

CHARTER REVISION COMMISSION 2020
MINUTES
MAY 20, 2020

A meeting of the Charter Revision Commission 2020 was held on Wednesday, May 20, 2020 remotely via Zoom teleconference. The meeting was called to order by Chair Kate Donahue at 7:04 p.m.

Members Present: In attendance were Commissioners Kate Donahue, Tom Tesoro, Susan Gilson, Nancy Gardiner, J.C. Cinelli, and Martin McCann. In addition to the Commission members were Town Attorney Dan Schopick and Chief Administrative Officer and Commission Clerk Cindy Katske.

All present recited the Pledge of Allegiance.

Public Comment: There was no public comment.

Prior Minutes: Moved by Nancy Gardiner, seconded by Susan Gilson to approve the minutes of the May 13, 2020. The motion carried 5-0-1 (ABSTENTION: Cinelli).

Setting Public Hearing Date: The Commission discussed setting the date of the second public hearing, but it was agreed to wait until next week to see how much gets done tonight.

Charter Review: The Commission reviewed the following topics.

1. Chapter II, Sections 1 and 2, requiring a return to seven equally balanced districts: The Commission discussed the language proposed by Town Attorney Dan Schopick (attached). Moved by Martin McCann, seconded by Nancy Gardiner, to approve the language proposed by Town Attorney Dan Schopick. Moved by Martin McCann, seconded by Tom Tesoro to amend the motion by replacing the number "3" in Chapter II, Section 2, first paragraph with "three (3)." The motion carried unanimously, and the motion as amended carried unanimously.
2. Chapter III, Section 6G, regarding purchasing. The Commission discussed the recommendation by town staff to delete any language that would be covered in the town's Purchasing Policy from the Charter after having read the town's Purchasing Policy. Consensus was that the Charter should contain language requiring purchasing thresholds in the Purchasing Policy, without specifying those thresholds. Discussion also ensued regarding conflicts of interest. Martin McCann will work on language for the next meeting.
3. Chapter III, Section 15, regarding fidelity bonds. The Commission discussed the Charter requirement that fidelity bonds must be posted by specified town employees and officers and the difference between fidelity bonds and crime insurance. Town Attorney Dan Schopick will draft language for the Commission to consider at the next meeting.

4. Chapter VII, Section 1A, regarding Board of Finance alternates: The Commission discussed the purpose of alternates and how they have been used in the past. Moved by Tom Tesoro, seconded by Susan Gilson to add at the end of Chapter VII, Section 1A the following language: "There shall be at least one (1) alternate member from each party, but no party shall have more than two (2) alternate members." The motion carried unanimously.
5. Waiting period between changing parties and eligibility to be appointed to a board or commission. The state statute provides for a three-month waiting period. Discussion ensued regarding whether this would apply only to alternate members or all appointments. This will be discussed further at the next meeting.
6. Chapter VII, Section 3, regarding the Board of Education: The Commission discussed changing to an even number of members. State statute provides that a tie vote to elect a chair is broken by the Town Council. With regard to approving a budget, the statute provides that the Board of Education shall promulgate a budget, which is mandatory. Moved by Tom Tesoro, seconded by Nancy Gardiner to change Board of Education from seven to eight members. The motion carried unanimously. Moved by Nancy Gardiner, seconded by J.C. Cinelli to provide that for the election in 2021, there shall be four two-year terms and four four-year terms, and for the election of 2023, all terms shall be staggered four-year terms. The motion carried unanimously. Moved by Martin McCann, seconded by Susan Gilson to provide that no party may hold more than four seats on the Board of Education. For the election in 2021, no party shall hold more than two two-year seats nor more than two four-year seats. The motion carried unanimously. The issue of breaking ties will be discussed at the next meeting.
7. Youth Commission and Commission on Aging: Tom Tesoro will draft language for discussion at the next meeting.
8. Chapter VII, Section 18, Conservation Commission: Town Attorney Dan Schopick's advice is to do nothing. The terms of members need to be adjusted to fit the Charter requirements but no changes to the Charter are necessary.
9. Chapter VII, Section 17, Ethics Commission: Ethics Commission Chair Tom Lee wrote a letter (attached) to the Commission to consider. More time is needed to review the letter, so it will be discussed at the next meeting.
10. Term limits: Town Attorney Dan Schopick got some information from CCM. Stratford and Bristol have term limits, for example. What seems prevalent is the number of consecutive terms, so you can have a break between terms. Discussion ensued and the issue was tabled until the next meeting.
11. Chapter VIII, Section 9B, Bonding referendum: Town Attorney Dan Schopick will work on language for discussion at the next meeting.

Moved by Nancy Gardiner, seconded by J.C. Cinelli to adjourn at 8:58 p.m. The motion was approved by unanimous consent.

Respectfully submitted,

Cindy Katske, Clerk

Proposed Language for Chapter II, Sections 1 and 2

Section 1. Town Council.

The legislative power of the Town shall be vested in a Town Council, hereinafter referred to as Council, consisting of twenty-one (21) members elected as provided herein and having the powers and duties conferred herein and by law. Its members shall serve without compensation. The Council shall be the judge of the qualifications of its members. Notwithstanding any other provision of this Charter, no member of the Council shall hold any other office or position of the Town, appointive or elective, permanent or temporary except as a member of a special or standing committee **created by** the Council.

Section 2. Composition and Election.

At the Town election, the members of the Council shall be elected from and by voting districts of the Town for terms of two (2) years. **There shall be seven (7) voting districts of substantially equal population, with 3 Council members for each district. District lines shall be established from time to time by ordinance adopted by the Council.**

Each Council member shall, during the term of his/her office, reside in the voting district from which he/she was elected.

In each district no political party may nominate more than one (1) less than the number of Council **m**embers to be elected from the district, and each voter may vote for as many Council members as may be elected from the district.

Thomas E. Lee

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May 20, 2020

Ms. Kate Donahue, Chairperson
Trumbull Charter Revision Commission 2020
(Sent via e-mail to ckatske@trumbull-ct.gov)

Re: Town Charter – Section 17 Ethics Commission B(II)

Dear Chairperson and Members:

I am writing to you in my capacity as a long time Member of the Trumbull Ethics Commission, and its Chairman for twenty years. It is recently been suggested that the word “material” appear in Section 17 B(II), between the words “any” and “violations” of the Town Charter.

I have individually spoken to each member of the Ethics Commission, both regular members and our alternate member. Of the five regular members, four have indicated that they would not approve of the inclusion of this word “material” as suggested by Attorney McCann, our alternate member. One regular member has been neutral to whether it is, or is not, included in the Charter.

As stated, I am voicing my own opinion. There has been no meeting of the Trumbull Ethics Commission on this issue due, in part, to my inability to conduct a meeting in accord with the new standards of the use of Zoom, a lack of a computer camera and time. Consequently, I placed a call to, and spoke at length with, each member and have related the results of my conversations with each as to supporting or not supporting the use of the word “material” as has been moved by Attorney McCann.

The primary legal reason that I believe that the word “material” would be inappropriate in the Charter, is that Section 7-148h of the Connecticut General Statutes sets forth that the establishment of our Commission is “... to investigate allegations of unethical conduct ...”. The implementing legislation does not suggest that it is only a “material” violation which must be investigated. The lack of a modifier before “violations” would structurally indicate that all allegations of a violation must be investigated. The next sentence of 7-148h indicates that Section 1-82a of the Connecticut General Statutes “... shall apply to allegations before any such agency of such conduct, influence or activities to an investigation of such allegations conducted prior to a probable cause finding ...”. Such language directs our attention to Section 1-82a, which speaks primarily to confidentiality of complaints, and evaluations of possible violations and investigations. Subsections A-E set forth the statutory method of handling complaints of violations. They include a finding, or no finding, of probable cause of a violation and if probable cause is found, to a hearing in public on the alleged

May 20, 2020

violation. If a probable cause violation is not found, then the matter remains confidential and it must be dismissed. This is what our current Ethics Code and Charter provisions encompass. There is no indication in State Statute or the Trumbull Code of Ethics that the materiality of the violation could be, or should be, a cause for the Ethics Commission to dismiss a complaint.

Several practical reasons come to mind which contra-indicate the use of this word “material”. First, is the “material” matter to be viewed from the perspective of the complainant’s view of it being of great import (material), or from the opinion of the Commission viewing that it is not a matter of great import and consequence? We may reasonably assume that if a member of the public goes through the process of writing and filing a complaint and swearing to it in front of a notary or attorney, the violation is “material” to them. If the Ethics Commission is to make a determination as to whether or not the allegation concerns a “material” violation, then standards relating to what is “material” must, of necessity, be provided. Mere subjective opinions and conclusions are to be avoided. There are no standards in the Code or in the Charter for the actions contemplated, since the word “material” is not used in any place. If there is to be a change, what standards are to be applied?

Second, I believe that such a requirement, as would be imposed by the use of the word “material”, would have a chilling effect upon the public in filing complaints which, in any event, are often few and far between. Guesswork on the part of the citizen complainant to determine what is a “material” violation can only lead to reticence on the part of the potential complainant. In 2018, no complaints were filed, in 2019, there were two complaints filed and in 2020, no complaints have been filed.

Third, and perhaps most importantly, the Trumbull Ethics Code currently has a provision which does not require a sanction to be imposed on a respondent by the Ethics Commission, despite there being a finding of “probable cause” and, thereafter, that a finding of a violation has occurred by “clear and convincing evidence”. I suggest that Article V, Case Procedure, Section E (the Green Book version of citation), allows the materiality of the violation to be taken into account, at that point, even if that very violation has been found to exist after the hearing in public. The first sentence of Section E indicates that after a hearing, the complainant, respondent and Town Clerk need to be notified of the results of the hearing in public. The final action and notification by the Commission must be in writing and the “sanction, if any, imposed”. The Commission is not required to sanction the respondent in a particular case. At this point, the materiality of what has been found to be the violation would, of necessity, come into play and discussion ensue by the Commission.

May 20, 2020

Fourth, we should be aware of the law of unintended consequences. Currently, upon a finding of probable cause by the Commission that an ethics code violation has occurred, the complaint is made public. Prior to the hearing in public on the allegations, new, relevant evidence of its breach can be brought forward which, but for its publication to the public, would not be known by other citizens. What might initially appear to not be a "material" violation may then become very "material" with new evidence, only because the complaint has been made public. It is inadvisable to dismiss a complaint despite a find of probable cause.

Fifth, and lastly, in the twenty years I have served on the Commission, this topic of "material" allegations has never been discussed or suggested at a Commission meeting. To use the ungrammatical expression, "if it ain't broke, don't fix it".

I hope that you will review this information and you certainly may contact me, or any member of the Commission, for further input.

I appreciate your taking my recommendation in my earlier letter, for the most part, to delete several sub-sections of Section 17 of the Charter. I thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Lee', with a stylized flourish at the end.

Thomas E. Lee

TEL:bk