

COMMITTEE REPORT

To: Town Council

From: Evan Ross, Chair, Outreach, Communications, & Appointments Committee (OCA)

Date: 12-03-2019

Background

Per its charge, OCA is responsible for “Mak[ing] recommendations to the Town Council regarding all appointments by the Town Council [Sec. 2.9]”. Throughout the winter and spring of 2019, OCA worked to develop an internal process through which OCA could bring forward recommendations for appointments to the Planning Board, Zoning Board of Appeals, Ranked-Choice Voting Commission, Participatory Budgeting Commission, and the non-voting resident members of the Finance Committee. OCA sought to balance two priorities, (1) transparency and (2) the privacy interests of applicants, while complying with Open Meeting Law (OML). The core element of the process involved private interviews with applicants so as to not subject applicants to a public interview, which the majority of OCA thought might discourage applicants. However, the constraints imposed on this process by OML created a significant challenge for OCA and resulted in a process that many members of the Town Council found complicated and imperfect.

In response to feedback from the Town Council, OCA decided to revise this process. OCA has discussed a new process over the course of seven meetings during September, October, November, and December. This report is intended to preview the likely process for the Town Council to solicit feedback in advance of final adoption by OCA. As an internal process of the committee used to carry out a component of its charge, this process is not subject to Town Council approval and OCA **is not** seeking a vote on this process by the Town Council. However, OCA **is** interested in receiving Town Council feedback in advance of the adoption and implementation of this process to ensure that the broader Town Council is confident in OCA’s operations as it moves forward with future appointment recommendations.

The draft process is attached to the end of this report starting on page 7. This report discusses some of the key elements of the process and explains their rationale and the deliberations behind each decision. The process has seven sections. OCA is voting on each section of the process individually, and will then vote to adopt the process as a whole. This will permit OCA members to register disapproval with any particular aspect of the process without having to vote against the process as a whole. To date, OCA has voted on Sections 1, 3, and 4. OCA is scheduled to vote on the remaining sections (2, 5, 6, and 7) and the process as a whole at the regular OCA meeting on December 9. During that meeting, OCA may choose to edit some aspects of this process. Thus, the attached process is a preview of where OCA currently stands, is not the final process, and is subject to change.

Public Interviews - Group Interview on a Single Day (Section 6)

The most significant departure from OCA's previous process is the scheduling of public interviews. There remains a desire by many on OCA to protect the privacy interests of applicants, including applicants' concerns over their professional reputations should they not be brought forward for appointment. However, after lengthy discussions with the Town Attorney to ensure compliance with OML, OCA determined the only way for Councilors to conduct private interviews without triggering the OML requirement to post the interview as a public meeting was to have only a single Councilor conduct an interview. After implementing this process, it became apparent that there was significant interest from the Town Council to involve more Councilors in interviews.

In revising the process, OCA found no OML-compliant way to involve multiple Councilors while also keeping interviews private. Thus, the new process involves public interviews as a posted public meeting. OCA is, however, seeking a rule change from the Town Council Committee on Governance, Organization, and Legislation (GOL) to revise the Town Council Rules of Procedure 10.5(h) to allow the meetings with interviews to not have public comment to prevent the possibility of public comments disparaging an interviewee.

The format of the public interview is a group interview on a single day, where OCA asks questions of the group and each interviewee has an opportunity to respond. This is modeled after the process that has been used to fill a vacancy on elected bodies, such as the School Committee. A benefit of this format is that it efficiently allows all interviews to be conducted at once and follows an existing format with which the town has some experience. A group interview also creates a consistent experience for each interviewee and allows OCA to see how interviewees interact and react to the responses of others.

Regarding the format for the public interview, OCA discussed two other options, but ultimately decided against them for the following reasons:

Individual interviews on a single day: OCA members were most divided over whether to schedule group or individual interviews. OCA acknowledged that there were benefits to individual interviews. First, some interviewees may find the group interview intimidating and be more comfortable in an individual interview. Second, the time commitment for the interviewee is less for an individual interview than for a group interview (a 15-20min interview vs a much longer group interview). However, there are also drawbacks. Because the interview will be a posted public meeting, the conditions of the interview could change from one interview to the next. For example, one interviewee may be alone in the room with OCA, while another may have to interview in front of several members of the public. OCA also recognized that an interviewee's placement in the interview lineup (whether an interviewee is the first interview vs the last interview) can affect that atmosphere, and the behavior, mood, or tone of the

interviewers. Thus, to ensure a consistent experience for all interviewees, the majority of OCA supported a group interview.

Individual interviews over several days: OCA also discussed the possibility of conducting interviews over several days, which would permit greater flexibility in accommodating all applicants. However, the majority of OCA felt that the scheduling logistics, demands on the time of Councilors, and the consistency concerns discussed above made conducting interviews over several days undesirable.

OCA Meeting (Section 6)

The interview will be posted as a special OCA meeting. The OCA Chair will preside over the meeting. All Town Councilors are invited and encouraged to attend the meeting, but non-OCA Councilors will attend as members of the public and will not participate in the interview. OCA considered the option of also calling (at the President's discretion) the interview as a special meeting of the Town Council. However, this only makes sense if other Town Councilors will participate in deliberation at the meeting. As proposed, the interviews are the sole agenda item of that meeting and no deliberation will occur.

OCA further considered the option of allowing other Town Councilors to ask questions. However, the majority of OCA felt as though allowing other Councilors to ask questions could make the interview more time consuming and opens up the possibility of tangential or inappropriate questions since they will not have been part of OCA's development of interview questions (Section 5). More information on interview questions is below. Because there will be no deliberation, and only OCA is asking questions, there is no need to call the meeting as a special Town Council meeting, nor any reason for non-OCA Councilors to participate in the meeting beyond attending as members of the public there to observe.

Remote Participation (Section 6)

OCA discussed at length whether to permit remote participation. OCA recognized that conducting the interview on a single day could end up excluding some viable candidates who may be out of town or otherwise unable to physically attend. However, the majority of OCA members voted to prohibit remote participation for the following reasons:

- Experience on the Town Council and in committees has shown that remote participation is incredibly difficult to do successfully, and our technological ability to do so is limited. Frequent disruption of connection can be time-consuming and can alter the atmosphere of the room.
- There is value in interviewers being able to physically interact with interviewees.
- Leaving it to the discretion of the OCA Chair as to whether an interviewee has a sufficiently extenuating circumstance to permit remote participation poses a challenge for the Chair in ensuring fairness and determining what is or is not a valid reason.

OCA is committed to finding a time for interviews that works for all candidates. The proposed process requires the OCA Chair to work with applicants to identify a time most convenient to all. However, OCA also acknowledges the possibility that an applicant may be unable to attend the interview and will therefore not be considered for appointment. While this is unfortunate, the staggered terms of multiple-member bodies creates a vacancy annually and so an applicant can be considered in the next round of appointments.

Sufficiency of the Pool (Section 3)

OCA voted 4-1 (Councilor DuMont voted no) to approve Section 3.

OCA debated whether to have specific numerical or diversity thresholds that the applicant pool must meet in order for OCA to declare the pool sufficient to proceed with interviews. Some OCA members felt as though OCA should not proceed with interviews unless there are more applicants than there are vacancies. Some OCA members also felt that if the pool did not contain demographic diversity it could not be considered sufficient. However, after a lengthy discussion OCA came to consensus that having rigid thresholds could be overly restrictive. For example, if there is a vacancy on a committee and after a period of recruitment there is only one applicant for that vacancy, and that applicant is eminently qualified, it might not make sense to leave that vacancy open to the detriment of the committee when a qualified applicant is in the pool ready to serve. Further, extenuating circumstances, such as multiple vacancies that threaten the ability of the committee to have a quorum at meetings, may overrule a desire to have a large and rich applicant pool. OCA agreed to language that (1) highlights two qualities of the applicant pool that OCA will strive towards, (2) recognizes that an assessment of the pool should be done holistically and in context, and (3) eschews a rigid commitment to any particular threshold.

Councilor DuMont's vote against the section was in opposition to the prohibition on public disclosure of applicants prior to the posting of interviews (discussed in the section below titled "Disclosure of Community Activity Forms and Numbers of Applicants").

Interview Questions (Section 5)

The proposed process requires OCA to adopt a set of interview questions in advance of the interviews. OCA debated whether to maintain this step (which carries over from the previous process), or whether to permit OCA members to ask questions at their discretion during the interview. OCA recognizes that the proposed process does not allow for follow-ups or the organic formation of questions during an interview based on interviewee responses. However, OCA also recognized the possibility of tangential questions, poorly-developed or poorly-considered questions, or inappropriate questions if the interview questions are not discussed and developed in advance. At one point during deliberation an OCA member posed a question that they would find to be inappropriate to ask during the interview.

Another OCA member then stated that they found that to be a desirable question! OCA then spent some time discussing whether or not it was an appropriate question, and then how the question could be reframed to better elicit the information that would be appropriate and useful. This discussion highlighted the need for OCA to discuss and consider interview questions in advance. OCA is confident that this will produce better questions that will allow OCA to more effectively garner useful and appropriate information from interviewees.

Developing interview questions in advance also allows OCA to ask non-OCA Councilors to contribute their questions and provides an opportunity for OCA to include and integrate questions from all Councilors. This allows non-OCA Councilors to get the information they feel is valuable and makes the interviews more inclusive of all Councilors.

Term Limits (Section 4)

OCA voted 3-1-1 (Councilors Brewer, Ross, and Swartz voted yes; Councilor Ryan voted no; Councilor DuMont abstained) to approve Section 4.

The lengthiest OCA debate centered around Selection Guidance, and in particular the criteria for a healthy multiple-member body (Section 4A(3)). This section brings over some language from the current Appointed Committee Handbook regarding number of terms, preference for reappointment, and preference for newcomers when an incumbent member has served multiple terms.

Councilor Ryan felt that because of the complex and technical nature of the Town Council-appointed committees, and because of remarks from current members of the Planning Board citing the significant learning curve for that body, that it should be permissible for members to serve more than two terms. He disagreed with language that discourages reappointment beyond a second term, so voted no.

Councilor DuMont preferred stricter language on term limits. She sought a more rigid prohibition on any member serving more than two terms. Councilor DuMont could not support the current language, but did not want to vote no, so chose not to vote on this section.

The majority of OCA believed that the language in the Appointed Committee Handbook is a compromise between these two viewpoints. It encourages turnover on committees, yet does not set any hard term limits and acknowledges that for bodies where “special training or expertise is required”, which applies to the Planning Board and Zoning Board of Appeals, it is acceptable to allow periods of service beyond two terms.



Disclosure of Community Activity Forms and Numbers of Applicants (Sections 2 & 3)

OCA voted 4-1 (Councilor DuMont voted no) to approve Section 3, has not yet voted on Section 2.

The proposed process at the time of this writing maintains the current Town and Town Council practice of not disclosing numbers of applicants and not publicly releasing Community Activity Forms (CAFs). CAFs continue to be personnel records, not public records. As such, these records are not to be shared with the public or the press, and the documents themselves may not be brought into consideration during deliberation. This is consistent with the opinion received from our Town Attorney. One OCA member supports releasing CAFs to the public. While OCA may choose to recommend this in the future as OCA considers revisions to CAFs this winter, the proposed process does not recommend changing our current practice at this time. This especially should not happen now as current applicants submitted their CAFs under the impression that they are personnel records. There is no language currently on the CAFs that informs applicants that their CAFs may be released publicly. Any decision on the public release of CAFs should occur as part of a larger conversation around CAF revisions and should include proper advance notification of applicants.

Under the proposed process, the Town Council will not disclose the number of applicants to the public or the press until the interviews are posted. One OCA member supports releasing applicant numbers at any point. However, the majority of OCA agrees that doing so may influence potential applicants' decisions (e.g. "So many people have applied I won't bother") and can create confusion as the number of applicants may be fluid.

Town Council Process

The proposed process ends at the OCA recommendation. The process does not include any discussion of what happens when the recommendation reaches the Town Council as this is an internal OCA process only and cannot dictate what the Town Council does once the recommendation is transmitted from OCA. However, OCA does wish to convey its expectations.

OCA is seeking a rule change from GOL to revise the Town Council Rules of Procedure 8.6 to strike the crossed-out language to clarify that the Town Council cannot act on an appointment to a Town Council-appointed committee until it receives a recommendation from OCA:

Appointments: The Council shall not vote to confirm any appointment ~~made by the Town Manager~~ until it has been considered by the Outreach, Communications, and Appointments Committee.

OCA expects that upon receipt of OCA's recommendation, the Town Council will act at the next regular Town Council meeting to minimize the time between interviews and appointment. OCA expects that the motion sheet will contain OCA's recommendation.

Town Council Committee on Outreach, Appointments, and Communications [OCA]

Process to appoint members to multiple-member bodies appointed
by the Town Council

Charter Sec. 2.9(c)

Charter Sec. 5.5(b)

DRAFT 12-02-2019

1. Vacancy

When a vacancy or impending vacancy occurs on a multiple-member body appointed by the Town Council (including Planning Board, Zoning Board of Appeals, and non-voting resident members of the Finance Committee), the Chair of OCA shall write and submit to the Town Clerk for publication on the Town Bulletin Board a vacancy notice, in accordance with Charter Sec. 9.12(e). A vacancy occurs whenever the Town Clerk receives a signed resignation from a member of the body, a member passes away, or a member is removed from the body in accordance with Charter Sec. 2.9(e) and Sec. 9.14. An impending vacancy occurs whenever a member intends to resign or a member's term is expiring, regardless of whether that member may be reappointed.

2. Community Activity Forms (CAF)

Individuals interested in serving on the Planning Board, Zoning Board of Appeals, or as a non-voting resident member of the Finance Committee shall fill out a CAF to express their interest in service. The CAF for these three bodies is separate from the CAFs for Town Manager-appointed multiple-member bodies and is automatically distributed to all Councilors. The OCA Chair shall reach out to all applicants to confirm receipt of their CAF.

CAFs are personnel records, not public documents, and therefore cannot be shared or distributed by Councilors.

3. Sufficiency of the applicant pool

In accordance with Charter Sec. 9.12(e), the vacancy notice must be published on the Town Bulletin Board for a period not less than 14 days, any time after which OCA may assess the sufficiency of the applicant pool. OCA shall collect all CAFs submitted over the preceding two years. The OCA Chair or designee shall contact any applicant who submitted their CAF prior to the posting of the vacancy notice to confirm continued interest. The applicant pool shall be all CAFs submitted over the preceding two years for which applicants are currently interested. In making a determination regarding the sufficiency of the applicant pool, OCA shall consider the following factors:

- The number of applicants relative to the number of vacancies or impending vacancies. OCA strives for more applicants than vacancies.
- The demographic diversity of the applicant pool. OCA strives for a diverse applicant pool, including racial, economic, gender, and generational diversity.
- The current needs of the body-to-be-appointed, including any current burdens placed on the body by a vacancy.

OCA assesses the applicant pool holistically in the context of the needs and history of the body-to-be-appointed. OCA shall, by majority vote, declare the applicant pool sufficient to proceed to interviews. Absent this declaration, OCA may engage in outreach to recruit additional applicants.

Prior to the posting of the interviews OCA does not disclose the total number of applicants to the public or to the press.

4. Selection Guidance

Prior to developing interview questions or holding interviews, OCA shall, by majority vote, adopt Selection Guidance for filling the vacancy that OCA provides to the Town Council in advance of interviews. OCA shall derive Selection guidance from the following two sources:

A. Criteria for a healthy multiple-member body

OCA considers the following factors to be important for a multiple-member body to be healthy:

- 1) A strong base of seasoned members who have completed or nearly completed one term as member. These members bring an understanding of process, institutional knowledge, can mentor new members, and take on leadership roles.
- 2) Newer members who have served fewer than one term. These members bring new energy, outlooks, and ideas to the body, and ensure the body will continue to have a strong base of seasoned members in the future.
- 3) Generally, if a person is serving a first term, they are given preference for a second. Conversely, if a person is completing a second term, and there are other qualified applicants, preference would be given to a newcomer (Appointed Committee Handbook Sec. 2.3). Although there is no fixed limit on length of service, the length of service is normally limited to two (2) terms, three (3) years in length. In cases where special training or expertise is required, longer periods of service may be appropriate (Appointed Committee Handbook Sec. 2.5).

B. Input from the body's chair

Prior to the adoption of selection guidance, the OCA Chair shall solicit from the chair of the body-to-be-appointed the following:

- 1) Skills and characteristics of a successful member of that body
- 2) Knowledge and/or expertise related to the work of that body
- 3) Preferred knowledge and/or expertise to meet the current needs of that body

5. Interview questions

Prior to holding interviews, OCA shall, by majority vote, adopt a set of interview questions OCA will ask all applicants. OCA shall consider the adopted Selection Guidance in developing interview questions. OCA shall also solicit questions from the Town Council in advance and attempt to include them.

6. Interviews

In advance of interviews, the OCA Chair shall distribute to the Town Council and to all interviewees the adopted selection guidance, interview questions, and committee handouts.

The OCA Chair shall schedule and post a special OCA meeting at a time most convenient to all interviewees and provide at least 14 days' notice of such meeting to all interviewees. All Town Councilors are invited to attend as members of the public. Any applicant unable to attend the meeting shall not be considered for appointment. The meeting shall include the interviews as the sole agenda item, and shall not include public comment. The OCA Chair shall preside over the meeting.

All interviewees will be interviewed together as a group. OCA will ask the adopted interview questions of the group, and each interviewee will have an opportunity to answer each question.

7. OCA recommendation

At the next regular or special OCA meeting following the conclusion of interviews OCA shall discuss the interviewees and the OCA recommendation to the Town Council. OCA shall seek to minimize the time between interviews and an expected Town Council vote. OCA may choose not to make a recommendation. OCA may also recommend fewer appointments than vacancies or impending vacancies.

OCA's recommendation shall include the following:

- Name(s) of applicant(s) recommended for appointment
- Dates of appointment
- Reasons for recommendation