



Memorandum – 2

TO: Plymouth Charter Commission
FROM: Collins Center Charter Project Team
DATE: May 6, 2022
RE: Memorandum 2 – COPC and Related Topics, Continued

Overview

This memo (Memorandum-2) addresses topics discussed at the Commission’s 4/25/22 and 5/2/22 meetings. Included in the memo is new and updated proposed charter text regarding:

- Committee of Precinct Chairs,
- Warrant Article Oversight Committee,
- Charter enforcement, and
- Advisory and Finance Committee.

Proposed Changes to COPC Sections

The project team proposes deletion of sub-sections 2-3-4 and 2-3-5 and all of section 2-11, replacing that language with new sections 2-6 and 2-7. (Please note that Article 2 sections will need to be renumbered to account for new 2-6 and 2-7 and deleted 2-11.) The reordering of the sections and language changes are intended to streamline the charter provisions and clarify the responsibilities and authority of the Town Meeting precincts and the COPC.

The new proposed charter text strengthens the legislative branch’s role between Town Meetings by authorizing COPC to recommend a Special Town Meeting and appoint Finance Committee members, adding warrant oversight, giving COPC the authority to make warrant article recommendations, and allowing COPC the ability to create a consent agenda for town meeting.

This draft does not include granting COPC the power to take financial action on behalf of Town Meeting between regular town meetings. By statute and precedent, it is the role of the Advisory and Finance Committee to manage the reserve funds to be used in emergency situations, and the project team has not yet seen an appropriate way to involve COPC in this (beyond giving COPC appointing authority over some of the Advisory and Finance Committee).

Note that the project team also has not included language implementing a process for deciding whether a matter is financial or not. It has been accepted practice that Advisory and/or Finance Committees can choose to determine what is in their purview as financial matters because almost all legislation affects the

town's finances or budget. The project team has not found any examples of other representative town meeting charters that contain a process for distinguishing financial and non-financial matters.

Additionally, proposed charter changes later in this memo remove the prohibition on town meeting members being on the Advisory and Finance Committee, give the COPC appointments on the Finance Committee, and allow the COPC to make recommendations on non-financial matters. Taken together, these new provisions should allow for robust input by town meeting members into both financial and non-financial matters.

The proposed COPC-related sections would be:

Section 2-6 Caucuses (formerly Section 2-11; text unchanged other than renumbering)

2-6-1 The representative town meeting members from each precinct shall, within twenty (20) days following each town election, meet and elect from among their own precinct's representative town meeting members, a chairperson, vice-chairperson, and clerk, to serve for a term of one (1) year, and shall file a notice of such organization with the Town Clerk. If the Town Clerk fails to receive a notice of organization within twenty-one (21) days following a town election, the Town Clerk shall immediately call a meeting of the representative town meeting members from such precincts that have failed to organize, for the purposes of organizing.

2-6-2 Each precinct delegation shall hold a caucus meeting for the purpose of reviewing the subject matter of the upcoming representative town meeting. Caucus meetings may be held in conjunction with other precinct delegations.

2-6-3 Each precinct chairperson shall arrange for the posting of notices of caucus meetings in town hall and on the town's website. Each such caucus meeting shall be conducted under the open meeting law established by section 20 of chapter 30A of the General Laws.

2-6-4 The precinct chairpersons shall meet together within forty-five (45) days following each town election, and shall organize as a Committee of Precinct Chairs, electing a Chairperson and a Clerk.

Section 2-7 Committee of Precinct Chairs (new)

2-7-1 The Committee of Precinct Chairs described in Section 2-6-4 shall function as a standing committee of Town Meeting whose purpose is to establish legislative branch continuity between Town Meetings and provide a voice for the legislative branch as a co-equal branch of government.

2-7-2: In furtherance of its purpose and mission, the Committee shall keep Town Meeting Members informed about warrant articles, make recommendations concerning Town Meeting rules and procedures, facilitate oversight of articles passed by Town Meeting, review Town bylaws, and participate in other such activities as the Town Meeting shall deem appropriate.

2-7-3 The Committee may make recommendations to Town Meeting on all warrant articles that it deems to be non-financial.

2-7-4 At least 10 days prior to Town Meeting, upon a unanimous vote of the Committee, the Committee may propose a consent agenda to bundle Town Meeting warrant articles it deems non-controversial for a single vote. The Committee must include with the consent agenda a report outlining the rationale for inclusion of the articles. Any Town Meeting member may move that an item be removed from the consent agenda, and if 10 Town Meeting Members oppose the inclusion of an item, the item will be removed and taken up as its own article. The remaining warrant items in the consent agenda will be put before Town Meeting for a single vote.

2-7-5 The Committee may, with a two-thirds vote, recommend to the Select Board that the Board call a Special Town Meeting within 30 days.

2-7-6 The Committee may make appointments to the Advisory and Finance Committee, as provided in Section [???], to the Charter Review Committee, as provided in Section [???], and to other committees, as provided by bylaw or vote of Town Meeting.

2-7-7 *[Placeholder for potential additional powers; see note below]*

2-7-8 The Committee may from time to time appoint subcommittees of itself or committees of Town Meeting Members to fulfill its duties under this section.

2-7-9 At least quarterly, the Committee shall report on its activities to all Town Meeting Members, the Town Moderator, and the Select Board.

As noted above in 2-7-7, the project team is still researching the potential for additional COPC powers that could be included in the charter. However, given the new substantive powers (e.g., ability to recommend the calling of a town meeting, appointments to the Advisory and Finance Committee, creation of Warrant Article Oversight Committee of COPC members, ability to create a consent agenda for town meeting, etc.) and the new language clarifying the purpose and role of the COPC, it is possible that the COPC may now have the tools to achieve what the Commission believes it should achieve without further changes.

Having said that, the project team recently learned of a unique provision in another town that might further solve one of the same issues that strengthening the COPC is attempting to solve. If part of the concern is the challenges involved in calling a town meeting quickly in the face of emergencies, the [special act that creates Burlington's town meeting](#) may include a solution. Section 12 of the act begins: "(a) The town meeting shall be a continuous body, but it may adjourn for periods not exceeding 150 days." It is the project team's understanding that the intent of the provision is to allow representative town meeting to meet more quickly than typically permitted under town meeting notice procedures, but the project team is still gathering information on how this works in practice. The project team will report back.

Proposed New Warrant Article Oversight Committee Section

The project team proposes a new section at the end of Article 2 for the Warrant Article Oversight Committee.

Section 2-14 Warrant Article Oversight Committee (new)

2-14-1 There shall be a Town Meeting Warrant Article Oversight Committee to track the status of articles passed by Town Meeting.

2-14-2 The Committee shall be comprised of five members as follows: the Committee of Precinct Chairs shall annually appoint three of its members to the Warrant Article Oversight Committee within 30 days following the close of annual town meeting. The other members shall be the Town Manager or designee, and the Town Clerk or designee. Appointments to the Committee shall be made within 30 days following Town Meeting by filing notice with the Town Clerk specifying the appointment.

2-14-3 In furtherance of its purpose, the Committee may interview a member of a multiple-member body or a Town Department Head and/or request any information that is within the scope of responsibility of that person in relation to Town Meeting Warrant Articles.

2-14-4 The Committee shall provide three status reports to all representative town meeting members regarding the status of implementation of Town Meeting Warrant Articles and any information regarding implementation or challenges to implementation. Such reports shall be filed as follows:

- First Report: 60 days following Town Meeting
- Second Report: 180 days following Town Meeting
- Third Report: 300 days following Town Meeting

2-14-4 At least twice a year, the Committee and the Select Board shall meet in a joint session to review the most recent Committee report and discuss any issues relating to implementation of Town Meeting Warrant Articles.

Proposed Charter Enforcement Section

The project team is still working to address the desire for an enforcement mechanism that has sufficient strength without creating liability issues for the Town. The existing examples that the project team has seen either seem too weak to have an impact or so strong that they may create liability challenges. The lack of good examples available highlights the difficulty of the issue. It is likely that the best solution may be a charter mechanism that feeds into a political solution. (That is, an appropriately constructed charter provision raises a charter enforcement issue in a way that it becomes a tool in the political process, allowing the voters to decide whether the alleged violation merits recalling or not re-electing the body or individual in violation.)

Nevertheless, as part of its research, the project team has found one new example of a charter enforcement provision in the Provincetown charter. It is included below, followed by the two provisions also provided in the last memo. ***As with the prior memo, the project team has *not* had any conversations with officials in any of these towns to understand how these sections have worked in practice, but the team could do so, if the Commission is interested.***

From Article 1 of the Provincetown charter:

Section 4. Compliance with the Charter and the Charter Compliance Commission

- a. There shall be a three-member Charter Compliance Commission elected by the voters for three-year overlapping terms with the responsibility to educate the Town about the Charter and to encourage compliance with the Charter. A vacancy on the Commission that may be filled by a majority vote of the remaining members of the Commission, but only until the next annual election, and quorum is based on the filled positions.
- b. The Commission shall provide its written interpretation of the Charter on the written request of any resident or official of the Town. The Commission's interpretation is advisory only and for educational purposes and shall not be the basis for any legal action. A copy of the request and the proposed response shall be provided to the Select Board and the Town Manager for review prior to being issued.
- c. The Town Manager, as the administrative officer of the Town, shall be responsible to ensure that all Town Departments, Boards, Officers and Employees comply with the Charter. Whenever the Town Manager determines that any Town Department, Board, Officer or Employee is failing to comply with the Charter, it is the responsibility of the Town Manager to meet with them to discuss why they are not complying.
- d. Whenever the Town Manager determines that any Town Department, Officer or Employee is continuing to fail to comply with the Charter after that failure has been discussed with them, the Town Manager shall determine the appropriate response.
- e. Whenever the Town Manager determines that any Town Board is continuing to fail to comply with the Charter after that failure has been discussed with them, the Town Manager shall refer the matter to the Select Board to determine the appropriate response.
- f. The Select Board shall be responsible to ensure that the Town Manager complies with the Charter.
- g. Any registered voter of the Town may petition the Town Manager to ensure faithful compliance with the Charter by any Town Department, Officer or Employee, except with respect to matters related to employment, or to petition the Select Board to ensure faithful compliance with the Charter by the Town Manager or a Town Board. The petition shall be filed with the Town Clerk and shall state the provision or provisions of the Charter in question. The Town Clerk shall deliver a copy of the petition to the Town Manager, the Select Board and the Charter Compliance Commission within one business day of receipt.
- h. Following receipt of a petition by a registered voter and prior to taking action thereon, the Town Manager and/or the Select Board shall consult with the Charter Compliance Commission for such input as may be appropriate. The Charter Compliance Commission will provide a recommended response if requested. The Charter Compliance Commission may also provide a recommendation regarding future implementation of the Charter, such as a proposed modification, if requested. The Town Manager and the Select Board shall take such action with respect to the petition as is deemed appropriate.
- i. The foregoing sections shall not limit the right to seek enforcement of this Charter as otherwise provided by law.

From Chapter 10, Section 3 of the Orleans charter:

§ 3. Enforcement 10-3-1

Clause 3-3-3 requires the Board of Selectmen to enforce the Charter. Ten or more voters shall have the right to petition the Board of Selectmen for enforcement of the Charter or to obtain a formal opinion from Town Counsel regarding any Charter enforcement issue. The forgoing enumeration shall not limit or restrict the exercise of rights of enforcement set forth in the General Laws of the Commonwealth.

From Article 9, Section 1 of the Falmouth charter:

§ C9-1. Enforcement. [Added ATE 5-21-2013]

A. Any person who has reason to believe that a town official or governmental body has violated any provision of this charter by action or failure to act may file a written complaint with the Town Clerk, setting forth the circumstances which constitute the alleged violation.

(1) The written complaint shall identify the official or governmental body, specify the date and time of the alleged violation and cite the section of the charter allegedly violated.

(2) The written complaint shall be filed within six (6) months of the alleged violation. Upon receiving the written complaint, the Town Clerk shall forward a copy thereof to the official or the chairperson of the governmental body with a further copy to the Town Manager and the Board of Selectmen.

B. The official or chairperson of the governmental body shall file a reply with the Town Clerk.

(1) It shall either acknowledge the alleged violation with proposed remedial action if appropriate and feasible, or deny the alleged violation with a statement of reasons therefore.

(2) The reply shall be so filed by an official within 30 days of receipt of a copy of the complaint. In the case of a governmental body, its chairperson shall file a reply within thirty (30) days of the receipt of the copy of the complaint or within ten (10) days after the second regularly scheduled meeting of the governmental body following receipt of the copy of the complaint, whichever is greater.

(3) The Town Clerk shall forward a copy of the reply to the complainant with a copy of the reply to the Town Manager and the Board of Selectmen.

C. A complainant who is aggrieved by the reply may pursue any remedy available at law or in equity.

Advisory and Finance Committee Changes

As discussed in the 5/2/22 meeting, the project team includes the following changes to Section 2-12-1. New text will also need to be added to the transition provisions to accomplish the change in appointing authority proposed here, but that can be dealt with when that article is addressed.

2-12-1 There shall be aAn Advisory and Finance Committee of 15 members, 5 of whom shall be appointed by the Moderator for 3-year overlapping terms and 10 of whom shall be appointed by the Committee of Precinct Chairs for 3-year overlapping terms. There shall be no more than 3 members from each precinct of the town; provided, however, that in the event that the number of incumbent members from a particular precinct increases due to redistricting or the change in residency of that member or another, no incumbent member need be removed, and may serve

out their respective terms. The Advisory and Finance committee shall choose from its members a chairperson and fill the other offices as it may create. The moderator or Committee of Precinct Chairs respectively may fill any vacancy by appointment and the term of that appointment shall be for the remainder of the unexpired term of the person causing the vacancy. Persons not registered to vote in the Town of Plymouth, ~~and~~ Town of Plymouth employees, ~~and representative town meeting members~~ shall not be eligible for appointment to, or service on, the Advisory and Finance Committee.