

TOWN OF BRIDGEWATER

Charter Review Committee

Dennis C. Gallagher, Chair

Carlton Hunt
Stephanie Ryan
Erick Lynch
Aisha Losche
Eric Desrochers



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Bridgewater Charter Review Committee

Minutes for the Charter Review Meeting that Convened on Wednesday, March 25, 2015

Meeting called to order by Carlton Hunt (Acting Chairman of the Committee) in accordance with rules governing meetings and quorum not filled. Meeting starts at 7:30 PM.

Members in Attendance: *Carlton Hunt, Aisha Losche and Stephanie Ryan*

Members Not in Attendance: *Dennis C. Gallagher, Erick Lynch and Eric Desrochers*

Approval of Agenda: *The Committee accepts the agenda of the current meeting.*

Approval of Meeting Minutes: *The Committee defers approval of minutes until the next meeting.*

Public Comments: *There are no public comments for the current meeting.*

Announcements:

As Chair Gallagher is on vacation, Mr. Hunt is Acting Chair for this meeting. The meeting was held without quorum.

Committee Meeting Schedule:

April 1, 2015 – Library Trustee Greg Lee; Review Town Attorney Addendum items; Review presentation documents for Town Council meeting on April 7th

April 7, 2014 – Formal presentation to Town Council

Additional Items

*Town Attorney Mark Gildea attended the meeting to review some discussion points previously sent to him by the Committee. **Notes from the discussion may be found in the attached Addendum.***

A motion was made by Mr. Hunt to modify the double vote policy for the last meeting on April 1, 2015 to a single final vote; seconded by Ms. Ryan. A provisional vote was taken, with a vote of 3 yea to 0 nay.

The group discussed the upcoming presentation to Town Council. Ms. Losche's PowerPoint draft was reviewed and some revisions were suggested. Mr. Hunt will make revisions to Report as well. A suggestion was made to have Ms. Losche present to the Council, with Mr. Hunt being available at the podium for in depth discussion as requested.

The group discussed Ms. Ryan's email pertaining to Special Municipal Employees MGL 268A. Based upon Town Attorney discussion, should we add a clause under section 2 for the Town Council to appoint special town employees as allowed under (cite specific MGL section)? Group to discuss further at next meeting.

With discussion concluded, a request is made to adjourn: *By unanimous consensus of the Committee, the meeting is hereby adjourned. The next meeting will be April 1, 2015.*

Meeting is hereby adjourned by unanimous consensus of the members in attendance in accordance with rules governing meetings. Meeting adjourns at 9:05 PM.

I hereby affix my hand to this document that the minutes of this meeting are true and accurate to the best of my ability, note-taking, and penmanship as so ordered by the Chair of the Committee this Twenty Fifth Day of March, Two Thousand and Fifteen.

A True Copy Attest,

A handwritten signature in black ink, appearing to read "Dennis C. Gallagher", written over a horizontal line.

Dennis C. Gallagher, Chairman of the Committee

A handwritten signature in blue ink, appearing to read "Patti Paccia", written over a horizontal line.

Patti Paccia, Secretary of the Committee

Addendum to CRC Minutes of March 25, 2015 – Discussion with Town Attorney, Mark Gildea

2-1: Clarify that it is OK to merge districts 4 & 5 into one, adding one at - large councilor.

Proposed language:

There shall be a town council consisting of nine members which shall exercise the legislative powers of the town. Five of these members shall be from Districts 1, 2, 3, 6, and 7 and one member elected from a combined district comprised of Districts 4 and 5, to be known as district councilors, shall be nominated and elected by and from the voters of the said districts. Three members, to be known as councilors-at-large, shall be nominated and elected by and from the voters at large.

You certainly can merge the districts as long as you get legislative approval, and educate people about the rationale for combining.

2-7. MEASURES; EMERGENCY MEASURES; CHARTER OBJECTION

- a) *Recommendation is to decrease the 30 day hold times for orders and resolutions after Town Council action to 10 days . Any issues?*

In my opinion, I think the 30 day hold is unnecessary. There is so much notice already set forth in the charter and in state law, so I think the less amount of time the better. *Is there any example of why you think an order should be held?* I think it's been more of a hindrance than a help. Many cities have limitations of 72 hours. Many times a councilor has the ability to move for reconsideration. *Is that a charter thing?* **I will confirm and get back to the group.**

2.8: (Council Staff). Current language

The town council may employ such staff and experts as are necessary to conduct the business of the town council. The town council shall set the salaries of such staff.

The town council can already set the salaries. In my opinion there shouldn't be a body that can set a salary just by a motion and vote vs. by an ordinance. There are 3 ways to pay a municipal employee: 1) by contract, 2) pay ordinance and 3) collective bargaining. Functions of clerk and council should really be set by ordinance. **CRC to revisit.**

The town council shall appoint an officer of the town who shall have the title of council clerk. The council clerk shall give notice of town council meetings to its members and the public, keep the journal of its proceedings and perform such other duties as are assigned by this charter, by the town council or by general or special law.

What are the Issues around merging the Town Council Clerk into the Town Clerks office?

Is the role of the clerk of the council something that could be absorbed into the town clerk position? The problem is that the council would then lose their clerk. If it were to change, the clerk's office would need to have more money appropriated to them to hire an administrative clerk. **CRC discussion point for next week – don't structure things based upon personality, but strictly around necessary skills.**

SECTION 2-9. PUBLICATION REQUIREMENTS

Every proposed ordinance or loan order, except emergency measures as hereinbefore defined and revenue loan orders, shall be published once in full in at least one newspaper of general circulation within the town, *the town's official website and other electronic media as available and appropriate, and in any additional manner that may be provided*

by ordinance, at least 10 days before its final passage; provided, however, that if any ordinance or proposed ordinance or codification of ordinances or proposed ordinances, shall exceed eight octavo pages of ordinary book print, then, in lieu of the advertising required by this section, *the same may be published by the town council on the town's official website or other electronic media as available and appropriate or in a municipal bulletin or printed pamphlet*, and if so published in full at least 10 days before its final passage, the publication shall be deemed sufficient without the newspaper publication as herein required.

I had a discussion with the town manager about ordinances requiring publication in newspapers. It's an archaic provision. The language to consider is 'at least one newspaper...' "OR". You can get rid of the language by special legislation via the charter. If you revise it to on the website, you can get rid of the alternative.

3-1 Paragraph 2: Clarify restricting town employees from serving (not running) for town office. Library Trustees? School Committee? *The group would like to know if the charter has the legal standing to tell someone they will lose their job if elected.*

Proposed change: Any voter shall be eligible to hold any elective town office; provided, however, that the voters meet **the conditions of MGL Chapter 268, part 20 to serve**. In the charter you could give the town council the authority to appoint special municipal employees. You are designating the position not the person. The provision in the charter had a different intent. In my opinion it's already addressed by the ethics code. It never made much sense to me to exclude all municipal employees in the manner they did. Cite MGL 268A in section 2. Any town resident can run for elected office. Get rid of that section altogether and it accomplishes what you want to do. MBL 268A applies no matter what. If I'm a police officer, I can run for an elected position. The question is can you accept the salary. Do you care that a municipal employee might run for town council? The purpose in restricting the number of appointed positions is to avoid the same people participating in everything. *Town Attorney suggests to drop the section about anyone can be elected, but incorporate a reference in the legislative section to MGL 268A. CRC to revisit.*

3-1 Paragraph 4: Town officers subject to the call of Town Council/Town Manager –
Current language: "Notwithstanding their election by the voters, the town officers named in this section shall be subject to the call of the town council or the town manager, at all reasonable times, for consultation, conference and discussion on any matter relating to their respective offices"

CRC is of consensus that it should be stricken because if there is an issue, there has to be a mechanism to address the issue (email, Town Council, town meeting).
If your intent is to give town council the ability to call them, you should not strike this section.

3-4: TOWN CLERK

Proposed change:

- (a) Composition- A town clerk shall be appointed by the Town Council **with conditions that assure the independence of the office from political or other influence.**

That statement is so vague and ambiguous that it is not enforceable. The town council by its nature is political. When they vote on something, it's political. That's why the majority of positions are appointed by the town manager, not the council. **CRC to revisit.**

Can Council vote to set the term of 5 years for an appointed Town Clerk? how does the Town Clerk appointment in Brockton work, 4) would the Town Clerk be a union employee, 5) can the Charter dictate the term of appointment or can that only be decided by the employment contract,

Now most of the department heads are under collective bargaining, but that was voted by the selectmen. Chapter 150e may have a provision that excludes the town clerk from being in the union. *Town Attorney to verify and confirm with group.*

Can charter set an appointment for say 5 years? Yes, however, if you recommend that town manager appoints town clerk, then you don't want to indicate a term.

Re-clarify who sets licensing fees and penalties.

Unless there are certain provisions of state law, then it should be set by town council in an ordinance.

3.5.5: new Section) 3.5.5

The incumbent shall continue to perform the duties of office until the recall election. If then re-elected, he shall continue in office for the remainder of the unexpired term, subject to recall as before, except as provided in this act. *If the majority of the votes cast upon the question of recall is in the affirmative, the candidate receiving the highest number of votes shall be declared elected provided that at least thirty-five-percent (35%) of all qualified registered voters of the district or Town in the case of an at large councilor shall have voted.* If not re-elected in the recall election, the officer shall be deemed removed upon the qualification of his successor, who shall hold office during the unexpired term. If the successor fails to qualify within five days after receiving notification of his election, the incumbent shall be deemed removed and the office vacant.

If 20% can elect a person, why do you need 35% to remove it? The group's rationale was to make it harder to remove than elec. Did you ever look at turnout to see the number of times voters went over 35%? It's probably not very often. This will mean no one will ever get recalled.

4-3 Clarify the term "appointive administrative officers" .

Current Language says: The town manager shall have the authority to suspend or remove department heads and *appointive administrative officers* provided for by or under this charter, except as otherwise provided by law,...

We probably need to add a section that the charter will define these appointive administrative officers. Not a bad idea to define it further. CRC to revisit.

5-3 Town attorney add c New language

Should legal action be required between Town departments concerning official town business, the town attorney will be guided by the town manager as to which department the town attorney's office will represent. If the legal dispute is between the town manager and the town council concerning official town business, the town attorney will represent the town council, as the elected representatives of the town, and recommend representation for the town manager. This dispute will be adjudicated by means of arbitration/mediation by a third party to which both offices mutually agree. Should neither office agree on a third party or on the decision of the arbitrator/mediator the

normal legal court proceedings will take place, however, the town attorney will maintain representation for the town council.

This is not a good idea. Typically the town manager would hire someone to represent the other party. Depending upon the situation, I may have cases on both sides and need to remove myself from involvement in both parties. The town manager would need to appoint attorneys for both parties. You would be creating internal conflict in the town charter by this language. In the vast majority of towns, you don't have suits between the legislative body and executive body. I would say I'm not representing either side. Standards of professional conduct in the legal profession take care of these issues without having a charter provision. **CRC to revisit.**

6-3 (a) Public Hearing & (b) Adoption of the Budget. TM edits lead to the following text. OK?

(a) Public Hearing - The town council shall publish in a newspaper of general circulation in the town and the town's official website and other electronic media as available and appropriate, a summary of the proposed operating budget as submitted by the town manager by a notice stating: (1) the times and places where copies of the entire proposed budget are available for inspection by the public; and (2) The Town Council shall identify a the date, time and place not less than 14 days after the publication, when a public hearing on the proposed budget will be held by the town council. For the purpose of this section, the summary of the proposed operating budget that is required to be published shall contain proposed appropriations, funding sources and any narrative summary deemed necessary by the town council. The proposed budget will be published on the town's website not less than 14 days before the date of the public hearing.

This is another place where you should use OR. I don't see any issue with this. The town manager had talked with me about this.

6-4 Paragraph 1 Supplementary Budgets – is it MGL that notice must be posted in newspaper or are electronic media options sufficient.

Change (b) Emergency Appropriations to – “To address a public emergency affecting life, health, property or the public peace, the town council may make emergency appropriations as provided under MGL. Ch. 44, Sec. 31. The appropriations may be made by emergency ordinance in accordance with Article II.”

6-4 (a) Supplemental Appropriations –

If during or before the fiscal year begins, the town manager certifies that there are available for appropriation, revenues in excess of those estimated in the budget, town council by ordinance may make supplemental appropriations for the year up to the amount of the excess.

There was discussion around the difference between supplemental and emergency. An example was given that if there was a windfall in May, you can't use the amount until it's budgeted. Supplemental is not useful until the budget is certified by the state. **Is this already part of MGL.**

This is not needed. In the fall you file with the Commonwealth, certify your numbers and set the tax rate. Once that is set you cannot do any more supplemental unless something else comes down from the state. It is bad language to begin with because you don't make supplemental appropriations by ordinance. If the intent is to make a supplemental appropriation, it's already

addressed in MGL. *Town Attorney will send the group appropriate MGL information but will go back and re-read, but he doesn't feel we need it. CRC to revisit vote.*

9-7 Removal of Member of Multiple Member Appointed Bodies

An official appointed by the town manager to a multiple-member body, may be removed from office by the town manager if the official fails to *attend regularly scheduled meetings for a period of three consecutive months* without express leave from the chairman of the multiple member body, unless the town manager shall determine otherwise.

Can this section be tighten to three consecutive meetings? Should regularly be defined (i.e., 50%)

This language will supersede town bylaw of 3 meetings. I could get elected and never show up again. There are no repercussions other than recall. My take is it's so difficult to get bodies involved, so why go there....

General

Can the Town restrict a convicted felon from running for town office?

I guess you can, but I don't think it's a great provision. *Town Attorney to revisit this.*

Board of Health: Clarify to the CRC the level of independence the BH has.

Just to clarify, BOH operates by MGL. There are provisions in the statute, however, that is subject to other provisions in our town charter. Charter intention is to make the person follow the town manager, but there are certain provisions such as restaurants, etc. that town manager has no say in. In addition there are unions involved, so day-to-day performance is dictated by union. *Should BOH be added to the charter? Yes, if you want to change how they are selected. Town Attorney to check into who appoints BOH authority.*

Ability of the TC to "order" TM to undertake an action

4-2 (A) (22): to perform such other duties as necessary or as may be assigned by this charter, by ordinance or by vote of the town council;

The question of whether the Town Council has the right to specifically direct/manage the Town Manager through orders that are voted on by the Town Council was raised. The CRC asked for information regarding why this has come up and role of the CRC. Discussion concerned definitions of an order, whether the Town Council and Town Manger have an agreed upon performance plan, and the span of August 2, 2011 Superior Court findings regarding the interaction of the Town Council and Town Manager. The CRC reading of the courts finding (see attached) during the meeting suggests that the judgment is narrow and focus on the Council's ability to affect the hiring and dismissal of the Town Attorney.

I would interpret duties to mean more oversight of particular departments vs. direct orders. If you interpret that as telling the town manager what to do on a day-to-day basis, it effectively negates the intent of the charter and the town manager duties. Councilors should express their desire via resolution and if the town manager doesn't perform or they are unhappy with the performance, you invalidate the form of government. Town council can issue ordinances to set forth goals. It's difficult to separate duties in the charter. *Perhaps we should define duties.* It goes to the problem

that elected officials feel they have certain authority, but their authority comes from membership on the board, and should come from the board as a whole, not an individual councilor. If the town manager has to react to 9 individual councilors, it will be very difficult to get the job done. You have a professional town manager who runs the town on a day-to-day basis. Again, town council should express points by resolve. An ordinance is establishing a town rule or by law; generally directs something to happen. Resolution expresses the sense/opinion of the council. This clause really goes to how you view the form of government and who should run the town day-to-day. If you feel it is town council then its fine. If it's the town manager, then maybe that needs to be modified somehow. That is not a legal opinion.