



## Memorandum – 9

**TO: Plymouth Charter Commission**  
**FROM: Collins Center Charter Project Team**  
**DATE: August 1, 2022**  
**RE: Memorandum 9**

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### Overview

This memo (Memorandum-9) addresses topics discussed at the Commission’s meetings to date, as well as items to be discussed at its August 8th meeting. Included in the memo are:

1. Select Board Composition
2. Planning-Related Charter Language
3. Conservation Commission Composition
4. Potential Creation of Appointment Board and Proposed Alternative
5. Refined Language for Legal Counsel
6. Licensing Board Study
7. Charter Enforcement Provisions
8. Potential Communications and Engagement Article
9. Town Manager Duties and Authorities Reorganization

### 1. SELECT BOARD COMPOSITION

At the meeting on July 18, 2022, the Commission voted to expand the Select Board to seven (7) members, creating two district representatives. This change requires altering language in several different sections of the Charter affecting composition, terms, vacancies, and recall and requires establishing language for creation of districts. The project team suggests that the creation of districts be accomplished by establishing an implementation committee in the transition provisions of the Charter. Suggested language for the Commission’s consideration is provided below.

As a note, Plymouth’s current charter briefly refers to the General Laws to establish requirements for nomination papers and signature requirements. MGL, Chapter 53, s. 6 addresses the nomination of candidates of candidates for local offices as follows:

Nominations of candidates for offices to be filled at a city or town election, except where city charters or general or special laws provide otherwise and nominations of candidates for the office of regional district school committee members elected district-wide, may be made by like nomination papers, signed in the aggregate by not less than such number of voters as will equal

one percent of the entire vote cast for governor at the preceding biennial state election in the electoral district or division for which the officers are to be elected, but in no event by less than twenty voters in the case of an office to be filled at a town election or election to a regional district school committee elected district-wide; provided, however, that no more than fifty signatures of voters shall be required on nomination papers for such town office or regional district school committee elected district-wide. At a first election to be held in a newly established ward, the number of signatures of voters upon a nomination paper of a candidate who is to be voted for only in such ward shall be at least fifty.

To avoid confusion and to be consistent with the language in the general laws regarding signature requirements in newly established wards, the Center team recommends adopting a requirement of 50 signatures for District Select Board members and that such requirement be stated in Chapter 4 of the Charter.

### **PROPOSED CHANGES TO CHAPTER 3:**

#### **Existing Language**

The Select Board: Composition and Terms

3-1-1 A Select Board of five (5) members shall be elected for three-year (3) overlapping terms. The regular election for the office of selectman shall be held in accordance with Chapter Five of this Charter.

3-1-2 Vacancies in the office of selectman shall be filled by special election in accordance with G.L. c. 41, § 10, and any other applicable law.

### **PROPOSED NEW LANGUAGE**

The Select Board: Composition and Terms

3-1-1 A Select Board of seven (7) members shall be elected as follows:

- A. At-Large Members: There shall be five (5) at large members elected for three-year (3) overlapping terms.
- B. District Members: There shall be two (2) district members elected for three-year terms. These members shall be elected during the same election year, with the inaugural term as specified in the Chapter TBD of Article TBD (Transition provisions) and elected every three years thereafter.
- C. Election: The regular election for the office of Select Board Members shall be held in accordance with Chapter Five of this Charter.
- D. Vacancies: Vacancies in the office of at-large select board members shall be filled by special election in accordance with G.L. c. 41, § 10 and any other applicable law. Vacancies in the office of district Select Board members shall be filled by special election in accordance with G.L. c. 41, s. 10, and any other applicable law; provided, however, that two hundred (200) registered voters of the town and 20 percent of the total number of registered voters shall be replaced by "100 registered voters of the district or 10 per cent of the total number of registered voters of the district"; the applicable language would be as follows:

If there is a failure to elect or a vacancy occurs in the office of selectman, the remaining selectmen or selectman may call a special election to fill the vacancy and shall call such election upon the request in writing of one-hundred registered

voters of ***district***, or ***ten*** per cent of the total number of registered voters of the ***district***, whichever number is the lesser; provided, that such request is filed with the board or board member at least than one hundred days prior to the date of the next annual election.

- E. Districts shall be initially determined as provided in Chapter TBD of Article TBD (Transition provisions and may be revisited following the same procedure and timeframe used for determination of the town's precincts. Revisions made to precincts must also address adjustments to districts, as needed, to ensure, to the extent possible, that each district is composed of adjoining precincts that are to the extent possible, equal in the number of residents.

## PROPOSED CHANGES TO CHAPTER 4

### CHAPTER 4

#### ELECTED TOWN BOARDS AND OFFICERS

##### Section 1 General Provisions

4-1-1 Beginning with the first town election held after the effective date of this Charter, the town shall elect the following boards and offices:

a select board of ~~five (5) members~~; ***seven (7) members comprised of five (5) at-large members and two (2) district members***;

#### ***PROPOSED NEW SECTION TBD: Nomination of Candidates for Election to District Select Board Positions***

***The nomination of a candidate for election or reelection as District Select Board member shall be made by separate nomination papers signed by not less than fifty registered voters of the district in which the candidate resides. Nomination papers shall be filed with the Town Clerk no later than the last day on which the nomination papers of candidates for other offices must be filed.***

***Nomination papers shall identify the District Select Board members seeking re-election with the phrase "Candidate for Re-election" placed next to each candidate's name.***

## CREATION OF NEW SECTION 9 IN CHAPTER 5 (RECALL OF DISTRICT SELECT BOARD MEMBERS)

### Section 9 Recall of District Select Board Members

5-9-1 District Select Board Members shall be subject to recall as generally provided in Section 7 of Chapter 5 of this Charter, provided:

- that the words "district select board member" shall be substituted for the word "officeholder" throughout Section 7 of Chapter 5 of this Charter;
- that in Section 5-7-2 the number "two hundred fifty (250)" shall be substituted for the number "five hundred (500)," and that names submitted shall be those of registered voters residing in the district of the intended recall election;
- that in Section 5-7-4, the recall petition shall include the signatures and residential addresses of at least fifteen (15) percent of the registered voters residing in the district;
- that in Section 5-7-7 the words "special district election" shall be substituted for the words "special election";

- that in Section 5-7-10 the words "of the district" shall be substituted for the words "of the town"; and
- that any vacancy created by a recall election shall be filled in accordance with the provisions of Section 9 of Chapter 2 of this Charter.

**NEW TRANSITION PROVISION LANGUAGE (NUMBERING TBD)**

SECTION TBD: DISTRICT IMPLEMENTATION COMMITTEE

Within 6 months of the effective date of this Charter, the Town Manager shall create a District Member Implementation Committee to propose a method of devising district representation for two Select Board members. The Committee shall be selected as follows:

- COPC (Committee of Precinct Chairs) – 2 voter appointments
- Select Board – 2 voter appointments
- Moderator – 1 voter appointment
- Town Clerk – or designee
- Town Manager – or designee

The Committee shall review Plymouth’s existing voting precincts and create a proposal dividing the existing precincts equally into two districts for the purpose of electing two District Select Board members. In formulating its recommendation, the Committee shall follow all guidelines established by M.G.L., Ch. 54, sec. 6 and any other applicable state laws.

The Committee shall present its proposal for two (2) representational districts to the Select Board within Six (6) months of convening. The Select Board shall act on the recommendation within 60 days of receipt, either approving or rejecting the proposal. Should the Select Board fail to enact the proposed recommendation of the Committee, the Select Board shall establish the districts within 30 days of the vote to reject. The inaugural election of district representatives on the Board shall occur at the next regular Town election and every three years thereafter.

**2. PLANNING-RELATED CHARTER LANGUAGE**

In this section, the Center project team will address some of the various suggestions for planning-related changes that were raised at public meetings and through other communications to the Charter Commission.

**a. Compliance with the Master Plan**

The Center project team proposed a new Master Plan compliance section in Memo 8. In response to the commentary by the Planning Director in the July 11 meeting, the team has suggested making changes to the new 3-13-3 provisions so that the Planning Director can assign an appropriate designee to provide input.

**PROPOSED NEW SECTION:**

3-13-3: Compliance with Master Plan - NEW

- A) Proposed By-law, Ordinance, or Rule/Regulation. Any proposed change or addition to any by-law, ordinance, or rule/regulation that relates to any area within the purview of the Department of

Planning and Development (specifically land use, environmental, community planning, and economic planning and development functions of the town) shall be presented to the Director of Planning and Development at least 30 days prior to implementation. The Director **or the Director's designee** shall issue a recommendation regarding the proposed action, which shall specifically address whether the proposed action aligns with the Master Plan. The Director's **or designee's** recommendation shall be presented to the Planning Board, which shall vote to adopt, amend, or reject the Director's recommendation. The Director's recommendation, along with the action of the Board, shall be provided to the Town Manager prior to implementation of the proposed action.

- B) Town Meeting Warrant Article. Proposed Town Meeting Warrant Articles relating to any area within the purview of the Department of Planning and Development (specifically land use, environmental, community planning, and economic planning and development functions of the town) shall be presented to the Director of Planning and Development for review and commentary. The Director **or the Director's designee** shall issue commentary regarding the Warrant Article, which shall specifically address whether the proposed action aligns with the Master Plan. The Director's **or designee's** commentary shall be presented to the Planning Board, which shall vote to adopt, amend, or reject the Director's commentary. The Director's commentary, along with the action of the Board, shall be printed in the Town Meeting Warrant and provided for Town Meeting review.
- C) Planning Board approvals. For all projects that are within the purview of the Department of Planning and Development, the Director of Planning and Development **or the Director's designee** shall issue commentary regarding the project, which shall specifically address whether the proposed action aligns with the Master Plan. The Director's commentary shall be presented to the Planning Board, which shall vote to adopt, amend, or reject the Director's commentary. The Director's commentary, along with the action of the Board, shall be included in any project approval decisions issued by the Board.

#### **b. Master Plan Task Force**

Additionally, in the team's last memo, the team suggested a small change to strengthen the establishment of the Master Plan Task Force. The current charter language is:

3-14-7 The Planning Board may appoint committees to assist and advise the Board in carrying out its duties under this charter such as a Master Plan committee and such other committees as the Board deems necessary to assist the Board in performing its duties. Failure of the Board to appoint such committees shall not relieve the Board of its responsibilities to fulfill all the duties enumerated under this charter.

The Center team proposed the following change:

PROPOSED: 3-14-7 The Planning Board **shall appoint a Master Plan Task Force and** may appoint **other** committees to assist and advise the Board in ~~carrying out its duties under this charter such as a Master Plan committee and such other committees as the Board deems necessary to assist the Board in~~ performing its duties **under this charter**. Failure of the Board to appoint such committees shall not relieve the Board of its responsibilities to fulfill all the duties enumerated under this charter.

#### **c. Expanded role for Associate Member**

The Commission, through its chair, has indicated that it will seek a legal opinion as to the expansion of authority for associate members of the Planning Board. Therefore, the Center project team is not providing an analysis of this issue.

**d. Suggestion for a twice-a-year required workshop between the Planning Board and the Select Board before the warrant is closed**

The chair of the Planning Board suggested that the charter require a planning workshop between the Select Board and Planning Board twice per year before the warrant closes in order to discuss how the warrant articles align with the Master Plan. Some changes to the Select Board provisions have already been discussed and may accomplish the Planning Board's goal, especially if additional language is included.

To review, the current charter provides as follows:

*3-2-8 The Select Board shall meet jointly with the School Committee, Planning Board and all other elected boards of the Town for the purpose of sharing information. The Select Board shall schedule the joint meeting(s), which shall be held no less than twice (2) a year.*

Suggested changes to the charter were discussed and tentatively approved as follows:

*3-2-8 The Select Board shall meet jointly with the School Committee, Planning Board, and all other elected boards of the Town for the purpose of sharing information. The Select Board shall schedule the joint meeting(s), which shall be held no less than twice (2) a year. **At least one of these meetings, which shall also include the Finance Committee, shall be held at the beginning of the annual budget process and shall be for the purpose of reviewing projections and other information relevant to the development of the annual budget.***

Additional changes (in all caps) could further clarify that alignment with the Master Plan is an important topic for these meetings:

*3-2-8 The Select Board shall meet jointly with the School Committee, Planning Board, and all other elected boards of the Town for the purpose of sharing information, **INCLUDING DISCUSSING THE TOWN'S PROGRESS TOWARDS IMPLEMENTING THE GOALS OF THE MASTER PLAN.** The Select Board shall schedule the joint meeting(s), which shall be held no less than twice (2) a year. **At least one of these meetings, which shall also include the Finance Committee, shall be held at the beginning of the annual budget process and shall be for the purpose of reviewing projections and other information relevant to the development of the annual budget.***

Alternatively, if the Commission wants to create separate meetings solely between the Planning Board and Select Board for the purpose of discussing the master plan, the Collins Center offers this sample language:

The Select Board and Planning Board shall hold joint meetings not less than twice per year to consider the Town's Master Plan and other planning initiatives.

**e. Perceived conflict in Charter duties of Planning Board and Town Manager/Select Board**

The Planning Board Chair has expressed concern that planning responsibilities are assigned inconsistently in the charter between the Town Manager and the Department of Planning and Development. The Planning Board Chair recommends changing the language to explain the relative duties assigned between the Town Manager and the Planning Department.

Section 3-5-1 (f) currently provides that the Town Manager shall “*coordinate the operational and strategic planning for the town.*”

Section 3-13-1 provides (emphasis added):

*There shall be a Department of Planning and Development responsible for the planning of the land use, environmental, community planning, and economic planning and development functions of the town. **The Department of Planning and Development shall supervise and coordinate all planning and development activities of all town government offices and agencies.** The Department of Planning and Development shall include the functions of comprehensive planning, subdivision control, zoning appeals, preservation of natural open space, community development, economic development, design review, redevelopment, and planning of new buildings and facilities.*

After a close read of the language, the Center team does not believe these provisions are inherently inconsistent as written, although the Charter Commission is free to make any clarifications it deems necessary.

By charter, the Town Manager is the chief administrative officer of the Town and is responsible for implementing all policies of the Select Board. (3-5-1) The Select Board “shall serve as the goal setting, long-range planning and policy-making body of the town.” (3-2-1) The Town Manager appoints the Director of Planning, subject to veto power by the Planning Board. (3-15-1) Additional provisions outline that the Director of Planning “work[s] with the Planning Board, Town Manager, and Select Board in developing strategic plans and policies.” (3-15-4)

The Charter provisions reflect that that there are multiple town boards, elected officials, and staff who are jointly responsible for strategic planning and implementation of policies. The practical division of labor originally outlined in this charter language has been developed over years of charter implementation and past practice. While the Charter Commission could attempt to tease out and separate the precise duties of each board, official, and staff member, changes in language might not reflect the reality of the cooperative nature of these positions.

Therefore, the Center project team does not recommend making language changes in the charter based solely on concerns that the language may appear internally inconsistent. However, if the charter language as written is causing an operational concern that needs to be addressed, the Collins Center can assist the Commission in providing language to remedy the problem. The project team looks forward to hearing more from the Commission at the next meeting.

The Commission also expressed concern about whether the Select Board’s and Planning Board’s Charter language conflicts with respect to long-range planning responsibilities.

The current charter provides the following, with respect to the Select Board:

*3-2-1 The Select Board shall be the chief executive body of the town. It shall serve as the goal setting, long-range planning and policy-making body of the town. It shall make recommendations on major courses of action to the representative town meeting. It shall adopt policy directives and guidelines which the officers, boards, committees, commissions and employees of the town shall implement. The Select Board shall maintain a policy handbook containing such policy directives and guidelines*

The charter further provides, with respect to the Planning Board:

*3-14-3 The Planning Board shall serve as the long-range planning body of the town with respect to the planning of the physical, environmental, community, and economic development of the town. The Planning Board shall be responsible, through the Director of Planning and Development, for the efficient and orderly operation of all Planning Board functions and all related activities.*

Finally, the Director of Planning, in 3-15-4, is responsible for “*working with the Planning Board, Town Manager, and Select Board in developing strategic plans and policies.*”

The Charter Commission is concerned with clarifying in the charter which body has responsibility for long-range planning. On its face, the Charter appears to give broad, overarching, long-range planning and policy responsibilities to the Select Board and more detailed planning responsibilities to the Planning Board in the areas of “physical, environmental, community, and economic development.” The Director of Planning works with both boards to develop plans and policies, indicating the cooperative nature of the boards.

In practice and by state law, each body has been charged with specific duties and functions related to planning. The Select Board, as the chief executive body for the town, has many oversight, planning, and policymaking responsibilities, including coordinating the roles of many different departments and boards. The Planning Board is responsible for specific statutory planning duties, including creating a master plan, reviewing Approval Not Required (ANR) plans, subdivisions, and site plans, and making recommendations on bylaw changes. Additional local boards and staff, including the Town Manager, Conservation Commission, Zoning Board of Appeals, Board of Health, and Town Meeting, have essential roles and statutory duties in the planning process.

If the Charter Commission believes the language in 3-14-3 conflicts with 3-2-1, one option is to emphasize the cooperative planning roles of both the Select Board and Planning Board within the Planning Board section. The following may provide some recognition that the boards share planning responsibilities – both in law and practice.

*3-14-3 **In conjunction with the Select Board**, the Planning Board shall serve as the long-range planning body of the town with respect to the planning of the physical, environmental, community, and economic development of the town.*

This language, along with the addition of biannual meetings to discuss the Master Plan, could help make clear that the Select Board should consider the Master Plan and that the Planning Board works with the Select Board on long-range planning.

**f. Term Limits**



A Commissioner who is also a member of the Planning Board proposed 10-consecutive-year term limits for the Planning Board. There has been some discussion of setting term limits for other elected officials as well. The Center team provides the following background to help frame the Commission's discussions of term limits.

There are only a handful of municipalities in Massachusetts that have established term limits. The Center team is aware of the following: Methuen (mayor, city councilors, and school committee members are limited to three consecutive 2-year terms), Southbridge (councilors are limited to three 3-year consecutive terms), Newton (school committee members limited to four 2-year terms), and Barnstable (councilors limited to three terms for a total of 12 years).

Some recent attempts at creating term limits have failed. For example, in 2021, the City Council of Everett had approved filing a home rule petition to limit the terms of councilors and school committee members to five 2-year terms and limit the mayor to three 4-year terms. However, this approval was vetoed by the mayor and not overridden by the Council. In Rockport, a 2021 town meeting warrant article creating term limits for Selectmen was not approved. Likewise, in 2019 warrant articles proposing term limits Select Board members failed in both Ipswich and Stoneham.

There are at least a couple examples of towns rescinding term limits in the past few years. In Topsfield, 3-consecutive-term limits for elected Planning Board members were rescinded by vote of town meeting in 2018. In Arlington, term limits of six consecutive years for its appointed Community Preservation Act Committee members were *removed* from the bylaw in 2021. The Select Board's rationale for supporting the elimination of term limits was as follows: "Most importantly, volunteers for CPAC membership ... often need several CPA funding cycles to become fully familiar with CPA program areas. There is sufficient turnover to provide opportunities for fresh perspectives on CPAC without automatically disqualifying persons who have invested time and energy to become knowledgeable in the work of the committee."

When discussing term limits, it is important to consider both their benefits and drawbacks. Among the benefits, term limits allow for more frequent turnover of elected officials, potentially increasing new ideas and new community leaders. Limits may also encourage more people to run because open seats may draw multiple candidates, which may encourage diversity. For some boards, such as school committees, term limits may increase the likelihood that members have children that are active in the school system. Finally, term limits potentially focus elected officials to plan and accomplish an agenda within a certain timeline.

Arguments against term limits invariably include the fact that voters already have an opportunity to limit terms of officials through regular elections and the recall process. Term limits potentially force popular and accomplished leaders to give up their positions even while they are still effective. Limits can result in a large number of vacancies in a body at the same time, resulting in a body with fewer experienced officials or bodies with vacancies due to a lack of candidates. Finally, term limits can result in the loss of institutional knowledge, skills, and experience that were developed by volunteers over several years in the position.

With respect to the planning board members, the Commission may wish to consider 1) the average term of planning board members over the years and whether there is turnover even without term limits; 2) whether there have been multiple members running for each position even without term limits; 3) whether the long-term view and multi-year projects permitted by the planning board would be impacted by a loss of institutional knowledge.; and 4) the amount of time it takes a newly elected volunteer to gain expertise in the technical requirements of the position.

A similar analysis could be made if the Commission is considering term limits for other positions.

**g. Annual Master Plan and other suggestions**

In addition to proposing term limits, members of the Planning Board also proposed a number of changes that the Collins Center will briefly address herein.

1. Member suggestion to change the language of 3-14-2 as follows:

*3-14-2 The Planning Board shall exercise such powers and duties as prescribed by general law, this Charter, the **Master Plan**, and applicable town by-laws.*

The team understands this proposal is meant to convey the weight and significance of the Master Plan. However, the team has been unable to identify any precise powers and duties that the Master plan can authorize, so it is difficult to determine the practical outcome of making this change. The change may provide too little guidance and be too vague to be enforceable. The entirety of 3-14 and the new provisions outlined above provide a specific encapsulation of the powers and duties of the Planning Board and may have the same impact of prioritizing the Master Plan.

2. Member suggestion for 3-14-3:

*3-14-3 The Planning Board shall serve as the long-range planning body of the town with respect to the planning of the physical, environmental, community, and economic development of the town. The Planning Board shall be responsible, through the Director of Planning and Development, **The Building Inspector, and their staff**, for the efficient and orderly operation of all Planning Board functions and all related activities, **and for their adherence to the guiding principles of the CMP.***

Further elaboration is required to understand the purposes of this change and the incorporation of the Building Inspector and their staff members. It appears that the purpose is to give the Planning Board authority to require the Director, Building Inspector, and their staff members to adhere to the Master Plan. This may conflict with some of the other provisions of the charter and bylaws that grant other staff and bodies similar responsibilities. It would be helpful to hear more specifics before weighing in on this proposal.

3. Member suggestions for 3-14-4:

*3-14-4 The Planning Board shall develop and maintain a Comprehensive Master Plan (CMP) which, **in coordination with the town's zoning bylaws**, shall be the guidance document for departmental duties under Section 3-13-2, above, and for the Board's recommendations to the representative town meeting.*

*The CMP shall be updated ~~periodically~~ **annually** to address current issues concerning the physical, environmental, community and economic development of the town, including planning strategies for Open Space Preservation, Land Acquisition, Village Centers Development, Economic Development, Housing, and Historic Preservation.*

The Center team cautions that including any mandatory Master Plan time frame in the charter -- much less a one-year mandate -- binds the town regardless of its fluctuating staffing and resources in any given year. Very few charters create a specific time period for updating master plans because updated master

plans require anywhere from one to two years of work, significant staffing resources, and input from every level of town government. It would be nearly impossible for the Planning Board and town staff to comply with the requirement for an annual updated CMP. Plymouth's last master plan appears to have been finalized in 2006 after two years of work. It does not appear to have been updated at all since then. Transitioning to an annual master plan, even just as an update, would have significant staffing and workload ramifications for the Board and town staff.

Furthermore, the long-range purposes of Master Plans – providing a predictable, long-term strategy and vision for the town -- may be inadvertently frustrated by allowing the town's long-term strategic planning to be subject to yearly political trends or short-term changes.

Should the Charter Commission seek to require the creation of a master plan at certain intervals, the Collins Center would recommend that it adopt a generous time frame, perhaps "no less than every 10 years," and continue to provide flexibility for the Planning board to update or make changes as needed. This would give sufficient time for a comprehensive update with input from all stakeholders every 10 years. Of the few towns that address master plan time requirements, Walpole requires the development of a master plan with updates of no less than 10 years.

There is no prohibition against the Planning Board updating or changing its plan more frequently when the need arises. Ch 41, §81D provides that: "Such plan shall be made, and may be added to or changed from time to time, by a majority vote of such planning board and shall be public record. The planning board shall, upon completion of any plan or report, or any change or amendment to a plan or report produced under this section, furnish a copy of such plan or report or amendment thereto, to the department of housing and community development."

Requiring a comprehensive master plan at least every 10 years provides a more urgent timeframe than currently exists. Maintaining flexibility for updating keeps the focus on predictable, long-term goals while providing an avenue to address urgent local needs. This, coupled with the ongoing work of a Master Plan Task Force, could give the Planning Board the tools to updated as often as practicable.

### **3. CONSERVATION COMMISSION COMPOSITION**

The appointment of Conservation Commission members is governed by MGL Ch 40, §8c, which provides, for towns with a manager, that "appointments shall be made by the town manager, subject to the approval of the selectmen." In Plymouth and several other towns, the town charters have transferred appointment authority directly to the Select Board.

In every single municipality, with one complicated exception, Conservation Commission members are appointed and not elected. In Wellesley, *by a special legislative act*, the statutory duties of the Conservation Commission, Park Commission, Tree Warden, Town Forest Committee, and Forestry and Pest Control officers were consolidated under the umbrella of a locally elected Natural Resources Commission (NRC). This elected NRC technically takes the place of the Conservation Commission in Wellesley. However, all wetland permitting duties under the Wetland Protections Act are delegated to a Wetland Protection Committee, which is appointed by the NRC. So, even in the one instance where the Conservation Commission (NRC) members are elected, a committee of appointed members carry out the duties under the Wetland Protection Act.

The Center project team would not recommend a change to an elected Conservation Commission without an in-depth inquiry into the necessity and consequences of such a change, including seeking input from the Conservation Administrator and the Commission. Some issues that should be considered carefully include the following:

- It is unclear whether a municipality may change from appointed to elected Conservation Commission members by charter alone. Such a change would likely require a petition for a special act by the Massachusetts legislature, and the Collin Center would recommend a legal opinion with respect to this issue.
- The Commission's complex permitting duties require diverse skill sets and a considerable time commitment. Members face a steep learning curve. Appointing authorities are often able to balance the Commission by appointing members with varied practical experience and education in areas such as wetlands delineation, mapping, construction, engineering, state and local wetland and environmental laws, species identification, planning, and environmental policy.
- In recent years, Conservation Commissions have experienced a high turnover rate, and many municipalities are having difficulty attracting and appointing new Commission members. Requiring individuals to mount a political campaign may politicize the wetlands permitting process and discourage qualified residents with valuable skills from volunteering for the Commission.
- The Conservation Commission is charged with the protection of a community's natural resources and enforcement of state and local environmental laws and regulations. Members must make decisions that may be unpopular with individual property owners but beneficial to the community's conservation goals. Appointed members may be more insulated from concerns that their permitting decisions will affect members' electability.
- The Charter Commission did not elaborate upon its reasons for considering elected Conservation Commission members. However, it is possible that any Charter Commission concerns could be addressed by residents having more involvement in the appointment nomination process, as discussed in the next section of the memo.

#### **4. POTENTIAL CREATION OF APPOINTMENT BOARD AND PROPOSED ALTERNATIVE**

The Commission raised for discussion the creation of an Appointments Board that would potentially appoint members of other Town boards and committees. Because the parameters of such a board have not been discussed by the Commission, the project team has not completed research on which appointments, if any, it would be legally permissible for an Appointments Board to make, and the appointing authority of many boards and committees is specified by statute. The project team felt that it is important to state strongly the team's belief that an Appointments Board is a problematic idea – whether for the appointment of Planning Board committees, as suggested by one Commission member, or for other committees as well. Instead, the project team proposes an alternative approach that may accomplish many of the goals sought by the Commission.

It is the project team's understanding that the Charter Commission's interest in this concept is due to a concern about the impact of politics on appointments to boards and committees. While the project team understands the concern that a Select Board might make appointments for "political" reasons, the Board is the head of the executive branch of the Town government and is directly responsible to the voters for the successful functioning of the Town. Because the executive branch has certain responsibilities under state law and the Plymouth Charter, it must retain its authority to fulfill those responsibilities. Diluting its appointment authority creates a disconnect between its role and its ability. Moreover, the Plymouth

charter already contains two remedies for residents who disagree with the Select Board's decisions regarding boards and committees. The first is simply to vote out the members who made the offending decisions. In more extreme cases, the charter provides voters with the capacity to initiate a recall of those Select Board members. For these reasons, the team believes this option is not in the Town's best interests.

Having said that, the project team has frequently heard from local appointing authorities about two challenges: 1) recruiting candidates to boards and committees (in particular, recruiting a diversity of perspectives beyond the same group of volunteers that forms the core of nearly every municipality's resident participation), and 2) appropriately vetting candidates in a systematic and timely manner. To that end, the project team has worked with two municipalities (Amherst and Watertown, both council-manager forms of government) to create resident advisory committees to assist appointing authorities with recruitment and vetting. The project team provides the text of both here:

Amherst charter, Section 3.3(c) (highlighting added for emphasis):

Appointments to Multiple-Member Bodies: Except as otherwise provided by this Charter, the Town Manager shall appoint all members of multiple-member bodies. Members of all appointed multiple-member bodies shall be residents of the Town at the time of appointment and throughout the term of the appointment, unless otherwise approved by Town Council. All appointments to these bodies shall be subject to the provisions of Section 2.11. **The Town Manager shall establish a Residents' Advisory Committee to assist with evaluation and selection of candidates for appointment.**

Watertown charter, Section 3-7:

The city manager shall establish a Residents' Advisory Committee to assist with recruitment, evaluation, and selection of candidates for appointment to multiple-member bodies. In making appointments to multiple-member bodies, the city manager shall seek to appoint individuals with relevant expertise or experience. The city manager shall work with the Residents' Advisory Committee to establish policies and practices to actively encourage a diverse pool of applicants for multiple-member bodies. The city manager and Residents' Advisory Committee shall recognize the importance of diversity in appointments, including, but not limited to, gender identity, sexual orientation, race, and ethnicity.

The project team believes that an advisory committee is an effective strategy for residents to become more involved in ensuring that appointed boards attract and retain a diverse pool of qualified candidates. The team can tailor the above examples to reflect the Commission's needs and concerns after the Commission discusses the issue in further detail.

However, in the event the Commission decides to pursue a separate Appointments Board rather than an advisory committee, the team has also adapted the suggested planning board language as a starting point in constructing language for an Appointments Board. The project team provides that language here (based on language proposed by a Commissioner):

Board and Committee Appointment Board:

There shall be a Board and Committee Appointment Board, which will have responsibility for the review, appointment, and removal of Town board and committee members, unless another appointing authority is designated by this charter or by Massachusetts General Law. The Board

shall consist of seven (7) members chosen from, or designated by, the chairs of the Select Board (2 selections), Planning Board (2 selections) and Committee of Precinct Chairs (3 selections). Board members will serve for two years, meeting twice a year unless called into session for the removal of a committee member for cause. Every individual seeking appointment to a Town board or committee must submit a resume and/or letter of intent and appear for an interview.

## **5. REFINED LANGUAGE FOR LEGAL COUNSEL**

The Commission indicated that it would like to add charter language related to the appointment of legal counsel. The Commission requested language providing for review of the appointment of legal counsel by the Select Board not less than every three years, including an opportunity for public comment. The project team provided the following language, with reservations about mandating in the charter the sharing of information that could force disclosure of sensitive topics or decisions:

At least every three years, the Select Board shall review the appointment of legal counsel. The review process shall include at minimum an opportunity for public comment.

However, at the July 18 meeting, the Commission appeared to be unclear about whether the town manager or Select Board is ultimately responsible for the hiring decision. The current Charter gives the Select Board the authority to appoint town counsel:

3-3-1 The Select Board shall appoint a Town Manager, town counsel, registrars of voters, election officers, constables, and members of all multiple-member boards, committees, and commissions except as otherwise provided in this Charter and/or the town by-laws.

If the Commission intends for the appointment of town counsel to remain with the Select Board, the proposed new provision could be added as a second paragraph under 3-3-1, using “town counsel” to match the current language.

3-3-1 The Select Board shall appoint a Town Manager, town counsel, registrars of voters, election officers, constables, and members of all multiple-member boards, committees, and commissions except as otherwise provided in this Charter and/or the town by-laws.

***In furtherance of this section, not less than every three years, the Select Board shall review the appointment of town counsel. The review process shall include, at minimum, an opportunity for public comment.***

Alternately, if the Commission intends to give the Town Manager responsibility for appointing town counsel, Section 3-3-1 must be amended to delete the reference to “town counsel.” Additionally, Chapter 3, Section Four would need to be amended to give appointing authority to the Town Manager. Proposed language would be contained within 3-5-1a:

The Town Manager shall appoint town counsel. Not less than every three years, the Select Board shall review the appointment of town counsel and shall make recommendations and provide commentary to the Town Manager. The review process shall include, at minimum, an opportunity for public comment.

## **6. LICENSING BOARD STUDY**

In the last memo, the project team provided some background on licensing in Massachusetts municipalities. The Commission indicated that it was interested in a possible study committee to evaluate whether licensing can be done in a more efficient manner, rather than implement a change at this time. Some suggested language is proposed below:

Within 6 months of the effective date of this charter, the Town Manager shall create a Licensing Study Committee to study the most effective and efficient means of issuing various licenses in the Town of Plymouth. This Committee shall review the various licenses issued by the Town, identify the current issuing authorities, solicit input from the current licensing authorities, and make recommendations for increasing effectiveness and efficiency of the licensing processes.

The committee shall consist of three (3) members: the Town Manager or the Town Manager's designee, one voter appointed by the Select Board, and one voter appointed by the COPC. The Select Board within eight (8) months of creation. The Select Board shall act on the recommendations within 60 days of receipt. Should the recommendations include proposals requiring a change to the charter, the proposals shall be presented to the next Charter Review Committee for its consideration.

## **7. CHARTER ENFORCEMENT PROVISIONS**

The project team understands that the Commission is interested in establishing greater accountability for charter violations and is considering language similar to provisions contained in the Falmouth Charter.

PROPOSED NEW SECTION:

### CHARTER ENFORCEMENT

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 four (4) months of the alleged violation. Upon receiving the written complaint, the Town Clerk shall forward a copy thereof to the alleged offender (either the town official or the chairperson of the governmental body), the Town Manager, and the Select Board.

- 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 Select Board.

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

## **8. POTENTIAL COMMUNICATIONS AND ENGAGEMENT ARTICLE**

The Commission requested potential text for a new article on Communications. Although several Massachusetts charters include references to communications, the Center team is not aware of any that have an entire article for the topic. The team believes this lack of Communication articles is because municipalities are only starting to consider and codify Communications issues. As such, Plymouth could lead the way in the Commonwealth.

In the last memo (memo 8), the project team provided several examples of communications-related text from Massachusetts charters and a new (2021) sample article created by the National Civic League for its *Model City Charter*. The project team suggests Commissioners review these examples and consider the questions below to prepare for a discussion that will help to determine what priorities are for text to include in a proposed Communications article.

Questions to consider:

- What are the major long-term communications and public engagement issues facing the Town? (Not recent/short-term communications issues.)
- Are there ways the Town could improve communication **to** residents? Are there ways the Town could improve collecting information/feedback **from** residents?
- Are there regional differences within the Town in how residents might respond to the prior questions? Are there differences among demographic groups within the Town in how residents might respond to the prior questions?
- What are your goals for a new communications article?

## **9. TOWN MANAGER DUTIES AND AUTHORITIES REORGANIZED**

The Center team has previously recommended regrouping the Town Manager responsibilities for clarity and better organization. The team suggests the following groupings. Note that the numbering system has been left with the letters as they were for ease of discussion, although the placements have changed.

The Town Manager shall have the following authorities and responsibilities:

General:

- c. supervise all town departments under the jurisdiction of the Select Board and direct the operations of the town;
- d. establish, reorganize, consolidate, or abolish any department or position under the Town Manager's direction and supervision with the approval of the Select Board;



- e. administer, either directly or through designated persons, all provisions of general and special laws applicable to the town, and all by-laws and regulations established by the Select Board;
- f. coordinate the operational and strategic planning for the town;
- r. represent the town at local, state, and regional meetings, and undertake public relations activities for the Select Board;
- s. have authority to examine, without notice, the activities of any agency under the Town Manager's control, or the conduct of any officer or employee thereof;
- t. have access to all town books and records necessary for the performance of the duties of Town Manager;
- u. conduct periodic operational and staffing evaluations of selected town departments, and provide a written report of the assessments performed to the Select Board [Amended by Article 20, Motion 2 Fall Town Meeting 10-20-2018] and to the representative town meeting; and
- v. perform any other duties required by town by-laws, the Select Board [Amended by Article 20, Motion 2 Fall Town Meeting 10-20-2018], or vote of the representative town meeting.

Personnel, hiring, and bargaining:

- a. unless otherwise provided herein and in Section 2 of Chapter 6 of this Charter, and except as may be otherwise provided in Civil Service Law, appoint, suspend, or remove all department heads, a Board of Assessors, and all officers, subordinates, and employees of the town, including those under grant funding, except employees of the school department.

The Town Manager shall appoint a town clerk, whose duties shall be as specified in general or special legislation.

In the case of an employee who works with a multiple-member board or the Plymouth Public Library Corporation, the Town Manager shall act in accordance with this Section only after consultation with that multiple-member board, or the Plymouth Public Library Corporation, as the case may be.

Except as may be otherwise provided in Civil Service Law, appointments, suspension, or removals of Department and Division Heads, or equivalents regardless of title, shall take effect on the fifteenth (15) day after the Town Manager files notice of the action with the Select Board unless the Board shall within that period, by a vote of four members veto the action. The Select Board may, by a majority vote, waive this fifteen (15) day period, whereupon the action shall become effective forthwith.

This same authority to veto the actions of the Town Manager provided herein to the Select Board shall accrue to the Planning Board in the case of the appointment, suspension or removal of the Director of Planning and Development;

- b. fix the compensation of all town officers and employees appointed by the Town Manager within the limits of existing appropriations and personnel bylaws;
- k. administer and enforce collective bargaining contracts, and personnel rules, regulations, and by-laws adopted by the town;
- q. negotiate collective bargaining contracts on behalf of the Select Board, unless the Town Manager specifically designates another negotiator or negotiating team;

Financial:

- g. administer all grants received by the town;
- h. submit to the Select Board a written proposed operating budget for the ensuing fiscal year, providing in detail the estimated revenue from all sources and all expenditures, including debt services, for the previous, current, and ensuing year;

- i. submit annually to the Select Board a five-year (5) capital improvements program, including a list of all capital improvements proposed for the next five (5) fiscal years with supporting data, cost estimates, methods of financing, recommended time schedules, and the effect on the operating budget or revenues for each proposed capital improvement;
- j. keep full and complete records of the financial and administrative activities of the town and render a detailed written report on all operations as often and for such periods as may be required by the Select Board;
- p. approve all warrants or vouchers for payment of town funds submitted by the Town Accountant;

Property, facilities, and procurement:

- l. develop and maintain a complete inventory of real and personal property of the town, except school property, at least annually.
- m. procure from the school department, a detailed written report of the complete inventory of real and personal school property for annual submission to the Select Board. The school department shall be obligated to prepare the detailed written report;
- n. have full jurisdiction over the lease, rental, disposal, and use of all Town property, except schools, after approval of the Select Board, and shall be responsible for the maintenance and repair of all Town property;
- o. be the Chief Procurement Officer under the provisions of G.L. c. 30B, responsible for the purchasing of all supplies, materials, and equipment for the town, including the bidding and awarding of all contracts, except for the school department;