

## Town Government under the Proposed Charter

In their Final Statement, the Charter Commission said that they addressed issues such as “transparency, conflicts of interest... [and] improvements in the structure of our government to make it more efficient, democratic, and accountable...” However, a review of the **actual language** of the proposed changes indicates that the changes to Town structure, reporting, and responsibility would create a government that in future is **less transparent/accountable, less democratic, and less efficient**. Equally troubling, the proposed Charter contains numerous provisions which appear to conflict with each other and/or State law. Below is an analysis of the language in question and its potential effects.

Please note this is **not** an analysis as to other potential forms of government as that is not up for consideration by the voters this May.

### 1. **Town Government Would Be Less Transparent/Accountable**

The proposed charter changes seek to take certain authority away from elected boards such as the Select Board and give it to Town Meeting and its subdivision, the Committee of Precinct Chairs (COPC).

One of the major reasons that policy making and administrative authority is given to elected boards is that they are subject to State Campaign Finance Law (G.L. c. 55), Ethics Law (G.L. c. 268A), and Open Meeting Law (G.L. c. 30A §§ 18-35). That means that what these bodies are allowed to do is clearly defined **and** there is a mechanism to enforce those regulations. In contrast, under State law Town Meeting and its subdivisions are expressly exempted from the State Ethics Law, G.L. c. 268A §1(g), the Open Meeting Law, G.L. c. 39 §§ 9-10, and all Campaign Finance Laws, and the proposed charter changes do not put in place any enforceable regulations on the conduct of Town Meeting or the COPC. Some examples:

- Both our current Charter and proposed Charter require that Town Meeting always operate in open session and not hold secret ballots. **There is no similar requirement for the COPC**. That means that the COPC can take the position (as they do currently) that as they are not subject to these regulations. This would allow the COPC to hold meetings, conduct discussions and deliberations, and even reach agreements and decision **outside the view of the public and without minutes to indicate what was done**. Nothing in the proposed Charter would prevent this.
- Additionally, despite giving Town Meeting and the COPC new powers, authority, and responsibilities, the proposed Charter does **not** impose any financial disclosure, ethics requirements, or sanctions for violations of Town policy on Town Meeting or the COPC. [There is a conflict of interest provision in the existing and proposed Charter stating that Town Meeting members are not to engage in certain types of conflicts, but there is no enforcement mechanism for a violation]. That means that they are able to take donations and act on matters in which they or those with whom they have a business or personal

relationship have an interest without any notice to the public. And even if a violation is found, the proposed charter doesn't include any means to discipline a Town Meeting member.

- The proposed Charter also creates new Town Meeting committees which may not be subject to the State Ethics Law and Open Meeting Law, such as the Legislative Oversight Committee. **(Draft Charter Sections 2-13-1 – 2-13-4)**.
- That committee is proposed to have the power to require board and committee members, department heads, and even Town employees to provide information and answer questions, all of which it could potentially do outside public view. **(Draft Charter Section 2-13-3)**.

Curiously, despite stating that the intention was to make Town government more accountable, and to make Town Meeting a co-equal branch of government, the proposed Charter proceeds to treat Town Meeting and the COPC differently, even exempting them from a number of requirements being imposed on other Town boards and committees:

- Board members are required by state law to attend meetings, and can be removed for failing to do so. There is no sanction included for a Town Meeting Member that fails to attend Town Meeting. **(Draft Charter Sections 2-2-7 and 2-5-1)**.
- Boards are required to hold regular meetings to ensure that they stay current on Town business and events. Town Meeting Members are only required to hold caucuses once before each representative Town Meeting, and there is no sanction for not attending. **(Draft Charter Section 2-6-2)**. The COPC are not required to hold any individual public meetings. **(Draft Charter Sections 2-13-1 – 2-13-4)**.
- The proposed charter imposes a restriction that Select Board and its individual members are not permitted to “interfere in the day-to-day administration of the affairs of the town” or “give orders to any employee”. **(Draft Charter Sections 3-2-1 and 3-2-6)**. There is no such restriction on Town Meeting or the COPC. In fact, the proposed Charter expressly authorizes Town Meeting to assign duties to the Town Manager (Draft Charter Section 3-5-1(i)) and for its subcommittee to question Town department heads **(Draft Charter Section 2-13-3)**.
- The proposed Charter creates an Appointments Advisory Committee which would advertise board and committee vacancies, review the applicants, and then forward its “recommended candidates”. **(Draft Charter Section 3-17-2)**. Yet, the proposed charter expressly excludes all Town Meeting appointments, even for those committees where others are also making appointments. **(Draft Charter Section 3-17-4)**. So this committee would decide which applicants other groups should appoint but make no such determination for Town Meeting/COPC appointments which, again, can be made in private.

Under this proposed Charter, Town Meeting and the COPC remain exempted from the type of State oversight and scrutiny imposed on other branches of government, have further exempted themselves from any additional imposed in the Charter, and are not subject to any sanction whatsoever even if a violation is found to have occurred. In fact, a single Town Meeting Member could do all of the following on behalf of themselves, a family member, friend, or client:

- Present an article to Town Meeting
- Advise Town Meeting on financial matters as a member of the Finance Committee
- Advise Town Meeting on non-financial matters as a member of the COPC
- Vote to prevent public comment as a Town Meeting member
- Vote to approve an article, and
- Seek to direct Town staff as to how an article should be carried out as a member of the Legislative Oversight Committee

All without ever disclosing if they have any connection to the matter or sanction even if it is discovered. This can only lead to a less transparent and less accountable form of government.

## **2. Town Government Would Be Less Representative/Democratic**

Several provisions of the proposed Charter limit the ability of the residents to present proposals, speak on issues, and vote on matters critical to Town operation.

- Town Meeting relies heavily on the Advisory and Finance Committee (A&F) in considering the proposals and budgets placed before it. Currently, the A&F is appointed by the Town Moderator who is elected by the residents in a town-wide election. Town Meeting members are not permitted to serve on A&F. This allows the residents to have some measure of control and ensure the independence of those advising Town Meeting. The proposed Charter takes all of this away.
  - Instead of an A&F appointed by an official elected town-wide, Town Meeting would be advised by a Finance Committee appointed by Town Meeting (through a Moderator that they elect) and the COPC which consists of Town Meeting members.
  - Town Meeting members would also be allowed to serve on the new Finance Committee. This is intentional, as a provision keeping the restriction against Town Meeting members serving on this committee was removed from an earlier draft.
  - So under this proposed Charter, Town Meeting would be advised only by people appointed by Town Meeting which can consist of Town Meeting members. This takes away the checks and balances afforded by having the residents vote on the appointing authority. **(Draft Charter Sections 2-7-3, 2-7-5, and 2-12-1).**

- Town Meeting would appoint 2/3 of the Charter Committee that meets every 5 years to address changes in the Charter. **(Draft Charter Sections 2-7-5 and 8-6-1).**
  - This would allow Town Meeting to ensure that no change would occur which imposes greater oversight on Town Meeting.
- This proposed Charter takes away the right of the residents to have their issues addressed at Town Meeting.
  - The right to automatically have resident sponsored articles heard is eliminated. In fact, it creates a means by which an article might not be heard at all unless approved by 2/3 of Town Meeting. **(Draft Charter Section 2-12-2 (c)).**
  - Unless given permission to submit information in writing, the proponent of an article must appear before the Finance Committee, and if not, the article cannot be considered by Town Meeting unless 2/3 agree to hear it. **(Draft Charter Section 2-12-2 (c)).**
  - Additionally, despite saying that dividing A&F into a Finance Committee and the COPC will save time, the language of the proposed Charter still requires the new Finance Committee to hear every article, meaning that those presenting articles may now have to be heard by multiple Town Meeting committees or risk not having their article presented to Town Meeting. **(Draft Charter Section 2-12-2 (c)).**
  - The right of a resident to be heard at Town Meeting can also be taken away by Town Meeting, even if a resident has been previously approved to speak by the Moderator. **(Draft Charter Sections 2-8-4 and 2-8-7).**
- The creation of “District Select Board” seats will not create greater representation. The Charter Commission has said, multiple times, that it will create districts for north, central, and south Plymouth. **That is not permitted by State law.**
  - Under State law, districts must be created **based on population**. That means that representation is weighted to those areas that are heavily populated, and less sparsely populated areas would not gain any additional representation.

The government that would be created by this proposed Charter would place greater influence over town-wide issues in the hands of Town Meeting/COPC members who are elected as representatives of their precincts, not the entire Town. As a result, under this proposed Charter, residents could lose even more control over their ability to influence the matters that affect them.

### 3. Town Government Will Be Less Efficient/Effective

The proposed new Charter imposes a slew of new obligations on various Boards, Committees, and Town employees. This requires the hiring of multiple additional Town staff whose roles are fixed as a matter of law, meaning that they cannot be eliminated. For example:

- The Town Manager would be **required** to provide staffing for **any requests** voted by Town Meeting (**Draft Charter Section 3-5-1(i)**); sought by the COPC (**Draft Charter Section 2-7-2**); or as requested by the Town Moderator (**Draft Charter Section 2-8-6**), all of which are part of Town Meeting.
  - This would require the Town Manager’s office to have additional staff available to serve the multiple bodies of Town Meeting.
  - Town Meeting can also assign areas of responsibility to the Town Manager and direct the Town Manager to perform unspecified duties, essentially meaning that the Town Manager also report to Town Meeting. (**Draft Charter Section 3-5-1(i)**).
  - The Town Manager is required to prepare staffing evaluations of town departments and provide them to Town Meeting, even though Town Meeting has no authority over Town staff. (**Draft Charter Section 3-5-1(h)**).
- The proposed Charter would create a new Town Meeting Legislature Oversight Committee made up of 3 COPC members, the Town Manager’s Office and the Town Clerk’s Office.
  - This will require the Town Manager and Town Clerk to participate in additional meetings and prepare additional reports. (**Draft Charter Sections 2-13-12 and 2-13-14**).
  - Additionally, this Committee would have the **right to interview** any board or committee member, department head or employee they want to question about implementation of enforcement of any Town Meeting Article. (**Draft Charter Section 2-13-3**). **This will necessitate the involvement of Town paid legal counsel for any Town employee or official who requests it.**
- The Town Manager has to create a new Appointments Advisory Committee which decides which candidates are qualified for Town committee openings. (**Draft Charter Sections 3-17-1 – 3-17-2**).
- - This will create another committee for which Town staff will have to provide support and which may create legal issues where candidates are not “recommended”.

- A new “complaints” process is created which **requires** the Town Clerk to investigate any allegation that a town official or governmental body has not followed the Charter and then requires that official or governmental body to respond in writing. All of which must be published. **(Draft Charter Sections 8-5-2, 8-2-5, and 8-2-5).**
  - o No procedure was created for an initial review by someone (such as Town Counsel) to determine if the claim even rises to the level of a Charter violation (as opposed to a mere disagreement with the actions of the official), meaning;
    - Town staff will need to review each complaint and determine (a) what the complaint is about and (b) who is required to respond.
    - It will also allow anyone who simply disagrees with a decision to file a complaint (or multiple complaints) in order to harass those who are volunteering their time.
  - o **This will also again necessitate the involvement of Town paid legal counsel for any Town employee or official who requests it.**

Our Town Manager, Finance Director, and independent legal counsel estimate that this will require an additional full-time employees and consultants. **The cost to the taxpayer of implementing this new charter would be \$1.47 million in the first year alone, and \$950,000 each year after that.**

In addition to cost, this increased bureaucracy will limit the time our volunteer elected officials and paid Town employees will have to address the needs of the residents. Some examples:

- The Select Board would be required to have no less than 12 joint meetings with other boards and committees. That means 25% of its meeting time will be spent on such meetings. In addition, staff for both the Select Board and the Committee will have to prepare for those meetings, requiring more people taking more time away from day-to-day operations of the Town. **(Draft Charter Sections 2-7-7, 2-13-5, and 3-2-8).**
- The Planning Director would be required to prepare, and the Planning Board would be required to review, comment, and vote on, reports regarding compliance with the Master Plan for every proposed by-law, warrant article, or project which falls within the scope of the Planning Department, which would include Open Conservation, Economic Development, and Historic. This will amount to literally **hundreds of additional reports per year.** **(Draft Charter Section 3-12-4).**

Time spent by officials and staff addressing inter-governmental requests, directives, and meetings will take time away from governing and operating the Town.

#### 4. The Proposed Charter Contains Vague, Conflicting, and Even Unlawful Provisions

Despite an initial review by the Attorney General's office and the hiring of a consultant to advise on legality (but not on whether any provision makes sense), the final version of the proposed Charter, if passed, contains a number of provisions which could be problematic in either obtaining final State approval, challenged by residents, or result in operational problems:

- The proposed Charter creates a transition from our current 5 person Select Board to a 7 person Select Board which requires all members to re-run for their position even if their term hasn't expired. This is in conflict with State statute (**M.G.L. c. 41 §2**).
- Charter simultaneously says that the Moderator shall be replaced at the next town meeting after the Charter becomes effective and that he serve out his current term.
- Despite passing enabling legislation to have a hybrid Town meeting, the Charter actually doesn't allow for remote participation, meaning absent a suspension of the open meeting laws we would have to go back to in-person Town Meeting. (**Draft Charter Section 2-2-6**).
- The Charter requires that there be a physical location where residents have the unrestricted ability to view the recording of Town Meeting. (**Draft Charter Section 2-2-4(c)**). That means we would actually have to staff a location 24/7 365 days a year.
- The Open Space Committee is now reporting directly to Town Meeting, even though it is appointed by the Planning Board, Select Board, and Land Use Acquisition Committee. (**Draft Charter Section 3-14-1**).

The proposed Charter contains a number of good ideas. However, the document on which we have to vote in this coming election, contains language which does not achieve its stated goals and which could result in significant problems and unintended consequences. The residents should never accept a binding legal document as its guiding constitution which contains such flaws. That is why a number of Town officials, including Town Meeting/COPC Members, have proposed that this Charter **not** be adopted, and instead that it be used by a newly appointed Charter Committee as a blueprint to make changes to our current Charter so that we can adopt the positive aspects and work to make Town Meeting a legitimately co-equal branch of government.