



Memorandum – 3

TO: Plymouth Charter Commission
FROM: Collins Center Charter Project Team
DATE: May 13, 2022
RE: Memorandum 3 – COPC, Finance Committee, and Moderator

Overview

This memo (Memorandum-3) addresses topics discussed at the Commission's 4/25, 5/2, and 5/9 meetings, as well as items to be discussed at its 5/16 meeting. Included in the memo are:

- Revisions to COPC and related text;
- Quick update on proposed charter enforcement provision;
- Advisory and Finance Committee revisions from the meeting and additional topics for discussion; and
- First thoughts on moderator discussion topics.

Revisions to COPC and Related Text

The project team provides new COPC and related sections text below. Edits made in track changes are the project team's understanding of decisions the Commission made at its 5/9/22 meeting. Edits highlighted in green are new changes proposed by the project team that the Commission has not yet seen.

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. The provisions of the Open Meeting Law as established by Massachusetts General Laws Chapter 30A, Section 20, shall apply to caucus meetings held under this section.

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-~~45~~ The Committee may, with a two-thirds vote, ~~recommend to request that~~ the Select Board ~~that the Board~~ call a Special Town Meeting within 30 days. **[NOTE: The project team understands the Commission is still debating whether this is best as a majority or two-thirds vote threshold.]**

2-7-~~56~~ The Committee ~~may shall~~ make appointments to the Advisory and Finance Committee, as provided in Section **[TBD]**, to the Charter Review Committee, as provided in Section **[TBD]**, 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-~~86~~ The Committee ~~may shall~~ from time to time appoint subcommittees of itself or committees of Town Meeting Members to fulfill its duties under this section.

2-7-~~97~~ At least quarterly, the Committee shall report on its activities to all Town Meeting Members, the Town Moderator, and the Select Board. **[NOTE: The project team believes it is ok to leave this vague, if the Commission wants to let the Committee shape its own practices. Alternatively, the Commission could be more prescriptive about reporting procedures.]**

2-7-8 At least quarterly, the Committee and the Select Board shall meet in a joint session to review matters related to Town Meeting.

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. **Each report shall contain an appendix including any articles still not implemented from prior Town Meetings and the most recent update from a prior report on their status.** 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.

Quick Update on Proposed Charter Enforcement Provision

Per discussion with the Chair, the project team understands that the Commission is interested in understanding how the enforcement provision in the Falmouth charter (included below) has worked in practice. The project team has reached out to Falmouth with this inquiry and will update the Commission as soon as the team has information.

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 Revisions from the Meeting and Additional Topics for Discussion

The project team understands that the Commission approved of the following changes to the Advisory and Finance Committee subsection 2-12-1 at its 5/9 meeting. The project team has made some further edits to clarify that the original appointing authority of a position being vacated will be the one appointing the committee member to fill the vacancy.

2-12-1 ~~There shall be a~~An 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. Should a vacancy occur, it shall be filled by the appointing authority responsible for initially appointing the position, the ~~The~~ moderator or Committee of Precinct Chairs respectively. ~~may fill any vacancy by appointment and the term of that~~ The 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~~ 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.

Additionally, the project team has developed a new proposed conflict of interest subsection for the Advisory and Finance Committee section. The new text below mirrors the conflict of interest section for town meeting members generally, with minor edits to reflect their differences (e.g., this does not include employees, as the RTM section does, because employees are prohibited from being Committee members).

2-12-7 (a) Notwithstanding any general or special law to the contrary, Finance Committee members who have a financial interest in any matter being considered by the Committee shall recuse themselves from consideration of such matter, including discussion, deliberation and voting on such matter. Immediately upon learning of the conflict, such Committee member shall notify the Town Clerk, in writing, as to any matters giving rise to such financial interest. (b) Notwithstanding any general or special law to the contrary, no Finance Committee member shall participate in the consideration of, or vote on any matter in which an immediate family member, or any business or organization in which the Finance Committee member serves as an officer, director, partner, or employee, or has a financial interest. For purposes of this section, "immediate family member" shall be defined as the Finance Committee member, that member's spouse or partner, and each of their parents, children, and siblings. Any such Finance Committee member shall notify the Town Clerk, in writing upon learning of the conflict, as to any matters giving rise to such financial interest. For the purposes of this section, the "financial interest" of a Finance Committee member shall be determined pursuant to the interpretation of the term "financial interest" by the State Ethics Commission and applicable reported appellate court decisions, which are hereby incorporated by reference.

Beyond these proposed changes, the project team raises the following questions for the Commission to discuss regarding the Advisory and Finance Committee section of the charter (currently Article 2, Section 12).

- Given the focused role of the Committee on financial matters, does the Commission wish to consider changing the name of the Committee from the "Advisory and Finance Committee" to the "Finance Committee"? If so, such change would need to be made consistently throughout the Charter.
- Is the size of the Committee appropriate? How will the upcoming change in the number of precincts affect the COPC's appointments to the Committee? Should the size of the Committee be tied to the number of precincts via the COPC's appointments?

The project team also looks forward to hearing the Commission's thoughts about any other issues related to the Advisory and Finance Committee for which there may be a charter-related solution.

First Thoughts on Moderator Discussion Topics

The project team has reviewed the moderator section of the charter (Article 2, Section 6) and has one potential change to recommend. Subsection 2-6-5 provides reasons why the Assistant Moderator may substitute for the Moderator. The project team recommends that the Commission consider adding the Moderator's recusal to that list of reasons, as shown in the track changes below.

2-6-5 Promptly following the annual Town election, the Moderator shall appoint an Assistant Moderator for a term commencing at the first Town Meeting following such annual election, or at such time as a vacancy occurs, and ending on the date of the annual Town election in the following year. Such appointment shall be subject to the approval of such Town Meeting. The Assistant Moderator shall substitute for the Moderator in the event that the Moderator is absent from a Town Meeting session, is recused due to a conflict of interest, or at the discretion and request of the Moderator, and shall carry out the duties of the Moderator excluding any exercise of appointing authority. In the event that the Moderator cannot carry out the duties of his office by reason of death or disability, then the Assistant Moderator shall carry out all of the duties of

the office of Moderator. The Assistant Moderator position shall be uncompensated except in the event of the death or disability of the Moderator.

Beyond this potential change, the project team raises the following questions for the Commission to discuss regarding the Moderator section:

- Are there any challenges related to election for the moderator position – either in finding people to run for the position or in perpetual lack of competition for the position? If so, then there may be reasons to discuss either the term length or the possibility of term limits. If neither of these things has been an issue, then there's no need to discuss these topics.
- Have there been any issues related to the moderator's potential role as a tie-breaking vote?

The project team also looks forward to hearing the Commission's thoughts about any other issues related to the Moderator for which there may be a charter-related solution.