



## Memorandum – 7

**TO: Plymouth Charter Commission**  
**FROM: Collins Center Charter Project Team**  
**DATE: June 21, 2022**  
**RE: Memorandum 7 – Article 2 Final Items and Article 3**

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### Overview

This memo (Memorandum-7) addresses topics discussed at the Commission’s meetings to date, as well as items to be discussed at its 6/23 meeting. Included in the memo are:

- Language allowing early commission of a Reprecincting Committee
- Language regarding custody of recording of Town Meeting recording and minutes
- Language for nomination process for the Town Moderator
- Language including Finance Committee in budget-focused joint meeting of town-wide Boards and Committees
- Adjusted language added regarding appointment and removal authority of a temporary Town Manager
- Language clarifying the relationship between the Select Board and Employees
- Language regarding changes to the structure of the Select Board
- Language emphasizing the role and responsibility of the Planning Board
- Language regarding review of legal counsel

### REPRECINCTING PROVISIONS

The Commission requested language allowing greater flexibility in commissioning a Reprecincting Committee. The below gives an option for convening the Reprecincting Committee as early as 5 years, but no later than 1 year prior to the decennial review. Also, per request of the Chair, the title of the body has been changed Board to Committee.

#### Article 2-1-1

The town shall be divided into voting precincts, as prescribed by state law.

- (a) In every year ending in a nine (9), there shall be appointed a Precinct Advisory ~~Board~~ **Committee** 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. The Select Board shall not appoint multiple members from the same precinct, and the Committee of Precinct Chairs shall not appoint multiple members from the same precinct.

- (b) *Upon request of the COPC, or upon its own initiative, the Select Board may appoint the Precinct Advisory Committee as provided in subsection (a), as early as 5 years prior to the decennial precinct review.*
- (c) The Precinct Advisory ~~Board~~ **Committee** shall study the Town's precincts and population prior to the release of the final results of the decennial federal census, shall review the final results of the decennial federal census upon receipt, and shall propose any changes that the ~~Board~~ **Committee** deems necessary to the Select Board. The Precinct Advisory ~~Board~~ **Committee** shall hold one or more public hearings to solicit public input.

## **TOWN MEETING RECORDING AND MINUTES**

Based on the Commission's discussion regarding the importance of ensuring that Town Meeting recordings and minutes are preserved and kept by the Town, the language below specifies that the Town is the custodian of video recordings and minutes. The updated language from Memo 6 is in red.

2-2-4(a): The Select Board shall ensure that a video recording of all Town Meeting sessions is created, along with a text record that includes time stamps at the beginning of each warrant article.

2-2-4(b): The Town Clerk 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, and the action taken on each warrant article.

*2-2-4(c) The Town shall be the custodian of both the video records and the minutes specified in subsections (a) and (b), and such records shall be stored in a location that is accessible for unrestricted public viewing.*

## **TOWN MODERATOR**

At its last meeting, the Commission sought to clarify that the nomination for the office of Town Moderator should follow the regular nomination process used for Town elections and also that the Town Moderator should appoint an Acting Town Moderator in the same manner as is currently followed (as opposed to an election). The Collins Center team makes no determination of whether the Town Moderator would be subject to the same campaign finance laws and other election laws and regulations. The Town should seek outside counsel on this matter.

The project team has provided two options below for election of the Town Moderator. Rather than a nomination protocol, the team recommends establishing candidacy for moderator by filing a notice of intent with the Town Clerk during a specified window.

Option A provides for election at the annual town meeting. One important note – this process requires the Town Clerk or the Assistant Town Clerk to run the election and address any issues that arise during voting. Because the Town Clerk will presumably be assisting with Town Meeting, the Assistant Town Clerk or other designee (on some occasions Town Clerks from other communities will serve) will be required to run the moderator election. It is therefore recommended that voting occur during a specific timeframe, so that the Town is not required to continue voting to a second day if town meeting is continued.

Option B specifies that the election occur at special town meeting held a minimum of 90-days prior to the annual town meeting. Another variation of this would be to have a special town meeting immediately preceding the annual town meeting. However, the successful moderator candidate would not have any time to familiarize themselves with town meeting rules and procedures prior to the annual town meeting. Both of these options allow the Town Clerk to run the election without the need for a designee.

Note that in both options, the language of 2-8-2 has been changed to try to reflect the fact that the Moderator can vote in the election for the position, but not on any other matter except in the case of a tie.

### ***Option A – Declaration of Intent Filed and Voting at Annual Town Meeting***

#### **Section 8 Moderator**

##### **2-8-1 Election of Town Moderator.**

A Moderator shall be elected at the annual town meeting in the year that the incumbent Moderator's term expires. The incumbent Moderator shall preside over the spring annual town meeting, during which representative town meeting members shall elect one registered voter 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. **The Town Clerk, or the Assistant Town Clerk in the absence of the Town Clerk or so designated by the Town Clerk, shall preside over the town moderator voting procedure during the annual town meeting. Voting shall be open during the first hour of Town Meeting and election results shall be announced after the conclusion of the annual town meeting.**

2-8-2 The Moderator shall have no vote **on Town Meeting business**, 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 shall appoint 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.

Additional change to Article 5:

Section 1 Town Elections 5-1-1

The regular election for all town offices shall be by official ballot held on the third Saturday of May of each year, *with the exception of Town Moderator, who shall be elected every third year by Town Meeting Representatives at the spring annual Town Meeting.*

Insert after Section 4 in Article 5 (and renumber later sections):

**Section 5 Candidates for Election to Town Moderator**

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 90 days prior to the end of the incumbent's term, and no earlier than the first business day of the new year.

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.

5-5-3 The nomination procedure for all other elected positions shall be as set forth in general or special law.

**Option B: Declaration of Intent with Voting at a Special Town Meeting**

**Section 8 Moderator**

2-8-1 Election of Town Moderator.

A Moderator shall be elected at a special town meeting in the year that the incumbent Moderator's term expires, held no more than 45 days nor less than 30 days before the current moderator's term expires. The Town Clerk shall be the presiding officer at such election. The Town Clerk shall provide each candidate for moderator an opportunity to speak at the special town meeting prior to voting.

In the event of more than 2 candidates for moderator, voting will be conducted in rounds. Each candidate for moderator must receive at least 30% of the vote to advance to the next round. Election continues until there are only 2 candidates. The candidate receiving at least 50% of the vote plus 1 is elected to serve upon the completion of the term of the incumbent moderator.

The elected Moderator shall be sworn into office immediately following the election and shall preside over the spring annual town meeting, and all other town meetings occurring during their term of office unless an Acting Town Moderator is appointed.

2-8-2 The Moderator shall have no vote **on Town Meeting business**, 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 shall appoint 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.

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Insert after Section 4 in Article 5 (and renumber later sections):

**Section 5 Candidates for Election to Town Moderator**

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 90 days prior to the end of the incumbent's term, and no earlier than the first business day of the new year.

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.

5-5-3 The nomination procedure for all other elected positions shall be as set forth in general or special law.

## JOINT BOARD MEETINGS

The Commission requested that the language regarding Finance Committee be inserted with the School Committee and Planning Board. New language in red.

- 3-2-8 The Select Board shall meet jointly with the School Committee, Planning Board, **Finance Committee** 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 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.

## TEMPORARY TOWN MANAGER

The Commission requested language adding authority to establish a Temporary Town Manager. During the discussion, questions were raised regarding the authority of an Acting Town Manager to remove/appoint if immediate action was required. The Center proposes the following language in red to address the need for immediate action on appointments / removals.

- Current:  
3-4-4 The Select Board shall designate a qualified person to serve as Acting Town Manager and to perform the duties of the office during any vacancy of the Town Manager exceeding thirty (30) days caused by the Town Manager's absence, illness, suspension, removal, or resignation. The term of appointment of an Acting Town Manager shall not exceed one hundred eighty (180) days.
- Proposed: new first paragraph; second paragraph is the same  
3-4-4(a): The Town Manager shall designate, by letter filed with the Select Board and Town Clerk, a qualified officer of the Town as Temporary Town Manager to perform the duties of the Town Manager during a temporary absence or disability. The Select Board may not revoke such designation until at least 30 days have elapsed, whereupon it may appoint another officer as Temporary Town Manager to perform the duties of the Town Manager. In the event of failure of the Town Manager to make such designation, or if the person so designated is for any reason unable to serve or is deemed not qualified by the Select Board, the Select Board may designate some other qualified officer as Temporary Town Manager to perform the duties of the Town Manager until the Town Manager returns. The powers of a Temporary Town Manager shall be limited to matters not admitting of delay. *No Temporary Town Manager shall have authority to make any permanent appointment to, or removal from, any office or position, unless such appointment or removal is authorized by a majority of the Board of Selectmen.*

3-4-4(b): The Select Board shall designate a qualified person to serve as Acting Town Manager and to perform the duties of the office during any vacancy of the Town Manager exceeding thirty (30) days caused by the Town Manager's absence, illness, suspension, removal, or resignation. The term of appointment of an Acting Town Manager shall not exceed one hundred eighty (180) days.

## **SELECT BOARD COMMUNICATIONS WITH DEPARTMENTS**

The Center project team provided the below example language from Provincetown, and the Commission will continue to seek examples of language that reinforces the town manager's authority to direct Town employees and clarifying that the Select Board should direct its communications with Town staff through the town manager.

*Ch.3, Sec. 6 b. The Select Board, and individual members thereof, shall deal with employees who are under the direction and supervision of the Town Manager solely through the Town Manager. Furthermore, neither the Select Board nor its individual members shall give direct orders to any such employee.*

## **STRUCTURE OF THE SELECT BOARD**

The Commission asked the Center team to draft language implementing the election of a Select Board comprised of both regional and at-large members. The Commission proposed one Select Board member for each of six regions (combining three precincts in each region) and at least two at-large members.

In Massachusetts, a Select Board must be elected and have at least three members. MGL Ch. 41, §1. The vast majority of towns have either three or five members, although at least one, Wakefield, has seven members elected at large. (Wakefield is the only town that has renamed its Select Board as "Town Council.") Best practice dictates that the board should be comprised of an odd number.

The Center team has not identified any current Select Boards that include regionally elected members. However, in 1972, the Town of Scituate provided for a five-member board with three at-large members and one member from each of two districts. The Town has since returned to an at-large Select Board with five members.

The Center team has drafted a starting point for making the change to a combination regional/at-large Select Board. This language will change based upon the Commission's decisions with respect to 1) how the regions will be determined; 2) the total number of members; 3) how to account for an odd number of members; and 4) how to create language that provides clarity in the case that the next census changes the number of voting precincts.

Once the Commission determines how precincts will be divided, appropriate language will be included in Article 2-1-1 of the charter and implementation language can be drafted. To accomplish an odd number, voters could elect one member from each of six regions plus three at-large members for a total of nine members. Alternatively, voters could elect one member from each of three regions plus two at-large members for a total of 5 members.

Note that the census could result in the addition or subtraction of voting precincts, which would mean that the Select Board would need to approve separate Select Board regional voting boundaries that differ from the town meeting precinct boundaries in order to divide the town by six.

### **Ch. 3, Section 1 The Select Board: Composition and Terms**

3-1-1 A Select Board of ~~five (5)~~ **nine (9)** members shall be elected for three-year (3) overlapping terms. Three (3) members shall be elected by the Town at large. One (1) member will be elected from each of six Town regions established by the Select Board in accordance with Article 2-1-1, for a total of six (6) regional members.

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.

## **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 **nine (9)** members, **with three (3) at-large members and one (1) member from each of six Town regions established by the Select Board in accordance with Article 2-1-1.**

## **PLANNING-RELATED CHARTER LANGUAGE**

The Commission has expressed frustration about how planning decisions can diverge from the approved master plan, something unfortunately that occurs in plenty of Massachusetts municipalities. The project team understands that Plymouth has a Master Plan Task Force, as many towns do, and that Commissioners are investigating that Task Force. Beyond that, the project team has been reviewing other charters and talking with others about potential options to address these issues, but the team has not located anything yet.

## **LEGAL COUNSEL**

The Commission indicated that it would like to consider language requiring the appointment of legal counsel to be considered by the Select Board not less than every three years. Possible language for the Commission's consideration is below:

**No less than every three years, the Select Board shall review the appointment of legal counsel.**