



AGENDA ITEM #: #19-109
COUNCIL MTG. OF: September 17, 2019
FROM: Dave Caron, Town Administrator
OFFERED BY: Administration
PREPARED BY: Administration
SUBJECT: Amend Town Charter to Provide Override of Tax Cap

STAFF REPORT
Public Hearing 10-1-19

INTRODUCTION:

To allow the Council to preserve the validity of the Tax Cap by presenting a budget override process to the voters.

TOWN ADMINISTRATOR COMMENTS

Please see comments within this staff report.

BACKGROUND

The Town has operated under a town charter since 1984 and a budgetary tax cap since 1993. Although the Charter currently includes two opportunities to raise taxes outside of the cap, state law requires a general override process of the Tax Cap pursuant to RSA 49-D:3 I (e). The Supreme Court recently reaffirmed this requirement in its decision of Teeboom v. City of Nashua, Moriarty v. Mayor, City of Nashua, 2018-0171.

DISCUSSION

Currently, there are two mechanisms available to the Council under the charter to raise taxes in excess of the voter approved Tax Cap. First, Section 9.4 Action on the Budget, includes language which recognizes the interaction of the town's budget with federal and state mandates:

This provision shall not limit the Town Council from appropriately funding any programs or accounts mandated to be paid from municipal funds by state or federal law.

Similarly, Subsection (B) of Section 9.4. Exceptions to Budget Limitation, provides an additional mechanism:

The total or any part of principle(sic) and interest payments for any municipal bond may be exempted from being included in expenditures subject to the prior limitation in Sec. 9.4 (A) upon a two-thirds vote of the entire Derry Town Council. This decision shall be made annually.

The City of Nashua Charter, upon which the Supreme Court affirmed the Superior Court's invalidity of its tax cap, includes the exact two limitations that are found in Derry's Town Charter. Thus, it is clear that without further voter action, the Town's Tax Cap limitations as set forth in Section 9.4 are invalid.

Town Counsel has reviewed this matter and concurs that RSA 49-D:3 I (e) specifically requires language in the Charter which provides an override mechanism in order to validate the Tax Cap. Counsel recommends amending the Town Charter as follows:

(C) Override of Tax Cap: The Council may vote to exceed the limit on annual increases under the tax cap provision in Sec. 9.4 (A) for the specific budget year under consideration upon a two-thirds vote of the entire Derry Town Council.

It is recommended that the Council authorize placement of a question before the voters at the March 10, 2020 Municipal Election as follows:

“Shall the Town adopt Section 9.4 (C) of the Town Charter which provides for an override of the tax cap upon a two-thirds vote of the entire Derry Town Council” (Failure to enact this subsection will invalidate the Tax Cap)

The process to adopt this amendment is as follows:

- 1) The Council first votes to propose an amendment by Resolution, and as part of the vote will provide notice and schedule a public hearing on its proposed amendment;
- 2) Within 7 days after the final public hearing (October 1), the Council must file with the Town Clerk a report containing the final proposed amendments.
- 3) Within 10 days after the Town Clerk receives the report from the Council, the Town Clerk must file a certified report of the proposed charter amendment with the Secretary of State, Attorney General, and the Commissioner of the Department of Revenue Administration.
- 4) Within 14 days after the three agencies receive the report, all three must notify the Town Clerk in writing of the agency’s receipt.
- 5) Within 45 days after the receipt, the three agencies must give notice to the Town Clerk approving or disapproving the proposed amendment
- 6) Within 7 days after receiving approval from the three state agencies, the Council may order the proposed amendment to be placed on a ballot at the next regular municipal election.

FISCAL IMPACT

Passage of the Charter amendment would allow the Town Council to continue to deliberate and act upon the Town Budget as currently provided. Consideration of this amendment by the voters will occur during the regular municipal elections, thus avoiding any additional costs.

RECOMMENDED ACTION BY COUNCIL & MOTION

Act upon Resolution #2019-056 (please see Resolution)

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