

The Final Report of the Town Clerk Study Committee

Submitted to the Board of Selectmen - March 26, 2018

The Town Clerk Study Committee (TCSC) was formed by a vote of the Board of Selectmen in December 2017. It was charged with studying the Town Clerk position, and making a recommendation to the Board of Selectmen on whether the position should be changed from elected to appointed. The timing of this study was selected to coincide with the retirement of a long-time Town Clerk.

Over the course of seven (7) meetings, the TCSC discussed the history of the Town Clerk position, essential functions, and researched how other towns are addressing its changes over the years. In the end, it was the conclusion of the majority of the committee that the advantages of an appointed Town Clerk are too significant to ignore. We understand that there are many voter concerns in the conversion of an elected position to appointed. We hope this report will address those concerns.

The Position

Duties: The Town Clerk position is largely a statutory position, legislated by MGL Ch. 41, Sec. 15. The Town Clerk is charged with recording all votes of Town Meeting, administering oath of office, and overseeing elections¹. Other statutory duties include dog licensing, violation fee collection, maintenance of vital records, meeting notice postings, issues various permits and certificates, and administration of the annual Town Census². The Town Clerk serves as the Custodian of all Town Records, as ex officio member of the Board of Registrars, as a Constable, as a Notary Public, as a Records Access Officer, and Keeper of the Town Seal.

Requirements: This position is administrative, and requires thorough knowledge of applicable state, local, and federal statutes and regulations related to the duties and responsibilities of the Town Clerk's office. This includes knowledge of Open Meeting Law, Public Records Law, and State Ethics Law.

Policy-Setting vs. Administration of Policy

Before delving into the concerns frequently raised by voters related to creating the appointed Town Clerk position, the TCSC feels it is important to highlight the difference between "policy-setting" officials (who are elected) and "policy-administering" officials (who are better suited to being appointed).

Policy setting: Board of Selectmen
Board of Health
Planning Board
Board of Public Works
School Committee

Policy administering: Town Administrator
Police Chief
Administrative Assessor
Finance Director/Collector/Treasurer
Human Resources Director

For these purposes, the majority of the TCSC felt that the Town Clerk fell squarely into the “policy administering” portion of the Town’s governmental reporting structure.

Public Outreach

The TCSC did not have an appropriation; for this reason, public outreach was a challenge. The TCSC conducted an online survey of residents and held an outreach forum at the Town Hall on February 26, 2018. These outreach efforts outlined several common voter concerns in regards to changing the Town Clerk position. Those concerns follow:

- ❖ Common Public Perception #1: Town Clerk should be a Town resident.

TCSC Majority Response: This is a detailed administrative position that requires a considerable level of expertise and subject knowledge. Errors and omissions could have significant legal and financial implications. The essential functions of this position are reliant on regulatory knowledge, not exclusively community knowledge. Moreover, there is no residency requirement for other department head positions; the TCSC majority did not see a distinction in the Town Clerk position that would make residency advantageous.

- ❖ Common Public Perception #2: Town Clerk should represent the voters.

TCSC Majority Response: Voters should elect officials that will drive and create policy. The Town Clerk position is administrative and does not create any policy.

- ❖ Common Public Perception #3: Making the Town Clerk appointed will take a vote away/disenfranchise voters.

TCSC Majority Response: This is the last remaining full-time, professional, elected position in the Town of Fairhaven, and it is a leftover tradition from when the town was a smaller community. The Town has eliminated other elected full-time positions in the past, including the elected Treasurer/Town Clerk in 1987. The Treasurer/Collector position was acknowledged by Town Meeting as a professional position needing a qualified employee. It is the opinion of the TCSC that the time has come to make a similar change to the Town Clerk position.

- ❖ Common Public Perception #4: If voters do not have confidence in a Town Clerk, they can vote him/her out.

TCSC Majority Response: If an elected Town Clerk fails to perform his/her duties, the voters have two options: recall vote or wait for another election. Both of these options present problems:

- *Recall election*: Recall elections require the signature of 50 voters to initiate, and 20 percent of the registered voters to complete the recall³. These signatures would have to be certified by the Town Clerk, and the election would be run by the Town Clerk. Elections cost the Town a considerable amount of money. Recall elections are contentious and dividing.
- *Wait until regular election*: This leaves an employee in question in a sensitive position until the voters can make a decision.

In our appointed scenario, the Town Administrator would address any performance issues, as he would with any other department head. In this way, we believe that the Town Administrator is better equipped to provide immediate accountability and direction to the Town Clerk, where the electorate cannot.

- ❖ Common Public Perception #5: Why now? Are you not satisfied with the Town Clerks to date?

TCSC Majority Response: This is where the topic gets sensitive for some. It is the opinion of the majority of the TCSC that the town has actually been very fortunate to date. We have had Town Clerks who have taken their role seriously, treated it as a full-time position, held the same office hours as the rest of Town Hall, and have completed their duties as assigned by MGL. Theoretically, a Town Clerk could be elected, receive a full-time salary for part-time work (or could simply not show up to work), and there would be no immediate accountability to address this.

The timing of this study and recommendation coincides with the retirement of a long-time Town Clerk. Although the statutory duties of the Town Clerk has not changed over the years, the position has gotten considerably more complicated, with more technical reporting and computer/database skills needed. With a growing need to digitize archives and post agendas digitally to comply with Open Meeting Law and Records Access⁴, there needs to be additional training and qualifications for our prospective Town Clerk candidates.

- ❖ Common Public Perception #6: The Town Administrator will make a political appointment. This is too much centralization of power in the hands of one person.
TCSC Majority Response: The Town Clerk is an administrative, clerical position. If appointed by the Town Administrator (with Selectmen approval) as recommended by the TCSC, then it would be no different than any other professional Town department head. We do not elect our police chief, our highway superintendent, health inspector, etc. These positions report to elected officials who set policy. It is the TCSC majority opinion that the Town Clerk should function the same way. Under the TCSC recommendation, the Town Clerk would report to the Town Administrator, who reports to the Board of Selectmen, and the Board of Selectmen reports to the voters. To this majority, this demonstrates a well-run democracy with a clear reporting structure and immediate accountability for full-time employees.

Some Research Highlights

In addition to the aforementioned issues, the TCSC majority would like to highlight several points to support the creation of an appointed Town Clerk:

Applicant pool: The process of running for Town Clerk can be daunting for some qualified applicants. The TCSC majority feels that making the position appointed will increase the applicant pool of qualified candidates.

Salary: Under the current elected position, the Town Clerk has to request his/her salary every year. To date, the salary requested has typically reflected the same cost-of-living increases received by union and non-union. The Town Clerk position has certain personnel disadvantages:

- *Classification and Compensation Plan* – because the Town Clerk does not currently fall under the Non-Union Personnel, the position was not included in a recent classification and compensation plan. As a result, while the other non-union positions will be updated to reflect current job descriptions and salaries/wages that reflect internal and external equity, the Town Clerk position remains untouched, and could fall behind peer employees for pay.
- *Unemployment* – An elected Town Clerk who does not get re-elected is not eligible for unemployment⁵. The TCSC majority felt this was an important detail, as a safety net is important for all employees.

Elected to Appointed; Never Vice Versa: In the TCSC's research, we found many instances of communities changing their Town Clerk positions from elected to appointed, but could not find one example of a community changing their appointed Town Clerk to elected. To the TCSC majority, this indicated that, once communities make this change, they are satisfied with the outcome.

The TCSC interviewed selectmen, town moderators, and town managers from communities with appointed town clerks (Everett, Gardner, Middleborough, Norton, Norwood, and Yarmouth). These communities were selected because they were similar in land size, population, house value/per capita income to Fairhaven. Officials from these communities indicated that the appointed Town Clerk position was working well and that they were happy with the outcome. More communities are trending toward the appointed Town Clerk model, with about one-third of Massachusetts communities now having an appointed Town/City Clerk instead of elected⁶.

Legislation, Appointment, and Reporting

It is the recommendation of the TCSC majority that the Board of Selectmen sponsor a home-rule petition article on the Annual Town Meeting warrant. This article will petition legislation to make a change to the Town governmental structure, abolishing the elected Town Clerk position and creating an appointed Town Clerk. Further, it is the recommendation of the TCSC majority that this appointed Town Clerk position report to, and be appointed/dismissed by the Town Administrator with Selectmen approval, consistent with other department head positions.

Conclusion

The TCSC would like to thank the Board of Selectmen for this opportunity. The TCSC majority hopes that the Board will sponsor a Town Meeting article to petition legislation to make the Town Clerk position appointed, and reporting to the Town Administrator. Change is always difficult, but progress always requires change. The TCSC majority believes the creation of a Town Administrator has modernized and improved the Town's reporting structure. The TCSC

majority would like to continue this trend of restructuring/improving the governmental structure, through the creation of the appointed Town Clerk position.

Respectfully,

Ann Richard, Chair
Mark Badwey
Kyle Bueno
Anne O'Brien, Clerk
Phil Washko

Attachment: Proposed Town Clerk Job Description for the Town of Fairhaven

¹ MGL Ch. 41, Section 15

² Fairhaven MA | . (1970, January 01). Retrieved March 21, 2018, from <http://www.Fairhaven-MA.gov/>

³ Town of Fairhaven eCode 360. (1991, January). Retrieved March 22, 2018, from [https://ecode360.com/search/FA1596?query=recall election](https://ecode360.com/search/FA1596?query=recall%20election)

⁴ Division of Open Government, Office of the Attorney General. (n.d.). Open Meeting Law, G.L. c. 30A, §§18-25.

⁵ Check eligibility for unemployment benefits. (n.d.). Retrieved March 21, 2018, from <https://www.mass.gov/service-details/check-eligibility-for-unemployment-benefits>

⁶ O'Malley, D. (n.d.). Clerks Elected Appointed (Secretary of State, Elections Division), November 20, 2017.



Town of Fairhaven

Job Description

Job Title: Town Clerk
Level: Schedule B, Level 15
Hours: 40 hours per week
Supervisor: Town Administrator
Status: FLSA Exempt, Non-Union

Summary

The Town Clerk performs highly responsible administrative and supervisory functions in connection with the maintenance of official municipal records, the issuing of various licenses and official Town documents, management of the Town census, and the direction of election activities. The Town Clerk exercises independent judgment and initiative in the planning, administration and execution of the services of the Clerk's office, in the interpretation and application of laws, regulations and procedures.

Essential Functions:

- Plans, directs and supervises the work of the Town Clerk's Office, including preparation, monitoring and oversight of department operating budget
- Responsible for all Town Clerk functions established by Massachusetts General Laws, or as may be required by federal and local law, policies and procedures
- Supervises personnel in all aspects (i.e., recruitment of personnel, assignment of duties, performance evaluations and supervision, payroll preparation, maintenance of personnel records)
- Serves as Custodian of all Town records for which no other custodian is defined; has custody of books, reports, records and laws received from the Commonwealth; certifies public records
- Serves as Chief Election Officer for the Town, with full responsibility for the complete administration of fair and impartial federal, state, and local elections, including but not limited to maintenance of accurate voter registration lists, absentee ballots, maintenance and accuracy of election systems and equipment, and campaign finance law administration
- Serves as ex officio member and clerk of the Board of Registrars
- Serves as Custodian of Vital Records
- Attends all Annual and Special Town Meetings; records all votes and other action taken at town meetings; assists Town Moderator in the preparation and conduct of town meetings; records and certifies all appropriations; responsible for transmitting Town Meeting adoption of bylaws to the Attorney General's Office for approval, Town Meeting acceptance of provisions of the Massachusetts General Laws and Special Acts to the Secretary of State, and authorizations for borrowing to the Department of Revenue
- Administers the Annual Town Census
- Issues a variety of state and local licenses, permits and certificates; collects fees as necessary

- Serves as Keeper of Official Seal of the Town; administers oaths to elected and appointed officials and employees; complies with Massachusetts General Laws' requirements relative to the Conflict of Interest and Open Meeting Laws
- Receives, posts, and/or files all notices and minutes of meetings of all town boards and committees, as appropriate; handles public notice filings; records and files applications, maps, and decisions of the Planning Board; records and maintains files on preliminary and definitive subdivision plans; records and files all decisions of the Zoning Board of Appeals and appeals of such decisions
- Responds to inquiries and requests for information from the public, Town officials and employees, and other government officials, among others
- Performs similar or related work as required or assigned
- Receives, posts, and/or files all notices and minutes of meetings of all town boards and committees, as appropriate; handles public notice filings; records and files applications, maps, and decisions of the Planning Board; records and maintains files on preliminary and definitive subdivision plans; records and files all decisions of the Zoning Board of Appeals and appeals of such decisions
- Responds to inquiries and requests for information from the public, Town officials and employees, and other government officials, among others
- Posts agendas and minutes on the Town website
- Performs similar or related work as required or assigned

Judgment:

The Town Clerk has access, and must exercise discretion regarding, confidential and sensitive information. Errors could result in significant confusion and delay, result in improper disclosure of confidential information, could have legal and financial repercussions, and/or cause adverse public relations. The Town Clerk must be completely honest, reliable, discreet and have good judgment.

Knowledge, Skills and Abilities

- Excellent communication skills, both oral and written
- Ability to deal tactfully, courteously, and professionally
- Ability to maintain confidentiality and to exercise sound judgment and discretion
- Highly organized, detail oriented, and able to manage ongoing projects with minimal supervision
- Ability to operate all standard office equipment and software, including databases and spreadsheets
- Ability to establish and maintain complex record-keeping systems
- Ability to plan work ahead of time, handle multiple tasks, prioritize, multi-task, meet strict deadlines, and work in high-pressure situations
- Proficiency in typing, spreadsheets, creating presentations, documents, and use of database software

Education and Experiences/Special Requirements

- This position requires a bachelor's degree and at least five (5) years of experience as a Town Clerk or Assistant Town Clerk. Preference is a certification as a Certified Massachusetts Town

Clerk. Such certification shall be required within three (3) years. The required education is to be supplemented with specialized training associated with the position of Town Clerk

- The position requires the ability to be bonded and remain bonded during the entire tenure in the position.
- The position requires that the individual have a commission as a notary public or obtain such within one (1) calendar year.

Working Conditions

- Standard office environment with frequent interruptions from visitors and staff, and shifts in workload prioritization
- Must be able to travel / attend required and optional meetings, training sessions, conferences, seminars, court dates and resident appointments (day and evening) as required
- Must be able to attend night meetings and hearings

This job description does not constitute an employment agreement between the employer and employee, and is subject to change by the employer as the needs of the employer and requirements of the job change. This is an "at will" position

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