

CHARTER AND BYLAW REVIEW COMMITTEE REPORT TO SPRING ANNUAL TOWN MEETING 2023

BACKGROUND

The Charter and Bylaw Review Committee (“CBRC”) was formed as result of Article 25 at 2022 Fall Annual Town Meeting. Including the first meeting on January 10, 2023, the CBRC has met 12 times.

CHARGE OF THE CBRC

The charge of the CBRC is established in the Charter as follows:

Section 7-6 Periodic Review, Charter, and By-Laws

(a) Establishment of Committee - The town meeting shall provide for the establishment of a special committee to be appointed by the Moderator, unless otherwise directed by vote of town meeting. Said committee shall review the provisions of the charter and the by-laws and shall make a report, with recommendations, to the town meeting, concerning any proposed amendments or revisions, which said committee may deem to be necessary or desirable. The town meeting shall establish the committee at least within five years of the time the previous committee was dissolved and, at any time, may vote to extend the term of the committee or the time by which the committee is required to submit a report.

(b) Review Procedures - The committee shall conduct its review with the assistance of town counsel or, if the town meeting so directs, special counsel retained for that purpose. A report, with recommendations, shall be submitted to the town meeting not more than ten months following the date such committee is appointed or as otherwise provided by town meeting vote.”

CHARTER ORGANIZATION

The charter has seven articles as follows:

- Article 1 Incorporation of Powers
- Article 2 Legislative Branch
- Article 3 Elected Officers
- Article 4 Town Administrator
- Article 5 Fiscal Procedures
- Article 6 Administrative Organization
- Article 7 General Provisions

The CBRC is aware of the town governance study committee created by the Select Board. That study committee has a charge specified by the Select Board. The CBRC will likely review the results from this study committee when they are reported and will consider those matters that fall within the mandated charge of the CBRC.

CBRC’S PROCESS

The CBRC is conducting a substantive review of the Charter and the Bylaws. The CBRC has completed an initial thorough review of the charter. This process has

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identified approximately forty matters for further consideration and review. Several examples are provided in the illustrative list of items in Appendix A.

The committee intends to do further research and analysis of items to determine which might result in a possible recommended change to the Charter. The CBRC will be contacting appropriate town officials after Spring Town Meeting to discuss the specific items that might affect or involve those town officials. This outreach is a key part of the CBRC's ongoing work.

After Spring Town Meeting, the CBRC will be evaluating the bylaws in a similar manner. The CBRC has not yet begun a structured review of the bylaws. However, a handful of bylaw related issues have been identified as a result of reviewing the charter.

Not every item that has been found for further review will necessarily involve a change to the charter or to the bylaws. However, as described later in Appendix B, given the number of issues found in the Charter, the committee feels the need for special dedicated counsel to assist in its work. Although a variety of issues have been found for further consideration, no solutions or changes have been developed or evaluated. The next step in the CBRC's process will be to complete the evaluation, consult with affected boards, committees or town officials and develop proposed changes, as appropriate.

Respectfully Submitted:

Paul Griesmer, Chair

Saul Beaumont, Vice Chair

William Proia, Secretary

Robert Awkward

Paul Connolly, Associate Member

Anne Continelli

Donna McKenzie, Associate Member

Harriet Merckowitz

Christine Weithman

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APPENDIX A

Posting in Local Newspaper

Several charter sections require posting in a local newspaper. With the disappearance of newspapers serving the town and reduced circulation of newspapers, the charter might need to specify alternative methods of supplying notice to the citizens.

Parks Commissioners

The MGL appears to specify that when a town does not have an elected Parks Commissioners consisting of 3 to 5 elected members, then the elected public works commissioners serve as parks commissioners. If the town does not have elected public works commissioners, then the Planning Board can serve as the Parks Commissioners provided that the town has voted to have the Planning Board serve in this role. If none of these have occurred, then the Select Board appear to be the Parks Commissioners.

The CBRC needs to determine if the Select Board are the Parks Commissioners and then resolve incompatible language in the charter that makes the town administrator *shall have full jurisdiction over the rental and use of all town facilities except those under the jurisdiction of the school committee*. Parks are facilities.

The Charter also says *The Select Board shall have all of the executive powers it is possible for a Select Board to have and to exercise*.

If the Select Board are the Parks Commissioners, the duties of the town administrator may need revision and the duties of the Parks and Recreation Commission to advise the Town Administrator on recreational program might need to be revised to include advising the Select Board.

Road, Water, Sewer Commissioners

The CBRC is reviewing which executive body has these various ultimate authorities. To the extent that these are inherent powers and duties of the Select Board under the charter phrase *The Select Board shall have all of the executive powers it is possible for a Select Board to have and to exercise*, the CBRC is considering whether these should be specifically listed in the Select Board Bylaw rather than obliquely referenced in this simple phrase in the charter. Specificity could help Select Board members and candidates, and voters of the town have a more detailed understanding of the role of the Select Board. To the extent these duties exist within, for example, the Town Administrator, the Town Administrator section of the bylaw could have that specificity.

Term Limits

With the exception of the Finance Committee and the Council on Aging, there are no term limits anywhere in the charter or bylaws. The CBRC would like to hear from Town Meeting members whether term limits should apply more broadly and if so whether such application would be to appointed officials only or also to elected officials. The CBRC is concerned that forcing term limits on elected officials impinges on the rights of citizens

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to vote for candidates of their choice. On the other hand, having term limits for appointed committees could create more opportunities for more citizens to participate as volunteers in town government.

A somewhat related issue of exclusivity exists for appointed positions. Elected officials, other than town meeting members, may only hold one elected office at a time. Except for the positions of town administrator, finance committee and personnel board, individuals may serve in more than one appointed capacity at a time. For finance committee and personnel board, individuals on those committees may only serve on study committees for town meeting or screening committees. They may serve on no other board or committee at the same time. However, these restrictions in the case of the personnel board have not always been followed. The CBRC will be evaluating whether members appointed to any standing committee should only serve one such standing committee at a time.

Role of Town Counsel

The charter specifies that the Select Board appoint “a” town counsel in the singular. This provision, written in 1980, might be outmoded in an era where legal specialization has proliferated. Although the bylaws allow the Select Board to appoint special counsel for various matters, the CBRC is reviewing whether the town should have several standing legal counsels for specialties such as labor and employment, zoning and land use, licensing, procurement, etc. For example, the CBRC is also considering whether certain elected bodies such as the Planning Board should have their own counsel on a dedicated basis.

Deputy or Assistant Moderator

With the change in the Town Clerk from elected to appointed, there is no clear responsible person to moderate town meeting in the absence or recusal of the moderator. Although the meeting could elect a temporary Moderator, this would consume and waste the meeting’s time. The CBRC is considering whether an elected or appointed Deputy Moderator to assist generally and to preside in the absence of the moderator.

Hybrid Town Meeting

The governor signed legislation at the end of March extending remote and Hybrid Town Meeting options until 2025. During the pandemic, Natick held remote town meetings. The technology used by the town meeting to manage the meetings was temporarily acquired. A hybrid meeting differs significantly from a remote meeting. It has logistical challenges which require investment in new technology and development of new procedures to manage the meeting effectively.

Board of Assessors

A recent study of the town’s finance department recommended that the elected board of assessors be changed to an appointed board, The DOR study did not elaborate a

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reason. Presumably, appointed persons would have technical training in conducting valuations of property. However, the CBRC notes that all board members must take and pass the examination for DOR's ten-part course 101 in assessing. The CBRC also notes that some of the duties of the Board of Assessors are quasi-judicial such as granting exemptions and abatements and settling appellate tax board cases.

Article 6: Treasure Collector, Assistant Treasure Collector and Comptroller

These positions/departments are established by Charter, with the Treasurer/Collector position/department also subject to a General Bylaw provision.

In the context of the Charter provisions, the Committee identified numerous issues. The positions, qualifications and duties of comptroller, treasure collector and assistant treasurer collector are in the charter. The description of duties and qualifications appear incomplete and might better exist in a bylaw. Further, the Committee is aware of the February 2023 Financial Management Review addressed to the Select Board from the Division of Local Services, MA Department of Review [DLS Review] that cited a range of issues in the town's finance department. At present, the Committee elects to await specific discussion of these comptroller and treasure collector matters in the charter pending assessment of the administration's approach to addressing the numerous issues raised in the DLS Review.

Article 6 Bylaw or Administrative Code Changes

The charter specifies that two methods exist for changing the structure, duties, powers or existence of appointed town agencies. The term "town agencies" includes any board, commission, committee or other multiple member body, department, division, or office of the town. The two methods to make changes are by bylaw or by administrative code change. In the first method, the town meeting votes a bylaw to create, alter, amend, or revise the duties of any appointed agency or office. In the second method, the town administrator proposes an administrative code change – applicable only to positions reporting to the Town Administrator. Such a change must be voted up or down by town meeting without amendment. The CBRC is evaluating which town agencies may have been created without either method and what implications exist as a result. The CBRC is also looking at whether these provisions of Article 6 should exist or be changed to meet current practices.

Attendance of All Town Employees at Town Meeting

The charter requires that all town agencies (i.e., every office, department, official etc.) must have a representative attend each and every session of town meeting to answer questions. This provision requires numerous town employees, after a full day's work, to attend every session of town meeting even when no reasonable prospect exists that any matter involving their department will arise. In the modern era when people have cell phones and when the order of business is established and known in advance, the CBRC is looking at ways this charter requirement can be relaxed or modified so that

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town employees are not forced to attend sessions of town meeting when their department is not involved.

Charter Article 2-9 vs. Bylaw Article 10 Section 1

The CBRC is evaluating the potential inconsistency and possible confusion in these two sections. The charter is the superior document. The Charter says *“Section 2-9 General Powers All powers of the town shall be vested in the representative town meeting, except as otherwise provided by law or the charter. The town meeting shall provide for the exercise of all powers of the town and for the performance of all duties and obligations imposed upon the town.*

The Bylaws say *“Section 1 Scope of Powers and Duties*

In accordance with Section 3-2 of the Charter, the Board of Selectmen shall be responsible for the general direction and management of the property and affairs of the Town in all matters not otherwise provided for by law or by these by-laws.

Article 3-2 of the Charter says *The Select Board shall serve as the chief policy making agency of the town.* However, Article 7 of the charter makes clear that town meeting is not a town agency but is a distinct and separate body.

Article 1 of the Charter specifies that *Section 1-3 Division of Powers The administration of all the fiscal, prudential and municipal affairs of the town shall be vested in an executive branch headed by a Select Board. The legislative powers of the town shall be exercised by a representative town meeting.*

The CBRC is considering ways to address an area of confusion regarding these provisions.

Charter Article 3-1-e

This provision of the charter says *Coordination - Notwithstanding their election by the voters, the town officers named in this section shall be subject to the call of the Select Board or the town administrator, at all reasonable times, for consultation, conference and discussion on any matter relating to their respective offices.*

Based on concerns brought to its attention, the CBRC is evaluating whether this provision should include any elected or appointed officer of the legislative branch (i.e., Moderator and Finance Committee). The CBRC has been made aware of various efforts, in the past, to dictate to the Moderator and or the Finance Committee.

Planning Board Terms

The charter specifies that Planning Board members are elected for a term of five years. Other than Library Trustee, no other office runs for more than three years. The CBRC is examining whether the Planning Board terms should be three years with as many as two members elected every year. The CBRC has been made aware that the five-year term may be a deterrent for people running for office.

Ties in Write in Candidates for Town Meeting and the Caucus Procedure

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The CBRC has heard from the Town Clerk that the process for resolving ties for write-in candidates for town meeting and the caucus process is impractical and excessively time consuming. Under our charter, a lottery must be conducted for any ties for town meeting. All persons receiving the tie vote must be contacted and allowed to witness the lottery. Often the only way to contact people is by mail or constable since no one knows their email or cell phone number. Under the law, write in candidates must accept election after the lottery. Often the person selected by lottery does not want the job and the process repeats. The CBRC is evaluating what changes might be made to preserve democracy, but also establish a more efficient process.

Size of Town Meeting

The size of town meeting at 18 members per precinct is set in the charter.

The CBRC would like to hear from town meeting members and from citizens as to whether a smaller town meeting (such as 15 or 12 members per precinct) might be worthwhile in terms of improving attendance, reducing vacancies, making the role of town meeting member more important or any other aspect.

Town Administrator or Town Manager

The CBRC is evaluating whether the job of the town Administrator should be changed to a town manager and what such changes might involve and what the pros and cons might be.

Review Standards for the Town Administrator

The charter requires that the Select Board review the town administrator annually. The town administrator interacts with numerous other boards and committees and also interacts with town meeting. The charter and the bylaws have no minimum standards or criteria for the review including dealings with other boards and town meeting. Given the importance of the position of town administrator, the CBRC is evaluating whether certain minimum standard should exist for the review and whether the review should include consideration of the Select Board conducting review on behalf of the town and not just on behalf of the Select Board.

Financial Condition of the Town

The charter requires the town administrator to keep the Select Board fully informed on the fiscal condition of the town. The CBRC is evaluating whether and how this obligation should include Town Meeting.

Removal and Suspension of the Town Administrator

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The charter specifies that the town administrator can only be suspended or removed by a 2/3's vote of the Select Board with 100% of the Select Board attending. With a five-person board, this translates into a 4/5ths vote which cannot be taken if one member is absent. The 2/3rds provision was written in the original charter when the Select Board had only 3 members. A simple majority of a 3- person board is also a 2/3rds majority. When the Select Board was increased to 5 members in 1997-1998, the threshold effectively changed from simple majority to 4/5ths.

The original provision was supposedly written as a protection against capricious actions against the town administrator. However, the CBRC also notes that a simple majority of 3 can hire the town administrator or renew the town administrator's contract .. he CBRC is evaluating whether these provisions of the charter should be revised and looks forward to meeting with the Select Board in this regard.

Three Ways to Amend the Charter

Three ways exist to change a charter. Option 1) a 2/3rd's vote of town meeting followed by voter approval; Option 2) charter commission or Option 3) special legislation.

In the first method, Town Meeting may vote by 2/3rds on any change except the composition, mode of election or appointment, or terms of office of the legislative body, the select board or town manager. In the second method, a charter commission, once created, can consider every issue in a charter and completely revise an entire charter. A charter commission is created after petition by at least 15% of the registered voters, and subsequent voter approval to authorize the creation of a charter commission and to elect commissions members. The town used the third method, in the mid 1990's, to change the number of members on the Select Board from 3 to 5. An initial vote of Town Meeting was followed by passage of special legislation. This was then approved by the voters.

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APPENDIX B

There are four principal reasons for seeking special counsel.

The current town counsel is a legal generalist. CBRC believes that the services of a specialist in charter and bylaw matters are advisable given the number and nature of the issues being considered and evaluated.

The current town counsel serves many roles and has multiple demands from many town officers, boards and committees including Town Administrator, Select Board, Town Clerk, Superintendent of Schools, Building Commissioner, Director of Public Works, Director of Public Health, Town Moderator, Comptroller, Town Treasurer/Collector, Director of Recreation and Parks, Chief of Police, Fire Chief, Community Development Director, and Chairman of the following Boards or Committees acting with the authority of a majority of their members: Board of Assessors, Board of Appeals, Planning Board, School Committee, Finance Committee, Board of Health, Conservation Commission, Retirement Board, Personnel Board and Recreation and Parks Commission. Frequently, multiple demands for town counsel's time create scheduling, prioritization, and response time issues. Given the number of issues being considered, the CBRC needs a dedicated resource to complete its work.

Special counsel would supply a fresh and an added perspective. Special counsel would also provide knowledge of other communities beyond the client list of current town counsel. The current town counsel firm has served Natick continually for over 30 years. The added perspectives and knowledge of special counsel would help the charter and by law review. Current legal counsel would not be completely separated from the review process. If and when the CBRC formalizes a prospective change to the charter and bylaws after consulting with a particular board, committee or officer affected by such potential change, that board, committee, or officer would have the ability not only to hear what special counsel has told the CBRC but also what town counsel may tell that board, committee or officer.

One of the issues being considered by the CBRC is changing the charter and bylaws regarding town counsel itself. Section 3-2 -c of the charter currently authorizes the Select Board to appoint "a town counsel" in the singular. Although the bylaws allow the Select Board to appoint special or interim counsel for specific matters (such as bond counsel or litigation counsel), the CBRC is examining whether the town should have more than one standing legal counsel for specific areas given the complexities in law and the various specializations in the legal profession since 1980 when the original town counsel provision was written. Possibilities under consideration are standing counsel for employment, zoning and land use, and procurement contracting. In this regard the CBRC is picking up where the Town Counsel Study Committee left off in August 2019 when it abandoned its work. The CBRC believes that analysis of possibly dividing the role of town counsel into specialist parts should not be advised by the incumbent town counsel.

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The appropriation request was developed after interviewing four firms who a) submitted responses to the town's RFP for legal services as town counsel in 2020 and b) who were not picked by the Select Board. These firms reviewed our charter and bylaws before providing a range including a top and range of costs. The top end range was used to avoid having to come back to Town Meeting. Any unused funds would be returned to free cash. Two firms read the list of CBRC members and note that one member is an attorney who has previously served other communities as a town counsel. Although this member now practices in real estate and contract law, these two firms indicated that if questions to them were framed by an attorney of this member's experience, then their estimates would be significantly lower. The CBRC looks forward to the continued service of this member but cannot guarantee this person will continue to serve through the dissolution of the CBRC. To the fullest extent possible, the CBRC will work to spend less than the requested amount.