

## **CHARTER COMPLIANCE COMMISSION**

Meeting Date: June 25, 2020

Meeting Location: Conference Call

Meeting Time: 12 noon

### Attendees:

Members - Robert Klytta, Julia Perry

Moderator - Thaddeus Soule

Public - Patricia Miller

1. In accordance with §2-3-g-4 of the Provincetown Charter, the Provincetown Charter Compliance Commission held a Public Hearing on Thursday, June 25, 2020, at 12:00 noon. The meeting was held by conference call pursuant to Governor Baker's March 12, 2020, Order Suspending Certain Provisions of the Open Meeting Law. Thaddeus Soule, Town Planner, served as Moderator.

2. The Chair of the Charter Compliance Commission called to order the Public Hearing on the Warrant items related to the Charter. The Public Hearing was held to solicit comments from the public and to vote in favor or opposed to Article 20 of the Warrant for the Spring 2020 Special Town Meeting and Annual Town Meeting, as published in the Banner newspaper on June 11 & 18, 2020.

3. Warrant Article 20 reads as follows

Warrant Article 20. Finance Committee - Charter Amendment – Removes Provision Allowing Part-time Resident Appointments to the Finance Committee. To see if the Town will vote to authorize the Select Board to petition the General Court for special legislation to provide as set forth below; and further, that the Charter amendment, if approved, may be combined with any other Charter amendments approved at this meeting into a single bill to be submitted to the General Court and, in connection therewith, to authorize the Town Clerk, in consultation with the Town Manager, to finalize the form of the special legislation for these purposes, including any non-substantive changes made or required by the proposed amendments with respect to lettering or numbering of the sections of the Town Charter so amended; provided, however, that the General Court may make clerical or editorial changes of form only to the bill so submitted, unless the Select Board approves amendments to the bill before enactment by the General Court; and further that the Select Board is hereby authorized to approve amendments which shall be within the scope of the general public objectives of this petition.

**AN ACT RELATIVE TO THE CHARTER OF THE TOWN OF PROVINCETOWN.**

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 7 of Chapter 5 of the Charter of the Town of Provincetown, which is on file in the office of the archivist of the Commonwealth as provided in section 12 of chapter 43B of the General Laws, is hereby amended by striking out the last sentence within subsection (c) and replacing it with the following: *Individuals who are not registered voters and who commit to their appointing authority in writing prior to being appointment to being present for a majority of the meetings of the Board, may be appointed to any non-regulatory Town Board, except for the Finance Committee.*

SECTION 2. This act shall take effect upon its passage. Or to take any other action relative thereto.

The following explanation was provided with Warrant Article 20:

***Explanation of Article 20:*** *The amendment would remove the ability of the Moderator to appoint a Part-time Resident as an Alternate to the Finance Committee. Finance Committees are standing subcommittees of Town Meeting and a non-voter cannot vote at Town Meeting, therefore a non-voter cannot vote on its subcommittee and cannot take the place of a voter for quorum. Alternates exist to help fill quorum when regular members are absent, and in the case of the Finance Committee, a non-voter cannot participate without special permission and cannot vote at Town Meeting. Due to these special circumstances, it is not appropriate to have non-voters on a subcommittee of Town Meeting.*

4. In discussing this Warrant Article, the Charter Compliance Commission considered the following Public Comments:

a. The handout signed by Patricia Miller and provided to the Commission by a representative for her at the Meeting dated March 10, 2020, and attached to the Minutes for that Meeting, which did not address it at that time since the topic - the proposed revision of the Charter by the Finance Committee was not on the Agenda. The handout is also attached to these Minutes. Her comments are summarized in part as follows:

- i. The voters revised the Charter to allow non-voting part-timers to sit as alternates on non-regulatory committees.
- ii. The Finance Committee is not a regulatory committee.
- iii. A part-timer has applied for one of two alternate position vacancies on the Finance Committee. Alternate positions on the Finance Committee have been vacant for more than two years.
- iv. The Moderator did not seek to fill the vacant alternate positions until a part-timer applied.

b. Other Public Comments - Patricia Miller at June 25, 2020, Meeting, asked:

- i. Can the Finance Committee propose an amendment to the Charter?

ii. Would the Charter Compliance Commission be willing to make a statement as to whether the actions of the Finance Committee, and the Moderator as the Appointing Authority for the Finance Committee, are in violation of the "spirit of the Charter".

5. The Charter Compliance Commission determined:

a. Contrary to the explanation included with the Warrant, the Finance Committee is not a "Standing subcommittee of Town Meeting", since Town Meeting is not a Committee, and subcommittees can only exist in relationship to a Committee. The role of the Finance Committee is to inform Town Meeting. Per Town Meeting Times, "In Massachusetts, the finance committee's recommendations are purely advisory."

As stated in the authorizing legislation, Chapter 39, Section 16, of the Massachusetts General Laws:

"Every town whose valuation for the purpose of apportioning the state tax exceeds one million dollars shall, and any other town may, by bylaw provide for the election or the appointment and duties of appropriation, advisory or finance committees, who shall consider any or all municipal questions for the purpose of making reports or recommendations to the town."

And as stated in the Finance Committee Handbook by the Association of Town Finance Committees, revised October 2017, at Page 18:

"Finance Committee The finance committee is a town's official fiscal watchdog. Its primary responsibility is to advise and make recommendations to town meeting on the budget and other areas of finance, although in many towns they prepare and submit the budget as well as comment on it. The state statutory authority of the finance committee does not vary from community to community, but the role and process does."

b. Contrary to the explanation provided with the Warrant article, Alternates count toward quorum of a meeting of the Committee if taking the place of a full member who is absent, and can vote during a Committee Meeting if taking the place of a full member.

c. Also contrary to the explanation included with the Warrant, the restriction on a person who is not a registered voter from voting at Town Meeting does not affect the functioning of the Finance Committee, since the votes of the Finance Committee relative to its advisory role to the Town Meeting take place outside of Town Meeting. The explanation is confusing the role of the Finance Committee with the role of the individuals serving on the Finance Committee.

d. The wording in the Charter makes it clear that appointment of a part-time resident to a non-regulatory committee is optional to the Appointing Authority.

e. The Article as written is confusing. It contains a grammatical error ("prior to being appointment"), inadequate punctuation (no comma after "voters" to identify the beginning of the dependent clause), and it is unclear what portion of the foregoing sentence is controlled by the final clause "except for the Finance Committee" because of the dependent clause.

f. In consideration of Patricia Miller's comments at this meeting, the Commission finds that the Finance Committee has authority to sponsor a proposed amendment to the Charter. Consideration at Town Meeting requires an indication of the vote of the Committee, which is not available due to a lack of Minutes for 2020 for the Finance Committee, but that lack can be addressed prior to the Town Meeting. As to her other comment, the Commission declines to address whether the actions of the Finance Committee and the Moderator constitute "a violation of the spirit of the Charter" as being beyond the authority of the Commission.

Based on the foregoing, the Commission voted 2-0-0 to not recommend Warrant Article 20 as written. (Motion by Julia Perry, Second by Robert Klytta.)

Adjourn at 12:45 pm.

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Secretary: Julia L. Perry

Good evening: :

I am again writing individually and in my capacity as President of the PPRTA to urge opposing the FinCom article seeking to revise the Charter to eliminate all non-voting part-timers from sitting in any capacity on FinCom, including as alternates.

Just a few facts that might help in analyzing this proposal.

1-As you know, the voters revised the Charter to allow non-voting part-timers to sit as alternates on non-regulatory committees.

2-The Charter also identifies by name (as voted by the voters) the regulatory committees. FinCom is not on that list and is therefore a non-regulatory committee. This was confirmed by the Charter Compliance Commission in September 2019.

3-A part-timer applied for one of two FinCom vacancies. It is worth noting that at that time at least 1 FinCom alternate role was vacant for 60 consecutive months. At least 2 alternate roles were vacant in 27 of 60 possible months, or nearly half the time. To be clear, 27 months is over two years and 60 months is 5 years.

4—Clearly, FinCom had no particular urgency about filling these alternate spots — until a part-timer applied. Then the seasoned Town Moderator sought out two alternates only to be told that one appointment, Mr. Panagore, violated the Charter. He resigned in November and again the vacancy sits empty – to this day. It is not a big leap to conclude, had an inquiry not been made questioning his eligibility, Mr. Panagore, as the former Town Manager, would be serving as an alternate on FinCom today.

5—The Moderator’s original articulated reasons as to why a part-timer cannot be appointed as a FinCom alternate were as follows: She did not want anyone on any Committee/Board from “away” and when she was on the Select Board she only wanted voters on all committees. Both those reasons fell flat – Mr. Panagore is from “away” and since the Moderator was a select person, the voters revised the Charter to allow for part-timers.

6—And now we have Mr. Hatch – a non-elected official – who brings a new reason. He declares that “the Charter is beside the point” -- the law is beside the point; the voters are beside the point. Somehow FinCom is, as the Committee stated, a “zebra with the horses.” The zebra is presumably FinCom and the horses are all the other ‘lowly’ non-regulatory committees. And as a zebra, FinCom must have only voters.

7—This new found concern is belied by the incredible length of time that the alternate vacancies remained/remain vacant. To put it another way, no one on FinCom gave one hoot about some alleged remote problem concerning quorum until a part-timer applied. And now, at least two excuses/pretexts later, it is of primary concern. Stop it.

8—It is also worth noting that the FinCom majority did not ask for clarification from the Charter Compliance Commission. They simply voted to undo what the voters have done. That too speaks volumes.

I am strongly urging a no support for this article.

Thank you again for your time on, and attention to, this matter.

Patricia Miller

President, PPRTA