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TOWN OF CHELMSFORD
PATRICIA E. DZURIS
TOWN CLERK

Approved July 20, 2017

06/07/2017

6/6/2017 Charter Review Committee (CRC) Meeting Notes SPC

Location: Room 204, Town Hall

Present: S. Pichette, G. Thoren, D. McLachlan, D. Bruce, M. McCall, S. Chase,
D. Burke

Absent: V. Diggs

Meeting called to order: 7:01 PM

Notification of CTM live Broadcast and identification of Media: No Media present

Open Session/Public Input: None

Approval of Minutes: May 9, 2017 (deferred from 5/25/2017): Revised version distributed to Committee on 6/4/2017. D. Burke clarified his questions to Town Clerk O. Maloney, and wanted to ensure that the minutes accurately reflected what he said. The minutes will be changed to reflect his remarks. Amended minutes approved. Discussion and approval of 5/23/2017 Minutes will be deferred until next meeting, 6/20/2017.

Updates: M. McCall took an action item from 5/23/2017 to research Mass. General Law with regard to the existence of any statutory language governing a minimum requirement for write-in vote qualification as it applies to the election of Town Meeting Representatives. MGL CH41 Sec. 11 appears to be the only area where a "minimum number of vote" requirement is addressed, but this pertains only to ballots cast in state primary elections. M. McCall could find no language that directly addresses the issue of a minimum number of qualification votes for a municipal election, specifically, Town Meeting membership. It appears that any change in this area as requested by the Town Clerk will have to be via the normal Charter change process, and perhaps accompanied by a by-law change.

S. Chase reviewed Committee progress up to this point. At the start of our process, the Committee agreed to review the existing Charter in total, section by section, at a "discussion" level prior to taking final votes on proposed changes. This "discussion level" review will be completed tonight, after our review of Part IV, Sections 4-1 through 4-7. S. Chase drafted a sequential outline by section detailing results of discussions on each Charter section, indicating

those areas where further discussion/action is required. The Committee appreciated the outline and agreed to follow the suggested process.

Discussion continued, Part IV, Town Manager

Section 4-1, Appointment, Qualifications, Term of Office, Requirement of 4/5 Vote to Hire/Terminate: At our 5/9/2017 meeting, we heard testimony from all Board of Selectmen (BOS) members concerning the 4/5 vote requirement for both hiring and termination of the Town Manager. 4 BOS members support a change to a 3/5 vote for both hiring and termination, 1 member supports retaining the current 4/5 vote requirement. D. McLachlan favors keeping the current 4/5 requirement to hire. In most instances, the BOS interviews candidates who are personally unknown to them, and any hiring exercise is thus a gamble relative to a hired candidate's personality and work ethic, which can only be known after the selected individual has been in office for a while. Because a hiring decision must be made on intuition and projection, D. McLachlan feels that the 4/5 vote requirement is a better predictor of potential candidate success and lends an air of security and confidence to the hiring process. Most candidates would not want to start their tenure without a unanimous or near-unanimous (4/5) vote of confidence. G. Thoren echoed these sentiments, adding that with a critical hire such as Town Manager, the community needs to feel that more than a simple majority of the BOS is convinced that a candidate has a good potential for success. 4 out of 5 members should be on the same page; if two are opposed, that can cast doubt on the candidate and the process itself. S. Pichette asked if the vote to hire requirement should be a unanimous vote rather than 4/5? G. Thoren said that in theory this would be ideal, but realistically unanimity might be a difficult standard to achieve. D. Burke said that if he were a Manager candidate, he would want to be called by a unanimous vote, but would accept a 4/5 supermajority. He would feel uncomfortable with an endorsement from only 3 of 5 members. S. Pichette raised the possibility of three finalists with the BOS voting 4/5 for all three. How would that situation be resolved: S. Chase explained that normal meeting rules prevail for confirmation. Candidates would be nominated for a vote, one at a time, and the nomination would be seconded or not. If no Second, then that nomination dies. If seconded, then a discussion ensues and a final vote is taken. If the first nominee receives 4 out of 5 votes, he is the BOS choice, and the other two candidates are removed from consideration. If that nominee fails to get a 4/5 vote, then he is removed from consideration, and the next nominee is acted upon, and so on. G. Thoren, D. McLachlan, S. Chase do not envision a scenario where that process would not be observed; therefore the likelihood of 3 finalists all deadlocked with 4/5 vote support is remote at best. D. Burke and M. McCall said that, alternatively, prior to nomination and voting, the Chair can ask if there is a Committee preference for a candidate (sense of the Committee), and that may then focus the Committee on a single candidate. At that point, the Chair can call for a unanimous vote. **Committee Consensus (5 of 8 members concurring): the 4/5 requirement for hiring lends credibility to the BOS choice, and should stand. A vote will not be taken on this matter until all members have had an opportunity to express an opinion via further discussion, or otherwise abstain.**

Sec. 4-1, Indefinite Term: Currently the Charter specifies an indefinite term for the Town Manager. D. McLachlan feels that a Town Manager's employment contract specifies the term. S. Chase said that the contract term is independent of a term specified by Charter. If the Town Manager's contract expires and the BOS fails to take action to extend or renew, that act in and of itself does not terminate the Manager. Under a Charter "indefinite term" situation, the town manager would continue in the town's employ, presumably under the basic terms of the current (expired) contract, much the same way that police, fire, and school department personnel continue to work when their contract negotiations extend beyond the expiration dates of their current employment contracts. D. McLachlan, G. Thoren, S. Pichette feel that the current indefinite term provision provides maximum flexibility to the BOS and that provision should be retained, D. Burke and S. Chase agree. **Committee Consensus (5 out of 8 members concurring): the specified indefinite term should stand. A vote will not be taken on this matter until all members have had an opportunity to express an opinion via further discussion, or otherwise abstain.**

Sec. 4-2, Powers of Appointment: No change recommended.

Sec. 4-3, Administrative Powers and Duties, subsections (a) through (r): This section will be re-ordered for clarity as detailed in prior meetings, along with some minor wording changes. **A Committee vote will be required to effectuate.**

Sec. 4-4, Compensation: No change recommended.

Sec. 4-5, Vacancy in Office: Wording change as detailed in prior meetings; **Committee vote required.**

Sec. 4-6, Temporary Absence: No change recommended.

Note: Committee sense is that Sections 4-5 and 4-6 should be re-ordered; that is, Temporary Absence should precede Vacancy in Office in the order. **Committee vote required.**

Sec. 4-7, Removal of Town Manager: G. Thoren listened attentively to the 4 BOS members who advocated for a change to a 3/5 vote to remove at our 5/9/2017 meeting, and he understands why they have asked for the change. However, G. Thoren feels that the current 4/5 vote to remove requirement is necessary to insure that a narrowly-focused, well-financed and continuous campaign based on suspicion, unsubstantiated opinion and innuendo does not derail a proven competent Manager. Under a 3/5 removal scenario, it is too easy for fleeting political passion and personal agenda politics to upset the operational stability that a Strong Manager system promotes. G. Thoren worries that a 3/5 removal requirement makes it too easy to "flip" a board in one election cycle, and that may encourage a Manager to manage within the realm of short-term political considerations vs. pursuing and advocating for management strategies designed to benefit the town in the long run. Prior to the town's recent experience with a sustained adverse information campaign designed to portray the Town Manager and many of the town's volunteer officials in an unfavorable light, campaigns were

not generally “agenda politics” and “big money” driven. That has changed somewhat, and the 4/5 requirement to terminate helps to blunt those effects. G. Thoren feels that the requirement to terminate should reflect the same thought process as the vote to hire, which a majority of the Committee apparently feels should remain at 4/5. G. Thoren feels that a Manager’s decisions should not be governed by the constant “threat of removal” that a 3/5 vote would signal. A Decision to Remove should not be “last incident” based; rather a range of performance should be considered, and the 4/5 vote to remove supports that thinking. S. Pichette feels that the BOS has more authority and ability to influence a Town Manager’s thinking than they may realize. They have influence through their policy-making authority that is clearly defined in the Charter. S. Pichette feels that any effort to remove a Town Manager should be based on the BOS strength of opinion, and that means either a unanimous, or near-unanimous (4/5) vote to remove. D. Burke said that he “almost agrees” with G. Thoren’s views. However, D. Burke feels that the strong Town Manager form of government encourages a “weaker” BOS, and the current 4/5 supermajority to remove requirement only supports this. Under the current requirement, it is too easy for a Town Manager to disregard a BOS’ expressed opinions, which presumably represent voters’ wishes. A 3/5 vote requires a Town Manager to be more responsive to current thinking and political reality. D. Burke supports a change to a 3-2 vote for removal. At the start of our process, D. McLachlan favored a change to a 3/5 removal vote, largely based on his thought that the process ought to be as democratic <majority rule> as possible. However, after listening to Public input and Committee discussion, and much personal reflection, he now supports keeping the 4/5 vote to remove requirement. D. McLachlan feels a 3/5 requirement makes it too easy to remove a Manager in one election cycle, and therefore makes the Manager’s continuation in office overly subject to fleeting political considerations. D. McLachlan believes in our “Strong Manager” form of government, and believes that retaining a 4/5 vote to remove requirement is necessary for continued management stability. S. Chase said that he served on the BOS during the last Charter review period, and he, along with 3 other BOS members, favored changing the Charter to provide for a 3/5 vote to hire and remove, and in fact, made that recommendation to the 2006 Charter Review Committee. This feeling was based solely on the premise that the process should be democratic (majority rule), same process that applies to Board and Town Meeting member election. However, based on the local politics of the last few years, S. Chase has re-evaluated his position and now understands the reason for a 4/5 vote to hire and remove; essentially all the reasons articulated by the original (1989) Charter Commission and re-iterated now by other Committee members. S. Chase could not have envisioned the several years of political turmoil that recently prevailed in Chelmsford, and if a 3/5 removal threshold had been operative during that time, it would have been too easy for enflamed political passion to remove a competent Manager who sacrifices political expediency for the long view. It is not in the town’s long-term interest to have elections focused primarily on how a Town Manager reacts to short-term political pressure, and that is what would happen with our 2-2-1 seat BOS election cycle coupled to a 3/5 removal vote process. S. Chase’s thinking on this issue has changed, largely due to his experience with the town’s recent political history, and he now feels that retention of the 4/5 vote to hire and terminate a Manager is critical to maintaining the town’s stability and long term success. G. Thoren said that he has a problem with the “leverage” reasons that the BOS articulated for wanting a change to a 3/5 removal vote. G. Thoren and S. Chase said

that the easy threat of termination should not be a substitute for the BOS' continuing substantive engagement with the Town Manager and their application of overall good management technique. Vote to Suspend (currently a 3/5 requirement): D. McLachlan, S. Pichette, G. Thoren, S. Chase feel that a 3/5 vote to initiate the Town Manager removal process ("vote to suspend") sufficiently addresses concerns about "simple majority" democratic process relative to removal. It seems reasonable to require a simple majority to start the process, with the seriousness of removal requiring the supermajority vote. D. Burke would prefer consistency with the suspend and final removal process, that is, 3/5 vote for both. At this point 4 members favor retaining the 3/5 vote to suspend and the 4/5 vote to terminate, 1 member favors a change to a 3/5 vote to terminate, with 2 members uncommitted and one member absent. A vote will not be taken on this matter until all members have had an opportunity to express an opinion via further discussion, or otherwise abstain.

Future Meeting Schedule: June 20 (Tuesday) is our last scheduled meeting. Members were asked to think about availability for July and August, preference is to keep to the 2nd/4th Tuesday schedule observed to date, with a view to finalizing at our June 20 meeting.

Meeting adjourned, 8:30PM.