

ASHLAND CHARTER REVIEW COMMITTEE MINUTES September 20th, 2016

Ashland Town Hall – Rooms B & C

Members present: Chairman Roberta Soolman (Roberta), Vice Chairman Ken Rush (Ken), Steve Greenberg (Steve G), Alexis Christopher (Alexis), Joe Magnani (Joe), Betsy Emberley (Betsy), KG Narayana (KG who arrived at 7:08 pm)

Guests: Michael Ward (Mike), Director of Municipal Services and Tanya Stepasiuk (Tanya), Performance Management Analyst, both from the Edward J. Collins, Jr. Center for Public Management at UMass/Boston

Resident: Steve Morgan (arrived at approximately 7:30 p.m.)

Call to order: 7:02 pm.

1. Welcome and Introductions: Roberta welcomed everyone and asked if anyone objected to having the meeting recorded to make it easier to verify details for the purpose of the minutes. There were no objections.

2. Discussion with Mike and Tanya: Roberta suggested we go through their memo dated September 16, 2016 and address the high priority research issues first. Mike expressed that they'd like to leave with follow up questions to research and enough clarity to help us draft language.

High Priority: Research Topics for Collins Center

- 1. Disciplinary actions against members of elected/appointed boards (unappoint, censure, sanctions, removal for absenteeism) and template for process and language**

The project team understands that this topic is particularly pressing for the Town. This question involves two different categories of board members – those that are elected and those that are appointed.

For appointed positions, there is already a section in the Charter about absenteeism, but there is not a mechanism for removal for other reasons. Mike referred to Appendix B of the memo which has an example from Provincetown and another example of text from Salisbury that he handed out. Tanya said that most are based on the appointing authority removing members and use language to ensure it's a fair process. She'd want to consult with our Town Counsel but, in the absence of a removal process, the appointing authority may have the power to remove.

Steve G asked about collective bargaining language. Mike said that, given that concern, the Provincetown language is a better example. Roberta explained why recall and code of conduct are priorities for us in Ashland at this time. Mike articulated that recall for elected officials is supposed to be

difficult without being too onerous, he has seen it tipped both ways, and it seems our Charter is tipped to make it too difficult. Tanya mentioned that we don't want to target only the current circumstances, but we do want to craft our language to be specific to our town.

Ken and Steve G asked for clarification that the first steps involve the appointing board, but asked when and how the member in question gets notified. Alexis cited the Capital Improvement Committee, and asked how a fully membered committee would push a concern to the Board of Selectmen and what mechanism they would use. The Capital Improvement Plan is referenced in the Charter, but the Capital Improvement Committee is not, it is in the bylaws.

Mike suggested adapting the Provincetown language so it applies to Ashland. Ken said he likes that the Salisbury example mentions removal for "good cause." Joe wondered if "good cause" is the same as just cause." Tanya said she thinks they seem like they'd probably be the same terms, but it would probably be best to use the same language. It's an issue to check with Town Counsel.

Steve G pointed out that there may be a board with a combination of members who are appointed and elected. Discussion ensued. KG pointed out that only two of the 72 committees he found were a combination. Mike said it's doable, but it's not common. Ken asked if the fact that it's not common could get us in trouble. Tanya pointed out that it could be a problem in terms of perception with the public, but would be all right with the Attorney General's office. Removal of a member, even on a blended board, depends on whether the member was appointed (the removal authority would accrue to the appointing authority) or the member was elected (the removal would accrue to the electorate).

Roberta asked them to elaborate on why Charters generally do not have provisions for censure and sanctions. Mike said that some boards write their own code of conduct. Tanya asked what we envisioned and what the purpose would be for including censure in the Charter. Steve G said it falls under "if you can hire, you can fire". Joe explained they would provide us with tools to keep boards on track to get their work done. Roberta asked about a suspension for an appointed member. Mike wondered how that would look and how the board would come together after a suspension when it would likely be very awkward. Tanya wondered if that was putting too many hoops in place for the purpose of providing middle ground. Discussion ensued. Steve G suggested Board decisions would still be driven by the majority vote. Further discussion ensued. It was suggested that the committee, by a vote, be able to bring a request for a removal to the appointing authority. Mike brought up that we want to avoid censuring a board or members of a board with a policy making role so that a member with a minority opinion or a board with a controversial opinion is not being censured for its opinion instead of for egregious conduct because it could damage the board's ability to function.

They will review the draft Code of Conduct and make suggestions for revision or for sample language from elsewhere. They suggested referencing a Code of Conduct but not including it in the Charter.

2. Recall process for elected officials with template for process and language

Mike informed us that, while we're not the only ones who require a 2/3 vote for a recall, the majority of town charters in Massachusetts require a majority. If we recommended a change to a majority, he would suggest we include a minimum voter turnout to protect the will of the people. Tanya recommended we look at history of voter turnout to determine a number that is reasonable. Roberta explained that she was tasked with looking at recall in other town charters and found that ours is on the

more onerous side and is very confusing in terms of the timeline and steps required. Mike said that most charters use the same recall language so it's approved by the Office of the Attorney General. He also said they can provide us with a template for the order of steps, a timeline and decision points. Ken asked if they would provide guidance for a range regarding the numbers, and Tanya said they would.

3. Residency and/or citizenship requirement for appointed boards; town employee eligibility for appointed boards

We had a discussion to define absenteeism and residency requirements. Tanya would like to see the residency requirements specifically outlined in the Charter so if someone moved out of town and was not attending meetings, it would be considered a "vacant" position which could then be filled. Roberta asked if other Charters require a resident to also be a citizen and/or registered voter in order to be appointed to a committee. Tanya will verify if residents who are not citizens can serve on appointed boards. Mike brought up how many towns find it challenging to identify volunteers to serve on boards and committees. We discussed taxation without representation and being inclusive considering we do have many residents who are not citizens but do have areas of expertise they could contribute.

4. Town Manager holding elective office elsewhere or appointive office elsewhere in regular or ex-officio capacity

Roberta explained that we want to include language that makes it absolutely clear that the Town Manager can be appointed to serve on town boards and committees or regional boards and committees if the Board of Selectmen feels he/she would provide necessary expertise and it would be important to the performance of the town. Mike feels a slight revision of the sentence regarding the Town Manager's duties can make it clearer.

Steve G pointed out that the same challenge exists for the Selectmen, and he was struck by the state code of ethics that says the Selectmen are supposed to be Selectmen and not serve on other boards. Tanya expressed that she believes this is meant to be applied to other elected boards. Discussion ensued. Mike asked if the current Selectmen serve as liaisons to other boards. Joe said they are if they take an interest in the work of the other boards. He stated there is consensus on the Ashland Board of Selectmen that the Town Manager should be allowed to serve on other boards. There is not consensus regarding the Selectmen serving on other boards. Mike suggested that we could include something in the Charter to prevent Selectmen from holding two elected offices within the town.

5. Determining whether or not ex-officio appointments on boards/committees can vote, and what criteria should be used to decide whether or not they can vote

Typically, ex-officio members do not vote although there are instances where ex-officio members of a board or committee can vote if specified. Occasionally, a charter will state that an ex-officio member may only vote in the case of breaking a tie. The ex-officio member would not be included in determination of a quorum. Roberta asked what the difference is in having the Town Manager attend a meeting as an ex officio member or having him/her attend as a staff member. Tanya explained that there isn't much difference unless you want to require him/her to attend. At Selectmen meetings, the Town Manager can't vote, but he/she does facilitate and is permitted to speak to provide additional information. He/she has a "voice" but not a "vote".

6. Town-wide code of conduct for elected/appointed boards and template for language

This was covered during the discussion of the first item.

7. Whether or not Finance Committee members should be allowed to serve on other committees/boards, either elected or appointed, ex-officio or not, voting or not

Mike gave some history of Finance Committees, stating that historically they have been a standing committee of Town Meeting and the legislative branch's check on the executive branch. He pointed out that some Charters (e.g., Maynard) prohibit Finance Committee members from serving on other committees; however these Charters do sometimes make an exception to permit them to serve on a Charter Review Committee, possibly because they would bring some expertise. It also not seen as a conflict of interest because the Charter Review Committees don't have a budget that has a direct impact on other town committees or departments.

8. Vetting process for appointments

We explained that some concern has been expressed by residents regarding the lack of transparency in the appointment of Finance Committee members by the Town Moderator. Discussion ensued. We could recommend that a committee, comprised of the Town Moderator, Chair of the Board of Selectmen and Chair of the School Committee, makes the appointments. We could also recommend that the Committee is still just appointed by the Town Moderator, but the process is more transparent.

Alexis brought up the one-year term of the Town Moderator, and wondered if that's a typical term length. Mike said they'd look into it. Tanya informed us that most towns have a similar process to vet appointed board members. Mike said they'd do some more research to see if other Boards of Selectmen have an internal vetting process that's more thorough. Alexis described the process the Council on Aging uses. Mike suggested they could look at temporary appointments as part of the vetting process.

9. Special provision to specify what constitutes a quorum for committee/board attendance and votes (e.g., majority present or majority as constituted), and template for language

Roberta explained the controversial votes that some committees have had to re-vote certain decisions, not because the subject was controversial, but because of a lack of clarity regarding the definition of quorum and what constitutes a majority vote. KG found a definition in an Open Meeting Law complaint from another town and will forward what he found to Mike and Tanya. Steve Morgan brought his laptop to Roberta and had pulled up an Open Meeting Law definition of a majority vote which is a majority the board as constituted, not a majority of those present at a meeting, unless otherwise specified in a town's Charter. Tanya will research the issue, but thinks it sounds correct as cited.

Ken asked who can vote on accepting minutes of a meeting, i.e., if it is limited to only those who were present at the meeting for which the minutes were taken. For example, if a quorum is 5 members but not all 5 were present at the meeting for which the minutes were taken, the question is if there a sufficient number of members to vote on the minutes. Tanya will research it for us. The solution may be a procedure that needs to be provided to boards and committees as a clarification of the Open Meeting law and the town's Charter.

10. New section requiring bylaw review after Charter revisions are adopted to maintain harmony between Charter and bylaws

Mike said it is very common to include a provision for a formal bylaw review committee to be established six months after the Charter changes go into effect. He will work on some draft language for us. Roberta stated that we're unsure if a bylaw review has been done before after a new Charter has been accepted to be sure the bylaws are in harmony with the Charter. She was also concerned that it be done on an ongoing basis and before bylaws come to Town Meeting for a vote. As a cited example, the Capital Improvement Plan is viewed by some as not in sync with the Charter Improvement Committee bylaw. However, Mike was very clear that the bylaws must conform to the Charter and that the Charter always takes precedence over bylaws.

Mike posed some questions about Section 5-3 regarding the temporary absence of Town Manager. Many other town Charters have provisions to address this issue. He and Tanya can draw up so language for us to consider.

Mike suggested several things to deal with next: the detail for Human Resources Management System, the plan of reorganization the Town Manager proposes, perhaps too many details regarding the budget process. Steve G asked Roberta if the budget items were covered in the discussion with the Town Accountant, and she said they were.

Roberta pointed out that the Town Manager is the Police Commissioner, which is not mentioned in the Charter but is assumed to be in the Town Manager's job description. We expect to discuss the issue when the Chief of Police comes to our next meeting. Joe described some related history.

Lower Priority: Other Topics Charter Review Committee Has Discussed To Date and Can Make Recommendations Based on Committee's Research

1. Term of Town Manager contract

Mike thinks the way we have it worded is fine. It can be a marketing tool for recruiting when it's time to hire a new Town Manager. Ken stated that both the current and previous Town Managers pointed out that it's attractive to have the possibility of being offered a five-year contract.

2. Whether Board of Health, Planning Board, and Library Trustees should be elected or appointed

Tanya explained that we should weigh the pros and cons for each of these boards. Joe asked why some places drop the elected boards. Mike explained that it's hard to find people to run for office. He encouraged us to review our own electoral history. If an elected position has a long history of being uncontested, it's basically a self-appointed by default. A lot of people, who are willing to be appointed to a board are unwilling to run for election. Appointing certain boards allows more careful vetting when specific expertise is desirable. There is a slow but steady march across the state to convert boards from being elected to appointed, although Library Trustees very rarely go from elected to appointed. Roberta asked about blended boards. Tanya shared that a colleague with decades of experience cautions against

it in large part because it can cause problems between the elected and appointed members. She and Mike will pull together more data and think about it for our next meeting with them. Alexis pointed out that there are many people who are residents who could not run for an elected position because they are not citizens but are highly qualified if they were to be appointed to certain boards.

3. Revise process for appointing Finance Committee

We discussed this earlier in this meeting.

4. Revise Capital Improvement Plan process

Roberta explained that the Charter does include information about the Capital Improvement Plan, but does not mention the Capital Improvement Committee which was established through a town bylaw voted at Town Meeting. Tanya reiterated what Mike said earlier in that the Charter trumps the bylaw. Discussion ensued.

Preparation for next meeting with The Collins Center:

Mike asked that we provide some additional background on the problems we're looking to solve for lower priority items 5-10 before we meet with him and Tanya again. Roberta asked if they could do the research on our election history (e.g., contested vs. uncontested races and turnout) because our Town Clerk is focused on the presidential election. Mike said they can collect it if it's on the town's website. Ideally, they'd like to have at least ten years of history. Steve G said it would be nice if we could include two presidential elections in that data.

At 10 pm, KG moved to continue the meeting past the posted end time of 10 pm, Alexis seconded, motion passed 6-1-0 (Betsy voted no).

Mike, Tanya, and Steve Morgan left the meeting.

3. Approval of minutes: For the minutes of the meeting on August 23rd, KG moved, Joe seconded and the motion to approve the minutes passed 4-0-3 (Betsy, Ken, and Joe were absent). For the minutes of the meeting on September 12th, KG moved, Alexis seconded, and the motion to approve passed 5-0-2 (Ken and Steve G were absent).

4. Other business: None today.

5. Next meeting: September 27th

Adjourn: KG moved, Steve G seconded, and the motion to adjourn passed 7-0-0 at 10:18 pm.

Respectfully submitted by,
Betsy Emberley

Please note: these minutes are a representation of the actions and discussion at the Charter Review Committee meeting and are not a verbatim transcript.

Documents used at this meeting:

1. Memo1 to Ashland Charter Review Committee Responses to Priority Questions.09.16.16 (doc)
2. Ashland Charter Document with Center Notes1 (doc)
3. Ashland Comps - Boards and Committees (xls)
4. Framework for considering elected and appointed offices.05.12.11 (pdf)
5. Salisbury document distributed by Collins Center