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Memorandum – 12

TO: Plymouth Charter Commission
FROM: Collins Center Charter Project Team
DATE: August 25, 2022
RE: Memorandum 12

Overview

This memo (Memorandum-12) addresses topics discussed at the Commission’s August 22 and 23, 2022, meetings. Included in the memo are:

1. New language regarding “Annual Town Meeting”
2. Correction of typo in “by-law” definition
3. Proposed language edits to the definition of “Days”
4. Proposed deletion of the definition of “Precinct”
5. Proposed edits to the definition of “Select Person”
6. Edited version of Communications Section
7. Charter Enforcement discussion
8. Transition provisions

1. NEW LANGUAGE REGARDING “ANNUAL TOWN MEETING”

With the proposed addition of a waivable third town meeting, the Commission asked the Collins Center to clarify which meetings met the definition of annual town meetings. The Commission also inquired about adding a definition for “annual town meeting” in the Charter’s definition section.

Mass. Gen. Laws Ch. 39, sec. 9, provides in part, “the annual meeting of each town shall be held in February, March, April, May or June; and other meetings may be held at such times as the selectmen may order or the charter or by-law prescribe.” While at least one “annual town meeting” must be held between February and June, it is less clear whether additional meetings prescribed in the Charter are deemed to be “annual” meetings under state law. In practice, however, many towns, including Plymouth, treat both their fall and spring meetings as annual town meetings for purposes of notice and procedural requirements. Whether or not these additional meetings are labelled as “annual town meetings,” the charter can establish that the additional scheduled meetings be treated as town meetings.

After reviewing the law, attorney general reports, and other charters, the Collins team does not recommend specifically defining “annual town meeting” in the definition section of its Charter. Instead, the team suggests rewording section 2-4-1 and adding language similar to that used by other towns to designate that the two additional meetings have all the powers of an annual town meeting.

2-4-1 The Representative Town Meeting shall **be scheduled to** meet at least ~~twice (2)~~**three (3) times** 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 **Town Meeting** shall be held during the last four calendar months **of each calendar year**, at a time fixed by by-law. **A third non-mandatory Town Meeting shall be scheduled for January of the calendar year following the Spring Annual Meeting; provided, however, that the third Town Meeting may be waived by a joint majority vote of the Select Board and the COPC (Committee of Precinct Chairs). The vote to waive such meeting shall be taken no later than thirty (30) days prior to such January town meeting.**

The second and third Town Meetings shall be deemed to have all the powers and standing of an Annual Town Meeting.

The budget, as adopted at the spring annual representative town meeting, may be reopened by a citizen-petitioned article pursuant to G.L. c.39, § 10, or any other applicable law.

As provided by G.L. c.39, §10, (i) the Select Board may, at any time upon at least fourteen days prior notice, call a special town meeting, and (ii) the Select Board shall call a special town meeting upon the request in writing of two hundred registered voters, such meeting to be held not later than forty-five days after receipt of such request, and the Select Board shall insert in the warrant therefor all subjects the insertion of which shall be requested by said petition.

2. CORRECTION OF TYPO IN BY-LAW DEFINITION

The current definition of by-law in the Charter uses the word “hereby” instead of “herein” and is corrected as follows:

- a) By-law – The word “by-law” shall mean any by-law of the ~~t~~Town duly adopted by the Town Meeting or continued in effect as provided ~~hereby~~ **herein**.

As a general note, the document should be checked for consistency in the use of capitalizations. The Collins Center suggests that titles of government bodies and officials be capitalized for clarity.

3. PROPOSED LANGUAGE EDITS TO THE DEFINITION OF “DAYS”

The current Charter defines “days” as follows:

- d) Days – The word “days”, unless otherwise provided by law, shall refer to business days, not including Saturdays, Sundays and legal holidays when the time set is less than seven days; when the time set is seven days or more, every day shall be counted. When the last day falls on a Saturday, Sunday or legal holiday the period shall be extended to the end of the next day which is not a Saturday, Sunday, or legal holiday.

In order to instruct clearly on the counting of days for the purpose of time limits, the team suggests replacing the current language with the following for clarity:

- d) Days -- Unless otherwise provided by law, bylaw, or this charter, when a time limit is less than seven (7) days, the word "days" shall refer to business days, not including Saturdays, Sundays, and legal holidays. When the time limit is seven (7) days or more, every day shall be counted. When the last day falls on a Saturday, Sunday or legal holiday, the period shall be extended to the end of the next day that is not a Saturday, Sunday, or legal holiday.

4. PROPOSED NEW LANGUAGE DEFINING “DISTRICT” AND REDEFINING “PRECINCT”

Currently, the Charter provides the definition for “Precinct” as follows:

- i) Precinct-The word “precinct” shall mean the areas into which the Town is divided.

The Commission is considering dividing the Town into two districts for the purpose of electing District Select Board Members. The Charter spells out the meaning of “precincts” and “districts” in the relevant Charter provisions, so no additional definition is required in the definition section.

The Collins Center suggests removing the term Precinct from the definitions page and relying upon the descriptions in the individual Charter sections and under state and federal law.

5. PROPOSED LANGUAGE EDITS TO THE DEFINITION OF “SELECT PERSON”

The Commission requested that the Collins Center team rewrite the definition of “Select Person” in light of the new hybrid makeup of the Select Board. The current definition of Select Person in the Charter is as follows:

l) Select Person – the words “Select Person” shall mean a person elected to the Select Board.

Proposed changes are as follows:

Select Person – the words “Select Person” shall mean a person elected to and currently serving on the Select Board. The definition of Select Person includes both At-Large Members and District Members of the Select Board pursuant to Chapter 3, Section 1, of this Charter.

6. EDITED VERSION OF COMMUNICATIONS

In Memo 11, the Collins team provided draft language for the inclusion of a Communications Section within the Charter, as well as an additional provision within the Town Manager’s responsibilities. The Charter Commission accepted the additional provision within the Town Manager’s section and asked the Collins Center to 1) add some of the language and ideas from the Watertown Charter, 2) incorporate some draft provisions provided by resident Joe Hutchinson, and 3) draft transition provisions to implement Chapter 7.

A large section of the Watertown Charter communication section has already been incorporated verbatim into the Town Manger’s new responsibilities under 3-5-1(w). However, additional Watertown Charter principles are incorporated in the newly proposed language below and in the transition section.

The Collins team continues to recognize the positive ideas and contributions of Mr. Hutchinson and encourages Mr. Hutchinson to work with the Town Manager to implement the new Chapter throughout the transition period.

Many of Mr. Hutchinson's proposals focus on the creation of a Communication Department and the hiring of specific personnel to accomplish its communication goals. The Collins Center does not recommend the establishment of specific departments and positions in the Charter in order to give the Town Manager and executive branch the flexibility to determine how to best implement the goals of the new Chapter.

However, Mr. Hutchinson did propose vision and mission language that would help define the goals of the Chapter without committing to specific personnel decisions. Some of this language has been incorporated into the language below.

CHAPTER 7
COMMUNICATIONS AND PUBLIC ENGAGEMENT

Section 1 Communications and Public Engagement Principles

7-1-1 ~~Communication with residents and the larger community is a basic obligation of government and an essential component of the democratic process.~~ 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 ~~individual residents,~~ other government jurisdictions and authorities, anchor institutions, community-based organizations, civic groups, ~~business communities, corporations, and visitors and individual residents.~~ The Town shall endeavor to provide a positive, forward-looking, public-facing, open, and transparent window to the work of Town government.

7-1-3 The Town shall strive to ensure that communications and public engagement activities are ~~timely, effective, reliable,~~ inclusive, and accessible in order to reach a wide range of residents and organizations, ~~encourage informed participation in local government, and provide a high level of services for the residents of Plymouth.~~

7-1-4 The Town shall strive to ensure that communications align with Plymouth’s comprehensive Master Plan vision and goals.

7-1-5 The Town shall work to monitor and report its progress under this chapter in order to provide transparency, accountability, and the opportunity to communicate expectations and results to the public.

7-1-46 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(z).
[See below]

As noted above, an additional bullet on communications and public engagement was added to the Town Manager’s responsibilities under 3.5.1. This task contains language from Watertown’s Charter:

(z): 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.

The transitional provisions for this chapter are proposed in section 8 of this memo.

7. UPDATED CHARTER ENFORCEMENT LANGUAGE

The Commission continues to discuss the distribution of charter complaints beyond the Town Clerk. The Commission wishes to clarify in the Charter that the complainants must identify themselves, and it seeks to ensure that confidential information, including personnel information, is protected as required by law. Below, the Collins team repeats the language contained in its Memo 11 and adds clarifying language to emphasize the protection of confidential information. The Collins team awaits further direction from the Charter Commission as to which officials should receive copies of the complaints and replies. For consistency, the Collins Center also changed the time for filing a complaint from two months to 60 days.

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. **The written complaint shall be signed by the complaining party.**

2. The written complaint shall be filed within sixty (60) days 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 Clerk shall forward a copy of the written complaint to the Town Manager and the Select Board, to the extent permissible under state and federal law, including the Public Records Law.**

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 **thirty (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, **Town Manager, and the Select Board, to the extent permissible under state and federal law, including the Public Records Law.**

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.

8. TRANSITION PROVISIONS

Below is a draft of proposed transition provisions that includes transition language specifically discussed by the Commission, as well as some suggested procedural language. It is customary for municipalities to update and change transition provisions after the proposed Charter's publication and submission to the Attorney General. This transition language is expected to change based upon decisions made by the Commission at its August 29, 2022, meeting, the results of the Attorney General's review, and further input in the next stages of the process. Some towns simply leave the transition section blank except for a note indicating that additional provisions will be prepared at a later date to address any transitional language that may be needed.

Once the charter is finalized, the Collins Center suggests that the Commission map out the dates and stages of the proposed changes so that transition language can be modified for specificity. The Commission will need to consider questions of timing and implementation. For example, the Commission will need to determine whether elected officials unaffected by charter changes serve out their full terms.

Note that some proposed dates have been edited in the District Implementation Committee section in response to the relatively short turnaround time between the effective date and the next spring election. Additional changes may be required when the Commission maps out the timeline for implementing Charter changes.

CHAPTER 9

TRANSITIONAL PROVISIONS

[Additional provisions will be prepared at a later date to address any transitional language that may be needed.]

Section 1 Effective Date

9-6-1 This Charter shall become effective on July 1, 2023, except as provided herein.

Section 2 Transfer of Records and Property

9-2-1 All records, property, and equipment whatsoever of any Town agency, or part thereof, the powers and duties of which are assigned in whole or part to another Town agency, shall be transferred forthwith to such agency.

Section 3 Continuation of Government

9-3-1 All committees, commissions, boards, departments, officers, and other agencies of the town shall continue to perform their duties until reappointed, re-elected, or until successors to their respective positions are duly appointed or elected or their duties have been transferred.

Section 4 Continuation of Administrative Personnel

9-4-1 Any person holding an office or position in the administrative services of the town, or any person serving in the employment of the town shall retain such office or position and shall continue to perform his duties until provisions shall have been made in accordance with this charter for the performance of the said duties by another person or agency; provided however, that no person in the permanent full time service or employment of the town shall forfeit his pay grade or time in service. All such persons shall be retained in a capacity as similar to their former capacity as it is practical so to do.

Section 5 Effect on Obligations, taxes, etc.

9-4-1 All official bonds, recognizances, obligations, contracts, and other instruments entered into or executed by, with or on the behalf of the municipality before the adoption of this charter, shall continue to be obligations of the municipality and all taxes, assessments, fines, penalties, forfeitures, incurred or imposed, due or owing to the municipality, shall be enforced and collected; and all writs, prosecutions, actions and causes of action, except as herein otherwise provided, shall continue without abatement and remain unaffected by the charter; and no legal act done by or in favor of the municipality shall be rendered invalid by reason of the adoption of this charter.

Section 6 District Implementation Committee

9-6-1 Within ~~two (2) months~~ ~~6 months~~ of the effective date of this Charter, the Town Manager shall create a District Member Implementation Committee to propose a method of devising district representation for two District Select Board members. The Committee shall be selected as follows:

COPC (Committee of Precinct Chairs) – 2 voter appointments

Select Board – 2 voter appointments

Moderator – 1 voter appointment

Town Clerk or designee

Town Manager or designee

9-6-2 The Committee shall review Plymouth's existing voting precincts and create a proposal dividing the existing precincts equally into two districts for the purpose of electing two District Select Board members. In formulating its recommendation, the Committee shall follow all guidelines established by M.G.L. Ch. 54, sec. 6 and any other applicable state laws.

9-6-3 The Committee shall present its proposal for two (2) representational districts to the Select Board within ~~six (6)~~ ~~four (4)~~ months of convening. The Select Board shall act on this recommendation within ~~60 days~~ ~~30 days~~ of receipt, either approving or rejecting the proposal. Should the Select Board fail to enact the proposed recommendation of the Committee, the Select Board shall establish the districts within 30 days of the vote to reject. The inaugural election of district representative on the Board shall occur at the next regular Town election and every three years thereafter.

Section 7 Communications and Engagement

9-7-1 The Town Manager shall be charged with the creation of a transition plan for the implementation of Chapter 7 -- Communications and Public Engagement. The Town Manager shall solicit input into the transition plan from residents, community groups, businesses, elected and appointed Town officials, and Town Department Heads. Within 120 days of the effective date of this Charter, the Town Manager shall provide an update to the Select Board on the transition plan, including the Town Manager's anticipated strategy for fulfilling the requirements of Chapter 7.