

Charter Review Committee (CRC)
Town of Groton, Groton, MA 01450 978-448-1111

Meeting Minutes - October 5, 2016
At Town Hall

Present: Jane Allen, Robert Collins, John Giger (Secretary), Michael Manugian (Chair), Bud Robertson (Vice-Chair), Stuart Schulman

Not present: Michael McCoy

Recorder: Stephen Legge

Visitor: Judy Anderson

Call to Order: Chairman Manugian called the meeting to order at 7:00 PM.

Approval of Meeting Minutes:

The draft meeting minutes of September 28, 2016 were considered. **Mr. Schulman moved to accept the minutes of September 28th.** Mr. Robertson seconded. The corrected minutes were approved 4 – 0 with Ms. Allen and Mr. Collins abstaining due to absence from the meeting.

Administrative Issues:

There will be no meeting next week (October 12th) out of respect for the Yom Kippur holiday. Mr. McCoy will be unable to attend the meeting the following week (October 19th).

The Selectmen's conference room will not be available for the meetings of October 26th and November 2nd. The room is to be used for election early voting operations by the Town Clerk.

Action Item #1: Mr. Manugian will talk to the Town Clerk about using the upstairs conference room for these two meetings.

Mr. Manugian asked if there were any further (new) reconsiderations requested by the Committee. None were requested, and none are currently under reconsideration.

Mr. Manugian announced the result of having met with Mr. Giger last week to discuss the mechanics of presenting Charter changes to the public and the Committee for further review and discussion. All changes will be flagged in the final revised Charter with the new numbering scheme as compared to the 2010 (current) version.

Discussion of the Draft Revised Charter, Version 0.7-2:

Version 0.7-2, dated September 30, 2016, is a revised and corrected version of last week's Version 0.7. All changes noted last week for Version 0.8 are reflected in this week's Version 0.8-2, dated September 30, 2016, but are not necessarily shown in Version 0.7-2. Please note that Version 0.7-2 uses the old (2010) numbering system; Version 0.8-2 uses the proposed new numbering system.

Page 2, Lines 60-62: remove the second sentence which is a repeat of Section 1-9(j).

Page 3, Line 87: remove "by –". The phrase should read "by law".

Line 95: replace "bylaw" with "by-law".

Line 105: replace "as" with "at".

Visitor Ms. Anderson asked for the opportunity to offer several edits of the document. Mr. Manugian invited her comments:

Page 6, Line 207: remove the second "the"; replace "Fund" with "Funds". (Ms. Anderson)

Page 8, Line 269: the first "registrar" shall read "Registrars"; the second "registrar" shall read "Registrar".

Line 271: "registrar" shall read "Registrars". (both on this page, Ms. Anderson)

Page 10, Line 348: replace "of" with "on". (Ms. Anderson)

Page 11, Line 392: replace "service" with "serve". (Ms. Anderson)

Page 16, Line 620: replace the first "members" with "member". (Ms. Anderson)

Page 17, Lines 623-24: flag the last sentence as an addition. (Committee)

Page 20, Line 746-47: **after the phrase "must select another member" it was proposed to add "who is not being considered for re-appointment".**

The above change was moved by Mr. Manugian. Mr. Collins seconded.

A vote was taken and the motion was approved unanimously.

Discussion of the Definition of "Town Officer" and "Department Head":

Mr. Collins offered a letter to the Committee dated October 5th (two pages) discussing at some length the treatment of the above definitions in the Mass General Laws. He claimed that eliminating the definition of "Town Officer" in the Charter, as the Committee had voted to do, might create some confusion with the MGL verbiage. For example, it may leave some appointed positions not mentioned in the Charter (such as the Conservation Commission) unclear as to whether they have any authority under the MGLs. In the current Charter "Town Officer" is defined as a person having charge of an office or department of the town who exercises some portion of the sovereign power of the town. Mr. Collins asserts that this definition and usage

needs to remain in the Charter in order for such Officers to exercise the authority granted to them under the MGLs.

There was a lively discussion about where appointees fit into this scheme to exercise “sovereign power of the town”.

Mr. Collins was concerned about the course the Committee had taken by eliminating the 2010 Charter’s definition and replacing it with definitions of Elected Official and Department Head. Mr. Schulman shared this concern also.

Mr. Collins said the MGL says elected persons and persons appointed by the BOS are “Town Officers”.

Discussion shifted to the Town Clerk’s position as an elected officer and as a statutory position mandated by the MGL.

Action Item #2: Mr. Collins offered to create some new definitions that he thinks will fill the gap left by the new definitions voted by the Committee. He intends to define elected officers, appointed officials and department heads.

Action Item #3: Ms. Allen offered to identify all the places in the 2010 Charter where “Town Official” refers to other than elected officers.

Mr. Collins said the definition of “department head” also causes some problems because it could be viewed as occupied by either an employee of the town or by a “Town Officer” or elected official. He told the Committee the MGL is of little help on this issue but case law does distinguish between an officer and an employee. Mr. Collins felt the Committee viewed department heads as holding supervisory positions, but having limited , if any, discretionary authority.

The Committee agreed that the usage of the terms Town Officer, Elected Official and Department Head would be reconsidered at the next meeting after the Committee had received the new definitions from Mr. Collins and the list of term usage from Ms. Allen.

Action Item #4: Mr. Manugian offered to suggest to the BOS that “Registrars of Voters” be included in the Town Annual Report.

Discussion of the Draft Revised Charter, Version 0.8-2:

This updated version of the Charter has a new numbering system for articles, sections, subsections and paragraphs. It also is a clean version of the revised Charter, i.e., it has no flagging of changes.

Ms. Anderson had a number of edits to offer for this version as well. The Chair allowed her to offer them to the Committee.

Page 14, Lines 511-12: the reference to Section 3-2(h)4 needs to reflect the new system. The Committee went further and decided by consensus to remove the reference all together. (Ms. Anderson)

Page 16, Line 612: replace “members” with “member”. (Ms. Anderson)

Page 17, Lines 662-64: remove the phrase “which, before to the adoption of this charter, were performed by or under the authority of the Town Accountant, the Tax Collector, the Town Treasurer and the Principal Assessor”. (Committee)

Lines 666-67: remove the phrase “with respect to municipal finance related functions and activities”. (Committee)

Page 19, Lines 709-10: remove the phrase “and such other functions as may be prescribed by the Town Manager;”. (Ms. Anderson)

Line 716: replace “tee” with “the”. (Ms. Anderson)

Line 721: replace “members” with “member”. (Ms. Anderson)

Page 21, Line 814: insert “in” before “at”. (Committee)

Page 22, Line 832: replace “5” with “five”. (Ms. Anderson)

Line 846: replace “ninety” with “90”. (Ms. Anderson)

Page 23, Line 887: replace “1” with “one”. (Ms. Anderson)

Line 890: remove the phrase “Town Meeting”. (Committee)

Discussion of the Draft 2016 Fall Town Meeting Presentation:

Mr. Manugian presented his September 21st draft of four slides to the Committee for discussion. The Committee offered several comments as follows on Slide 4:

4th bullet should read “Hold Public Hearing – CRC does homework on input received”;

After the 5th bullet insert a new bullet titled “Ballot Vote”.

Replace the last bullet with “After Approval, Implement New Charter”

Mr. Robertson proposed to add the approximate timing for certain items such as public hearings, the Town Meeting vote and the ballot vote on Slide 4.

Mr. Collins questioned why the Charter Review Committee should be explaining changes to all affected parties after the Charter has been approved.

Discussion of Charter Changes Full Report to 2017 Spring Town Meeting:

Mr. Manugian had passed out a working draft of the full report to Town Meeting of the recommended Charter Changes (40 pages, dated September 26, 2016) at the last meeting.

Mr. Robertson will produce an explanation of debt exclusion for the budget process section.

Mr. Schulman asked if the Committee is biting off too much by explaining how our municipal government works. He feels our charge as a committee is limited to reviewing the Charter and offering recommendations for change. He thinks we are making extra work for ourselves.

Mr. Collins answered, yes, but some people are pretty upset about the way they think our government works. And sometimes what they think is true is not necessarily the case.

Mr. Manugian said he will complete the report with these explanations and the Committee may review it, and then take out such sections as they feel are not appropriate.

Mr. Robertson offered several minor edits of the document:

Page 6: where it says “wise reader”, remove the word “wise”.

Page 9: where it says “Here is a gray area”, say instead “This is a gray area”.

Page 12: in the last sentence add the phrase “If this ballot vote succeeds”.

Other Administrative Issues:

Mr. Manugian explained the Committee would be focusing on three items over the next two weeks:

- the revised draft report for the Fall Town meeting (scheduled the Monday before the next Charter Review meeting);
- continuation of the updating and fine-tuning of the draft revised Charter; and
- revision and filling in of the draft final report of the Committee to the Spring Town Meeting.

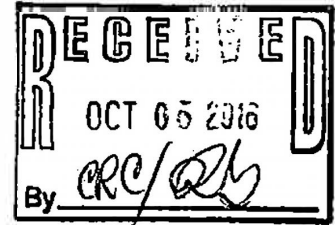
The meeting was adjourned with unanimous consent at 9:00 PM.

**** The next meeting is scheduled for Wednesday, October 19th, at 7:00 PM. ****

Exhibit: Letter from Robert Collins, Esq., to Charter Review Committee, dated October 05, 2016, subject: Definitions of “Elected Officer” and “Department Head” Set Forth in Section 1-9(l) of the Current Charter

Exhibit to CRC Minutes
of 2016-10-05

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5 October 2016

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The Groton Charter Review Committee
Michael Manugian, Chairman
Town Hall
173 Main Street
Groton, MA 01450

Dear Committee Members:

I wish to offer the following observations with regard to the terms "elected officer" and "department head."

The current definition set forth in Section 1-9(l) of the current Charter reads:

"Town Officer", a person having charge of an office or department of the town who, in the exercise of the powers or duties of that position, exercises some portion of the sovereign power of the town."

Chapter 41 Section 1 of the General Laws sets forth the elected town officers which a town shall have unless otherwise provided for by law or by a municipal charter. This section includes the language "All other town officers shall be appointed by the selectmen unless other provision is made by law or by vote of the town."

Interestingly, there is not a definition of "town officer" provided in the General Laws; although it is clear that both elected and appointed officials are considered town officers under the law. A town officer has the right to exercise the authority, responsibilities, and power of the office the officer is elected or appointed to as provided by law or by charter, and that authority is limited by law or by charter. Our current definition seems to accurately reflect what the law envisions for individuals occupying these positions, and as Stuart correctly pointed out, has a certain elegance.

We might, as a committee, therefore consider whether it is ill- advised to substitute the term "elected officer" for "town officer" since the former then leaves the many appointed officials in an undefined limbo.

The term "department head" becomes interesting, since it could be viewed as occupied by an employee. One could also view such a position as being held by a municipal official (or town officer) since one would presume that such a position encompasses the exercise of some portion of the power and authority of the municipality.

Now, unfortunately the General Laws are of no help here. Case law, however, distinguishes officer from employee. Factors to be considered are the importance, dignity, and **independence** of the position (emphasis mine).

I believe what we view as department heads hold supervisory positions with limited, if any, discretionary authority.

One could thus consider defining "department head" as "an individual holding a supervisory position over a municipal office, department, or departments whose discretionary authority is limited by that individual's appointment."

Very truly yours,


Robert L. Collins