

CHARTER COMPLIANCE COMMISSION

Meeting Date: October 19, 2021

Meeting Location: Live/Microsoft Meetings/Conference Call

Meeting Time: 1:00 pm

Attendees:

Members - Robert Klytta, Chair; Oriana Conklin, Vice Chair; Julia Perry, Secretary

Participants - Emmett Catanese, Petitioner; Elizabeth Paine, Secretary to the Select Board

Public – None

The Charter Compliance Commission for the Town of Provincetown held a Public Meeting on Tuesday, October 19, 2021, starting at 1:02 p.m. The meeting was held in person in the Judge Welsh Room in Town Hall combined with remote access via Microsoft Meetings/conference call pursuant to Governor Baker's March 12, 2020, "Order Suspending Certain Provisions of the Open Meeting Law".

Agenda

1. Public Statements - None.
2. Review and Consideration of the term "part-time resident" from the Petition received from the Town Clerk dated September 21, 2021. The results will be published as Consideration and Decision 2021-3.
3. Discuss the Select Board's Code of Conduct. All members indicated that they had received and reviewed it.
4. Any other business that may come before the Commission - None.

The Meeting adjourned at 2:21 pm.

Secretary: Julia L. Perry



Charter Compliance Commission

Consideration and Decision, 2021-3

The Charter Compliance Commission met on Tuesday, October 19, 2021, at 1:02 pm, in person and via Microsoft Meeting/Conference Call in accordance with Governor Baker's Executive Order of March 12, 2020, "Order Suspending Certain Provisions of the Open Meeting Law" to consider a Request for Interpretation of the Charter. Participation in the Meeting was either in person or by remote access.

Present were Charter Compliance Commission members Robert Klytta, Chair; Oriana Conklin, Vice Chair; and Julia L. Perry, Secretary. Also present was Emmett Catanese, Petitioner, and Elizabeth Paine, Secretary to the Select Board.

The Minutes of the Meeting where this Consideration and Decision was discussed is a separate document.

The authority of the Commission in this matter is stated at Chapter 1, Section 4.b. of the Town of Provincetown Charter:

The Commission shall provide its written interpretation of the Charter on the written request of any resident or official of the Town. The Commission's interpretation is advisory only and for educational purposes and shall not be the basis for any legal action.

Via email dated September 21, 2021, the Town Clerk forwarded to the Charter Compliance Commission a petition in accordance with Chapter 1, Section 4g of the Town Charter from the Town Clerk, Emmett Catanese, requesting review and clarification of the term "part-time resident", as follows:

"The Office of the Town Clerk is writing to petition the Charter Compliance Commission for review and clarification of the following term "part-time resident".

"This term appears under Chapter 5 s 7(c) : " If the Appointing Authority determines that there are an inadequate number of registered voters who are willing to serve as members or alternates on appointed non-regulatory Boards, then the Appointing Authority may appoint part-time residents to serve as alternates, as long as the majority of members are registered voters. Individuals who are not registered voters shall be appointed to a non-regulatory Town Board only if they can commit to being present for a majority of the meetings of the Board".

"Clarification of this term is necessary to ensure regularity standards regarding (non-regulatory) town board appointments and to ensure fair and impartial application of this standard.

"Some scenarios to help explain the issue (this is clearly not an all-inclusive list):

1. If a member of a non-regulatory town board changes their voter registration to Wellfleet, but owns a second home in Provincetown which they may or may not rent out, are they a part-time Provincetown resident?
2. If a member of a non-regulatory town board changes their voter registration to Orleans, but claims their parent's own a home in Provincetown, are they are part-time resident?
3. If a person lives in Provincetown in a rental unit, but is registered to vote in Florida, are they a part-time resident?
4. If someone has always been a registered voter in Truro, but owns a business in Provincetown are they a part-time resident?

"The Office of the Town Clerk will need some kind of verifiable evidence if we are moving from a voter registration list which is a clearly a yes/no answer. Please define what kind of verification **they** will need to provide (local utility bill, lease/rental agreement for x months, tax bill, parking sticker, etc) when they apply for a town board."

Based on this request, a meeting of the Charter Compliance Commission was scheduled by the Chair.

CHARTER REFERENCES

In reviewing the Petition filed by the Town Clerk, the Charter Compliance Commission referred to the following sections of the Charter, as well as to the Charter as a whole –

Chapter 1. THE TOWN AND THE CHARTER

...

Section 1. Powers of the Town

...

c. The powers of the Town under this Charter shall be construed liberally in favor of the Town and its residents, and the specific mention of powers in the Charter shall not be construed as limiting the general powers of the Town. However, to the extent any specific provisions of this Charter conflicts with any provisions expressed in general terms, the specific provision shall prevail.

...

Section 2. *The Provincetown Charter*

a. This Charter may be replaced, revised, or amended only in accordance with the Constitution of the Commonwealth of Massachusetts and the Massachusetts General Laws.

...

Section 3. *Definitions of Terms within the Charter*

c. "Appointing Authority" is the person or Board with authority to appoint members of a Town Board. Authority to appoint members also includes the authority to remove members for good cause as determined by the Appointing Authority in accordance with Chapter 5.

...

Section 4. *Compliance with the Charter and the Charter Compliance Commission*

a. There shall be a three member Charter Compliance Commission elected by the voters for three-year overlapping terms with the responsibility to educate the Town about the Charter and to encourage compliance with the Charter. ...

b. The Commission shall provide its written interpretation of the Charter on the written request of any resident or official of the Town. The Commission's interpretation is advisory only and for educational purposes and shall not be the basis for any legal action. ...

...

h. Following receipt of a petition by a registered voter and prior to taking action thereon, the Town Manager and/or the Board of Selectmen shall consult with the Charter Compliance Commission for such input as may be appropriate. The Charter Compliance Commission will provide a recommended response if requested. The Charter Compliance Commission may also provide a recommendation regarding future implementation of the Charter, such as a proposed modification, if requested. The Town Manager and the Board of Selectmen shall take such action with respect to the petition as is deemed appropriate.

...

Chapter 5 THE TOWN BOARDS

...

Section 7. Rules Specific to Appointed Town Boards

- a. The Moderator is the Appointing Authority for the Finance Committee and the Personnel Committee. The Town Manager is the Appointing Authority for the Conservation Commission and the Historical Commission. The Board of Selectmen is the Appointing Authority for all other appointed Town Boards. ...
- b. No person shall be appointed to a Town Board:
- 1) unless determined to be qualified by the Appointing Authority, or able to become qualified by serving and there are sufficient number of members already serving on the Board who are qualified to carry out the responsibilities of the Board,
 - 2) if appointment would be contrary to the Conflict of Interest laws, or
 - 3) based on political party consideration, with the exception of the Board of Registrars or as otherwise provided by State law.
- c. If the Appointing Authority determines that there are an inadequate number of registered voters who are willing to serve as members or alternates on appointed non-regulatory Boards, then the Appointing Authority may appoint part-time residents to serve as alternates, as long as the majority of members are registered voters. Individuals who are not registered voters shall be appointed to a non-regulatory Town Board only if they can commit to being present for a majority of the meetings of the Board.

BACKGROUND

Member Julia L. Perry shared with the Commission her knowledge of the background of the material appearing in Chapter 5, Town Boards, Section 7. Rules Specific to Appointed Town Boards, Subsection c., based on her experience serving on the appointed Charter Committee and then on the elected Charter Commission. The term "part-time residents" arose from the Part-Time Residents Association, which requested that their members be allowed to serve on Town Boards. There was extensive discussion among the members of the Committee and the Commission about whether that should be allowed, leading up to the final meetings of the Charter Commission. There were some members who argued that anyone who wanted to serve should be allowed to serve, particularly given the number of vacancies on Town Boards at the time; others who felt that service on Town Boards by individuals who were not registered voters would undermine the interests of registered voters.

The compromise was to leave it up to the Appointing Authority to determine if there was a need to appoint part-time residents. The final argument in favor of this compromise

involved situations where a specialist was needed on a Board - such as an architect on the Building Committee or a medical specialist on the Health Commission - and none was available among the registered voters who were willing to serve. However, none of this discussion was included in the Charter; therefore it cannot be part of our interpretation.

CONSIDERATION

1. The Charter Compliance Commission only has authority to provide an interpretation of the wording that appears in the Charter. It does not have authority to add or change existing language.

2. Since there is no definition of "part-time resident", any interpretation must be based on a common definition of the words.

3. Per the Charter, at Chapter 1, Section 2, the Charter may be replaced, revised, or amended only in accordance with the Constitution of the Commonwealth of Massachusetts and the Massachusetts General Laws. Massachusetts General Laws - Part 1, Title VII, Chapter 43B states the following:

Section 2. Every city and town shall have the power to adopt or revise its charter or to amend its existing charter in accordance with procedures prescribed by this chapter.

...

Section 10. (a) Amendments to a city or town charter previously adopted or revised under this chapter may be proposed by ... the town meeting of a town by a two thirds vote in the manner provided by this section

4. Chapter 5. Town Boards, Section 7. Rules Specific to Appointed Town Boards, Subsection c, does distinguish between "registered voters" and "part-time residents".

5. The Charter states at Chapter 5, Section 7.c.:

If the Appointing Authority determines that there are an inadequate number of registered voters who are willing to serve as members or alternates on appointed non-regulatory Boards, then the Appointing Authority may appoint part-time residents to serve as alternates, as long as the majority of members are registered voters. [emphasis added]

DECISION

It is our Decision, based on the above, that

1. There is no definition of "part-time residents" in the Charter. Since there is no definition of "part-time resident", our interpretation must be based on a common definition of the words. Our interpretation is a "resident" is someone who lives in Provincetown, and a "part-time resident" is someone who lives in Provincetown part of the time.
2. There is adequate authority in the Charter for the Appointing Authority to make the determination who may be considered a "part-time resident" for purposes of Chapter 5, Section 7, Subsection c.
3. Any other clarification of the term "part-time resident" will have to be made by an amendment to the Charter voted at Town Meeting, per the Massachusetts General Laws.

Motion to Approve the Consideration and Decision 2021-3, dated October 19, 2021:

Motion by Robert Klytta /second by Oriana Conklin to accept the Consideration and Decision as presented.

Moved and approved by the Charter Compliance Commission by a vote of 3-0-0.

Per the Charter, a Decision of the Charter Compliance Commission is advisory only and for educational purposes and shall not be the basis for any legal action.