



Memorandum – 8

TO: Plymouth Charter Commission
FROM: Collins Center Charter Project Team
DATE: July 8, 2022
RE: Memorandum 8

Overview

This memo (Memorandum-8) addresses topics discussed at the Commission’s meetings to date, as well as items to be discussed at its 7/11 meeting. Included in the memo are:

1. Language refining the election process for Town Moderator
2. New proposed language emphasizing the role and responsibilities of the Planning Board and compliance with the Master Plan
3. Refined language regarding review of legal counsel
4. Research regarding licensing authorities
5. Some examples related to a potential Communication and Engagement article
6. New potential language for transition provisions

1. TOWN MODERATOR – Language refined

At its last meeting, the Commission expressed a consensus to have the election of moderator follow a process that includes a declaration of intent and election at the regular Annual Town Meeting occurring in the spring. 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.

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. The newly elected Moderator shall take office at the conclusion of the Town Meeting at which the Moderator is elected.

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 Meeting 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.

2. PLANNING-RELATED CHARTER LANGUAGE – proposed new language

The Commission has expressed frustration about how planning decisions can diverge from the approved master plan, something that occurs in quite a few 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.

The Commission has also expressed interest in language that would strengthen compliance with the Town's Master Plan. The Center offers the following suggestion:

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 shall issue a recommendation regarding the proposed action, which shall specifically address whether the proposed action aligns with the Master Plan. The Director'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 shall issue commentary regarding the Warrant Article, 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 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 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.

Additionally, the Commission was interested in seeing language that provided a stronger basis for the Master Plan Task Force. The current charter language is:

CURRENT: 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 would propose a small change to strengthen the basis of the Master Plan Task Force.

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.

3. LEGAL COUNSEL – language refined

The Commission indicated that it would like additional language related to the appointment of legal counsel. In addition to the review of the appointment by the Select Board not less than every three years, the Commission requested an opportunity for public comment and that some kind of information be made public. The project team has provided new possible language that includes the opportunity for public comment. However, the team has reservations about mandating in the charter the provision of information that could force disclosure of sensitive topics or decisions.

Not less than 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.

4. LICENSING BOARD

The Charter Commission was interested in exploring the transfer of some or all licensing duties from the Select Board to a newly established Licensing Board. The Commission is interested in learning whether

residents could appeal Licensing Board decisions to the Select Board. The Commission's primary concern is that the Select Board is required to spend much of its meeting time on licensing issues.

Massachusetts licensing overview:

Massachusetts towns administer a wide variety of licenses, ranging from dog, marriage, raffle, and fortune-telling licenses to restaurant, solicitor, taxi, and alcohol licenses. Each type of license has its own complex rules and appeal procedures. In general, Town Clerks usually handle many of the licenses that do not require hearings, such as dog licenses, marriage licenses, raffle and resale licenses, and DBA Certificates. Local police chiefs often administer the paperwork required for solicitor licenses and enforce local solicitor and taxi bylaws.

In Massachusetts, the vast majority of towns with Select Boards do **not** have a separate Licensing Board, and the Select Board is named as the Local License Authority required by alcohol and victualler license laws. In all towns with Representative Town Meetings, the Select Board appears to act as the Local License Authority.

After reviewing a large sampling of Open Town Meeting towns, the team has identified only one – the Town of Provincetown – that has established a separate Licensing board. In Provincetown, the Licensing Board has authority over all business licenses, including innholders, common victuallers, and alcoholic beverages. The Provincetown Licensing Board, as a “regulatory town board” in its charter, is made up of registered voters appointed by the Select Board for terms of three years.

In contrast, most towns with a Town Manager/Council form of government (with no Select Board) have established Licensing Boards. These towns include Amherst, Barnstable, Bridgewater, North Attleborough, Palmer, Southbridge, Winthrop, and Randolph.

Considerations in creating a Licensing Board:

A review of Plymouth Select Board minutes reveals that the most time-consuming licensing operations include alcohol and victualler (food sales) licenses. This is consistent with the stringent state regulatory requirements in these areas. In Plymouth, the Town Manager, Town Clerk, and Police Department handle most of the licenses that do not require hearings, so these do not impact the Select Board's time significantly. Therefore, when considering a Licensing Review Board, Plymouth, like most towns, should take into consideration the requirements under the alcohol and common victualler laws.

1. Liquor Licensing

In Massachusetts, the Alcohol Beverages Control Commission (ABCC) controls the sale, transportation, purchasing and manufacturing of alcoholic beverages. Under state law, applicants file for a retail license with a Local Licensing Authority (LLA), which holds a hearing and issues a decision. In Plymouth, the Select Board is the LLA. Decisions can be appealed directly to the ABCC. Once the LLA is established, Licensing Board decisions are not appealable to another town department, such as the Select Board or Town Council.

Under Mass. Gen. Law Ch. 139 §1, Local Licensing Authorities are defined as, “the licensing boards and commissions established in any city or town under special statute or city charter or under section four or corresponding provisions of earlier laws, or, in a city having no such board or commission or having a board

rendered inactive under section eight, the aldermen, or, in a town having no such board or commission, the selectmen.” Therefore, the Select Board are the presumptive Local Licensing Authority absent a charter or statutory change. While there are stringent requirements for city LLAs, town LLAs are dependent upon local rules.

2. Innholder and common victualler licenses

Common victualler and innholder licenses, however, are governed by Mass. Gen. Law Ch. 140, under which Licensing Authorities are generally defined as “the selectmen in towns.” Mass. Gen. Law Ch. 140 §2 provides further that innholder and common victualler licenses must be signed by a majority of selectmen in towns. However, since this legislation was enacted, town government structures and practices have evolved. For example, there is no mention of whether Town Councils may sign licenses or who signs when there is a town licensing board.

In practice, in Provincetown, the Licensing Board signed the licenses before COVID, and, since the pandemic, the Licensing Agent has signed. The Select Board is not involved in the decision-making process, nor does it accept appeals. The Center team cannot make a legal determination as to whether the Select Board must sign off on common victualler licenses and encourages the Commission to consult counsel about any required appeals process.

3. Practical considerations

If the Commission decides to create a Licensing Board, it must carefully analyze which licenses to include under its purview. In a town the size of Plymouth, it might be most practicable to transfer authority of only those licenses that the Select Board now handles. Additional licensing might be an excessive burden on the Licensing Board. If the Commission chooses to transfer authority to issue licenses that are currently administered by town staff, the Commission should solicit more information from the affected Departments, as such a transfer may have unforeseen implications for their procedures, staffing, and management.

Additionally, the Charter Commission may wish to consider whether current volunteerism in Plymouth supports the addition of another town board.

Sample Licensing Board parameters

For the Commission’s review, below are four examples the Commission may wish to consider if crafting charter language. The first example is Southbridge, which established a Liquor Licensing Board that only handles licenses for alcoholic beverages. Next is Barnstable, whose licensing board is limited to alcohol licenses and any Ch. 140 licenses that are not specifically delegated to other government entities. The Amherst example gives authority to the Licensing board of all licenses not assigned to another town departments by law, and the North Attleborough example is also broad but less defined.

1) Southbridge

3-212 Liquor Licensing Board

3-212.1 Establishment – There shall be a liquor licensing board, appointed by the Town Manager, subject to confirmation by the Town Council, to consist of three members and one alternate member, in accordance with the provisions of MGL Chapter 138, Sections 4-10B and Section 9-1-1 of the Town Charter. (Charter, §4-3-2)

3-212.2 Authority and Responsibility – The liquor licensing board shall have the authority and responsibility provided under MGL Chapter 138.

2) Barnstable

§ 241-25 Licensing Authority.

A. Term of office. There shall be a Licensing Authority consisting of three members and not more than three associate members. They shall not be engaged, directly or indirectly, in the manufacture or sale of alcoholic beverages and shall be voters of the Town. If any member or associate member of said board engages directly or indirectly in such manufacture or sale, his or her office shall immediately become vacant.

[Amended 11-3-2005]

B. Authorities and responsibilities. The Licensing Authority may grant licenses relating to alcoholic beverages under Chapter 138 of the General Laws and those licenses under Chapter 140 of the General Laws which are not, by the provisions of said chapter, placed within the jurisdiction of another municipal officer or agency, and shall have all the powers and duties of a licensing authority under said chapters. The Licensing Authority is an advisory and regulatory committee of the Town.

C. Interrelationships.

(1)

Town Council: The Licensing Authority annually reports to the Council the Authority's activities, with recommendations as necessary concerning issues relative to Chapter 138 and Chapter 140 licensing within the Town.

(2)

Town Manager: The Licensing Authority interacts with the Town Manager for the purposes of receiving administrative support for its deliberations and responsibilities, to include but not be limited to the office of the Town Manager, including the licensing program within that office, Legal and Health.

[Amended 6-17-2021 by Order No. 2021-160]

3) Amherst

SECTION 6.3: BOARD OF LICENSE COMMISSIONERS

There shall be a Board of License Commissioners which shall have the power to issue licenses for innholders or common victuallers, the powers of a licensing board appointed under Massachusetts General Laws Chapter 138, Section 4, and shall be the licensing authority for the purposes of Massachusetts General Laws Chapters 138 and 140.

The Board shall have all powers with respect to other licenses for which the Town has statutory and regulatory authority unless otherwise assigned to another Town office or officer by general law.

The Board of License Commissioners may grant licenses relating to alcoholic beverages under Massachusetts General Laws Chapter 138 and those licenses under Massachusetts General Laws Chapter 140 which are not, by the provisions of said Chapter, placed within the jurisdiction of another Town officer or agency.

The Board of License Commissioners shall consist of 5 voters appointed by the Town Manager and confirmed by the Town Council as provided in Section 2.11. Members shall serve for 3-year terms. No person while a member of the Board of License Commissioners shall have any financial interest, directly or indirectly, in the sale or distribution of alcoholic beverages, marijuana, or any regulated substance that may come under the purview of the Board of License Commissioners in any form.

The Building Inspector, the Director of Public Health, the Fire Chief, and the Police Chief, or their designees, or persons performing similar duties under any other title, shall advise the Board of License Commissioners when requested. The Board of License Commissioners shall make an annual report to the Town Council.

4) North Attleborough

SECTION 5-7. LICENSING BOARD

(a) Composition. There shall be a Licensing Board of five members appointed for three-year rotating terms.

(b) Powers and Duties. The Licensing Board shall have the power to issue licenses provided for by the general laws or bylaws that would otherwise be issued by a board of selectmen or city or town council, make all necessary rules and regulations regarding the issuance of such licenses, and attach such conditions and restrictions thereto as it deems to be in the public interest. The Licensing Board shall enforce the laws relating to all businesses for which it issues licenses. Except as otherwise provided herein, the Licensing Board shall have such powers and duties as may be authorized for licensing authorities by the general laws, or by this Charter or bylaw.

5. NEW ARTICLE ON COMMUNICATION AND ENGAGEMENT

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.

What follows are, first, examples of existing narrower text from Massachusetts municipal charters and, next, generic text from [the most recent \(2021\) edition of the National Civic League's Model City Charter](#), which includes, for the first time, an article on public engagement. While some of the *Model City Charter* language seems geared toward larger cities, other parts may be useful.

Although not included in the examples below, the project team would note that the Amherst and Watertown charters both include annual "state of the town" meetings and public forums.

The project team is interested in what the Commission thinks of these examples, and what some of the Commission's goals might be for a new communications and engagement article.

Examples of Community/Citizen Participation Officer Positions

Amherst:

(d) Community Participation Officer: The Town Manager shall appoint a Community Participation Officer to increase participation in local government by diverse residents as described in Section 3.3(c). Such officer may be a current Town employee. The Community Participation Officer will:

- (i) Provide support for individuals interested in being involved in local government;
- (ii) Devise and implement strategies to enhance public engagement;
- (iii) Conduct community outreach efforts to increase participation by underrepresented residents in Town government;
- (iv) Aid in planning and conducting of District Meetings;
- (v) Analyze data on resident engagement;
- (vi) Regularly submit reports to the Town Manager and Town Council; and
- (vii) Carry out any other duties designated by the Town Manager.

Framingham:

c) Citizen Participation Officer: The mayor shall appoint a citizen participation officer to work with municipal departments and multiple-member bodies to develop and implement strategies to enhance public engagement using current communication and outreach practices, to process citizen complaints and inquiries, and ensure compliance with public notice requirements. The citizen participation officer shall maintain the municipal notification list. The citizen participation officer shall analyze data on citizen engagement, complaints and inquiries, and shall regularly submit reports as directed by the mayor.

Examples of Communications Items Included in Watertown Town Manager "Powers and Duties" list

The powers and duties of the city manager shall include, but are not intended to be limited to, the following: ...

14) Be responsible for city government communications, including, but not limited to, developing a timely and comprehensive communication strategy, coordinating the announcements and messages from department heads, communicating regularly, via all available media avenues, with residents, ensuring that all aspects of the city's website are kept up-to-date, and soliciting recommendations for greater communication from residents.

15) In order to provide transparency, accountability, and the opportunity to communicate expectations and results to the public, maintain a public-facing data and performance management initiative that periodically monitors, reports, and benchmarks progress on the implementation of the council's strategic priorities; key performance measures to benchmark the activities of the city as a whole and city departments, commissions and

committees; and any other subject matter that, in the discretion of the manager, focuses on improving the efficiency and effectiveness of city services.

Public Engagement Text from [National Civic League's Model City Charter](#)

Section 7.01. Public engagement as an essential part of civic infrastructure.

The city shall treat public engagement as an integral part of effective and trusted governance, not just as an occasional process or activity. The city shall treat engagement as a “multi-channel” endeavor that includes face-to-face meetings, virtual interactions, and other online communications. The departments of city government shall encourage collaboration in public engagement efforts with other government jurisdictions and authorities, anchor institutions, community-based organizations, civic groups, and individual residents.

Section 7.02. Institutional structures to support and coordinate engagement.

The city shall establish new institutional structures or adapt existing structures to oversee, support, coordinate, track, and measure engagement on an ongoing basis. These structures can include:

- (1) Council committees that include residents and other stakeholders
- (2) Departments or administrative positions
- (3) Public engagement commissions
- (4) Community advisory boards, including boards designated to address the concerns of specific populations.
- (5) Youth commissions
- (6) Participatory budgeting processes and commissions

Section 7.03. Principles of public engagement.

To ensure public engagement centers on the needs and goals of community members, the city shall uphold the following principles, using them as the basis of public engagement protocols and in the remits of public engagement structures (as listed in Section 7.02):

- (a) Equity in engagement. Principles of justice, equity, diversity, and inclusion should guide the design and execution of public engagement activities, in several ways:
 - (1) Government-sanctioned bodies such as CABs may become “gatekeeping” entities that reflect the ideas of self-designated community leaders if they aren’t inclusive, open, and accessible to all members of the public. City officials, therefore, should conduct continual public outreach to bring in new voices.
 - (2) When engaging community members, city officials should identify and proactively reach out to the community in its full diversity. To ensure that public engagement activities are not attended only by people already active in local government and politics, city officials should regularly recruit residents through face-to-face or personal written invitations, social media requests, and randomized selection methods. Materials should be written in plain, comprehensible English, and should also be translated into the other predominant languages that residents speak and read.

(3) Traditionally excluded and marginalized individuals and communities should be included in ways they themselves identify as authentic and meaningful. City officials should codesign engagement processes with community members to meet the needs of the communities served. Processes should respect a range of values, interests, perspectives, experiences, cultures, and knowledge of those involved.

(4) The city should expect local the organizations and networks it works with to engage their members in equitable and deliberative ways, so that the input received is representative of their constituents.

(5) The city should use an equity lens to evaluate data on impacts of engagement, including costs, benefits, and responsibilities.

(b) Accountability in engagement. There should be meaningful opportunities for community members to bring issues, concerns, and priorities to city officials to influence city policy, ordinances, and actions. Public engagement activities should be designed to appropriately fit the legal authority, scope, character, and potential impact of a policy, program, or project. There should be clarity about process sponsorship, purpose, design, and how the results will be used. The purpose and potential influence of each public engagement process should be known by all participants in advance but should be flexible enough to adapt to changing conditions during implementation.

(c) Transparency in engagement. Communications about public issues and public engagement opportunities should ensure community members can engage effectively. Communications should be made in the predominant languages that residents understand. Participants should have the opportunity to bring and share their own experiences as well as information they have gathered about the issues at hand. Full and complete results should be shared and explanations of how the results will be used or how they will influence decisions should be provided to process participants and the broader public.

(d) Accessibility in engagement. Public engagement activities should be broadly accessible in terms of schedule, location, facilities, and information and communication technologies. Schedules should accommodate a variety of participants. Locations should be nearby and reachable via affordable transit, and some engagement activities should be conducted in places where community members already gather regularly. Facilities should be welcoming public spaces and not present physical or cultural barriers to participation. Online engagement opportunities should use technologies that are freely available to residents and attend to barriers people may face, such as: no access to broadband, limited proficiency with technology, and challenges related to deaf-blind accessibility.

(e) Collaboration in engagement. Public engagement efforts should build on and help develop longterm, collaborative working relationships and mutual learning opportunities with residents of all ages, civic groups, organizational partners, and other governments. This may include project-specific or ongoing community engagement initiatives.

(f) Evaluation of engagement activities. Each public engagement activity and the state of engagement overall should be evaluated through participant feedback, analysis, and learning that is shared publicly and broadly. The ideas, preferences, and/or recommendations contributed by participants should be fully documented and be made available to participants and the broader public. Lessons learned should be applied to future public engagement activities and contribute to the city's overall engagement plan.

6. NEW LANGUAGE FOR TRANSITION PROVISIONS

Several items, including the potential for a shared town/schools facilities department and the potential for a community preservation department, were discussed at the Commission's recent meetings as topics for further assessment. These topics are likely to be too narrow or specific for inclusion in the charter and/or would require more time to address than could be accomplished within the Commission's remaining time frame. The Center team proposes using the transition provisions to provide for further study of these issues.

CHAPTER X TRANSITION PROVISIONS

Section X Topics for Study

X-X-1 Within two years after the acceptance of this charter, the Town Manager shall investigate the feasibility of taking the following actions and shall make a report to the Select Board with findings and recommendations. The list below is in no particular order or priority:

- (a) Whether to create a shared town/schools facilities department; and
- (b) Whether to create a community preservation department.