



## Charter Compliance Commission

# Meeting Agenda

The Town of Provincetown Charter Compliance Commission will hold a public meeting on Tuesday, June 1, 2021, at Noon.

**NOTE: THIS IS A REMOTE PARTICIPATION MEETING**

In keeping with Governor Baker's Executive Order of March 12, 2020; "Order Suspending Certain Provisions of the Open Meeting Law" – All Participation in this meeting will be by remote access.

For this meeting, members of the public who wish to participate in the meeting may do so by dialing **(833) 579-7589**. When prompted, enter Conference ID number: **148 742 066#**.

Microsoft Teams: **Join on your computer or mobile app**

[Click here to join the meeting](#)

When public participation is allowed on the agenda, the Chair will ask for public comment. Please give your name and announce your presence and wait to be recognized. Otherwise please keep your phone on mute to not disrupt the proceedings, mute all background noises like tv and computers. Please don't speak until recognized by the Chair.

No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings in real time, via technological means. If the audio becomes unavailable, the meeting will be paused until it can be restored, or the meeting will end.

Agenda items to be discussed [Votes may be taken unless otherwise noted]:

1. Public Statements
- 2 Review and discussion of the questions submitted via email on May 24, 2021 to Charter Compliance Commission from Anthony T. Panebianco, Esq. on behalf of Michela Carew-Murphy regarding the dismissal/resignation of Thomas Biggert from HDC.
3. Discussion by Commission in preparation of Opinion
4. Minutes
  - a. Approve minutes from May 26, 2021.
  - b. Discuss policy for approving minutes for future meetings.
5. Any other business that may come before the commission.

Submitted by Robert Klytta, Chair

Posted: Town Hall [www.provincetown-ma.gov](http://www.provincetown-ma.gov) , 05/27/2021, 9:05 am AR

**From:** Anthony Panebianco <apanebianco@dtm-law.com>  
**Sent:** Monday, May 24, 2021 8:23 AM  
**To:** Julia Perry <jperry@provincetown-ma.gov>  
**Cc:** Elizabeth Paine <epaine@provincetown-ma.gov>; Alex Morse <amorse@provincetown-ma.gov>; Emmett Catanese <ecatanese@provincetown-ma.gov>  
**Subject:** Termination/Resignation of Thomas Biggert

To Whom It May Concern:

I am sending this letter on behalf of Michela Carew-Murphy, a member of the Historic District Commission (“HDC”). The intention of this letter is to report a series of potential violations of the Town Charter in the initial termination and following resignation of the Chair of the HDC, Thomas Biggert, as well as a request for clarification on who the current appointing authority for the vacant seat is.

In a letter dated March 12, 2021, from the Town Clerk to the Chair of the HDC, the Chair was informed that his:

*“service on this regulatory board has exceeded its time limit as outlined by the Town Charter Chapter 5 Section 6c.*

*(His) fulfillment of 3 overlapping terms expired on June 30, 2019. (His) first appointment as an alternate was less than 18 months and therefore according to the Town Charter it does not count towards three overlapping terms. Then (he) served as an alternate from December 17, 2012- June 23, 2014 when (he) moved to a regular position. This is term 1. Term 2 was from June 23, 2014- June 30, 2016. Term 3 was June 27, 2016-June 30, 2019.”*

This letter was followed up on with an email dated March 18, 2021 to the rest of the members of the HDC, as well as the Select Board, the appointing authority, entitled “removal effective immediately” which attached the aforementioned letter and relayed the following:

*“Members of the Historic District Commission,  
Attached you will find the letter to Mr. Biggert dated March 12, 2021 regarding his service to the Historic District Commission. He has exceeded his term limits in accordance with the Town Charter Chapter 5 s. 6c. Effective immediately Mr. Biggert is no longer eligible to serve on your regulatory board until he has an absence of one year, at which time he may be re-appointed. Once again as I mentioned to you in the previously stated email, Thank you Mr. Biggert for your service to the Town of Provincetown.*

*To the remaining members of the Board, please notify the office of the Town Clerk when you appoint a new chair.”*

Following this, it is my understanding that Town Counsel called Chair Biggert and explained that the Town required his immediate resignation, which is believed to be in direct conflict with the Town Charter.

The following timeline was proposed to the Clerk under “Section 6. Rules Specific to the Regulatory Town Boards”:

*“The Charter clearly makes a distinction between member and alternate member but does not set a time limit for alternate members. The charter also states that ‘Members of Regulatory Town Boards may serve for only three three-year overlapping full terms.’, however, in your letter to*

*Thom, you not only counted his time as an alternate member, the first two terms counted were only for two years each.*

*From my understanding, Thom's "clock" should have started ticking down on June 23, 2014 when he became a "member" rather than an "alternate member" and his terms should be 2014-2017, 2017-2020 and his final term would expire in June of 2023."*

If the initial timeline proposed by the Town Clerk was correct, as is his assertion, the termination and demand for resignation were still not only inappropriate but once again contrary to the Charter which states:

*"15-4-5 Term Expiration: Each member and alternate **shall** continue to serve in the office after the expiration date of his or her term until a successor is duly appointed."*

Following the termination/forced resignation, there is now a vacant seat. Can you please provide clarity on whether the 60 days in which the Select Board is the appointing authority began with the termination on March 18, 2021 or the forced resignation letter of March 30, 2021? Did the PMPM's nomination power expire when they failed to nominate a viable candidate within 30 days of the notice of the vacancy per:

*"15-4-2 Appointment Process: The Selectmen shall appoint one Commission member from up to two nominees solicited from the Provincetown Chamber of Commerce; one member from up to two nominees solicited from the Provincetown Business Guild; one member from up to two nominees solicited from the Provincetown Art Association and Museum; one member from up to two nominees solicited from the Provincetown Historical Commission; and one member from up to two nominees solicited from the Pilgrim Monument and Provincetown Museum. If, within 30 days after submission of a written request for nominees to any of the organizations herein named, no such nominations have been made, the Board of Selectmen may proceed to make appointments as it desires."*

This letter is certainly not to accuse anyone of malfeasance or dereliction of duty, but to demonstrate how little true understanding many have of the Charter as there are so many varying interpretations and this is a situation in which clarity from the Charter Compliance Commission (CCC) is direly needed.

To summarize, it is requested that the CCC adjudicates on the following:

1. Was the termination/forced resignation of the former HDC Chair Thomas Biggert a violation the Charter?
2. Do terms as an alternate member count toward the three overlapping three year terms?
3. When was Chair Biggert's term due to expire according to the charter?
4. When did/does the PMPM nominating authority expire for the vacant seat on HDC?
5. Who is the current appointing authority for the vacant seat on HDC and when does that authority expire?

Respectfully,

*Anthony T. Panebianco, Esq.*

DROHAN TOCCHIO & MORGAN, P.C.

175 Derby Street, Suite 30

Hingham, MA 02043

Ph: 781.749.7200 x 130

Fax: 781.741.8865

[apanebianco@dtm-law.com](mailto:apanebianco@dtm-law.com)