

INFORMATION ON BOARD OF SELECTMEN AND PLANNING BOARD:

The Town of Gilford's website is [www.gilfordnh.org](http://www.gilfordnh.org). This will provide you with some general information on the Board of Selectmen and Planning Board.

The authority granted to the Board of Selectmen and Planning Board is governed by the NH Revised Statutes Annotated (RSA's). On the homepage of the Town website, if you go to "Links", at the top of the page, you can go directly to the State of NH Website. ([www.nh.gov](http://www.nh.gov))

On the State's website, click on Laws and Rules, then State Statutes On-line.

From there, click on Browse Index, and you will see a Table of Contents. There is a great deal of information on the Planning Board under Title LXIV, Planning and Zoning. These Chapters are pretty self-explanatory.

As far as information on the Board of Selectmen, Title III, TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES has information on the duties of the Board of Selectmen in Chapters 41; specifically Sections 41:8 and 41:9.

I also have a copy of the NH Local Government Center's Chapter regarding "The Role of the Governing Body", which is attached.

At this time, the members of the Board of Selectmen receive a \$2,500.00 per year stipend.

Sandy Bailey  
Administrative Secretary  
527-4790

If the voters decide to call their municipality a city, they must choose either the council-city manager form of government or the mayor-aldermen form of government, as outlined in RSA Chapter 49-C. Thirteen New Hampshire municipalities have adopted city charters. In cities, the council or board of aldermen is both the governing and legislative body of the city.

For towns, the local charter options for the legislative body, as outlined in RSA 49-D:3, are the town council, town council with budgetary town meeting, representative town meeting, official ballot town council and official ballot town meeting. Several New Hampshire towns have adopted charters that specify a town council-town manager form of government. Some of these charters retain an annual town meeting with budgetary authority; otherwise, both governing and legislative authority resides with the town council.

In adopting a charter, a municipality may only change the form of its government; it cannot alter or add to its authority to govern or legislate by incorporating new authority into the charter. *Manchester v. Secretary of State et al.*, 161 N.H. 127 (2010) (statute requires elected body to adopt budget by a simple majority vote, so charter amendment requiring two-thirds vote to override a spending cap was illegal and unenforceable); *Hooksett v. Baines*, 148 N.H. 625 (2002) (a municipality may not require in its charter that a candidate for office meet additional qualifications for office not otherwise required by state laws or Constitution because municipalities have no authority to add qualifications). A town or city with a charter continues to be bound by the fundamental rule of municipalities in New Hampshire, which is that towns and cities get all of their authority to act from the legislature through statutes. *Girard v. Allentown*, 121 N.H. 268 (1981).

#### D. Checks and Balances

As we discuss the roles of the governing body and legislative body, remember that most decisions made by one are in some manner checked and balanced by some authority assigned to the other by statute. For example, although the selectmen have the authority to spend town funds, they may only spend the funds if the legislative body has appropriated them to that purpose. The checks and balances system was intentionally built into the relationship between the bodies to prevent either body from assuming too much power and acting against the will or best interest of the majority of citizens.

## II. The Role of the Governing Body

### A. How Does the Board of Selectmen Function?

#### 1. *The Board Acts Collectively*

Authority rests with the board acting as a whole. RSA 41:8. The same is true in council towns. All actions taken by the selectmen or council must be voted on by a majority of the board at a public meeting that complies with the Right to Know Law, RSA Chapter 91-A, or the actions may later be invalidated by a court.

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#### 2. *One Selectman Has No Authority*

It is all too common for one selectman to think his or her individual action is final so long as a second selectman later agrees, either in a private conversation, by telephone or email to ratify the action. At other times, selectmen

think that any action is valid if at least two of three selectmen (or three of five selectmen) have put their signatures on a piece of paper, even if the signatures are collected over a period of several days. These practices violate the right of any remaining selectman (or selectmen) to participate in decisions, as well as the public's right under RSA Chapter 91-A to observe the decision being made at a public meeting. See Chapter Five for details on the Right to Know Law. If a single selectman acts alone, or if some or all of the board violate the requirements of the Right to Know Law, the actions taken are subject to court scrutiny, and may subject either the local official or the town or both to a range of remedies under that law.

## B. What Do Selectmen Do?

“The selectmen shall manage the prudential affairs of the town and perform the duties by law prescribed.” RSA 41:8.

### 1. Prudential Affairs

Under RSA 41:8, in addition to a host of specific statutory duties, the board of selectmen's duty is to “manage the prudential affairs of the town.” “The particular duties comprehended within the meaning of the phrase ‘prudential affairs’ are not easily enumerated.” *Moulton v. Beals*, 98 N.H. 461, 463 (1954). These powers are limited to what is “required to meet the exigencies of ordinary town business.” *Moulton v. Beals*, 98 N.H. 461, 463 (1954); *DeRochemont v. Holden*, 99 N.H. 80, 82 (1954). In *Moulton v. Beals*, the selectmen were directing certain litigation for the town. The town meeting voted specifically to assign control of the litigation to a special appointed committee. The Supreme Court upheld the town meeting action, finding that the selectmen were authorized to act in the absence of action by the town meeting, but the selectmen's prudential affairs authority was superseded by a specific directive of the town meeting.

The selectmen are the *executive, managerial and administrative body* that does what is necessary to carry out the votes enacted at town meeting. For example, the town meeting appropriates money, but under authority given them in RSA 41:9, the selectmen spend it. If the town meeting votes to buy or sell land, it is the selectmen who sign the deed. Most policy choices rest with the legislative body-town meeting, but the selectmen manage facilities and personnel and administer contracts to implement those policies. This doesn't mean that the selectmen perform all of the tasks on a day-to-day basis. Most municipalities hire staff, such as a town administrator, to deal with citizen questions, communicate with others, and prepare documents for the selectmen to discuss and act upon at a scheduled meeting. It is appropriate for the board to delegate the performance of day-to-day tasks to employees.

This power to manage, while broad, is not unlimited. The selectmen are not the general agents of the town and, therefore, have no broad authority to act with the full power of the town. When challenges and opportunities present themselves during the year, the selectmen cannot always proceed alone and may be required to call a special town meeting to resolve an issue.

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In addition to the prudential affairs powers, the board of selectmen has many specifically assigned roles and powers, which are discussed below.

## ***2. Calling the Town to Meeting***

The selectmen call the town voters to annual or special meetings by drafting and posting the document called the “warrant.” The warrant is the legal call to the voters that creates the agenda for the meeting and contains written statements of the issues to be considered by the voters, known as “warrant articles.” While articles may be placed on the warrant at the initiation of citizens by petition under RSA 39:3, most of the articles are created by the selectmen. The selectmen’s authority over the warrant under RSA 39:2 and preparation of the budget under RSA 31:95 and RSA 32:5 requires the board to act as an advisor to the town meeting.

**a. Budget advice.** The selectmen’s budgetary advice is presented to the town meeting in the form of the proposed operating budget and other appropriations articles. In towns with budget committees, the selectmen’s budgetary advice goes to the budget committee; the amounts shown in the warrant on the annual budget as “recommended” by the selectmen constitute their advice to the town meeting of the levels of funding required to deliver town services. RSA 32:5. In town manager towns, the manager advises the selectmen on the budget.

*The annual report must be available seven days before town meeting. RSA 41:13 and 41:14.*

**b. Reports.** As part of its advisory role, the board of selectmen prepares an annual financial report of the town and is responsible for publishing the reports of all other officers. The annual report must be available seven days before town meeting. RSA 41:13 and 41:14. RSA Chapter 21-J requires towns to send specific reports to the state Department of Revenue Administration (DRA). The DRA uses the information to administer various tax laws and to assure that municipalities comply with the budget and finance laws, RSA Chapters 32 and 33.

**c. Zoning ordinance protest petitions.** If a proposed change to the zoning ordinance is protested by affected landowners, the selectmen are responsible for ascertaining the validity of the protest petition under the provisions of RSA 675:5, and warning the voters of the existence of the petition by posting it at the polling place prior to the beginning of the meeting.

## ***3. Other Specific Statutory Duties***

In addition to its advisory and prudential functions, the board of selectmen has some independent authority, meaning it can act without town meeting approval. These substantive powers are set forth specifically in statute. They include:

**a. Regulation of town highways and commons.** The power granted to the selectmen by RSA 41:11 includes setting speed limits, enacting winter storm parking controls, and regulating sidewalks and bridges. See Chapter Ten for more information about regulating highways.

**b. Layout of highways.** Authority is granted in RSA 231:8 – :19 to the selectmen to create and alter highways by layout. However, selectmen do not have general authority

outside of the layout process to make a judicial determination about the status of a highway. In *Gordon v. Rye*, the board of selectmen held a hearing to determine whether a road had become a public highway by prescription. The New Hampshire Supreme Court held that this sort of judicial decision could not be made by selectmen, but rather through a petition to the superior court. 162 N.H. 144 (2011). See Chapter Ten for more information.

**c. Hazardous and dilapidated buildings and excavations.** The selectmen can order dilapidated buildings repaired or demolished and hazardous excavations filled or protected as provided in RSA Chapter 155-B.

**d. Licensing.** Selectmen issue licenses for many different purposes. These include community events (RSA 31:100), transient vendors (RSA 31:102-a) and parades and other types of shows (RSA Chapter 286). In addition, anyone who wants to operate a junkyard in the town must receive a licensing permit from the board of selectmen as outlined in RSA 236:111 – :129.

**e. Health regulations.** The selectmen and the health officer, acting jointly under authority of RSA Chapter 147, make up the town's board of health, which can enact health regulations without town meeting approval. This is a powerful tool for dealing quickly with public health issues. It includes the ability, for example, to repair sewage systems that have failed and includes authority for the town to collect its costs for such repairs from a landowner in the same manner as taxes are collected. See RSA 147:7-a and :7-b for important procedural details.

**f. Setting fees.** If the town meeting has adopted the provisions of RSA 41:9-a, the selectmen may set fees for regulatory programs such as building permits, or for revenue-producing facilities such as the solid waste facility. The board of selectmen must post notice of its proposed action and hold a public hearing before imposing or changing such fees.

**g. Establish and amend local welfare guidelines.** The board of selectmen adopts guidelines to administer the general assistance program as provided in RSA 165:1. The town can elect or appoint a local welfare administrator, but if it does not, the welfare assistance duty falls to the selectmen. See Chapter Seven for more details on the local welfare obligation of municipalities.

**h. Manage and regulate use of town property.** The selectmen have general authority to manage town land, which includes the authority to rent or lease town property for a public or private use for up to one year, or, if such authority is granted to the selectmen by town meeting, up to five years. RSA 41:11-a. Leases of longer duration require a town meeting vote. However, some statutes grant managerial authority over certain town property—library property or conservation land, for example—to boards other than the selectmen.

**i. Financial accounting and safeguarding.** The selectmen have important financial duties under RSA 41:9. They must establish procedures to receive and deposit town revenue promptly, authorize the treasurer to make payments properly approved by

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the selectmen, and keep fair and accurate accounts of all their financial transactions. The selectmen must prepare financial reports to the state and to the town meeting. The selectmen must annually review and adopt an investment policy for investment of public funds in accordance with standards established by statute. They must establish internal control procedures for “safeguarding” all town assets and properties, including the transactions and assets maintained by other elected officials such as the town

clerk. (See the LGC publication *Basic Financial Policies: A Guide for New Hampshire Cities and Towns*, 2009 edition.)

**j. Cemetery trustees.** RSA 289:6, II-a allows the town meeting to delegate the duties of the cemetery trustees to the board of selectmen. These functions fall to the town manager, if there is one.

**k. Election duties.** While RSA 659:9 designates the moderator as the chief election official of the town, under other statutes and the New Hampshire Constitution, Part II, Article 32, the selectmen are election officials with a role at the polling place during all elections. Under RSA 658:9-a, the selectmen are responsible for the physical setup of the polling place for elections, including reserving the polling place, providing voting booths and making sure all of these comply with the requirements for accessibility for persons with disabilities and the elderly.

**l. Adoption and amendment of town codes and ordinances in larger towns.** Under RSA 41:14-b, towns with populations greater than 10,000 may give the selectmen the power to establish and amend town ordinances and codes after two public hearings. This power does not apply to zoning, historic district or building code ordinances adopted under the provisions of RSA Chapter 675.

**m. Taxation.** Selectmen are responsible for assuring that all taxable real property in the town is inventoried and appraised and that a warrant is issued to the tax collector for the collection of such taxes. See RSA Chapters 72 through 76. Once taxes have been assessed, selectmen deal with requests to abate the taxes when filed by taxpayers. See Chapter Eight for details.

**n. Perambulation.** Every seven years the selectmen, or persons appointed by them in writing, are required by RSA Chapter 51 to perambulate the lines between adjoining towns and renew the marks and bounds. A report must be made, signed by the selectmen or their appointed perambulation agent and filed with the town clerk and secretary of state. Selectmen may be fined for neglect of these duties.

#### ***4. Appointing Other Officials***

The selectmen are responsible for appointing persons to serve in various town positions. They may supervise the work of these persons and, if specifically permitted by statute, the board may remove them from office.

**a. Direct appointment.** The town meeting has the option to create any elected (RSA 41:2) or appointed position it deems necessary to perform the work of the

town. For example, many towns have an administrative assistant, even though there is no statute specifically authorizing this position. The duties, pay and manner of selection of these optional officers may be directed by the town meeting vote authorizing them, but the town meeting often delegates the task of defining the duties of these appointed officials to the selectmen.

Note that some appointed positions, such as members appointed to a planning board, zoning board of adjustment or conservation commission, have duties assigned by state law and are not subject to the direct supervision of the selectmen when they perform their statutory duties. In addition, these persons are not treated as town employees.

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**b. Approval of appointment.** A deputy tax collector is appointed by the tax collector subject to the selectmen's approval under RSA 41:38. The process is the same for the deputy town clerk (RSA 41:18) and deputy treasurer (RSA 41:29-a). Once they have approved the appointment, the selectmen have no direct supervisory role over these officials.

**c. Nomination.** The health officer is recommended by the selectmen to the state Department of Health and Human Services (DHHS), but is appointed by the DHHS commissioner under RSA 128:1.

**d. Filling vacancies.** A vacancy in an elective office is defined in RSA 652:12 and results from, among other things, death, resignation and cessation of domicile in the town. Note that vacancy doesn't include a temporary absence from the town. RSA 669:61 – :75 spells out how vacancies in each office are filled, whether by the board of selectmen or other board or officer empowered to deal with the vacancy.

### III. Role of a Town Manager

#### A. Adoption

The adoption of the town manager law, RSA Chapter 37, is one of the most significant alterations to the form of town government that can be made without adopting a home rule charter. The question is presented to the voters on the official ballot either by action of the selectmen or by petition of at least 10 voters. The town manager provisions cannot be voted on at a special town meeting. The question must be: "Do you favor adoption of the town manager plan as provided in Chapter 37 of the Revised Statutes Annotated?" "Yes" and "No" boxes must follow the question. A similar method is used to discontinue the town manager plan. See RSA 37:11 – :15.

#### B. Hiring

The board of selectmen is responsible for hiring the town manager. In town-council towns, the council-manager form of government is required and is adopted as part of the town's charter.

# Legal Q AND A

By C. Christine Fillmore, staff attorney with the  
New Hampshire Local Government Center's Legal Services  
and Government Affairs Department

## Selecting the Rules for Boards of Selectmen

It may be surprising that New Hampshire law says very little about the way a board of selectmen should operate. We receive many questions regarding the role of the chairperson and the rules that govern the board's procedure. The lack of specificity in the law gives local boards a lot of freedom to define these things. However, this can also mean a board has very little guidance when faced with difficult situations. Here are a few of the questions that have arisen.

### Q. How is the chair chosen?

A. In whatever way the board decides. No statute or court case explains how the chair is chosen or how long he or she serves. In comparison, land use boards such as the planning board and zoning board of adjustment are required, by statute, to elect a chair from among their members every year. RSA 673:8 and RSA 673:9.

The method of selecting a chair varies from town to town. Some towns have a tradition that the longest-serving member or the one whose term expires next is the chair. Others elect a chair at the first meeting from among all members. No matter how the chair has been chosen in the past, a board may vote to change the method. A board may also vote to change which selectman is the chair at any time.

### Q. Are there any rules to guide the board in how it should do this?

A. Two major statutes guide the board in everything it does. The first is RSA 41:8, which says "[a] majority of the selectmen shall be competent in all cases." In other words, a board of selectmen may take action only by majority vote. As is often said, a single selectman has no authority. The second critical statute is RSA Chapter 91-A, New Hampshire's Right to Know Law. It requires the board to conduct any official business at a properly held meeting. RSA 91-A:2.

This means a chair should be chosen in the same way that all other official business is conducted by the board: at a properly held public meeting, by majority vote.

### Q. Can the chair vote?

A. Yes! As a member of the board, the chair has the same right as the other members to participate in debate and to vote. The chair of a board of selectmen is not the same as a town moderator, who is chosen to preside over a large legislative body and, ordinarily, does not vote except to break a tie or by secret ballot. Each selectman on a small board of three or five members was elected to participate in debate and to vote, and the fact that one of them was chosen as chairperson does not deprive him or her of that right. 59 Am.Jur. 2d. Parliamentary Law, §4. The chair should be able to do this while overseeing the business of the board in a fair manner. In addition, if the chair does not vote, often there will be an even number of members voting on an issue. Boards are designed to have an odd number of people to reduce the potential for a tie.

### Q. What is the role of the chair?

A. Generally, to preside over the board and see that business is conducted fairly, openly and efficiently. The chair should maintain order. *State v. Dominic*, 117 N.H. 573 (1973). However, it is only the will of the board, expressed by majority vote, that is binding on the board. The chair cannot arbitrarily overrule the will of the majority. See RSA 41:8.

The chair should balance his or her full participation in debate and voting with the duty to conduct the board's business fairly and efficiently. Different viewpoints should be permitted, and constructive discussion should be encouraged, but the business of the board must continue. If any person refuses to come to order or yield the floor, the chair has authority to order that person to leave and may ask a law enforcement officer to assist. *State v. Dominic*, above (a

selectman was properly removed from a selectboard meeting and convicted of disorderly conduct after refusing to come to order). Removal does not violate that person's freedom of expression because the chair has a duty to maintain order and to protect the rights of others to speak in an orderly manner. *State v. Dominic*, above; *State v. Albers*, 113 N.H. 132 (1973).

### Q. What about calling meetings, setting agendas and other decisions that must be made between meetings?

A. The chair has only as much authority as the board votes to give him or her. Some boards have rules providing that the chair calls meetings and sets the agenda. Other boards permit any member to call a meeting, and all members contribute to the agenda. In any case, the board as a whole may vote to change these rules at any time it sees fit.

However, the chair (as a single selectman) has no authority to act on behalf of the board between meetings unless the board has voted at a properly-held meeting to delegate that action to the chair.

### Q. What rules of procedure guide the board of selectmen?

A. There are no statutory procedural requirements for conducting ordinary

business other than those in RSA 41:8 (a majority is required to take action) and RSA Chapter 91-A (official business must follow public meeting requirements). Unlike land use boards, which are required by statute to adopt formal rules of procedure, boards of selectmen are not required to adopt such rules. See RSA 676:1.

However, without at least some procedural rules, it can be difficult for boards to operate efficiently. Selectmen come from a variety of backgrounds and may be used to different procedural rules. For example, the rules governing the State legislature, Rotary Club, religious organizations, nonprofit boards of directors, fraternal organizations and other groups can differ in complexity and formality. Adopting a single set of rules can help board members and the public know what is expected and how to accomplish things quickly and fairly.

A board may choose any rules it finds appropriate so long as they do not conflict with the law. For example, RSA 41:8 says that a majority vote is required for the board to act. Local rules cannot change that.

*Robert's Rules of Order* are not required, nor are they particularly useful for municipal boards. For one thing, they are extremely complex. The current 10<sup>th</sup> edition is more than 700 pages long; the official "brief" version is more than 200 pages. It is also a challenge to be sure everyone

is using the same version. Because some of the earliest editions are no longer protected by copyright, they have been revised and republished by a variety of writers under confusingly similar titles. *Robert's Rules* are also written with private organizations in mind rather than smaller municipal bodies that meet in frequent public sessions. More useful, but at over 700 pages still far more complex than necessary, is *Mason's Manual of Legislative Procedure*. It is used in most state legislatures and is geared specifically toward large public bodies.

Simple, straightforward rules are best. Their purpose is to facilitate the orderly and convenient conduct of business. They might address things like meeting times, who calls meetings and how it is done, setting the agenda, simple rules regarding motions, discussions and voting, and rules for maintaining order during meetings. It can be useful to remember that the rules are there to help the board accomplish its goals, not to confuse or impede the process.

Once rules have been adopted, it is a good idea to follow them consistently and fairly. However, local rules (unlike the law) may be amended, waived or disregarded by a majority vote of the board. *Richardson v. Union Congregational Society of Frankestown*, 58 N.H. 187 (1877).



54 Suncook Valley Road  
Barnstead, NH 03218  
Phone: 603-435-8808  
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**Q. Does the board have to allow public comment at meetings?**

**A.** In most cases, no. The only time public comment is required is during a public hearing, when parties whose rights may be affected have the right to be heard. For example, if the board conducts a public hearing for the layout of a new public road, the owners of the land over which the road will pass have a right to be heard. RSA 231:11. When the selectmen hold a public hearing to consider buying or selling land, or accepting unanticipated grants, any member of the public who wishes to speak should be allowed to do so. See RSA 41:14-a; RSA 31:95-b.

In contrast, the general public has no right to speak at an ordinary selectmen's

meeting. Meetings must be open to the public, but the right to *attend* is not the same thing as the right to *speak*. See RSA 91-A:2. Unless the board decides otherwise, the only people who may speak at a selectmen's meeting are the board members and other people invited or permitted to speak by the board. Use caution, however—if public comment is permitted, the First Amendment right to free speech may be triggered. For more information on that subject, please see the ar-

ticle "Public Meetings and Freedom of Speech: When Do Citizens Have a Right to Speak?" published in the March 2009 issue of *New Hampshire Town and City* magazine.

*For more information on this and other topics of interest to local officials, LGC's legal services attorneys can be reached Monday through Friday from 8:30 a.m. to 4:30 p.m. by calling 800.852.3358, ext. 384.*

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