

**CHARTER REVISION ADVISORY COMMITTEE
REGULAR MEETING
September 12, 2023, at 6:00 pm
Charlestown Town Hall Council Chambers**

FINAL MINUTES

1. Call to Order

The meeting was called to order at 6:03 p.m.

2. Roll Call

Catherine Graziano - Present
Margaret Hogan – Arrived at 6:15 p.m.
Anne Mulhall – Present
Lorna Persson – Present
Laura Rom - Present
Evelyn Smith – Present
Rosemary Sullivan - Absent

Amy Weinreich, Town Clerk - Absent
Jeffrey Allen, Town Administrator - Present
Deborah Carney, Council Liaison - Present
Shirell Perry, Committee Clerk – Present

3. Public Comment

The opportunity for public comment was given. Ruth Platner asked to have public comment moved to the end of the meeting.

Motion made by Laura Rom to move public comments to the end of the meeting. Lorna Persson seconded the motion. The motion was unanimously approved.

4. Discussion and potential action concerning the approval of prior meeting(s) minutes:

a. July 11, 2023

Motion made by Laura Rom to approve the minutes as written. Anne Mulhall seconded the motion. The motion was unanimously approved.

5. Update, Discussion, and Potential Action regarding Action Items from previous meetings:

a. Amend list to track Committee approved changes to the Charter to include a “Reject/Approve” column – Ms. Hogan.

As Ms. Hogan was not present at the time of this agenda item, the Committee did not discuss it.

b. Compile a list of the Committee’s questions concerning the Charter sent to the Town Administrator and Town Solicitor – Ms. Graziano

Ms. Graziano volunteered to maintain this list moving forward. Ms. Graziano stated that one of the issues that has come up is she had requested of Council President Carney that a Solicitor be at these meetings to speed things along or at least keep track of our proposals, etc. It was Ms. Graziano’s understanding that there was no one available for our August meeting, which ended up being canceled, and for this meeting, the understanding was that they were also not available. Ms. Carney will request that they be here for the next meeting. In the event that Peter Ruggiero’s office cannot make it, Ms. Graziano suggested reaching out to Attorney Bob Craven because he is also a Solicitor for the town.

Action: Ms. Carney volunteered to send an email to request that a Solicitor be available for the next meeting on October 10th at 5:30 – 7:00 p.m.

c. Compile a list of the historic Charter ballot questions and results - Ms. Weinreich

Ms. Graziano confirmed that everyone received a copy of the list that Amy Weinrich sent. Evelyn Smith indicated that this area was her niche, to have historical institutional knowledge of this area. The question Ms. Smith was seeking to answer is, “When is a Charter revision required to be approved by the General Assembly and was this done for all the previous amendments?” She stated that she went through the charter section by section, noting that the most complete printed copy of the charter that she had was published in 1997 after substantial amendments in 1996 - up to 60 sections of the home charter were changed in the 1996 amendment process, but she did not see any public law enacted to ratify those revisions that were approved by the voters in 1996.

Ms. Graziano pointed out that Amendments relating to Education and Elections might be subject to mandatory ratification or at least review by the General Assembly. Ms. Smith indicated that Land Use is also a police power of the state so whatever authority is delegated to the town is only delegated by the state; as such, if the state decided to take that authority back, we would not be able to pass our own subdivision and Zoning ordinances anymore. We are able to regulate our subdivision and Zoning ordinances because the state has allowed it through state law. Ms. Smith went over some of the specific amendments from 1996 indicating over 60 sections of the Charter that had been changed, stating that the chances that none of those required state approval is low. The question is: “Are these sections of the Home Rule Charter now in effect or having not been ratified are they not in effect and should we incorporate them all over again when we do it this time around? Ms. Graziano indicated that this is a perfect reason for one of the Town Solicitors to be in attendance at these meetings. Ms. Persson inquired, “How would you know if they were ratified or not by the state.” Ms. Smith stated that there would be a public law on record. She noted that there are two ratifications on file in the public laws of the state house: the first one was to ratify the charter’s adoption and it was approved and signed by the Governor in March of 1981; and the second one in 1992 and that approved amendments that were passed in 1988 and there were 9 amendments on that ballot that were approved. The 1992 amendments concerned the police department, and the school department were repealed because we entered Chariho, so we abolished the Charlestown School Department, and some other charitable land use, amongst a few other things that were approved and ratified by the assembly in 1992. There were also amendments that are in this version of the Charter that were proposed by General Code Publishers Corporation, so they covered all of the amendments until 1996. Ms. Graziano asked if Ms. Smith had received the packet of attachments from Ms. Weinreich after the July meeting. Ms. Carney mentioned that in speaking with Representative Tina Spears, who had spoken with Legislative Counsel up at the State House, they couldn’t find anything after the 1992 reference that Ms. Smith spoke about. Ms. Smith indicated that unless there is something in the Charter that is regulated by state law we are not required ratification; it is something that we have the authority to do already and it’s not something we are flaunting or disregarding the regulations - we may not have had to have a ratification. Ms. Smith’s next step will be to query the solicitors as to the nature of each of the amendments and whether ratification was required or not by state law and, if not, we must figure out what the impact is on those sections of the charter that were amended and not ratified. Ms. Rom mentioned that she thought the ratification of the general assembly was a blanket ratification of the changes that you made. Ms. Graziano pointed out that there is not a blanket ratification, noting that Ms. Smith is saying

there are only certain instances where there is a charter change that would require that the State General Assembly ratify it. There may be only one issue in a group of charter amendments that requires General Assembly approval, but all of the amendments approved at that time would be submitted to the General Assembly for ratification. There may be ten that do not need ratification in any given year. Ms. Rom noted that the General Assembly has not ratified anything since 1992. Ms. Graziano stated that this begs the question, “Were there any amendments that would or should have triggered bringing amendments to the General Assembly for ratification?” We have had several massive rewrites of the Charter and what provisions remain intact and what provisions are in question is something that will have to be determined by legal staff. Ms. Rom questioned whether all along, amendments had been reviewed by legal staff. Ms. Graziano suggested we may need to propose inserting a provision in the Charter that specifically says there shall be an assessment by the Town Solicitor and the matter brought to the General Assembly. Ms. Rom agreed.

Ms. Graziano suggested that if anyone has the opportunity to take a look at the Portsmouth Home Rule Charter, their formatting is incredible; every single section shows the year it was changed and a summary of what was changed. Ms. Smith indicated that this was why she signed up for this Committee; she stated that she would compile a list of the ballot questions as they were offered, the voting results and submit them to the Town Solicitor to say whether ratification was required. Ms. Graziano mentioned that the information that Ms. Weinreich provided has most of that information.

Motion made by Ms. Smith and seconded to ask for a legal opinion from the Town Solicitor’s office as to whether each of these ballot questions required General Assembly ratification based on the package provided by Amy Weinreich. Unanimously approved.

Action: Ms. Carney to ask the Solicitor for a legal opinion.

Ms. Smith requested a digital Word version of the original Charter and the current Charter to create a compilation of each of the amendments to the Charter and the effects they had on the Charter.

Ms. Hogan joined the meeting.

- a. **Amend list to track Committee approved changes to the Charter to include a “Reject/Approve” column – Ms. Hogan.**

Ms. Hogan requested, and the Committee consented to defer this item until the next meeting.

- d. **Research and distribute historical amendments to C-13 Means of Acquisition - Ms. Weinrich.**

Ms. Carney noted that prior to 2002 the Charter included only the first paragraph “The Town may acquire real and personal property with or without...” It did not list a dollar amount. The \$50,000 amount was added to it through a charter amendment. The Committee consented at a prior meeting to let this section stand as is.

- e. **Draft proposed language for C-18, Public Highways not owned in fee simple absolute – Ms. Hogan**

Ms. Hogan requested, and the Committee consented to defer until the next meeting.

f. Draft language for C-19, Town Council Terms, utilizing staggered terms – Ms. Hogan

Ms. Carney pointed out that the Committee had previously discussed the language used in the 2018 Charter Revision recommendations drafted by the Town Solicitor. It was suggested that the Committee previously agreed to use that same language from 2018. The October 22, 2018, meetings are available online on the Agenda and Minutes Link under the Charter Revision Advisory Committee and include the question “*Shall the Town Charter be amended at Article 6, Town Council Organizational Election C-19 number of elections be amended to provide that the two candidates receiving the largest number of votes shall be elected to a four-year term and the next three candidates receiving the largest number of votes be elected to a two-year term. Thereafter at each subsequent election, the term of office for council members shall be four years.*”

Ms. Hogan pointed out that, according to the minutes, the Committee discussed C-116, Charlestown School Committee as an option for the language, but the Committee didn’t take action on the actual language. Ms. Persson inquired and the Committee consented to propose staggered terms, but the question was what language to propose.

Ms. Carney pointed out that one of the issues was how to begin the staggering process. The Committee discussed potential scenarios.

Ms. Rom suggested that the top two vote-getters serve for four-year terms. So that we don’t elect a majority that’s going to be there for four years. So one year there would be two people being elected and another year there would be three. Going forward every election cycle.

Ms. Smith asked the question “What happens if a term is vacated before the next election and then it’s only to fill the unexpired term?” Ms. Carney noted that it would depend on the timing of the vacancy. If the vacancy occurs more than a year before the next General election, the Town must hold a Special Election. If the vacancy occurs with less than one year before the General Election, the Town Council will make an appointment. She noted that there was existing language that addressed this.

Ms. Smith asked the Committee if they wanted to entertain that if there were a vacancy, the position would go to the next highest vote-getter in the most recent election. Ms. Hogan stated that she was not a proponent of giving it to the next highest vote-getter because so much can change since the last time the people voted the people should speak again. She agreed with the existing language.

Ms. Rom expressed that she thought the Committee should take no action concerning vacancies on the Council and that she would like to move the staggered terms along.

Action: Ms. Carney stated that she will forward the exact language from the minutes from the July meeting to the Town Solicitor, once the Committee votes to forward this matter for future public hearing, and have him review the language to see if it is still relevant and correct.

Motion made by Ms. Hogan to move the staggered terms forward with the language as discussed. Motion seconded by Ms. Rom. The motion was unanimously approved.

The Committee confirmed that the provision in C-24 concerning filling a Council vacancy would still be effective if the Council terms were to change.

g. Research posting requirements concerning C-42, Qualifications, Appointment of Elected Officials – Ms. Graziano

Ms. Graziano stated that she had previously questioned if there was any type of requirements with state laws or town laws, regarding physically posting a job. She noted that there isn't anything specifically on point, however, if there are union positions, there may be a requirement in a collective bargaining agreement that says the opening must be posted physically and, in some circumstances, it may specify the number of days. She noted that the State seems to have a more online approach to hiring, so you must apply online. She stated that her concern with not physically posting there could be someone moving into town, and they used to be a Town Administrator somewhere else and although they are not looking for a job, they see something up that says "opening", it might be a case where someone not expecting to apply for the job sees it and decides to apply.

She stated that she was not sure if the physical posting requirement was something that needed to be in the Charter. Ms. Graziano expressed her concern that the proposed language leaves the entirety as to how the vacancy would be marketed to the Clerk.

Motion made by Ms. Hogan to accept C42-A with the changes below. Seconded by Ms. Rom. The Motion was unanimously approved:

A. Whenever the position of Town Administrator becomes vacant, the Town Clerk shall ~~post the vacancy, at a minimum, in the Town Hall, the Library, and~~ advertise the vacancy in other such media he/she deems currently appropriate for employment searches. The Town Clerk shall solicit resumes and references and forward the same to a search committee, if a search committee appointed by the Council. ~~The search committee shall review the qualifications, conduct interviews, conduct the appropriate reference checks, and forward all resumes, and references and its recommendations, if any, to the Council.~~ The Administrator shall be chosen by the Council on the basis of which shall consider the Applicant's education, executive, and administrative abilities, with special reference to academic and relevant management experience, in, or knowledge of, accepted practices in respect to the duties of office as hereinafter set forth.

Action: D. Carney to forward C-42 A to the Solicitor for review.

The Committee consented to propose no amendments to C-51.

h. Draft proposed language concerning the allowance of mail ballots for the Financial Town Referendum as a potential provision in C-87 B.4 – Ms. Weinreich

It was noted that Amy Weinreich distributed proposed amendments to the Committee. The changes include adding a line to C-84 B.3, not adding section C-87 B.4. The changes include: Originally it stated *The Board of Canvassers shall determine the location of polling places.* The added wording includes: *and the process of the referendum not inconsistent with state election laws*".

Motion made by Ms. Hogan to amend C-87 B. 3. to add the additional language from the Town Clerk. Seconded by Ms. Rom. The motion was unanimously approved.

Action: Ms. Carney is to ask the Solicitor to review this proposed language in relation to Title 17 as State statute states that local referendums are not required to comply.

i. Research Financial Town Meeting statutes as to their applicability to Charlestown – Ms. Graziano

Ms. Graziano requested, and the Committee consented to defer this item until the next meeting.

j. Town Council decision regarding Declaratory Judgement concerning the Planning Commission from July 24, 2023, Town Council meeting – Ms. Carney

Ms. Carney stated that this topic was put on the Town Council Agenda at the end of July, the beginning of August, at the Committee's request. She explained that the Council voted not to go forward to get the Declaratory Judgment. People were concerned that we were overturning the election and taking away the rights that they had voted on, even though Solicitor Craven had indicated that that would not be the case. She stated that there was not a desire to take away anyone's right to vote and nullify past elections; the Council voted not to take any action and the Solicitor advised that if an individual sued the Town, there would be further action. Solicitor Ruggiero recused himself from the discussion because he would have to defend the Charter so, therefore, he couldn't advise the Council. Attorney Craven stepped in and provided legal coverage for this matter.

Ms. Smith indicated that the state law regarding subdivision approval has been amended and starting in January 2024, appeals of Planning Board decisions are going to go directly to the Superior Court. She explained that in the past, appeals from the Planning Commission would go to the Zoning Board of Appeals and then would be appealed to Superior Court. She noted that the last time the issue of the elected status of the Planning Commission was raised as a violation of state law was in the Whalerock case; the applicant argued that the Planning Commission was elected when the state law said that it should be appointed, but the judge said that since the appeal would go to the Zoning Board of Review, there was no relief that they could offer the applicant in Superior Court, so he was not going to render a decision on the question of whether the Planning Commission was correctly composed because there was no legal issue for him to decide, that it would make no difference to the case as he was deciding it. However, she noted that the question of the authority of the Planning Commission being elected and not appointed will be to be able to be raised in Superior Court starting in January. She suggested that if the Town was going to try to fix the Charter, then the Committee really needs to take a look at the current law with regard to Land Use relative to the appointment and/or election of the Planning Commission. Ms. Carney explained that the way the Council left it was to wait to see if someone would sue the Town and then it would be resolved.

Ms. Rom stated that she understood why the judgment was desirable and agreed with that if that was what was necessary, but she stated that she didn't think it was necessary. She stated that she wanted to just go forward with changing the Planning Commission to be appointed instead of elected. She noted the argument for the Planning Commission to be appointed because you may not have candidates with credentials concerning Land Use. She suggested that the Council should accept applications, with interviews to take place.

Ms. Persson noted that a variety of individuals was beneficial to the makeup of the Planning Commission. She inquired how Charlestown is the only Town that has an elected Planning Commission. Ms. Rom stated that the issue to her was not that Charlestown had the only elected Planning Commission; rather, she stated that it had to do with the level of professionalism and the requirement of credentials in that area. Ms. Rom stated that this was the time to propose the change. She acknowledged that the change would be up to the voters.

Ms. Smith noted that all power relating to Land Use is considered Police power of the state. The only power that the town has is given to them by the state. If the state decides to take back that

authority, we don't have that authority anymore. So, when the state adopted, and gave the town the authority to regulate sub-division, it made a requirement that the Planning Commission be appointed. That was a condition from the very beginning – that we amended our Home Rule Charter, without a specific ratification by the General Assembly to allow Charlestown to stand in a unique position of being able to elect a Planning Commission which was not the authority granted by the state law. She expressed that this put in question the authority of the Planning Commission to do the job that they're supposed to do.

Ms. Smith noted that either side can appeal a decision of the Planning Commission. If the Planning Commission approves an application, then the abutting property owner can appeal the decision to Superior Court. If the Planning Board denies the application, then the applicant can appeal the decision in Superior Court. Whoever appeals the first decision in 2024 is going to be going to the Superior Court and if they really want to win their case and pull out all the stops, one of the quivers in their bow is whether the election of the Planning Commission in Charlestown is legal. Ms. Graziano confirmed that Ms. Smith was correct. She explained that the matter was in front of Judge Savage in the Whalerock case and the issue that was raised was exactly this. And she never got to that issue for a number of reasons including the fact that the Planning Commission was not made a party to the case. The Judge remanded it back to the Zoning Board, so she never made a decision, but it was absolutely a part of that case. Ms. Smith pointed out that all the defenses that have been raised have been to say our solicitors have argued this and our solicitors have argued that and they've filed legal memoranda, but the judges have never made a decision. The issue has never been decided.

Ms. Persson stated that in the Committee's capacity, it seems it would be negligent not to propose this.

Ms. Hogan noted that the General Assembly did not re-enact the whole Zoning Enabling Act; they amended zoning sections and the comprehensive permit for low and moderate income and they created a land calendar at the Superior Court.

Ms. Carney explained the question that was raised last time, if the Planning Commission is illegally constituted then by putting this question on the ballot you are in essence asking for people to vote on something that might not be legal, and that was the whole reason for trying to get the Declaratory Judgement. Ms. Hogan clarified that that if the voters were to reject the question of changing from elected to appointed, they would simply be rejecting a change as this is in existence; they would not in essence be voting for something illegal, they would just be rejecting a change.

6. Discussion and potential action of the Charter and any further proposed additions/changes/revisions

a. Proposed amendments concerning term limits and term lengths for elected Town officials (C-19) (C-172)

C-19 Council – discussed previously (see above).

C-172, Planning. Ms. Rom suggested that a six-year term was too long; noting that a Committee member could be reappointed if they wanted to continue to serve.

Ms. Persson inquired whether it was taking more than four years to get through an application before the Planning Commission. Ms. Hogan stated that it should not, but noted that as time has gone by and technology has changed, all of those meetings are now live-streamed and recorded.

She explained that if there was a change in the composition of a board and they had to be there for the entire application in order to vote on it, new Board members could watch those videos and they can make an attestation that they had familiarized themselves with those videos they have looked at all of the things. She noted that this happens: people resign, people move away and the people that are Alternates have to move up. The Alternates are listening, they are participating, they are learning, and depending on that particular town and how their procedures are laid out, if something comes to a vote and a regular member is either absent or ill or whatever the case may be, an Alternate can then step into the seat of the sitting member and if they have reviewed all of the minutes or participated at all of the meetings so they are familiar with all of the entire application and they can attest that on the record, they can participate in the vote.

Ms. Persson noted that because what we're proposing is for this to be an appointed position and not an elected one, the concern about having an election every year because of term lengths doesn't really apply. Ms. Smith noted that if appointments were staggered four-year terms, every two years you would have appointments to fill and if you had alternates for two years terms, and a vacancy arose, then an alternate could fill the position. You could appoint an alternate to balance out the alternate terms. Ms. Persson noted that several towns have three-year staggered terms for their Planning Commissions. Ms. Hogan suggested if we are going to make changes to the C-172, that they be bifurcated so the question of the Planning Commission being elected or appointed would be one question, and the question of the Planning Commission's terms would be in another question. Ms. Hogan clarified that the question to vote on would be "Shall the Planning Commission be appointed?"

Ms. Graziano noted that the manner in which terms were awarded should be the same as the Council to be consistent.

Ms. Smith suggested that the appointments take place in non-election years so that the Council has time to get its feet on the ground before making an appointment. Ms. Carney agreed with Ms. Smith

Ms. Carney noted that it would be a four-year term, the two highest vote-getters would get the four-year terms, with the next two highest getting two-year terms. She inquired how this would work, to not disenfranchise the voters by removing the sitting Committee members. Ms. Hogan suggested that "the sitting members would continue to serve the natural course of their terms and when their seat became vacant, that's when the Council would appoint", and presumably that seat becomes vacant in October or November, at the beginning of an election cycle. When those terms expire in sequence, that's when the Council would have the ability to appoint; not before then, because they will be seated.

Ms. Carney suggested the Committee consider scenarios one at a time. She suggested that the voters say, "We want it to remain as elected" and "We are going to four-year terms". Right now we have three people that are going to be sitting there for four more years. She inquired whether there being four seats up this time, two full-time, and two alternates, would the two that are elected, be elected to only two-year terms because that would provide the staggering terms? You would have three people that would still have the four years, you would have two people that would now have the two years. She inquired if this would happen all at one time or if it would happen in phases. She then noted that if an amendment were proposed to move to an appointed Planning Commission and should the amendment fail, the Planning Commission would still be elected. She noted that the Town still had one individual who had four years left on her term, and two individuals who had two years left on their term. She inquired whether the two individuals being elected at this time would be for a four-year term in order to have three members with four-year terms. She inquired whether the highest vote-getter would serve for a four-year term, the next highest vote-

getter would serve for a two-year term, and the two lowest vote-getters become the Alternates. She stated that there had to be some forethought into staggering the terms.

Ms. Hogan noted that this language would be included in the Charter itself.

Ms. Graziano noted that the Charter amendments would be up for a vote in 2024 and so would a number of Planning members. There will be four positions up, two full and two alternate, and there will be two individuals who still have two years left on their terms and one individual who has four years left on her terms.

Ms. Carney noted that the language needed to be worked into the proposed Charter language, similar to the Charlestown School Committee.

Ms. Hogan noted that a separate provision would address appointments in the order in which current terms expire; current members would continue to serve until their terms expire. Ms. Smith noted that if those elected terms were vacated, they would be filled according to the current regulations.

Action: Deb Carney to put in language that we can see and really understand in both scenarios how for the term limits, that would work.

Ms. Smith noted if the voters want to go to appointed four-year terms, the transition provisions would have to be spelled out as a separate transition provision in the charter that says how to make the change.

Ms. Graziano noted that the provision about terms could be all-inclusive and could be written in a manner that doesn't matter how the first vote turns out,

The Committee further discussed term limits for the Town Council and the Planning Commission.

Ms. Hogan noted the institutional knowledge that benefits the Town decisions as well as the consistent need for Board and Commission volunteers.

Ms. Graziano stated that she would like to propose term limits for the Planning Commission and the Town Council. She suggested 12 years (3 terms). Ms. Graziano considered looking at the other cities and towns and stated she would come back to the Committee with a specific proposal for further discussion.

Ms. Carney expressed her concerns about a member reaching a term limit and not being a willing candidate to serve.

Ms. Carney asked Ms. Perry to forward to the Committee the following document, received at a recent Council meeting: "An Act Validating the election procedures and the Charter adopted by the Town of Charlestown November 4th, 1980, Approved by the Governor, March 25, 1981, RI Public Laws 1981."

Action: Shirell to make a copy of "An Act Validating the Election Procedures and the Charter Adapted by the Town of Charlestown November 4th, 1980, Approved by the Governor, March 25, 1981, RI Public Laws 1981 and send to the Committee.

b. Proposed amendments concerning the Board of Canvassers (C49)

Ms. Rom spoke concerning this matter stating that currently, the Board of Canvassers has one too many Democrats as an Alternate. Ms. Carney noted that once an Alternate volunteer resigns it will go to the Council agenda for acknowledgement. She noted that this was a mistake and that it would be rectified.

Action: D. Carney to put it on her list to find out how long the term would be for.

7. Review, discussion, and potential action concerning Charter Sections C-1 through C-209, as needed.

It was noted that the next meeting on October 10, 2023 conflicts with the Town Council meeting. The Committee consented to keep the same date of October 10, 2023, but to move the meeting up to 5:30 p.m. – 7:00 p.m. in the Annex Conference Room.

3. Public Comment

Ruth Platner, Chair of the Planning Commission proposed the question, “On your special elections for Council C-24 you were going to keep the language that is there? So if someone is elected to a four-year term and leaves in an election year, what happens if their term is ending in an election year are you going to have a special election?” She stated that if someone resigns and the election is less than a year away you would not want to have a special election you would want it to happen during the regular election. She suggested that the Committee check the language.

Motion made by Ms. Hogan, seconded by Anne Mulhall, and approved unanimously to adjourn. Adjournment took place at 8:15 p.m.

ATTEST:

Shirell G. Perry, Committee Clerk