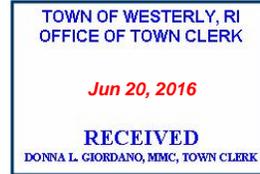


**REGULAR MEETING – AD-HOC ADVISORY CHARTER REVISION COMMISSION – TOWN CLERK’S LIBRARY
WEDNESDAY – JUNE 8, 2016 – 5:30 P.M.**

I. 5:38 P.M. CALL TO ORDER

- 5 **Present:** Lawrence Cioppa, Chair
 Chris Lawlor, Filer
 James Angelo
 Richard Dudley
 John Formica
10 Christian Lund
 Nina Rossomando
 Paula Ruisi
 Stephen Turano



- 15 **Also Present:** Oliverio & Marcaccio, LLP, Town Solicitor (entered 5:39 p.m.)
 Donna Giordano, Town Clerk
 Benjamin Delaney, Recording Secretary

II. 5:30 P.M. APPROVAL OF MINUTES

20 Mr. Dudley clarified the amendment to the May 25, 2016 meeting minutes made at the June 1, 2016 meeting was to record the proposed revised texts of 8-1-1 Town Assessor and 8-1-2 Duties of Assessor in their entirety.

 Mr. Cioppa requested future votes be recorded as yeses followed by nos.

25 **Motion by Mr. Dudley, Seconded by Mr. Lawlor, to approve the minutes of June 1, 2016. (Voted unanimously)**

III. 5:40 P.M. REPORTS

A. Town Solicitor

30 Mr. Cioppa noted the Commission had received and was reviewing a summary of draft referenda questions provided by the Town Solicitor.

 Matthew Oliverio, Esq. stated Mr. Cioppa had provided a copy of the draft Commission’s report. He noted the summary provided to the Commission did not address most staff changes due to continuing drafting edits and he had also provided the ethics ordinance for the City of Providence in regard to the Commission’s proposed code of ethics. He summarized the history of the City’s
35 establishment of an Ethics Commission and stated he believed the establishment of an ethics commission in the Town should be studied by a separate commission. He noted the proposed language was aspirational and cited questions which would have to be answered for the establishment of such a study commission.

40 Mr. Cioppa stated eliminating the proposed revision may be problematic as other proposed revisions were related to the code of ethics. He questioned if an ethics commission would need to be

included in the Charter.

5 Mr. Oliverio recommended it be done by ordinance or entirely through the Charter. He noted the Commission proposed specific grounds for its proposed recall and all elected and appointed public officials were subject to the state's Code of Ethics. He stated a local code of ethics should be established to address gaps within the state's code and clarified portions of the Commission's proposed code were duplicative. He cited portions of the Commission's proposed code which may be subject to constitutional challenge due to vague terms.

10 Ms. Ruisi, responding to Mr. Oliverio's noting that additional terms the Commission proposed to adopt from the Town of Narragansett's Charter were aspirational, questioned if the Town of Narragansett should be contacted regarding how it enforces its code of ethics.

Mr. Oliverio noted no complaints have been filed to-date in the City of Providence under its ethics ordinance. He noted the Commission's proposal did not include establishment of or investigative authority or enforcement mechanism for an ethics commission.

15 Mr. Lund clarified the Commission had not intended for the creation of an ethics commission.

Mr. Oliverio, noting the intent of the ethics code was clarified to be to serve as a grounds for recall, questioned if the grounds of recall should instead include a finding of probable cause by the Rhode Island Ethics Commission to review a filed complaint. He stated an arbiter would be needed to determine if there was a violation to the local code.

20 Ms. Ruisi stated the code was proposed due to a perceived lack of respect for the state's Code of Ethics.

Mr. Oliverio cited the City of Providence's Municipal Integrity Officer had stated the ethics code had not been designed to supplant the state's Code.

Mr. Cioppa confirmed the Commission's proposal was not meant to supplant the state's Code.

25 Ms. Ruisi noted a member of a prior Commission had recommended the Commission review the Town of Narragansett's Ethics Code. She clarified for Mr. Oliverio she was unsure if that Town's code established a commission or enforcement mechanism.

30 Ms. Rossomando, regarding draft referenda question seven in the Solicitor's summary, clarified the Commission was proposing to reject the existing organization of the Finance Department. She cited the Commission's organizational diagram for the Department and stated the Commission proposed the Finance Department be headed by a Director of Finance appointed by the Town Council and responsible for developing the municipal budget and enterprise funds. Separately, a School Director of Finance would be appointed by the Superintendent of Schools.

Mr. Oliverio noted the Charter presently reflected this organization.

Mr. Angelo stated the present organization did not reflect the Charter.

35 Mr. Dudley noted the Director of Finance would be responsible only to the Town Manager.

Discussion was held regarding the inclusion of "acting" in the draft referenda question seven and Mr. Oliverio stated he would revise the question to state "...Town Manager from serving as Director of Finance..."

40 Ms. Rossomando questioned if the electorate would need to vote on the revision if was the same organization as presently in the Charter.

Mr. Oliverio noted there were other proposed revisions regarding the Finance Department not currently present in the Charter and overviewed draft referenda questions eight through twelve.

Ms. Rossomando questioned what the Commission could do to clarify for the public its rejection of the current organization of the Department, noting it was in violation of the Charter. She questioned if the draft referenda question could reference the organization established by the Charter at present.

5 Mr. Turano suggested the draft referenda question be left as is with the present organization of the Department revoked if the question was approved by voters. He noted the Department’s organization would not be discussed if the Town Council had adopted an ordinance corresponding with its approval of the consolidation.

Mr. Lund suggested the Town Council propose a revision to formally establish or revoke the present consolidation.

10 Mr. Oliverio clarified for Ms. Rossomando the Commission’s work was to amend, revise and eliminate sections of the Charter rather than reaffirm sections. He recommended the Director of Finance should not have alternative titles.

15 Mr. Dudley noted the Charter presently uses the term “Chief Financial Officer of the School Department” and the Commission’s passed motion uses the title. He clarified draft referenda question three should revise “a Town Council member” to be “an elected official.”

Mr. Lund clarified for Mr. Oliverio the Commission believed Town employees were precluded from the proposed code of ethics due to their signing of the employee handbook.

Mr. Oliverio noted employee handbooks can be amended. He questioned why the Commission proposed to mandate specific accounting practices for enterprise funds.

20 Mr. Angelo summarized the contrast between municipal and double-entry accounting. He confirmed for Mr. Oliverio there were no other forms of recommended accounting the Finance Department would be restricted from. He clarified the proposed revision was to address municipal accounting presently being used for enterprise funds.

25 Ms. Rossomando, regarding draft referenda question one, clarified the Commission proposed School Committee members serve for no more than two consecutive terms. She questioned if questions one and five could be consolidated as one question.

Mr. Oliverio stated the questions could not be consolidated as some voters may approve limiting consecutive terms for some bodies and not others. He clarified the order of the referenda questions would likely mirror the order in which they appear in the Charter.

30 Mr. Dudley stated there was no record of a vote on limiting consecutive terms for School Committee members.

Mr. Oliverio, reviewing Title 16 Education of the Rhode Island General Laws, confirmed there was no statute precluding consecutive term limits. He confirmed a formal vote on a motion would be needed by the Commission.

35 Mr. Dudley cited the relevant provision was 11-1-1 School Committee.

40 Mr. Oliverio confirmed draft referenda question sixteen would be clarified in the same manner as question five. He stated, regarding question nineteen, town solicitors were subject to the Rules of Professional Responsibility and a portion of the proposed revision should be reserved for ordinance. He questioned if the duties and responsibilities were illustrative or all-encompassing and cited a Town Solicitor may be ordained by the Town Council or Town Manager with additional duties and/or responsibilities. He noted his concern the text of the proposed revision transformed the position of Town Solicitor from an attorney for the Town as a corporate entity to an attorney for the general public.

He recommended the language of the proposed revision be rescinded and recommended if the Commission opt to keep the language, to be modified to state “so long as such duties and responsibilities are not inconsistent with the Supreme Court Rules of Professional Responsibility” at its end. He confirmed for Ms. Rossomando eliminating the final sentence of the proposed revision and adding to the new final sentence “so long as such duties and responsibilities are not inconsistent with the Supreme Court Rules of Professional Responsibility.” would be adequate.

Ms. Rossomando noted the Commission wanted to include the Town Solicitor’s opinions are advisory only unless the Town Solicitor becomes aware of a violation of federal law, state statute or Town ordinance or the Town Charter.

Ms. Ruisi cited an advisory of the Town Solicitor to the Town Council on an Office Research, Assembly and Technology (ORAT) zoned parcel owned by the Carpiolato Group as being advised based on general ORAT zoning rather than an amended ordinance establishing specific terms for the parcel as an example and noted the Town Solicitor may have been unaware of such terms.

Mr. Oliverio again noted town solicitors had obligations under the Rules of Professional Responsibility and stated he had not seen language similar to the Commission’s proposed revision in other municipal charters. He noted the vagueness of “appropriate action” as included in “The Town Solicitor is advisory except that, as an officer of the court, the Town Solicitor must take appropriate action...”

Ms. Rossomando stated her understanding the intent of the proposed revision was for the Town Solicitor to advise the Town Council of a motion which may be against federal law, state statute, local ordinance or the Town Charter.

Ms. Ruisi noted litigation had resulted from the Town having in the past not followed procedure or ordinances and stated her support for the proposed revision.

Mr. Angelo confirmed the proposed revision was not intended to be all-inclusive. He stated specificity was needed in the Charter to ensure certain actions were done.

Ms. Giordano suggested draft referenda question twenty-six be revised from “...from ‘May’ to ‘June’?” to “... from ‘June’ to ‘May’ for submittal of the water and sewer budget?”

Ms. Rossomando, citing draft referenda question twenty-nine, clarified the Commission’s proposed revision was for the School Committee to change the format of the presentation of the school budget as requested by the Board of Finance.

Mr. Cioppa cited the proposed revision.

Mr. Oliverio confirmed question twenty-nine would be revised as “Shall 11-1-7 of Charter be amended to submit the presentation of the proposed annual school department budget in the format requested by the Board of Finance?” He restated for Mr. Cioppa he did not recommend the code of ethics and its enforcement be split between the Charter and ordinances.

Ms. Ruisi noted the Charter included verbatim language from several ordinances and stated her support for consistency between the Charter and ordinances.

Mr. Oliverio noted the need for flexibility for an elected body to pass amendments and laws. He suggested for Ms. Rossomando a referenda question be drafted whether the Charter should mandate the Town Council to form a commission to develop an enforceable ethics code on or before a given date. He suggested for Mr. Angelo the ethics code be adopted as an ordinance and for the Commission that they discuss and propose a timetable and deadline for the commission.

Mr. Angelo announced his intention to rescind the Commission's previous motion on a Code of Ethics at the June 15, 2016 regular meeting.

5 Mr. Oliverio confirmed for Mr. Dudley a proposed revision for establishing staggered terms for Town Council members would need to include a deadline for establishment. He suggested the process for establishing staggered terms be proposed by and included in the Commission's report and stated he would include the proposed revision as a referenda question.

10 Discussion was held regarding the process for shifting from two-year to four-year terms so that all Town Council members would be seeking election for four-year terms in or after the November 2018 election. Mr. Oliverio recommended he and Ms. Giordano meet to discuss the transition.

Mr. Cioppa requested Mr. Oliverio's and Ms. Giordano's suggestions be provided to the Commission.

Ms. Giordano recommended Cathy Brayman, Deputy Town Clerk and Clerk to the Board of Canvassers, also attend the meeting.

15 Mr. Oliverio stated for Mr. Turano no one was currently responsible to enforce the Charter and identify Charter violations. He noted and summarized the legal principle of standing and cited the proposed recall process would serve as Charter enforcement.

Mr. Angelo questioned what would be the timeframe for remedying a violation.

20 Commission members requested Mr. Oliverio provide clarification on the state law allowing for pensions for Town Council members.

Mr. Oliverio summarized the Town previously exited from the municipal employee retirement system (MERS) which councilors serving as of July 1, 1973 were allowed to contribute to and participate in by a 1973 statute. The Town passed a resolution in 2000 establishing an allowance system for eligible councilors which included a one-time contribution factor. Five councilors were presently eligible and three of these councilors were collecting. He clarified the resolution would need to be repealed for the system to be eliminated and those currently eligible would need to be grandfathered into the system. He advised the repealing of the resolution and pensions should not be addressed in the Charter and noted the 2000 resolution was a response to a 1997 lawsuit.

30 Mr. Angelo noted the limit to consecutive terms for councilors would extend the time for councilors to become eligible for the allowance system.

IV. 7:10 P.M. UNIFNISHED BUSINESS

A. Rescinding of Chapter IV Department of Development Services

35 **Motion by Mr. Angelo, Seconded by Mr. Lawlor to rescind the [Commission's] action taken on Chapter IV Department of Development Services.**

40 Mr. Angelo stated the Department was in violation of the Charter, the Director of Development Services did not have authority or responsibility and enforcement of the code by the Zoning Official and Town Planner could be overridden by the Zoning Board of Review and the Planning Board, respectively. He questioned if an individual in the position of Director could oversee building, planning, zoning, housing authority and other areas under the scope of the Department. He stated the Director was a staff

position and its responsibilities belonged elsewhere.

Ms. Ruisi summarized the Director was established in 2012 without submitting a proposal to the Town Council and the Department was reorganized and renamed by the current Town Manager without following the same procedure, outlined in 15-2-1. She stated the Department had already handed down
5 ordinances on the ninety-day moratorium and the Harbor Management Plan to be developed by the Department. She clarified the Zoning Official was involved in the establishing of the Airport Hazard Overlay District. She recommended the Commission rescind the Department so that it may established by the outlined procedure.

Ms. Rossomando questioned why the rationale for the Commission's establishment of a Director
10 of Environmental Protection and Public Welfare did not apply to the Department and Director of Development Services.

Mr. Lawlor noted the Director of Environmental Protection and Public Welfare was being established whereas the Commission would be affirming the Department and Director of Development Services already established without proper procedure.

Mr. Turano clarified the Town Council had not confirmed the Department's establishment with
15 an ordinance and cited 13-3-5 Additional Departments or Officials.

Mr. Lawlor questioned similar wording between the Town Manager and Director of Development Services and if the Director's duty to administer grants would limit future job applicants.

Mr. Lund agreed the procedure had not been followed and stated he was not looking to punish
20 the Town. He stated the ultimate responsibility for enforcement was with the Town Manager and noted this responsibility was delegated down by the Town Manager and respective Department heads. He stated the Department's reorganization and renaming mirrored a trend in other municipalities to attract additional revenue. He stated he was content with the Commission's proposed revision.

Mr. Cioppa stated the Commission had proposed the revision to legitimize the Department and
25 'give it teeth' to function. He recommended the Commission legitimize the Department through the Charter and stated its proper function would be the responsibility of the Town Manager. He stated he would vote 'no' on the motion.

Ms. Ruisi clarified the rescinding of the motion would not prevent the Department from being established. She stated the rescinding of the motion would hold the Town responsible for duties which
30 had not been followed and the Commission would not be doing its job if it allowed the Department to be legitimized through the Charter.

Mr. Angelo stated his agreement and restated his concerns regarding the position of Director.

Ms. Rossomando stated her consideration was based on whether the Department as organized
35 made sense for the Town in 2017 and going forward. She stated the Department's inclusion in the Charter would be affirming its need to be in the Charter.

Mr. Angelo clarified the motion did not preclude the Commission from making another motion regarding the Department.

**(Motion voted 2-7 with Mr. Cioppa, Mr. Lawlor, Mr. Dudley, Mr. Formica, Mr. Lund, Ms. Rossomando
40 and Mr. Turano against)**

Ms. Rossomando stated the Department was an important function of the Town and the Town

had the right to reorganize the Department in some way.

Mr. Lawlor and Mr. Formica stated they were against the Department being established without following proper procedure and the Department's establishment was in the best interests of the Town.

5 Mr. Lund stated most officials involved in the Department's establishment in 2012 were no longer working for the Town.

Mr. Dudley stated he believed the structure of the Department made sense regardless of how the Department was established.

Mr. Turano noted the Town Manager's support of the Department.

Mr. Cioppa stated he believe the structure of the Department made sense.

10 **(Mr. Oliverio exited)**

V. 7:25 P.M. NEW BUSINESS

A. Limiting of Consecutive Terms for School Committee members

15 **Motion by Mr. Dudley, Seconded by Ms. Rossomando, to amend 11-1-1 School Committee to reword the paragraph by stating "The School Committee shall consist of seven (7) members elected at large to serve a term of four (4) years and until each one's successor is elected and qualified" and to add "members shall be elected in staggered fashion and no member shall serve more than two (2) consecutive terms." (Voted unanimously)**

20 **VI. 7:27 P.M. ADJOURNMENT**

Motion by Mr. Lawlor, Seconded by Mr. Lund, to adjourn. (Voted unanimously)

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Minutes for the May 14, 2016 public hearing submitted by:

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Benjamin Delaney