

CHARTER REVIEW PUBLIC FORUM VOTED MINUTES

Thursday, June 13, 2019 - 5:30 P.M.
Hermann Room - Falmouth Public Library
300 MAIN STREET
FALMOUTH, MA 02540

Members Present: Peter Clark, Chairman; H. Carter Hunt; Daniel H. Shearer; Charles McCaffrey; David Garrison; Judith Fenwick; Frank Duffy, Esq., ex-officio

Members Absent: Flannery du Rivage Rogers

Also Present: Michael Palmer

At 5:30 Peter Clark called the meeting to order. Committee members were introduced. Peter Clark explained that the attendees had available to them a summary of the Charter and 30 preliminary recommendations formulated by the committee presented in order of Charter sections and grouped around 6 themes: work of governmental bodies, gender neutrality, consistent terminology, web-based distribution, executive authority, aligned planning.

Peter Clark explained that the purpose of the CRC was to recommend amendments in Charter language based on suggestions of the public and officials. The goal was to clarify the meaning of Charter language and create more effective government operation. He noted that the CRC cannot alter the 1990 approved structure or suggest ideas other than amendments.

Carol Murphy expressed concern that there would be bundling of some of the Articles. Peter Clark said that David Viera had promised to work with the committee on the Articles so that they could be easily unbundled should town meeting members have concerns.

A review and discussion of the preliminary recommendation followed with items taken in number order, except for those that were related by a theme:

1) C1-3: One of the underlying CRC themes has been attending to the importance of citizen participation on “governmental bodies” (committees, boards, and other groups) and clarifying how they are treated in the Charter. At C1-3, where the form of government is named, we recommend adding recognition of these bodies as a part of the basic form of government. See article language in #2 below. (On this theme see also the following numbered recommendations--3(a), 9, 11, 14, 24, 25, and 28)

Carol Murphy commented that she did not like the proposed change since it was confusing in situations where there were paid governmental employees and volunteer committee members.

2) C1-3: A second concern of the CRC has been to make the Falmouth Charter gender-neutral. At C1-3, and throughout the document, we recommend using

“Select Board” rather than “Board of Selectmen, and “member(s)” rather than “selectman(men)” (Related to the concern for gender-neutrality, see also 3(c) and 10)

C1-3 Form of government.

This Charter provides for the Representative Town Meeting/Selectmen **Board**/Town Manager form of government, and it shall be known by the title "Falmouth Home Rule Charter.” **Governmental bodies, both elected and appointed, may be used to perform public purposes.**

No comment offered.

3) C1-6: A third CRC theme has been to enhance the clarity and consistency of terminology. To increase the awareness of significant terms, we recommend creating a new C1-6 Definition section which places this information more prominently. Within the new section we recommend several changes:

(a) Apply “governmental bodies” as the term for all committees and other working groups and add a sentence to differentiate the formal bodies that work with Town Meeting and the Board of Selectmen from those that are not governmental bodies because they work with the Town Manager and other officials. (See also number 9 on C2-9))

(b) Apply “Local Comprehensive Plan” rather than “Master Plan” as the name of the Town’s principal planning document. (See also number 17 on C4-6C)

(c) Under “Word Usage,” delete reference to the use of “He/His” as unnecessary if a change is made at C2-14 (See also number 10)

(Related to the theme of clarity/consistency, see also the following numbered recommendations--4, 9, 14, 17, 23)

C1-6 Definitions.

GOVERNMENTAL BODY

Any A multi-member **body** board, committee, commission or subcommittee thereof within the Town, however created, elected, appointed or otherwise constituted, and established to serve a public purpose, whether or not specifically mentioned in this Charter, with the exception of Town Meeting. **Any multi-member body appointed by a public official to serve the purposes of the official is not considered a governmental body.** The provisions of the Charter apply to all governmental bodies within the Town unless specifically exempted herein.

MASTER PLAN LOCAL COMPREHENSIVE PLAN

The Master Plan, sometimes referred to as t The Local Comprehensive Plan, is the community vision of the future of the Town, including issues of growth, economic and community development, historic community character, civic improvements and resource conservation.

B. Word usage.

(1) He/His. The masculine noun and pronouns used in this Charter shall be taken to mean both the masculine and feminine.

(2) Counting of Days. "Working days" shall include every day, except Saturdays, Sundays and holidays. "Days" shall mean calendar days.

Concern was expressed that Finance Committee members were not permitted to act in a voting capacity on advisory committees. Another opinion expressed was that the Finance Committee members should not be permitted to vote on advisory committees. The CRC was asked to consider this issue.

It was explained that the town manager may have groups to advise and these groups may be exempt from open meeting law.

4) C2-1: To achieve simplicity and consistency, while still respecting the representative form of Town Meeting, we recommend amending C2-1 and then deleting the word "representative" from "Representative Town Meeting" at C3-1 and wherever it occurs thereafter. (See article language in #5 below.)

No comment offered.

5) C2-1: To correct an historical inaccuracy, we recommend amending C2-1 to cite the right source for the maximum number of Town Meeting members.

Article II The Representative Town Meeting

C2-1 Composition, membership and eligibility

A.A Representative Town Meeting, **hereinafter called Town Meeting**, of not more than two hundred fifty-two (252) members shall be elected for three-year overlapping terms. The total number of Town Meeting members shall be fixed by bylaw **Chapter 349 of the Acts of 1935 and any amendments thereto.**

Article III The Board of Selectmen

C3-1 Composition and terms

C.Any compensation for the members of the Board of Selectmen shall be determined by the Representative Town Meeting acting on an annual recommendation of the Finance Committee.

No comment offered.

6) C2-3: To correct an inconsistency between Charter language and current practice relative to action on the capital improvement budget and to provide future flexibility in placing budget issues before Town Meeting, we recommend amending C2-3A and B. Language is also amended to correct the erroneous use of "bond issues."

Article II The Representative Town Meeting

C2-3 Procedures.

A.The Town Meeting shall be held **twice** annually: in the spring, on a date to be fixed by bylaw, **and in the fall on a date chosen by the Board of Selectmen.** to consider and act upon, with or without amendments, all proposed operating and capital improvement budgets, bond issues and all other issues that may properly come before the Meeting.

B.The Town Meeting shall also meet annually in the fall, on a date chosen by the Board of Selectmen, to consider and act upon matters that may properly come before the Meeting. **These meetings** and will consider and act upon, as required, with or without amendments, all proposed operating and capital improvement budgets, **appropriations, borrowing** bond issues and all other issues that may properly come before them.

No comment offered.

7) C2-4: In response to a concern from the Town Clerk, a fourth concern of the CRC seeks to use the method of distribution of public documents by which the greatest number of citizens have access, while still allowing other methods, and avoids the expense of purchasing newspaper space. We recommend removing wording requiring publication in a newspaper within the town and replacing with the Town website at C2-4 regarding Town Meeting attendance records. (See also number 15 regarding warrants; and number 22 regarding Town ballots.)

Article II The Representative Town Meeting

C2-4 Attendance Records

A record of those in attendance shall be kept by the Town Clerk. Such record shall remain open until the end of each session to enable latecomers to be recorded as present. The attendance record shall be a public record, shall be posted in the Town Hall, and published in the annual town report and published **on the Town website**.in a newspaper of general circulation within the town.

Many comments were made that expressed concern with not publishing documents in the Enterprise. It was noted that a majority of households in Falmouth subscribe to the Enterprise, some people do not have easy internet access, the town web site is not that user friendly and it does not have feedback and commentary that the newspaper has. Michael Palmer said he would be happy to increase the budget for publication in the newspaper. A concern was expressed about increased font size increasing the cost of publication.

8) C2-6: To unify in one location the information about the moderator's responsibilities, we recommend creating a new C2-6 D, E, F to receive deleted language from C4-2 B, C, D. with no actual change in wording.

Article II The Representative Town Meeting

C2-6 Moderator.

A.A Moderator shall be elected as provided in § C4-2.

B.The Moderator shall preside at all sessions of the Town Meeting and shall have no vote unless the members present and voting are equally divided.

C.The Moderator shall establish and promulgate written procedures for the orientation of new Town Meeting members and shall conduct an annual meeting at which time said orientation shall take place.

D. The Moderator, in consultation with the Town Clerk, shall prepare simplified rules of parliamentary procedure, which shall be made available to all elected Town Meeting members.

E. The Moderator shall appoint ad hoc committees of the Town Meeting as provided in § C2-12B.

F. The Moderator shall preside at any public hearing to discuss the suspension or removal of the Town Manager

No comment offered.

9) C2-9: To implement adopting the term “governmental bod)” as the general term for all forms of multi-member groups working for the public purposes of the Town and to replace all generic terms for such groups in the Charter with “governmental body(ies)” we recommend amending C2-9 and elsewhere through the document.

Article II The Representative Town Meeting

C2-9 Compulsory attendance

A. All appointed town officers, the Town Manager, department heads, Chairpersons of **governmental** multimember bodies or their designated representatives shall attend Town Meeting sessions when the warrant includes articles relating to their office or function.

No comment offered.

10) C2-14: To achieve gender neutrality, we recommend removing ‘his designee’ at C2-14, and using the term “watcher” for ‘watchman.’”

Article II The Representative Town Meeting

C2-14 Watchman Watcher of the Warrant

The Moderator, **or a person designated by the moderator** or his designee, shall act as the Watchman Watcher of the Warrant and shall present a written progress report on each passed action article of Town Meeting to be printed in the Annual Town Report.

No comment offered.

11) C2-15: To place the Finance Committee clearly within the “legislative branch” of Town government, we recommend creating a new C2-15 A and B and deleting C8-2A and B, with new language for A and no word change for B.

Also, to allow expeditious filling of routine and vacancy openings on the Finance Committee and to keep the process within the “legislative branch,” we recommend adding new language as C2-15C. Also, to provide a clear definition of the role of the Finance Committee, we recommend creating a new C2-15 D.

C2-15. Finance Committee.

A. The Finance Committee shall consist of fifteen (15) members, who shall be nominated by the Town Moderator and from the floor of Town Meeting, and

elected by Town Meeting for three year overlapping terms at the Annual Town Meeting in the spring of each year. Current members of the Finance Committee shall continue to serve until their terms expire.

B. No member of the Finance Committee shall be an employee of the town or hold any other elected or appointed town office, except the office of Town Meeting member. Members of the Finance Committee may serve on advisory boards in a non-voting capacity.

C. Any vacancy in the membership of the Finance Committee shall be filled as follows: replacement members shall be nominated by the Town Moderator and from the floor of Town Meeting and elected by Town Meeting to complete the term of the departed member at any Annual or Special Town Meeting.

D. The Finance Committee shall review and make recommendations to Town Meeting on 1) the town budget and any amendments thereto and 2) articles requesting an appropriation of money or having financial consequences for the Town. It shall approve any transfers from the reserve fund. For these purposes, the Finance Committee may require the attendance of any department head or other town official and take public comment.

E. Finance Committee meetings shall comply with the Open Meeting Law.

“Approving grants’ was inadvertently left out.

15 members of the Finance Committee may be a good amount since the committee may otherwise be shorthanded.

Nominations for the Finance Committee may be made from town meeting floor.

12) C3-2: As part of renaming the Board of Selectmen to achieve gender neutrality, we recommend adding the following language: And also, a fifth unifying theme of the CRC relates to providing the Board of Selectmen clear and consistently-stated authority in their executive functions; see also numbers 16, 21, and 26.

C3-2E. The Select Board shall have all the powers and authority of a Board of Selectmen, and its members and officers shall have all the powers and authority of members and officers of a Board of Selectmen, under any general or special law of the Commonwealth of Massachusetts, any bylaw, rule or regulation of the Town or any contract or agreement of the Town.

No comment offered.

13) C3-3: A sixth concern of the CRC is the importance of promoting discussion between the Board of Selectmen and other governmental bodies to achieve the strongest alignment of plans and integration of thinking and decision making. The Charter too often sets specific frequencies for events or processes to achieve this end and these targets are often not met. The CRC feels that the efforts of the current Board of Selectmen to hold joint meetings

with appropriate groups should be captured in Charter language. Therefore, we recommend amending C3-3B Policy Leadership to achieve a different approach. (Relative to scheduling for aligning and exchange, see numbers 14, 17, 18, 19, and 29)

C3-3 Policy leadership.

B. The Board shall, **before the start of each calendar year, publish an annual schedule for** hold a joint meeting, at the very least twice per year, with the Planning Board devoted exclusively to consideration of the town's Master Plan and other planning initiatives. **The Board shall also hold joint meetings, as needed, on other significant policy initiatives with any other governmental body.**

Several commentators favored specifying the number of meetings noting that numbers can be motivating and beneficial. Other committees should have specified meetings with the Board of Selectmen as well.

14) C3-6: To provide consistent terminology and to avoid setting time targets that cannot be met, we recommend two amendments to C3-6C.

C The Board shall also have the power to appoint **other governmental bodies** ad hoc committees and to multi-member bodies and define their duties, set the limits for the scope, their responsibilities and the terms of their existence. Any such committee having a planning function shall coordinate its activities with the Planning Board at least once a year.

Members of the Planning Board note that there is often no coordination.

15) C3-7: As above, we recommend removing wording requiring publication in a newspaper within the town and replacing with the Town website at C3-7G regarding warrants.

Article III The Board of Selectmen

C3-7 Specific powers, administrative duties and responsibilities.

C3-7G The Selectmen shall publish a copy of the Warrant **on the Town website** in a newspaper of general circulation in the town at least four (4) weeks before a Town Meeting and, again, with recommendations by the Finance Committee, Planning Board and Selectmen at least 14 days before a Town Meeting.

16) C3-7: To clarify the general authority of the Board of Selectmen to make rules and regulations for the effective operation of Town government, we recommend creating a new C3-7H to define broadly the power of the Board of Selectmen to adopt rules and regulations, through a defined system, to manage town business.

H. The Board shall have the power and authority to adopt rules and regulations, after public hearing and publication, for the conducting of town business, the use

of town real and personal property, and other matters within its jurisdiction and to set the penalties for violations thereof.

Will there be penalties incorporated into the proposal?

17) C4-6: To provide the Planning Board clear opportunity to effectively gain needed information from other Town agencies about consistency with the Local Comprehensive Plan we recommend adding language to C4-6B and to implement adoption of the term “Local Comprehensive Plan” for the Town’s principal planning document, we recommend amending C4-6C and elsewhere through the document.

C4-6 Planning Board.

B. The Board shall make recommendations as it deems necessary on all matters concerning the physical, economic and environmental development of the town to the Board of Selectmen and to the parties directly involved through the Town Planner, who acts as the Board's Administrator. **At the request of the Planning Board any town agency dealing with significant public improvements relating to the physical, environmental, or economic development of the town, shall report the status of such plans or developments to the Planning Board so as to be evaluated for consistency with the Local Comprehensive Plan.**

C. The Planning Board shall be responsible for the development and periodic review of a **Local Comprehensive** Master Plan or portions thereof. Such plan may include all or portions of plans developed by other boards or committees, but these inclusions must be approved by a vote of the Planning Board. The Master Plan, also known as **Local Comprehensive Plan**, shall be submitted to the Town Meeting and then to the Cape Cod Commission.

If town meeting approval is needed this leaves no room for needed flexibility. Several committees do a lot of planning but the Planning Board doesn’t hear from them.

18) C4-6: To state assertively the role of the Planning Board in strongest alignment of Zoning Bylaws with the Master Plan, we recommend amending C4-6D.

D. Whenever t **The Planning Board shall** recommends proposed amendments to the Zoning Bylaw, it **and** shall provide detailed written explanations of its recommendations and the extent to which such recommendations are consistent with the Master Plan.

No comment.

19) C4-6: To provide coordination of meetings for strongest alignment of planning, we recommend the amendment of C4-6:

C4-6 Planning Board.

E. The Planning Board shall possess and exercise all powers given to it under the Constitution and Laws of the Commonwealth and shall have and exercise such

additional powers and duties as may be authorized by the Charter, bylaw or vote of the Town Meeting. It shall also:

(2) Meet with the Board of Selectmen **as scheduled under C3-3B** at least twice a year.

20) C4-7: To eliminate a contradiction between the Charter and evolving State requirements for Housing Authority membership, we recommend amending C4-7.

Article IV Other Elected Town Boards and Officers

C4-7 Housing Authority.

A Housing Authority shall be established consisting of five (5) members. Four (4) members shall be elected by and from the voters at large, and the fifth member shall be appointed **to be selected in accordance with the laws** by the Secretary of Communities and Development of the Commonwealth. All members shall serve five-year overlapping terms.

No comment.

21) C5-5: To allow the Board of Selectmen and the Town Manager to adjust salaries to fit rapidly changing needs to hire and retain effective staff, while still staying within the budget set by Town Meeting, we recommend striking the words “subject to Town Meeting vote” from C5-5B(2)

Article V: Town Manager

C5-5: Responsibilities in personnel administration

The Town Manager, acting through the Director of Personnel, shall from time to time propose, and the Board of Selectmen may adopt, with or without amendment, personnel regulations and rules relating to all town positions, except those covered by collective bargaining contracts and those of the School Department. Such regulations shall provide for:

(2) Salary and pay plan for all positions subject to Town Meeting vote.

Salary change is not right; it should be left to town meeting.

The Finance Committee will not see the issue unless it is a town meeting article.

“Subject to budgetary constraints’ was suggested.

22) C6-7: As above, we recommend removing wording requiring publication in a newspaper within the town and replacing with the Town website at C6-7B regarding Town ballots.

Article VI Citizen Participation: Elections and Recall

C6-7 Ballot position.

B. Before every election, the Town Clerk shall make available the names and residences of all candidates to be voted for and the form of any questions to be submitted to the voters at such election. Such lists shall be a public record, and the Town Clerk shall cause one (1) copy of the official ballot to be posted in Town Hall and **on the Town**

website published in a newspaper of general circulation within the town at least one week prior to the election.

23) C6-9) To improve clarity and consistency, we recommend using the term Board of Registrars throughout the document by amending C6-9C and elsewhere.

Article VI Citizen Participation: Elections and Recall

C6-9 Referendum

C. The Town Clerk shall, within one (1) working day of receipt of said petition, submit the petition to the **Board of Registrars of Voters** in the town, and the **Board of Registrars** shall within fourteen (14) working days certify thereon the signatures which are names of registered voters. If the petition shall be found and certified by the **Board of Registrars of Voters** to be sufficient, the Town Clerk shall within one (1) working day submit same with a certificate so stating to the Board of Selectmen. The Selectmen shall within seven (7) working days order a special election to be held on a date fixed by them, which shall not be less than sixty (60) nor more than eighty (80) days after the date of the Town Clerk's certificate that a sufficient petition has been filed.

No comment.

24) C7-2: With over 40 elected and appointed governmental bodies, most within the Town government, plus a few semi-independent entities, the Charter lacks clear definition of how to treat them consistently relative to listing in the document. We recommend adding to C7-2A a delineation of which governmental bodies need to be in the Charter. **C7-2 General provisions.**

A. Governmental bodies established in this article shall possess and exercise all powers given to them under the Constitution and laws of the Commonwealth and shall possess and exercise such additional powers and duties as may be authorized by this charter, by-law or vote of Town Meeting. **This Charter names those governmental bodies which 1) are mandated or authorized by the laws of the Commonwealth and 2) exercise regulatory or other authority.**

Concern was expressed with excising the Waterways Committee.

25) C7-2) To clarify who is responsible to initiate action when a member of a governmental body has had excessive unexcused absences, we recommend amending C7-2G to specify the chairperson.

G. The unexcused absence, without good cause, of a member from one-half (1/2) of the total number of meetings during any twelve-month period or from four (4) or more consecutive meetings of any such board shall serve to vacate the office, **as determined by the chairperson and confirmed by vote of the body.** When such a vacancy has been created, it shall be filled within thirty (30) days or in accordance with General Law.

No comment.

26) C7-3: To eliminate a contradiction between the authority of the Board of Selectmen to establish appointed committees in C7-1A and the role of Town Meeting, we recommend deleting the language in C7-3 which allows the Town Meeting to set these sizes by bylaw.

C7-3 Change in composition of appointed boards.

The Representative Town Meeting may, by bylaw, enlarge or decrease the number of persons to serve as members of appointed town multimember bodies; provided, however, that all such bodies shall always consist of an odd number of members.

The CRC was urged to consider a third aspect to the definition: real and personal property.

27) (C7-10, 11, 12, and 13) Four committees that are not mandated or authorized by state law and that perform only an advisory role are currently listed in the Charter. To treat over 30 such committees in a consistent manner, we recommend deleting C7-10 (Recreation Committee), C7-11 (Waterways Committee), C7-12 (Beach Committee), and C7-13 (Human Services Committee). As long-standing bodies advising on areas significant to the wellbeing of the Town, the CRC recommends that the Board of Selectmen codify their roles and responsibilities as soon as possible in bylaw language. (NOTE: At our June 10 meeting the CRC tabled discussion of reconsidering this recommendation; we are conducting further research on the implications of this proposed change and may consider refinements to the proposal at a subsequent meeting.)

The Finance Committee said there may be an issue with obtaining 3 cost estimates.

28) C7-16 and 17: We recommend adding the Community Preservation Committee and the Economic Development and Industrial Corporation because they fit the criteria for inclusion--having both a basis in State law and also areas of direct decision-making authority.

C7-16 Community Preservation Committee

A Community Preservation Committee shall be appointed as provided by the provisions of Massachusetts General Laws, Chapter 44B, and applicable Town bylaw.

C7-17 Economic Development and Industrial Corporation

An Economic Development and Industrial Corporation shall be appointed as provided by the provisions of Massachusetts General Laws, Chapter 121C, and applicable vote of Town Meeting.

No comment.

29) C8-6: To achieve the strongest alignment of plans, we recommend adding language to the development of the Capital Improvement Plan relative to the Master Plan and Long-Range (Strategic) Plan.

§ C8-6 Capital improvements plan.

A. The Town Manager shall prepare a five-year capital improvements plan which shall include a clear summary of its contents; a list of all capital improvements proposed to be undertaken during the next five (5) fiscal years, together with supporting data; cost estimates, methods of financing and recommended time schedules; and the estimated annual cost of operating and maintaining the facilities or equipment to be constructed or acquired **and an analysis of the consistency of each capital improvement project with the Local Comprehensive Plan and the Long-Range Plan.** The above information shall be revised and extended each year with regard to capital improvements pending or in the process of construction or acquisition.

30) C9-9: To ensure that Charter language requirements can be purposefully and consistently fulfilled by Town government, we recommend more flexible guidance on the revision of bylaws, while urging that the task must be done conscientiously.

§ C9-9 Revision of bylaws.

The Board of Selectmen shall ensure that the town by-laws are reviewed, **periodically, in whole or in part**, and prepared for any necessary revision or amendment at least every five (5) years

Attendees noted that this is not happening. Use of consultants was suggested.

Peter Clark called for final comments.

Peter Waasdorp expressed regret that his suggestion to secure rights and greater protections for volunteer committee members was not acted on. He urged consideration of an ombudsman and review of the Massachusetts Selectman's Handbook.

Julian Suso thanked the CRC and said he will send comments via email.

NEXT MEETING: Monday, June 17, 2019; 4:00 PM

Old Water Department Meeting Room - Town Hall

Relevant Documents

Charter and Action Summary

List of Preliminary Recommendations