

Charter Review Committee Report on Charter Amendment

The Charter Review Committee was formed by the Town Moderator and held its first meeting on April 22, 2021 over Zoom. All meetings for 2021 were held over Zoom. The membership with representation consisted of Jeff Swanberg, Select Board; Natasha Rivera, School Committee; William Cranshaw, Housing Authority; Janice Rosenberg, Library Trustees; Elliot Bruce, Finance Committee; Peter Campbell, Finance Committee; William Kohlman, Member-at-large; Anita Dolan, Member-at-large; and Lou Ann Cutaia, Member-at-large. William Kohlman was elected Chair. The committee determined that given all the conflicts members have with their own committee meetings, the best time to hold Charter Review meeting were the second and/or fourth Wednesday of the month. As we began to hold meetings, we realized that with most of the members also serving on other committees, that we would keep the number of meetings per month to one, unless absolutely necessary. The committee also decided to rotate the position of Recording Secretary so that one person isn't burdened with it at every meeting.

Prior to the meeting in May 2021, Anita Dolan resigned, being unable to attend the Zoom meetings. After the May 2021 meeting, Janice Rosenberg resigned. Sally Bubier replaced her as a Library Trustee representative. Also, Brendon Chetwynd replaced Anita Dolan as a Member-at-large. In June 2022, Elliot Bruce resigned from the Finance Committee so in July 2022 the Finance Committee appointed Danielle Ericks as their second representative on the committee.

During the course of our discussions, the committee members reached a consensus on what they wanted to see in the Charter. The committee wanted the Charter to allow for accessible and transparent Town government, with easy access to information. But also, not to make changes to the Charter for change's sake. Taking the view point, "Do no harm", if the system is working, even though we may envision it to be better, would a change actually make it better or would there be unintended consequences to our proposed action that the town would have to live with until the next review in ten years. With this in mind, we employed a light hand to our proposed changes and kept in mind that unless they would try to contradict the Charter, by-laws could be used to clarify sections of the Charter and bring forward additional requirement that the Town would follow.

Omnibus Changes to the Charter

The initial changes are omnibus changes that address typographical errors and grammatical corrections throughout the Charter. Also, the addition, deletion or movement of sections or subsections require the renumeration of the sections that follow. There are also changes to change wherever it states "by by-law" to "by town by-law". The reason for this change became apparent when reading the charter aloud, in many places in the Charter, the text reads, "by law or by by-law". It was confusing listening to it being read so the insertion of the word "town" between the words "by by-law" should reduce the feeling of confusion. Another change throughout the Charter is the usage of the word "website" as one word, where it had been used as either two words or one word and referring to the town website as the "official town website". We have also attempted to keep the Charter gender neutral and any text specifying a specific gender has been changed to a neutral gender.

Charter Introduction

In the Introduction of the Charter, we added a new initial paragraph that describes the purpose of the Charter and the reason for having it for the town. In the fourth paragraph we updated the dates of previous Charter reviews including the current one. We replaced the section on the Community Development Principles with a new section addressing Town By-laws, Community Development Principles, and the Maynard Master Plan. The reason for this change is that since the last Charter review in 2013, the Master Plan has been adopted and a permanent By-law Committee has been established.

Article 1 - Incorporation; Short Title; Powers

In Article 1: Incorporation; Short Title; Powers, the only change was in section 1-1: Incorporation where the words, “of the Commonwealth” were inserted after the text, “...as established by law”. This is to clarify the source of the law establishing the incorporation of the town of Maynard.

Article 2 - Legislative Branch

In Article 2: Legislative Branch, the first change was simply moving section 2-11 General Powers and Duties of the Town Meeting, to section 2-2. It now directly follows section 2-1: Town Meeting. The committee felt that section 2-11 needed to be emphasized more since along with section 2-1, they essentially establish the Legislative Branch of town government. This change results in the rest of the sections in the article to be renumbered.

The next change in Article 2 is in Section 2-4b(1) Powers and Duties (formerly Section 2-3b(1)). Text has been added to state, “The finance committee serves as the town’s official fiscal legislative oversight body.” What was the second paragraph of that subsection, has been moved to directly follow the inserted sentence. At the end of that paragraph, the sentence, “As granted by town meetings, the finance committee shall administer the town’s reserve fund and any other fund which they are directed by town meeting.” The subsection is titled Power and Duties, and how it had been written was to first address the duties before stating the powers they have. The committee felt that it made more sense to address the powers first, followed by the duties. The additional text clarifies their role as the town’s official fiscal legislative oversight body and their administration of the reserve fund and any other funds as directed by town meeting.

The last change concerning finance committee is in section 2-4b(2) Conflicts (formerly Section 2-3b(2)). Currently a finance committee member would have to resign if they were to submit papers to run for an elected town position or to be appointed to another town position. The review committee has changed the language so that a finance committee would not have to resign to submit papers to run or to be appointed but would have to immediately resign if they are elected or appointed to the position.

In Section 2-6a Town Initiated Special Town Meetings (formerly Section 2-5a), we have changed the requirements of giving notice by deleting publication in a local newspaper and have replaced it with an announcement through the town’s official notification system(s) (i.e., reverse 911 call) and also clarify that it will be posted on the official town website.

In Section 2-6b Citizen Initiated Special Town Meetings (formerly Section 2-5b), we have added a notification requirement similar to the one in Section 2-6a.

Section 2-8 Initiation of Warrant Articles (formerly Section 2-7) presented the committee with some challenges. Many members thought that the layout and order in which the information in this section was presented was confusing. In the current Charter the differences between the requirements for the initiation and inclusion on the warrant of Town initiated and citizen petitions were combined in the same paragraphs and it was difficult to follow which requirement went with which source. The committee has attempted to clarify this section through formatting and titling subsection having been initiated by citizen petitions, town administration, or both. **Overall, the only change regarding the inclusion of articles on warrant is that citizen petitions are also subject to review by town counsel and if deemed illegal shall be disqualified by the select board.** [Amended – After the May 15 2023 Town Meeting vote, the Attorney General’s office reviewed the changes to the Charter. Even though they had reviewed it in the Fall of 2022 and had requested other minor changes to the proposed Charter, they determined that the proposed Town Counsel review and possible disqualification of a citizen petition conflicted with G.L. c. 39, § 10 that requires citizen petition warrant articles to be placed on a Town Meeting warrant if the statutory requirements are met. Therefore, we have removed the Town Counsel review of citizen petitions as a requirement in the proposed Charter. Town Counsel may still review the petitions and offer legal opinion at Town Meeting but shall not advise the Select Board to disqualify a petition if all statutory requirements are met.] In subsection b Review, we have clarified that it is the administrative personnel in the office of the select board who register the proposed warrant article and distribute them as stated.

The last change in Article 2 is in Section 2-9 Availability of Town Officials at Town Meeting (formerly Section 2-8). Currently for a Town officer which includes all elected positions to be excused from Town Meeting is by the approval of the town moderator and the select board. The committee realized that there were two problems with requiring the select board approval. First if it was a last-minute request the select board would have to post a meeting and then meet in order to make a decision. They could delegate that responsibility to the town administrator. But there still is the second problem. For departments outside of town hall such as the schools, library, etc., the select board has no authority over them. The committee discussed this and concluded that Town Meetings are the town moderator’s meetings. The moderator plans them and conducts them. The moderator should be the sole person approving an absence from Town Meeting. The committee also felt that it is important to know if someone was not at Town Meeting so we added, “the list of excused individuals will be included in the minutes of the meeting.”

Article 3 - Elected Officials

Resignations of elected town officials in the past few years, has brought to light that the process of resigning was not clear as to who had to be notified. Also, the process of filling the vacant position through a town election was left open for interpretation as to when the term would start, immediately after the election or July 1. The Charter review committee of 2013 had desired that the position be filled immediately and believed it had been written that way and the current committee agrees with that position. In the past few years, the Charter had been interpreted that the position would begin on July 1. We have attempted to correct the text in the

Charter so that the position in an election to fill a vacant office would begin immediately after the election. To clarify when this applies to a vacated position, consider the following. If an individual on an elected multiple member board other than the select board resigns in their first or second year, a joint meeting of that board and the select board appoint a replacement to fill that position until a person is elected at the next town election to fill the remainder of the term. The newly elected person takes office immediately. However, if an individual resigns in their third year or too late in their second year to meet the timeline for a town election, the appointed person would serve out the remainder of the term. The next election for that position would be for the start of a new term and would begin on July 1.

In Section 3-1d Commencement of Office, we have added after, "... offices shall begin on the first day of July" the text, "with the exception of filling vacancies of elected officials as specified in section 3-1h".

In Section 3-1f, we change the word "officers" to "officials" for consistency with the rest of the section.

We have added a new Section 3-1g Notice of Resignation of Office. It instructs the resigning official to notify the Town Clerk and if the resignation is immediate or effective on a future date. Note that the process of filling the vacancy cannot begin until the position is actually vacant. This change follows the requirement of Massachusetts General Laws Chapter 41 section 109 concerning resignations of town officers.

In Section 3-1h(1) Filling of Vacancies: Elected Officials – Multiple Member Boards (formerly Section 3-1g(1)) we have replaced the existing text with new text that refers to Massachusetts General Laws Chapter 41 sections 10 and 11 which governs vacancies on multiple member boards. We have also added the text, "In the case of an election to fill the unexpired term of office, the individual is qualified as soon as the election results are known and can take office immediately following the required swearing in."

In Section 3-1h(4) Filling of Vacancies: Elected Officials – Regional Vocational School Representative (formerly Section 3-1g(4)) we have added the text, "The individual elected is qualified as soon as the official election results are known and can take office immediately following the required swearing in."

In Section 3-2b Select Board – Powers and Duties, the listing of the powers and duties was mostly in paragraph form which for the most part, did not separate one power or duty from another. For the sake of clarity, the listing has been reformatted into a numerical list. One change to the powers of the select board that in the current text that reads, "The select board shall have the authority to appoint town boards in accordance with the provisions of this charter", the text, "and by town by-law" was added at the end.

In Section 3-2c Licensing Authority, the text, "the laws", has been changed to, "all applicable laws". This is to limit the scope to just the laws, rules, and regulation related to the businesses for which the select board issues licenses.

In Section 3-4a Housing Authority – Composition, Term of Office, recent changes in state law now requires a tenant member appointed by the select board. This section was changed to reflect that.

In Section 3-5b Library Trustees – Powers and Duties, we found that this section was dated and inaccurate. With input from the library trustees, we updated the section to accurately reflect the powers and duties of the library trustees.

In Section 3-7b Regional Vocational School Representative – Powers and Duties, we added the sentence, “Upon request, the regional vocational school representative shall appear before and report to the select board, the school committee, and/or the finance committee.” This duty was not in the Charter and the committee believes it should be, to ensure clear communications between town government as a whole and the regional vocational school.

Article 4 - Town Administrator

In Section 4-2b Powers and Duties, the text “and town by-laws,” was added after the text, “...as may be applicable,” and the words, “town bulletin board” were replaced with, “official town website”.

In Section 4-2e Powers and Duties, after much debate the committee added this sentence to the end of the subsection, “Towards the goal of a transparent and open government, periodic financial reports shall be made available to the select board, finance committee, and the public as required by town by-law.” The committee believes that the financial status of the town should be available to interested citizens on a periodic basis. In the past, some members of the committee had difficulty in obtaining this information. Rather than to place the detailed reporting requirements in the Charter where it would be difficult to change if needed, the reporting requirements were approved at the June 2022 Town Meeting as a new by-law.

In Section 4-2p(2) Powers and Duties, the committee corrected the phrase, “town agencies serving under the office of the select board” by adding the word, “office”.

In Section 4-4b Acting Town Administrator – Vacancy, the committee changed the length of renewal for a temporary appointment from 3 months to 6 months.

In Section 4-4c Acting Town Administrator – Powers and Duties, the committee discovered that the existing text contained a double negative and believed that the initial intent of the section was to limit the authority of an acting town administrator to matters which cannot be delayed so the committee has deleted a “not” which is causing the confusion. In the case of an acting town administrator who is filling in a vacant position, that individual could be in the position for up to a year. Currently, the Charter states that they can only make temporary or emergency appointments but not make permanent appointments. The committee realizes that could have the potential of keeping well qualified individuals in a state of limbo concerning their future employment with the town and could result in the inability to fill the positions with qualified people or being able to keep them in a temporary position when a permanent position in another town is offered to them. The committee has added at the end to the text, “but not to make permanent appointments or designations”, the additional text, “, unless approved by the select board”.

Article 5 – Administrative Organization

Section 5-3 Appointments, Promotion, and Discipline, the committee noticed that in the last sentence of this section which states, “In the case of an acting or interim department head or chief, the town administration shall have approval authority over all new hires.”, we believe that

there is a typo and it should be, “town administrator”, rather than, “town administration”. We have made that change.

Skipping ahead momentarily, when the committee reviewed Section 7-8 Removals and Suspensions, we believe that it belonged in Article 5 so we moved it to a new Section 5-6. In examining the section in detail, we realized that it grouped appointed officers, appoint members of multiple member boards, and some employees together and without regard to the appointing authority with the exception of those positions appointed by the select board. The town administrator was responsible for the process of suspending or removing the individual from office.

The committee referenced the Organization of Town Government in the Charter and figure 1 of the town organization chart to determine all the appointing authorities within the town excluding those of other elected multiple member boards. The committee determined that there are six different types of positions to consider. They are: the town administrator; employee of the town not subject to the provisions of the state civil service law, or covered by the terms of a collective bargaining agreement which provides a different method; appointed officer or member of a multiple member body appointed by the select board or town administrator; appointed officer of the Board of Health, Board of Assessors, Conservation Committee or Council on Aging; appointees of the town moderator; and appointees of any multiple member body appointed by the town moderator.

The following reflects the committee’s proposed section for Removals and Suspensions. The requirements for the removal of and suspension of the town administrator are set forth in Article 4, sections 4-1 and 4-5 of the Charter. Individuals appointed by the select board may be suspended or removed by the select board. Individuals appointed by the town administrator or appointed by the Board of Health, Board of Assessors, Conservation Committee, or Council on Aging, may be suspended or removed by the town administrator. Individuals appointed by the town moderator may be suspended or removed by the town moderator. Individuals appointed by a multiple member board appointed by the town moderator may be suspended or removed by the multiple member board. In the case of the town moderator or a multiple member board appointed by the town moderator, they may delegate the removal or suspension to the town administrator. The committee worked with town counsel to rewrite this section and in the red-line or marked up version, green text is what was the original text moved from Section 7-8, underlined being kept and strike-through being deleted, and blue underlined being new text added to the section.

In Section 5-7 Organization of Town Government (formerly Section 5-6), we have updated the listing to add new committees or positions and have deleted those committees and positions that no longer are needed or exist. We have also removed the number of members that a specific committee should have. These are listed in the town by-laws in Chapter 4 and other chapters. This will allow for a quicker less cumbersome process to change the size of a committee if the need arise. This change also required a change in the wording of the paragraph before the listing of appointees of the select board, town administrator, and town moderator, the text that begins, “The [appointing authority] shall appoint...”.

In subsection a, b, c, d, and e of this section, we have removed text that was essentially job descriptions of each of the position, understanding that positions such as these may evolve over time and should be defined by the board that the individual serves. We have also changed the process of appointing these positions. Currently, there are two possible methods. The board

could appoint the individual subject to the approval of the town administrator or the board could delegate the selection process to the town administrator who would then submit the selected individual to the board for appointment. Given that these individuals work under the day-to-day direction of the town administration and under the recommendation of town counsel, the committee believes that the town administrator should be the one to select the individual to be recommend to the board for appoint. The town administrator is knowledgeable of the hiring process and being a full-time employee can devote more effort to the selection process than a board of volunteers.

Figure 1, the Town organizational chart has also been updated but it is for illustrative purposes only.

Article 6 – Finance and Fiscal Procedures

In Section 6-3 Long Term Financial Projection, in keeping with the title of the section, we have added the text, “long term”, to the beginning sentence to change it to, “The town administrator shall develop an overall long term financial projection of the town...”. The committee wanted to clarify that the financial projection was not just for next year or the year after but looked at a much longer term, which could be defined by town by-law in the future.

The sentence before the title heading of Section 6-5 Action on the Proposed Budget appears to belong more to Section 6-5 than to Section 6-4 so we moved the section title to before that sentence.

Article 7 – General Provisions and Definitions

When the committee began the process of reviewing the Charter, members kept questioning certain terms, unsure of what they meant. Then we realized that many of the terms in question were defined in Article 7. We added, “and Definitions” to the title of the Article to assist individuals reading the Charter to know that many terms are defined and to assist with their understanding of the Charter.

New Section 7-1 Continuation of Existing Laws. While the committee is calling this section new, in reality it is not. When the Charter was initially adopted in 1991, there was an additional article entitled Transitional Provisions. This section was Section 8-1 of the initial Charter. In the 2003 Charter review, sections in Transitional Provisions were either deleted or moved to other parts of the Charter. At an early meeting of the committee, a question was raised about the deletion of a different section of the Transitional Provisions of the initial Charter. We asked town counsel to review the Transitional Provisions article and determine if any of the deleted sections were still required. The guidance from counsel was that this section, Continuation of Existing Laws, should be in the Charter. We have taken counsel’s advice and returned it to the Charter. The insertion of a new Section 7-1 requires the existing sections to be renumbered in the Charter.

In Section 7-5 Number and Gender (formerly Section 7-4), the sentence referring to gender was wordy and awkward. The committee replaced it with a simpler sentence, “Words importing one gender shall include all genders.”

In Section 7-6 Definitions, we have added definitions for Notification System, Office of the Select Board, Official Town Website, and Rules and Regulations. We have deleted the term

Public Notification since it is no longer used in the Charter. Its use was to refer to a publication of general circulation and the official town website. We are now using the terms official town website and notification system as the process to notify the citizens of Maynard when required by the Charter.

In Section 7-7 Rules and Regulations (formerly Section 7-6), we have updated this section to exempt the school committee and the school department from this requirement. The superintendent's office is responsible for this for the schools. In addition, we have the agency being responsible for the posting of their rules and regulations on their or the town's official website. A copy is still required to be provided to the town clerk as they are the record keeper for the town. We have also removed the delay of newly adopted rules and regulation from going into effect until 10 days after filing with the town clerk. They can go into effect as soon as they are approved by the agency.

In Section 7-8a Periodic Review - Charter (formerly Section 7-7a), we have set a specific time period for the Charter review to begin as opposed to the current wording where it would begin sometime after Annual Town Meeting in a year ending in 1. Currently there is no requirement for when it has to begin and could start months or even years after that Annual Town Meeting. The new requirement would require for the Charter Review process to start sometime in the first five months of the calendar year ending in 1. For the next review, the process would start sometime between January 2, 2031 and May 30, 2031. June 1, 2031 is on a Sunday.

Section 7-8b Periodic Review - By-laws (formerly Section 7-7b). When the Charter was first adopted there was no by-law committee so a new committee had to be created for reviewing the by-laws and revise them to comply with the Charter. There is currently a standing by-law committee and the Charter review committee recognized that it could be counter-productive to have two by-law committees working separately at the same time. We have provided for two options depending if there is a functioning by-law committee. If a by-law committee exists, then the town moderator shall appoint two additional members from the Charter review committee to serve on it to revise the by-laws relative to the Charter revisions. After the committee presents the changes to the by-laws at town meeting, the two positions cease. If there is not a functioning by-law committee, then the town moderator shall appoint a special committee of five members, two of which had served on the Charter review committee, for the purpose of revising the by-laws relative to the Charter revisions. After the committee presents the changes to the by-laws at town meeting, the committee is discharged. The latter option is similar to what is currently in the Charter with the exception of five members instead of seven.

Section 7-8 Removals and Suspensions was moved to Section 5-6, which was previously discussed.

Section 7-9 Procedures Governing Multiple Member Bodies, required some simple modification due to changes in the open meeting law and technology. In subsection a, meeting notices are posted on the town bulletin board and additionally, on the official town website. There are no longer "special meetings" and any posting should just be considered as a "meeting". In subsection b, the term "journal" has been replaced with, "minutes". For subsection c Voting, changes in open meeting law, along with possible changes for in-person, remote, and hybrid meetings, makes it difficult to know the requirement that should be in the Charter. Since open

meeting law must be followed, it makes more sense not to have it in the Charter. With that, we have deleted subsection c Voting.

In Section 7-10 Notice of Vacancies, the committee was initially confused as to the subject since we had also had discussed “notice” in regards to giving notice of a meeting, notice of resignation, and giving notice of vacancies on committee to the appointing authority. In this case the term is not meant for the town clerk or appointing authority but rather for the whole town. It is essentially a list of vacancies on committees or positions of employment whether paid or unpaid, which is maintained by the town clerk and is updated quarterly. We have removed the requirement that it is published in a paper of local circulation in January of each year. To help clarify the intent of this section, we have retitled it “Publication of Vacancies”.

In Section 7-11 Loss of Office, Excessive Absence and Section 7-12 Terms of Office, both of these sections contained an incorrect Massachusetts General Law reference which we corrected and added the text, “pertaining to open meeting law executive session” after each of the references.

Conclusion

The Charter Review Committee spent sixteen months reviewing, discussing, and debating the Charter and suggested changes to it. We examined other town charters and researched Massachusetts General Laws. We believe that our proposed changes to the Charter will help increase openness and clarity to town government and the Charter.

We would like to thank Lisa Mead, Town Counsel, and her staff for answering our questions on sections of the Charter and to render opinions on our proposals to ensure that they would be legal and workable.

We would also like to thank Dick Downey, Town Moderator; Greg Johnson, Town Administrator; and Joanna Bilotta-Simeone, former Town Clerk; for their help and insight on the process and procedures within town hall so we could better understand how changes to the Charter would affect their role and the town.

Respectfully submitted,

William G. Kohlman

Chair, Charter Review Committee