

At a Regular Meeting of the Town Council of the Town of Middletown, RI held at the Middletown Town Hall, 350 East Main Road, Middletown, RI on Monday, May 21, 2018 at 6:00 P.M.

Council President Robert J. Sylvia, Presiding

Vice President Paul M. Rodrigues

Councillor Henry F. Lombardi, Jr.

Councillor M. Theresa Santos

Councillor Dennis B. Turano

Councillor Barbara A. VonVillas, Members Present

Councillor Antone C. Viveiros, Absent

PLEDGE OF ALLEGIANCE TO THE FLAG

RECONSIDERATION

The Middletown Town Council follows the codification of present-day general parliamentary law as articulated in Robert's Rules of Order Newly Revised 10th edition (2000), together with whatever rules of order the Council has adopted for its own governance. The motion to reconsider is one of the motions that can bring a question again before an assembly, and is designed to bring back for further consideration a motion which has already been voted on:

If, in the same session that a motion has been voted on, but no later

than the same day or the next day on which a business meeting is held, new information or a changed situation makes it appear that a different result might reflect the true will of the assembly, a member who voted with the prevailing side can, by moving to Reconsider [RONR (10th ed.), p. 304-321] the vote, propose that the question shall come before the assembly again as if it had not previously been considered. (From Robert's Rules of Order Newly Revised In Brief, Robert, Evans et al., De Capo Press, 2004)

Council President Sylvia requested a moment of silence for the victims of Santa Fe, Texas High School tragedy.

Council President Sylvia requested a moment of silence for the victims of Stoughton, Massachusetts High School Students tragedy.

6:00 P.M. – Budget Review

1. Review of Town of Middletown Proposed Budgets and Capital Improvement Plan - General Fund, Parks & Recreation Fund, Sewer Fund and Refuse & Recycling Fund for Fiscal Year 2018–2019 and matters related thereto.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to begin said Review of the Proposed Budgets and Capital Improvement Plan - General Fund, Parks & Recreation Fund, Sewer Fund and Refuse & Recycling Fund for Fiscal Year 2018–2019 and matters related thereto.

Council President Sylvia announced that the First Public Hearing for the budget will be Wednesday, May 23, 2018 at 6:00 p.m. Tonight's meeting is a follow up from the Saturday, April 28, 2018 meeting for the Town Council to ask budget questions.

Councillor Santos requested that the budget ordinance include the budget numbers from 2018 to compare the numbers for the past two years.

Vice President Rodrigues inquired about the School Technology Budget dollar amount and how it compares to other communities the same size and the trends.

Superintendent Rosemarie Kraeger and Assistant Superintendent Linda Savastano noted that the information requested by Vice President Rodrigues will be provided for all.

Councillor Santos inquired how many Middletown students attend the Newport Vocational Technical School.

Councillor Turano noted concern with the Texas Tragedy, inquiring what the School Administration is doing to prevent local tragedies.

Superintendent Rosemarie Kraeger explained that there is staff in place to assist students with personal issues, but would like to have

more staff available.

Councillor Lombardi noted that teachers and coaches should be trained to assist students with personal issues.

Discussion centered around the IT budget reoccurring expenses, training of teachers, coaches and other staff to identify students with personal issues, teacher layoffs, reductions in the budget including an administrator, reductions in certified and non-certified staff, possible reduction to sports and fine arts, student enrollment and a possible shortfall in impact aid.

Vice President Rodrigues inquired what the School Administration would reduce if the budget is funded at 1%, funded at 2%, funded at 3% or level funded.

Superintendent Rosemarie Kraeger and Vice Chair Theresa Spengler responded that until the budget is passed, they do not have scenarios of the reductions.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to recess this meeting until 7:00 p.m.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to reconvene this meeting at 7:01 p.m.

7:00 P.M. REGULAR MEETING

PRESENTATIONS

2. Becca Trietch, Administrator, Energy Efficiency Programs, Rhode Island Office of Energy Resources (OER), re: Energy Goals and State Assistance.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to begin said presentation.

Becca Trietch, Administrator, Energy Efficiency Programs, Rhode Island Office of Energy Resources and Ryan Mulcahey, RI Infrastructure Bank, addressed the Council presenting a powerpoint presentation regarding Energy Management Resources, which is on file in the Office of the Town Clerk.

PUBLIC FORUM

3. Pursuant to Rule 23 of the Rules of the Council, Citizens may address the town on one (1) subject only, said subject of substantive Town business, neither discussed during the regular meeting nor related to personnel or job performance. Citizens may speak for no longer than five (5) minutes and must submit a public participation form to the Council Clerk prior to the start of the meeting. All items discussed during this session will not be voted upon.

No one spoke during this session.

Vice President Rodrigues requested that item #6 be heard under the regular portion of the agenda.

CONSENT

4. Approval of Minutes, re: Special Meeting, April 28, 2018

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to approve said minutes.

5. Approval of Minutes, re: Regular Meeting, May 7, 2018.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to approve said minutes.

6. Communication of Accounting Manager, thru Town Administrator, with enclosure, re: Quarterly Tax Collector's Report as of 03/31/2018 – Town of Middletown.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said communication and report.

Vice President Rodrigues noted the financials are favorable.

Finance Director Marc Tanguay reviewed the Quarterly Tax Collector's report, entered above.

7. Communication of Paul A. Croce, Chairman, Planning Board, re: Proposed On-Site Wastewater Management Plan.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said communication.

8. Notice of Public Hearing from the Middletown Zoning Board of Review to be held on Tuesday, May 22, 2018 at 6:00 p.m. Petition of: Evergreen Properties, LLC (owners), Sean Napolitano (Applicant) for a Variance from Sections 603, 701 & 803 (G) to allow the construction of a 10'x8' covered front porch with a front yard setback of 17' where 25' is required and to construct a pool house with a side yard setback of 5' where 15' is required. Said real estate located on 0 Evergreen Avenue; TAP 108NW, lot 308A.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said Notice of Public Hearing.

9. Resolution of the Town of Jamestown, re: In support of In-Person Early Voting.

On motion of Vice President Rodrigues, duly seconded, it was voted

unanimously to receive said resolution.

10. Resolution of the Town of Barrington, re: In opposition to School Construction Referendum in Article 9 of the Proposed Rhode Island State Budget (FY2019).

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said resolution.

11. Resolution of the Town of Barrington, re: In support of School Construction Referendum in Article 5 of the Proposed Rhode Island State Budget (FY2019).

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said resolution.

12. Resolution of the Town of Barrington, re: In support of S 2464 Raising the Age for Purchase and Sale of Tobacco Products to 21.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said resolution.

13. Resolution of the Town of Barrington, re: In support of S 2331 Which Amends Section 39-2-15 Of the General Laws in Chapter 39-2 Entitled "Duties of Utilities and Carriers" Town Extend Those Protections Currently Granted to State Contract Work to Municipal

and Quasi-Governmental Agencies Within the State of Rhode Island.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said resolution.

14. Resolution of the Town of Barrington, re: Urging Rhode Island Attorney General Peter Kilmartin to Distribute Google Funds to the Barrington Schools.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said resolution.

15. Resolution of the Town of Foster, re: In Opposition to the Governor's FY2019 Budget Request Article I – Quasi-Public Reserve Transfers (Section 15-16) Article 10 – Quasi Public Reserve Transfers (Sections 5-9).

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said resolution.

LICENSES

16. Application of Walgreen Eastern Co., Inc. dba Rite Aid #10222, 7 East Main Road, for a Holiday Sales License for the 2018-2019 licensing year. (NEW)

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to grant said license.

17. Application of Russell Carlone, Middletown, for a Private Detective License for the 2018-2019 licensing year. (NEW)

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to grant said license.

18. Application of Stephen Charles Schwarz, Middletown, for a Private Detective License for the 2018-2019 licensing year. (NEW)

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to grant said license.

Town Solicitor Peter B. Regan recused himself from action on the following item #19 of business, due to a possible conflict of interest.

19. Application for Special Event Permit from Newport County YMCA Summer Camp – Summer Camp – Surf Camp to be held at Second Beach, June 18, 2018 through August 24, 2018, 9:00 a.m. to 2:00 p.m.

Discussion centered around liability insurance and is life guard is provided by the Applicant.

On motion of Vice President Rodrigues, duly seconded, to grant said Special Event Permit, with the condition that no rental of equipment shall occur on 2nd Beach and each camp participant shall be responsible for their own equipment.

TOWN COUNCIL

20. Memorandum of Town Planner, re: 2018 RIDEM Recreation Development Grant Award.

Mason Hawes, 431 Reservoir Road, addressed the Council requesting support for the grant and the need for additional sports fields. Mr. Hawes also noted that there will be a BMP in the area for water quality.

Council President Sylvia thanked all involved with the project and persistence to get this done.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said memorandum.

21. Resolution of the Council, re: Authorizing the Town Administrator to accept the grant and execute the grant agreement and allocate town matching funds for the 2018 RIDEM Recreation Development Grant.

Vice President Rodrigues noted the committee, including himself, Councillor Lombardi and Councillor Viveiros, met with Middletown Sports Leagues to create a plan to upgrade current fields and use the Drive In property for additional fields. Mr. Rodrigues inquired where the funding would be appropriated from. Vice President Rodrigues also noted the concern for the neighbors and the project to be done correctly.

Councillor Lombardi noted concern about the neighbors including noise and lighting from the Drive In property fields.

Discussion centered around the funding will be allocated from the Parks and Recreation Fund, Open Space bond monies can be utilized if the scope of the project expands, the Department of Public Works Director has preliminary plans, the area should be looked at from a holistic perspective, meetings with the neighbors, wetlands in the area and the sewer for the restrooms is tied to the Gaudet School system.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to pass said resolution.

22. Memorandum of Robert M. Silva, Esquire, Chairman, Middletown Economic Advisory Committee, re: Tax Increment Financing (TIF) Legislation.

Attorney Robert M. Silva addressed the Council noting that

Middletown Economic Advisory Committee members David Lapore and John Bagwill were present. Mr. Silva reviewed the memorandum above.

Discussion centered around the proposed legislation is specific to Middletown, the Town Council can decide on which tax date to use, current property owners in the lower Aquidneck Avenue area have done improvements to their property and passing the legislation does not bound the Town to the program.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said memorandum.

23. Resolution of the Council, re: Tax Increment Financing (TIF) Legislation.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to pass said resolution.

24. Memorandum of Town Administrator, re: Building Permit Fees: Request for Extended Transition Period.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to receive said memorandum.

Town Administrator Shawn Brown reviewed the memorandum above.

Mr. Brown noted that there is a bill in the legislature which will all allow the Cities and Towns to set their own fees.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to authorize the Town Administrator to submit a written request to the State Building Code Commission to extend the transition period to June 30, 2020.

25. Proposed amendments to the Middletown Town Charter. (Council will vote on each proposed amendment to be placed on the November 2018 ballot) (See attached)

Question ___

Amends Article II, The Town Counsel, § 202. Qualifications of members; vacancy occurs if member becomes disqualified

“Shall the Charter be amended to set limits on the number of consecutive terms members of the Town Council may serve?”

Members of the council shall be qualified electors of the Town of Middletown and shall hold no other paid public office or employment in the service of the town. Current service as notary public, justice of the peace, membership in the national guard or naval, air or military reserve or employment by any of the educational institutions maintained by the state, shall not disqualify persons for council membership. No member of the council shall be eligible to accept any

other paid local town office during his or her tenure on the council or for a period of one year thereafter. No member of the council shall serve more than three (3) consecutive partial or full terms on the council, without at least a two-year interval before serving any additional term(s). The office of any council member who shall, during his or her term, cease to meet the foregoing qualifications, shall be deemed vacant.

Summary: The proposed amendment seeks to encourage greater political participation by requiring members of the town council who have served three consecutive terms to take a two-year break before serving any additional terms.

On motion of Vice President Rodrigues, duly seconded, it was voted to place the above Charter question regarding Amending Article II, The Town Counsel, § 202. Qualifications of members; vacancy occurs if member becomes disqualified on the November 6, 2018 General Election Ballot; Councillor VonVillas voted YES; Council President Sylvia, Vice President Rodrigues, Councillor Lombardi, Councillor Santos and Councillor Turano voted NO to said motion; MOTION FAILED TO PASS.

Question ___

**Amends Article VI, Town Officials; Municipal Court; Probate, § 608.
Judge of the Municipal Court**

“Shall the Charter be amended to reflect the Town Council’s power to

appoint alternate municipal judges in the event of vacancies?”

The town council may appoint a member in good standing of the bar of the State of Rhode Island, with no fewer than 5 years of experience in the active practice of law, to sit as judge of the municipal court for a term of 2 years and subject to re-appointment. Whenever such judge of the municipal court is a party or interested in any proceeding about to be heard in his or her court, or is absent or unable to perform his or her duties, or there is a vacancy in the office of judge, the council shall designate a qualified member of the bar of the State of Rhode Island to act as a municipal judge. The fact of such interest, absence, inability or vacancy shall be recorded in the records of said court.

Summary: The proposed amendment would confirm the Town Council’s power to appoint alternate municipal judges in the event of vacancies, consistent with the Town Council’s power to appoint alternate probate judges in §609 of the Charter.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to place the above Charter question regarding Amending Article VI, Town Officials; Municipal Court; Probate, § 608. Judge of the Municipal Court on the November 6, 2018 General Election Ballot.

Question __

Amends Article VII, Town Departments, § 701. Police

“Shall the Charter be amended to modify the qualifications for chief of police to broaden the potential pool of candidates and include requirements consistent with the needs of the Town?”

There shall be a police department, the head of which shall be the chief of police, who shall be a police officer with at least ten five years of experience above the rank of patrolman in any an organized police department or equivalent experience in a state or federal law enforcement agency, have demonstrated experience in the organization, administration, management and direction of police officers and possess such other qualifications as the Town Council may prescribe, consistent with the needs of the Town. The chief of police shall be appointed by the town administrator. In addition to the chief of police, there shall be a deputy chief and such other subordinate officers and patrolmen, all of the aforesaid serving full time, as shall from time to time be determined by the town council. The further organization of the department into divisions or offices or grades shall be made by the town council on recommendation of the town administrator after conferring with the chief of police. The police department shall be responsible for the preservation of the public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, regulation of traffic, and the enforcement of the laws of the state and the ordinances of the town and rules and regulations in accordance therewith. The chief of police

and other members of the department shall have all the powers and duties as are now and hereafter vested in such police officers by the laws of the state and the town ordinances. The chief of police shall be in direct command of the police force and shall, subject to the approval of the town administrator and town council, make rules and regulations concerning the conduct of all officers and subordinates.

Summary: The proposed amendment seeks to broaden the potential pool of candidates for chief of police by reducing the years of experience as a police officer above the rank of patrolman from ten to five years, adding a requirement for experience in the administration, management and direction of police officers, and allowing the Town Council to require such other qualifications consistent with the needs of the Town.

Vice President Rodrigues noted the proposed amended is broad.

Town Solicitor Peter B. Regan responded that the proposal is flexible.

Councillor Lombardi noted that he is not in favor of the proposal, explaining the department is young and the proposal does not make sense.

On motion of Vice President Rodrigues, duly seconded, it was voted to place the above Charter question regarding Amending Article VII, Town Departments, § 701. Police on the November 6, 2018 General

Election Ballot; Council President Sylvia, Vice President Rodrigues, Councillor Lombardi, Councillor Santos; Councillor Turano and Councillor VonVillas voted NO to said motion; MOTION FAILED TO PASS.

Question __

Amends Article VII, Town Departments, § 706. Finance

“Shall the Charter be amended to allow the duties of the tax collector and the human resources manager to be separated from those of the Finance Director?”

There shall be a department of finance headed by a finance director, who shall have ten years prior financial management experience in the public or private sectors and be appointed by the town administrator. There shall also be a deputy finance director, appointed by the town administrator, who shall assist the finance director and shall exercise the powers and perform the duties of the office of finance director in case of the absence or disability of the finance director. The finance director shall act as town treasurer, town tax collector, and purchasing agent, and human resources manager, and shall exercise those powers and perform those duties prescribed for these offices now or in the future by this Charter and the Constitution and laws of the state. The finance director shall also

have such additional powers and duties as may be assigned to him or her by the town administrator.

Summary: The proposed amendment would provide the Town administration with additional flexibility, by allowing the duties of the tax collector and the human resources manager to be separated from those of the Finance Director.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to place the above Charter question regarding Amending Article VII, Town Departments, § 706. Finance on the November 6, 2018 General Election Ballot.

Question ___

Amends Article VII, Town Departments, § 711. Town engineer

“Shall the Charter be amended to require that the town engineer be a registered engineer?”

There shall be a town engineer appointed by the town administrator. The town engineer shall be a civil engineer, a registered professional engineer, and need not be a resident of the Town of Middletown. He or she may be appointed to serve either full time or part time. He or she shall be available to provide engineering advice and services to the town administrator, the town council, and all other departments, offices and agencies of the town government. He or she shall be

responsible for the custody and proper maintenance of all the files and records that pertain to his or her office, including surveys, plans, maps and the like. He or she shall maintain these files and records in the Town of Middletown. The results of all engineering studies or similar work he or she performs for the town shall become the property of the town. (Added, November 4, 2008.)

Summary: The proposed amendment would require that the town engineer be a registered professional engineer.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to place the above Charter question regarding Amending Article VII, Town Departments, § 711. Town engineer on the November 6, 2018 General Election Ballot.

Question ___

Creates Article VII, Town Departments, § 712. Tax Collector (New Section)

“Shall the Charter be amended to allow the duties of the tax collector to be separated from those of the Finance Director?”

There shall be a tax collector appointed by the town administrator, who shall be responsible for the collection of all taxes and assessments levied by the Town. The tax collector has all the powers, rights and duties prescribed for said office now or in the future by

this Charter and the Constitution and laws of the state. The tax collector shall also have such additional powers and duties as may be assigned to him or her by the town administrator or by ordinance.

Summary: The proposed amendment would provide the Town administration with additional flexibility, by allowing the duties of the tax collector to be separated from those of the Finance Director.

Councillor Santos inquired if this proposal is a new position.

Town Administrator Shawn Brown noted that this is not a new position, it allows for the flexibility to assign the position to someone other than the Finance Director.

Vice President Rodrigues noted that the Town population is decreasing.

Town Administrator Shawn Brown noted the function is with the Tax Assessor at this time.

Town Solicitor Peter B. Regan explained that by state law someone must be designated as tax collector.

On motion of Vice President Rodrigues, duly seconded, it was voted to place the above Charter question regarding the Creation of Article VII, Town Departments, § 712. Tax Collector (New Section) on the

November 6, 2018 General Election Ballot; Council President Sylvia, Vice President Rodrigues, Councillor Lombardi, Councillor Santos; Councillor Turano and Councillor VonVillas voted NO to said motion; MOTION FAILED TO PASS.

Question ___

Creates Article VII, Town Departments, § 713. Human Resource Manager (New Section)

“Shall the Charter be amended to allow the duties of the human resources manager to be separated from those of the Finance Director?”

There may be a human resource manager appointed by the town administrator, who shall be responsible for the development and daily administration of the Town’s human resource management system, and to ensure that said system meets the current and projected needs of the Town and is compliant with local, state and federal laws and regulations affecting the Town’s workforce. The human resource manager shall also have such additional powers and duties as may be assigned to him or her by the town administrator or by ordinance.

Summary: The proposed amendment would provide the Town administration with additional flexibility, by allowing the duties of the human resources manager to be separated from those of the Finance Director.

On motion of Vice President Rodrigues, duly seconded, it was voted to place the above Charter question regarding the Creation of Article VII, Town Departments, § 713. Human Resource Manager (New Section) on the November 6, 2018 General Election Ballot; Councillor Lombardi, Councillor Turano and Councillor VonVillas voted YES; Council President Sylvia, Vice President Rodrigues and Councillor Santos voted NO to said motion; MOTION FAILED TO PASS.

Question ___

Amends Article VIII, School Department, § 801. School committee - Established; number and election of members.

“Shall the Charter be amended to increase the number of school committee members from five to seven and set limits on the number of consecutive terms members of the school committee may serve?”

There shall be a school committee consisting of five seven members, each of whom shall be elected from the town at large by the electors of the Town of Middletown, to serve for a term of four years and until a successor is elected and qualified. Three members of the committee shall be elected at the first election after the adoption of this Charter and at said elections every fourth year thereafter and two four members shall be elected at the subsequent biennial election and at said elections every fourth year thereafter. The election of school committee members shall be by nonpartisan election, an

election without designation or identification of political affiliation. No member of the school committee shall serve more than two (2) consecutive partial or full terms on the committee, without at least a two-year interval before serving any additional term(s).

Summary: The proposed amendment seeks to encourage greater political participation by increasing the number of school committee members from five to seven, and requiring members of the school committee who have served two consecutive terms to take a two-year break before serving any additional terms.

Councillor Turano noted that the issue was debated by the Charter Committee and suggests the proposal be sent to the voters.

School Committee Member Liana Fenton noted concern with term limits because it will affect the experience of the committee and affect accomplishing matters at the state level.

On motion of Vice President Rodrigues, duly seconded, it was voted to place the above Charter question regarding Amending Article VIII, School Department, § 801. School committee - Established; number and election of members on the November 6, 2018 General Election Ballot; Councillor Turano and Councillor VonVillas voted YES; Council President Sylvia, Vice President Rodrigues, Councillor Lombardi and Councillor Santos voted NO to said motion; MOTION FAILED TO PASS.

Question ___

Amends Article VIII, School Department, § 806. Same - Organization, rules and journal of proceedings.

“Shall the Charter be amended to require that the school committee clerk be a member of the school committee?”

The school committee shall elect from its membership a chairman, and a vice-chairman and a clerk, all of both of whom shall serve at the pleasure of the school committee. The school committee shall also appoint a clerk, who need not be a member of the school committee and shall serve at the committee's pleasure. The chairman or the clerk may sign any orders and official papers, and the clerk, under the direction of the school committee, shall keep a journal of the proceedings of the committee. The school committee shall adopt its own rules and order of business.

Summary: Together with Section 814, requiring the school committee clerk to be a member of the school committee will provide greater internal controls, by ensuring that purchase vouchers are signed by two people, rather than one.

Councillor Santos requested clarification regarding this proposed charter amendment.

Town Solicitor Peter B. Regan explained that currently the school vouchers are executed by the School Committee Chair and the Superintendent.

School Committee Chair Kellie DiPalma Simeone explained the School Committee appoints the Superintendent as the clerk, there are two people that sign the vouchers and all vouchers are approved by the School Committee at the meetings.

Discussion centered around that the vouchers are always signed by two people, the proposal is consistent with state law and the proposed change is a check and balance.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to place the above Charter question regarding Amending Article VIII, School Department, § 806. Same - Organization, rules and journal of proceedings on the November 6, 2018 General Election Ballot.

Question ___

Amends Article XII, Amendment of Charter; Separability of Provisions of Charter, § 1201. General Provisions

“Shall the Charter be amended to revise the first sentence of this provision so as to more clearly reflect the separate and distinct issues?”

This Charter may be amended at any time, in the manner provided by the State Constitution, and shall be reviewed at least every ten years in the manner provided by the Constitution. Should two or more amendments adopted at the same election have conflicting provisions, the one receiving the largest affirmative vote shall prevail.

The sections of any amendments in addition to this Charter shall be numbered by the town clerk and inserted in their appropriate places or added to the Charter.

Summary: This amendment would clarify the process for amending and reviewing the Charter.

Town Solicitor Peter B. Regan explained that this amendment is housekeeping.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to place the above Charter question regarding Amending Article XII, Amendment of Charter; Separability of Provisions of Charter, § 1201. General Provisions on the November 6, 2018 General Election Ballot.

Proposed Charter Amendment regarding appointment of Department Heads

Sec. 207. Power to determine policy; other enumerated powers.

The town council shall be the policy-determining body of the town, and shall exercise all the powers of the town, except as otherwise

provided by this Charter, or by the Constitution and laws of the state. Among the powers of the council, to be exercised in accordance with relevant provisions of this Charter and of the Constitution and laws of the state, shall be the power:

(a) To judge the qualifications of its members, and for such purpose it shall have the power to subpoena and require the production of records.

(b) To appoint standing and temporary committees, but no legislative powers of the council may be delegated to these committees.

(c) To create, change and abolish town offices, departments and agencies not established by this Charter or by the Constitution and state laws.

(d) To fix the amount of official bonds of all officers of the town who, in its opinion, should be bonded, the premium on such bonds to be paid by the town.

(e) To order the raising by a tax upon real and personal estate of such sums of money as may be required to pay town debts and defray the necessary charges and expenses of the town, and to order the assessment, levying or imposing of any other taxes for the support of the town which legally may be assessed, levied or imposed under any general or special laws which are now or may hereafter be in existence.

(f) To enact and amend a zoning ordinance.

(g) Bond Limitation Without Referendum. No bonds shall be issued pledging the credit of the town in excess of one hundred

thousand (\$100,000.00) dollars in any one fiscal year unless submitted to a vote of the electors at either a general or special election, and approved by a majority of the electors voting at said election.

(h) To authorize the hiring, pursuant to statutes now or hereafter in effect, of money in each financial year in anticipation of the receipt of the proceeds of the annual tax due or to become due in said financial year upon the ratable property in the town.

(i) To provide for the audit at any time of the accounts of the town or any department, and to provide for an annual audit as prescribed in section 1005.

(j) To provide for a personnel policy system as provided in article IX.

(k) To appoint the town administrator as provided in section 303.

(l) To appoint the heads of all administrative departments of town government provided for in this Charter or which shall be provided for in the future, but not including the superintendent of schools, and to confirm all appointments of the town administrator for which town council confirmation is required.

(m) To enact, amend or repeal ordinances for the preservation of the public peace, health, safety, comfort and welfare, and for the protection of persons and property.

(n) To provide reasonable penalties for the violation of any ordinance.

(o) To exercise all additional powers, consistent and in accordance with this Charter and the laws and Constitution of the state, which

have been or may hereafter be granted to the council by the Charter or to the town by the laws and Constitution of the state.

(p) Contracts for materials and services shall be awarded in accordance with the laws and Constitution of the state, and as established by town ordinance.

(q) Notwithstanding any other provision of this Charter to the contrary, the Town Council shall have the authority to merge common duties, functions and/or services of any agency or department of the Town and another department or agency of the Town including but not limited to any department or agency established by or enumerated in this Charter or by the Constitution and state laws. (Amended, September 15, 1980; Amended, November 4, 2008; Amended, November 6, 2012.)

Sec. 304. Enumeration of power and duties.

The town administrator shall have the power and shall be required:

(a) To submit to the council, not later than ninety days prior to the start of the next fiscal year, a proposed budget of receipts and expenditures and an explanatory budget message. For such purpose the town administrator shall obtain from the head of each office, department and agency except the school committee, estimates of its revenues and expenditures and such supporting data as he or she may request. In preparing the proposed budget, the town administrator shall review the estimates and may revise them as he or she may deem advisable. The budget as proposed by the town administrator shall show all anticipated revenue and all proposed

expenditures except those for school purposes, and the total of such expenditures shall not be greater than the total of anticipated revenue. The town administrator shall request from the school committee its budget of estimated expenditures and revenues for transmission to the council. He or she shall incorporate the total of these expenditures and revenues with the total he or she has arrived at for general town purposes, but shall not have the authority to increase or decrease any item in the school committee's budget.

(b) To see that the laws and ordinances are enforced.

(c) To nominate appoint, subject to the confirmation of the town council, the heads of all administrative departments of town government provided for in this Charter or which shall be provided for in the future, but not including the superintendent of schools. The Town Administrator shall provide the town council with the names and qualifications of the top three (3) candidates for any such position, in order of preference, and the town council shall make the appointment from said list. He or she may remove any of the aforementioned department heads for whom he or she is the appointing authority; provided, that any person so removed shall have the right, within ten days of receipt of written notice of his or her removal, to petition the town council for a hearing before that body. Following any such hearing, the council shall convey its conclusions to the town administrator, but his or her decision to confirm or rescind the dismissal shall be final.

(d) To determine the compensation of all officers and employees under his or her jurisdiction subject to the approval of the council.

(e) To assign additional duties to officers, agencies or departments established by the Charter, but he or she may not discontinue or reassign duties assigned to specific organs under this Charter.

(f) To prepare and submit to the council, as of the end of the fiscal year, a complete report on the finances and administrative activities of the town for the preceding year, which report shall be printed and made available to the citizens.

(g) To coordinate the activities and programs of all departments and agencies of the town including any and all boards or commissions whose members are chosen by the town council. All such departments and agencies shall submit periodic reports to the town administrator as he or she shall direct, and supply him or her with any and all information regarding their work which he or she may request.

(h) To perform such other duties as may be prescribed by this Charter or required of him or her by the council. (Amended, November 4, 2008.)

Town Solicitor Peter B. Regan explained that the proposed amendment changes the manner in which department heads are hired.

Councillor VonVillas noted concern with the amendments, explaining the Town Administrator should be held responsible for hiring.

Town Solicitor Peter B. Regan noted that if a current Town employee

is a candidate for a department head position, the discussion may be held in executive session; outside candidates must be discussed in open session.

Discussion centered around confidentiality of applicants, concern with lack of applicants if the interview is held in open session, the current process the Town Council confirms the appointment of department heads, currently when hiring a department head a committee is formed (with expertise of the position) to interview applicants and politics being kept away from employees.

Council President Sylvia noted he will not support this proposed amendment.

On motion of Vice President Rodrigues, duly seconded, it was voted to place the above Charter question regarding Appointment of Department Heads, Sec. 207. Power to determine policy; other enumerated powers and Sec. 304. Enumeration of power and duties on the November 6, 2018 General Election Ballot; Council President Sylvia, Vice President Rodrigues, Councillor Lombardi, Councillor Santos; Councillor Turano and Councillor VonVillas voted NO to said motion; MOTION FAILED TO PASS.

Proposed Charter Amendments regarding deputy positions and Town Engineer.

Summary: By replacing the word “shall” with “may”, the proposed

amendments would make the appointment of a Deputy Town Clerk, Deputy Police Chief, Deputy Fire Chief, Deputy Finance Director and Town Engineer optional.

Sec. 601. Town clerk; deputy town clerk.

There shall be a town clerk, who shall be appointed by the town administrator and shall have those powers and perform those duties prescribed now or in the future by this Charter and the Constitution and laws of the state, and such additional powers and duties as may be assigned to the clerk by the town administrator. The clerk shall have charge of such personnel as may be provided by the town council to assist the clerk in the discharge of the powers and duties of the clerk's office. There may shall be a deputy town clerk who shall be appointed by the town administrator in accordance with article IX and shall exercise the powers and perform the duties of the office of town clerk in case of the absence or inability of the town clerk.

Vice President Rodrigues noted this suggested proposed amendment, along with all of the proposed amendments regarding the deputy positions and the Town Engineer is to allow flexibility to the Town, it is not suggested to lay people off, it is based on the declining population.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to place the above Charter question regarding Sec. 601.

Town clerk; deputy town clerk on the November 6, 2018 General Election Ballot.

Sec. 701. Police.

There shall be a police department, the head of which shall be the chief of police, who shall be a police officer with at least ten years experience above the rank of patrolman in any organized police department or equivalent experience in a state or federal law enforcement agency. The chief of police shall be appointed by the town administrator. In addition to the chief of police, there may shall be a deputy chief and such other subordinate officers and patrolmen, all of the aforesaid serving full time, as shall from time to time be determined by the town council. The further organization of the department into divisions or offices or grades shall be made by the town council on recommendation of the town administrator after conferring with the chief of police. The police department shall be responsible for the preservation of the public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, regulation of traffic, and the enforcement of the laws of the state and the ordinances of the town and rules and regulations in accordance therewith. The chief of police and other members of the department shall have all the powers and duties as are now and hereafter vested in such police officers by the laws of the state and the town ordinances. The chief of police shall be in direct command of the police force and shall, subject to the approval of the town administrator and town council, make rules and regulations

concerning the conduct of all officers and subordinates.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to place the above Charter question regarding Sec. 701. Police on the November 6, 2018 General Election Ballot.

Sec. 702. Fire.

There shall be a fire department, the head of which shall be the fire chief, who shall be a firefighter with at least ten years experience in the fields of fire fighting and fire prevention. The fire chief shall be appointed by the town administrator. In addition to the fire chief, there may shall be a deputy chief and such other subordinate officers and firefighters, all of the aforesaid serving full time, as shall from time to time be determined by the town council. In addition to the members of the permanent fire department, the fire chief may from time to time appoint additional special firefighters for occasional services and for limited terms who shall serve at the pleasure of the fire chief. The further organization of the department into divisions or offices or grades shall be made by the town council on recommendation of the town administrator after conferring with the fire chief. The fire department shall have all the powers and duties as are now and hereafter vested in it by the laws of the State of Rhode Island and town ordinances. The fire department shall, subject to the approval of the town administrator and town council, make rules and regulations concerning the conduct of all subordinates.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to place the above Charter question regarding Sec. 702. Fire on the November 6, 2018 General Election Ballot.

Sec. 706. Finance.

There shall be a department of finance headed by a finance director, who shall have ten years prior financial management experience in the public or private sectors and be appointed by the town administrator. There may shall also be a deputy finance director, appointed by the town administrator, who shall assist the finance director and shall exercise the powers and perform the duties of the office of finance director in case of the absence or disability of the finance director. The finance director shall act as town treasurer, town tax collector, purchasing agent, and human resources manager, and shall exercise those powers and perform those duties prescribed for these offices now or in the future by this Charter and the Constitution and laws of the state. The finance director shall also have such additional powers and duties as may be assigned to him or her by the town administrator

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to place the above Charter question regarding Sec. 706. Finance on the November 6, 2018 General Election Ballot.

Sec. 711. Town engineer.

There may shall be a town engineer appointed by the town

administrator. The town engineer shall be a civil engineer, and need not be a resident of the Town of Middletown. He or she may be appointed to serve either full time or part time. He or she shall be available to provide engineering advice and services to the town administrator, the town council, and all other departments, offices and agencies of the town government. He or she shall be responsible for the custody and proper maintenance of all the files and records that pertain to his or her office, including surveys, plans, maps and the like. He or she shall maintain these files and records in the Town of Middletown. The results of all engineering studies or similar work he or she performs for the town shall become the property of the town.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to place the above Charter question regarding Sec. 711. Town engineer on the November 6, 2018 General Election Ballot.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to direct the Town Solicitor to prepare the Charter questions in proper form for the November 6, 2018 General Election ballot; for the Town Council to pass a resolution for placement on the ballot at the June 18, 2018, Regular Meeting of the Council.

BOARDS AND COMMITTEES

26. Submitted by Lt. Jason Ryan, Detective Commander, MPD, on

behalf of the Harbor Commission, re: Proposed Dinghy Rack Rules and Regulations.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to adopt said Proposed Dinghy Rack Rules and Regulations.

EXECUTIVE SESSION

27. Executive Session - Pursuant to provisions of RIGL, Sections 42-46-2, 42-46-4 and 42-46-5 (a) (2) Collective Bargaining (Police), (5) Lease (Tibbits) and (5) Potential Litigation.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to recess open session and reconvene in executive session at 9:08 p.m.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to recess executive session and reconvene in open session at 9:57 p.m.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to seal the executive session minutes pursuant to Section 42-46-7. RIGL.

On motion of Vice President Rodrigues, duly seconded, it was voted unanimously to adjourn said meeting at 9:59 p.m.

Wendy J.W. Marshall, CMC
Council Clerk

Supporting documentation is available at
<http://clerkshq.com/default.ashx?clientsite=Middletown-ri>