



**COMMITTEE REPORT**

**To: Town Council**

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

**Date: 12-11-2019 for the 12-16-2019 Town Council meeting**

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## Overview

Over the course of fall 2019 OCA worked to develop a revised process for OCA to recommend appointments to multiple-member bodies appointed by the Town Council. On 12-09-2019, OCA voted 4-1 to adopt the revised process attached to this report. The dissenting vote was Councilor DuMont, who disagreed with several individual components of the process and therefore opted to vote against the process as a whole. The draft process is attached in Appendix A of this report. This report discusses some of the key elements of the process and explains their rationale and the deliberations behind them.

## Context

### 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 to avoid subjecting applicants to a public interview, which the majority of OCA thought might discourage potential 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.

### OCA Deliberations

In response to feedback from the Town Council, OCA decided to revise this process. OCA discussed a revised process over the course of eight meetings during September, October, November, and December 2019. The resulting process has seven sections. OCA voted on each section of the process individually, and then voted to adopt the process as a whole. This permitted OCA members to register disapproval with any particular aspect of the process without having to vote against the process as a whole. The individual votes on each section are reported in Appendix B. OCA also sent the full Town Council a preview of the process on December 4 to solicit their feedback. Several non-OCA Councilors provided feedback, and OCA addressed that feedback at its 12-09-2019 meeting prior to voting on final adoption of the process. Responses to Councilor feedback are in Appendix C.

## Moving Forward

OCA will present its final adopted process to the Town Council at the 12-16-2019 Town Council meeting via this report and during Council discussion. It is important to note that this an internal OCA process exclusively used to carry out a component of OCA's charge, specifically to produce a recommendation to the Town Council regarding appointments. As such, this process is not subject to Town Council approval and OCA **is not** seeking a vote on this process by the Town Council. OCA was careful to ensure that this process is applicable to and implementable by OCA alone. No aspect of the process requires any actions of the Town Council. Nor does the process involve any action or restriction that binds the Council, in compliance with Town Council Rules of Procedure rule 10.1. The process purposefully exists wholly within OCA. Thus, the 12-16-2019 discussion at the Town Council should serve to apprise the Town Council of the process and as an opportunity for OCA to receive additional feedback.

Having adopted the process, OCA is moving ahead with implementation. The vacancy notices for Zoning Board of Appeals and Planning Board were posted to the Town Bulletin Board on 9-12-2019 and 10-17-2019, respectively, meeting the 14-day requirement (Charter Sec. 9.12(e)). At OCA's next meeting on 12-20-2019, OCA will begin discussion of the sufficiency of the applicant pool (see Section 3). The OCA Chair will be reaching out to applicants to confirm continued interest during the interim period (See Section 3). OCA is hoping to schedule interviews for the Planning Board sometime in January.

## Process

### 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 to revise the Town Council Rules of Procedure 10.5(h) to allow the meetings with interviews to not include public comment to prevent the possibility of public comments disparaging an interviewee (see memo in Appendix D).

Since the preview document that the Town Council received on 12-4-2019, OCA clarified that the interviews will be videotaped, as per normal OCA meetings.

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. But another may have to interview in front of several members of the public who show up for that interview only. There is also the possibility that an interviewee with the luxury of time may sit in as a member of the public on another's interview, providing that interviewee an advantage not shared by others. 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 the 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 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 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)

OCA voted 5-0 to approve 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 recognized 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 4(A)(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 a 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.

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, and voted 4-1 (Councilor DuMont voted no) to approve Section 2.

The proposed process 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 and made a motion during OCA deliberation to make all current CAFs public records. That motion failed to receive a second. 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 for the following reasons:

- Current applicants submitted their CAFs under the impression that they are personnel records. Any decision to re-classify CAFs as public records should occur after the current set of appointments to not change the practice mid-way through an appointment process.
- There is no language currently on the CAFs that informs applicants that their CAFs may be released publicly, so current applicants would have no advance notice.
- 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. This is consistent with OCA's focus on removing potential barriers for newcomers who may feel dissuaded if they see a large number of applicants.

### Length of Time Between Interviews and Town Council Vote (Section 7)

OCA voted 4-1 (Councilor DuMont voted no) to approve Section 7.

OCA debate on Section 7 focused largely around one sentence: "OCA shall seek to minimize the time between interviews and an expected Town Council vote." Councilor DuMont felt as though a lengthy period of time between the interviews and Town Council vote on appointment would be beneficial, as it would maximize the amount of time for the public to offer their opinions. However, most OCA members felt that OCA should act quickly after the interviews out of consideration and courtesy to the applicants. OCA members recognized that for any individual there is some anxiety and restlessness following an interview waiting to hear the outcome and preferred to minimize that time for applicants. Further, there is also concern that a lengthy period of time would open up the possibility of letters to the editor or other campaigns in favor of a particular candidate, and OCA members recognized that as volunteers willing to serve on a committee they should not be subjected to such experiences similar to a candidate running for elected office.



## 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 two rule changes from the Town Council. One is described earlier in the report and in Appendix D. The other is 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.

APPENDIX A: Town Council Committee on Outreach, Appointments, and Communications [OCA] process to recommend appointments to multiple-member bodies appointed by the Town Council

Charter Sec. 2.9(c)

Charter Sec. 5.5(b)

ADOPTED 12-09-2016

## **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 members of the Finance Committee shall fill out a CAF to express their interest in service. Members seeking reappointment must also submit a new CAF. 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) Term limits: 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. Meetings shall be videotaped consistent with regular OCA meetings.

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

## APPENDIX B: Record of Votes on OCA Process

**Section 1:** 5-0

**Section 2:** 4-1 (Councilor DuMont voted no)

**Section 3:** 4-1 (Councilor DuMont voted no)

**Section 4:** 3-1-1 (Councilor Ryan voted no, Councilor DuMont abstained)

**Section 5:** 5-0

**Section 6:** 5-0

**Section 7:** 4-1 (Councilor DuMont voted no)

**Process as a whole:** 4-1 (Councilor DuMont voted no)

## APPENDIX C: Responses to non-OCA Councilor Comments

On 12-04-2019 OCA sent a preview of the process under consideration and a report to the Town Council, asking Councilors to send feedback by 12-09-2019 at 7am. Several Councilors responded with feedback. During the 12-09-2019 meeting OCA discussed each comment received. Some resulted in minor changes to the process.

While OCA discussed the comments, I wrote the responses below. I tried my best to capture the sentiment of the committee, but in some cases the committee entrusted me to write the response based on OCA votes and deliberations. Comments received are in bold and numbered. Responses are below comment, lettered, and unbolded.

Evan Ross, Chair, OCA

### Section 3

1. **I agree that being too rigid can get in the way of common sense, but that every effort should be made to find a sufficient and diverse pools of applicants. Common sense and fairness should guide decisions. These boards make legally binding decisions on projects that may cost multi-million dollars and stand for a century; the emphasis must be on qualifications and judgment.**
  - a. OCA appreciates this comment. We had a lengthy discussion regarding the use of rigid thresholds to declare the pool sufficient and agree that rigidity could be problematic, and that common sense and a more holistic approach was more sensible.
  
2. **I do not agree with the committee's vote on disclosure of CAF's or of the number of applicants. It's strange that you concluded that a large number of applicants would discourage people from applying, without considering the opposite which is "Oh, so few people have applied, then I might have a chance. They might need my voice; it's my duty to apply." All future CAF's should be treated as public documents. Members of the Planning Board and Zoning Board of Appeals make decisions as important as those we Town Councilors make. They are doing the Public's work just as we do; they are public officials, but they don't have to go to the expense and trouble of campaigning (for which they should be grateful). The public has the right to know how many people applied and what the credentials of those applying for the positions are. This is necessary if we are to have the open, transparent, and democratic government we advertise. I must be missing something. Why should Councilors and the members of the public not be able to see the CAF's? Is this a secret society? If you want people to trust you, then stop the secrecy.**
  - a. There are many pieces to this comment and I will do my best to address them all. Regarding disclosure of numbers of applicants, your comment is well-taken that a small





applicant pool may encourage someone to apply. But that does not negate the real concern that a large applicant pool might discourage someone from applying, and at least two members of OCA felt that outcome was overly concerning. It is important to note that there are ways to signal the need for more applicants without disclosing numbers of applicants. The Town Council may choose to re-post the vacancy announcement, or state publicly that there is a need or desire for more applicants. This might encourage people to apply under the scenario you cited. One OCA member was also concerned about potential fluidity in numbers of applicants and the problems that could pose, and questions about who has the authority to release numbers of applicants. The simplest and cleanest solution is not to release numbers prior to interviews.

Regarding treating CAFs as public records, the majority of OCA believes that they should not be reclassified at this time as that poses several challenges for applicants who already applied under the assumption that they are not public records. These reasons were detailed in the report. If the Council does, at some point, decide to re-classify CAFs, it should be part of a larger conversation of CAFs, not mid-appointment process, and should be done with notification to applicants.

It is also important to note that the Town Manager has no intentions of releasing CAFs for Town Manager-appointed multiple-member bodies. As you note, the Planning Board and Zoning Board of Appeals are important regulatory bodies that make impactful decisions. But they are not special in their authority or impact. Other committees, such as the Conservation Commission, Board of License Commissioners (BLC), and the Board of Health (BOH) have enormous regulatory power on par with the PB and ZBA. For examples, see the recent BLC changes to the Common Victualler License, or the recent BOH regulations on the sale of certain tobacco products. These decisions are incredibly impactful and not subject to Town Council vote. Given that their CAFs are not public, the argument that PB and ZBA volunteer committee members should be subjected to special scrutiny, including public release of their CAFs, because their decisions are impactful would be applied inconsistently across bodies.

Regarding the statement “The public has the right to know how many people applied and what the credentials of those applying for the positions are”, please note that because interviews are public the public will know who applied and their credentials at the time of the interview. OCA also briefly discussed developing a primer document for interviews that could include information about each candidate that would be public that could accomplish this goal without the problems of releasing a CAF.

Lastly, I do want to correct one inaccurate statement: “Why should Councilors and the members of the public not be able to see the CAF’s?” All Councilors have access to CAFs. Currently, all CAFs for PB, ZBA, and FinCom are automatically distributed to all Councilors. You also already have all CAFs submitted before this change as they were part of the previous applicant pool used in spring appointments.

#### **Section 4**

- 3. I support Georges’s position in this section. If you are going to put preferences for appointments in, I would much rather see a “yes to incumbent after 1 or 2 terms, no after 3” for Planning Board and ZBA (not Finance). Given my conversations with PB members, I think a three term standard is much better for the two regulatory committees, instead of two. Since they issue formal permits and are regulatory, I believe they deserve special consideration and longer service is likely better. Finance is different, so I’m ok keeping that one 2.**
- 4. It could be clearer that members might be chosen (or continued) because of their particular profession/expertise. If there is only one attorney on the PB, and no attorneys are in the pool, you wouldn't want to term limit that person off the board.**
- 5. Regarding Section 4a), I have concerns about term limits in three circumstances:**
  - a. A committee that has experienced significant recent turnover and has had a large amount of experience lost in a brief period. That was the problem with the Planning Board. It wasn’t the loss of Mr. Stutsman’s experience in isolation. It was the loss of the experience of a large number of long-time members in a short period, culminating with his term ending.**
  - b. Some committees require unique skills or knowledge and there are few people who offer them. There may be qualified applicants, but you won’t know until you receive CAF’s. We should not preclude current members from asking for a third term so that the opportunity to reappoint an interested and qualified member exists until the full applicant pool is known.**
  - c. Similarly, there may not be an adequate pool, even if there are several round of applicants. Again, the interested and qualified member who has served two terms and is interested in continuing to serve should not be eliminated before the process begins.**
- 6. I agree with the decision of the majority of the committee regarding term limits. Encouraging turnover after two terms served is good in that it opens the committee or board to new perspectives, but when necessary, if there are no good alternatives, a member may be allowed to serve beyond two terms.**
  - a. Because comments 3-6 were around the same issue I will address them together. Section 4, and in particular Section 4(A)(3), produced the greatest amount of debate within OCA and highlighted some of the greatest divisions. While Councilor Ryan did vote against the section because of his opposition for a two-term preference for appointments, he stated during the 12-09-2019 OCA meeting that he has been**



persuaded that the current language is a compromise and is sufficiently flexible to address his concerns.

Given the feedback, it might be useful to clarify OCA's interpretation of 4(A)(3). The language allows flexibility around appointments. It does not make absolute statements. For example, it says "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." The use of the word "preference" shows some weighting in favor of reappointment at the expiration of a first term but not a second, but does not commit OCA or the Council to such actions. There may be reasons not to reappoint after a first term, despite the preference. And, as highlighted in the feedback, there are many reasons the Council may want to reappoint after a second term despite a preference for a newcomer. Specifically, the language in the second sentence that states "and there are other qualified applicants" suggests that if there are not other qualified applicants then you might choose to reappoint beyond a second term, addressing the concern raised in comment 5(c).

The language that states "the length of service is normally limited to two (2) terms, three (3) years in length" includes the word "normally", which allows flexibility and does not preclude a member from applying for a third term (addressing the concern in comment 5(b)). OCA did discuss whether the language might make an applicant feel as though they can't or shouldn't apply for a third term. OCA did not change the language for two reasons. First, some members felt like openly acknowledging the possibility of applying for a third term might encourage members to apply for additional terms, and some on OCA felt as though that shouldn't be encouraged. Other members felt as though the language did not prohibit the applications, and that informal discussions could ensure members don't feel as though it is prohibited. For example, if a qualified member is completing a second term, Councilors, staff, or committee members may encourage them to apply and reassure them that it is permissible.

OCA believes that the concerns outlined in comments 3, 4, and 5(a) are sufficiently addressed by the statement "In cases where special training or expertise is required, longer periods of service may be appropriate." All the Town Council-appointed committees require some special expertise, and thus OCA recognizes that for these bodies there are some circumstances where longer periods of service might be appropriate. As noted in comment 4, a legal background is an area of expertise that is useful for the Planning Board. Thus, if a member with a legal background is finishing a second term, and no attorneys exist in the applicant pool, that sentence provides OCA and the Council with cause to recommend reappointing that member beyond a second term since their expertise is required.

OCA opted not to change the language of Section 4 in response to comments because, as explained in the preceding paragraphs, members of OCA believe all the concerns outlined in the comments are sufficiently addressed by the flexibility provided for in the language.

The committee did spend some time specifically discussing the suggestion in comment 3 that the preferred length of service be longer for PB and ZBA than for FinCom. However, OCA agreed that if the intent of the Charter Commission was to provide for resident members of FinCom to compensate for a potential lack of municipal finance expertise within the Council, then it may be in the interest of the Council to allow for longer period of service for qualified FinCom members if the composition of the Council shows a deficiency in this area.

### **Section 5**

**7. On interview questions I also vote against rigidity. There is great value in the committee's working together to create appropriate and useful questions ahead of time. However, it is foolish to tie your hands so you cannot ask relevant follow up questions when needed. Any time you feel that a robot could do your job, you are not doing it right. What is the point of Town Councilors being able to submit questions to the committee ahead of time if they have not seen the CAFs of the applicants?**

- a. OCA discussed this issue at length. Many agreed that there is value in the ability to ask follow-up questions. However, for the sake of time and to ensure that the questions asked are thoughtful, meaningful, and appropriate, OCA decided that the best approach was to spend time developing questions in advance and to limit the interview to those questions.

As discussed in my response to comment 2, Town Councilors have access to all the CAFs and so will have seen them prior to submitting questions to OCA.

### **Section 6**

**8. The group interview could be during the time slot that the body normally meets. (eg., Weds at 7pm for PB, but on a Weds that there is not a meeting).**

- a. OCA discussed this idea and intends to pursue it. Already, I have received the dates of all PB and ZBA meetings during 2020 and will be attempting to schedule the interviews around these dates. However, OCA felt that it was not necessary to write this into the process.

- 9. It does not appear that you have a provision to seek or allow comments after interview by Councilors who are not a member of OCA, members of the committee with the appointment including the Chair, or members of the public. Those comments would need to be in writing and public documents, with notice to anyone submitting that they are public documents. It does not make sense to have public interviews and not allow those present to offer comments.**

- a. This comment is inaccurate. While non-OCA Councilors will not participate in the interviews or the succeeding OCA deliberations, once OCA completes its process and submits its recommendation then the recommendation and the appointment sits in the full Town Council. At this point Councilors participate fully in discussion and deliberation around the candidates. While OCA recommends, the Town Council appoints, and Councilors (who may attend the interviews or watch them later on video) have ample ability to offer comments during that discussion.

Regarding the public, as with any issue the public (including members of the committee with the appointment) can provide their comments to OCA or to the Town Council in writing via email. They also may choose to meet with the Councilors, or otherwise contact them to express their opinion. The Town Council President also has the discretion to permit public comment on the appointments when the Town Council takes them up. Thus, there are ample opportunities for Councilors and the public to provide comments after interviews and before appointment.

- 10. You probably should clarify whether interview sessions will be recorded and available to the public and members of the Council who cannot attend. In addition, if OCA does not want to do so, do you need a rule that members of the public cannot make audio or video recordings of the interviews?**

- a. Thank you for this comment as OCA had not previously discussed this issue. Members of OCA disagreed on whether sessions should be recorded. One member felt this was unnecessary and could be intimidating to interviewees. Another felt that the public would want to access videos. Another felt as though Councilors who cannot attend might want access. While there is no requirement that Town Council committees videotape their meetings, OML does allow the public to make audio or video recordings. OCA felt as though since the public can make recording, OCA might as well record the interviews. In response, OCA added to Section 6 "Meetings shall be videotaped consistent with regular OCA meetings."

- 11. I worry that the process may be daunting or unfriendly to some applicants and reward applicants who have skills and experience to present well in the setting you have developed. Has the committee determined that to be a qualification for appointment? Will it affect diversity goals?**
- 12. I support individual interviews on a single day. Group interviews are unfair because they favor the extravert, at the expense of the introvert, and good committees need both. Being required to show up at a certain time and place in order to be considered for something you want is not an undue burden, but how the world often works. I notice that in your draft report of 12-02-2019 your 3rd paragraph in part 6 had language suggesting a group interview, which I thought you had eliminated from consideration.**

- a. Since comments 11 and 12 are similar in nature I will address them together. OCA debated which format is more people-friendly for interviewees. As noted, some people have the skills, experiences, and personality traits to do well in this format, whereas others might not. However, after discussion OCA recognized that what is friendly to one person may be unfriendly to another. Some members of OCA felt personally that a group interview is more stressful and intimidating, whereas other members felt that being alone in front of the room and before a committee was more stressful and intimidating. There is no way to construct a format that works for every personality and every level of experience.

It should be noted that several members of OCA recognize public interviews themselves, whether individual or group, might favor applicants who have particular skills, experiences, or personality traits. Those members still would prefer to have private interviews. Yet the constraints of OML did not permit this without complication. As a result, if OCA and the Town Council feels as though interviews are useful, then they will likely need to be public.

- 13. I agree that remote participation would get in the way of a calm smooth interview process for the rest of the group. Face to face communication is much more meaningful.**
- a. Thank you for this comment. OCA wrestled with this question for some time but agreed that the technological complications of remote participation would pose a challenge for the interviews.

#### Other

- 14. All members should be evaluated every year, and those evaluations should be considered at reappointment time.**
- a. OCA discussed this issue but took no action on it for the following reasons: (1) the Town Council is the appointing authority and as such a decision to do an annual evaluation rests in the full Town Council, not OCA (which just recommends appointments per its

charge); (2) some members felt unqualified to evaluate members of these bodies; (3) some members felt this suggestion more properly belongs in GOL.



## APPENDIX D: Memo Requesting Revision of Rule 10.5(h)

**To: Lynn Griesemer, President, Amherst Town Council**

**From: Evan Ross, Chair, Outreach, Communications, and Appointments (OCA)**

**Date: 12-04-2019**

### **Request**

OCA is requesting that the Town Council revise Town Council Rules of Procedure rule 10.5(h) to insert the italicized language:

h. *Regular* Committee meetings shall provide for a period of public comment.

### **Rationale**

OCA is moving forward with an internal process to produce recommendations for appointments to Town Council-appointed multiple-member bodies that will involve public interviews of applicants. Because of Open Meeting Law, those interviews will be posted public meetings of OCA. Under the current language of rule 10.5(h) OCA would be required to provide a period of public comment during these meetings. OCA members are concerned that with interviews as the sole agenda item, public commenters may comment on a named individual interviewee. There is also the possibility that a commenter might make disparaging comments about an interviewee. To prevent this, OCA would like to prohibit public comment at these meetings.

Revising the rule to specify that regular committee meetings must have public comment allows OCA to schedule the interviews as a special committee meeting and thereby avoid the requirement of public comment. This rule change mimics Charter Sec. 2.6(d)(ii), which requires public comment at regular meetings of the Town Council.

### **Process**

OCA is hoping to hold interviews for the Planning Board in January. To ensure that this rule is in effect by then, I am requesting that the Town Council have a first reading of this rule change at the 12-16-2019 Town Council meeting. I have spoken to the Chair of GOL, who has agreed to place this item on the 12-18-2019 GOL agenda. A GOL recommendation, second reading, and vote to adopt could then be held at the 01-06-2020 Town Council meeting.