

FINANCE & ADMINISTRATION COMMITTEE MEETING

Monday, August 20, 2012

5:30 p.m.

Hampden Town Office

1. Minutes – 8/6/2012
2. Review & Signature of Warrants
3. Old Business
 - a. Ordinance Exempting Eligible Active Duty Personnel from Vehicle Excise Tax – Town Attorney Opinion
 - b. Town Council Rules
4. New Business
5. Public Comment
6. Committee Member Comments

FINANCE & ADMINISTRATION COMMITTEE MEETING MINUTES

Monday, August 6, 2012

Attending:

Councilor Shelby Wright	Mayor Janet Hughes
Councilor Jean Lawlis	Sue Lessard, Town Manager
Councilor Jeremy Williams	Chip Swan, Public Works Director
Councilor Tom Brann	Residents

The meeting was called to order at 6:35 p.m. by Mayor Janet Hughes.

1. Minutes – 7/16/2012 – Motion by Mayor Hughes, seconded by Councilor Jean Lawlis to approve the minutes of 7/16/2012. Unanimous vote.
2. Review & Signature of Warrants – The Warrants were reviewed and signed by Committee members.
3. Old Business
 - a. David Caliendo – Application to Board of Assessment Review – Motion by Councilor Williams, seconded by Councilor Lawlis to recommend to the Council the re-appointment of David Caliendo to the Board of Assessment Review. Unanimous vote.
 - b. Town Manager – Board of Environmental Protection Meetings – Use of Vacation Time – Motion by Councilor Lawlis, seconded by Councilor Brann to reaffirm the action of prior Councils with respect to the Town Manager's service on the Board of Environmental Protection. Unanimous vote.
 - c. Town Charter Review – Town Council Section – This item will be discussed at the next meeting. It has been on the agenda several times and lack of time has not allowed it to be discussed. The time for getting Charter changes done for a vote in November of 2012 has passed.
4. New Business
 - a. Loader/backhoe Financing – Motion by Councilor Williams, seconded by Councilor Wright to recommend to the Council that the loader/backhoe bid be awarded to Nortrax for a cost of \$63,000, funded from Public Works Equipment Reserve through a five year lease purchase plan. Unanimous vote.
5. Public Comment - None
6. Committee Member Comments – None

The meeting was adjourned at 6:53 p.m.

Respectfully submitted,

Susan Lessard
Town Manager

FARRELL, ROSENBLATT & RUSSELL

ATTORNEYS AT LAW
61 MAIN STREET
P.O. BOX 738
BANGOR, MAINE 04402-0738

ANGELA M. FARRELL
NATHANIEL M. ROSENBLATT
THOMAS A. RUSSELL
JON A. HADDOW
GREGORY P. DORR
ROGER L. HUBER

TELEPHONE (207) 990-3314
TELECOPIER (207) 941-0239
e-mail: tar@frrlegal.com

MEMORANDUM

August 15, 2012

To: Susan Lessard
From: Tom Russell
Re: Excise Tax Exemption for Active Duty Military Personnel

The Maine Supreme Judicial Court has routinely held that the legislative authority concerning taxation is vested in the State Legislature and that municipalities cannot exercise their home rule authority with respect to taxation. Rather, in matters dealing with taxation, municipalities may only exercise the authority expressly granted to them by the Legislature.

On April 4, 2011, L.D. 1385 was introduced at the First Regular Session-2011 of the 125th Maine Legislature. L. D. 1385 proposed the enactment of 36 M.R.S. §1483(17), which would have created an exemption from excise tax for vehicles owned by residents of Maine who are on active military duty and who are either permanently stationed at a military or naval base outside of Maine or are deployed for military service for a period of more than 30 days.

The Committee on Taxation amended L.D. 1385 to delete the proposed adoption of §1483(17), and to substitute the proposed enactment of §1483-A, which was ultimately enacted by Public Law 2011, c. 313, §§ 1 and 2. Essentially, the version of L. D. 1385 that was enacted abandoned the outright creation of an excise tax exemption, and created a local option for municipalities to enact an ordinance to exempt from excise taxation vehicles owned by a resident who is on active duty serving the Armed Forces and who is either permanently stationed at a military or naval post, station or base outside Maine or deployed for military service for a period of more than 180 days.

The Town developed such an ordinance based on a sample ordinance provided by the Maine Municipal Association. Section 2 of the proposed Ordinance tracks the language of 36 M.R.S. §1483-A. After the public hearing on the proposed Ordinance at the August 6th meeting of the Town Council, a number of councilors raised questions concerning the Town's discretionary authority under §1483-A, and whether the Town has the authority to place limits or qualifications on the exemption, such as a limit on the number or types of vehicles to be exempted from the excise tax.

Since 36 M.R.S. §1483-A deals with taxation, it is clear that the Town cannot exercise its home rule authority to broaden or expand the exemption by ordinance. Under general principles of administrative law, however, if an official or entity is granted rather broad authority, that official or entity has the inherent authority to exercise less than the full scope of authority granted by law or rule. It is not an “all or nothing” grant of authority. I have reviewed the language of 36 M.R.S. §1483-A, as well as the limited legislative history of the bill on the Legislature’s website. I did not find anything that expressly prohibits a municipality from exercising its home rule authority to impose limitations or qualifications on the granting of the authorized exemption, nor did I find anything to suggest that the Legislature intended to prohibit the exercise of such home rule authority “by clear implication”.

Therefore, it is my opinion that the Town Council has the authority to adopt qualifications or limitations on the excise tax exemption. For example, under the language of the statute and the draft ordinance, a qualified resident could claim an exemption for all “vehicles” owned by the resident. Section 1481(5) defines the term “vehicle” to include a motor vehicle (defined as any self-propelled vehicle not operated exclusively on tracks, including motorcycles, but not including aircraft, snowmobiles or any vehicles prohibited by law from operating on public highways), mobile home, camper trailer, heavier-than-air aircraft or lighter-than-air aircraft. I believe the Town Council could place limitations on the type of “vehicles” that would qualify for the excise tax exemption under the Town’s Ordinance.

As to the draft Ordinance, I recommend that Section 3 be revised to read as follows:

“Pursuant to Section 213(c) of the Town Charter, this Ordinance shall become effective at the expiration of 30 days after its adoption by the Town Council, and shall remain in effect unless and until it, or 36 M.R.S.A. §1483-A, is repealed”.

If you have any questions or comments, or you desire further review, please contact me.

TOWN OF HAMPDEN, MAINE
ORDINANCE
EXEMPTING ELIGIBLE ACTIVE DUTY MILITARY PERSONNEL
FROM VEHICLE EXCISE TAX

Section I. Authority.

This Ordinance is enacted pursuant to 36 M.R.S.A. §1483-A, which expressly authorizes such ordinances.

Section 2. Excise Tax Exemption: Qualifications.

Vehicles owned by a resident of this municipality who is on active duty serving in the United States Armed Forces and who is either permanently stationed at a military or naval post, station or base outside this State or deployed for military service for a period of more than 180 days and who desires to register that resident's vehicle(s) in this State are hereby exempted from the annual excise tax imposed pursuant to 36 M.R.S.A. §1482.

To apply for this exemption, the resident must present to the municipal excise tax collector certification from the commander of the resident's post, station or base, or from the commander's designated agent, that the resident is permanently stationed at that post, station or base or is deployed for military service for a period of more than 180 days.

For the purposes of this section, "United States Armed Forces" includes the National Guard and the Reserves of the United States Armed Forces.

For purposes of this section, "deployed for military service" has the same meaning as in 26 M.R.S.A. §814(1) (A).

For purposes of this section, "vehicle" has the same meaning as in 36 M.R.S.A. §1481(5) and does not include any snowmobiles as defined in 12 M.R.S.A. §13001.

Section 3. Effective Date: Duration.

This Ordinance shall take effect immediately upon enactment by the municipal legislative body unless otherwise provided and shall remain in effect unless and until it or 36 M.R.S.A. §1483-A is repealed.

Tabled after Public Hearing

HAMPDEN TOWN COUNCIL RULES

1. The Town Council shall only act by ordinance, order, or resolve. All ordinances, orders, and resolves shall be confined to one subject, which shall be clearly expressed in the title. All orders and resolves shall be dated, numbered, and signed by the Town Clerk and the Town Councilors will receive a copy.
2. In all motions of command, the form of expression shall be 'ordered' and in all motions concerning principles, facts, or purposes, the form shall be 'resolved'.
3. The name of the Council member or other person, persons, or group requesting an item on the agenda will be indicated on the agenda with the said item.
4. As a matter of courtesy, conduct for all Council and Committee meetings shall be as follows:
 - a. Cell phones shall be silenced during Council & Committee meetings by Town Councilors, staff, and the general public.
 - b. Councilors and staff shall refrain from texting or emailing during all Council or Committee meetings.
 - c. Cell phone use, texting, and email may be done during breaks in regular or special Council meetings or committee meetings.
5. Town Councilors shall participate in Freedom of Information Act training within 120 days of being sworn in as a Town Councilor and documentation of that training shall be filed with the Town Clerk.
6. Town Councilors shall participate in Elected Officials training offered by the Maine Municipal Association within the first year of office.
7. A New Councilor orientation packet shall be provided to all Councilors at the time they are sworn in.
8. Excused absences for Councilors for Council meetings may be granted as the result of illness, vacation, work commitments, or family illness.
9. The Mayor shall take the chair at the appointed time for the meeting, call the members to order, and proceed to the following order of business:
 - A. Consent Agenda
 1. Signatures – Treasurer's Warrants, etc
 2. Secretary's Report
 3. Communications
 4. Reports
 - B. Public Comments
 - C. Policy Agenda
 1. Public Hearings
 2. Nominations-Appointments – Elections
 3. Unfinished Business
 4. New Business
 - D. Committee Reports
 - E. Manager's Report

F. Councilor Comments

G. Adjournment

10. In the absence of the Mayor, the Deputy Mayor shall preside over the Town Council meeting. In the absence of the Deputy Mayor, the Mayor shall appoint, in advance, another Council to chair the meeting.
11. When a question is under debate, the Mayor shall receive no motion but to adjourn, or for the previous question, to lay on the table, or to postpone to a day certain, or to refer to a committee or some administrative official or to amend, or to postpone indefinitely; which several motions shall have precedence in order in which they stand arranged.
12. When a vote is passed, it shall be in order for any member who voted in the majority, or in the negative on a tie vote, to move a reconsideration thereof at the same, or the next stated meeting, but not afterwards; and when a motion or reconsideration is decided, that vote shall not be reconsidered.
13. When any member is about to speak, they shall respectfully address the Mayor, confine themselves to the question under debate, and avoid personalities. No member speaking shall be interrupted by another but by a call to order, or to correct a mistake.
14. Every member present, when a question is put, shall give their vote, unless the Council, for special reasons, shall excuse them. Application to be so excused must be made before debate on the issue and the decision on the application shall be made by a majority vote of the council without debate.
15. The rules cannot be dispensed with or suspended if one or more members of the council shall object. No rule or order shall be amended or repealed without notice, in writing, being given at the preceding meeting.
16. Any person wishing to address the Town Council will be given the opportunity to do so in accordance with the following procedure:
 - a. Persons wishing to address the Council on an item which appears on the agenda shall wait until the Mayor announces the consideration of such item, at which time they may address the Council on that particular item. There shall be a five minute limit on such comments per person, per item. In the event that a large number of persons wish to speak on an issue, this limit may be changed to insure that all who wish to speak have the opportunity to do so. Once public comment on an item has closed and a motion and second has been made by members of the Town Council, further public comment is only allowed if approved by a unanimous vote of the Town Council.
 - b. Any person wishing to address the Council on an item not appearing on the agenda shall be allowed to do so only in that section of the agenda referred to as "Public Comments". There shall be a five minute limit on such

comments per person per subject raised. Items heard during Public Comment may be agendaed for a subsequent meeting or referred to a Committee or staff member for discussion/action. No votes may be taken by the Council on a subject raised during Public Comment without a vote by the Council to set aside the rules and add it to the regular agenda for consideration.

- c. Any person wishing to address the Council shall signify their desire by raising their hand and, when recognized by the Mayor, such person shall thereupon request permission to address the Council, giving their name and address and then designating the subject matter on which they desire to address the Council.

17. At the commencement of the Calendar year, or as soon thereafter as possible, there shall be chosen the following Committees, each Committee to consist of three (3) members of the Council as the Mayor may designate, or, upon a motion, the Council may ballot.

- a. Finance & Administration – The purpose of this committee shall be to review all items related to their fiscal impact on the Town as well as all matters that pertain to items of administrative procedures. This committee will also have the responsibility for the review and signature of all payment warrants.
- b. Services Committee – The purpose of this committee shall be to review all matters related to services provided by the Town related to recreation, parks, trails, the library, the pool, and other items related to non-emergency or public works services provided in the community
- c. Infrastructure – The purpose of this Committee shall be to review all matters pertaining to public infrastructure including buildings, roads, and all town capital equipment.
- d. Planning & Development – The purpose of this Committee shall be to review all matters related to all ordinances of the Town and all proposals for economic & community development.
- e. Communications – The purpose of this Committee shall be to review all matters related to the Town Website, Town Newsletter, Town Cable Channel 7, and other town sponsored communication activities.

18. Committee procedure shall be governed as follows:

- a. All Committees will be required to post an agenda at least 48 hours prior to the meeting and no issue may be voted on unless it is agendaed.
- b. It shall be the responsibility of the Committee Chair to discuss the development of the meeting agenda with the assigned staff person at least 24 hours before the meeting is required to be posted.

- c. The assigned staff member shall prepare and post the agenda.
 - d. Draft minutes of each meeting will be prepared by the staff member supporting the committee within three business days.
 - e. Committee meeting minutes shall be posted on the Town website following their voted approval by the Committee.
 - f. Non-committee Council members attending a Committee meeting will have voting rights if they have been present for the entire discussion of an issue, providing that at least two of the three appointed members of the committee are present.
 - g. Two appointed members of the Committee shall constitute a quorum
 - h. The Mayor shall serve as an ex-officio member of all committees with the exception of Finance & Administration, and shall serve as a member and Chairperson of that Committee. The Mayor, when serving as an ex-officio member, shall not count as an appointed member for the purpose of establishing a quorum at all other Committee meetings.
19. The Mayor of the Council may appoint members of the Council and/or citizens of the Town to special committees as authorized by the Council. No Committee shall have the power of executive action unless specifically authorized and shall report back to the Council for action on its recommendations or proposals.
20. In all cases where the parliamentary proceedings are not determined by the foregoing rules and orders, "Roberts Rules of Order" shall be taken as authority to decide the course of proceedings.
21. The first and third Mondays of each month are designated as 'regular' council meetings with the provision that a unanimous vote of the council would cancel a meeting. Whenever a regular meeting falls on a legal holiday, such meeting will take place the following day.
22. Special meetings of the Town Council may be scheduled for other dates for special purposes. The agendas for such meetings shall be posted at the Post Office, Town Office, Town Bulletin Board, on the Town website, no less than 72 hours in advance of the meeting (unless an emergency meeting is needed for the purpose of dealing with an unanticipated Town emergency, in which case posting shall be to all normal posting locations and via email to local print media as soon as it is identified that a meeting will be held). The agenda for a Special Meeting shall be prepared as follows;
- A. Call to order
 - B. Subject(s) for meeting
 - C. Adjourn

The general public shall be allowed to comment on subjects at Special meetings in the same manner as for Regular Council meetings. There shall be no general Public Comment section for items not contained on the agenda for Special Council meetings.

23. Any item on the consent agenda can be set aside for discussion at the request of any Councilor, prior to a motion on the remainder of the consent agenda.
24. Council Meetings shall not extend beyond 10 p.m. without an affirmative vote of the Town Council.
25. The Councilor Comment section of the agenda is reserved for the purpose of enabling any Council member to discuss matters not previously mentioned on the agenda. No official Council action can be taken at this time.

This policy replaces the Council Rules last updated February 19, 2008

Adopted by Town Council: May 21, 2012