

**TOWN OF TIVERTON**  
**CHARTER REVIEW COMMISSION**  
**2017-2018 TERM**

**FINAL REPORT**

**July 23, 2018**

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2018 JUL 23 P 9:15

**Town of Tiverton  
Charter Review Commission  
343 Highland Road  
Tiverton, Rhode Island 02878**

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Dear Tiverton Voters:

This final report is respectfully presented to the voters of Tiverton from the 2017-2018 formal term of your elected Charter Review Commission (the "Commission").

### **Executive Summary**

The 9-member elected Tiverton Charter Review Commission held 40 public meetings over the course of a year considering 143 formal proposals and countless other informal proposals to amend the Home Rule Charter of the Town of Tiverton. After lengthy deliberations and input from citizens and government officials, the Commission fully approved 77 and prioritized them into a "top 20" for the voters to vote on at the November 2018 general election as well as a "top 40" in case a special election was held.

Unfortunately, for the first time in Tiverton history the current Tiverton Town Council has acted to deprive Tiverton voters from voting on the proposals of its elected Charter Review Commission while still putting forward proposals of its own. Because of the actions of the Town Council, which in the view of the Commission are probably unlawful and are certainly disrespectful of the voters of Tiverton, the Charter Review Commission believes that the Tiverton Town Council has tainted the entire process and additional action will be needed in the future so that Tiverton voters have the fair opportunity to vote on the proposals of their elected Charter Review Commission representatives.

### **Introduction**

This final report summarizes the extensive work done by the 2017-2018 term of the Tiverton Charter Review Commission. The report provides background on the Tiverton Home Rule Charter and the Commission in general, the specific process of this Commission, some of the difficulties encountered, and summaries of the substantive work and recommendations.

Further information is also available in the official meeting minutes of the Commission, public records, and in various document on the town website. Some of the meetings were also videotaped.

Feedback on this report is invited by electronic mail to: [tivertoncrc@cox.net](mailto:tivertoncrc@cox.net).

## **Attachments**

- Attachment A is the final disposition summary of the 143 proposals submitted to the Commission. The actual submitted proposals are available in the Commission's full record at Tiverton Town Hall.
- Attachment B includes the top 20 proposals of the Commission.
- Attachment C includes the proposals 21-40 of the Commission.
- Attachment D is a copy of the Commission's memorandum on the charter review process.
- Attachment E is the Town Council Resolution dated February 27, 2017 enabling the Charter Review Commission and Special Election July 18, 2017.
- Attachment F Voter Protection Resolutions

## **Charter Background**

The Town of Tiverton Home Rule Charter was initially adopted by Tiverton's electorate in 1994 and has since been amended in six elections (1999, 2004, 2008, 2011, 2014, and 2016).

The initial adoption in 1994 and four rounds of amendments were voted during general elections in November. Twice (in 2004 and 2011) amendments were voted in special elections (also in November).

It is believed that the General Assembly ratified the initial adoption and all six rounds of amendments.

## **The Charter Review Commission**

In Tiverton, the Charter Review Commission is a non-partisan elected body, having nine members serving one-year terms. The Charter requires the Commission to be elected at least every six years.

The current Charter Review Commission was elected on July 18, 2017 and the election results were certified by the Board of Canvassers on July 24, 2017 for a one-year term.

The current Commission is Tiverton's fourth (not counting the original Charter Commission). In addition to the Charter Commission for the initial 1994 adoption, review commissions existed relating to the 1999, 2004, and 2008 amendments. The 2011 amendments stemmed from the Financial Town Meeting Changes Advisory Committee appointed by and for the Tiverton Town Council, and the 2014 and 2016 amendments stemmed from the Town Council proposing amendments on its own without an elected commission or an advisory committee. It appears that Tiverton, by allowing over six years to elapse between the elections of the prior and current commissions, did not comply with its own charter requirements.

## **Process**

The Commission's first meeting was held on July 31, 2017 and its last on July 23, 2018. In that timespan, the Commission held 40 public meetings, all of which were open to the public other than

one portion held in executive session, and 4 of the meetings included formal public hearings. Meetings were typically from 7:00 P.M. until 10:00 P.M. and held at the Tiverton Town Hall, the Tiverton Public Library, or the Tiverton Senior Center.

The Commission worked in four stages. First, an initial organizational stage. Second, a proposal stage where all government bodies and officials were invited to provide suggestions. Third, a deliberation stage where the Commission triaged and considered all requests and suggestions. Fourth, a finalization stage where the Commission decided on recommendations and completed proposed ballot questions, reasons and effects of change, and actual charter wording changes to be presented to the Tiverton electors for a vote. The Commission held public hearings on all approved proposals.

### **Problems with the Town Council**

The Commission's work was made more difficult by unprecedented actions by the current Town Council. Town Council actions immediately preceding the Commission's enabling Resolution, adopted by the Tiverton Town Council on February 27, 2017 (see Attachment E), may explain this, will certainly provide context for its actions, and indeed may even explain the Town Council's decision to call for the Charter Review Commission election in the first place when it did.

In January of 2016, the Town Council created by Resolution a Casino Sub-Committee whose stated purpose at that time was to develop a Host Community Agreement. Immediately following the voter approval for the casino in the November 8, 2016 election, the Town Council amended its Resolution for a Casino Sub-Committee to add as one of its purposes, "developing a plan for apportioning expected revenue from the casino-hotel development", making it clear the Town Council already desired to "allocate" the gaming revenue away from the Financial Town Referendum (the "FTR") budgeting process, away from voter control and potential property tax reduction.

In August of 2016, then Town Councilor David Perry attempted to place charter change questions on the ballot for the November 2016 election that would have essentially neutered or eliminated the FTR, and hence prevented taxpayers from controlling their taxes through the annual FTR budget adoption process.

In the spring of 2017, Denise deMedeiros, current President of the Town Council, stated at a Budget Committee meeting that addressing the 'allocation' of the gaming revenue, and specifically addressing Charter Section 1214 Fees Collected by The Town, is why a Charter Review Commission was needed.

Twenty-four (24) candidates ran for this nine-member Charter Review Commission, and the nine who won, and won handily, all ran on a slate to keep the casino gaming revenue in the FTR budgeting process so that voters could decide to lower taxes, and to protect the FTR. The landslide election outcome is a mandate for the platform of the elected candidates.

Following are the “unprecedented actions” this Commission has encountered with the Town Council:

- 1) Other than an appearance at two meetings of the Commission by the Town Council president, the Town Council never attended a single Commission meeting in any official capacity.
- 2) The Town Council missed every deadline for requested input, first in September 2017, then in December 2017. And, when it did finally submit some proposals in March 2018, way past the deadline, they were not on the Commission form which included a summary of the “Reason for” the requested charter change, and the “Effect of” that change. (Every other department head, government official, and resident submitting proposals used the Commission form). Some of the proposals the Town Council forwarded for its public hearing were never submitted to the Commission.
- 3) In an effort to maintain communication, coordination and cooperation between the two elected bodies, the Commission requested several times the appointment of a liaison from the Town Council. The Town Council refused.
- 4) In an effort to resolve issues between the Commission and the Town Council, the Commission invited the Town Council to accept numerous joint workshops. The Town Council refused.
- 5) The town attorney appointed by the Town Council refused to meaningfully work with the Commission. Dozens of requests for assistance were ignored or unreturned. Many Commission recommendations were discarded on the off-the-cuff verbal and undeveloped legal arguments without full analysis and without cooperation with the Commission (as he had indicated he would do after a meeting with three members of the Commission in early October 2017). Worse still, after the contested leadership change at the Town Council, the Town Council appointed town lawyer reportedly would only contact the Commission when directed to by the Town Council. In fact, two Commission members were told by Town Council President Denise deMedeiros that the Town Solicitor ‘works for the Council’.
- 6) Concerned that the Town Council was going to use its conflicted attorney to “declare” proposals that would be advantageous to taxpayers to be “illegal”, “unconstitutional”, or the like, the Commission requested that independent legal counsel be appointed to properly represent the Commission’s interests. The Town Council refused.
- 7) Concerned that the Town Council would disenfranchise Tiverton voters, the Charter Review Commission drafted and sent Voter Protection Resolutions (see Attachment F) to the Town Council for adoption. These resolutions would have ensured that this Commission’s proposals would be balloted for voter approval and that the Town Council would direct the Town Solicitor to cooperate with the Commission. The Town Council refused.

- 8) The Town Council did not prepare timely minutes for one critical meeting. This required the Commission to file a complaint with the Rhode Island Attorney General.
- 9) The Town Council would not arrange for videotaping of Commission meetings as requested, other than on three or four occasions. Therefore, only about ten percent of Commission meetings were professionally videotaped.
- 10) In Town Council meeting after meeting, certain councilors would make personal attacks against commissioners and disparage its members or the work of the body. In one instance Councilor Edwards disparaged the term “Commissioners” and the Commission’s own Executive Board which is critical to its efficient functioning.
- 11) Worst of all, for the first known time in Tiverton’s history, other than perhaps one time with the Commission’s consent, the Town Council blocked Tiverton’s voters from voting on the recommendations of its duly elected representatives on the charter-mandated Charter Review Commission.

Nevertheless, determined not to let the Town Council “slow roll” the Commission, the Commission did complete the work it was elected to do. Consistent with the Town Council’s Resolution, the Commission believes the Charter intends the Commission proposals be on the ballot for the voters to consider and will continue to make sure this happens.

It was the current Town Council that ordered the election to elect the Commission but then chose not to follow its own Resolution in doing so.

### **Conclusion**

This Commission had forty (40) meetings over the course of a year. This Commission considered 143 formal submissions and countless others informally and approved 77, prioritizing twenty (20) to be on the ballot at a general election, and forty (40) to be on the ballot at a special election. The top priorities for the Commission were making sure voters get to vote on casino money and protecting the FTR while increasing voter power. The themes of the top 20 were:

- 1) Ensuring all casino money is voted on annually through the FTR process;
- 2) Reducing the amount of money Town Council can borrow or spend without voter approval (except in cases of emergency);
- 3) Making the FTR ballot access easier by reducing signature count, while also improving the process by requiring petitioner statements that the Budget Committee must consider and requiring the Budget Committee to hold a public hearing before it finalizes its work;
- 4) Helping control the tax burden by requiring 4/5ths votes (instead of the majority) if the government wants more than 2% increase in taxes or to approve union labor contracts that increase more than 2% annually in total cost;
- 5) Ensuring the FTR voter choice by automatically including a 0% tax increase option on the FTR if no other elector petition presented;

- 6) Allowing Town Council and School Committee to change their budget requests up to the last minute;
- 7) Clarifying that government officials can engage in political activity on their own time but not using government resources or non-public personal information;
- 8) Increasing voter power by making recalls easier, having charter complaints go directly to municipal court (and no longer able to be quashed by town clerk or town council), electing both town judges so they are independent, and ensuring vacancies are filled by next highest vote getters in all elected offices;
- 9) Increasing scope of conflict of interest protection.

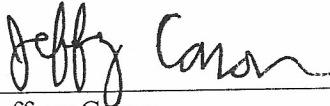
These are the types of proposals this Commission wants on the ballot for the voters.

The Town Council has rejected or modified all these Commission proposals while arrogantly, and with the full help of its Town Solicitor in drafting them, only balloting their own proposals to increase Town Council power and reduce the power of the taxpaying voter.

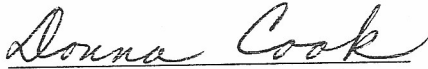
Our Commission was professional and faithful to the voter's directive when we were elected in a landslide last year. We maintained the highest standards of integrity and fidelity to ensure the voter's wishes to preserve the FTR and have a say in how the casino revenue is used was the cornerstone of our recommendations for the ballot. Unfortunately, the Town Council in a power grab has decided to block our recommendations and replace them with ballot items of their own. Ultimately, we the Commission believe in the wisdom and right of the taxpayers to determine what is best for the Town while the Town Council believes they need to expand their power and only they can decide what is best for the Town.

Respectfully submitted to the voters of Tiverton,

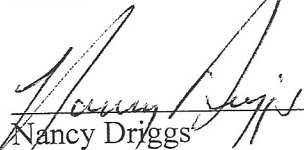
**The Tiverton Charter Review Commission**



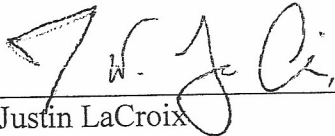
Jeffrey Caron  
Commissioner and Assistant Secretary



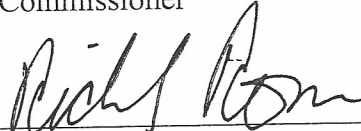
Donna Cook  
Commissioner and Vice Chair



Nancy Dryggs  
Commissioner and Assistant Secretary

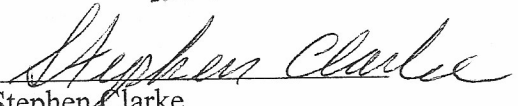


Justin LaCroix  
Commissioner



Richard Rom  
Commissioner and Secretary

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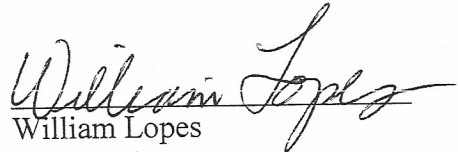
Stephen Clarke  
Commissioner



Robert Coulter  
Commissioner and Chair



Ray Fougere  
Commissioner



William Lopes  
Commissioner



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ID #	Sponsor	Proposal	CRC Ballot Question	Final Disposition
1	Caron, J	Language to ensure the use of casino revenue (gaming and tax revenue) is approved by Tiverton Electors. (Combined with ID #59)	Question #1	Approve
2	Caron, J	Change of FTR Elector petition signature quantity requirement.	Question #3	Approve
3	Caron, J	Language that automatically places a "zero percent" default increase on the annual FTR ballot.	Question #4	Approve
4	Caron, J	Language that establishes a cap on tax levy increases.	Question #5	Approve
5	Caron, J	Language that ties school funding to metrics such as performance and enrollment.		Withdrawn
6	Caron, J	Language to increase library accountability via conditions placed on annual funding.		Withdrawn
7	Caron, J	Language to Require FTR voter approval of all collective bargaining agreements.		Withdrawn
8	Caron, J	Language that limits total compensation increases of unionized employees.	Question #7	Approve
9	Caron, J	Language requiring all collective bargaining contract negotiations to be in public.	Question #39	Approve
10	Caron, J	Language to regulate firefighter force size.		Approve
11	Caron, J	Language to regulate police force size.		Approve
12	Caron, J	Language to regulate the use/amount of police and firefighter overtime.		Approve
13	Caron, J	Language establishing term limits for the School Committee.		Reject
14	Caron, J	Language establishing a maximum term for the position of School Committee Superintendent.		Reject
15	Caron, J	Language requiring public safety department heads to reside local to Tiverton.		Approve
16	Caron, J	Language that sets a maximum cap for library grant increases.		Withdrawn
17	Caron, J	Language that sets maximum cap for school department funding from local sources.		Withdrawn
18	Caron, J	Language that prevents general fund spending not approved by the FTR. (Combined with ID #44)	Question #2	Approve
19	Caron, J	Language that limits role of the Town Council in charter complaint process. (Combined with ID #83 and ID #101)	Question #15	Approve
20	Caron, J	Language that makes the recall process more practical. (Combined with ID #82)	Question #17	Approve
21	Rom, L	Consistency for Boards, Committees, Commissions.		Withdrawn
22	Caron, J	Town Council/School Committee Optional Budget. (Combined with ID #87)	Question #11	Approve

**Attachment A**

ID #	Sponsor	Proposal	CRC Ballot Question	Final Disposition
23	Driggs, N	Change Budget Committee Members from 11 to 7. Modified to change membership from 11 to 9. (Combined with ID #24, ID # 60, and ID #61)	Question #16	Approve
24	Driggs, N	Eliminate Treasurer on Budget committee and use Docket Secretary. (Combined with ID #23, ID # 60, and ID #61)	Question #16	Approve
25	Driggs, N	Budget Committee members not to serve more than 8 consecutive years.		Reject
26	Driggs, N	[As revised] Vacancy in membership of all elected positions shall be filled by next highest vote total from previous election for remainder of term. (Combined with ID #66)	Question #13	Approve
27	Driggs, N	Editorial Changes.		Approve
28	Cook, D	Appoint Town Clerk.		Defeated
29	Cook, D	Town Clerk Qualifications.		Withdrawn
30	Cook, D	Appoint Town Treasurer.		Defeated
31	Cook, D	Disbursement of Funds.		Withdrawn
32	Cook, D	Treasurer Qualifications.		Withdrawn
33	Cook, D	CRC Decrease commissioners.		Withdrawn
34	Cook, D	Video of meetings.		Approve
35	Cook, D	Charter Review change time to 10 years.		Withdrawn
36	Cook, D	CRC Volunteer language (amended) - no compensation.	Question #35	Approve
37	Cook, D	CRC Budget; sufficient funds to carry out duties.		No Vote Taken
38	Cook, D	Ethics, finance, unions; Code of Ethics, RI GL 34-14-2. (Combined with ID #39)	Question #18	Approve
39	Cook, D	Negotiations and Ethics, conflict of interest. (Combined with ID #38)	Question #18	Approve
40	Rom. R	Collection and Distribution of Union Fees.	Question #27	Approve
41	Rom. R	Limit Labor Negotiations. (Suspended pending independent legal counsel)		Approve
42	Rom. R	Elderly Property Tax Freeze.		Withdrawn
43	Rom. R	Private School Property Tax Credit. (amended) (Suspended pending independent legal counsel)		Approve
44	O'Dell, M.	Limiting appropriations that can be spent by the Town Council without voter approval. (Combined with ID #18).	Question #2	Approve
45	Rom, L	Language to add Town Clerk duties to update website docs.		Withdrawn
46	Anderson, S	Addition of Historical Preservation Advisory Board to the Charter.		No Vote Taken

## Attachment A

Tiverton Charter Review Commission  
July 23, 2018

ID #	Sponsor	Proposal	CRC Ballot Question	Final Disposition
47	Anderson, S	Town Committee/Board Applicant Vetting.		Reject
48	Cook, D	Change name Financial Services to Department of Finance.		Withdrawn
49	Cook, D	Change title of Town Treasurer to Town Treasurer/Tax Collector.		Reject
50	Cook, D	Eliminate Office of Tax Collector.		Reject
51	Cook, D	Office of Tax Assessment.		Withdrawn
52	Cook, D	Tax assessor head of Office of Tax Assessment.		Withdrawn
53	Cook, D	Tax Assessor Qualifications.		Withdrawn
54	Cook, D	Tax Assessor Board of Review.		Withdrawn
55	Lopes, W.	Designated categories for casino annual gaming.		Approve
56	Lopes, W.	Capital Improvement and gaming revenue. (Approved + Rescind = No Vote Taken)		No Vote Taken
57	Lopes, W.	Town Debt commitment list.		Approve
58	Anderson, S	All taxpayers should be able to vote on the budget-tax levy: non-resident and resident.	Question #6	Approve
59	Driggs, N	Language to clarify that miscellaneous sources of revenue include casino gaming revenue. (Combined with ID #1).	Question #1	Approve
60	Planning Board	Change Planning Board Members from 9 to 7. (Combined with ID #23, ID #24, and ID #61)	Question #16	Approve
61	Planning Board	Duties of the AO. (Amended) (Combined with ID #23, ID # 24, and ID #60)	Question #16	Approve
62	a Treasurer	Change Police Pension member to non-voting member. (Approved + Rescind = No Vote Taken)		No Vote Taken
62	b Treasurer	Clarify Wastewater Commission and Housing Commission.	Question #34	Approve
63	a Treasurer	Treasurer FTR Alternate Budget Detail Comments.		No Vote Taken
63	b Treasurer	Town Treasurer and Town Clerk Qualifications.		Reject
63	c Treasurer	Appropriate Detail for Alternate FTR Budget.		No Vote Taken
64	Leonard, C	Qualified Elector Signatures.		No Vote Taken
65	Leonard, C	Preliminary Budget (s) Public Hearing. (Combined with ID #89)	Question #10	Approve
66	Leonard, C	Appointment Procedure. (Combined with ID #26)	Question #13	Approve
67	Leonard, C	Protection Against Reprisal.		Approve

**Attachment A**

ID #		Sponsor	Proposal	CRC Ballot Question	Final Disposition
68		Cook, D	[Amended] Judge of Probate increase from 2 year to 4 year term and non-partisan. (Combined with ID #69)	Question #20	Approve
69		Cook, D	[Amended] Municipal Court Judge Change from appointed to elected, non partisan, 4 year term. (Combined with ID #68)	Question #20	Approve
70		Spears, J.	Allow expanded access to board and commission appointments.		No Vote Taken
71		DeCotis, M	Expand Town Council term to 4 years.		Reject
72		Cook, D	Taxpayer rebate of casino gaming revenue. (Approved + Rescind = No Vote Taken)		No Vote Taken
73		Larkin, J	Section 1218, prevents elected officials from advocating re FTR. (Combined with ID #93 and ID #135)	Question #14	Approve
74		Larkin, J	Section 703, Docket. (Combined with ID #65 and ID #89)		Reject
75		Driggs, N	100% Gaming Revenue for property tax rebate. (Approved + Rescind = No Vote Taken)		No Vote Taken
76		Cook, D	Town Council Boards, Commissions.		No Vote Taken
77	a	EDC	Rewriting description and responsibilities for EDC.		Reject
77	b	EDC	Powers and duties for EDC.		Reject
78		Mello, N	General qualifications for members of boards, committees, commissions. (Combined with ID #99)	Question #31	Approve
79	a	Mello, N	Reduce TA time for Budget Review from 10 days.		Approve
79	b	Mello, N	Move Financial Town Hearing to before finalization. (See ID #65 and ID #89).		Reject
79	c	Mello, N	Clarify Role of Town Clerk.	Question #29	Approve
79	d	Mello, N	Eliminate run off, highest vote wins.		Reject
80		Mello, N	Judge of Probate - non partisan.		Approve
81		Mello, N	Municipal Court Clerk delegation of duties.	Question #26	Approve
82		Mello, N	Recall Petition. (Combined with ID #20)	Question #17	Approve
83		Mello, N	Charter Complaints. (Combined with ID #19 and ID #101)	Question #15	Approve
84		Mello, N	Healthcare for Town Treasurer and Town Clerk. (Combined with ID #104)	Question #23	Approve
85		Mello, N	Town Administrator to hire seasonal, part time, and/or temporary help.	Question #40	Approve
86		Larkin, J	School Committee Budget Submission.		Reject
87		Larkin, J	School Committee Access to Ballot. (Combined with ID #22)	Question #11	Approve

## Attachment A

Tiverton Charter Review Commission  
July 23, 2018

ID #	Sponsor	Proposal	CRC Ballot Question	Final Disposition
88	Larkin, J	Petitioner Submission Requirements.		Reject
89	Larkin, J	Presentation of Docket to Electorate. (Combined with ID #65)	Question #10	Approve
90	Larkin, J	School Committee Meeting Minutes.		Approve
91	Larkin, J	School Committee Officer Elections.	Question #32	Approve
92	Larkin, J	School Committee Vacancies.		Approve
93	Larkin, J	Use of voluntary labor. (Combined with ID #73 and ID #135)	Question #14	Approve
94	Cook, D	Town Council 2 year staggered terms.		Withdrawn
95	a Cook, D	Article X Boards and Commissions.		Approve
95	b Cook, D	Move location of Section 1011.		Approve
96	Cook, D	All labor or collective bargaining agreements published minimum 30 days prior to approval.	Question #38	Approve
97	Cook, D	Town Council duties and responsibilities. (Combined with ID #106)		No Vote Taken
98	Cook, D	Change listing of Capital Improvement Program.		Approve
99	Coulter, R	Non-Elector Members of Certain Appointed Advisory Bodies. (Combined with ID #78)	Question #31	Approve
100	Cook, D	Boards, committees and commissions with low participation.		Reject
101	Coulter, R	Charter Violation Complaint Process. (Combined with ID #19 and ID #83)	Question #15	Approve
102	Coulter, R	Address Ambiguities from Prior Charter Complaints.	Question #33	Approve
103	Coulter, R	Charter Review Commission - term duration and frequency.	Question #28	Approve
104	Coulter, R	Benefits for Elected Full-Time Officials. (Amended) (Combined with ID #84)	Question #23	Approve
105	Lebeau, R	Amendment to Section 1214 Fees Collected by Town.		Reject
106	Cook, D	Financial Services composition. (Combined with ID #97)		No Vote Taken
107	Cook, D	Executive session voting.		No Vote Taken
108	Cook, D	Town website on-line documents.	Question #36	Approve
109	Cook, D / Rom, R	Section 1201 Open Records, terms to become public information.	Question #30	Approve
110	Fougere, R	Municipal Planting Program.		No Vote Taken
111	O'Dell, J	Morals Clause for all town employees.	Question #37	Approve
112	O'Dell, J	Mandatory warrantees for town property work.		No Vote Taken
113	Cook, D	Section 804 Judge of Probate.		Approve

## Attachment A

Tiverton Charter Review Commission  
July 23, 2018

ID #	Sponsor	Proposal	CRC Ballot Question	Final Disposition
114	Bellanger, R	Casino - Hours of Operation.		No Vote Taken
115	Bellanger, R	Casino - Outdoor Operations.		No Vote Taken
116	Bellanger, R	Casino - Non-smoking Policy.		No Vote Taken
117	Bellanger, R	Casino - Signs and Advertising.		No Vote Taken
118	Bellanger, R	Casino - Residential Safety Plan.		No Vote Taken
119	Bellanger, R	Casino - Rotary Design, Approaching Roadways.		No Vote Taken
120	Cook, D	Add percentage change column to budget line items.	Question #25	Approve
121	Edwards, J/TC	Modify Department Head Descriptions, Duties and Responsibilities (subset of entire proposal).	Question #12	Approve
122	Hilton, T/TC	Amend FTR Process - Signatures.		No Vote Taken
123	Hilton, T/TC	FTR Remand Process Improvement.	Question #8	Approve
124	Hilton, T/TC	FTR Process Improvements.		No Vote Taken
125	Hilton, T/TC	Volunteer Boards and Commissions.		No Vote Taken
126	Hilton, T/TC	Reorganization of Planning, Zoning and Building functions.		No Vote Taken
127	Town Council	Suggested Changes to placement of Section 806 Senior Citizens Director.	Question #21	Approve
128	Town Council	Tiverton Emergency Management Agency duties and responsibilities, and staffing.	Question #19	Approve
129	Town Council	Suggested Changes to Section 1205 - delete no longer relevant language.	Question #22	Approve
130	Town Council	Modify department head duties and responsibilities and clarify employment terms can be "at will".	Question #12	Approve
131	Town Council	Eliminate Article IX, Section 908, Building Department. (backup included)		No Vote Taken
132	Caron, J.	Petitioner Blocking at FTR.	Question #9	Approve
133	Caron, J.	FTR Schedule and Timing.		No Vote Taken
134	Caron, J.	Implement Budget Committee Resolution #1.	Question #24	Approve
135	Caron, J.	Publication of Government (GOTV) "Contract Lists". (Combined with ID #73 and ID #93)	Question #14	Approve

## ATTACHMENT B

**Question 1:** Shall the Tiverton Town Charter be amended to clarify that all sources of revenue, including but not limited to casino gaming revenue, shall be transmitted to the town treasury and deposited into the general fund, and shall there remain unless and until appropriated by voters at a Financial Town Referendum, as recommended by the Charter Review Commission?

**Reason for Change:** The Town Council has expressed intentions of budgeting and spending the casino gaming revenue outside of the Financial Town Referendum budgeting process.

**Effect of Change:** The proposed change will ensure all revenues, including the casino gaming revenue, go to the general fund and will be in the annual budgeting process. This will maintain maximum flexibility for future town budgeting, will require elector approval of how the money is spent, and will have the potential to reduce the tax levy by the maximum amount.

### ARTICLE XII MISCELLANEOUS

#### Section 1214 Fees Revenues Collected by the Town

All (a) General Fund. Except as set forth in Section 1214(b), or during a state of emergency declared pursuant to Section 310, all revenues, including but not limited to fees, fines, penalties, payments, charges, gifts, donations, grants, Casino Gaming Revenue, and any other miscellaneous sources of revenue including but not limited to vending machines, copy machines, and recreational activities collected by Town Officials or agencies in their official capacities shall be transmitted to the town treasury to be deposited in the general funds of the Town, and shall there remain unless and until appropriated through a Financial Town Referendum. The compensation paid to each official shall be in lieu of all fees, penalties and payments payable to such official in the performance of his/her duties. Fees, penalties, and payments shall be reviewed and revised as necessary on an annual basis. Fees, penalties, and payments shall be set to at least cover the cost incurred by the Town.

(b) Restricted Funds. Nothing in Section 1214(a) shall prohibit an elected body or elected official from obtaining and spending restricted grants, donations, and gifts for the benefit of the Town in an aggregate amount of up to \$250,000 per fiscal year outside of the annual budget or other approval at a Financial Town Referendum so long as such grants or funds require no associated funds, contributed labor, or other expense from the Town.

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## ATTACHMENT B

**Question 2: Shall the Tiverton Town Charter be amended to clarify major appropriations absent emergencies are no longer permitted, and to reduce the amount of money the Town may borrow in an aggregate amount without voter approval to \$250,000, as recommended by the Charter Review Commission?**

**Reason for Change:** As written the charter is not clear regarding the Town spending money without voter approval. In addition, the current charter permits borrowing in the name of the Town up to \$500,000 per occurrence without limitation to frequency.

**Effect of the Change:** This amendment removes any such ambiguity by prohibiting spending unless approved by voters. In addition, this amendment reduces the amount the Town may borrow to \$250,000 in the aggregate annually.

### ARTICLE II ELECTIONS

#### Section 203 Balloting on Major Appropriations and on Proposals for Borrowing or the Issuance of Bonds

~~Any major or special appropriation, other than those which are part of the annual budget, for an amount in excess of \$500,000, and a~~Any proposal for the borrowing of money by the Town either by note or by the issuance of bonds in an aggregate amount in excess of ~~\$50~~250,000, whether ~~such appropriation or~~ such borrowing be for school purposes or for any other Town purpose, including the issuance of special obligation bonds under Chapter 33.2 of Title 45 of the General Laws, must be approved by the electors at a referendum. All referenda for such purposes shall take place at a Financial Town Referendum or at a general election or at a special election as the Council shall determine. Special elections for such referenda shall be scheduled by the Board of Canvassers, which shall also determine the hours, number and locations of the polling places to be used. Voting at such special elections shall be by ballots prepared by the Town Clerk. The Council shall cause language to be prepared with the approval of the Board of Canvassers for all such referendum questions describing clearly the amount, and purpose of the ~~appropriation or~~ borrowing for which approval is sought. There shall be a public hearing at least ten (10) days before the referendum vote. Notice of the time and place(s) for such referendum voting, and of the question(s) to be voted on thereat, shall be given by the Town Clerk by advertising the same at least once in a newspaper of general circulation in the Town no less than one (1) week prior to the referendum vote. The date of such Special Meeting shall not exceed forty five (45) days following certification of the petition. The provision of this Section shall not apply to borrowing in anticipation of taxes, or of federal or state grants, as provided for under Chapter 12 of Title 45 of the General Laws.



## ATTACHMENT B

### QUESTION 3:

**Shall the Tiverton Town Charter be amended to change the number of required signatures for Financial Town Referendum Elector Budget Proposals and Elector Resolutions from fifty (50) to twenty-eight (28), as recommended by the Charter Review Commission?**

**Reason for Change:** Signature collection rate is prohibitive and not on parity with collection rate for local candidates including the Town Council, School Committee, and Budget Committee. It is important to keep the Elector Petition available to and not unreasonably burdensome for electors.

**Effect of Change:** This charter amendment would reduce the burden on all electors by reducing the Elector Petition signature requirement to a reasonable quantity. Consistent with local office candidates, 13 days is permitted to obtain 50 signatures. Using parity and rounding up numbers infers an Elector Petitioner should obtain 28 signatures in 7 days.

### ARTICLE III FINANCIAL TOWN REFERENDUM

#### Section 301 Budget, Tax Levy, and Resolution Adoption Process

...

(d)

...

**3.) Qualification of Petitions:** The Town Clerk shall cause petition signatures to be verified by the Board of Canvassers, such verification to be completed no later than 21 days before the Financial Town Referendum. All Elector Budget Proposals and Elector Resolutions shall be included on the ballot for the Financial Town Referendum and presented at the Financial Town Hearing provided they are accompanied by ~~50~~ 28 qualified elector signatures.

## ATTACHMENT B

### QUESTION 4:

**Shall the Tiverton Town Charter be amended to provide for a Default Budget Proposal representing a zero percent (0%) tax levy increase compared to the prior year and require that it be on the Financial Town Referendum ballot whenever a qualified Elector Budget Proposal is not on said ballot, as recommended by the Charter Review Commission?**

**Reason for Change:** There have been Financial Town Referendums with only one budget proposal available to voters.

**Effect of Change:** Voters would select from at least two budget proposals on the Financial Town Referendum ballot and the Default Budget Proposal representing a zero percent tax levy increase could also be a target baseline during the annual budgeting process.

### ARTICLE III FINANCIAL TOWN REFERENDUM

#### Section 301 Budget, Tax Levy, and Resolution Adoption Process

##### (a) Schedule

...

12.) Budget Committee: Approve and submit the Budget Committee Docket, which includes Budget Proposal and Resolutions, and the Default Budget Proposal to the Town Clerk no later than 44 days prior to the Financial Town Referendum.

...

##### (c) Access to Ballot

...

4.) Should a Qualified Elector Budget Proposal not appear on said ballot, then a Default Budget Proposal in accordance with Section 703 shall appear on said ballot, and if approved by voters shall be remanded to the Budget Committee for docket line item determination.

## ATTACHMENT B

### ARTICLE VII BUDGET COMMITTEE

...

#### Section 703 Duties and Responsibilities

The Budget Committee has the following responsibilities:

- 1.) To participate in the Initial Budget Workshop
- 2.) To review the budgets submitted by the Town Administrator and the School Department, in which review the Committee shall consider both the supporting evidence for each requested budget expenditure and the ability of the Town to support the level of service recommended.
- 3.) To provide the electorate with budget recommendations which balance the value of the proposed goods and services with their cost in taxes.
- 4.) To develop a docket including both (a) resolutions of its own, and (b) the preceding year's approved budget, the budget requests of the Town Administrator, Town Clerk, Town Treasurer and the School Department for the coming year, the Budget Committee's recommendations, and a Budget Proposal.
- 5.) To develop a Default Budget Proposal comprising said ballot entries of Section 301 (b) 1.) A. through E. wherein the percentage increase or decrease to the prior year's certified Net Tax Levy is zero percent.
- 56.) To prepare and submit the docket and Default Budget Proposal for publication to the Town Clerk in accordance with Section 301(a) of this Charter.
- 67.) To present the docket to the electorate at the Financial Town Hearing.
- 78.) If remanded to the Budget Committee, determine docket line items(s) in accordance with said petition originator's budget proposal or said Default Budget Proposal.

## ATTACHMENT B

### QUESTION 5:

**Shall the Tiverton Town Charter be amended to require that any Budget Committee recommendation which requires a tax levy 2% greater than the prior year tax levy shall require an explicit Budget Committee affirmative full membership four-fifths (4/5ths) majority vote, as recommended by the Charter Review Commission?**

**Reason for Change:** While the State of Rhode Island has a similar 4% tax levy cap, Tiverton offers no further protection for its taxpayers.

**Effect of Change:** This charter amendment in effect mirrors the state 4% tax cap by implementing a 2% tax cap local to Tiverton. Any Budget Committee recommendation that requires a tax levy increase greater than 2% would require an explicit Budget Committee affirmative full membership four-fifths (4/5ths) majority vote which is a higher bar than the current simple majority vote requirement.

### ARTICLE VII BUDGET COMMITTEE

...

#### **Section 703 Duties and Responsibilities**

...

4.) To develop a docket including both (a) resolutions of its own, and (b) the preceding year's approved budget, the budget requests of the Town Administrator, Town Clerk, Town Treasurer and the School Department for the coming year, the Budget Committee's recommendations, and a Budget Proposal. Any Budget Committee recommendation which requires a tax levy increase which is more than two percent (2%) greater than the prior year tax levy shall require an explicit affirmative four-fifths majority vote of the Budget Committee full membership.

## ATTACHMENT B

### QUESTION 6:

**Shall the Tiverton Town Charter be amended to permit all non-resident taxpayers to vote in the Financial Town Referendum, as recommended by the Charter Review Commission?**

**Reason for Change:** Currently not all taxpayers can vote in the Financial Town Referendum which results in taxation without representation.

**Effect of Change:** All taxpayers would have voting access to the Financial Town Referendum ballot.

### ARTICLE III FINANCIAL TOWN REFERENDUM

#### Section 301 Budget, Tax Levy, and Resolution Adoption Process

\*\*\*

(f) Financial Town Referendum

\*\*\*

...

**(f) Financial Town Referendum**

...

**5.) Ballot:** All electors and all real property taxpayers, resident or non-resident, shall be eligible to vote on the ballot in accordance with Section 301 (b) presented at the Financial Town Hearing. The Board of Canvassers shall adopt regulations such that no more than one non-Elector taxpayer (or representative or proxy holder) may vote with respect to each parcel of taxable real property.

## ATTACHMENT B

### QUESTION 7:

**Shall the Tiverton Town Charter be amended to require that any municipal collective bargaining agreement that includes a total cost increase of more than two percent (2%) year over year (including current year) shall require a public four-fifths (4/5<sup>ths</sup>) affirmative vote of the full Town Council membership; and that the Town Treasurer shall not authorize any related payment that exceeds the annual total cost as published prior to collective bargaining agreement approval, as recommended by the Charter Review Commission?**

**Reason for Change:** Town officials often enter unaffordable union contracts and presently there is no mechanism to ensure that contract expenses do not exceed the amounts published prior to approval.

**Effect of Change:** Approval of a municipal union contract whose total annual cost increase exceeds 2% would require a public four-fifths (4/5<sup>ths</sup>) affirmative vote of the full Town Council membership; and the Town Treasurer would not be authorized to make payments in excess of the published contract cost. By making the contract approval vote threshold a function of increased contract cost the town's bargaining power with unions is strengthened which incrementally protects the taxpayer.

### New Section

## ARTICLE XII MISCELLANEOUS

### Section 12XX Ratification of Labor Collective Bargaining Agreements

Prior to the Town Council entering any collectively bargained labor agreement, a fiscal impact statement shall be published no later than thirty days prior to entering said agreement. Said fiscal impact statement shall reflect, for each year of said agreement, the total annual cost of said agreement including cost components including but not limited to salaries, health benefits, retirement benefits, leave benefits, clothing allowances, education allowances, fringe, and any other cost component to said to said agreement. Any agreement that whose fiscal impact statement includes a year over year, including current year as a basis, total cost increase of more than two percent shall require a public four-fifths (4/5<sup>ths</sup>) vote of the full Town Council membership for agreement ratification. The Town Treasurer shall not authorize any payment to fulfill said agreement that exceeds said total annual cost as defined by the fiscal impact statement as published prior to said agreement ratification.

## ATTACHMENT B

### Amend Section 407

#### ARTICLE IV TOWN COUNCIL

##### Section 407 Powers and Duties

All powers of the Town shall be vested in the Town Council except as otherwise provided by the Charter or by the Constitution and laws of the State. The Town Council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the Town by law, provided however, that the administration and management of the government of the Town shall be the responsibility of the Town Administrator. Among its powers and duties the Council shall:

...

13.) Review and ratify all tentative agreements negotiated for the Town by the Town Administrator, except those under School Committee jurisdiction. Unratified agreements shall be returned to the Town Administrator, with the reason(s) explained, for further negotiations. For all labor or collective bargaining agreements requiring approval of the Town Council, the details of any tentative agreement shall be made public at least ~~three~~thirty days prior to the meeting at which the final approval vote is to be taken. The ratification process for all collective bargaining agreements shall be in accordance with Section 12XX of this charter.

...

### Amend Section 602

#### ARTICLE VI FINANCIAL SERVICES

##### Section 602 Town Treasurer

The non-partisan Town Treasurer shall be elected for a four (4) year term at general elections.

##### **(a) Duties and Responsibilities**

The Town Treasurer shall have all the powers, rights, and duties prescribed under the General Laws of the State of Rhode Island for Town Treasurers including but not limited to:

...

14.) Monitoring all payments related to municipal labor collective bargaining agreements to ensure compliance with Section 12XX of this charter.

...

## ATTACHMENT B

### QUESTION 8:

**Shall the Tiverton Town Charter be amended to require that any Financial Town Referendum Elector Budget Proposal which chooses to remand the docket to the Budget Committee for final determination of docket line item(s) also must be accompanied by a petitioner's statement which the Budget Committee must consider at a public hearing, as recommended by the Charter Review Commission?**

**Reason for Change:** A petitioner who uses the Financial Town Referendum remand option is not required to provide a statement of intent.

**Effect of Change:** This amendment would require a statement and require the Budget Committee to consider said statement at a public hearing.

### ARTICLE III FINANCIAL TOWN REFERENDUM

#### Section 301 Budget, Tax Levy, and Resolution Adoption Process

...

#### **(d) Petitions**

**1.) Elector Budget Proposals:** "Electors of the town may petition that an alternate budget proposal be included in the Financial Town Referendum. No later than 35 days before the Financial Town Referendum the Town Clerk shall make petition forms available which include fields for the name of the elector who is the petition originator and the ballot entry amounts of Section 301(b)1 A through E. The Town Clerk shall record the dollar amounts sought by the petition originator on the petition form, shall prepare a typed version of this petition form to be verified by the petition originator, and record a petition originator's statement, if any, as to the purpose of the petition. The petition originator shall provide and the Town Clerk shall record either (1) the specific docket line item(s) to be increased, decreased, or created, or (2) a statement to remand the docket to the Budget committee for final determination of docket line item(s) in accordance with said petition originator's budget proposal. A petitioner's statement is required and must be considered at a public hearing by the Budget Committee. Any person obtaining signatures must be a legal resident of voting age. Petitions must be returned to the Town Clerk no later than 28 days prior to the Financial Town Referendum. Any language added to a petition, or any alteration of the language thereof subsequent to the verification by the petition originator of the Town Clerk's typed version, shall be of no force or effect. There shall be no limit to the number of separate petitions which an elector may sign. Nothing in this chapter shall prevent an elected official or any appointed member of a Board, Committee or Commission from being a petition originator or signatory. Nothing in this Charter shall prevent an elector, a majority of an elected body or Board, Committee or Commission from circulating a petition. An elector may originate no more than one Budget Proposal petition.



## ATTACHMENT B

### QUESTION 9:

**Shall the Tiverton Town Charter be amended to ensure that all Financial Town Referendum Elector Budget Proposals and Elector Resolutions appear on the Financial Town Referendum ballot provided all procedural requirements are met, as recommended by the Charter Review Commission?**

**Reason for Change:** Elector Resolutions submitted by petition were recently blocked based on content, not procedure. This is unprecedented and essentially allows the Board of Canvassers, an unelected body, the power to restrict a citizen's right to the ballot.

**Effect of Change:** Elector Budget Proposals or Resolutions, budgetary or otherwise, will not be blocked based on substance or content.

### ARTICLE III FINANCIAL TOWN REFERENDUM

#### Section 301 Budget, Tax Levy, and Resolution (Budgetary or otherwise) Adoption Process

##### (a) Schedule

...

17.) Board of Canvassers: Certification of all elector petitions, meeting procedural requirements, complete no later than 21 days prior to the Financial Town Referendum.

##### (b) Ballot

...

**2.) Resolutions:** Pursuant to Section 301(c), a resolution, budgetary or otherwise, or ballot question may be included on said ballot, provided that if adopted it shall not alter the ballot entries of Section 301(b)1.) A. through E. Electors shall be instructed to "Approve or Reject" Resolution(s).

##### (c) Access to Ballot

...

**3.)** Qualified Elector Budget Proposals in accordance with Section 301(b) 1.) submitted by elector petition in accordance with Section 301 (d) shall appear on the ballot in an order determined by a Board of Canvassers lottery. Qualified Resolutions submitted by elector petition in accordance with Section 301 (d) shall appear on the ballot.

## ATTACHMENT B

### (d) Petitions

1.) **Elector Budget Proposals:** "... The petition originator shall provide and the Town Clerk shall record either (1) the specific docket line item(s), without limitation, to be increased, decreased, or created . . ."

...

3.) **Qualification of Petitions.** "... All Elector Budget Proposals and any elector Resolution shall be included on the ballot for the Financial Town Referendum. . . "

### (e) Financial Town Hearing

1.) **Purpose.** The ballot pursuant to Section 301 (b) as it will be presented at the Financial Town Referendum shall be provided for electors to review and equitably debate all budget proposals and all resolutions.

2.) **Notice.** The agenda notice for the Financial Town Hearing shall comprise the Budget committee recommendation, ~~and~~ other qualified budget proposals, and any Resolution(s) as they will appear on the ballot for the Financial Town Referendum.

...

7.) **Resolutions.** "All Resolutions shall be adopted if the number of approvals is greater than the number of rejections. . . "

### (f) Financial Town Referendum

1.) The Financial Town Referendum may order any tax which lawfully may be ordered, make appropriations, and transact any other business pertaining to the affairs of the Town, budgetary or otherwise, which may legally come before such referendum via Budget Proposals and Resolutions.

...

4.) **Jurisdiction:** The Board of Canvassers shall have jurisdiction over the Financial Town Referendum including a process for absentee ballots. Such jurisdiction shall include ensuring compliance with procedural requirements, provided, however, that ballot access shall not be deprived based on substantive concerns.

**Section 302. Special Referenda-** "... Any request for Special Referenda shall include a Budget Proposal and or any Resolution(s) in accordance with Section 201 (b) Ballot. . ."

## ATTACHMENT B

### QUESTION 10:

**Shall the Tiverton Town Charter be amended to require that the Budget Committee hold a public hearing prior to submission of the docket for publication, as recommended by the Charter Review Commission?**

**Reason for Change:** The public has no formal opportunity to review and comment on the Budget Committee recommendation prior to docket publication.

**Effect of Change:** The public would have an opportunity to review and comment on the proposed Budget Committee recommendation prior to docket publication.

### ARTICLE III FINANCIAL TOWN REFERENDUM

#### Section 301 Budget, Tax Levy, and Resolution Adoption Process

##### (a) Schedule

...

8.) Town Administrator. Submit the final Municipal budget request (excluding the Town Treasurer's and Town Clerk's budgets) and final revenue estimates to the Budget Committee no later than ~~683~~ days prior to the Financial Town Referendum.

9.) Town Clerk: Submit the final Town Clerk budget request to the Budget Committee no later than ~~683~~ days prior to the Financial Town Referendum.

10.) Town Treasurer: Submit the final Town Treasurer budget request to the Budget Committee no later than ~~683~~ days prior to the Financial Town Referendum.

### ARTICLE VII BUDGET COMMITTEE

#### Section 703 Duties and Responsibilities

...

5.) The Budget Committee shall hold a public hearing no earlier than 67 days prior to the Financial Town Referendum and prior to submission of the docket for publication to the Town Clerk in accordance with Section 301(a) of the Charter.

~~56.) . . . 67.) . . . 78.) . . .~~

## ATTACHMENT B

### QUESTION 11:

**Shall the Tiverton Town Charter be amended to allow the Town Council and School Committee to place an Optional Budget Proposal on the Financial Town Referendum ballot without constraints upon any line item, as recommended by the Charter Review Commission?**

**Reason for Change:** The current Town Charter places a restriction on the Town Council and School Committee Financial Town Referendum Optional Budget Proposal which limits budgeting flexibility.

**Effect of Change:** This Charter amendment would remove said restriction and allow the Town Council and School Committee propose any amounts in an Optional Budget Proposal.

### ARTICLE III FINANCIAL TOWN REFERENDUM

#### Section 301 Budget, Tax Levy, and Resolution Adoption Process

...

#### (c) Access to Ballot

...

2.) "At the request of either the Town Council or School Committee or both, an Optional Budget Proposal shall appear on the ballot in accordance with Section 301(b) 1.). If either the Town Council or the School Committee initiate an Optional Budget Proposal then those bodies shall timely coordinate with respect to their respective line items. ~~At the discretion of the Town Council, said Optional Budget Proposal shall include the Budget Committee recommended municipal budget or the municipal budget request. At the discretion of the School Committee, said Optional Budget Proposal shall include the Budget Committee recommended school budget or the school budget request. . . .~~"

## **ATTACHMENT B**

### **QUESTION 12:**

**Shall the Tiverton Town Charter be amended to modify and shorten the descriptions for department head duties and responsibilities, and to clarify that the Town Council may hire department heads with "at will" employment terms without mandatory fixed terms, as recommended by the Charter Review Commission?**

**Reason for Change:** Unknown

**Effect of Change:** Unknown

Language to be supplied by Town Solicitor

APPROVAL PENDING

## ATTACHMENT B

### QUESTION 13:

**Shall the Tiverton Town Charter be amended to appoint the candidate for an elected office with the next highest number of votes from the last election to serve for the duration of the term of a vacated office, as recommended by the Charter Review Commission?**

**Reason for Change:** The Town Council has made appointments of people who were not candidates for an office while in fact there were candidates who received votes for said office but were not appointed.

**Effect of Change:** Candidates who received votes for said office would be appointed to elected offices before people who were not candidates for said office.

### ARTICLE II ELECTIONS

...

#### Section 202 Vacancy of Elected Positions

~~Should an elected position, other than on the Town Council, be vacated for any reason, the Town Council shall appoint a person to fill the vacated position until the next General Election.~~

In the event of a vacancy or vacancies in the membership of any elected position, -(including the School Committee), the Town Council shall appoint, to complete the remainder of the unexpired term(s) of that position, the qualified candidate (who declared and received the fifty (50) required signatures) for that position with the next highest number of votes from the last election, if that candidate agrees to be appointed, until the list of candidates is depleted. Once the candidate list is depleted the Town Council shall appoint, to complete the remainder of the unexpired term(s) now vacant, from a list of applicants responding to published notice of said vacancy.

### ARTICLE V TOWN COUNCIL

...

#### Section 403 Vacancy

~~Any vacancy in the membership of the Council shall be filled in the manner provided in the provisions of this Charter. by the candidate for the Council with the next highest vote total from the last election. If the next highest candidate is unavailable, the next available candidate is chosen until the list is exhausted. In the event of a tie, the Council shall select. If no candidate is available from the list, the council shall appoint a qualified elector to fill the vacancy for the remainder of the unexpired term. The new member shall be sworn in at the next regular Council meeting.~~

## ATTACHMENT B

### ARTICLE VII BUDGET COMMITTEE

...

#### Section 702 Elections and Vacancies

~~Biennial elections to fill~~Any vacancies on the non-partisan budget committee shall be held at ~~general elections~~filled in the manner provided in the provisions of this Charter.

### ARTICLE VIII TOWN OFFICIALS AND OFFICES

...

#### Section 804 Probate Court

...

Whenever the Judge of Probate is a party to or interested in any proceeding about to be heard in his/her court, or is absent or unable to perform the duties of Judge of Probate, or there is a vacancy in such office, those duties shall be temporarily performed by the ~~Town Solicitor~~ Municipal Court Judge, or in the event that the ~~Town Solicitor~~ Municipal Court Judge is unable to perform those duties the position shall be deemed to be vacant. Vacant positions shall be filed in the manner provided in the provisions of this Charter. ~~by such person meeting the criteria for Judge of Probate appointed by the Town Council.~~

#### Section 805 Municipal Court

...

##### (a) Municipal Court Judge

...

##### (b) Acting Judge of the Municipal Court

Whenever the Municipal Court Judge is a party to or interested in any proceeding about to be heard in his/her court, or is absent or unable to perform the duties of Municipal Court Judge, or there is a vacancy in such office, those duties shall be temporarily performed by the Judge of

## **ATTACHMENT B**

Probate, or in the event that the Judge of Probate is unable to perform those duties the position shall be deemed to be vacant. Vacant positions shall be filled in the manner provided in the provisions of this Charter., ~~by such person meeting the criteria for Municipal Court Judge appointed by the Town Council.~~

### **ARTICLE X I SCHOOL DEPARTMENT**

#### **Section 1101 School Committee**

" . . . Should a Committee member fail to meet the above qualifications, or become disqualified from continuing in office under the provisions of the State Constitution, State Law or this Charter, his/her office shall be deemed to have become vacant. ~~The Town Council shall appoint a person to fill the~~Any vacated position for a period not to exceed six (6) months of the next ~~Town Election, whichever comes first~~ shall be filled in the manner provided in the provisions of this Charter... ."



## ATTACHMENT B

### QUESTION 14:

**Shall the Tiverton Town Charter be amended to clarify that town officials and employees are permitted to engage in advocacy or activities relating to voting contests and other political activities on their own personal time when not using town resources, and to ensure that any lists, data, or other information used by any government body, department, or official for advocacy or political activity be made publicly available for fair use by the public, as recommended by the Charter Review Commission?**

**Reason for Change:** Elected officials and town employees not using town resources could not advocate for their budgets. And, conversely, government officials were using a subset of the general population in the distribution of materials or data concerning a voting contest.

**Effect of Change:** Elected officials and town employees who are not using town resources can advocate for their budgets, and any lists, data, or information used by a government body, department, official, or employee must be made publicly available for inspection and fair use by the public.

### **Section 1218 - Use of Town Resources to Influence a Voting Contest**

a) No ~~officer~~ official or employee of the Town, including the School Department, shall use, or cause to be used, Town property, goods, money, grants, or labor to influence the outcome of an election, ballot question, or referendum information by the Town Clerk, the Board of Canvassers, or a Charter Review Commission.

b) Nothing in this section shall prohibit (1) the distribution or publication of election, ballot question, or referendum information to the general public by town officials as necessary to properly act within their official capacities, (2) conducting forums for discussion fairly open to the entire public, (3) permitting the use, rent, or lease of buildings and facilities to political groups to the same extent generally permitted for the public. Furthermore, nothing in this section prohibits the expression of personal positions where the expression does not use Town resources and does not otherwise interfere with the conduct of official duties.

c) In the event any list, data, or other information is compiled or used by any government body, department, official, or employee concerning a voting contest or for advocacy or political activity, such list, data, or information must be made publicly available for inspection and similar fair use by the public.

## ATTACHMENT B

### QUESTION 15:

**Shall the Tiverton Town Charter be amended to eliminate the Town Council's role in the charter complaint process by sending complaints directly to the Municipal Court, and to revise penalties, complaints against the Municipal Judge, unauthorized expenditures or obligations, and protection against reprisal, as recommended by the Charter Review Commission?**

**Reason for Change:** Currently Charter Review Complaints, including complaints against the Town Council, can be blocked from reaching the Municipal Court by the Clerk and the Town Council.

**Effect of Change:** Per this Charter amendment Charter Review Complaints could not be blocked and would go directly to the Municipal Court.

### ARTICLE XII MISCELLANEOUS

...

#### Section 1211 Enforcement

##### (a) Complaints by Citizens

Any qualified elector of the Town may file a sworn complaint statement in the office of the Town Clerk, acting as Clerk of the Municipal Court, charging that:

(1.) An elected or appointed official or member of a board ~~or~~, commission, committee, or council of the Town is serving in his or her office in violation of the provisions of theis Charter; or

(2.) That any elected or appointed official or member of any board, committee, or commission, or that any official ~~body, board, or~~ commission, committee, council, or other body in its corporate capacity, or any Town employee, has ~~knowingly~~ taken any action or failed to take any action, in his or her official capacity, in violation of any of the terms or provisions of theis Charter, or of any ordinance, rule, or regulation adopted under the authority thereof.

~~Any such statement shall set forth the particulars as to the charges made. A "sufficiently set forth"~~ Any such complaint shall specify (a) the section or sections of the Charter which are charged to have been violated, (b) the nature of the violation, and (c) the person, persons, or body charged with having committed the violation.

~~1.) If the Town Clerk determines that the charges are "sufficiently set forth", he or she shall schedule a public hearing before the Town Council acting in its capacity as the Charter Monitoring and Complaint Review Board, such hearing to be held no later than thirty (30) days from the date on which the charges were filed. If the Town Clerk fails to find that the charges~~

## ATTACHMENT B

are "sufficiently set forth", he or she shall so notify the complainant in writing, providing the reason(s) for dismissal.

— 2.) In the even a "sufficiently set forth" complaint is against a majority of the Town Council members, the Town Clerk, within ten (10) days from the date on which the charges were filed, shall file the complaint in the Municipal Court.

— 3.) If the complaint is against the Town Clerk, the Town Administrator shall fulfill the duties of the Town Clerk regarding review of the charges and scheduling of the public hearing, as presented above.

### **(b) Action by the Town**

— 1.) At the public hearing, the Review Board shall receive testimony from the complainant and from the official, board, or commission, or the members of the official body, against whom or which the charges were made, and from such witnesses as either party may bring forward. In the event the complaint is against a member of the Town Council, such member shall not take part in review of the complaint.

— 2.) If, following the hearing, the Review Board, by a two-thirds vote of those present but in no event fewer than four (4) affirmative votes concludes that the charges have been supported by the testimony and evidence presented, it shall direct the Town Administrator to cause a complaint to be filed within ten (10) days of the hearing against the alleged violator(s) in the Municipal Court.

### **(b) Adjudication**

The Town Clerk shall promptly cause copies of the charges to be delivered to all parties named in the complaint and forwarded to the Municipal Court for adjudication.

— 3.)—The Municipal Court shall have jurisdiction to determine violations of this Charter, Town ordinances and rules or regulations adopted under the authority hereof, and to enter appropriate orders, decrees or judgments with respect to such violations.

The complainant or any respondent may appeal any order, decree, or judgment of the Municipal Court by petition to the Superior Court within 180 days.

### **~~(c) Protection Against Reprisal~~**

— In the event that charges are filed pursuant to the terms of this Section by any employee of the Town as defined in Section 36-15-2(1) of the General Laws, that employee shall be deemed to enjoy the protection afforded by the Rhode Island Whistleblowers' Protection Act, Chapter 15 of Title 36 of the General laws, as amended.

### **~~(d) Penalties~~**

## ATTACHMENT B

1.) A violation of any of the prohibitions of or a failure to perform duties required by this Charter shall be punishable by a fine of not more than ~~three~~ five hundred dollars (\$3500), provided that no fine over one hundred dollars (\$100) shall be imposed unless the court finds - Upon a finding of a violation by the Municipal Court a preponderance of evidence that the respondent knowingly or with reckless indifference or gross negligence acted or failed to act. In addition, if the violator is an officer or employee of the Town, such violator court finds that evidence clearly and convincingly shows that the respondent knowingly or with reckless indifference or gross negligence acted or failed to act, then the Respondent may be ordered removed from elected or appointed office or -immediately dismissed from employment.

### **(d) Complaints Against Municipal Judge**

If the Municipal Judge is a respondent in a complaint brought under this Section, then the complainant may bring an action directly in the District Court who shall have original jurisdiction. The complainant or the Municipal Judge as respondent may appeal any order, decree, or judgment of the District Court by petition to the Superior Court within 180 days.

### **(e) Unauthorized Expenditures or Obligations**

1.) Every expenditure or obligation incurred in violation of the provisions of ~~this~~ Chapter, and the rules and regulations made pursuant thereto, shall be deemed illegal, and in addition to any other penalties provided by law for such violations, every official authorizing such a payment or any part thereof, knowing the same to be in violation, shall be jointly and severally liable to the Town for the full amount so paid or received. ~~If any appointed official or employee of the Town shall knowingly incur any~~ Enforcement of this provision may be brought through a Charter complaint, a civil action, through restitution ancillary to another legal action, or other legal cause of action in any court of competent jurisdiction. obligation, or authorize or make any expenditure in violation of the provisions of this Charter, it shall be grounds for his or her removal.

### **(f) Protection Against Reprisal**

In the event that charges are filed pursuant to the terms of this Section by any employee of the Town as defined in Section 36-15-2(1) of the General Laws, that employee shall be deemed to enjoy the protection afforded by the Rhode Island Whistleblowers' Protection Act, Chapter 15 of Title 36 of the General Laws as amended.

### **(g) Other Causes of Action Not Limited**

Nothing herein shall be construed to prohibit or limit the right of any proper party to bring administrative or judicial actions through any process or court of competent jurisdiction.

## ATTACHMENT B

### QUESTION 16:

**Shall the Tiverton Town Charter be amended to change the Budget Committee membership from eleven (11) to nine (9) and to replace its Treasurer with a Docket Secretary; and to change the Planning Board membership from nine (9) to seven (7) and to clarify role of the Administrative Officer, as recommended by the Charter Review Commission?**

**Reason for Change:** Quorums are often not achieved with larger boards and committees which makes it difficult to conduct necessary business.

**Effect of Change:** Quorums will be achieved more often.

### ARTICLE VII BUDGET COMMITTEE

#### Section 701 Composition

The Budget Committee shall consist of ~~eleven~~ nine (~~11~~) members elected for a term of four (4) years, ~~so staggered,~~ such that no more than ~~six~~ five (~~6~~) terms expire at any one time. The Budget Committee shall elect annually, from among its membership, a Chairperson, Vice Chairperson, Secretary, ~~Treasurer~~ Docket Secretary, and may elect other such officers as ~~they~~ it deems appropriate. Budget Committee members shall hold no other town position.

Transitional Provision (2018 charter change): The Budget Committee shall be maintained at the size of eleven (11) members until the 2020 general election and be reduced in size to nine (9) members by electing no more than four (4) members in the 2020 general election.

### ARTICLE X BOARDS AND COMMISSIONS

#### Section 1001 Planning Board

##### **(a) Duties and Responsibilities**

The Planning Board shall have the duties and responsibilities provided for in State law and such additional duties and responsibilities as may be prescribed by the Town Council not in conflict with the State law. The Planning Board shall act in an advisory capacity to the Town Council in all matters concerning the Comprehensive Community Plan, land use, Zoning and Subdivision Regulations, physical growth and development of the Town. The Planning Board shall be supported by the administrative officer as provided for in RIGL 45-23-55.

## **ATTACHMENT B**

### **(b) Composition and Vacancies**

The Planning Board shall consist of ~~ninseven~~ (97) members appointed by the Town Council from among electors of the Town for a terms of three (3) years. Said terms ~~will~~shall be staggered ~~so~~such that no more than ~~one-third~~ (1/3) member terms will expire in any given calendar year. No member of the Planning Board shall be an elected official or employee of the Town. Any member of the Planning Board may be removed from office by the Council for due cause, following a public hearing. The Town Council shall appoint replacements to fill vacancies on the Board. The Planning Board shall annually elect a Chairperson and such other officers as it may deem appropriate from among its membership.

Transitional Provision (2018 Charter Change): The Planning Board shall be maintained at the size of nine (9) members until December 31, 2018, and the Town council shall implement this change at its discretion, effective no later than December 31, 2019.

## ATTACHMENT B

### QUESTION 17: Amendment to Article XII

**Shall the Tiverton Town Charter be amended to require a 500-signature maximum with a collection period not to exceed seventy-five (75) days, and require an affirmative fifty-five (55) percent majority to recall an elected official?**

**Reason for Change:** Current recall requirements can be excessively difficult, especially for officials elected in a general election. In addition, both the recall process and signature collection periods presently have no time constraints.

**Effect of Change:** This charter amendment makes recall requirements feasible by capping the signature requirement at 500, offers elected officials some protections by requiring a 55% majority vote for recall, and implements a schedule window for recall which eliminates the beginning and end of the candidate's term.

### Section 1209 Recall

Any elected official or elected officials of the Town who have been sworn in to that office for the current term for at least one-hundred and eighty-one (181) days may be recalled or removed from office by the electors of the Town as herein provided. Any elector or electors may request from the Town Clerk a recall petition form and file with the Town Clerk, a notarized petition, containing the name and title of the elected official or officials whose removal is sought and a statement of the grounds for removal. Said petition shall have the signatures of electors equal in number to at least twenty-five (25) percent of the number of electors in the last election voting for the person holding that office, not to exceed a five hundred (500) signature maximum with a collection period not to exceed seventy-five (75) days. If said petition contains the name and title of more than one elected official, then the number of signatures required shall be equal in number to at least twenty-five (25) percent of the number of electors voting for the person named in the petition who received the highest number of votes, not to exceed a five hundred (500) signature maximum with a collection period not to exceed seventy-five (75) days. Within seven (7) days after receipt of the petition, the Board of Canvassers having certified the petition, the Town Clerk shall notify the official(s) involved by certified mail. The recall vote shall be taken no earlier than fifty (50) days and not later than seventy-five (75) days thereafter. No such vote shall be taken within one hundred eighty (180) days prior to the end of the official(s) term, or if the elected official shall resign from office before the taking of such vote. Said recall election shall be called and conducted in the same manner as is provided in the General Laws of the State of Rhode Island for Special Elections. The form of the question to be voted shall be substantially as follows: "Shall (here insert the name and title of the elected official whose recall is sought) be recalled?" If said petition contains the name and title of more than one elected official, there shall be a separate ballot question for each elected official. An affirmative fifty-five-percent (55%) majority vote of the electors voting in the recall election is necessary to recall such elected official. ~~shall not be effective unless a total of at least forty (40) percent of the number of electors in the last election who voted for the person holding that office, shall have voted on the~~

## **ATTACHMENT B**

~~recall question.~~ If approved, the recall of such elected official shall become effective upon certification of the results of the voting thereon. ~~Any given~~ An elector can ~~may only initiate attempt~~ one recall against a specific ny given ~~electd official during the respective elected term.~~ If any elected official shall be recalled, the vacancy created thereby shall be filled in the manner provided in ~~the provisions of~~ this Charter. A recall effort for which the requisite number of signatures is not met within 75 days shall be void.



## ATTACHMENT B

### QUESTION 18:

**Shall the Tiverton Town Charter be amended to require that a town official who receives financial benefit from an organization that collectively bargains recuse from any and all discussions or votes on financial matters related to said organization, as recommended by the Charter Review Commission?**

**Reason for Change:** Union members have the same goals even within different locals and recusal should be required. Code of Ethics RI Gen. Laws 36-14-2 Definitions (3) "Business associate" means a person joined together with another to achieve a common financial goal.

**Effect of Change:** Conflicts of interest or undue influence in discussions or votes on financial matters related to organizations that collectively bargain would be reduced.

### **New Section XXXX**

Current members of a labor union or other collective bargaining organization or unit (or retired union member who receives monetary benefits from such union), while serving on the Town Council, School Committee or Budget Committee, shall recuse themselves from any discussions or votes on financial matters, including but not limited to budgets pensions, litigation or contract negotiations, which involve said union or said organization (even if from a different local).

## ATTACHMENT B

### QUESTION 19:

**Shall the Tiverton Town Charter be amended to clarify that the management of the Tiverton Emergency Management Agency must be staffed by an existing department head and to clarify the powers and duties of the Tiverton Emergency Management Agency, as recommended by the Charter Review Commission?**

**Reason for Change:** Efficient government would dictate that the Tiverton Emergency Management Agency should be staffed by an existing department head; and Tiverton's Emergency Management Agency duties and responsibilities do not comport with State's Emergency Management Agency which could cause confusion and conflict during an emergency.

**Effect of Change:** This Charter amendment will not cause Tiverton's employee payroll to increase though hiring of additional staff, and Tiverton's Emergency Management Agency would be compatible with the State's Emergency Management Agency so that it could perform without confusion and conflict during an emergency.

### ARTICLE IX DEPARTMENTS AND AGENCIES

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#### Section 904 Tiverton Emergency Management Agency

There shall be an Tiverton Emergency Management Agency Director with powers and duties similar to those of RI Emergency Management Agency. The Tiverton Emergency Management Agency shall have a director who shall be- appointed by the Town Administrator and who must be a current department head in Tiverton. , responsible for assisting the Town Administrator during an emergency. Duties of the emergencyThe Tiverton Management Agencydirector shall cooperate with and assistinclude preparation and maintenance of an Emergency Operations Plan for the utilization of Town facilities, equipment and personnel during a declared emergency. In addition he/she shall act as the liaison between the Town and the Rhode Island Emergency Management Agency and shall perform such services as may be requested by it. The Town Administrator shall be the final authority for emergency management decisions in normal day to day operations. The line of successions during a declared emergency shall be the Town Administrator, Fire Chief, and Chief of Police. Tiverton Emergency Management Agency may act jointly or with other local emergency management agencies.

## ATTACHMENT B

### QUESTION 20:

**Shall the Tiverton Town Charter be amended to make the Judge of Probate and the Municipal Court Judge non-partisan offices and to elect both the Probate Court Judge and Municipal Court Judge to four (4) year terms, as recommended by the Charter Review Commission?**

**Reason for Change:** Currently the Municipal Court Judge is not independent because the judge is appointed by the Town Council; the Probate Judge is a partisan position and two (2) year term which is historically short for the judgeship.

**Effect of Change:** Both Tiverton judges would be elected to non-partisan four (4) year terms and hence be independent of the Town Council.

### ARTICLE VIII TOWN OFFICIALS AND OFFICES

...

#### Section 804 Probate Court

##### (a) Judge of Probate

There shall be a non-partisan Judge of Probate who shall be a qualified elector of the Town and member in good standing of the bar of the State of Rhode Island, engaged in the active practice of law. The Judge of Probate shall be elected at the general election for a ~~four~~ four (4) year term pursuant to the provisions of State Law and ~~the~~ Charter.

Transition Provision (2018 Charter Change): Four-year terms shall commence in the 2020 general election.

##### (b) Acting Judge of Probate

Whenever the Judge of Probate is a party to or interested in any proceeding about to be heard in his/her court, or is absent or unable to perform the duties of Judge of Probate, or there is a vacancy in such office, those duties shall be temporarily performed by the ~~Town Solicitor~~ Municipal Court Judge, or in the event the ~~Town Solicitor~~ Municipal Court Judge is unable to perform those duties the position shall be deemed to be vacant. Vacant positions shall be filed in the manner set out in this Charter., ~~by such person meeting the criteria for Judge of Probate appointed by the Town Council.~~

## ATTACHMENT B

### **Section 805 Municipal Court**

...

#### **(a) Municipal Court Judge**

There shall be a non-partisan Municipal Court Judge who shall be a qualified elector of the Town and member in good standing of the bar of the State of Rhode Island, engaged in the active practice of law. The Municipal court Judge shall be appointed by the Town Council elected at a general election for a twofour (42) year term commencing in November pursuant to the provisions of the year between general elections State Law and this Charter.

Transition Provision (2018 Charter Change): The Municipal Court Judge shall remain as appointed by the Town Council until the 2020 general election.

#### **(b) Acting Judge of the Municipal Court**

Whenever the Municipal Court Judge is a party to or interested in any proceeding about to be heard in his/her court, or is absent or unable to perform the duties of Municipal Court Judge, or there is a vacancy in such office, those duties shall be temporarily performed by the Judge of Probate, or in the event that the Judge of Probate is unable to perform those duties, by such person meeting the criteria for Municipal Court Judge ~~Judge~~ Judge appointed by the Town Council. In the event no qualified elector of the Town in good standing of the bar of the State of Rhode Island applies for appointment, the Town Council may then temporarily appoint a member of the bar of the State of Rhode Island who is not a qualified elector of the Town.

## ATTACHMENT C

### QUESTION 21:

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TOWN OF TIVERTON

Shall the Tiverton Town Charter be amended to relocate the "Director Senior Citizens Center" section to Article VIII Town Officials and Offices, as recommended by the Charter Review Commission?

**Reason for Change:** Placement in the Town Charter of the "Director Senior Citizens Center" is not appropriate and would be difficult for someone to locate.

**Effect of Change:** The proposed placement of the "Director Senior Citizens Center" would be appropriate for its organizational structure and function.

### QUESTION 22:

Shall the Tiverton Town Charter be amended to delete the no longer applicable sentence, "This Charter shall not be replaced nor amended for a period of at least two (2) years following adoption." from Section 1205, as recommended by the Charter Review Commission?

**Reason for Change:** This sentence in the Town Charter is no longer applicable or relevant.

**Effect of Change:** Language in the Town Charter would be updated and concise.

### QUESTION 23:

Shall the Tiverton Town Charter be amended to provide health benefits for the elected full-time Town Treasurer and Town Clerk if approved at a Financial Town Referendum, as recommended by the Charter Review Commission?

**Reason for Change:** There has been past confusion regarding the Town Clerk voluntarily paying a co-pay, and the Town Treasurer is now a full-time employee and eligible for health coverage with the same contribution as AFSCME.

**Effect of Change:** Confusion of contribution amounts will be eliminated, and Town Treasurer, who is a full-time employee, will also get health benefits.

## **ATTACHMENT C**

### **QUESTION 24:**

**Shall the Tiverton Town Charter be amended to ensure the budget approved by the voters at the Financial Town Referendum will in fact be the budget for the town for the upcoming year, as recommended by the Charter Review Commission?**

**Reason for Change:** The Town Solicitor has opined that the approved Financial Town Referendum budget has no force or effect after July 1.

**Effect of Change:** The Budget approved by Financial Town Referendum voters will in fact be the approved Town Budget for the upcoming year.

### **QUESTION 25:**

**Shall the Tiverton Town Charter be amended to require the Budget Committee include in its docket a column which includes for each line item, on expenditures and revenues, the percent difference from the preceding year, as recommended by the Charter Review Commission?**

**Reason for Change:** The Budget Committee docket lacks transparency in that effort is required for the taxpayer to understand by what percentage a line item number is higher or lower than the preceding year.

**Effect of Change:** Transparency would be improved because the taxpayer would know by what percentage a given line item amount increased or decreased by inspection rather than calculation.

### **QUESTION 26:**

**Shall the Tiverton Town Charter be amended to permit the Town Clerk to delegate some of her duties, including Clerk of the Municipal Court duties, subject to retention of ultimate supervisory responsibilities; and to permit a Deputy Town Clerk and make other word changes, as recommended by the Charter Review Commission?**

**Reason for Change:** Most of the Municipal Court documents are generated from Police Department records versus the Town Clerk's office.

**Effect of Change:** The Town Clerk could delegate this duty, among others, provided he or she retains ultimate supervisory responsibility.

## ATTACHMENT C

### QUESTION 27:

**Shall the Town Charter be amended to add a section prohibiting the Town from utilization of Town services for the collection or distribution of union dues or fees, as recommended by the Charter Review Commission?**

**Reason for Change:** Any such service provided by the town could bring legal risk without bringing any benefit to the town. In addition, unions should function independently of town services

**Effect of Change:** The charter amendment would reduce legal risk to the town and keep town services free from union demands.

### QUESTION 28:

**Shall the Tiverton Town Charter be amended to clarify the terms of the Charter Review Commission extend until the certification of the election in which its recommended charter changes were considered by the voters, and Charter Review elections occur between four and eight years of the conclusion of the prior Charter Review Commission's term, as recommended by the Charter Review Commission?**

**Reason for Change:** This Charter amendment would allow the elected Charter Review Commission to shepherd charter proposals through the balloting process. In addition, it proposes a four-year window for a Charter Review Commission to be elected.

**Effect of Change:** Voters would have greater confidence that proposed Charter Review Commission amendments are properly balloted for adoption, and the four-year window to elect a Charter Review Commission offers flexibility.

### QUESTION 29:

**Shall the Tiverton Town Charter be amended to clarify the Town Clerk is under no obligation to assist a petition originator in filling out the petition form during the Elector Petition filing process, as recommended by the Charter Review Commission?**

**Reason for Change:** The Town Clerk could assist the elector petitioner with incorrect information and influence the process.

**Effect of Change:** The elector petitioner would be explicitly responsible for filing the petition and hence the process would not be at risk of being influenced by the Town Clerk.

## **ATTACHMENT C**

### **QUESTION 30:**

**Shall the Tiverton Town Charter be amended to require the town to provide public access to all records, documents, and accounts of every office, department, agency, council, commission, board, or committee of the Town, including the School Department, as recommended by the Charter Review Commission?**

**Reason for Change:** Executive Session often results in costly and non-disclosed settlements or exit agreements, and there is a need for increased transparency.

**Effect of Change:** Increased transparency so that taxpayers can be informed.

### **Question 31:**

**Shall the Tiverton Town Charter be amended to clarify that non-electors can be members of certain advisory boards and commissions as long as not a majority, as recommended by the Charter Review Commission?**

**Reason for Change:** Often advisory boards and committees cannot be filled due to a lack of elector volunteers.

**Effect of Change:** Permitting non-electors on advisory boards and committees will broaden the pool of qualified volunteers and help to fill vacancies on advisory boards. This charter change gives priority to Tiverton voters in filling vacancies and ensures Tiverton voters remain in majority control of boards and committees.

### **QUESTION 32:**

**Shall the Tiverton Town Charter be amended to adjust the terms of School Committee internal officers, appointment of a clerk, and the location to file School Committee minutes, as recommended by the Charter Review Commission?**

**Reason for Change:** The Town Charter description of School Committee internal elections is insufficient and needs to be changed to better describe situations where internal elections might be needed and it to include a clerk of the School Committee.

**Effect of Change:** School Committee would have more flexibility over their internal elections and the appointment of a clerk of the School Committee.



## ATTACHMENT C

### QUESTION 33:

**Shall the Tiverton Town Charter be amended to resolve any sections where prior Charter Violation complaints have resulted in ambiguity or inconsistency?**

**Reason for Change:** Charter complaints have resulted in ambiguity and inconsistency in the charter.

**Effect of Change:** Elimination of Charter ambiguities and inconsistencies.

### QUESTION 34:

**Shall the Tiverton Town Charter be amended to remove the Waste Water Commission and Housing Authority from the Treasurer's duties, as recommended by the Charter Review Commission?**

**Reason for Change:** The Waste Water Commission and the Housing Authority are separate entities from the Town of Tiverton and should not be included in the Treasurer's duties.

**Effect of Change:** Clarifies the purpose and role of the Treasurer's duties.

### QUESTION 35:

**Shall the Tiverton Town Charter be amended to prohibit any volunteer or elected official, other than the full time Town Treasurer and Town Clerk, from receiving compensation, as recommended by the Charter Review Commission?**

**Reason for Change:** Stipends are not consistently given to volunteers. All efforts and work for our town is valued, however compensating a few positions illustrates a bias for governing bodies that can allocate themselves a stipend. Volunteering, whether appointed or elected, means no compensation.

**Effect of Change:** All volunteers would be treated the same and not be compensated.

### Question 36:

**Shall the Tiverton Town Charter be amended to require the Town Clerk to publish online all documents, memorandums, agreements, contracts and exit agreements entered into by the Town with employees, as recommended by the Charter Review Commission?**

**Reason for Change:** Transparency.

**Effect of Change:** Transparency

## ATTACHMENT C

### Question 37:

**Shall the Tiverton Town Charter be amended to require the Town to add a morals clause to all town employee contracts, as recommended by the Charter Review Commission?**

**Reason for Change:** When Town Council investigations reveal evidence of illegal activity of a town employee, subsequent legal proceedings often end with the Town Council allowing the employee to retire with payouts, and legal proceedings against them are terminated.

**Effect of Change:** The Town Council would be able to terminate an employment based on morals clause, with no payouts, when an investigation reveals evidence of illegal activity.

### Question 38:

**Shall the Tiverton Town Charter be amended to increase the number of days in which the Town Council and School Committee must make public the details of any tentative labor or collective bargaining agreement requiring approval of that body from at least three (3) days prior, to at least thirty (30) days prior, to the meeting at which the final approval vote is to be taken, as recommended by the Charter Review Commission?**

**Reason for Change:** The Town Charter only allows 3 days for all labor or collective bargaining agreements to be made public before a final approval vote is taken which does not provide time for Tiverton citizens to inspect and comment on the negotiated agreement.

**Effect of Change:** Thirty days allows for more transparency and gives Tiverton citizens more time to inspect and comment on the negotiated agreement.

### QUESTION 39:

**Shall the Tiverton Town Charter be amended to require town officials to negotiate collective bargaining agreements in the public view, as recommended by the Charter Review Commission?**

**Reason for Change:** Because collective bargaining agreements are a large budget driver which in the end require taxpayer funding, the public at large should be able to witness the negotiation process. Secret negotiations can and have enabled union hierarchy to negotiate for themselves.

**Effect of Change:** The negotiation process that town officials engage in would be open to the public for increased transparency.

## **ATTACHMENT C**

### **Question 40:**

**Shall the Tiverton Town Charter be amended to transfer the duties of hiring temporary or seasonal employees from the Personnel Board to the Town Administrator, as recommended by the Charter Review Commission?**

**Reason for Change:** The process for temporary employment is costly and time consuming for the Personnel Board for practical purposes. Candidates for temporary employment are often no longer needed and or available by the time the town's process is complete.

**Effect of Change:** The Town Administrator would be responsible for hiring temporary and seasonal employees, thereby minimizing the hiring process time.

Attachment D

From: Tiverton Charter Review Commission

To: Tiverton Board of Canvassers  
Tiverton Town Clerk  
Tiverton Town Council

RECEIVED  
TOWN OF TIVERTON  
2018 JUL 23 P 9:15

Date: April 16, 2018

Re: **Tiverton Charter Amendment Process**

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**Introduction**

This memorandum reviews various aspects of the authorities and process surrounding the amendment of Tiverton's Home Rule Charter.<sup>1</sup>

**Background**

The Town of Tiverton Home Rule Charter was initially adopted by Tiverton's electorate in 1994, and has since been amended in six elections (1999, 2004, 2008, 2011, 2014, and 2016).

The initial adoption in 1994 and four rounds of amendments were voted during general elections in November. Twice (in 2004 and 2011) amendments were voted in special elections (also in November).

It is believed that the General Assembly ratified the initial adoption and all six rounds of amendments.

In Tiverton, the Charter Review Commission is a non-partisan elected body, having nine members serving one-year terms. The Charter requires the commission to be elected at least every six years.<sup>2</sup> The current Tiverton Charter Review Commission is Tiverton's fourth (not counting the original Charter Commission). In addition to the Charter Commission for the initial 1994 adoption, review commissions existed relating to the 1999, 2004, and 2008 amendments. The 2011 amendments stemmed from an advisory committee appointed by and for the Tiverton Town Council, and the 2014 and 2016 amendments stemmed from the Town Council proposing amendments on its own without an elected commission or an advisory committee.

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<sup>1</sup> Tiverton's current charter (including amendments up to and made in November 2016, may be referred to herein as the "Charter".

<sup>2</sup> Charter § 1205(a). Though the Town Council did appoint an advisory committee leading up to charter amendments in 2011, it appears that Tiverton did not comply with this charter requirement by allowing over six years to elapse between the elections of the prior and current commissions.

## Attachment D

The current Charter Review Commission was elected on July 18, 2017.<sup>3</sup> As of this date 126 charter amendment proposals have been formally submitted by sponsors, and approximately 30-40 concepts have been tentatively approved.<sup>4</sup> The Commission is not certain when proposals will be submitted to the voters for consideration, or whether such submission will be coincident with the November 2018 general election or at a special “election”<sup>5</sup> instead.<sup>6</sup>

### Relevant Authorities

#### Constitution

Article XIII (Home Rule for Cities and Town) of the state constitution<sup>7</sup> provides, in relevant parts:

Section 1. Intent of article. -- It is the intention of this article to grant and confirm to the people of every city and town in this state the right of self government in all local matters.

Section 2. Local legislative powers. -- Every city and town shall have the power at any time to adopt a charter, amend its charter, enact and amend local laws relating to its property, affairs and government not inconsistent with this constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly.

Section 3. Local legislative bodies. -- Notwithstanding anything contained in this article, every city and town shall have a legislative body composed of one or two branches elected by vote of its qualified electors.

Section 6. Charter commissions. -- Every city and town shall have the power to adopt a charter in the following manner: Whenever a petition for the adoption of a charter signed by fifteen percent of the qualified electors of a city, or in a town by fifteen percent, but not less than one hundred in number, of those persons qualified to vote on any proposition to impose a tax or for

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<sup>3</sup> The election results were certified by the Board of Canvassers on July 24, 2017. The current Charter Review Commission’s one-year term commenced on that date. See Charter § 1205(a).

<sup>4</sup> Some proposals overlap, such that the number of proposals approved in full or in part is larger than the number of unique topics. So far the Commission has held two formal public hearings with more expected.

<sup>5</sup> Arguably, voting on proposed amendments is more properly styled as a referendum or ballot question, rather than as an election.

<sup>6</sup> The Commission believes that determining the date of election/referendum at which its approved proposals should be decided by the voters is ultimately up to the Town Council, the Board of Canvassers, and/or the Town Clerk, though the date must be within a reasonably prompt period of time after the Commission submits its final approved proposals.

<sup>7</sup> The current Constitution of the State of Rhode Island and Providence Plantations may be referred to herein as the “Constitution”.

## Attachment D

the expenditure of money shall be filed with the legislative body of any city or town the same shall be referred forthwith to the canvassing authority which shall within ten days after its receipt determine the sufficiency thereof and certify the results to the legislative body of said city or town. Within sixty days thereafter the legislative body of a city shall submit to its qualified electors and the legislative body of a town shall submit to the electors of said town qualified to vote upon a proposition to impose a tax or for the expenditure of money the following question: "Shall a commission be appointed to frame a charter?" and the legislative body of any city or town shall provide by ordinance or resolution a method for the nomination and election of a charter commission to frame a charter consisting in a city of nine qualified electors and in a town of nine electors of said town qualified to vote upon a proposition to impose a tax or for the expenditure of money who shall be elected at large without party or political designation and who shall be listed alphabetically on the ballot used for said election. Such ordinance or resolution shall provide for the submission of the question and the election of the charter commission at the same time. Upon approval of the question submitted the nine candidates who individually receive the greater number of votes shall be declared elected and shall constitute the charter commission.

Section 7. Adoption of charters. -- Within one year from the date of the election of the charter commission the charter framed by the commission shall be submitted to the legislative body of the city or town which body shall provide for publication of said charter and shall provide for the submission of said charter to the electors of a city or town qualified to vote for general state officers at the general election next succeeding thirty days from the date of the submission of the charter by the charter commission. If said charter is approved by a majority of said electors voting thereon, it shall become effective upon the date fixed therein.

Section 8. Amendments to charters. -- The legislative body of any city or town may propose amendments to a charter which amendments shall be submitted for approval in the same manner as provided in this article for the adoption of a charter except that the same may be submitted at a special election, and provided further that in the case of a town, amendments concerning a proposition to impose a tax or for the expenditure of money, shall be submitted at a special or regular financial town meeting.

### Charter (Tiverton)

Section 1205 (Amendments of Charter) of Tiverton's current Home Rule Charter states:

This Charter may be amended or a new Charter adopted at any time in the manner provided by the Constitution of the State. All proposed amendments shall have a public hearing. Should two (2) or more amendments adopted

## Attachment D

at the same time have conflicting provisions, the one receiving the largest affirmative vote shall prevail. The sections of any amendments added to this Charter shall be appropriately numbered by the Town Clerk and inserted in their appropriate places. It shall not be necessary for the full text of the Charter or of amendments to the Charter to be printed on the ballot. Any digest or description thereof or any question or statement which substantially expresses the purpose, or identifies the subject matter to be voted upon shall be sufficient. When any question is to be submitted to the voters, the Town Council shall approve the statement of the question as it shall appear on the ballot. A copy of the full text of the Charter or amendments shall be posted in each polling place and such other places as may be designated by the Board of Canvassers. This Charter shall not be replaced nor amended for a period of at least two (2) years following adoption.

### (a) Charter Review Commission

In November 1998 and at least every six (6) years thereafter, a nine (9) member non-partisan review commission shall be elected for a term of one year, commencing on the date of the certification of the election by the Board of Canvassers, whose duty it shall be to review the Charter and recommend for approval and adoption, amendments or revisions in a manner provided by the State Constitution.

Section 1218 (Use of Town Resources to Influence a Voting Contest) also mentions the Charter Review Commission:

No officer or employee of the Town, including the School Department, shall use, or cause to be used, Town property, goods, money, grants, or labor to influence the outcome of an election, ballot question, or referendum; the foregoing shall not prohibit the distribution or publication of election, ballot question, or referendum information by the Town Clerk, the Board of Canvassers, or a Charter Review Commission.

### Statutes

Section 45-2-1 (Charters and special acts) of the Rhode Island General Laws provides:

Every town, city, and district has all the existing powers and privileges, and is subject to all existing duties and liabilities, conferred or imposed upon it by its charter, or by the several acts of the general assembly specially relating to it, until the charter or acts expire by their own limitation, or are revoked or repealed.

Two sections within Chapter 45-5 (Councils and Governing Bodies) may also be relevant. Section 45-5-1 (Management of affairs of town) provides:

## Attachment D

The town council of each town has full power to manage the affairs and interests of the town, and to determine all matters and things as by law come within its jurisdiction.

Section 45-5-18 (Special charters controlling) provides:

The provisions of the sections of this chapter and chapter 6 of this title are subject to the provisions of any special charters respecting any particular town or city.

### Case Law

There is no known published case law involving the unique instance of amending a charter (vs. adopting one) in a city or town with an independent elected review commission.

### Town Solicitor

In a memorandum dated February 26, 2018, the Tiverton Town Solicitor offered his opinion as to salient aspects of the charter amendment process. In this memorandum, the Solicitor opines:

*“Since the Town Council can only act by way of a vote of a majority of its members, each amendment proposed by the non-partisan review commission must receive a majority vote of the Town Council to appear on the ballot in November. This of course means that the Town Council has prerogative to either accept or reject any of the proposals, or even propose amendments on its own.”*

For the reasons discussed below, the Commission respectfully disagrees with the Town Solicitor, in particular, as to the second sentence of the excerpt quoted above.<sup>8</sup>

## Discussion

### Tiverton’s Charter Review Commission is an Independent Elected Body

Tiverton’s Charter Review Commission is an independent elected body.<sup>9</sup> As such, candidates and elections for the Charter Review Commission are governed by the full panoply of state and local

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<sup>8</sup> The Solicitor’s opinion relies heavily on one case, Viveiros v. Town of Middletown, 973 A.2d (R.I. 2009), which is addressed in more detail in the addendum to this memorandum. The key difference is that Middletown had no charter review commission involved in the Viveiros case, and certainly not an elected one. Further, the Commission doubts the Solicitor is seriously arguing that a body can avoid its obligatory duties just because the body must act by majority vote.

<sup>9</sup> Most charter review bodies in Rhode Island are appointed and advisory to the city/town council. Tiverton is a rare exception, in having an independent elected commission. This distinction is critical to the analysis here, and also indicates that for purposes of the amending the Charter, the Commission is likely a, if not the only, “legislative body” which the Constitution requires approvals from for charter amendments.



## Attachment D

election and campaign finance regulations as is any other local elected body. The Commission and its members are also subject to the Open Meetings Act, open records requirements, and the Code of Ethics.<sup>10</sup>

### All Proposed Amendments Must Have a Public Hearing

While Charter Review Commission meetings are all subject to the Open Meetings Act, these meetings need not be full public hearings (unless the commission so chooses).

Section 1205 of the Charter, however, provides that “all proposed amendments shall have a public hearing.” The Charter is silent on who must call or conduct such hearing, so there is no reason to think that the Charter Review Commission could not. If the Charter Review Commission does not hold the requisite public hearing, then another authority (such as the Town Clerk or the Town Council) could (and, in the view of the Commission, must) convene a hearing to satisfy this requirement.<sup>11</sup>

### Can the Town Council Propose Its Own Amendments?

Historical practice in Tiverton has been that both the Charter Review Commission and the Town Council have proposed amendments to the electorate. It is believed that no one has ever challenged either of these paths. Certainly, in other cities and towns which do not have independent elected charter review commissions, the city or town council would propose amendments, acting as the (sole) “legislative body” of the town.<sup>12</sup>

An argument could be made that, in Tiverton, its town council cannot itself propose amendments because of Tiverton’s unique structure in having an independent elected commission for that purpose. While the Charter certainly contemplates that the Charter Review Commission propose amendments, it never confers that authority on the Town Council or any other body or official. Indeed, an entire article<sup>13</sup> of the Charter is dedicated to the Town Council, and the role of the Town Council appears extensively in that article and elsewhere in the Charter, but never once does the Charter say that the Town Council can propose amendments.

Thus, if the Town Council can act directly, perhaps it can do so as a “legislative body” as permitted by the Constitution.

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<sup>10</sup> Charter §§ 1201-1203.

<sup>11</sup> For example, the Town Council, at a Special Meeting on July 7, 2008, voted to forward the entire package of the previous Charter Review Commission proposals to public hearing.

<sup>12</sup> “The legislative body of any city or town may propose amendments to a charter...” Constitution Art. XIII § 8.

<sup>13</sup> See Home Rule Charter, Town of Tiverton, Article IV and throughout. See also Section 407 enumerating sixteen specific powers of the Town Council. The Charter self-references in many instances vis-à-vis the Town Council (e.g., the Town Council sits as a charter complaint review board). Because references to the Town Council and the Charter are so prevalent throughout, the lack of any mention of the Town Council to itself propose amendments to the Charter suggests that it may not have such authority.

## Attachment D

Also relevant to this topic is Section 1205 of the Charter:

Should two (2) or more amendments adopted at the same time have conflicting provisions, the one receiving the largest affirmative vote shall prevail.

It seems unlikely – perhaps nonsensical – that if only one body were able to propose amendments, that there would be any conflicting provisions. That is, conflicting provisions only arise if there are competing proposals which suggests more than one body can make proposals. This suggests that, at least in Tiverton, both the Town Council and the Charter Review Commission can place proposed amendments before the voters.

In any event, the Board of Canvassers and/or the Town Council certainly has at least some role in charter amendments. Section 1205 of the Charter provides:

When any question is to be submitted to the voters, the Town Council shall approve the statement of the question as it shall appear on the ballot.

Rhode Island General Laws Section 17-8-5(a) (Local boards – Powers and duties – Quorum) states that the local canvassing authority (i.e., the Board of Canvassers), among other things, shall:

Have and discharge all of the functions, powers, and duties of the town council concerning nominations, elections, registration of voters and canvassing rights, the preparing and correcting of voting lists, and other related matters, which powers are transferred to the local board;

Given this state law and the language in the Charter, it may not be the case the Town Council has any role in charter amendment elections. Rather, it may be the Board of Canvassers which must approve the questions as they appear on the ballot.

In any event, whether this function must be done by the Town Council or by the Board of Canvassers, there may be some discretion involved in performing this function, at least when the Town Council is dealing with its own proposals, because the actual language on the ballot need not reproduce the literal wording changes proposed for the charter. That is, short summaries are permitted.<sup>14</sup>

### Can the Town Council Block Charter Review Commission Proposals?

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<sup>14</sup> “It shall not be necessary for the full text of the Charter or of amendments to the Charter to be printed on the ballot. Any digest or description thereof or any question or statement which substantially expresses the purpose, or identifies the subject matter to be voted upon shall be sufficient.” Charter § 1205. It appears that prior charter review commissions have proposed and/or coordinated with the Town Council on the exact ballot language as well as voter information guides. It may be the case, however, that the “shall” language here states a requirement for the Town Council to perform a ministerial duty without discretion (such as when publishing a charter initially proposed by a charter commission pursuant to Article XIII, Section 7 of the Constitution) if the Charter Review Commission drafts summary language for the ballot (in addition to the exact language changes to the Charter itself).

## Attachment D

Assuming that the town council in Tiverton can initiate its own proposals, a related question is whether the Town Council<sup>15</sup> can amend the Commission's proposals from reaching the ballot altogether. The answer is no, for at least the following nine categorical reasons.

### A. *The Plain Language of the Charter.*

The Charter charges the Charter Review Commission (and no other body or official): “whose duty it shall be to review the Charter and recommend for approval and adoption, amendments or revisions in a manner provided by the State Constitution.” The Charter does not say recommend for approval and adoption by the Town Council, nor could it since only the electorate – not the Town Council – can actually approve and adopt the amendments. Therefore, the intent of the Charter must be that the Charter Review Commission's efforts are directed to the electorate.

As noted above, despite extensively elaborating on the duties of the Town Council through the Charter, and despite extensive self-references within the Charter, the Charter never suggests that the Town Council has a role in charter amendments other than to approve the wording on the ballot. It is highly unlikely in this context and with such level of specificity otherwise, that the intent was to permit the Town Council to block proposals.

Compare the charter amendment process (set forth in Section 1205 of the Charter) to the ordinance amendment process set forth in Section 408 of the Charter, which reads in part:

Any person may propose to the Town Council or any member thereof, a new ordinance or an amendment to an existing ordinance. Any proposed ordinance, which the Council decides to consider for adoption, shall have a public hearing prior to adoption.

(Emphasis added.)

Unlike for charter amendments, for ordinances the Charter is quite clear that proposals go to the Town Council, and that the Town Council may decide whether to consider them. If the Charter intended that the Charter Review Commission report to the Town Council, and if the Charter intended to confer discretionary blocking authorities on the Town Council, then it would have said so as it clearly did for ordinances.

### B. *Conflicting Provisions Unlikely If Only One Body Could Act*

As discussed above, Section 1205 of the Charter contemplates the possibility of conflicting provisions. This strongly suggests that more than one body could place competing proposals on the ballot.

### C. *No Other Elected Body or Official in Tiverton is Advisory to Another*

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<sup>15</sup> While this discussion is mostly focused on the Town Council in response to the Solicitor's February 26, 2018 memorandum, the same analysis applies with respect to the Board of Canvassers and the Town Clerk.

## Attachment D

Tiverton has four elected bodies (Town Council, Budget Committee, School Committee, Charter Review Commission) and four elected officials (Town Clerk, Town Treasurer, Town Sergeant, Judge of Probate). In no other case is an elected body or official in Tiverton wholly advisory to another body or official.<sup>16</sup> If it were the case that the Town Council can on its own initiative propose charter amendments, then it would render the notion of an elected body entirely useless.

### *D. Charter Section 1218*

Section 1218 (Use of Town Resources to Influence a Voting Contest) also mentions the Charter Review Commission:

No officer or employee of the Town, including the School Department, shall use, or cause to be used, Town property, goods, money, grants, or labor to influence the outcome of an election, ballot question, or referendum; the foregoing shall not prohibit the distribution or publication of election, ballot question, or referendum information by the Town Clerk, the Board of Canvassers, or a Charter Review Commission.

The fact that the Charter Review Commission is mentioned – and the Town Council is not – strongly suggests that the Charter Review Commission’s activities continue directly with the electorate without interference by the Town Council.

Obviously the Charter expects here that the Charter Review Commission would be distributing its own proposals – and hence contemplated that it has direct access to the ballot.<sup>17</sup> If Charter Review Commission proposals could be blocked or modified by the Town Council, then it would be nonsensical that the Charter Review Commission would then promote Town Council proposals.

### *E. The Constitution Respects Electors*

Article XIII of the Constitution contains numerous references to the electorate. The initial adoption of a charter stems from petitions by electors. The initial charter commission (which must be nine members, being the same size as Tiverton’s Charter Review Commission) is determined

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<sup>16</sup> Contrast, for example, the Financial Town Meeting Changes Advisory Committee which was created and appointed by the Town Council which resulted in the 2011 charter amendments. This example shows that the Town Council can and has created advisory committees on its own, further suggesting that a Charter-mandated elected advisory committee would be superfluous and therefore very unlikely to have been the intent. After all, if the Town Council can create advisory committees at any time, and if it assumed that the Town Council can on its own propose charter amendments at any time, then what would be the point of having an elected Charter Review Commission? Such a structure would permit four town councilors (a majority of the seven-member Town Council) to thwart the will of the voters expressed through their elected commissioners, even if all nine commissioners were in unanimous agreement.

<sup>17</sup> As an aside, while the Commission’s approved proposals must be presented to other town officials before the end of its nominal one-year term (in the present case, July 24, 2018), this reference in Section 1218 (as well as past practice and common sense) confirms a continuing role of the Commission and its members until and through the time its proposals are voted on ballot.

## Attachment D

by a full election, and the legislative body<sup>18</sup> is required to submit the work product of that elected charter commission back to the voters for approval. Charter amendments must be submitted in a similar manner: back to the electorate. An effort to block the work product of an elected body such as the Charter Review Commission would contradict the Constitution's apparent intent to empower the electorate.

### F. *The Charter Review Commission Is a Legislative Body*

As noted above, the Charter Review Commission is an independent and duly elected body, subject to all of the same authorities and regulations as any other. In fact, with nine members, it is larger than the Tiverton's seven-member town council. The purpose – in fact the only purpose – of the commission is to propose amendments to the Charter, which is a form of legislation (and all the more viewed as such since it is commonly ratified by the General Assembly).<sup>19</sup>

While the Town Council has legislative authority to pass certain town ordinances<sup>20</sup> and resolutions it does not have complete and total authority over all town affairs. For example, in Tiverton, important functions are reserved to the School Committee, the Budget Committee, and the electorate through the Financial Town Referendum. Similarly, certain functions which would otherwise have defaulted to a town council, in Tiverton, have been assigned by law to the Charter Review Commission making the Charter Review Commission a – if not the – legislative body for the limited purpose of charter amendments contemplated by Article XIII, Section 8 of the Constitution.<sup>21</sup>

### G. *State Law*

In addition to the authority the Charter has standing on it is own, it also has the force and effect of a state statute since it has been ratified by the General Assembly.

Section 45-2-1 (Charters and special acts) of the Rhode Island General Laws provides:

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<sup>18</sup> The Tiverton Town Council was of course the legislative body for purposes of Article XIII, Section 7 at least until Tiverton's Home Rule Charter first became effective.

<sup>19</sup> Article XIII, Section 2 of the Constitution requires at least one legislative body and expressly contemplates that body possibly having more than one branch.

<sup>20</sup> Again, the power of the Town Council to pass ordinances (see Charter § 407, items 8), 9) & 11); § 408) is extensively delineated in the Charter, but the Charter says nothing as to the Town Council proposing amendments to the Charter, let alone blocking proposals from the Charter Review Commission.

<sup>21</sup> This is relevant only to the extent that it is the case that the only way to amend the charter is through a legislative body. While Article XIII, Section 7 speaks to charter amendments, Article XIII, Section 2 reminds that charter amendments must comply with the laws enacted by the general assembly ("Every city and town shall have the power at any time to adopt a charter, amend its charter, enact and amend local laws relating to its property, affairs and government not inconsistent with this constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly." (emphasis added)). This would also include the Charter itself, as it was ratified by the General Assembly. But even if the Charter Review Commission was not deemed a legislative body, the Town Council (and town, generally) would still be obligated to perform its mandatory duties arising from other law (i.e. the Charter and statutes).

## Attachment D

Every town, city, and district has all the existing powers and privileges, and is subject to all existing duties and liabilities, conferred or imposed upon it by its charter, or by the several acts of the general assembly specially relating to it, until the charter or acts expire by their own limitation, or are revoked or repealed.

(Emphasis added.)

Two sections within Chapter 45-5 (Councils and Governing Bodies) of the Rhode Island General Laws may also be relevant. Section 45-5-1 (Management of affairs of town) provides:

The town council of each town has full power to manage the affairs and interests of the town, and to determine all matters and things as by law come within its jurisdiction.

But Section 45-5-18 (Special charters controlling) of the Rhode Island General Laws provides:

The provisions of the sections of this chapter and chapter 6 of this title are subject to the provisions of any special charters respecting any particular town or city.

Notably, the title of the chapter – “Councils and Governing Bodies” – makes obvious that city and town councils are not the only possible forms of a governing body.

These state laws suggest a number of important points. First, they reinforce the conclusion that the Town Council is not the only legislative body (and perhaps not one at all), at least for the purposes of charter amendments in Tiverton. The Charter controls.

Second, they confirm the mandatory nature of the Charter’s requirements.

Third, even if the Constitution requires that charter amendments go through the Town Council, that requirement does not take away from the fact that the town is nonetheless obligated to follow the Charter and state law. Accordingly, the Town Council does not have discretion in the matter: Its duties to forward the proposals of the Commission to the electorate become mandatory and ministerial.<sup>22</sup>

### *H. Canons of Construction*

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<sup>22</sup> This is a key point of focus on where the Commission disagrees with the Town Solicitor. While all agree that the Town Council (just like generally any government body) can only act through a majority of its members (or to put it more precisely, a majority of a proper quorum of its members), that threshold does not of itself suddenly confer a government body with discretion to act on things it must do. With even a minute of reflection, one could easily come up with several instances where a government body must do something and also must act by majority of a quorum in doing what it must do. For example, does the Solicitor seriously argue that the Budget Committee has discretion in its prerogative to not prepare a Budget Proposal for the Financial Town Referendum, or that the School Committee has discretion in its prerogative to not hear student disciplinary appeals, or the Town Council has discretion in its prerogative to not provide for an annual audit, all because those bodies must act by majority vote?

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Courts generally construe authorities to give effect to the plain meaning of the language, and to give effect to all language therein. Statutes/charters are presumed constitutional. Ambiguities are resolved in favor of interpretations which are constitutional and which are consistent with internal and external sources of authority.

The Charter expressly contemplates the Constitution, and Article XIII, Section 2 of the Constitution states:

Section 2. Local legislative powers. -- Every city and town shall have the power at any time to adopt a charter, amend its charter, enact and amend local laws relating to its property, affairs and government not inconsistent with this constitution and laws enacted by the general assembly in conformity with the powers reserved to the general assembly.

Moreover, as discussed above, the General Assembly has ratified the Charter and other statutes apply to reinforce the obligations to follow town charters. All of these sources taken together, informed by standard canons of construction, suggest that a court would render an interpretation such that the Constitution, statutes, and the Charter all operate in harmony, which would preclude the Town Council from blocking proposals by the independent elected Charter Review Commission.

### *I. Presumption of Respecting Home Rule*

Finally, the very notion of home rule is that local municipalities should be given flexibility to organize themselves and govern their affairs as they see fit.

It is the intention of this [Article XIII] to grant and confirm to the people of every city and town in this state the right of self government in all local matters.

Constitution, Article XIII, Section 1.

Tiverton's Charter clearly reflects its choice to have an independent elected review commission to propose amendments to its voters. Any ambiguity should be resolved in favor of home rule.

### **Summary**

The Charter Review Commission is a fully elected body. As with any elected body, it is subject to full regulation by state and local election authorities, the Open Meetings Act, open records requirements, and the Code of Ethics.

The current Charter Review Commission's term expires on July 24, 2018. By then, it must have properly voted on proposed amendments (both in concept and in actual wording) to the Charter which are to be presented to the electorate for approval or disapproval.

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The Charter Review Commission must forward its proposals to the electorate, and implied in this is the necessary and nondiscretionary performance by other town authorities (such as the Town Clerk, and, indeed, with a majority vote of a proper quorum, the Board of Canvassers and the Town Council) to ensure the Charter Review Commission's proposals are given public hearing (if the Charter Review Commission has not already done so) and placed on the ballot before the voters in a reasonable time period. In any event, the Town Council and/or the Board of Canvassers must set the literal wording of the questions to be presented on the ballot, which need not reproduce the literal full-text wording of the proposed changes to the Charter itself.

\* \* \* \* \*



## Attachment D

### **Addendum: Discussion of Viveiros v. Middletown**

This addendum supplements the April 16, 2018 memorandum of the Charter Review Commission regarding the charter amendment process in Tiverton, with a particular focus on the case of Viveiros v. Town of Middletown, 973 A.2d (R.I. 2009) given that such case is heavily relied on (and the only case cited in) the Town Solicitor's February 26, 2018 memorandum.

1. Middletown Did Not Have an Elected Charter Review Commission.

The primary distinction between the facts in Viveiros and the facts in Tiverton is that Middletown did not have an elected charter review commission.<sup>23</sup> In fact, the plaintiffs in Viveiros were seeking a vote to have a charter commission created to frame an altogether new charter.

Nobody here is seeking to have a commission created. Tiverton already has a charter review commission, and nobody here is pursuing a new charter.

2. The Plaintiffs in Viveiros Proceeded Under Sections 6 & 7, not Section 8, of Article XIII

The plaintiffs in Viveiros, apparently because Middletown had no charter review commission like Tiverton does, attempted to force a ballot question to ask the voters in Middletown whether to consider a new charter by proceeding under Sections 6 and 7 of Article XIII of the Constitution. Section 7 is for the adoption of charters and Section 8 is for the amendment of charters.

In essence, the Viveiros plaintiffs were trying to adopt a new charter through Sections 6 and 7 by gathering signatures of at least fifteen percent of its electorate and calling for a new charter commission.

The majority and dissenting opinions of the Supreme Court sparred over whether the word "whenever" in Section 6 contemplated a one-time versus a recurring event, summoning Webster's and Random House dictionaries and quotes from a poet and a playwright and even Johnny Cash along the way.

But none of that argument, however interesting, is relevant here because in Tiverton we have a duly elected charter review commission in a town proceeding as contemplated in its charter. At the moment, Tiverton does not have an individual elector attempting to again follow the process which was presumably done leading up the initial 1994 adoption of the Charter. Section 6 of Article XIII is not relevant to the current questions in Tiverton.

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<sup>23</sup> Indeed, Middletown may not have had a charter review commission at all, elected or not. The Viveiros case mentions none.

## Attachment D

### 3. The Viveiros Case Did Not Hold Town Councils Are Always or the Only Legislative Bodies.

In his February 26, 2018, the Solicitor claims that:

*“For purposes of [Section 8 of Article XIII of the Constitution] the legislative body for Tiverton (and all other municipalities) is the Tiverton Town Council.”<sup>24</sup>*

The Viveiros case, however, simply never says this. Anywhere.

Actually, what the Court did state was: “With the passage of the home-rule amendment, the state relinquished a portion of its legislative authority to municipalities.” 973 A.2d at 611 (underlining supplied). Note the word choice of municipalities, not councils.

The Court also said “... under article 13, as enacted, the people of a city or town who wish to propose modifications to an existing charter can act only indirectly, through their elected representatives.” *Id.* (underlining supplied). Note the word choice of elected representatives, not councilors.

Furthermore, the Court referenced the 1951 Constitutional Convention and stated it was clear there that “the home-rule resolution adopted was intended to ‘permit[] the governing body of any city or town alone to propose amendments.’” *Id.* at 613 (citing 1951 Convention Proceedings at 131 (statement of Harold R. Smith) (underling supplied). Note the word choice of governing body, not council.<sup>25</sup>

Naturally, in the case of a town adopting a charter for the first time, there would be no elected charter review commission so the only possible legislative body in a town would be its town council. And in the Viveiros case, the Court mentions the Middletown town council because there was no other body around. But the Court never held that town councils are always “legislative bodies” for purposes of charter amendments, or that they could be the only “legislative bodies” (or governing bodies), or that no other legal authority (such as general laws or local charters) could also apply to the process of amending charters.

### 4. The Supreme Court in Viveiros Never Held A Legislative Body Could Ignore Other Authority.

Section 8 of Article XIII of the Constitution concerns the amendment of home rule charters, and the Supreme Court held in Viveiros that Section 8 is the only way to do so, in other words that the “legislative body” could propose changes. But in Viveiros, there was no

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<sup>24</sup> The Commission doubts that the Solicitor believes that the Tiverton Town Council is the “legislative body” for not just Tiverton but all other 38 cities and towns too, so it is assumed this is a drafting error.

<sup>25</sup> As discussed in the main body of the memorandum, the very title of Rhode Island General Laws Chapter 45-5 (Councils and Governing Bodies) suggests a council and a governing body might not be the same thing, and in any event Section 45-5-18 mandates that town charter provisions control.

## Attachment D

other authority such as provisions of a town charter like in Tiverton. Thus the Court never held that Middletown could ignore areas of authority such as charter provisions. Indeed, the Court never had to reach the question of whether Section 8 allows a “legislative body” [assuming here that the Town Council is one, and the only, for these purposes] to refuse to perform duties which are obligatory under a charter and state law simply because without a charter they would be optional under the Constitution.<sup>26</sup>

As discussed in the main body of the memorandum, the Charter and state statutes apply as well, and would likely be construed together be relevant, constitutional, and enforceable.

5. Political Remedies Were Important to the Supreme Court.

The Supreme Court in Viveiros noted that aggrieved electors deprived of their wish to see charter changes by the Middletown Town Council, could seek a political remedy by removing its councilors from office every two years. This rationale, important to the Court’s analysis, is quite relevant because in Tiverton the electors have already spoken by electing its representatives to the Commission.

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<sup>26</sup> Of course, the whole point of writs of mandamus and other compulsory process and orders is to ensure that a government official performs a duty that it has the power to do. These avenues would not exist if all duties were discretionary.

**Attachment E**

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2018 JUL 23 P 9:15

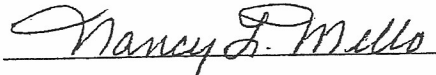
TIVERTON TOWN COUNCIL RESOLUTION

Resolution of the Town of Tiverton authorizing the Town to hold a Special Election for the purpose of electing a Charter Review Commission to review the current Town Charter and to present recommendations of amendments or revisions to the voters per the Tiverton Town Charter Section 1205(a).

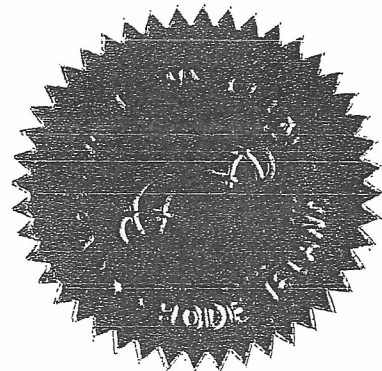
RESOLVED, THAT:

The Town Council hereby establishes July 18, 2017 as the date for such Special Election.

  
Joan Chabot, Town Council President

  
Nancy L. Mello, Town Clerk

Adopted by Tiverton Town Council on February 27, 2017.



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2018 JUL 23 P 9:15 TIVERTON CHARTER REVIEW COMMISSION

**RESOLUTIONS**  
**ENSURING VOTERS WILL BE ABLE TO VOTE**  
**ON CHARTER REVIEW COMMISSION PROPOSALS**

WHEREAS, the Tiverton Charter Review Commission ("Commission") is currently considering proposals for potential changes to the Tiverton Home Rule Charter;

WHEREAS, the Commission has approved and expects to approve additional various charter amendment proposals for presentation to the qualified electors of Tiverton (the "Voters") for their consideration and vote at an election as to be scheduled by the Tiverton Town Council ("Council") and/or the Tiverton Board of Canvassers;

WHEREAS, the Commission is a duly constituted public body independently elected by the Voters;

WHEREAS; a disagreement has arisen as to whether the Council has the legal authority to prevent charter amendment proposals duly approved by the Commission from reaching the Voters for ultimate decision by the Voters;

WHEREAS, the Commission is committed to ensuring that the Voters are not prevented from voting on charter amendment proposals as proposed by the independently elected Commission, but the Commission desires to do so without the need to resort to litigation;

WHEREAS, the Commission voted, at a meeting duly held on March 22, 2018, to delay any litigation until the Commission drafted a resolution asking the Council to confirm that it will not block any proposals duly approved by the Commission from reaching the ballot for the Voters to decide;

WHEREAS, the recitals and the first resolution included as Exhibit A (referred to herein as the "Voter Protection Resolution") hereto is the resolution contemplated by the aforesaid; and

WHEREAS, the Commission believes that amicably reaching agreement with the Council by adoption of the Voter Protection Resolution reasonably protects the rights of Voters and is in the best interests of the Voters.

NOW, THEREFORE, IT IS HEREBY:

RESOLVED, that the recitals and resolutions included on Exhibit A be transmitted to the Council (via the Clerk of the Town Council) together with a request that the Council duly approve the Voter Protection Resolution within thirty (30) days of delivery to the Clerk of the Town Council;

RESOLVED, that the Chair, the Vice Chair, and the Secretary and the Assistant Secretaries of the Commission (the “Officers”) be, and they hereby are, and each hereby is, authorized and directed to take preparatory steps in advance of any litigation relating (i) to ensuring that amendment proposals as approved by the Commission reach the Voters for their decision, or (ii) to any other business or matters involving the Commission;

RESOLVED, that the Commission hereby confirms and extends its vote taken on March 22, 2018, such that the Commission will further delay any litigation until at least May 23, 2018, such time intended to ensure that the Town Council has fair notice and opportunity to consider and approve the Voter Protection Resolution;

RESOLVED, a failure of the Town Council to approve the Voter Protection Resolution on or by May 21, 2018 with the affirmative votes of at least four (4) councilors (or other refusal or failure to place the Voter Protection Resolution on the agenda or hold a meeting or obtain and maintain a quorum) shall be deemed by the Commission as equivalent to a rejection; and it is further

RESOLVED, the Officers be, and they each hereby are, and each hereby is, provided that at least two of the foregoing work in concert together, authorized and directed to take any such actions for and on behalf of the Commission as they each, or any two of them working together, deem necessary or appropriate to fully effect the resolutions above.

\* \* \* \* \*

ATTESTED, that the above recitals and resolutions were duly adopted by the Tiverton Charter Review Commission at a meeting held on April 16, 2018.



Richard Rom  
Secretary

\* \* \* \* \*

# Attachment F

*Tiverton Charter Review Commission  
July 23, 2018*

## Exhibit A

### Voter Protection Resolution

[See next page]

[Exhibit A to Charter Review Commission Proposed Resolutions at its April 16, 2018 Meeting]

*[PROPOSED BY AND REQUESTED FROM CHARTER REVIEW COMMISSION]*

**TIVERTON TOWN COUNCIL**

**RESOLUTIONS**

**REGARDING CHARTER REVIEW COMMISSION PROPOSALS**

WHEREAS, the Tiverton Charter Review Commission (“Commission”) is currently considering proposals for potential changes to the Tiverton Home Rule Charter;

WHEREAS, the Commission has approved and expects to approve additional various charter amendment proposals for presentation to the qualified electors of Tiverton (the “Voters”) for their consideration and vote at an election as to be scheduled by the Tiverton Town Council (“Council”) and/or the Tiverton Board of Canvassers;

WHEREAS, the Council and the Commission are duly constituted public bodies independently elected by the Voters;

WHEREAS; a disagreement has arisen as to whether the Council has the legal authority to prevent charter amendment proposals duly approved by the Commission from reaching the Voters for ultimate decision by the Voters;

WHEREAS, the Commission has requested that the Council consider and approve the resolutions below in an effort to clarify and amicably resolve the disputed matter in the best interest of the Voters; and

WHEREAS, the Council likewise wishes to confirm its support and approval of the resolutions below in an effort to clarify and amicably resolve the disputed matter in the best interest of the Voters.

NOW, THEREFORE, IT IS HEREBY:

RESOLVED, that the Tiverton Town Council hereby expresses its intent, and further confirms and covenants, that it will not take any action, or omit to take any action, which would prohibit, block, disapprove, modify, amend, or otherwise have the effect of preventing any charter amendment proposal approved by the Tiverton Charter Review Commission from duly appearing on ballot for the Voters to decide at an election held before December 31, 2018, and the Council hereby provides further assurances that it will take all actions, whether ministerial or discretionary, within its powers to ensure that all such proposals reach the Voters for their decision at the upcoming general election or another election in 2018; and it is further



**Attachment F**

*Tiverton Charter Review Commission  
July 23, 2018*

RESOLVED, that the Town Solicitor be, and he hereby is, authorized and directed to work with the Charter Review Commission such that the Solicitor and the Commission shall cooperate in good faith to identify and timely resolve any legal requests, questions, or concerns raised by either of them.

\* \* \* \* \*

ATTESTED, that the above recitals and resolutions were duly adopted by the Tiverton Town Council at a meeting held on [\_\_\_\_\_], 2018.

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Nancy Mello  
Clerk of the Town Council

\* \* \* \* \*