



EDWARD J. COLLINS, JR. CENTER FOR PUBLIC MANAGEMENT
JOHN W. McCORMACK GRADUATE SCHOOL OF POLICY AND GLOBAL STUDIES
UNIVERSITY OF MASSACHUSETTS BOSTON

100 Morrissey Boulevard
Boston, MA 02125-3393
P: 617.287.4824
F: 617.287.5566
mccormack.umb.edu/centers/cpm
collins.center@umb.edu

Memorandum – 11

TO: Plymouth Charter Commission
FROM: Collins Center Charter Project Team
DATE: August 19, 2022
RE: Memorandum 11

Overview

This memo (Memorandum-11) addresses topics discussed at the Commission's August 15, 2022, meeting. Included in the memo are:

1. Language regarding the COPC Forum for Moderator Candidates
2. Review of Proposals Related to Budget Presentation
3. Conflict of Interest Language
4. Town Manager Suggestions
5. Updated Charter Enforcement Language
6. Appointments Advisory Committee Language
7. Proposed New Communications and Engagement Chapter
8. Resident Comments on Timelines
9. Miscellaneous Comments from a Commissioner

1. LANGUAGE REGARDING THE COPC FORUM FOR MODERATOR CANDIDATES

The Commission discussed the possibility of having the COPC host a moderator candidates' forum to facilitate open campaigning for the moderator position. The suggested language is below, as well as the suggestion to strike language regarding "candidate for reelection" to be consistent with the Commission's discussion regarding term limits and removing such language.

Proposed changes highlighted:

5-5-1 Any registered voter seeking the office of moderator shall file a declaration of intent to serve as moderator with the Town Clerk. Such declaration shall be filed no later than 60 days prior to the end of the incumbent Moderator's term, and no earlier than the first business day of the new calendar year during which such term ends.

~~5-5-2 The declaration of intent shall identify a Town Moderator seeking re-election with the phrase "Candidate for Re-election" placed next to the incumbent's name.~~

5-5-2 The COPC may provide a forum for all moderator candidates to share campaign platforms.

2. REVIEW OF PROPOSALS RELATED TO BUDGET PRESENTATION

Below is the project team's understanding of how the Commission decided during its last meeting to handle proposals related to the presentation of the budget.

2-12-3: Change paragraph to read: The Finance Committee shall present the proposed budget to the representative town meeting; *The municipal budget presentation shall be organized in a format that allows separate votes by representative town meeting on each major department, to encourage full transparency of recorded votes. The school budget may be presented in detail at a departmental level, but only the overall school budget shall be subject to a single vote by representative town meeting.* **CHANGES ACCEPTED WITH MODIFICATIONS**

3-2-3 Change paragraph to read: The Select Board shall review the annual proposed operating and capital budgets submitted by the Town Manager and make recommendations with respect thereto as it deems advisable. The Town Manager shall present the budget, *including a breakdown by department*, incorporating the recommendations of the Select Board, to the Finance Committee. **CHANGES ACCEPTED**

3-9-4. Change the sentence starting on line 496 of the latest draft, to read: The Director shall receive all requests made for the expenditure of town funds from every town office and agency and shall assemble all such requests into a form deemed to be best suited to show a complete financial plan, *at a level of detail at the department level for review and action by representative town meeting*, for all town funds and activities for the ensuing year. **CHANGES WITHDRAWN**

3. CONFLICT OF INTEREST LANGUAGE

Below is the project team's understanding of what the Commission decided to do about the conflict of interest section.

ARTICLE 2, SECTION 11 CONFLICT OF INTEREST

2-11-1 Notwithstanding any general or special law to the contrary, representative town meeting members are prohibited from voting on any article in which the member and/or an immediate family member has a financial interest. Representative town meeting members are also prohibited from voting on articles involving a financial interest of a business or organization other than the Town in which the member serves as an officer, partner or employee. - ACCEPTED

Such representative town meeting member shall notify the Town Clerk, in writing, prior to the representative town meeting session or during such session at such time as such member becomes so aware, as to any articles giving rise to such financial interest.

When such financial interest is attributed to a budget line item, the town meeting member is prohibited from voting on the budget line item but is not prohibited from voting on any other line item or from voting on the overall budget appropriation.

For purposes of this section, "immediate family member" shall be defined as the representative town meeting member, his or her spouse and each of their parents, children, brothers, and sisters.

2-11-2 For the purposes of Section 11-1 of Chapter 2 of this Charter, the "financial interest" of a representative town meeting 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.

4. TOWN MANAGER SUGGESTIONS

Below are the project team's understanding of what the Commission wanted to do about the Town Manager's requested edits.

- a. Page 8: "in bylaw as well" – Informative only. Just highlighting that bylaw will have to be modified for consistency with Charter changes
- b. Page 9: strike 2-12-4 – Commission has taken this action
- c. Page 10: "warrant" – Assuming that this comment is highlighting the Selectboard's duties with respect to the Town Meeting warrant, it could be added but those duties are specified by statute.

3-2-7: The Town Manager raises a concern regarding publication of department investigations in the Annual Report. The concern is valid as publication implicates a

number of issues, including privacy interests, and the project team recommends that the language regarding publication be removed in its entirety. The team notes that, to the extent that any of such a report is a public record, removing the language from the charter would not alter that status and requests could still be made for public information pursuant to the Public Records Law. If the Commission is inclined to retain the language, the following changes are recommended:

Current language:

3-2-7 The Select Board may investigate or authorize the Town Manager, or another town officer or any agency, to investigate the conduct of any town department, office, or agency. A detailed written report of any such investigation shall be filed in the Town Manager's office, and a report summarizing such investigation shall be printed in the next published annual town report.

Recommended new language for final sentence, if kept (highlighted yellow):

A detailed written report of any such investigation shall be filed in the Town Manager's office, and, to the extent permitted by law, including the public records law, a report summarizing such investigation shall be printed in the next published annual town report.

- d. Page 12: Language Regarding Discipline and Removals – The Town Manager raised a concern with disciplinary action taking 15 days. If the concern is related to ensuring that the Town can remove an employee from the workplace while investigating allegations of misconduct, paid administrative leave can be used for this purpose. The team recommends clearly exempting the use of paid administrative leave from the 15-day requirement and Select Board veto, to address the Town Manager’s concern. Suggested language below (highlighted yellow):

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. The above-referenced fifteen-day period and any veto by the Select Board shall not apply to a decision to place an employee on paid administrative leave.

- e. Page 12 & 13: Notes that TM authority in section d is limited by specific language regarding Finance, Planning, and DPW Departments in Charter. It is the understanding of the Collins Center that the Commission has decided to leave specifics regarding

departmental functions in the Charter. If the Commission would like to address this concern, it could add a subsection at the end of the sections describing the department that reads as follows:

- i. Nothing in the preceding section shall limit or restrict the authority of the Town Manger to establish, reorganize, consolidate or abolish any department or position under the Town Manager's direction and supervision with the approval of the Select Board as provided in Section 3-5-1(d) of this Charter.
- f. Page 13: Language regarding credentials (also applies to BOH and Finance Director): The Commission decided that where specific qualifications are mentioned, those specific qualifications will be replaced with this more general language: "shall be especially fitted by education, training and experience to perform the duties of the office."
- g. 3-8-1: Remove language regarding data processing function. Because the IT department is now a separate department, the Commission decided to remove all references to the data-processing function.
- h. Page 15 – Development and Industrial Commission – The Commission indicated this blank section has already been deleted in its proposed new Charter.
- i. Page 17: Land Use and Acquisition Committee – The Commission indicated this committee is still active and should be left in the Charter.
- j. Page 53: Section 6-2-1: TM noted that this is inconsistent with the process laid out in the TM authority. The changes to 3-5-1 should resolve this issue.

6-2-1 The powers conferred upon the Town Manager in Section 3-5-1(a) of this Charter, for all employees subject to the provisions of G.L. c.31, the Civil Service Law, (except Department and Division Heads, or their equivalents regardless of title, and school employees), may be delegated to the appropriate Department Heads. To the extent permitted by law, such powers, which shall include the ability to appoint, discipline, or discharge an employee, shall be subject to final approval by the Town Manager, without appeal or recourse to the Select Board. [Added by Chapter 336 of the Acts of 2012, Massachusetts General Court]

5. UPDATED CHARTER ENFORCEMENT LANGUAGE

The Commission expressed some concern regarding the distribution of complaints beyond the Town Clerk. Revised language below (changes highlighted yellow).

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)~~ **two (2)** 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. The reply 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. **If the complaint is filed against a town official, the** reply shall be so filed by ~~an~~ **said** official within 30 days of receipt of a copy of the complaint. In the case of a **of a complaint against a** governmental body, **the body's** 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.

D. Subject to the exemptions of the public records law, complaints and replies filed pursuant to this section will be considered public records.

6. Appointments Advisory Committee Language

SECTION TBD: Appointments Advisory Committee

The Town Manager shall establish an Appointments Advisory Committee to assist with recruitment, evaluation, and recommendation of candidates for appointment to

multiple-member bodies. There shall be five (5) members who shall serve for 3-year terms. The Town Manager shall provide administrative support to assist the Appointments Advisory Committee in performance of its duties under this section.

a. Duties

Duties of the Appointments Advisory Committee shall include notice, posting and active recruitment and advertising of vacancies, creation of a standardized application process and protocol for review of applicants, and timely submission of recommended candidates to the appointing authority.

b. Qualifications for Appointment

In making appointments to multiple-member bodies, the appointing authority shall seek to appoint individuals with relevant education, expertise, or experience. Desired qualifications for vacant positions shall be determined by the appointing authority and communicated to the Appointments Advisory Committee. The town manager shall work with the Appointments Advisory Committee to establish policies and practices to actively encourage a diverse pool of applicants for multiple-member bodies.

At minimum, every individual seeking appointment to a Town board or committee must submit a resume and/or letter of intent.

c. Exemptions

This section shall not apply to appointments made by the legislative branch, including appointments made to the Finance Committee, COPC and Warrant Oversight Committee; provided, however, that legislative branch appointing authorities may seek the assistance of the Appointments Advisory Committee at their discretion.

7. PROPOSED NEW COMMUNICATION AND ENGAGEMENT CHAPTER

As far as the Center project team is aware, no Massachusetts charter has an article devoted to communications and engagement, so the creation of one in the proposed Plymouth charter would be innovative and ground-breaking.

The Center project team proposes below a very short new chapter on communications and public engagement for the charter. The proposed chapter is short for three reasons: (1) there is minimal precedent to rely on in constructing a chapter, (2) there is very limited time remaining for the Commission to work on the chapter, and, probably most importantly, (3) the charter should not attempt to over-prescribe how communications should be implemented.

The project team proposes that the new chapter be inserted as chapter 7, moving the general provisions chapter to 8 and the new transition provisions chapter to 9.

The proposed chapter includes modified text from the National Civic League's *Model City Charter* and the recently-amended Watertown charter.

CHAPTER 7 COMMUNICATIONS AND PUBLIC ENGAGEMENT

Section 1 Communications and Public Engagement Principles

7-1-1 The Town shall treat communication and public engagement as integral parts of effective and trusted governance, not just as an occasional process or activity. The Town shall recognize that engagement is a "multi-channel" endeavor that includes face-to-face meetings, virtual interactions, and other online communications.

7-1-2 The Town shall encourage collaboration in public engagement efforts with other government jurisdictions and authorities, anchor institutions, community-based organizations, civic groups, and individual residents.

7-1-3 The Town shall strive to ensure that communications and public engagement activities are inclusive and accessible in order to reach a wide range of residents and organizations.

7-1-4 All Town agencies and officers, including Representative Town Meeting itself, shall make efforts to follow these principles.

Section 2 Communications and Engagement Strategy

7-2-1 The Town Manager shall be responsible for developing and implementing a comprehensive communication and engagement strategy as provided in section 3.5.1(w).
[See below]

As noted, an additional bullet on communications and public engagement would be added to 3.5.1 (the Town Manager's authorities and responsibilities). That new bullet would read:

(w): Be responsible for Town government communications, including, but not limited to, developing a comprehensive communication strategy, coordinating the announcements and messages from department heads, communicating regularly with residents via accessible and practicable media avenues, ensuring that the Town's website is kept up-to-date, and soliciting recommendations for greater communication from residents.

It is important to note that the inclusion of this chapter would **not** be cost neutral. It would entail a significant amount of initial and ongoing work to properly implement what is included here. New staff would likely be required (e.g., a Communications Director or some similar position reporting to the Town Manager). Due to the increasingly rapid changes in the communications

preferences and needs of the public (a trend which seems unlikely to stop), many Massachusetts municipalities have recently moved toward the creation of communications positions, even without the recognition of the importance of communications in their charters. The project team strongly believes that the investment in communications staffing and infrastructure is worthwhile, with likely benefits to the transparency, accountability, responsiveness, effectiveness, and efficiency of Town operations.

Finally, the project team would like to recognize the materials that Plymouth resident Joe Hutchinson provided related to the development of this new chapter. The materials will be very valuable to the Town Manager in the development of the communications and public engagement strategic plan that will be required if the proposed charter includes the new chapter and is enacted.

8. RESIDENT COMMENTS ON TIMELINES

The project team recognizes the comment made by a resident regarding the timing of the COPC's organization and its appointment of Finance Committee members. One possible method to provide additional time for appointments is to reduce the amount of time for the organization of the COPC from 30 days to 14 days, which would allow the COPC to begin substantive work on appointments faster.

9. MISCELLANEOUS COMMENTS FROM A COMMISSIONER

The project team addresses several comments made by a commissioner:

- a. One Commissioner asked that the Charter include language requiring the Planning Board to recommend zoning changes consistent with the Master Plan. The Center team believes this is already addressed by the Master Plan statute and the Planning Board working group, which will advise the Planning board on implementation of the Master Plan.

The project team notes that this is addressed in the statute, M.G.L. c.41, s.81D, which requires a Master Plan to include an “[i]mplementation program element which defines and schedules the specific municipal actions necessary to achieve the objectives of each element of the master or study plan. Scheduled expansion or replacement of public facilities or circulation system components and the anticipated costs and revenues associated with accomplishment of such activities shall be detailed in this element. This element shall specify the process by which the municipality's regulatory structures shall be amended so as to be consistent with the master plan.”

Further, the Charter already currently provides:

3-14-5 The Planning Board shall make recommendations to the representative town meeting and to the Select Board on all matters concerning the planning of the physical, environmental, community, and economic development of the town as prescribed by general law, this Charter, and applicable town by-laws, and specifically with reference to the consistency of such matters with the current CMP.

- b. Language regarding legal counsel was refined in Memo 9, and to ensure transparency in the public review, the Project Team suggests the following language:

In furtherance of this section, not less than every three years, the Select Board shall review the appointment of town counsel at a duly noticed public meeting, where the review is clearly noticed on the meeting agenda. The review process shall include, at minimum, an opportunity for public comment.