

May 29, 2020

Evan Teich
Unified Manager
Town of Essex & Village of Essex Junction
81 Main Street
Essex Junction, VT 05452

Re: H. 944 – Amendments to the Town of Essex Charter

Dear Mr. Teich:

We wanted to update you on our review of H. 944 – Amendments to the Town of Essex Charter.

As you may know, because of the COVID-19 state of emergency the workload of our committee has dramatically increased with much of that work focused on helping cities and towns deal with the crisis. At the same time, the allotted committee time we have each week has decreased significantly because of the need to meet virtually via Zoom conferencing services. Nevertheless, we made a commitment to review and discuss many of the charter amendment bills that have been assigned to our committee. Our goal in that review was to identify charter amendments that were straightforward and urgent that we could quickly vote out of committee.

Unfortunately, the proposed amendments to the Town of Essex Charter are not straightforward. Nor do they appear urgent. While H. 944 has only one operative provision – the expansion of the selectboard in the town to a six-member board, there are a number of issues with the amendments:

1. The proposed amendments do not contain any transitional provisions for electing the selectboard. Typically, when you are changing the composition of a legislative body, there are transitional provisions to ensure member terms are staggered and that you are preserving existing members terms. As Legislative Counsel discussed in our committee, the lack of transitional provisions may also raise constitutional issues as duly elected members of the current selectboard would have to make way for new members.

2. The proposed districts – inside the Village of Essex Junction and outside the Village – may violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution now or in the future. Local governments are subject to the one person, one vote rule that requires equal population among districts. *See* Avery vs. Midland Cty., 390 U.S. 474, 484-85 (1968). Even if the proposed districts have equal populations today, the proposed amendments to the Town of Essex Charter do not contain any reapportionment language if the populations of the two districts change. *See, e.g.,* 24 VSA Appendix ch. 1, § 103 (City of Barre Charter); 24 VSA Appendix ch. 5, § 201 (City of Montpelier Charter); and 24 VSA Appendix ch. 9, § 1.03 (City of Rutland Charter).
3. The proposed amendment calls for an even number of selectboard members. Typically, selectboards in Vermont have three or five members. An odd number of members helps avoid a deadlock because of a tie vote. Research also indicates that boards with an odd number of members make better decisions. It is the standard practice of our committee to recommend that any board with decision-making authority have an odd number of members.

We note that some of the issues we raise were also raised by the Greater Essex 2020 Governance Subcommittee. *See* Governance Subcommittee, Governance Recommendations - <https://www.greateressex2020.org/uploads/1/2/6/3/126381556/governancesubcommitteerecommendations-020320-.pdf>.

Given our current workload and the issues we have raised, it makes the most sense to table H. 944 for now. We look forward to re-visiting a charter change once the voters of the Town of Essex and the Village of Essex Junction have approved a plan of merger. As you may know, Title 24, Chapter 49 requires the development of a charter for a consolidated municipality as part of a plan or merger. It is our hope that our concerns can be addressed as part of this more thorough process and that we can work with you to ensure passage of the plan of merger in the General Assembly.

Sincerely,

Sarah Copeland Hanzas
Chair, House Government Operations

John Gannon
Vice-Chair, House Government Operations

cc: Town of Essex Selectboard
Village of Essex Trustees
Susan McNamara-Hill