



Memorandum – 4

TO: Plymouth Charter Commission
FROM: Collins Center Charter Project Team
DATE: May 24, 2022
RE: Memorandum 4 – Miscellaneous Article 2 Topics

Overview

This memo (Memorandum-4) addresses topics discussed at the Commission’s meetings to date, as well as items to be discussed at its 5/26 meeting. Included in the memo are:

- Response to the question about whether it is possible to reprecinct more frequently than every 10 years;
- Research into how other towns support reprecincting efforts;
- Research into how other towns handle the possibilities of employees serving on their finance committees;
- Some new proposed language for the section on the warrant article oversight committee;
- Some thoughts on the request to include a preference for financial expertise in the text describing the construction of the finance committee; and
- Quick update on proposed charter enforcement provision.

Response to the question about whether it is possible to reprecinct more frequently than every 10 years

The process of determining precincts for local elections is addressed in Mass. Gen. Laws Ch. 54, §§6-7. Every ten years, Select Boards must divide the town into voting precincts in compliance with state law. The timing of local precinct delineations aligns with the Commonwealth’s post-census redistricting for state and federal election purposes.

The Center project team has identified other towns that provide in their charters for redistricting of precincts between censuses, including Walpole, Fairhaven, Stoughton, Burlington, and Chelmsford. However, the team has made no determination as to how often these provisions are used in practice, whether they comply with Mass Gen. Laws, and the level of funding, time, and other resources required to review precincts at the increased tempo.

Because the redistricting process is lengthy, complex, and expends significant resources, the Center project team would not advise that Plymouth undertake charter changes that would permit redistricting precincts more often than 10 years. Such a change would require an in-depth analysis of (1) the reasons for making such a change, (2) the information that would be used to delineate precincts, (3) the financial impact upon the Town, and (4) the legal implications of reprecincting more frequently. If the Charter

Commission is interested in redistricting more frequently, the Center project team would recommend that the issue be revisited by a special committee created by the charter in the transition provisions article or by future Charter Review Committees, as a thorough analysis would not be possible within this Commission's timeframe.

Research into how other towns support re-precincting efforts

The Commission asked the Center project to review how other towns ensure that public input is included in the process of redrawing precinct boundaries. The Commission suggested that the COPC be involved in selecting an advisory board.

Under Mass Gen. Laws Ch. 54, §§6-7, the Select Board is ultimately responsible for redrawing precinct boundaries. The Office of the Secretary of the Commonwealth provides technical support to municipalities. Boundaries are determined according to prescribed population and geographical requirements. In addition, under the Voting Rights Act, precinct boundaries may not dilute the votes of minority group members.

Reprecincting requires unique technical skills and specialized knowledge in planning and mapping that necessitate input from trained town employees, such as the Town Clerk, Town Planner, GIS experts, Town Counsel, and Assessors. Most often, the Town Clerk spearheads this process, works with the Office of the Secretary, and presents the information to Select Boards for their approval at an open meeting, where public comments are considered.

Some towns create a staff working group or team to assist in this process. For example, the Town of Arlington convened a Reprecincting Working Group to advise the Select Board. This group included the town clerk, diversity director, GIS director, and the assistant director of planning and community development. The Select Board then voted on the working group's proposed plans in a public hearing with public comment.

The Plymouth Charter Commission appears interested in examples of public input into the process before the Select Board votes. One example occurs in Brookline, where, during the most recent reprecincting, the Select Board appointed a Redistricting Committee that included the Select Board Chair and one town meeting member from each precinct. The Committee, which was supported by the town clerk and GIS administrator, held public meetings over a couple months and solicited public input at these meetings. It then proposed a reprecincting plan to the Select Board for approval. This Redistricting Committee was not created by town charter.

Town charters are largely silent on the process of soliciting public input and the creation of reprecincting committees. One rare example occurs in the charter for the Town of Amherst, which has a Council/Manager form of government. Amherst's charter creating a District Advisory Board provides:

"Each such district shall be composed of voting precincts established in accordance with general laws. Every 10 years, upon receipt of the final results of the decennial federal census, the Town Council shall appoint a Districting Advisory Board composed of 9 members from diverse geographical areas of the Town, plus the Town Clerk or the Town Clerk's designee as a nonvoting member ex officio, to review such districts and propose changes if necessary to such districts..."

Should the Commission decide to include a reprecincting public process into the charter, proposed charter language could include features of Brookline's and Amherst's processes to be added to Section 2-1-1, plus potentially some additional language about public forums. As an example, it could appear like this:

2-1-1 The town shall be divided into voting precincts, as prescribed by state law. Every 10 years, upon receipt of the final results of the decennial federal census, the Select Board shall appoint a Precinct Advisory Board composed of one town meeting member from each precinct, plus the Town Clerk or the Town Clerk's designee as a nonvoting member ex officio, to review such districts and propose changes if necessary. The Precinct Advisory Board shall hold one or more public hearings to solicit public input.

The Collins Center recommends discussing proposed changes with the Town Clerk to fully understand the practical implications of such a board.

Where a Select Board is acting under statutory authority, Town Meeting may not control the board due to the separation between executive and legislative powers. The Select Board retains all executive authority (including the power to make appointments) when it is acting pursuant to its statutory requirement to determine precincts. Therefore, the Center project team has some concern that giving the COPC authority to appoint a reprecincting committee could be found in conflict with state law by the Attorney General. However, if the Commission still wants to proceed, the Center project team would propose the following alternative 2-1-1 language (shown in highlights).

2-1-1 The town shall be divided into voting precincts, as prescribed by state law. Every 10 years, upon receipt of the final results of the decennial federal census, the Chair of the Select Board and the Chair of the Committee of Precinct Chairs shall jointly appoint a Precinct Advisory Board composed of one town meeting member from each precinct, plus the Town Clerk or the Town Clerk's designee as a nonvoting member ex officio, to review such districts and propose changes if necessary. The Precinct Advisory Board shall hold one or more public hearings to solicit public input.

Research into how other towns handle the possibilities of employees serving on their finance committees

The Charter Commission asked for information to assist it in deciding whether to remove the prohibition on town employees from serving as Finance Committee members.

Finance Committee members are considered municipal employees under the Conflict of Interest Laws under Mass Gen. Law. Ch. 268A. They are held to the highest standards and must avoid even the appearance of bias while performing their duties.

Finance committee members must recuse themselves and must leave the room during the deliberation and the vote on any matters affecting their own financial interests or the financial interests of immediate family, business partners, current and prospective employers, and organizations on which they serve as officers, directors, partners, or trustees. They may not vote on any line items involving the particular financial interest, although they may vote on the budget as a whole. (<https://www.mass.gov/service-details/municipal-finance-committee-members-explanation-of-the-conflict-of-interest-law>)

Because Finance Committee members have an obligation to avoid even the appearance of impropriety, there are circumstances under which they must file written disclosures of their business and personal relationships, and they are also encouraged to make a public disclosure during the committee meeting or town meeting.

Due to these rigorous conflict of interest laws, Finance Committee members who are also town employees may find themselves occasionally facing conflict of interest issues that require recusal or disclosure. Even if the budget item does not involve the member's own department and does not create a duty to recusal, the public could perceive that the finance committee member/town employee is providing an unfair advantage to the employee's department or disadvantaging other departments. Furthermore, frequent recusals due to conflicts of interest can disrupt the committee's work if it is unable to maintain a quorum.

To that end, some towns, like Plymouth, have chosen to put restrictions on Finance Committee members, while others are completely silent on the matter. Reading, for example, prohibits elected or appointed town officers or town employees (except for town meeting members) from being appointed to the Finance Committee. Additionally, Finance Committee members cannot serve on any other town committees. Likewise, Wellesley, Saugus, and Falmouth are among several towns who also prohibit town officers and employees from serving on the Finance Committee.

In contrast, other towns only prohibit town officials and members of other committees from serving on the Finance Committee, while some have no restrictions at all. The Commission may determine which restrictions, if any, best serve the interests of the Town.

Some new proposed language for the section on the Warrant Article Oversight Committee

The Commission noted the value of the town manager maintaining a spreadsheet or database of each approved warrant article and the status of its implementation, updated regularly and published on the Town website. The Center project team believes this would be a helpful tool. However, this procedure could be required by vote or agreement during a Warrant Article Oversight Committee meeting. The new committee and the town staff will benefit from flexibility as they become operational and develop their own procedures as a team. Additionally, requiring the spreadsheet as part of the charter could elevate reasonable delays to the level of a charter violation, with no ability to take extenuating circumstances, such as pandemic-related staffing shortages, into account.

If the Commission decides to include this requirement in the charter, it could make a small change to the language proposed in the Center project team's last memo to indicate the Town Manager is responsible for the appendix attached to the reports.

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 prepared by the Town Manager that includes 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

Some thoughts on the request to include a preference for financial expertise in the text describing the construction of the finance committee

The Commission suggested that the Finance Committee members should be appointed with a preference for those with financial expertise. While financial expertise is certainly essential to the committee, additional areas of expertise may be crucial to a well-rounded board. The Finance Committee might find it has a sufficient number of financial experts but, in a particular year, needs members with human resource experience, construction management expertise, legal training, or municipal operations management. Also, a specific candidate with more financial expertise might not be a good fit for the board for other reasons.

If one particular qualification – financial expertise -- is written into the charter, the Town risks discouraging applicants with no financial experience but with skills and perspectives that might benefit the Committee. There is also a risk that the financial expertise qualification could be used to establish a legal presumption that one candidate has a right to an appointment over another candidate. Beyond that, there is some question about how “financial expertise” would be defined and by whom.

For these reasons, the Center project team does not recommend including a preference for financial expertise in the appointment to the Finance Committee.

Quick update on proposed charter enforcement provision

The project team understands that the Commission is still interested in understanding how the enforcement provision in the Falmouth charter has worked in practice. The project team has received one response so far to its inquiries to Falmouth. The response from the Chair of the Select Board indicated that the process has been used, and that it seemed to be a positive experience. The only caveat was the Chair’s suggestion to think through how it will be implemented with regard to each section of government (e.g., different elected boards, committees, positions, etc.), although that may not be practical for the Commission at this point in time. The project team is still hoping to learn more from Falmouth and will update further if/when more information is provided.