

Advisory Committee on Bethlehem Town Governance

Final Report

July 2012

Introduction

In January 2012, the Bethlehem Town Board (“Board”) appointed an advisory committee on town governance (“the committee”) to provide the Board and citizens with additional information to evaluate proposed changes in the way that the Town of Bethlehem (“Bethlehem”) manages its affairs. The committee was tasked with providing the Board with information for possible governance changes, not with making specific recommendations on which possible changes to adopt.

After its initial meeting in January, the Chair assigned committee members to three subcommittees to study a potential ward system, the selection of department heads, and terms and term limits of elected officials. Each subcommittee's report provides you with relevant background and history, a presentation of the pros and cons relating to the current process as well as any potential changes, and information on how any changes could be implemented by the Board or public.

The members of the advisory committee were as follows:

Chair

David Liebschutz

Patty Salkin, Special Advisor

Ward System Subcommittee

Donna Giliberto, Co-Chair

Christopher Hanifin, Co-Chair

Linda Jasinski

Frank Zeoli

Steve Elliott

Department Head Subcommittee

Peggy Sherman, Chair

Richard Reeves-Ellington

Charlotte Buchanan

Marge Kanuk

Terms & Term Limits

Saul Seinberg, Co-Chair

Susan Hager,

Richard Mendick

The committee met approximately a dozen times as a whole, and its three subcommittees met several additional times. In addition, the committee was ably assisted by four law students from the Government Law Center at the Albany Law School:

Jenna Dana
David Gordon
Rob Smith
Emily Von Werlhof

Summary of Findings

The committee believes that this report will be a useful tool for the Board as it considers whether or not to make possible changes to the way it governs itself, especially in identifying any necessary steps to implement the changes discussed below. While individual members of the committee may have their own thoughts about the usefulness of particular governance changes, as per our charge from the Board, the committee has not taken a position on any particular potential changes in Town governance but would be happy to continue to be a resource for the Board should any of these changes be considered more fully going forward.

What follows is a brief summary of the three main areas that the committee considered (a ward system, the selection of department heads and term lengths and limits) followed by the full subcommittee reports and appendices.

Establishing a Ward System

Introduction

Of the 932 towns in New York, 167 are eligible to use a ward system to elect council members, (whereby town board members represent a particular area (or “ward”) of a town), and 13 have chosen to do so. The remaining 919 towns, including Bethlehem, use the at-large system of town council representation, where board members represent (and are elected by) all town residents. It should be noted that only the 109 first-class towns (i.e., generally towns with a population of 10,000 or more) and 58 suburban towns as defined by New York Town Law are eligible to adopt a ward system.

Comparison Table

Current System

Ward System

	<u>Current System</u>	<u>Ward System</u>
1. Residency Requirement	Anywhere within the Town for any of the four Board seats.	Within the ward for that Board seat assigned to that particular ward.
2. Representation of Board members (excluding supervisor)	Resident votes for all four Board members.	Resident votes for one of four (or six) Board members.
3. Impact on Costs to Administer Elections	Unchanged.	Negligible to no impact.
4. Responsiveness of Elected Officials	Each resident is represented by all four Board members from the Town.	Each resident is represented by the Board member from his/her ward.
5. Party System Impact	Town-wide elections reflect party identification town-wide, making it potentially difficult for a minority parties to win a board seat.	Ward system may produce variations in political party power in each ward but may also be susceptible to Gerrymandering.
6. Accountability to Voters	All Board members are accountable to all Town residents; though residents may be less familiar with individual board members or their	Each Board member is accountable to the residents of his/her ward. Smaller area and number of voters means voters are more likely

	performance.	to know/interact with their board member
7. Setting of District Boundaries	All elected positions are Town-wide. No internal boundaries are needed.	Board positions are based on internal boundaries, with Town divided into four or six districts. Districts must be roughly equal in voters, and are redrawn every 10 years (like other election districts).
8. Eligibility of Potential Candidate	Eligible from the Town at large – increases participation opportunities from whole Town or multiple seats. Any eligible voter can run for any one of four board seats.	Eligible from only within ward. Divides candidate pool. Any eligible voter can only run for the one seat representing the ward. ¹
9. Governmental Functions & Stewardship	Each Board member and Supervisor has an equal say in governance and share responsibility for public assets and services equally.	Although all members have Town-wide responsibilities, the Supervisor is elected Town-wide while Board members have only a mandate from his/her ward and could potentially focus just on ward issues.
10. Elections	Every two years, have two Board seats plus supervisor (3 of 5) are up for election.	Every two years, all four Board seats plus the supervisor are up for election.
11. Terms	Supervisor has a two year term; Board has four year terms.	Supervisor and Board have two year terms.

Implementation Issues

The ward system of electing town board members is authorized by §§ 81 and 85 of the New York Town Law. Town Law § 85 further provides that a town may choose to have either four or six wards. The change to a ward system can be initiated either by the voters directly, through a petition, or through action by the Board. The Board may, upon its own motion, submit a proposition to be on the ballot at a Town election to establish the ward system for the election of Board members. However, if a petition is presented by the voters, the Board must submit the proposition for a public vote.

In addition, if dividing the Town into wards, a few rules apply. First, a Town election district cannot be divided and no election district thereafter created can include parts of two or more wards. Second, the number of voters in each ward must be approximately “equal”.² The law is silent as to the types of

¹ See Election Law 6-122 “A person shall not be designated or nominated for a public office or party position who is not a citizen of the state of New York; is ineligible to be elected to such office or position; or who, if elected will not at the time of commencement of the term of such office or position, meet the constitutional or statutory qualifications thereof.”

² In addition, the provisions of existing federal and state law regarding “one person, one vote” population standards must be

geographic or geopolitical units that can be considered when drawing ward boundaries. However, all 13 towns that have a ward system of government have used election districts as the basic unit of geography for building wards. (An election district is an administrative unit created by county boards of election in New York State for the purpose of running elections.) Further, the law is silent as to the time frame for completing the ward-drawing process, public participation and disclosure, and the role of the Board when the County Board draws the lines.

When the County Board of Elections (or Town Board where a local law has been enacted) determines the ward boundaries, it must prepare a map of the Town showing in detail the location of each ward and its boundaries and file the original with the Town Clerk. Copies must also be filed with the County Clerk and the County Board of Elections. The ward system will be deemed established after this filing is complete.

Required changes. The establishment of a ward system results in several significant changes to the Board. First, the terms of Board Members would change from four years to two years. Unless changed by a subsequently adopted local law, the terms of the two board members elected to four-year terms at the same election at which the proposition to establish wards was approved, are now reduced to two years. Second, the terms of Board Members are no longer staggered. That is, in subsequent Town elections, all four Board seats and the Supervisor will be placed on the ballot. Third, since Board Members are elected by ward, a Town resident can vote for only one individual (from within the ward) to serve as a Board member. Last, a Board member must reside within the ward he or she represents in order to take the oath of office for that particular Board seat.

New York law states that after a ward system is established, the term of office of every town board member will end on December 31 next succeeding the first biennial town election held not less than 120 days after the establishment of a ward system; and at such biennial town election, and every biennial town election thereafter, one resident elector will be elected from each ward for a term of two years beginning on January 1 next succeeding the election.

Appendix Six (on pp29-30) has two graphic illustrations of what a four or six ward configuration might look like for Bethlehem.

Changing the System of Selecting Department Heads

Introduction

The Governance Options Study Committee was charged with looking at town governance and considering alternatives that will positively impact either efficiency or effectiveness. The Committee identified the method of selection of town department heads as one of the areas for further study. Specifically, the Department Heads Subcommittee looked at the elected offices of Town Clerk, Highway Superintendent and Receiver of Taxes. The Bethlehem 2020 Implementation Committee brought this topic to the Board in 2011. Their report presented the option of moving to appointed department heads for all Town departments and eliminating elective offices for Highway Superintendent, Tax Receiver and Town Clerk.

applied. The Committee was unable to determine how the apparent conflict between this requirement and the standards of the NYS Town Law (requiring that wards have a roughly equal number of voters) would be resolved in practice. Additional research in this area is needed.

Statistics from the Association of Towns on the prevalence of elected versus appointed officials showed that of the 932 towns in New York:

- 889 towns have elected town clerks, whereas 43 appoint their clerks;
- 577 town clerks serve as tax collectors or receivers; and
- 873 town highway superintendents are elected; 59 are appointive.

The Town of Bethlehem employs 221 individuals to provide services to residents and carry out the other duties of town government. The Town's 12 department heads are selected in three different ways:

(1) **Election:** Town voters elect the Town Clerk and the Highway Superintendent to 2-year terms and the Receiver of Taxes to a 4-year term. Candidates are nominated by party committees or by petition, subject to primary.

(2) **Competitive Civil Service Examination (referred to as "Civil Service" in this report):** Candidates for competitive civil service positions must take an examination. The Albany County Department of Civil Service is responsible for administering civil service for Bethlehem, including administering examinations. Appointments must be approved by the Board. In Bethlehem, the department heads for Parks and Recreation, Senior Services, Police, Human Resources and Management Information Services are appointed through a competitive civil service process.

(3) **Non-competitive or Exempt Civil Service Appointment (referred to as "Appointed" in this report):** Civil Service Law does not require examinations for positions classified as non-competitive or exempt. Candidates for appointment must meet minimum qualifications. Those appointed in exempt class positions serve at the pleasure of the appointing authority. Appointments must be approved by the Board. In Bethlehem, four department heads are appointed through this process, with varying terms. The Assessor is appointed for a 6-year term. The Comptroller, Commissioner of the Department of Public Works, and the Director of Economic Development and Planning are appointed each year at the annual organizational meeting and serve at the pleasure of the Board.

Pros and Cons

Based on interviews with officials of other similar Upstate New York towns of similar size, we found that town officials generally support the current selection processes that are used in their towns, whether they are elected or appointed.

Towns that recently consolidated the receiver of taxes position into the town clerk’s office did so for cost savings and better use of staff. Some towns have consolidated highway responsibilities with those for parks and public works.

The following table summarizes the viewpoints expressed by town officials in our survey on the various ways of selecting department heads (more details on the particular towns and their characteristics can be found in the attached full subcommittee report). These viewpoints may or may not apply to the department heads in the Town of Bethlehem but are simply viewpoints from other town officials in New York and can be used as starting points for a discussion as appropriate.

<u>Elected Department Heads</u>		<u>Appointed Department Heads</u>	
<u>Pros</u>	<u>Cons</u>	<u>Pros</u>	<u>Cons</u>
The public directly participates in choosing the official.	Low voter turnout and lack of challengers to incumbents indicate that voters tend to ignore these races. No opportunity for the Town to eliminate or consolidate positions or departments.	Larger and more qualified pool of applicants for position	Appointed Department Heads may be seen as political rather than professional appointments. (Civil service department heads avoid this pitfall.)
The voters can replace an unsatisfactory official at the next election.	The town is unable to establish minimum professional qualifications for the position, such as education and experience.	Potentially larger and more qualified pool of applicants for position. If appointed positions are publicly advertised against specific job requirements, the public can see the basis of selection.	Election is even more transparent.
Running for office provides a strong incentive for delivering high quality public services to the town’s residents.	Candidates are selected through a political process that may emphasize political needs over town needs. Town services such as issuing marriage licenses and dog licenses are not political, they are nonpartisan.	More flexibility in assignment of duties, priorities.	Potential for instability if terms are tied to those of the elected Board.

The official is accountable to the public.	Elective office can result in more political pressure on the town official. No one is specifically responsible for reviewing the official's performance. If an ineffective person is elected to a position, there is almost no way to get rid of the person until the next election.	Position qualifications are determined locally; job descriptions including education and experience background can be approved by the Board.	Appointments could be political and not reflect the residents' choice.
Elected officials are responsible to the public, not to the town supervisor	May reduce local government flexibility in dealing with budget issues, aligning government tasks and dealing with emerging issues.	Better accountability through local evaluations; if the person is ineffective or inefficient, that person can be terminated.	

Implementation Questions

Our survey identified towns like Bethlehem that operate successfully under a variety of organizational frameworks. In weighing the advantages and disadvantages of pursuing any change, we suggest the Board consider following questions:

1. What are the most important goals and results for Bethlehem with respect to these three departments? Is there an opportunity for departmental consolidation or to save money that is not available without elimination of an elective office? A department's priority might be to modernize systems or expand or improve services; or an overall town goal, such as achieving cost savings, might take priority.
2. Which process, elected, appointed, or civil service is most likely to result in the selection of an individual who can lead the department in achieving those goals?
3. Which accountability framework is most likely to produce the desired results? In the current framework, independently elected officials are accountable to the voters at election time. In an alternative framework, appointed department heads are accountable to the Supervisor on a day-to-day basis, and the Supervisor is accountable to the voters at election time.
4. If a change is made, what other actions need to take place to produce the desired results? For example, a specific plan might be developed to achieve cost savings.

Changes in Terms or Establishment of Term Limits

Introduction

Bethlehem has a set of elected officials typically found in a New York governmental entity of similar size, location and economic status. We have a Supervisor with a term of office of two years. The Board consists of four members each elected for four-year terms on a repeating two-year cycle; that is, two members in a specific year and the two other members two years later. There is a Receiver of Taxes elected to a 4-year term, a Town Clerk elected to a 2-year term and a Highway Superintendent, also elected to a 2-year term. Finally, Bethlehem has two Town Justices, elected for four-year terms in different years.

The foregoing is consistent with the number of elected positions in municipalities of similar population and proximity as to length of term and election cycles. There are currently no limits on the number of terms in a specific office that an elected official in Bethlehem can serve, either consecutively or in total.

On a related note, New York City has had term limits in place for several years limiting elected officials including the Mayor to two consecutive terms in office. In October 2008, the NYC Council voted to expand the limit to three consecutive terms. There has been recent talk seemingly for politically based reasons, about challenging or changing NYC's term limit restrictions.

Outside of NYC, there have been ten instances in which term limits have been imposed for elected officials in municipalities. In some instances, the term limits were applied to all elected officials. In other instances, only specified elected officials were term limited.

The municipalities that adopted term limits on the number of terms to be served included several cities and towns and one county (Suffolk). It should be noted that the village of Village of Islandia (Suffolk County) repealed term limits in 2009 for its Mayor and Trustees. These term limits had been in effect since 2005.

An important aspect of the number of terms an elected official can serve is the fact that there is currently no recall procedure or process available with respect to elected officials in NY. There have been a few decisions and opinions from the Schenectady City Attorney and the NY Attorney General's Office on point, to the effect that recall is not permitted or possible in the absence of an enabling constitutional provision or state statute. No such constitutional or statutory language enabling recall provisions currently exist although legislation for that purpose has been periodically introduced in the State Senate and Assembly, including a bill as recently as 2011.

Pros and Cons

As noted above, the two different issues examined by in this subcommittee were the length and number of terms for Bethlehem officials, especially the Supervisor.

Points favoring expanding the Supervisor's term were as follows:

1. The short two-year term forces the Supervisor to focus too much on reelection concerns.
2. More frequent elections for and changes in the Supervisor's office are disruptive to efficient operation of Town departments and fulfillment of Town projects and initiatives.
3. A four year term would match the length of term of Board members and potentially engender more cooperation.
4. A four-year term for the Supervisor would potentially prevent the loss of experience and institutional memory.

Points against expanding the Supervisor's term were:

1. If the Supervisor has done a good job, there should be no problem with respect to a two-year election cycle.
2. The current staggered cycle for electing the Supervisor/Board members ensures that the public has a frequent opportunity to change their Town representation.
3. Shorter terms might increase opportunities for other citizens to serve.
4. Shorter terms that involve more people would also create opportunities for fresh ideas to be introduced.

With respect to reasons for supporting limits on the number of terms that can be served by an elected official:

1. Increases the number of competitive elections.
2. Creates greater opportunities for a variety of individuals to serve in public office.
3. Curbs the influence of lobbyists.
4. Produces a "citizen legislature" of more ordinary people rather than professional politicians since term-limited representatives would be more in harmony with public opinion and with their districts' constituents.
5. Promotes fresh ideas and minimizes reelection pandering.
6. Avoids incumbency, which promotes more spending and bureaucracy.

Reasons against supporting limits on the number of terms that can be served by an elected official:

1. Leads to a loss of experience.
2. Inexperienced leaders may make beginner mistakes and possibly be subject to the will of special interests.
3. Term limits remove popular elected officials.
4. Term limits conflict with what would have been the will of the people with respect to successful office holders.
5. Term limits can result in negative impact on projects that outgoing officials sponsored, but newcomers delay or shelve.

Implementation Issues

In order to change the length or number of terms for a town official, there would need to be a change in the law. There are two methods by which a town board in New York State may extend the term of office of the supervisor, clerk and highway superintendent.

The first way would be pursuant to section 10(1)(a)(1) of the Municipal Home Rule Law, where the town board may adopt a local law extending the terms of offices of its officers and employees. This local law would be subject to a mandatory referendum. The referendum must be held not less than 60 days after it is adopted. The other procedure for providing a four-year term of office is set forth in Town Law, §24-a. Pursuant to this section, the Board may adopt a resolution at least 150 days prior to any biennial town election (November General Election held in odd numbered years – see Town Law, §80) providing for a four-year term for the specified officers, such as clerk and superintendent. The resolution must be submitted to the voters at the biennial election. If it is approved, then at the subsequent biennial election the officers will be elected for a four-year term.

Detailed Subcommittee Reports

#1 -- The Ward System

This subcommittee report examines the Ward System of local representation in New York.³ While there are other options that the Board may wish to consider, they are not explored in this report.⁴

Introduction

This report explains the legal process and raises issues that the Board would encounter if it were to consider changing the way voters elect their local Board representatives from the current at-large system to a ward system. This report is presented in four sections:

- (a) The law, process implementation, and timeline;
- (b) Examples of Towns with wards and those which rejected the ward approach: How do they compare to Bethlehem;
- (c) Observations – including advantages and disadvantages – for the Board’s consideration; and
- (d) Visual examples of what Bethlehem might look like with four or six wards.

Background

The Town of Bethlehem (“Bethlehem”) currently has an at-large system of electing the Board, which means all the Town’s voters elect the four Board Members and the Supervisor in accordance with Town Law § 20(1)(a). The four Board Members each serve four-year terms (two elected every two years), and the Supervisor serves a two-year term.⁵ Bethlehem has 33,656 residents (according to the 2010 Census) and about 23,092 registered voters (as of February 28, 2012).

Like other towns in New York, Bethlehem holds elections for Board members biennially on the first Tuesday of November in odd-numbered years. All other Town elections are special elections – those held in even-numbered years (to fill a vacancy in elective office) or those held at a time other than November in an odd-numbered year (see below, referendum on petition). The terms of Board Members are staggered, with two four-year board seats up for election every odd year in accordance with Town Law § 80. Since the population of Bethlehem is greater than 10,000, it is considered a town of the first class under New York Town Law § 10.⁶

³ Unlike the current “at-large” system of representation where four Town Board seats are elected from among Town residents as a whole, a “Ward” system of representation provides for the creation of four or six new geographic districts for Town Board membership and each Town Board member is elected from among Town residents who must reside in that district or “ward.”

⁴ Among other options for the Town Board to consider are as follows: a. Make no change – keep at-large election of Supervisor and at-large Board Members; b. At large-Supervisor, and Ward-elected Board members at four or six wards; c. All Board members elected and appoint a Chair of the Board to function as the Supervisor, similar to the County Board of Supervisors (e.g., Saratoga County); d. A Professional Town Manager or Administrator to serve as the Supervisor hired by the Board either as at-large or ward-elected Town Board members. The committee was asked to focus this informational report on a ward system for the Town of Bethlehem. Therefore, we do not explore or explain the other possible governance options.

⁵ Each Town Board member is paid \$14,104 per year and the Supervisor is paid \$106,890 per year.

⁶ Towns of the first class include all those in Westchester County; and those elsewhere having a population of 10,000 or more, except towns in Broome and Suffolk Counties; the Town of Potsdam, St. Lawrence County; and the Town of Ulster, Ulster County. The Town of Bethlehem, by resolution in 1964, has chosen to operate as a “Suburban Class” town. The Town Board also passed a resolution on July 11, 1951 stating that the Town of Bethlehem is a town of the first class.

There are 932 towns in New York, and 109 are first-class towns.⁷ Only first-class towns may adopt the ward system. Since Bethlehem's population is greater than 25,000, it is also one of 58 suburban towns under Town Law §50-a.⁸ Thus, the total number of towns eligible to adopt a ward system of representation is 167, based on the 2010 census.⁹

Currently, 13 towns in New York elect council members by ward. The remaining 919 towns, including Bethlehem, use the at-large system of town council representation. A list of the 13 towns with ward systems is provided in **Appendix 1**. A list of the towns which considered a ward system and rejected it is also provided in **Appendix 1**. Of the 13 towns which have adopted a ward-style town board, nine have one or more village governments within the town structure, whereas Bethlehem has none.¹⁰ Five of the thirteen towns which have adopted a ward system have larger populations than Bethlehem.¹¹

A. The law, process, implementation, and timeline.

The ward system of electing Town Board Members is authorized by §§ 81 and 85 of the New York Town Law. Town Law § 85 further provides that a Town may choose to have either four or six wards. The actual change to a ward system can be accomplished in one of two ways: Under the first approach, the Bethlehem Board may, upon its own motion, submit a proposition to be on the ballot at a Town election to establish the ward system for the election of Board members. Under the second approach, the Board must, if presented with a petition by the voters, submit the proposition for a public vote in accordance with New York Town Law § 81(2)(b).

First Option: Board Action. If the Board acts on its own motion, it generally adopts a resolution to place a proposition (or question) on the ballot for the next Town election. The proposition to be placed on the ballot would read "Whether the Town of Bethlehem should establish a Ward system for the election of Board members?" or words to this effect. Town Law § 92 states that a proposition must contain an abstract of the act or resolution concisely stating its purpose and effect. The Town Clerk prepares the abstract and transmits it to the Board in the form in which it is to be submitted at the election. If there is more than one proposition to be voted upon at the election, each proposition must be separately and consecutively numbered.

⁷ The number of first class towns in New York State is 109; the number of suburban towns (S) is 58, making the total number of towns eligible to adopt a ward system of representation 167, based on the 2010 census.

⁸ This section provides that "any town having a population of at least 25,000 or having a population of at least 7,500 and is not more than 15 miles from a city having a population of at least 100,000, measured from their respective nearest boundary lines; provided, however, that the population of such town shall have increased by at least 65 per cent between 1940 and 1960 or by at least 40 per cent between 1950 and 1960, as shown by the decennial federal censuses for such years." This provision of the Town Law took effect on January 1, 1964, and applied to towns as described above at that time. The Suburban Town Law has been largely superseded by the Municipal Home Rule Law and remains a designation for classification purposes.

⁹ Under Town Law § 12(1), any town of the second class having a population of 5,000 or more as shown by the latest federal census or in which the assessed valuation of the taxable real property as shown by the latest completed assessment role exceeds 10 million dollars or adjoining a city having a population of 300,000 or more as shown by the latest federal census, may become a town of the first class.

¹⁰ A village is a separately incorporated unit of government within a town formed by petition, defined by geographic boundaries, for the provision centralized services and administration.

¹¹ See **Appendix 1**. For example, Brookhaven, Hempstead, and North Hempstead are towns which have populations greater than three times the size of Bethlehem and are among the largest municipalities in New York State.

Second Option: Initiative and Referendum. If the Board is presented with a valid petition from residents and voters of the Town to place a proposition on the ballot to establish a ward or other system, the Board must adhere to Town Law § 81(4), which states that the petition must contain at least five per cent (5 percent) of the total votes cast for governor in the Town at the last general election, or at least 100 signatures. If a petition is filed with the Town Clerk no less than 60 and no more than 75 days prior to a biennial Town election, the proposition must be submitted at the biennial election. If a petition is presented at any other time, a special election must be called to be held not less than 60, nor more than 75 days after the filing of the petition.

The voters only vote “yea” or “nay” on the proposition itself; they do not vote on the number or composition of the wards. It is only after the proposition to establish a ward system is adopted by the voters, that the process of dividing the Town into four or six wards and fixing their boundaries is commenced. Town Law § 85(1) provides that the County Board of Elections establishes the wards. However, only after Town residents approve the establishment of a ward system, may the Board enact a local law to draw ward boundaries itself.¹² The authority to enact such a local law, which would supersede the Town Law, is granted by Municipal Home Rule Law. See **Appendix 2** for an explanation of the Municipal Home Rule Law.

Establishing Four or Six Wards. A town may, at the same election that a proposition to establish wards is presented, put forward a second proposition increasing the number of Board Members in accordance with Town Law § 81(2)(a). This would be required if the Board sought six wards instead of four wards.

A number of rules apply when creating wards. First, existing election districts within the town cannot be divided and no election district created thereafter can include parts of two or more wards. (An election district is an administrative unit created by county boards of election in New York State for the purpose of running elections.) Second, the number of voters in each ward must be approximately “equal”.¹³ The law is silent as to the types of geographic or geopolitical units that can be considered when drawing ward boundaries. However, all 13 towns that have a ward system of government have used election districts as the basic unit of geography for building wards. Further, the law is silent as to the time frame for completing the ward-drawing process, public participation and disclosure, and the role of the Board when the County Board draws the lines. For an example of how this might work in Bethlehem, see section D below.

When the County Board of Elections (or Town Board where a local law has been enacted) determines the ward boundaries, it must prepare a map of the Town showing in detail the location of each ward and its boundaries and file the original with the Town Clerk. Copies must also be filed with the County Clerk and the County Board of Elections. The ward system will be deemed established after this filing is complete. See Town Law §85 (1).

Required changes. The establishment of a ward system would result in several significant changes to the Board. First, the terms of Board Members would change from four years to two years. Unless changed by a subsequently adopted local law, the terms of the two board members elected to four-year terms at the same election at which the proposition to establish wards was approved, are now reduced to two years. Second, the terms of Board Members are no longer staggered. That is, in subsequent Town elections, all four Board seats and the Supervisor will be placed on the ballot. Third, since Board Members are elected

¹² See Cavallaro v Nassau County Bd. of Elections 307 A.D.2d 1003 (2d Dept. 2003).

¹³ In addition, the provisions of existing federal and state law regarding “one person, one vote” population standards must be applied.

by ward, a Town resident can vote for only one individual (from within the ward) to serve as a Board member. Lastly, a Board member must reside within the ward he or she represents in order to take the oath of office for that particular Board seat.

New York law states that after a ward system is established, the term of office of every Board Member will end on December 31 next succeeding the first biennial Town election held not less than 120 days after the establishment of a ward system; and at such biennial Town election, and every biennial Town election thereafter, one resident elector will be elected from each ward for a term of two years beginning on January 1 next succeeding the election.

Example: A biennial Town election is held November 2015, at which time a proposition to establish a ward system is on the ballot. At the same time, an election is held for two Board Members with four-year terms. If the proposition is adopted, board members in office would continue to hold office until December 31, 2017. At the biennial Town election held in November 2017, the ward system would be used to fill all board member positions. Starting on January 1, 2018, the term of office of each board member would be two years. Note that adoption of the ward system would reduce the four-year term of those elected at the November 2015 election to two years. If the original proposition on the ward system had failed, then the four-year terms of the board members elected at that time would remain in effect.

Once adopted, a ward system can be abolished by adopting a proposition at a special or biennial Town election. As with the adoption of the ward system, abolition would take place in much the same way: either on Board motion or pursuant to a petition from resident electors. All of the statutory rules stated above would apply to abolition as well. At the first biennial Town election held at least 120 days after the adoption of a proposition to abolish the ward system for election of Board Members, the electors of the Town would elect two Board members for two-year terms and two Board Members for four-year terms. At each biennial Town election held thereafter, two Board Members would be elected for four-year terms. The terms of all Board Members would begin on the first day of January next succeeding the date of their election. See, Town Law § 85(2).

Notice of Proposition. The Board must adopt a resolution at least 20 days before every special Town election designating the hours of opening and closing the polls and the place or places of holding the election, setting forth in full all propositions to be voted upon. If the Board designates more than one voting place, the resolution and the notice must specify the place at which the voters of each election district shall vote. The polls must remain open for at least six consecutive hours between 8:00 a.m. and 8:00 p.m. Voting on a proposition must be by ballot and each proposition must be separately stated and numbered. The Town Clerk must give notice of a special Town election at the expense of the Town by the publication of a notice in a newspaper published in the Town, or in a newspaper published in the County with general circulation in the Town, specifying the time when and place or places where the election will be held, the hours during which the polls will remain open for the purpose of receiving ballots, and setting forth in full all propositions to be voted upon. The first publication of the notice must be at least 10 days prior to the time of the special election. Additionally, the Town Clerk must post notice on the sign-board of the Town maintained pursuant to Town Law § 30(6) at least 10 days prior to the election. If a proposition is submitted at a biennial Town election, notice that it will be submitted, and setting it forth in full, must be published and posted in the manner provided for special Town elections. Town Law § 82. See **Appendix 3** for a sample Notice of Submission of Proposition to Town Electors at General Election.

B. Examples of Towns with Wards and those which rejected Wards - How They Compare to Bethlehem.

We have examined a number of towns that have considered the ward system and either adopted it, rejected it, or took some other action. The Towns that were interviewed include Brookhaven, Greece, Huntington, New Hartford, Poughkeepsie, and Salina. For those we were not able to interview, we obtained on-line information for Amherst, Clay, and New Castle.

Longer summaries for these Towns are contained in **Appendix 4**. The questions used to interview each Town are listed at **Appendix 5**.

1. **Amherst.** Amherst is a town of about 122,000 residents in Erie County, a suburb of Buffalo. In 2011, as a result of a citizens' petition, a proposal to form a ward system was put on the November election ballot in the Town of Amherst. The proposed system was voted down by voters. See www.mokenabuzz.com/uploads/Southwick_Study.pdf
2. **Brookhaven.** Brookhaven is a town of about 472,000 residents in Suffolk County and has nine villages within it. Brookhaven considered and adopted a ward system of six wards in 2002. Board members have two year terms. The County Board of Elections drew the lines. Positive and negative experiences with wards were reported. News articles suggest that scandal and one -party domination was a factor for adopting the ward system.
3. **Clay.** Clay is a town of about 58,200 residents in Onondaga County, the largest suburb of Syracuse. It considered a ward system via a proposition and the Town's voters rejected it.
4. **Greece.** The Town of Greece is a town of about 96,100 residents in Monroe County, a suburb of Rochester. Greece has a ward system of four wards with four year terms.
5. **Huntington.** Huntington is a town of about 203,000 residents in Suffolk County, one of the largest on Long Island. It considered a ward system several times and rejected it every time. However, it has a local law that if a ward system were ever adopted, it would be drawn by the Town Board, not the Suffolk County Board of Elections.
6. **New Castle.** New Castle is a town of about 18,000 residents in Westchester County, near Ossining and Mt. Kisco. It considered a ward system and rejected it based on Town fragmentation, decrease in continuity, increased costs, ability to get qualified candidates, and no impact or improvement on government transparency.
7. **New Hartford.** The Town of New Hartford with a population of about 22,000 is a suburb of Utica and has a ward system of four wards. It was adopted in 1964. Board members have four year terms. The Town Board drew the lines. Positive and negative experiences with wards were reported.
8. **Poughkeepsie.** The Town of Poughkeepsie with a population of about 43,000 has a ward system of six wards. No information was available about when it was adopted. Board members have two year terms. The County Board of Elections drew the lines. Positive and negative experiences with wards were reported.
9. **Salina.** The Town of Salina, with a population of about 33,000, is a suburb of Syracuse and has a ward system of four wards. No information is available about when it was adopted.

Board members have two year terms. The Town Board drew the lines. Positive and negative experiences with wards were reported.

There are at least seven other towns that have considered the ward system of government but due to either a challenge to the petition or failure of the proposition at the polls, the ward system was not adopted: Amherst, Clay, Colonie, Hamburg, Huntington, Malta, New Castle, and Ramapo.

Finally, it is important to note that of the towns we surveyed (except for Brookhaven) we have been unable to determine why the ward system was adopted in these towns.

C. Observations – Advantages and Disadvantages of the Ward System

In this section, we identify advantages and disadvantages of a ward system of representation, including immediate impacts on the Town and the issues raised. Bethlehem may wish to consider if any of these changes would (i) enhance or diminish representation or increase/decrease accountability to the voters; (ii) save the Town money, or (iii) improve the effectiveness of government administration. These are some, but not all, of the factors the Board and the public should examine when considering the ward system.

Comparison Table Current System Ward System

Comparison Table	Current System	Ward System
1. Residency Requirement	Anywhere within the Town for any of the four Board seats.	Within the ward for that Board seat assigned to that particular ward.
2. Representation of Board members (excluding supervisor)	Resident votes for all four Board members.	Resident votes for one of four (or six) Board members.
3. Impact on Costs to Administer Elections	Unchanged.	Negligible to no impact.
4. Responsiveness of Elected Officials	Each resident is represented by all four Board members from the Town.	Each resident is represented by the Board member from his/her ward.
5. Party System Impact	Town-wide elections reflect party identification town-wide, making it potentially difficult for a minority parties to win a board seat.	Ward system may produce variations in political party power in each ward but may also be susceptible to Gerrymandering.
6. Accountability to Voters	All Board members are accountable to all Town residents; though residents may be less familiar with individual board members or their performance.	Each Board member is accountable to the residents of his/her ward. Smaller area and number of voters means voters are more likely to know/interact with their board member
7. Setting of District Boundaries	All elected positions are Town-wide. No internal boundaries are needed.	Board positions are based on internal boundaries, with Town divided into four or six districts. Districts must be roughly equal in voters, and are redrawn every 10 years (like other election districts).

8. Eligibility of Potential Candidate	Eligible from the Town at large – increases participation opportunities from whole Town or multiple seats. Any eligible voter can run for any one of four board seats.	Eligible from only within ward. Divides candidate pool. Any eligible voter can only run for the one seat representing the ward. ¹⁴
9. Governmental Functions & Stewardship	Each Board member and Supervisor has an equal say in governance and share responsibility for public assets and services equally.	Although all members have Town-wide responsibilities, the Supervisor is elected Town-wide while Board members have only a mandate from his/her ward and could potentially focus just on ward issues.
10. Elections	Every two years, have two Board seats plus supervisor (3 of 5) are up for election.	Every two years, all four Board seats plus the supervisor are up for election.
11. Terms	Supervisor has a two year term; Board has four year terms.	Supervisor and Board have two year terms.

D. What would Bethlehem look like with four or six wards?

According to the 2010 Census, there were 33,656 people living in Bethlehem. Assuming an equal distribution of people in a four-ward system, each council member would represent about 8,400 people. In a six-ward system, each member would represent about 5,600 people. With approximately 23,000 registered voters, Bethlehem wards would vary in size between roughly between 3,500 and 6,000 voters (depending on how they are drawn and whether four or six wards were used). The wards themselves would be drawn using election districts as the basic unit of geography. This is because ward elections, like any election in the Town, must be run using the administrative apparatus of the County Board of Elections. There are currently 31 election districts in the Town of Bethlehem. Given the wide disparities in population and voters among these election districts, it may be necessary to adjust existing election district boundaries in order to create compact and legally permissible wards.

While wards according to the Town law must contain substantially equal numbers of voters, they must also comply with the provisions of all federal and state law regarding voting rights, especially the principle of “one person, one vote.” Election districts, the basic unit of geography, are administrative units created by county boards of election, and have varying numbers of voters and population. In the illustrative examples of ward boundaries, we attempted to minimize variations in number of voters among wards. While the Town Law gives no indication as to how much variation among wards intended to be substantially equal in number of voters would be allowed. However, case law provides an indication of the variation that would be allowed under various court rulings (although none applied directly to town

¹⁴ See Election Law 6-122 “A person shall not be designated or nominated for a public office or party position who is not a citizen of the state of New York; is ineligible to be elected to such office or position; or who, if elected will not at the time of commencement of the term of such office or position, meet the constitutional or statutory qualifications thereof.”

wards). According to such case law, wards would probably only be allowed to deviate from equal population by plus or minus 5 percent, or 10 percent overall.¹⁵

Appendix 6 presents several visual examples of what possible districts may look like based on ward systems for four or six Board members. These maps are only illustrations; they do not show what final districts will look like should a ward system be ultimately adopted.

Appendix 7 lists excerpts of Town Law cited in this report as well as background materials of interest.

¹⁵ See e.g., *Avery v Midland County*, 390 U.S. 474 (1968); *Abate v. Mundt*, 403 U.S. 182 (1971); *NYC Board of Estimates v Morris*, 489 U.S. 688 (1989); *Brooklyn Heights Association v Macchiarola*, 82 N.Y.2d 101 (1993); and *Abate v Rockland County Legislature*, 964 F.Supp. 817 (S.D.N.Y. 1997).

APPENDIX 1

TOWNS WITHOUT WARDS – There are approximately 919 towns in New York State that do not use the ward system.*

TOWNS WITH WARDS – There are 13 towns in NYS that use the ward system.*

**Please note: The number of first class towns in New York State is 109; the number of suburban towns (S) is 58, making the total number of towns eligible to adopt a ward system of representation 167, based on the 2010 census.*

Brookhaven – Suffolk County

Established 1686

531.5 square miles

486,000+ population – second most populous in New York State

Located in central Suffolk County, is the only town in the county that stretches from the North Shore to the South Shore of Long Island.

Largest town in New York in terms of total area.

Includes nine villages and 50 hamlets

Six wards, adopted in 2002

Camillus – Onondaga County

Established 1799

35 square miles

25,000+ population

Includes three hamlets and one village

Suburb of City of Syracuse

Four wards

Ellicott – Chautauqua County

Established 1812

30.5 square miles

8,700+ population

Includes two villages

Borders Chautauqua Lake

Surrounds the City of Jamestown on the east, north and west.

Four council members with two-year terms

Greece – Monroe County

Established 1822

51.4 square miles

94,000+ population

Includes six communities (not referred to as hamlets)

Borders Lake Ontario

Suburb of City of Rochester

Four wards

Hempstead – Nassau County

Established 1644

760,000 population

191.3 square miles includes 71.4 square miles of water

Largest town in NYS; includes 22 villages as well as the majority of the population of the county.
Six wards

Hyde Park – Dutchess County

Established 1810
39.8 square miles
21,500+ population
Includes three hamlets
Suburb of City of Poughkeepsie
Four wards

New Hartford – Oneida County

Established 1827
22,000+ population
25.5 square miles
Includes two hamlets and two villages
Largest suburb of City of Utica
Four wards

North Hempstead – Nassau County

Established 1784
226,000+ population
69.1 square miles
Includes 30 villages and 20 hamlets
Suburb of Queens
Six wards.

Poughkeepsie – Dutchess County

Established 1788
31.2 square miles
43,000+ population
Includes nine hamlets and part of one village
Suburb of City of Poughkeepsie
Six wards.

Queensbury – Warren County

Established 1762
64.81 square miles
25,000+ population
Suburb of City of Queensbury and City of Glens Falls
Four wards, adopted in 1985

Salina – Onondaga County

Established 1847
15.1 square miles
33,000+ population
Includes four hamlets and part of one village
Suburb of City of Syracuse
Four wards.

Wappinger – Dutchess County

Established 1659 as Town of Fishkill

27,000+ population

28.6 square miles

Includes three hamlets and one village

Suburb of City of Poughkeepsie

Four wards.

Wallkill – Orange County

Established 1772

27,000+ population

64 square miles – encircles City of Middletown

Includes 13 hamlets

Four wards.

APPENDIX 2

Municipal Home Rule Law

The Municipal Home Rule Law (MHRL) provides local government with the power to enact local laws only if they are "not inconsistent" with a general law of the state. MHRL §10(1)(ii). Various subdivisions found in the Municipal Home Rule Law provide authority, especially MHRL §10(1)(ii)(d)(3), for a Town to amend or supersede sections of the Town Law as it applies to the Town with regard to certain subjects spelled out in that subparagraph. N.Y. Const. Art. IX, §2(c), and the specific provisions of the MHRL, give local government the authority to adopt local laws on certain enumerated subjects, subject to restrictions by the State. MHRL §10(1)(ii)a(2), (13) provide that a Town may enact laws relating to its governance, including the membership, composition, and apportionment of its legislative body. Under MHRL §10(1)(ii)(d), a general law found in the Town Law may be amended or superseded by a local Town Law with regard to the Town's own government, even where the local law is inconsistent with the state statute. In addition, MHRL §10, which provides the statement of power, MHRL §11 (Restrictions on the adoption of local laws) enumerates the reverse – that is, the specific exceptions to the general grant of power to political subdivisions of the State provided by the statute.

APPENDIX 3

Sample Notice of Submission of Proposition to Town Electors at General Election.

Notice is hereby given that, pursuant to resolution adopted by the Board of the Town of Bethlehem, on [---], 20 [--], in accordance with the provisions of the Town Law applicable thereto, the following proposition will be submitted to the electors of this Town at the General Election to be held on [----], 20 [--].

“Whether the Town of Bethlehem should establish the ward system for the election of board members?”

Further notice is hereby given that voting on this proposition will be between the same hours as regular voting at said General Election and that the places of voting in each of the respective election districts of the Town shall be the same places, and shall be used for voting at the General Election on that day.

Dated: [----], 20 [--]. [-----] Town Clerk

[Add statement as to qualifications of voters, for which see Town Law §84].

[Certifications]

APPENDIX 4

Interview Reports of Other Towns and How They Compare to Bethlehem.

Town of New Hartford, Oneida County

Population: 22,166

Gail Young, Town Clerk

The Town of New Hartford is located in Oneida County and is a suburb of the City of Utica. It has four wards; Ward 2 is separated by the boundaries of the City of Utica. The Town adopted a four-ward system in 1964 because, “People really like to be able to have one person from their area that can identify with their specific problems,” according to Ms. Young. Board members have four-year terms, no term limits, and hold partisan elections. When the ward system was adopted, the Board drew the ward lines.

Ms. Young stated that sometimes there are issues with the representation of Ward 2, which is comprised of four districts, including two disparate areas: districts one and two are known as the Mills and districts three and four are known as the Hills. The Hills is a wealthier of the two areas. She noted that residents of the Mills may feel under-represented at times. She specifically noted that when a councilman who represented Ward 2 unexpectedly passed away, a lawyer from the Mills area was appointed to fill his term and won her first election following the appointment. She lost a re-election bid to a candidate from the Hills district. Ms. Young noted that following the outcome of the election, people in the Mills complained feeling they were not properly represented, especially regarding drainage issues that are specific to the Mills area.

She stated that in the last election, the result from Ward 2 was 718 voters from District 1; 987 voters from District 2; 936 voters from District 3; and 1075 voters from District 4.

Ms. Young reported that, besides the complaints in Ward 2, the Town has not experienced any negative fallout, such as in polarizing neighborhoods. She believes that, for the most part, wards benefit residents. “You can never really address everyone’s concerns/alleviate all the problems. I think having the closer relationship between the representative and the district that is familiar leads to people feeling better represented and they are held more accountable.”

She added that the local political parties field candidates and that the rate of board turnover is low. “I wouldn’t say it is frequent. We have one councilman on his fourth term and people usually serve two or three terms. One of the most difficult positions to fill is supervisor.”

Town of Salina, Onondaga County

Population 33,710

Mark Nicotra, Town Supervisor

The Town has four wards and a supervisor, with two- year terms for all members, and no term limits. We couldn’t find any information on when the Board adopted a ward system, but the Supervisor speculated that it was well over 30 years ago. Supervisor Nicotra feels strongly that wards produce more direct representation. “I think it is beneficial because people know who they can turn to. With an at-large (system) there are times when a board member might not even live near you. Familiarity is a huge benefit, and people on the board are fighting for projects in each area evenly.” However, he notes that “the only down side is that everyone is up (for election) at the same time which leaves the possibility of entire turnover. I am a huge proponent (of the ward system) because you represent your neighborhood and you

know it best.” He hasn’t seen anything to indicate that the ward system polarizes neighborhoods. “Not that I have ever heard, it has been this way for so long it doesn’t seem like they know any other way, I think it’s a great thing because you’re representing your neighborhood, I wouldn’t have gotten involved otherwise.”

The ward lines were drawn by the Board and are adjusted every 10 years based on population; the ward lines are drawn according to election districts. Supervisor Nicotra noted that some districts were moved to different wards with the past census, but there has been no negative response from the districts that have been moved.

According to the Supervisor, the ward lines were not drawn to benefit the majority party in Town. “Republicans are 4-1 on the board but the enrollment skews the other way, ward lines have no political benefits,” he said.

The Town runs partisan elections, and there have been some difficulties fielding candidates from Mattydale - one of the older parts of the Town. Mattydale is comprised of a lot of rental property and there is high turnover. It is also the area of Town with the fewest registered voters.

The rate of board turnover is relatively stable, although recently one ward turned over from Republican to Democrat and another turned over to an open seat. Supervisor Nicotra recently began a third term as supervisor.

The turnout in the last election was low. Out of 21,000 registered voters, only 5,300 voted.

Poughkeepsie

Todd Tancredi, Town Supervisor

Population: 42,777

We couldn’t find any information on when the Board adopted a ward system. The Town has six wards and a supervisor; each has two-year terms and no term limits.

Supervisor Tancredi was a council member representing the sixth ward for 10 years before being elected supervisor. He noted that while council members are primarily responsible for their ward, they vote on all issues.

The Supervisor is not aware of any fall-out from the ward system, noting “that is one thing that the system offers, each area has someone they know they can call to address their issues.” One downside is the cost of elections every two years. He estimated the cost at \$100,000.

While fielding candidates is up to the political parties, Supervisor Tancredi noted that the Democrats have had some problems coming up with candidate. For example, in the last election there were seven Republicans up for election and only two Democrat challengers. However, he doesn’t think the system benefits/protects or hurts either party.

Ward lines were drawn/designed based on population following (the) census. Election districts have recently been added based on census. “You would think the wards would run down main roads but they don’t. (You) could have a house where the lines run through a yard,” he said. “We are an old Town that is fairly built-out so there hasn’t been much of any change since I’ve been here.”

The Supervisor estimates typically voter turnout at 30 percent.

Town of New Castle

The Town of New Castle did not adopt a ward system of town government. The following was obtained from an online interview with a member of the League of Women Voters that examined the issue for the Board and provides several main reasons for the decision to not pursue wards.

Town fragmentation. Currently the Town Board is elected by and represents all of New Castle and is answerable to every citizen of the Town . The Town Board primarily deals with issues affecting the entire Town. In a ward system, each board member would be answerable to only residents in his or her ward. In addition, more focus could potentially be on narrower issues relevant to only one or two wards. New Castle is not large enough to justify such a major change in its government.

Decrease in continuity. Electing a new Town Board every two years is inefficient and probably would have a deleterious effect on continuity and long- range planning.

Increased costs. Two additional board members would result in an increase in costs to New Castle residents. Also, it is ill-advised to increase policy-makers at a time when the Town 's administrative staff is being reduced.

Ability to get qualified candidates. Prior to this year, New Castle had not had a contested election for board members in many years. Under the ward system it may be difficult to get the most qualified candidates for Town Board from six different wards of only 2,000 voters each.

Government Transparency. The League did not study the issue of whether New Castle's government is transparent or responsive enough. Rather, we studied whether the referendum would improve the transparency and responsiveness of the Town Board. We concluded it would not.

APPENDIX 5

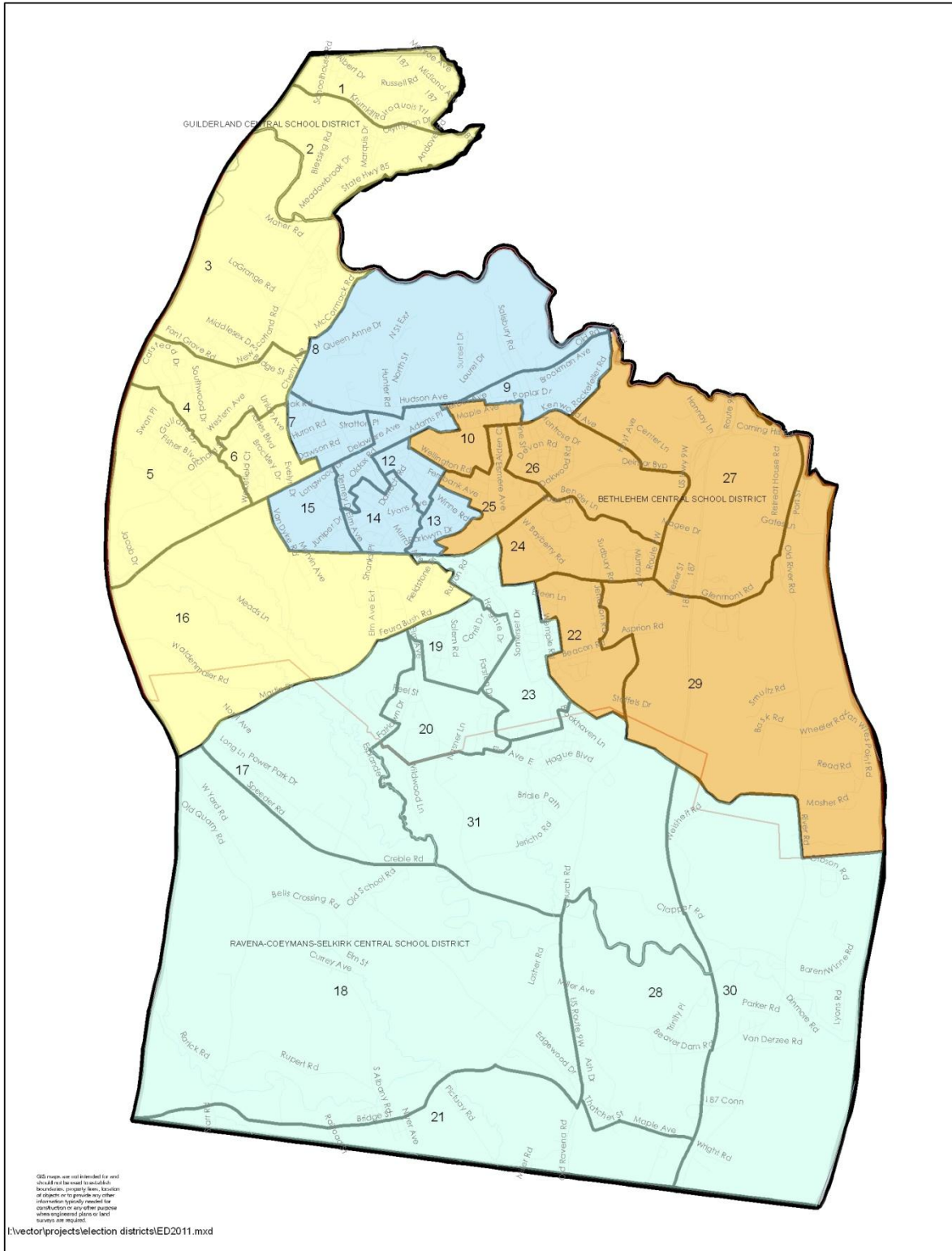
Research Questions for Towns with Ward System

1. When did you change to the ward system?
2. Why did you choose to use the ward system?
3. Is there a history explaining it? (If respondent was in office, etc. when wards were enacted, get personal anecdotes.)
4. State law authorizes ward creation, but did your board adopt any local laws in addition or to clarify? (Can you provide the local law?)
5. Did town board terms change to 2-year terms? Did board vote to change to four year-terms?
6. Is the ward system all or nothing? For example, two wards, two at large, etc.?
7. Was the change a citizen or board driven decision?
8. Do you believe there are cost savings at election time?
9. Has there been any negative fallout as in polarizing neighborhoods?
10. Have you had any issue with fielding candidates from each ward?
11. How were the ward lines drawn? Who drew them, the town or county?
12. Were the lines drawn to benefit the majority party?
13. What was the reaction of the residents to how the lines were drawn? Any challenges?
14. Do wards benefit residents?
15. Is there a belief that that the wards produce more direct representation?
16. Have any villages been incorporated in the Town as a result of wards?
17. Have you noticed/documentated any change in voter turnout?
18. What was the percent/# of voters in the last election (turnout)?
19. What is the rate of board turnover?
20. Did the ward system affect the town's bond rating or fund balance?
21. Does your town run partisan or independent elections?

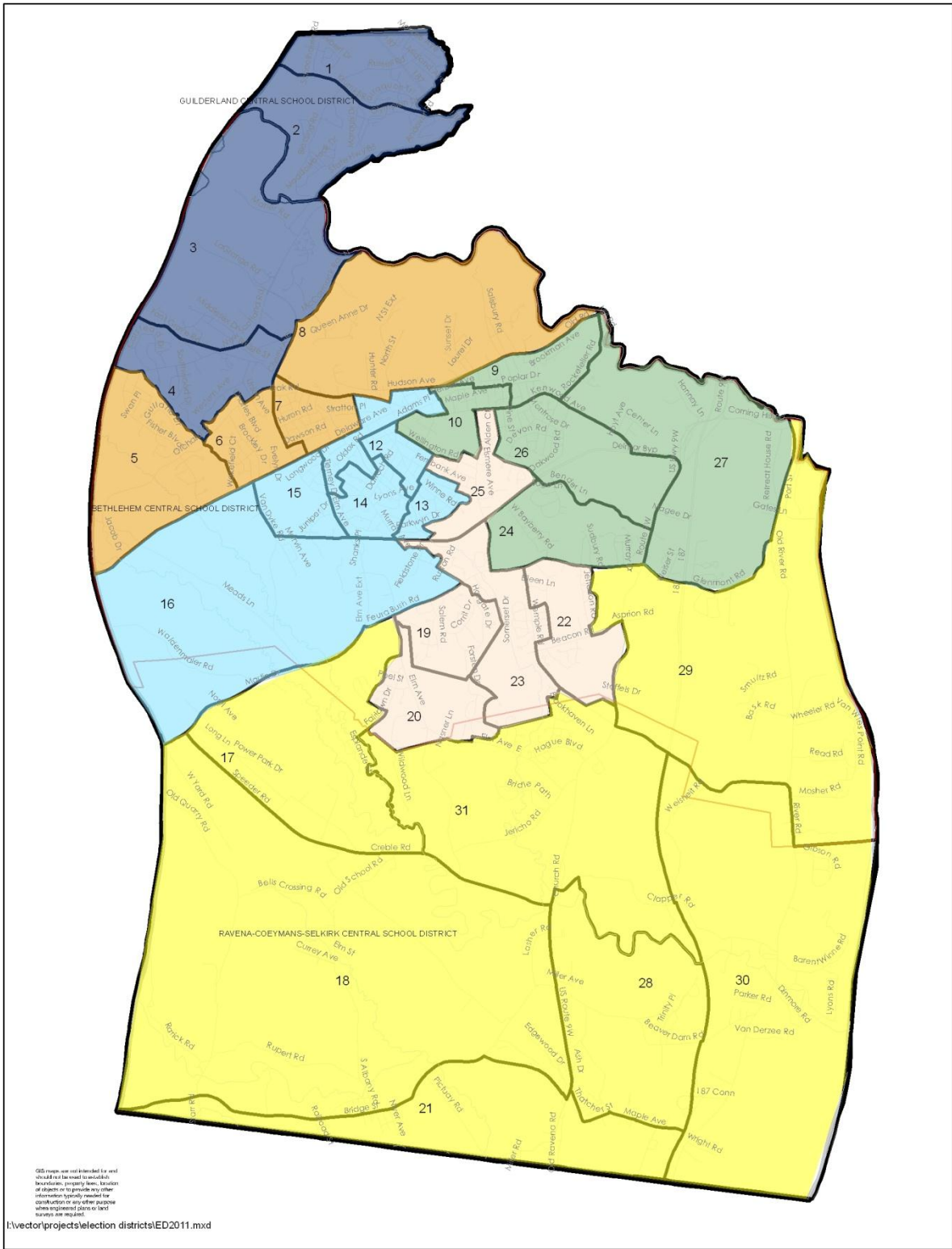
APPENDIX 6

Illustrative Maps to show visual examples of possible four and six district wards.

Illustrative Example of Four Wards for the Town of Bethlehem.



Illustrative Example of Six Wards in the Town of Bethlehem.



APPENDIX 7

Town Law Excerpts and Background Information

Provisions of Town Law Regarding Ward System Creation

Town Law § 81. Election upon proposition. The Town Board may upon its own motion and shall upon a petition, as hereinafter provided, cause to be submitted at a special or biennial Town election, a proposition:

1. In any Town:

(a) To erect a monument or monuments within the Town in commemoration Of any person or event.

(b) To purchase, lease, construct, alter or remodel a Town hall, a Town lockup or any other necessary building for Town purposes, acquire necessary lands therefore, and equip and furnish such buildings for such purposes, or to demolish or remove any Town building.

(c) To establish airports, landing fields, public parking places, public parks or playgrounds, acquire the necessary lands therefore, and equip the same with suitable buildings, structures and apparatus.

(d) To vote upon or determine any question, proposition or resolution which may lawfully be submitted, pursuant to this chapter or any general or special law.

(e) To dredge, bulkhead, dock and otherwise improve any navigable, or other waterway, within the Town, and to rent, purchase and equip necessary machinery for such dredging, docking, bulk heading or other improvement, and supply the necessary labor and material therefore.

(f) To provide for the collection and disposition of garbage, ashes, rubbish and other waste matter in the Town by (1) the award of one or more contracts for the collection and disposition of the same, (2) by the purchase, operation and maintenance of apparatus and equipment for the collection and transportation of the same, (3) by the construction, operation and maintenance of a disposal or incinerator plant or (4) by any combination of (1), (2) and (3).

2. In any Town of the first class:

(a) To increase the number of councilmen from four to six.

(b) To establish or abolish the ward system for the election of councilmen in Towns having four or six councilmen.

(c) To decrease the number of councilmen from four to two.

(d) To increase the number of councilmen from two to four.

3. In a Town of the second class having five thousand or more population according to the latest federal or state census or enumeration or having an assessed valuation of ten million dollars or more, as shown by the latest completed assessment-roll of such Town, or adjoining a city having a population of three hundred thousand or more, as shown by the latest federal or state census or enumeration, to change the classification of such Town to that of a Town of the first class.

4. Such petition shall be subscribed and authenticated, in the manner provided by the election law for the authentication of nominating petitions, by electors of the Town qualified to vote upon a proposition to raise and expend money, in number equal to at least five per centum of the total votes cast for governor in said Town at the last general election held for the election of state officers, but such number shall not be less than one hundred in a Town of the first class nor less than twenty-five in a Town of the second class. If such a petition be filed in the office of the Town clerk not less than sixty days, nor more than seventy-five days, prior to a biennial Town election, the proposition shall be submitted at such biennial election. If a petition be presented at any other time, a special election shall be called to be held not less than sixty days, nor more than seventy-five days after the filing of such petition.

5. A proposition for the consolidation or dissolution of a Town or district shall be noticed, conducted, canvassed and otherwise held pursuant to, and in accordance with, the provisions of article seventeen-A of the general municipal law; and a petition to consolidate

or dissolve a Town or district shall be subscribed, authenticated and otherwise governed pursuant to, and in accordance with, that article. Any expenditure approved pursuant to this section shall be paid for by taxes levied for the fiscal year in which such expenditure is to be made. However, nothing contained in this section shall be construed to prevent the financing in whole or in part, pursuant to the local finance law, of any expenditure enumerated in this section which is not authorized pursuant to this section. Any expenditure financed in whole from moneys appropriated from surplus funds shall not be subject to referendum.

§ 85, Town Law. Ward system for election of councilmen.

1. Whenever a proposition shall have been adopted in a Town of the first class for the establishment of the ward system and the election thereafter of one councilman from each ward, the board of elections of the county in which such Town is situate shall divide the Town into four wards and fix the boundaries thereof, unless a proposition shall have been adopted to increase the number of councilmen from four to six, in which instance, the board of elections shall divide the Town into six wards and fix the boundaries thereof. In so dividing the Town into wards, no Town election district shall be divided and no election district thereafter created under the election law shall contain parts of two or more wards. So far as possible the division shall be so made that the number of voters in each ward shall be approximately equal. When the board of elections shall have finally determined the boundaries of the wards, they shall cause a map of the Town to be prepared showing in detail the location of each ward and the boundaries thereof. The original map so made shall be filed in the office of the Town clerk and copies thereof shall be filed in the offices of the county clerk and the board of elections of the county. The ward system shall be deemed established after such filing is complete. After a ward system shall have been so established, the term of office of every Town councilman shall terminate on the thirty-first day of December next succeeding the first biennial Town election held not less than one hundred twenty days after the establishment of such ward system, and at such biennial Town election, and every biennial Town election thereafter, one resident elector of each ward shall be elected as councilman there from for a term of two years beginning on the first day of January next succeeding such election.

2. The ward system may be abolished upon the adoption of a proposition therefor at any special or biennial Town election. At the first biennial Town election held at least one hundred twenty days after the adoption of a proposition to abolish the ward system for election of councilmen, the electors of the Town shall elect one-half of the total number of Town councilmen for the term of two years each and one-half of the totals number of Town councilmen for the term of four years each. At each biennial Town election held thereafter there shall be elected one-half of the total number of Town councilmen for the term of four years each. The terms of all such councilmen shall begin on the first day of January next succeeding the date of their election.

The number of first class towns in New York State is 109; the number of suburban towns (S) is 58, making the total number of towns eligible to adopt a ward system of representation 167, based on the 2010 census.*

By County

Albany

Bethlehem (S)
Colonie (S)
Guilderland (S)

Cattaraugus

Allegany

Chautauqua

Ellicott
Pomfret

Chemung

Elmira
Horseheads
Southport

Clinton

Ausable
Plattsburgh

Dutchess

Beekman
East Fishkill
Fishkill
Hyde Park
La Grange
Poughkeepsie (S)
Red Hook
Wappinger

Erie

Alden
Amherst
Aurora
Cheektowaga
Clarence (S)
Elma
Evans (S)
Grand Island
Hamburg (S)
Lancaster (S)
Orchard Park (S)
Tonawanda
West Seneca

Franklin

Malone

Greene

Catskill

Herkimer

German Flatts
Herkimer

Jefferson

Le Ray

Madison

Sullivan (S)

Monroe

Brighton (S)
Chili (S)
Gates (S)
Greece (S)
Henrietta (S)
Irondequoit (S)
Ogden (S)
Parma (S)
Penfield(S)
Perinton (S)
Pittsford (S)
Sweden
Webster (S)

Nassau

Hempstead (S)
North Hempstead
Oyster Bay (S)

Niagara

Lewiston
Lockport
Newfane
Wheatfield

Oneida

Kirkland
New Hartford (S)
Whitestown

Onondaga

Camillus (S)
Cicero (S)

Clay (S)
De Witt
Geddes (S)
Lysander
Manlius
Onondaga (S)
Salina (S)
Van Buren

Ontario

Canandaigua
Farmington
Victor

Orange

Blooming Grove
Chester
Cornwall
Goshen
Highlands
Monroe
Montgomery
New Windsor
Newburgh
Tuxedo
Wallkill
Warwick
Woodbury

Oswego

Oswego
Schroepfel

Putnam

Carmel
Kent
Patterson
Putnam Valley
Southeast

Rensselaer

Brunswick (S)
East Greenbush (S)
North Greenbush (S)
Sand Lake
Schodack

Rockland

Clarkstown (S)
Haverstraw (S)
Orangetown (S)

Ramapo (S)
Stony Point

St. Lawrence

Canton
Massena

Saratoga

Clifton Park (S)
Halfmoon
Malta
Milton
Moreau
Wilton

Schenectady

Glenville (S)
Niskayuna (S)
Rotterdam (S)

Steuben

Bath

Sullivan

Fallsburg
Mamakating
Thompson

Tioga

Owego

Tompkins

Dryden
Ithaca
Lansing
Ulysses

Ulster

Lloyd
New Paltz
Plattekill
Saugerties
Shawangunk
Wawarsing

Warren

Lake George
Queensbury

Washington

Kingsbury

Wayne

Arcadia
Macedon
Ontario
Sodus
Walworth
Williamson

Westchester

Bedford
Cortlandt (S)
Eastchester (S)
Greenburgh (S)
Harrison
Lewisboro
Mamaroneck (S)
Mount Kisco
Mount Pleasant
North Castle
New Castle (S)
North Salem
Ossining (S)
Pelham
Pound Ridge
Rye (S)
Scarsdale
Somers
Yorktown (S)

*These figures are provided by the NYS Department of State. This total includes towns in Broome and Suffolk Counties; the Town of Potsdam, St. Lawrence County; and the Town of Ulster, Ulster County.

Broome

Union (S)

Vestal (S)

Suffolk

Babylon (S)

Brookhaven (S)

East Hampton

Huntington (S)

Islip (S)

Smithtown (S)

Southampton

St. Lawrence

Potsdam

Ulster

Ulster

THE WARD SYSTEM OF TOWN GOVERNMENT

New York's towns, all 932 of them, are the backbone of local government in our State. The town, for example, is the primary organizing element for elections and, in turn, political parties, which are built around the election district (towns in all counties except Monroe, Nassau and Suffolk establish and operate all election districts outside cities). Representative democracy is achieved in almost all of them through the system of electing town councilmen as at-large representatives. Towns of the first class (generally, towns with a population of 10,000 or more, or those towns with a smaller population that have chosen to become towns of the first class pursuant to sections 12 & 81 of the Town Law) usually elect a Town Supervisor and four town councilmen as the town legislative body, separate from other elective or appointive town offices such as clerk, justice and assessor.

Unlike cities in New York, which show a mix of both at-large and ward-elected councilmen, only a handful of towns elect councilmen by ward. At last count, only eleven towns in New York use the ward system.

The ward system of electing town councilmen is authorized by sections 81 and 85 of the Town Law. A town of the first class may, upon the vote of the town board or upon a duly qualified petition, submit a proposition to the voters for establishing the ward system. If the voters approve the proposition, the county board of elections must divide the town into four wards and fix their boundaries. "So far as possible the division shall be so made that the number of voters in each ward shall be approximately equal" (Town Law §85 [1]). The ward system is deemed established only upon the date the county board of elections duly files a map "showing in detail the location of each ward and the boundaries thereof" (Town Law §85 [1]). Note: voters may also decide on a proposition at the same election, whether to increase the number of councilmen from four to six, which if approved, would require drawing six wards.

Any past failures of ward propositions to be approved by the voters may be because boundaries of the wards are not known at the time of the ballot, but instead are fixed by the board of elections if the proposition is successful. Apart from the constitutional requirement of "one person one vote" (see, *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362) codified in the statute by its demand that wards contain "approximately" the same number of voters, the voter has few assurances how wards will be drawn.

If the ward system is established, the terms of the sitting councilmen end on December 31 after the first biennial town election held at least 120 days after the ward system is established. And of course the terms of the councilmen elected by ward commence January 1 following such election.

Only a town of the first class is authorized to both establish the ward system and increase the number of councilmen from four to six, and such a town may submit both propositions at the same election (Op. Atty. Gen. [Inf.] 90-63; 1968 Op. Atty. Gen. [Inf.] 52; 13 Op. St. Compt. 223, 1957). May a town of the second class, which is not authorized to either increase the number of councilmen or establish the ward system, submit a proposition to the electorate to change its classification to first class at the same election it submits the other propositions? Under the authorizing sections of sections 81 and 85 the Town Law, the answer is that the electorate must first approve a change in classification to first class, with subsequent elections necessary to increase the number of councilmen and establish the ward system. The Attorney General has opined, however, that a town of the second class may, by enactment of a local law, increase its number of councilmen and establish the ward system (Op. Atty. Gen. [Inf.] 90-63). Under the Municipal Home Rule Law (MHRL) towns, cities, counties and villages are authorized to adopt local laws not inconsistent with the Constitution or any general law, in relation to, inter alia, "the powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees" (MHRL, §10 [1] [ii] [a] [1], emphasis supplied). Such a local law would be itself subject to a mandatory referendum (MHRL, §23 [2] [b], [c], [g]).

The conclusion reached in the above-cited Attorney General's Opinion is based upon the reasoning that such a local law is not inconsistent with any provision of the Town Law, but it has not been tested by litigation, nor is it likely to be. It's fair to say that legal impediment isn't the reason why more towns don't have the ward system. If the voters want representation by ward they have the means to establish it. To date, they seem content with the prevailing mode of representation, the at-large system.

Taken from <http://www.dos.ny.gov/cnsl/lg01.htm>

#2 -- Selection of Town Department Heads

Introduction

The Governance Options Study Committee was charged with looking at town governance and considering alternatives that will positively impact either efficiency or effectiveness. The Committee identified the method of selection of town department heads as one of the areas for further study. Specifically, the Elected or Appointed Subcommittee looked at the elected offices of Town Clerk, Highway Superintendent and Receiver of Taxes.

The Bethlehem 2020 Implementation Committee brought this topic to the Board in 2011. Their report presented the option of moving to appointed department heads for all Town departments and eliminating elective offices for Highway Superintendent, Tax Receiver and Town Clerk. The 2020 Implementation Committee stated that this would “modernize and provide consistency in the Town’s management structure.”

The 2020 Implementation Committee presented statistics from the Association of Towns on the prevalence of elected versus appointed officials. Of 932 towns in New York:

- 889 towns have elected town clerks, whereas 43 appoint their clerks;
- 577 town clerks serve as tax collectors or receivers; and
- 873 town highway superintendents are elected; 59 are appointive.

The 2020 Implementation Committee also outlined the process to convert an elected department head to an appointed position. The Board must pass a local law at least 60 days before the date of a referendum of the voters, which could occur on a general election date. The conversion could be timed to take place at the end of an elected official’s term.¹⁶

The Elected or Appointed Subcommittee of the 2012 Governance Options Study Committee tried to supplement but not duplicate this previous work by the Bethlehem 2020 Implementation Committee. We focused on identifying the differences among elected, appointed and civil service positions and on comparing Bethlehem to other similar towns with respect to these three functions.

Elected, Appointed, or Civil Service

The Town of Bethlehem employs 221 individuals to provide services to residents and carry out the other duties of town government. The Town’s 12 department heads are selected in three different ways.

Election: Town voters elect the Town Clerk and the Highway Superintendent to 2-year terms and the Receiver of Taxes to a 4-year term. Candidates are nominated by party committees or by petition, subject to primary.

¹⁶ Bethlehem 2020 Implementation Committee, 21st Century Town Government and Management Structure, http://www.townofbethlehem.org/images/pageImages/2020/ImplementationMeetings/20110415_21st_Century_Town_Governance.pdf

State law establishes certain qualifications and duties for elected town officers. A person must be at least 18 years old, a United States citizen, and a resident of the town.¹⁷ No other qualifications are established in statute for the positions of town clerk, receiver of taxes or highway superintendent.

The duties of the town clerk are to keep “all records, books and papers of the town... attend all meetings of the town board... keep a complete and accurate record of the proceedings of each meeting” of the Board. The town clerk must keep an “ordinance book” with a copy of every ordinance adopted by the Board and “record all deeds of conveyance... [and] file all certificates or oaths and other papers...” Other responsibilities include issuing licenses and permits and collecting and depositing fees.¹⁸

The receiver of taxes must “receive and collect all state, county, town and school taxes, and all assessments that may be levied or assessed in the town, and all fees...” He or she must collect all water rates, sewer rentals, permit fees and other fees and charges payable to the town, keep a record of collections, and deposit them within 24 hours. The Board determines which banks and accounts the receiver of taxes should use.¹⁹

The highway superintendent must oversee repair and maintenance of roads and sidewalks, keeping them open and free from obstructions. He or she must “[c]onstruct and keep in repair sluices and culverts and cause the waterways, bridges and culverts to be kept open.” The highway superintendent is also required to remove loose stones from the highways at least 3 times a year; remove brush and weeds; “attend public meetings called by the department of transportation...;” and provide adequate detour signs during any road closures.²⁰ The Bethlehem Highway Superintendent has prepared a written job description that includes supervising the maintenance of all Town-owned vehicles and equipment; supervising the operation of the landfill, transfer station, and composting facility; reviewing work and projects with engineers and consultants; and other responsibilities.

As independently elected officials, the Bethlehem Town Clerk, Receiver of Taxes and Highway Superintendent answer primarily to the voters, not the Town Supervisor or Board. The Board approves the budget for their departments as well as appointments of personnel (except for most highway department positions, which are classified under Civil Service Law as non-competitive labor class). Currently there are three employees in the Town Clerk’s Office, three in the office of the Receiver of Taxes, and 56 in the Highway Department.

Competitive Civil Service Examination (referred to as “Civil Service” in this report): Candidates for competitive civil service positions must take an examination. The Albany County Department of Civil Service is responsible for administering civil service for the Town of Bethlehem, including administering examinations. The examination results in a list of eligible candidates ranked by score, with tie scores given the same rank. When a position becomes available, the list of candidates with the highest score is canvassed to determine their interest, and interested candidates are interviewed. Candidates with lower scores may be considered for appointment only when there are fewer than three candidates with higher scores. Appointments must be approved by the Board.

In Bethlehem, the department heads for Parks and Recreation, Senior Services, Police, Human Resources and

¹⁷ NYS Public Officers Law, section 3.

¹⁸ NYS Town Law, section 30.

¹⁹ NYS Town Law, section 37.

²⁰ NYS Highway Law, section 140.

Management Information Services are appointed through a competitive civil service process. The Town maintains written job descriptions for each of these positions.

Non-competitive or Exempt Civil Service Appointment (referred to as “Appointed” in this report): Civil Service Law does not require examinations for positions classified as non-competitive or exempt. Candidates for appointment must meet minimum qualifications. Those appointed in exempt class positions serve at the pleasure of the appointing authority.

Bethlehem’s Human Resources Department is responsible for recruiting candidates. Job openings are advertised in a way that is appropriate to the position, ranging from the publication of the American Public Works Association to monster.com. Typically openings are posted on the Town’s website. Interviews for department head positions are conducted by the Town Supervisor, the Director of Human Resources, and sometimes a third participant, such as a Board member or a past department head. Appointments must be approved by the Board.

In Bethlehem, four department heads are appointed through this process, with varying terms. The Assessor is appointed for a 6-year term. The Comptroller, Commissioner of the Department of Public Works, and the Director of Economic Development and Planning are appointed for 2-year terms concurrent with those of the Town Supervisor. Bethlehem maintains written job descriptions for each of these positions.

How Does Bethlehem Compare with Other Towns in New York State?

To learn about experiences with different ways of selecting key town officials, we mailed out a letter with survey questions to 10 towns. We looked for towns that are located north and west of the Hudson Valley; suburban in character; and similar in size to Bethlehem. Five of the towns were also identified as benchmarking communities by the Budget Advisory Committee. Subsequently a member of our committee called to interview the town supervisor or his or her designee, using the survey questions as a guide. We received responses from 9 of the 10 towns.

The towns responding to our survey represent a number of different configurations for the three offices:

- Two (Lewiston and Vestal) elect all three positions, like Bethlehem.
- One (Ithaca) appoints all three positions.
- Three utilize both methods.
 - Niskayuna elects the Tax Receiver and Town Clerk and appoints the Highway Superintendent.
 - Queensbury elects the Town Clerk and Highway Superintendent and appoints the Receiver of Taxes.
 - Salina elects the Tax Receiver and appoints the Town Clerk and Highway Superintendent.
- Three have eliminated the positions of Receiver of Taxes and consolidated those duties into the Town Clerk’s responsibilities. Of these,
 - Two (New Hartford and West Seneca) elect the Town Clerk and Highway Superintendent, and
 - Irondequoit appoints both the Town Clerk and Highway Superintendent.

None of the responding towns uses a civil service examination to select town clerk, tax receiver or highway superintendent. Table 1 compares the organizational framework of these towns to Bethlehem.

One of the survey questions asked the town representatives for their views of the advantages and disadvantages of appointing versus electing these three officials. Table 2 summarizes the answers and comments that we received.

Considering Changes: Generally, town officials support the current selection processes that are used in their towns, whether they are elected or appointed. Typically the organizational framework was established long before the tenure of current officials. However, one town has been discussing possible changes over the last four years, and two towns in our survey, West Seneca and New Hartford, recently eliminated the position of tax receiver by shifting those duties to the town clerk.

In West Seneca, concern about the cost of town government led to a grassroots movement to pare down its size. Citizens collected signatures for a town-wide referendum. In the subsequent election, voters approved the elimination of the receiver of taxes. They also reduced the size of the Board, from 5 to 3 members.

New Hartford voters eliminated the receiver of taxes in the November 2011 election. The purpose was to reduce costs and make town government smaller. Two members of the tax receiver's office were then incorporated into the town clerk's office.

Selection Process: In the survey, as well as in public comments last year in response to the 2020 proposal, it is clear that a number of people place a high value on the opportunity to directly elect the receiver of taxes, town clerk and highway superintendent. Electing local officials is seen as a way for the people to express their choice and have input into town government. At the same time, it is not unusual for these elections to be uncontested. In one town, none of these positions were contested in the last 4 elections. In another town, the incumbents have held their positions for multiple election cycles with only one primary challenge. Another respondent to our survey acknowledged that voter participation in these elections tends to be low.

By appointing individuals to these positions, a town can establish minimum qualifications, recruit widely and consider many applications. The supervisor recommends appointments to the Board, which must approve them. One respondent described selecting candidates with extensive relevant private sector experience and experience working for other towns. Another described experiences both with promoting from within the department and with recruiting from outside the town. However, survey respondents also noted that appointments could be made for political reasons. One survey respondent noted that the board had never turned down a supervisor's recommended appointment. Another respondent did not remember seeing job descriptions.

Accountability Framework: Appointed department heads report to the town supervisor. One survey respondent noted that the Board approves all job descriptions for the appointed positions, and the supervisor conducts annual performance reviews and forwards them to the board for information. In another town, the supervisor annually reviews the performance of each department head, and each department head evaluates the supervisor. Every three years, department heads evaluate each other.

Elected officials tend to function with more independence than other department heads. Typically, they are not directly supervised as town employees, and formal performance reviews are not conducted. However, one town supervisor commented that if the public is not happy with the services provided by one of these offices, the

supervisor will hear about it. The elected officials are accountable to the public for their performance, in either biennial or quadrennial elections.

In our survey, we did not learn of any regularly reported performance measures for the functions of town clerk, highway superintendent and receiver of taxes. It can be difficult to determine appropriate performance measures for government functions and expensive to set up measurement systems. Reported performance measures could make it easier for both town officials and voters to evaluate the performance of a department and the department head.

Efficiency and Cost Savings: Both elected and appointed department heads must operate their departments efficiently and control costs, while providing services to meet the town's needs. In Bethlehem, elected and appointed department heads have worked together to implement efficiency and cost savings initiatives. Greater efficiencies may be available through coordinating or even consolidating a single department with other similar government functions.

Towns that recently consolidated the receiver of taxes position into the town clerk's office did so for cost savings and better use of staff. One town supervisor reported considering such a consolidation but decided not to pursue it because of the efficiency of the current operation. Some towns have consolidated highway responsibilities with those for parks and public works.

One town reported a rigorous review process before filling vacant positions. Other towns described sharing services or even employees with other jurisdictions in order to realize savings. Outsourcing certain services, such as lockbox for deposits, was mentioned as a source of savings. When department heads are appointed and report to the town supervisor, a town may be able to more rapidly evaluate and implement various efficiency and savings opportunities.

Questions for consideration

Our survey identified examples of towns like Bethlehem that operate successfully under a variety of organizational frameworks. Because of public resistance to change, pursuing the elimination of the position of Receiver of Taxes or changing positions from elected to appointed may divert the time of the Board and Supervisor from other pressing issues. In weighing the advantages and disadvantages of pursuing any change, we suggest considering following questions:

1. What are the most important goals and results for Bethlehem with respect to these three departments? Is there an opportunity for departmental consolidation or to save money that is not available without elimination of an elective office? A department's priority might be to modernize systems or expand or improve services; or an overall town goal, such as achieving cost savings, might take priority.
2. Which process, elected, appointed, or civil service is most likely to result in the selection of an individual who can lead the department in achieving those goals?
3. Which accountability framework is most likely to produce the desired results? In the current framework, independently elected officials are accountable to the voters at election time. In an alternative framework, appointed department heads are accountable to the Supervisor on a day-to-day basis, and the Supervisor is accountable to the voters at election time.

4. If a change is made, what other actions need to take place to produce the desired results? For example, a specific plan might be developed to achieve cost savings.

Survey Results Table 1						Other Appointed Dep't Heads	Other Civil Service Dep't Heads	
Town (County and Nearby City)	2010 Pop.	Receiver of Taxes	Town Clerk	Highway Supt	Town Super.			Comments
Bethlehem Albany Albany	34,000	Elected, 4 year term	Elected, 2 year term	Elected, 2 year term	Elected, 2 year term	Comptroller, Assessor, Public Works, Economic Development and Planning	Parks & Recreation, Senior Services, Police, Human Resources, Management Info. Services	
Irondequoit Monroe Rochester	52,000	None/Town Clerk performs duties	Appointed, 2 year term	Appointed , 2 year term	Elected, 2 year term	Comptroller, Director of Community Development	Police Chief, Payroll Clerk	Director of Community Development oversees building, fire, community development.
Ithaca Tompkins	20,000	None/Town Clerk performs duties	Appointed	Appointed	Elected, 4 year term	Not available	Not available	Director of Public Works responsible for highways and water and sewer services.

Survey Results Table 1						Other Appointed Dep't Heads	Other Civil Service Dep't Heads	
Town (County and Nearby City)	2010 Pop.	Receiver of Taxes	Town Clerk	Highway Supt	Town Super.			Comments
Ithaca								
Lewiston	16,000	Elected, 4 year term	Elected, 4 year term	Elected, 4 year term	Elected, 2 year term	Budget Officer, Accountant	Building Inspector, Assessor, Police Chief, Admin'r/ Operator Treatment Plant	
Niagara								
Buffalo								
New Hartford	22,000	None/Town Clerk performs duties	Elected, 4 year term	Elected, 4 year term	Elected, 4 year term	All others		Town referendum in 2011 eliminated Receiver of Taxes
Oneida								
Utica								

Survey Results Table 1						Other Appointed Dep't Heads	Other Civil Service Dep't Heads	
Town (County and Nearby City)	2010 Pop.	Receiver of Taxes	Town Clerk	Highway Supt	Town Super.			Comments
Niskayuna Schenectady Schenectady	22,000	Elected, 4 year term	Elected, 2 year term	Appointed , 2 year term	Elected, 2 year term	Comptroller, Attorney, Assessor, Chief of Police, Recr'n Coordinator, Info. technology director	Town Engineer, Town Planner, Water/Sewer Department, Chief of Police	Highway superintendent also responsible for Parks
Queensbury Warren Glens Falls	28,000	Appointed	Elected, 2 year term	Elected, 2 year term	Elected, 2 year term	Not available	Not available	
Salina Onondaga	34,000	Elected, 4 year term	Appted, 2 year term	Appted, 2 year term	Elected, 2 year term	Director of Planning and Development, Assessor, Comptroller		Comptroller and Assessor are shared with another town

Survey Results Table 1						Other Appointed Dep't Heads	Other Civil Service Dep't Heads	
Town (County and Nearby City)	2010 Pop.	Receiver of Taxes	Town Clerk	Highway Supt	Town Super.			Comments
Syracuse								
Vestal Broome Binghamton	28,000	Elected, 4 year term	Elected, 4 year term	Elected, 4 year term	Elected, 4 year term	Not available	Not available	
West Seneca Erie Buffalo	45,000	None/Town Clerk performs duties	Elected, 2 year term	Elected, 2 year term	Elected, 4 year term	Building, Public Works (water and sewer)	Parks and Recreation, Senior Services	Highway Superintendent also responsible for sanitation, building and grounds

Survey Respondents: Mary Joyce D'Aurizio, Irondequoit Town Supervisor; Herb Engman, Ithaca Town Supervisor; Carol J. Brandon, Lewiston Town Clerk; Joe Landry, Niskayuna Town Supervisor; Paul Sebesta, Niskayuna Comptroller; Gail Wolanin Young, New Hartford Town Clerk; Barbara Tierney,

Queensbury Budget Director; Mark Nicotra, Salina Town Supervisor; W. John Schaffer, Vestal Town Supervisor; Town Supervisor's Assistant, West Seneca

Survey Results Table 2

<u>Elected Department Heads</u>		<u>Appointed Department Heads</u>	
<u>Pros</u>	<u>Cons</u>	<u>Pros</u>	<u>Cons</u>
The public directly participates in choosing the official.	Low voter turnout and lack of challengers to incumbents indicate that voters tend to ignore these races. No opportunity for the Town to eliminate or consolidate positions or departments.	Larger and more qualified pool of applicants for position	Appointed Department Heads may be seen as political rather than professional appointments. (Civil service department heads avoid this pitfall.)
The voters can replace an unsatisfactory official at the next election.	The town is unable to establish minimum professional qualifications for the position, such as education and experience.	Potentially larger and more qualified pool of applicants for position. If appointed positions are publicly advertised against specific job requirements, the public can see the basis of selection.	Election is even more transparent.
Running for office provides a strong incentive for delivering high quality public services to the town's residents.	Candidates are selected through a political process that may emphasize political needs over town needs. Town services such as issuing marriage licenses and dog licenses are not political, they are nonpartisan.	More flexibility in assignment of duties, priorities.	Potential for instability if terms are tied to those of the elected Board.
The official is accountable to the public.	Elective office can result in more political pressure on the town official. No one is specifically responsible for reviewing the official's performance. If an ineffective person is elected to a position,	Position qualifications are determined locally; job descriptions including education and experience background can be approved by the Board.	Appointments could be political and not reflect the residents' choice.

	there is almost no way to get rid of the person until the next election.		
Elected officials are responsible to the public, not to the town supervisor	May reduce local government flexibility in dealing with budget issues, aligning government tasks and dealing with emerging issues.	Better accountability through local evaluations; if the person is ineffective or inefficient, that person can be terminated.	

#3 -- Term Limits Subcommittee

Summary

The phrase “term limits” is generally used in two ways. First, this phrase is employed to indicate the number of consecutive or total terms an elected official can serve before becoming ineligible to run. Second, the phrase can indicate the length of each term to be served by an elected official once elected.

As used in this report, “Term Limits for Number of Terms” shall mean the number of terms an elected official can serve, consecutively or in total. “Term Limits on Years per Term” shall mean the limit on the length of an elected official’s term.

This report shall discuss both uses of the “term limit” phrase and, more specifically, their importance and potential effect on governance in Bethlehem if different term limits, in either sense, were adopted or if the status quo was maintained. The Subcommittee’s findings and conclusions are included throughout this report. Supporting documentation and references are attached to and/or described in this report.

Current Status of Term Limits For Number of Terms in Bethlehem:

Bethlehem has a set of elected officials typically found in a NY governmental entity of similar size, location and economic status. We have a Supervisor with a term of office of two years. The Board consists of four members each elected for four-year terms on a repeating two-year cycle; that is, two members in a specific year and the two other members two years later. There is a Receiver of Taxes elected to a 4-year term, a Town Clerk elected to a 2-year term and a Highway Superintendent, also elected to a 2-year term. Finally, Bethlehem has two Town Justices, elected for four-year terms in different years.

The foregoing is consistent with the number of elected positions in municipalities of similar population and proximity as to length of term and election cycles. There are currently no limits on the number of terms in a specific office that an elected official in Bethlehem can serve, either consecutively or in total.

The use of term limits to keep elected officials from serving too many terms in a specific office is a known concept dating back to ancient Greece. In the interesting and informative article *Arguments For and Against Term Limits* by Mayraj Fahim, it is pointed out that “Term Limits can be a productive if not blunt instrument despite the powerful passions they may invoke. And, witness the many web sites and organizations advocating various term limit positions, it is clear that strong opinions, both pro and con, exist for limiting the number of terms in office for an elected official.

The Greeks and Romans were both concerned with abuses by office holders and imposed various limits on the number of terms they could serve. Concern over this issue was voiced early on in the United States, by some of our constitutional framers. For example, Thomas Jefferson said "To prevent every danger which might arise to American freedom from continuing too long in office, it is earnestly recommended that we set an obligation on the holder of that office to go out after a certain period." Benjamin Franklin and John Adams also expressed their opinion that term limits were an important way of placing checks on individual power.

The Articles of Confederation limited delegates to just three year terms. A similar provision was not included in the U.S. Constitution. George Washington, however, chose to leave office after his second presidential term, creating an example that lasted almost 150 years. After Washington left office, eight presidents served two full terms and declined a third while three presidents served one full term and refused a second.

Then, Franklin D. Roosevelt was elected to four terms, running from the end of the Great Depression and through most of World War II. In 1951, a few years after FDR's death, mandatory term limits were imposed on the position of U.S. President although such restrictions were not applied to members of Congress. However, advocacy for limiting the terms of U.S. Senators and Representatives remains strong and ongoing.

Thus, while results on a national level for term limits for offices (TLFO) as discussed above are mixed, the more important question for the Subcommittee is how and to what extent such term limitations have been adopted in New York at the municipal level.

New York City, the largest NY municipality, has had term limits in place for several years limiting elected officials including the Mayor to two consecutive terms in office. In October 2008, the NYC Council voted to expand the limit to three consecutive terms. There has been recent talk seemingly for politically based reasons, about challenging or changing NYC's term limit restrictions.

Outside of NYC, there have been ten instances in which term limits for the number of terms to be served have been imposed for elected officials in municipalities. In some instances, the term limits were applied to all elected officials. In other instances, only specified elected officials were term limited.

The municipalities that adopted term limits on the number of terms to be served included several cities and towns and one county (Suffolk). It should be noted that the village of Village of Islandia (Suffolk County) repealed term limits in 2009 for its Mayor and Trustees. These term limits had been in effect since 2005.

An important aspect of the number of terms an elected official can serve is the fact that there is currently no recall procedure or process available with respect to elected officials in NY. There have been a few decisions and opinions from the Schenectady City Attorney and the NY Attorney General's Office on point, to the effect that recall is not permitted or possible in the absence of an enabling constitutional provision or state statute. No such constitutional or statutory language enabling recall provisions currently exist although legislation for that purpose has been periodically introduced in the State Senate and Assembly, including a bill as recently as 2011.

In the absence of recall, it would seem prudent for a Board to consider adopting term limits rather than waiting on a regular election to discharge a poorly performing official from office. While the ballot box is our accepted, even preferred way of rendering opinions on elected officials, in the absence of recall, a great deal of harm may be inflicted while waiting for an end-of-term election to take place.

With respect to reasons for supporting limits on the number of terms that can be served by an elected official:

1. Increases the number of competitive elections.
2. Creates greater opportunities for a variety of individuals to serve in public office.
3. Curbs the influence of lobbyists.
4. Produces a "citizen legislature" of more ordinary people rather than professional politicians since term-limited representatives would be more in harmony with public opinion and with their districts' constituents.
5. Promotes fresh ideas and minimizes reelection pandering.
6. Avoids incumbency, which promotes more spending and bureaucracy.

Reasons against supporting limits on the number of terms that can be served by an elected official:

1. Leads to a loss of experience.
2. Inexperienced leaders may make beginner mistakes and possibly be subject to the will of special interests.
3. Term limits remove popular elected officials.
4. Term limits conflict with what would have been the will of the people with respect to successful office holders.
5. Term limits can result in negative impact on projects that outgoing officials sponsored, but newcomers delay or shelve.

It is important to note that there are cogent reasons for and against the use of term limits. However, that doesn't mean that term limits are beyond formal review or use in municipalities such as Bethlehem. As stated in the above-cited Fahim article, "While the subject of term limits evokes powerful passions on both sides of the argument, as this discussion has illustrated, the subject is rich in nuances. Term limits can facilitate the refreshing of the system, but they are not necessarily blunt instruments." In other words, term limits directed to the number of terms that can be served by an elected official in Bethlehem merit full consideration.

Current Status of Term Limits For Length of Terms in Bethlehem:

As previously noted, Bethlehem has a set of elected officials typically found in a NY governmental entity of similar size, location and economic status. The Town's Supervisor has a two-year term. The Board's four members are each elected for four-year terms on a repeating two-year cycle. Since the Subcommittee is primarily concerned with the difference in length of terms between that of the Supervisor and those of the Board members, no further comment on the terms of Bethlehem's Receiver of Taxes, Town Clerk, Highway Superintendent or Town Justices will be made.

The position length of each term for Bethlehem's elected officials is consistent with the length of elected positions in the majority of surveyed municipalities of similar population and proximity. The focus in this report is on the differences in the length of a specific term for the municipality's Supervisor and Board members or their equivalent positions.

The Supervisor in Bethlehem serves each term for 2 years. Board members serve 4-year terms. The majority of similar municipalities also have 2-year Supervisor terms and 4-year Board member terms.

There are a lesser number of municipalities shown in this attachment that have 4-year Supervisor terms and 4-year Board member terms.

Not so surprisingly, some of the same arguments, both pro and con, that have been applied to the issue of number of consecutive or total terms that can be served by an elected official also apply to that same official's length of term. In this instance, the question centers on the length of the Supervisor's term. More specifically, the question can be stated "should the Bethlehem Supervisor's term be extended by adoption of local law from the present 2-year term to a term of 4 years?"

The historical background shows, as described in a August 4, 2011 memorandum from former Supervisor Sam Messina to the Bethlehem Board, that this question has been discussed for years. It is one of the issues described in the 21st Century Governance and Management Structure Report. The Supervisor's Report goes on to discuss the timing, process and language that should be used to enable its proposed change in the length of the Supervisor's term from 2 to 4 years through the use of a new local law.

As noted, the Supervisor's current term is 2 years. The Supervisor is a full time official. The four Board members have terms of 4 years each and serve on a part time basis. The Supervisor and the Board members collectively serve as Bethlehem's legislative, policy and financial body. The Supervisor also serves as the day-to-day, chief executive officer of the Town.

As of the date of the Supervisor's Report, around 280 towns, or approximately 30% of towns statewide, have changed the length of their Supervisor's term from 2 to 4 years. Our updated findings, reflect an equivalent difference of approximately 30% in the Supervisor's term for towns of the same approximate size as Bethlehem.

It is important to note that public comments were received at meetings conducted for that purpose in May and June 2011. These comments generally mirror the arguments made on the issue of lengthening a supervisory term in other municipalities. They also are consistent with the conclusions of the Subcommittee.

The above-referenced public comments were directed to two main points in favor of expanding the Supervisor's term:

1. The short 2 year term forces the Supervisor to focus too much on reelection concerns, and
2. More frequent elections for and changes in the Supervisor's office are disruptive to efficient operation of Town departments and fulfillment of Town projects and initiatives.

The Subcommittee also concluded that

3. A four year term would match the length of term of Board members and tend to engender more cooperation,
4. A four-year term for the Supervisor would definitely prevent the loss of experience and institutional memory.

The public comments also noted a few points offered in opposition to the expansion of the Bethlehem Supervisor's term:

1. If the Supervisor has done a good job, there should be no problem with respect to reelection, and
2. The current staggered cycle for electing the Supervisor/Board members ensures that the public has a frequent opportunity to change their Town representation.

The Subcommittee also concluded that:

3. Shorter terms might increase opportunities for other citizens to serve and expand the possibility that minority members would become more involved, and
4. Shorter terms that involve more people would also create opportunities for fresh ideas to be introduced.

The Subcommittee wishes to note with respect to these con points that the lack of a problem getting reelected may not lessen or negate the fact that a 2-year term Supervisor is likely to be distracted by running for office that much sooner and twice as often than if the Supervisor had a 4-year term. Further, expanding the Supervisor's term to 4 years would not meaningfully disturb the staggered election cycle since two Board members and the Supervisor would run every four years and the remaining two Board members would run in staggered fashion two years before and after the Supervisor runs.

It should be noted that there are other length of term differences in Bethlehem with respect to other elected officials. For example, the Receiver of Taxes is elected for a 4-year term while other elected department heads (for example Highway Superintendent and Town Clerk) serve for only 2 years. It seems, for the same reasons as applied to lengthening the Supervisor's term that the 2-year terms of the elected department heads in Bethlehem could also be expanded to 4 years. That would readily fit into Bethlehem's staggered election cycle.