



Townsend Town Council Special Meeting
February 15th, 2023 @ 6:00 pm
VIA CONFERENCE CALL &
Town Hall
141 Main St, Townsend, DE 19734

6:00 pm Town Council Special Meeting

I. Call to Order: 6:03 pm

II. Opening Ceremonies

a. Roll Call:

Mayor Lobdell,
Councilwoman S. Rojas,
Councilman J. Mertz,
Councilwoman E. Clarke,
Councilman E. Dugan, Police Chief R. Longo, Town Manager A. Tantillo, Town Clerk M. Rivera,
and Town Solicitor N.C. Griffiths.

b. Pledge of Allegiance: All present recited the pledge of allegiance.

c. Recognition of Visitors: Patrick Miller and Ms. Clarke resident of Esch Street via Zoom.

d. Announcements:

1. CM Mertz welcomed the new Vice Principal, Dr. Wisdom, of Townsend Elementary School

A. Chief Longo stated the Police Department was asked to participate in today's walk out for the previous principal of Townsend Elementary School. Chief Longo advised Dr. Wisdom will begin on February 16th.

III. Adoption of Agenda.

a. *CM made a motion to adopt the agenda. CW Clarke seconded the motion. Voice vote of all Council: all yeas.*

b. Agenda adopted.

IV. Citizens Comments & Participation

a. None

V. Reports

a. Town Manager Antonina Tantillo

1. **ACTION ITEM:** Discussion with Town Clerk on appointment of Board of Election Member.

A. TM Tantillo advised the Town has posted solicitation to fill a Board of Election seat. TM Tantillo explained the Board of Elections members remain in their seats until a new member is appointed.

B. TM Tantillo advised the notice of Candidate Solicitation period will be posted this week.

VI. Committee Reports

a. **Code Review Committee:** Chair: Mayor Lobdell, Co-Chair: Councilman Mertz

1. Mayor Lobdell reminded Council the Code Review Committee has been working on updating the Town's Charter and Code. Mayor Lobdell advised the Code Review Committee began

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Those wishing to attend virtually may dial **1(301)715-8592**. When directed, provide following meeting ID **827- 6421-7575#** and then the following password **361631#** to enter the meeting. If you choose to access the meeting online click the following link: <https://us02web.zoom.us/j/82764217575?pwd=aHI4RDhTZ0xjME1HV0ZOcHRxSHZ3QT09>

Residents will be able to view documents posted to the meeting tab on the Town website at <https://townsend.delaware.gov> or by joining the meeting via computer.

working on the Charter first. Mayor Lobdell explained this process consists of two parts: updating and adding, with the first being updating.

2. **ACTION ITEM:** Discussion regarding potential revisions to the Town Charter.
 - A. Mayor Lobdell advised the discussion for today is regarding the updates that have been suggested by the Code Review Committee. Noting, all the items that have been updated are redlined. Mayor Lobdell advised any additions to the Charter will be added and reviewed at a later date.
 - B. CM Mertz asked why the Town would submit the Charter to the State for review two times, advising the updates and additions should be reviewed by the State at the same time. Mayor Lobdell advised the reason for this is due to timing explaining it was decided that it would be best to have the updates approved prior to the upcoming election. Additionally, legal review is needed for any additions prior to sending to the State for approval.
 - C. TM Tantillo noted the State approval process may take time. Additionally, last year a minor revision was needed for the Town Charter. TM Tantillo reminded Council of the process stating, Council will need to approve via resolution first, then the State Representatives will bring the recommended changes to the State level for approval. TM Tantillo noted that she has reached out on behalf of the Town and the Town's State Representatives are happy to introduce the Charter changes; once approved at the Town level; to the state legislature.
 - D. CM Mertz advised against going to the State Legislature for approval twice. TM Tantillo reminded Council this process was discussed during the Code Review Committee meeting and all the changes presented are what they have discussed thus far. TM Tantillo advised making additions to the Charter may take longer.
 - E. Mayor Lobdell advised depending on the addition that is recommended it may take longer for approval.
 - F. Mayor Lobdell recommended for Council to review the recommended Charter changes by going through each section.
 - G. CW Clarke noted there are discrepancies between the date of when Townsend became incorporated on the Charter and the Town Marker. TM Tantillo stated she will obtain clarification on this to determine if the date should be April 5th or April 3rd.
 - H. CM Mertz noted the adopted by date on the Charter will need to reflect the new date of adoption.
 - I. Mayor Lobdell clarified this is a first reading of the recommended changes to review and discuss, no votes are necessary.
 - J. CM Mertz noted there was no change to Article I other than capitalizing the word Town.
 - K. CM Mertz noted there was no change to Article II. CM Mertz advised other Towns have more extensive sections.
 - L. CM Mertz opened discussion regarding Article III:
 - i. CM Mertz advised other Charters throughout the State will define and declare the type of government the Town runs. CM Mertz asked if this should be added to 3.1. TM Tantillo advised the changes that are presented

reflect the type of government the Town runs. CM Mertz clarified without the form of government declared the Town can operate without the Town Manager. CM Mertz specified if the Charter states that it is run by a Town Council and Town Manager government than it is more explicit. TS Griffiths advised the Town runs through a commissioner system meaning there are no assigned districts; whereas the highest voted members are in and the Mayor is determined amongst the members. TS Griffiths noted this type of government system is still in place and the only addition that has been made is to give voting power back to the Mayor. TS Griffiths advised the Charter reads well as is with the recommendations. Noting, there is a separate section for the Town Manager that goes into more detail as to why they are hired and what their duties are.

- ii. CM Mertz noted the Town's Charter does not allow districts and asked if this should be added as an option for the Town's future. TM Tantillo advised this was discussed at one of the Code Review Committee meetings. TM Tantillo advised Council during the meeting it was also discussed the possibility of adding additional members to Council. TM Tantillo explained it was decided the Town is not large enough at this time and that it will be discussed at a later time, for future Councils to decide.
- iii. TS Griffiths advised he is concerned with the Town's ability to "field the Council", noting all of Council can come from TV II (Townsend Village II) and how it may be diversified. CM Mertz clarified his suggestion is to add districts as an option so in the future Council does not have to revise the Charter again to do so. TS Griffiths advised there will still be a process regardless because Council will need to determine the district lines, explaining it is best to do so at a later date. TS Griffiths noted one of two Council Members may need to resign because they reside in the same district. CM Dugan noted the State may request what the proposed districts are. TS Griffiths confirmed and advised this may also limit the candidacy pool because it will be a requirement. TS Griffiths advised an additional subsection will be needed if the Town were to move forward with districts and other sections will need to be revised to reflect the addition.

L. Mertz opened discussion for Article IV:

- i. CM Mertz noted currently it is required the Town publish ordinances to the newspaper. CM Mertz advised this has been revised to require the Town to publish to the Town website.
- ii. CM Mertz noted this section and throughout the Charter, the proposed revision will now include the Mayor in the quorum number. CM Mertz noted the amount of affirmative votes to enact an ordinance should remain 3, with the inclusion of the Mayor.
- iii. CM Mertz noted there is missing punctuation in 4.2 that needs to be satisfied.
- iv. CM Mertz noted in other Town Charter's it is stated that Council can choose at the organizational meeting when to meet monthly. TM Tantillo advised against this noting having rigidity on when the Town Council meets so the public is aware. TS Griffiths advised the Charter allows for this currently to allow Council to change meetings due to a need. Additionally, it is best

- practice to set a specific time and date for regular meetings. Mayor Lobdell noted the Town recently changed the time for each meeting. TS Griffith's advised most potential candidates utilize the Charter to determine if they will run for election and the meeting date may be determining factor.
- v. CM Mertz noted 4.3 includes the Mayor in quorum. TS Griffiths advised, currently, the Town can be in violation of FOIA (Freedom of Information Act) if the Mayor is not present for a meeting. Noting, the Mayor has the power to vote when needed.
 - vi. CM Mertz noted 4.4 states Council must have a printed copy of the Town Ordinances. Council agreed to revise verbiage to express the Town Council shall have access to the ordinances, codes, orders and rules of the Town Council.
 - vii. CM Mertz noted Council does not have a section for the rules of Council. TS Griffiths advised he can share with Council a sample of rules that he has used in other Towns, whereas Council adopted them by a motion and a copy is kept for the public's knowledge on how meetings are run. TS advised the rules typically state the quorum, how much time is allotted for a public comment, seating time for speakers, and appointing speakers for groups. Additionally, this is more for larger meetings. CM Mertz suggested to add this to the charter as 4.2.2. for when Council reorganizes.
 - viii. CM Mertz noted other Town Charter's include a specific meeting date for when the Council Reorganization meeting occurs. TM Tantillo advised per the rules for Election, votes must be certified within 48 hours following the day of election and then there is a period for when people can submit complaints and therefore, there needs to be time between certification and reorganization.
 - ix. CM Mertz noted 4.5, 4.6.1. and 4.6.2. have been revised to include the Mayor for the majority vote.
 - x. CM Mertz noted 4.6.3. has been revised to state the Mayor shall at any time appoint another officer or Council member. CM Mertz clarified if the Mayor were to present an ordinance he cannot vote. TM Tantillo explained this allows the Mayor to appoint someone such as the Town Manager or the Town Solicitor as another officer, momentarily so that the Mayor may vote.
 - xi. CM Mertz read the first section of 4.6.7 and advised further clarification may be needed to remove a Council member. CM Mertz noted removal from the Town can be reworded to clarify the Mayor moved out of Town. CW Clarke asked if removal must be as public.
 - a) TS Griffiths advised awaiting a vote may potentially violate the Town Charter if the Mayor passes away or resigns. Additionally, action would be taken quickly if he determines someone is violating the Charter. TS Griffiths explained maleficence and misdemeanor are both general terms; however, the Delaware State Constitution and Supreme Court also define these terms generally.

- b) TS Griffiths advised the first paragraph removes the Mayor and the second paragraph discusses appointing a Mayor Pro Tempore after removal.
 - c) Mayor Lobdell advised a vote is needed if the Mayor in question refuses; noting this will cause the removal to be public.
 - d) Council agreed to change the verbiage in the first paragraph to shall hold a vote to may hold a vote. TS Griffiths advised to remove verbiage from the second paragraph that states appointment to be made at the next meeting so the Town can appoint at the same meeting.
- xii. Mr. Miller wanted further clarification on 4.6.6. regarding the violations deemed malfeasance. TM Tantillo advised this refers to violating 4.6.5.
- a) TS Griffiths advised for this section to specifically address section 4.6.5. instead of stating the above. Council agreed.

M. CM Mertz opened discussion regarding Article V:

- i. CM Mertz noted it has been discussed to change the election date to sync with the federal election time frame. TM Tantillo advised that she has reached out to the state Department of Elections who advised that there are no other municipalities that do this. Additionally, this can cause confusion with voter registration if a voter attempted to vote in the Town election and they lived in the unincorporated part of Townsend. Furthermore, she has been advised that the Town will not be able to utilize the State voting machines if the Town election were to be the same date as state and federal elections as they would be in use for the state and federal elections. This would violate the Town and State code as the Town utilized the state voting machines.
- ii. TM Tantillo noted the first two sections were swapped. CM Mertz read the revised section for 5.1. and noted the Board of Elections has replaced Town Council in certain sentences.
- iii. CM Mertz noted 5.3.1. has been revised to include successful background check as a qualification for office.
 - a) TS Griffiths advised this may cause a timing issue. Additionally, if someone is not qualified after election Council would need to move forward with removal steps. Mayor Lobdell advised there is verbiage regarding this in the revised Charter, however verbiage may need to be further revised due to the possibility of disqualification.
 - b) TS Griffiths advised additional research and processes regarding background checks can be determined later. Additionally, this can be added to the application.
 - c) CW Clarke noted Council members would need to successfully pass a background check to continue serving. CM Mertz noted the Town should pay for these.
 - d) TS Griffiths noted this may push people away from running for election. CM Mertz advised the background check can take place after the election.

- e) Chief Longo reminded Council the Townsend Police Department cannot perform fingerprinting at their location and provided locations the Town may use to do so.
- f) CW Clarke wanted clarification on what defines a successful background check. TM Tantillo referred to the Charters verbiage for disqualification of office noting misdemeanors during term of office will lead to disqualifications. Additionally, felonies are deemed disqualified. CW Clarke noted any misdemeanor that occurs prior to the term of office will not be considered disqualification.
- g) TS Griffiths advised he will research if registering to vote in Delaware means there are no felonies. Mayor Lobdell noted if that is determined the Town may not need to add this qualification.
- iv. CM Mertz read 5.3.2. and noted this has been added to the Charter.
- v. CM Mertz noted the verbiage Board of Elections replaced Town Council in section 5.4.
- vi. Mayor Lobdell noted 5.5 adds verbiage requiring voters to prove their ownership. Mayor Lobdell noted commercial property owners will have the ability to vote, if the deed is in their name and not listed as an LLC and they are registered to vote in the state of Delaware. Additionally, rental property owners may vote, if the property is owned in their name and they are registered to vote in the state of Delaware.
- vii. CM Mertz noted 5.8.1 revision includes the Mayor.
- viii. CM Mertz read the addition 5.8.2.
 - a) TS Griffiths clarified this allows for the next highest voted candidate to be appointed. Additionally, this shows the will of the people.
- N.** CM Mertz opened discussion regarding Article VI:
 - i. TM Tantillo reminded Council this is a place holder section.
- O.** CM Mertz opened discussion regarding Article VII:
 - i. CM Mertz noted 7.1.1. revision has verbiage removed.
 - ii. Chief Longo strongly advised for the Town to follow the police officers due process bill.
 - a) TS Griffiths advised he will look further into this.
 - iii. CM Mertz noted 7.2.1 revision gives the Town Manager authorization to authorize and approve compensation for employees, officers, and agents of the Town.
 - iv. CM Mertz read 7.2.3 noting the revision adds additional verbiage stating the effective at the term following the date of the ordinance.
 - v. Council agreed the revision should read as effective July 1st following the next election after the ordinance passes.
- P.** CM Mertz opened discussion regarding Article VIII:
 - i. CM Mertz provided a brief reading of 7.3.1 through 7.3.3 highlighting the revisions made.
 - ii. CM Mertz advised 7.3.3.1 should be revised with the inclusion of the Town Clerk and should not remove the original verbiage to designate a qualified person.

- iii. CM Dugan advised verbiage should be added that the Human Resources Committee will be responsible for writing up any violations of the Town Manager to bring to Council attention. TM Tantillo advised this is something that would be written in the Town's Personnel Policy.
- iv. CM Mertz read the last line for 7.3.1.1. and advised there should be a residency requirement that specifies the allowable distance from the Town and a timeframe to satisfy the requirement after appointment. CM Mertz noted most Town Charters have this requirement in their Charter's. TM Tantillo advised this is typically found in Charter's for Town's or Cities that are much larger than the Town.
- v. TS Griffiths advised a residency requirement may limit the application pool. Mayor Lobdell read the last line for 7.3.1.1 and advised against setting specifications. CM Mertz advised the residency suggestion will set the Town's expectations. TS Griffiths advised the Charter reads as such.
- vi. Council agreed to revise this line to state the Town Manager if preferred to be a resident of the Town of Townsend or the State of Delaware at the time of the appointment but may reside outside of the Town.
- vii. Chief Longo asked for clarification on the firing process of Town employees. TM Tantillo advised and read the verbiage of 7.3.4.1 that addresses this. Mayor Lobdell advised Council must stay out of this process as they sit as the Board of Appeals.
- viii. CM Mertz referred to 7.3.3.1 and advised there should be verbiage that states the Mayor and other Council people cannot serve as Town Manager. CM Mertz explained he has seen this written in other Town Charter's. CM Mertz clarified in one of the other Town Charter's it states Council cannot be hired as a Town Employee until after one year of resignation. TS Griffiths advised he has seen this.
 - a) CW Clarke advised she is hesitant to add this verbiage. CM Clarke advised without this verbiage there may be a conflict of interest. TS Griffiths clarified the way he has seen this written is that no Council member can serve on any other board or hired position until after one year of resignation.
 - b) Mayor Lobdell requested clarification on why this is a conflict of interest. TS Griffiths advised this has to do with public trust, explaining the Council member who has resigned still has inside connections with Council. CW Clarke advised the Town still has a fair hiring process in place. Additionally, she would prefer someone who is involved with Council become a Town Manager and live in the Town. Mayor Lobdell noted this individual understands how the Town works and can be an asset to the Town.
 - c) TC Rivera suggested the verbiage can stipulate the difference between resigning and term ending for Council to be hired as a Town employee. Mayor Lobdell noted if a Council members

term ends they would not be able to be hired as a Town employee because they must wait one year.

- d) TM Tantillo noted the Town Manager shall not be influenced by any matters whatsoever political or of factual nature. TM Tantillo explained by having a one-year difference could remove a resigned Council member from the political realm.
- ix. CM Mertz read the first line of 7.3.4.1. and asked for further clarification on what the revision means. TM Tantillo explained the Code Review Committee discussed how the current hiring process for all Town employees goes through Council as a resolution to approve is necessary. Mayor Lobdell noted the revision still goes through the same process unless when promoting from within with existing Town employees; whereas no resolution will be needed.
 - a) Council agreed to keep all other revision from this section and removed the revision that states, except from promoting from within.
 - b) CM Mertz asked what the current hiring process for Town employees who are not department heads. TM Tantillo explained the Human Resources Committee has the option to partake in the process, as they have in the past, however, they are not required to. CM Mertz noted the Human Resources Committee does not have a say in the hiring process per the Charter.
- x. CM Mertz noted the revision for 7.3.4.4. includes him or her and advised the Town should remove him or her. CM Mertz recommended to change the verbiage in this section and throughout to state they or them to be more inclusive.
 - a) Council agreed.
- xi. CM Mertz noted there were no major revisions for 7.4, 7.5, 7.6, and 7.7.
- xii. CM Mertz referred to 7.8 Police Force and asked if the Town should refer to other Town Charter's to revise this section.
 - a) TS Griffiths advised he will be working on this section and will also defer to the Police Chief.
 - b) Chief Longo clarified the Police do not have their own level of protections. Chief Longo explained they have a Due Process Hearing. Mayor Lobdell noted the police are under different circumstances than a regular Town employee.
 - c) Chief Longo noted the hiring process for the Town's Police Sergeant and wanted clarification on the hiring process for additional Police Officers. TM Tantillo advised the Town Manager has the option to work with the Police Chief, since they are the department head. However, it is not required since the Town Manager is responsible for personnel.
 - d) CM Mertz advised the revision of this section should grant authority to the Police Chief to hire Police Department employees similar to the Town Manager's hiring authority.

- e) CM Mertz, CW Clarke and CW Rojas agreed the Police Force should be separate since they have a different perspective on public safety, and they have to follow a separate set of criteria.
- f) Mayor Lobdell noted the Police Chief, and the Town Manager should work together on the hiring process. Chief Longo advised in his previous experiences the Police Department will hold the interviews and determine who they want to hire and then bring this person to the Town Managers attention. Additionally, per the Police Bill of Rights the Police Chief will welcome and/or terminate the employee not the Town Manager. Chief Longo clarified the employee would still need to defer to the Town Manager for Human Resources onboarding.
- g) CW Clarke advised she wants to ensure the Police Department will have a diverse hiring panel. Chief Longo advised in his previous experience he utilized a diverse panel of employees within the department to assist with the interview process and if/when needed he would utilize other Police Department's to create a diverse panel. Additionally, he would have the panel perform the first interview to pull the most qualified candidates to move forward to the second interview with the Police Chief. Police Chief reminded Council during his interview he stressed the importance of having the Police Department represent the community's diversity. TS Griffiths advised the Charter should not include verbiage regarding diversity and be left as a Police Hiring Policy.
- h) Council agreed this section needs further revisions as discussed. Additionally, there is a grammatical error in the last line of 7.8.1.

Q. CM Mertz opened discussion regarding Article IX:

- i. CM Mertz noted 9.1.1. revision would now allow the Town to eminent domain.

R. Council noted the revised Charter was done well. Mayor Lobdell advised more revisions and additions may be needed to add to the Charter. Mayor Lobdell explained additions needed will be more involved and require legal review. Additionally, since there are revisions regarding elections the Code Review Committee would like to have this approved by the State prior to the upcoming election.

II. Adjournment

- a.** *CM Mertz made a motion to adjourn the meeting. CW Rojas seconded the motion. Voice vote of Council: all yeas.*
 - b.** Meeting adjourned at 9:06 pm.
-