

CHARTER REVISION COMMISSION

MINUTES
Madden Room

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TOWN HALL

REGULAR MEETING
November 21, 2023

1. Call Meeting to Order

Chairperson Andy Peterna called the meeting to order at 5:30 pm.

2. Roll Call

Members Present

Andrew Paterna
Janice Snyder
Craig Zimmerman
Kathleen Daugherty
Denise Ricotta
Jessica Vogelgesang

Others:

Richard Carella, Town Attorney, Updike, Kelly, & Spellacy
Kaydeen Maitland, Associate Attorney, Updike, Kelly & Spellacy
Michael Maniscalco, Town Manager

Members Absent

Steven Cordeiro

Guests Present

Mayor Audrey Delnicki

3. Discussion Item: Commission Membership and those holding Public Office, EXHIBIT B

Rich Carella provided a legal opinion memo regarding the appointed members who also hold public office. (EXHIBIT B) By law, not more than 1/3 of members of the Commission can hold public office. Therefore, for a commission of 7 members, only two can hold public office. Public office means a position that has the authority conferred by law, a fixed tenure of office, and the power to exercise some portion of the sovereign functions of government.

Andy Paterna stated that there are persons on the Committee serving on Planning and Zoning and WPCA. Rich Carella said that it is not necessarily elected or appointed officials, it is either or. Kathy Daugherty said that it is also a fixed terms and all boards and commissions have a fixed term. According to that definition, it would affect Craig Zimmerman, Steve Cordiero and Kathy Daugherty and Jan Snyder. Jan Snyder commented that Strategic Planning Committee is no longer in effect. Kathy Daugherty stated that because the Town Council resolution did not state an end date for the Committee nor has the committee been officially dissolved by the Town Council, it is

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technically still in effect. In conclusion, two members can hold public office. It will need to be decided amongst the Commission who will step down from a committee.

4. Approval of Minutes – October 17, 2023

Kathy Daugherty made a motion to approve the minutes of October 17, 2023. Jessica Vogelgesang seconded the motion. **MOTION CARRIES.**

Jan Snyder commented that Public Input should be added to the agenda. Andy Paterna said that it will be put on the next agenda.

5. New Business Review of Proposed Changes to Charter, Sections 202 – 302 EXHIBIT A

Rich Carella said that there can not be any substance of work until the Public Hearing is held. The Commission can discuss what they would like to present at the Public Hearing that can be done, but no substance of work can take place. The meeting should be considered an organizational meeting. Any review of charter revisions should be limited to the structure of it. The Town Attorney does not recommend making any changes to the Charter. The Commission could look at the proposed changes and narrow the list of any similar or duplicate recommendations on Exhibit A to prepare to address the public during the Public Hearing.

Discussing what would be presented at the Public Hearing, Andy Paterna suggested the gender-neutral wording. Andy will get the presentation that was given to the Town Council by the Girl Scouts to review with the Commission.

Section 202 – Municipal Elections - Recommending a four-year term

Andy asked if the Commission wanted to discuss a four-year term as opposed to a two-year term. Craig Zimmerman said that it should be determined if the Town Council likes it, the commission or the referendum likes a four-year term. Craig said that the reasoning is because there is a learning curve and by that time, it is campaign mode so it can be difficult to get things accomplished in a two-year time frame. On the other hand, someone could be elected for four-years. Denise Ricotta asked if it made more sense for the Board of Education to have a four-year term.

Section 203 – Town Officers - Are they necessary today?

Rich Carella said that there are two types of constables (Appointed and Elected) and they have different functions. It could be changed from an elected to an appointed position. Denise Ricotta said there is not a lot of information on the website about constables and feels it should be available if there is going to be a public hearing about it. Kathy Daugherty said that the constables do deal with taxes, but it is only what is deemed appropriate by the Tax Collector as to who they will collect from. It should be listed in the Charter what the constables job entails. The question arose what the Board of Selectman does. It is not known by residents what their duties are. Craig

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Zimmerman said that the Treasurer should be on the list to be discussed at the public hearing as well. Rich Carella made a note to review the statutory duties and functions of those offices to better understand whether or not they want to be kept as elected or appointed positions or not at all.

Section 204 - Terms of Office and Minority Representation - Recommend Town Clerk to be a Town Employee

Kathy Daugherty is not in favor of this recommendation. She feels that the Town Clerk has always worked well with both parties and does a lot with regard to elections and should remain separated from being an employee of the Town.

Section 204 – Terms of Office and Minority Representation – Add: At no time shall there be more than a bare majority of any one political party on the Town Council

Jan Snyder recommended that the Town Council be 5-4 to allow the Council to better work together. Andy Paterna agrees that this suggestion be brought forward.

Section 207 – No person shall be eligible to any Town office who is not at the time of his election a resident elector of said Town – Add: and be current with all taxes and fees due to the Town, and any person ceasing to be a resident and elector of said Town shall thereupon cease to hold elective office in the Town

Rich Carella recommended that it may not be able to be done but he will investigate it and report back.

Section 209 – Voting Districts – Add language into the Charter that eliminates voting to be in religious organizations or business establishments

Craig Zimmerman recommended adding language to state that religious or business locations cannot be used unless it was an emergency situation. Denise Ricotta suggested to add that if there was a change that would require online voting, they could possibly come into the library to vote. Kathy Daugherty asked if a provision could be put in that the Town Council would have to vote on the polling location in an emergency polling location. Craig Zimmerman stated that it should be the whole Town Council that has to agree on the location.

Section 301 – Compensation of \$75.00 per month for the Mayor- Upgrade and include a clause that allows for future increases in line with the times

Craig Zimmerman recommended that it should be increased but he doesn't know how politically this topic would be charged. Kathy Daugherty does not feel that it should be increased. Jan Snyder agreed. Mayor Delnicki said that in other Towns other officials are paid. It was agreed that it should be a question presented to the public. Andy Paterna said that just the gas money alone that the Mayor spends to go to other places that other members of the Town Council doesn't do should be considered. Kathy Daugherty agreed and suggested a mileage reimbursement. Rich Carella said that could be added as a budgetary line item annually and not worry about putting it in the Charter.

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Section 302 – Organization – Change time, eliminate the time and first Monday following election and replace with “at a convenient or appropriate time to be determined and posted publicly

Dense Ricotta suggested just adding the days each month that the Council will meet, such as only adding the Town Council will meet the first and third Monday of each month. This was agreed by the Commission that this should be changed and presented to Council for revision.

Craig Zimmerman commented about looking into other places to meet. Andy will look into this and get back to the Committee.

6. Old Business

7. Adjournment

Steve Cordeiro made a motion to adjourn the meeting. Kathy Daugherty seconded the motion. **MOTION CARRIES.** The meeting was adjourned at 6:50pm.

Respectfully submitted,



Katherine Senerth
Executive Assistant

TOWN OF SOUTH WINDSOR
TOWN CHARTER PROPOSED REVISIONS

<u>DATE</u>	<u>SECTION TO BE CHANGED</u>	<u>PROPOSED CHANGE</u>	<u>PERSON WHO PROPOSED CHANGE</u>
October 31, 2019	All Sections	Make gender neutral.	Mayor Paterna
January 13, 2020	Section 202 - Municipal Elections	Currently the section reads, "A meeting of the electors of the town for the election of Town officers shall be held on the Tuesday after the first Monday of November 1969 and biennially." Recommend a four year term for increased consistency/efficiency.	Town Staff
January 13, 2020	Section 203 - Town Officers	Questioned if positions of Board of Selectmen, Constables, and Town Treasurer are relevant and necessary today?	Town Staff
January 13, 2020	Section 203 - Town officers	Remove Selectmen and Constables.	Councilor Delnicki
October 31, 2019	Section 204 - Terms of office and minority representation	Change Town Council and Board of Education terms making them 4 years staggered.	Mike Maniscalco/Town Staff
January 13, 2020	Section 204 - Terms of office and minority representation	Change Town Council and Board of Education terms making them 4 years. The Planning & Zoning Commission should also be 4 years but staggered.	Mayor Paterna
January 13, 2020	Section 204 - Terms of Office and Minority Representation	Recommend Town Clerk to be a Town employee.	Town Staff

January 28, 2020	Section 204 - Terms of office and minority representation	No political party shall nominate and no elector shall vote for more than six five (change to five 5) members of the Town Council. Add: at no time will there be more than a bare majority of any one political party on the Town Council	Councilor Snyder
January 28, 2020	Section 207	No person shall be eligible for election to any Town office who is not at the time of his election a resident elector of said town Add: and be current with all taxes and fees due to the Town, and any person ceasing to be a resident and elector of said Town shall thereupon cease to hold elective office in the Town.	Councilor Snyder
January 13, 2020	Section 209 - voting districts	Add language into the Charter that eliminates voting locations to be in religious organizations or business establishments.	Mayor Paterna
January 13, 2020	Section 301 - The Council	Compensation of \$75.00 per month for the Mayor - perhaps upgrade and include a clause that allows for future increases in line with the times.	Town Staff
October 31, 2019	Section 302 - Organization	Each newly elected council shall meet for organization in the town office building at 8:00 p.m. on the first Monday following each election, unless the first Monday is a holiday, then they shall meet on the first Tuesday following each election. Also, change time.	Debbie Reid/Mayor Paterna
January 13, 2020	Section 302 - Organization	Eliminate the time and first Monday following each election and replace with "at a convenient or appropriate time to be determined and posted publicly."	Town Staff
January 13, 2020	Section 302 - Organization	Time of Organizational Meeting. Change from 8:00 p.m. to 7:00 p.m. start.	Councilor Delnicki
October 31, 2019	Section 303 - Clerk	Change section, making Town Clerk appointed by the Town Manager.	Mike Maniscalco/Mayor Paterna

January 13, 2020	Section 306 - Ordinances; public hearing and publication	Public Notification via the best means of the times, i.e. website, social media, etc.	Town Staff
February 20, 2018/October 31, 2019	Section 314 - Obligatory referendum on bond issues, notes and the sale of real estate by the Town	The amount of \$25,000 should be higher; or remove and make an ordinance.	Steve Wagner/Mike Maniscalco
January 13, 2020	Section 315 - Appropriations	\$50,000 should be updated with inflammatory clause or made into an Ordinance.	Town Staff
October 31, 2019	Section 404 - Acting Manager	Amend to have the Town Manager appoint the Acting Town Manager in his absence.	Mike Maniscalco
January 13, 2020	Section 404 - Acting Manager	Recommend that the Town Manager assign a designee or Assistant Town Manager to cover in their absence.	Town Staff
January 13, 2020	Section 406 - Powers and duties of Manager, specific	Merit system to be a policy rather than in the Charter.	Town Staff
January 13, 2020	Section 407 and 612	Director of Recreation should be changed to Director of Parks and Recreation.	Town Staff
January 13, 2020	Section 502 Appointment of boards	Jury Committee should be eliminated.	Mayor Paterna
January 13, 2020	Section 502 - Appointment of boards	Is Jury Committee necessary?	Councilor Delnicki
January 13, 2020	Section 604 - Department of Public Works	References Parks and Recreation items which should be under Section 612 and remove "Town dump".	Town Staff
October 31, 2019	Section 609 - Town Attorney	Amend to make the appointment of the Town Attorney the responsibility of the Town Manager rather than the Town Council.	Mike Maniscalco
January 13, 2020	Section 611 Tree Warden and Dog Warden	Change Dog Warden to Animal Control Officer and move to Section 601 (Police Dept.).	Councilor Delnicki

January 13, 2020	Section 612 - Department of Recreation	Add ", and provide proper care and maintenance and control of public grounds, parks, and open space properties owned by the Town, and assist with care and maintenance of school grounds.	Town Staff
January 13, 2020	Section 704 - Duties of the council on the budget	Town referendum to vote on budget if increase is more than 3%.	Councilor Delnicki
January 13, 2020	Section 705 - Council action on the budget	Town referendum to vote on budget if increase is more than 3%.	Councilor Delnicki
January 13, 2020	Section 712 -Lapse of appropriations	Exemption for Special Revenue Recreation Fund.	Town Staff
October 31, 2019	Section 713 - Purchasing Section 714 - Purchasing procedure and Section 715 - Contracts for public works	Remove and create ordinance.	Mike Maniscalco/Mayor Paterna
January 13, 2020	Section 715 - Contracts for public works	Raise dollar amount (\$5,000) to \$25,000.	Councilor Delnicki
January 13, 2020	Section 716 - Payment of claims	Update the way payments can be made.	Town Staff
January 13, 2020	Section 801 - Mandatory public hearings	Public Notification via the best means of the times, i.e. website, social media, etc.	Town Staff
January 13, 2020	Section 802 - When action by a public hearing is required	Update the purchasing threshold for going to public hearing.	Town Staff



MEMORANDUM

TO: Richard D. Carella, Esq.
 Andrew Paterna, Chairperson, South Windsor Charter Revision Commission

FROM: Kaydeen M. Maitland, Esq.

SUBJECT: Definition of Public Office

DATE: November 9, 2023

Question:

What constitutes a “public office” as it relates to Conn. Gen. Stat. § 7-190, and the members of the Charter Revision Commission?

Answer:

A “public office” is a position which has “(1) an authority conferred by law, (2) a fixed tenure of office, and (3) the power to exercise some portion of the sovereign functions of government.”

Legal Analysis:

In appointing a Charter Revision Commission, Connecticut General Statutes provides that the Commission shall consist “...of not fewer than five nor more than fifteen electors, **not more than one-third of whom may hold any other public office in the municipality** and not more than a bare majority of whom shall be members of any one political party, which commission shall proceed forthwith to draft a charter, or amendments to the existing charter, or amendments to the home rule ordinance, as the case may be.” Conn. Gen. Stat. Ann. § 7-190. Based on a plain read of the statute, no more than one third of the Charter Revision Commission may hold any other public office. Thus, of the seven members appointed, only two may hold “public office”.

Connecticut General Statutes do not specifically define “public office.” This portion of the memorandum will explore how Connecticut law and courts have defined “public office.”

Connecticut courts define “public office” as “a position in a governmental system created, or at least recognized, by applicable law to which position ‘certain permanent duties are assigned, either by the law itself or by regulations adopted under the law by an agency created by it and acting in pursuance of it.’” Murach v. Plan. & Zoning Comm’n of City of New London, 196 Conn. 192, 196–200, 491 A.2d 1058, 1061–63 (1985) see also State v. Brethauer, 83 Conn. 143, 75 A. 705, 706 (Conn. 1910). The term “public office” “implie[s] a delegation of a portion of the

sovereign power to, and possession of it by the person filling the office.” Brethauer, 83 Conn. 143 at 706. Connecticut courts have recognized that in some cases an individual may be an employee in some contexts and hold a public office in other situations. Murach 196 Conn. 192 at 491. Equally important, “public office embraces the idea of tenure and duration” and this view rests on the continuing and permanent nature of the office; the duration of office need not be for a fixed period to constitute a public office.” Id. (See also Kelly v. City of Bridgeport, 111 Conn. 667, 151 A. 268, 269–70 (Conn. 1930).

Connecticut courts typically consider two main inquiries when analyzing whether a position is a “public office” or a “mere employment or agency resting upon contract.” Brethauer, 83 Conn. 143 at 706. The first inquiry is whether the position had “its source in the sovereign authority speaking through Constitution or legislation.” Brethauer, 83 Conn. 143 at 706. This part of the inquiry typically focuses on whether or not the position in question is in a body of law.

The court in Brethauer, 83 Conn. 143 at 706 found that the realtor’s position was not a “public office.” Id. The court reasoned that the realtor did not have a position in which any legislation had given him right or authority. Id. Although the city’s charter allowed for the appointment of the director of public works position who had then employed him as the realtor, the realtor’s position was not directly in legislation. Id. Authority conferred by the director of public works to the realtor was not enough to fulfil the first part of the inquiry. Id. Similarly, the court in Tremp v. Patten, 132 Conn. 120, 124, 42 A.2d 834, 836 (Conn. 1945) found that the detective lieutenant did not hold a “public office” although he was a “public officer.” Tremp 132 Conn. 120 at 124. The court noted that when the city council voted to establish a detective bureau “within the Police Department” the vote was not to conferring new authority to create a new agency or public office.” Tremp 132 Conn. 120 at 124.

The next part of the inquiry was whether the person holding the position was “incumbent, by virtue of his incumbency, becomes invested with some portion of the sovereign power which he is to exercise for the benefit of the public.” Brethauer, 83 Conn. 143 at 706. In evaluating the second inquiry, the court in Brethauer reasoned that “not everyone who is so engaged is invested with functions of the sovereignty which he is called upon to exercise.” Furthermore, “[o]ne’s service may be quite essential to the proper performance of governmental duties and functions, and he yet be without authority or duty other than that which some superior delegates to him, is responsible for, and controls. Id. This means that merely performing public service does not mean an individual holds a public office. The court in Brethauer found that the director of public works merely delegating his responsibility to the realtor. Id. The court in Tremp 132 Conn. 120 at 124 found that the city council was merely delegating tasks for efficiency within an existing department.” Tremp 132 Conn. 120 at 124. The reassignment of the detective lieutenant in the detective bureau was merely a transfer of his position.” Tremp 132 Conn. 120 at 124.

The court in Murach v. Plan. & Zoning Comm’n of City of New London, 196 Conn. 192, 196–200, 491 A.2d 1058, 1061–63 (1985) analyzed what constituted a public office determining whether a salaried member of the city’s fire department could be disqualified from serving as member on zoning and planning commission. Murach 196 Conn. 192 at 491. This court equated “municipal office” with “public office.” Id. This court contemplated an additional inquiry in evaluating whether a position constitutes a public office. Id. It was found that the salaried member

of the city's fire department held a public office and thus could not serve on the zoning and planning commission. Id. This court concluded that "the essential characteristics of a 'public office' are (1) an authority conferred by law, (2) a fixed tenure of office, and (3) the power to exercise some portion of the sovereign functions of government." Id.

The court reasoned that the salaried member of the fire department's position had been created by ordinance. The court further reasoned that the member held office "during good behavior" and could not "be removed except for cause by the city manager after hearing." Id. Equally important, the court reasoned that the powers bestowed to this member exercised sovereign function. Id. Specifically, the charter laws stated that the member had "[t]o organize, maintain and regulate a fire department, provide the necessary apparatus for extinguishing fires and do all other things necessary or desirable to protect the city from fire..." Id.

Conclusion:

An individual holding a public office can be a variety of individuals. It is important to remember that the Charter Revision Commission under § 7-190 allows some number of those appointed to hold "public office." In this case, two of the seven members may hold public office. Determining whether an individual appointed to serve on the Charter Revision Commission holds public office will be dependent on whether the position has "(1) an authority conferred by law, (2) a fixed tenure of office, and (3) the power to exercise some portion of the sovereign functions of government." Each position will have to be analyzed individually. Murach 196 Conn. 192 at 491. An analysis of each position will look to see if there is any form of legislative authority for the position and not merely a delegation of authority of a recognized public office. However, generally, those positions which are elected or appointed, or which would require a formal removal hearing process, will likely be deemed a "public office" by the Connecticut courts.

