



Memorandum – 5

TO: Plymouth Charter Commission
FROM: Collins Center Charter Project Team
DATE: June 3, 2022
RE: Memorandum 5 – Article 2 Final Items and First Thoughts on Article 3

Overview

This memo (Memorandum-5) addresses the final items from the Commission’s initial Article 2 discussions (through the 5/26 meeting) and provides some initial thoughts and questions on Article 3. Included in the memo are:

- 2-1-1: Language changes requested by the Commission for the establishment of a Precinct Advisory Board and a 5-year precincts review;
- 2-8-1: As requested by the Commission, sample language granting Town Meeting the authority to elect the Town Moderator;
- 2-8-7: Language clarifying that Town Meeting can vote to override the Moderator’s rulings with respect to non-resident speakers;
- 2-2-4: Proposed language changes regarding records kept of Town Meeting sessions;
- 2-4-1: Proposed language changes to require three town meetings per year, including one waivable town meeting;
- 2-6-2: Requested language changes regarding the discretion of caucuses to meet as they see fit;
- 2-12-1: Eligibility of Finance Committee Members; and
- First thoughts and questions on Article 3.

Reprecincting provisions

The Commission requested changes to reflect a Precinct Advisory Board comprised of five members appointed by the Select Board and five members appointed by the COPC. Additionally, the Commission requested that another Precinct Advisory Board be convened in five years to study population shifts. The Center project team suggests the following language, including language designed to give representation to several precincts.

2-1-1 The town shall be divided into voting precincts, as prescribed by state law ~~which shall contain, as nearly as possible, an equal number of inhabitants. Each voting precinct shall be composed of compact and contiguous territory, as prescribed by general law.~~ Every 10 years, upon receipt of the final results of the decennial federal census, there shall be appointed a Precinct Advisory Board of 10 members, 5 of whom shall be appointed by the Select Board and 5

of whom shall be appointed by the Committee of Precinct Chairs described in 2-6-4. The Town Clerk or the Town Clerk's designee shall serve as a nonvoting member ex officio. Neither the Select Board nor the Committee of Precinct Chairs shall appoint multiple members from the same precinct. The Precinct Advisory Board shall review the Town's precincts and population, and shall propose any changes that the Board deems necessary to the Select Board. The Precinct Advisory Board shall hold one or more public hearings to solicit public input.

Five years after the completion of the reprecincting undertaken as described, the Select Board and the Committee of Precinct Chairs shall appoint another Precinct Advisory Board in the same manner as described. The Board shall undertake an interim review of the precincts based upon population changes that have occurred since the last decennial federal census and shall make recommendations that the Board deems necessary to the Select Board.

Town Moderator provisions

The Charter Commission directed the Collins Center to draft language granting Town Meeting the authority to vote to elect the town moderator for a period of three years. The Commission proposed that nominations be taken at the beginning of the meeting while the outgoing moderator continues to serve. Then, at the end of Town Meeting, the members would vote on the new moderator whose term would begin at the next Town Meeting. The project team has developed proposed language for this.

At the same time, the project team has some concerns about this. In the Secretary of the Commonwealth's Citizen's Guide to Town Meetings, it states: "Moderators are usually elected at the Town Election at which voters go to their regular polling places. The term of office is one or three years. When the elected moderator is absent, a temporary moderator may be elected at the Town Meeting." (p. 2) Likewise, in Town Meeting Time, published by the Massachusetts Moderators Association, only elected moderators are contemplated: "In Massachusetts the moderator of a representative town meeting is elected by all the voters by ballot, and not by the town meeting members only, except when there is a vacancy." (p. 22)

Out of 32 municipalities with representative town meetings, the project team found only Saugus elects the moderator at town meeting. It is unclear whether this particular provision, which appears to have been written in 1947 before the Home Rule Amendment, has been reviewed by the Office of the Attorney General. The governing language in Saugus is as follows:

ARTICLE 1 SECTION 6. At the first representative town meeting after each election of town meeting members, one of said members shall be elected to serve as moderator of all town meetings, except as otherwise provided by law, for a term of two years or until a successor is elected and qualified. Any vacancy in the office of moderator may be filled for the balance of the term by such members at a meeting held for that purpose. If the moderator is absent, a moderator pro tempore shall be elected by the town meeting members. (As amended by Ch. 17, Acts of 1947)

In furtherance of the Commission's instructions, the team has drafted the charter changes outlined below. However, the Collins Center team does not endorse this language or the Commission's decision to grant town meeting the ability to elect the Town Moderator, in part, because the practice deviates from the overwhelming majority of representative town meeting procedures. Furthermore, Mass. Gen. Laws, Ch. 39, Sec. 14, may require that the Clerk preside over the Moderator's election meeting rather than the

outgoing Moderator: “At every town or district meeting until a moderator or temporary moderator is elected, the clerk of the town or district shall preside... Such presiding officer shall have the powers and perform the duties of a moderator.”

In practice, under the Commission’s proposal, outgoing moderators would be presiding over their own reelections. The team has also raised some concerns that, if nominations are accepted at the start of town meeting and the election occurs at the end, the spring town meeting could be disrupted or politicized by members supporting either the current town moderator or other moderator candidates. The project team would be happy to share thoughts on this charter change in more detail at the next meeting. In any event, the team encourages Plymouth to review this provision with town counsel and the AG’s office before the proposed new charter is finalized.

With respect to the Assistant Moderator position, if the Commission decides that the Town Meeting will elect this position as well, the team has drafted language for this election to be made immediately following the election of Town Moderator. In this way, Town Meeting can learn the results of the Moderator election and, if it chooses, elect one of the other candidates as Assistant Moderator.

The Commission also wanted to clarify that in Section 2-8-7, the rulings on non-resident speakers could be overridden by a 2/3 vote. The Center project team has suggested a change within this section.

The new 2-8 section with changes appears here:

Section 8 Moderator

2-8-1 ~~A Moderator shall be elected at the regular town elections for a term of three (3) years. At the beginning of the spring annual town meeting, in the year that the Moderator’s term expires, the Moderator shall accept nominations for the position of Moderator. The current Moderator shall preside over the rest of the spring annual town meeting. At the conclusion of town meeting, but before town meeting is adjourned, members shall elect one member to serve as Moderator of all town meetings, except as otherwise provided by law, for a term of three years or until a successor is elected and qualified. Any vacancy in the office of Moderator may be filled for the balance of the term by such members at a meeting held for that purpose.~~

2-8-2 The Moderator shall have no vote unless the representative town meeting members present and voting are equally divided.

2-8-3 The Moderator shall preside at all representative town meeting sessions and shall perform such other duties as may from time to time be assigned to the office through by-law or vote of the representative town meeting.

2-8-4 Following the raising of a point of order at any Town Meeting, a motion to appeal the ruling on such point of order shall be allowed by the Moderator and shall be decided by a two-thirds (2/3) vote of the Town Meeting.

2-8-5 Promptly following the ~~annual town election~~ election of Town Moderator, the ~~Moderator~~ Town Meeting shall elect an Assistant Moderator for a term commencing at the first Town Meeting following such election, or at such time as a vacancy occurs, and ending on the date that the Moderator’s term expires. ~~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.

2-8-6 The Town Manager shall provide support personnel to assist the Moderator in carrying out the Moderator's assigned duties.

2-8-7 Residents and taxpayers of the town may speak on any article in a warrant subject to such procedural rules as the Moderator *or Town Meeting* may impose. Town Meeting may override the Moderator's rulings under this section by following the procedure outlined in 2-8-4.

Town Meeting proceedings records

The project team understands the Commission's desire to have an accurate and detailed account of Town Meeting proceedings. It is further the team's understanding, based upon the Commission's discussion, that assigning this task to the Town Clerk might not be the most effective solution because the Town Clerk provides crucial functions during Town Meeting that may impede the ability to keep a detailed record of proceedings.

The current 2-2-4 reads as follows:

2-2-4 The Town Clerk shall keep a detailed journal of all representative town meeting proceedings and perform such other duties as may be assigned by this Charter, by-law, or vote of the representative town meeting.

Per the Commission's discussion, this provision could be supplemented by or replaced by the following, which will ensure that an accurate record of Town Meeting is maintained.

2-2-X: The Select Board shall ensure that a video recording of all Town Meeting sessions is created, preserved, and stored in a location that is accessible for unrestricted public viewing.

Alternatively, should the Commission desire language requiring a searchable word database of Town Meetings, the following language could be utilized:

2-2-4: The Select Board shall ensure that detailed minutes of all Town Meetings shall be created, preserved, and stored in a location that is accessible for unrestricted public access. Such minutes shall contain, at a minimum, the warrant articles, a summary of the discussion, and the action taken on each warrant article.

Number of Town Meetings per year

The Commission indicated a desire to increase the number of Town Meetings required by the Charter to include an expectation of three Town Meetings per year, with the third one being waivable if determined to be unnecessary. The rationale, as the project team understands it, is to give Town Meeting members and the public an expectation of three meetings and an approximate period when they may occur, specifically January, April, and October. The Commission also proposed that, if the third meeting (the January meeting) is not required, the meeting could be waived by a joint majority vote of the Board of Selectmen and the COPC.

To accomplish this objective, the team recommends adding new text to the first part of 2-4-1:

2-4-1: The representative town meeting shall meet at least twice (2) in each calendar year. The first such meeting, the spring annual representative town meeting, shall be convened during the period of March through April, at a time fixed by by-law. The spring annual representative town meeting shall be concerned primarily with the determination of all matters that concern raising, appropriating, or transferring funds, including, but not limited to the adoption of an annual operating budget covering all town agencies. The second such meeting shall be held during the last four calendar months, at a time fixed by by-law. A third non-mandatory meeting shall be scheduled for January of the calendar year following the spring annual meeting; provided, however, that the third meeting may be waived by a joint majority vote of the Select Board and the COPC. The vote to waive such meeting shall be taken no later than 30 days prior to the January meeting.

The second and third paragraphs in 2-4-1 would remain the same.

Caucus meeting purposes

The Commission proposed that language be added allowing precinct delegations to caucus for any reason that precinct chairs deem necessary. The team suggests adding the following language:

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. In addition, the precinct chair shall be able to call caucus meetings of the precinct delegation for any purpose in furtherance of town meeting as needed.

Finance Committee eligibility

The Commission determined that the prohibition against Town employees serving on the Finance Committee should remain, and the Commission sought to further restrict membership on the Finance Committee by prohibiting elected officials from serving on the Finance Committee. To that end, the team suggests the following revision to Section 2-12-1.

2-12-1 There shall be a 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 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 Moderator or Committee of Precinct Chairs, respectively. 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, Town of Plymouth employees, and persons holding an elective office of the town, other than the office of Town Meeting Member, shall not be eligible to serve on the Finance Committee.

First thoughts and questions on Article 3

The project team has taken a first look at Article 3 and put together this initial list of items for the Commission to consider and discuss:

- **3-2-6:** Does the Commission wish to consider language to clarify not only that the Select Board shall act through the Town Manager, but also that it shall act *only* through the Town Manager? It is the project team's understanding that this was one topic of potential interest for some Commissioners.
- **3-2-8:** Should one of the Select Board meetings with the elected boards be described explicitly as being part of the budget process, as is common in many towns?
- **3-4-2:** This includes more town manager qualifications criteria than many charters. While the criteria are not bad *per se*, creating explicit qualifications in the charter can make it more difficult for the town to adapt to changing circumstances around recruitment. The project team would recommend moving some of the current qualifications into the bylaws.
- **3-4-4:** There is no provision for an acting town manager for periods shorter than 30 days.
- **3-5-1:** The enumerated list of powers and duties might be made clearer by being grouped by topic under sub headers.
- **3-14-1:** Is there interest in discussing having the Select Board or the Town Manager appoint the Planning Board instead of electing the Board at a town-wide election?
- **Article 3 generally:** This article includes significantly more detail about departments than many charters. The Commission may want to consider what impact, if any, this has had on the town's operations. In general, ongoing difficulties in recruiting for vital town roles have highlighted an increased need for flexibility in hiring and departmental structures. Some municipalities are transitioning away from incorporating specific personnel and organizational structures into charters and bylaws. A great candidate might present an opportunity to combine roles, or a scarcity of candidates might require the town to find creative solutions, such as hiring one department head to supervise two related departments or divisions. As an overarching theme, where appropriate, the Commission should consider leaving room for flexibility in personnel requirements, duties, and organizational structure.