

Town of Ridgefield
Charter Revision Commission Regular Meeting
Monday, February 26, 2018 – 7:00 p.m.
Town Hall Large Conference Room
400 Main Street, Ridgefield, Connecticut
APPROVED MEETING MINUTES

*These minutes are a general summary of the meeting and are not intended to be a verbatim transcription.

Members Present:

C. Hancock, J. Shapiro, J. Seem, E. Burns, E. Geisinger, P. Walsh, L. Steinman, W. Davidson

Member Absent:

J. Egan

Agenda

1. Approve the Minutes from Charter Revision Commission Regular Meeting on February 12, 2018.
2. Economic Development Commission.
3. Zoning Board of Appeals.
4. Joe Savino.
5. Mr. Baldelli, Director of Planning and Zoning.
6. Any other business.
7. Adjournment.

The meeting was called to order by CRC Chair Jon Seem at 7:00 p.m.

1. Approval of Minutes of February 12, 2018 Regular Meeting.

Mr. Steinman proposed several modifications to the portion of the unrevised/unapproved minutes of the Regular Meeting relating to Mr. Steinman's memorandum of January 29, 2018 and its attachments. Mr. Davidson and Ms. Burns proposed a one-word modification of the discussion of the definition of "Town Agency".

P. Walsh moved and E. Burns seconded a motion to approve the unrevised/unapproved minutes of the February 12, 2018 CRC Regular Meeting, as modified. Motion carried 8-0.

2. Economic Development Commission.

Arnold Light and John Devine, the Chair and Vice Chair of the Economic Development Commission (EDC), respectively, presented proposals by the EDC. Messrs. Light and Devine referred to the two documents sent by them to the CRC via email on February 19th. The first is a document showing existing Sections 19-60 through 19-66 of the Code of the Town of Ridgefield with the inclusion of two proposed textual additions therein shown in red (at the end of Section 19-60 and at the end of Section 19-64.G). That first document is a proposal to change the name of the EDC to “Economic and Community Development Commission” (ECDC) along with a proposal to permit the renamed ECDC to market, with consent, organizations and businesses with funds contributed by organizations, groups, businesses and individuals, with the ECDC managing funds from private entities for the purpose of economic development. Those are proposed changes to the town’s ordinances. The second document is a recommendation that the ECDC assume final authority for parking in the central business district, with the Parking Authority (PA) reporting to the ECDC rather than to the Board of Selectmen, but with the Board of Selectmen continuing to appoint the members of the PA, and with the Chair of the PA being an ex officio member of the ECDC and being required to attend monthly meetings of the ECDC and present a report.

Mr. Light explained that the change in the name of the EDC would make it more inclusive of the whole community. He described the EDC’s responsibilities. Mr. Devine noted that a website, still in development, serves as a portal for town organizations. Marketing is done to attract people to attend events and drives the town’s economy through digital marketing. Since this is a town commission as opposed to a chamber of commerce, a business does not need to be a member to obtain the commission’s support. Commercial vacancies are listed on this website (not retail) and it is a way to market real estate. The purpose of the name change is to be consistent with the wide role envisioned by the EDC and to embrace local business. Several CRC members raised with Mr. Devine the issue of whether having a municipal commission raise funds from private parties might create ethics issues or legal issues. The CRC will consider whether there are any legal issues to clarify.

Mr. Steinman noted that the proposed amendments to Section 19-60 and 19-64.G of the Code were not matters to be considered by the CRC for Charter revision, since those matters are covered by ordinance in the Code rather than in the Charter, which mentions the EDC in only two places, in Section 5-1, where various appointive bodies are listed, and in Section 5-8, which briefly sets forth the duties of the EDC.

Mr. Davidson noted that if the EDC goes where they propose to go, all the funds should flow through the Controller of the Town of Ridgefield.

Mr. Walsh asked for the reason behind the proposed change of name of the EDC, and Mr. Devine responded that the expanded name, Economic and Community Development Commission, is the direction that has now been taken by most Economic Development Commissions throughout the state.

Mr. Shapiro mentioned that in a brief initial look at the text of Section 5-8 of the Charter, it does not look inconsistent with the EDC's proposed changes, but that this was not a well-formed view. Nevertheless, Mr. Shapiro told Messrs. Light and Devine that they were welcome to come forward to the CRC with specific comment on Section 5-8 of the Charter. Mr. Davidson recommended adding a few words of text to Section 5-8 to specify that part of the authority of the EDC is to work with town businesses, in addition to the existing text that mentions working with agencies, commissions, boards and departments of the town.

The meeting then moved on to a discussion of the EDC's proposal regarding the PA. Before that discussion began, Ms. Burns recused herself because she currently serves on the PA, and she left the meeting for the duration of the discussion concerning the PA.

Mr. Seem noted that today the PA reports to the Board of Selectmen. Mr. Devine stated that recommendations of the EDC to the PA in recent years regarding parking have not been addressed by the PA and this is frustrating.

Mr. Steinman noted that the PA is not mentioned in the Charter, nor is the work of the EDC relating to parking issues mentioned in the Charter.

Mr. Seem asked if the work of the PA would be more efficient if it were to report to the EDC. Mr. Light explained that the EDC would have more demands on the PA. Mr. Light referred to the retail economic plan completed over two years ago by SCRE Advisors, an outside firm, which made recommendations concerning parking challenges facing downtown Ridgefield retail and recommendations for improvement. He stated that none of the recommendations have been implemented. Mr. Light mentioned that ideas need to be enforced to help the parking situation through the EDC, and the PA does not seem to get anything done. Mr. Seem asked what the top changes to improving parking would be if the PA were to report to the EDC. Messrs. Light and Devine suggested re-doing all the parking permits and parking permit process with a reallocation, computerizing, and

re-issuing permits. Mr. Light mentioned providing specific spots for employees instead of requiring retail store employees to move their cars.

Rudy Marconi, the First Selectman, noted that many parking spots have been designated at the request of landlords and store merchants. Leases are being reviewed and are agreed upon with the landlord to set parking requirements. He explained some parking issues in more detail, including the Governor Street parking lot.

Ms. Burns re-joined the meeting.

3. Zoning Board of Appeals.

Glenn Smith, Chairman of the Zoning Board of Appeals (ZBA), and Kelly Ryan, ZBA Administrator, discussed the proposal made by Ms. Ryan to the CRC in her December 5, 2017 memorandum to Mr. Marconi. That memorandum proposes that appointees to vacant positions on the ZBA and to vacancies for ZBA Alternate serve the full remainder of the five-year term that they are appointed to fill, rather than having those appointees serve only until the next municipal election, with one result of implementing this recommendation being that no person would be elected at a forthcoming municipal election to fill the remaining portion of the term of a member of the ZBA or a ZBA Alternate.

Mr. Smith explained that the goal of the ZBA is to keep the membership as consistent as possible by having only one new member to the five-member board each year. He stated that there is a long period of learning upon becoming a ZBA member, which is sometimes accomplished by a ZBA member first serving as a ZBA Alternate. When the seat of a person appointed to fill a ZBA vacancy is subject to a municipal election to fill the remaining portion of the term, there is less stability of membership, which impedes the effective functioning of the ZBA. In explaining the reasons for the recommendation, Mr. Smith acknowledged that the ZBA has not researched its legality under Connecticut law, and he invited the CRC to check the legality. Nevertheless, if it is legal he asks that the CRC consider making the proposed change.

Ms. Burns explained the duration of terms of ZBA members in other towns in Fairfield County, and she also explained that in some towns ZBA members are appointed rather than elected. She noted that many towns designate four-year terms.

Mr. Smith responded that such a change would not be a good idea, because every two years either two seats or three seats on the five-member ZBA could change, thus diminishing the experience level of the ZBA members. Mr. Smith stated that if the results of an election were to change three of the five members, that large change in membership would have a greater change in the ability of the ZBA to do its work well than such a change would have on most other Ridgefield municipal boards.

In a discussion of how the 2017 election worked regarding ZBA and ZBA Alternate positions, Mr. Shapiro expressed his recollection that a single person had run for the remaining two years of a term as ZBA Alternate, the remaining three years of a term as ZBA Alternate, a full five-year term beginning one year hence as a ZBA member, and the remaining one year of a term as a ZBA member. Mr. Shapiro noted that there is a proposal to not allow one person to run for more than one position in a municipal election. He focused on the fact that among the positions up for election in 2017 were a full five-year ZBA term running from 2018 to 2023, and the remaining one year, from 2017 to 2018, of a five-year term to which someone had been elected in 2013 but subsequently resigned, which Mr. Shapiro characterized as essentially the same seat. Mr. Shapiro asked Mr. Smith, assuming the Charter change recommended by the ZBA is not adopted and thus there continue to be elections for the remaining portion of the terms of ZBA members who resign, to state whether he agrees that a person should be allowed to run in one election both for a full five-year ZBA term commencing one year hence and for the remaining one year of a ZBA term. Mr. Smith said yes, he would say so.

Mr. Steinman suggested that the CRC should consider whether the ZBA should be appointive rather than elective, because it is not a policy-making board. Rather, the ZBA administers existing laws. He asked Mr. Smith his view on making ZBA membership appointive rather than elective, and Mr. Steinman noted that under an appointive structure there could be a five-year term without having the complication of electing someone for a seat that does not take office for a year. Mr. Smith was non-committal on whether he could favor changing the ZBA from elective to appointive. Ms. Burns noted that, for example, even if the ZBA were changed to appointive, Mr. Smith would be grandfathered until the end of the term to which he was elected.

4. Joe Savino.

Mr. Savino introduced himself as a 27-year resident of Ridgefield who has served on four elective Ridgefield boards or commissions and various appointive ones. He explained that the town will need to take costs out, which will involve restructuring positions to save money. He noted that his online research shows no reason why the

position of Town Treasurer must exist. He recommended eliminating the position of Town Treasurer and having that work come under the town's chief financial officer, who is the town's Controller, Kevin Redmond.

Mr. Seem noted that the issue of cost savings could involve a broad look at all the town's positions, rather than starting with a focus on a single position, the Town Treasurer. Mr. Seem stated that the Board of Selectmen may have already started looking into this. He asked Mr. Marconi for comment. Mr. Marconi stated that they were looking at everything, but he was not prepared to talk about that at this point beyond saying that they are looking at everything.

Molly McGeehin, the Town Treasurer, said that she forwarded the recommendation of Mr. Savino to the town's Controller, Mr. Redmond, and Mr. Redmond told her that elimination of the position of Town Treasurer would add 15 to 20 hours per week to his job. Mr. Seem said that one action item for the CRC is to ask Mr. Redmond for his comment on Mr. Savino's proposal to eliminate the position of Town Treasurer.

Mr. Savino moved on to his other recommendations. One is that a person should only be able to run for one spot per cycle.

His next suggestion is to change the duration of the term of the First Selectman and Board of Selectmen from four years back to two years. Several members of the CRC asked Mr. Savino about his rationale for the change. Mr. Savino said that there is not a long learning curve on town positions. Mr. Steinman said that he disagreed that there is not a long learning curve for a position like First Selectman, which he characterized as quite complex these days. Ms. Burns agreed with Mr. Steinman. Mr. Hancock stated that having a four-year term rather than a two-year has resulted in a smoother form of government.

Mr. Davidson asked Mr. Savino what the advantages are to the town in having those positions be two years. Mr. Savino responded that it is good to have a top of ticket race, and having this every two years gets more people involved and makes elections more interesting. Mr. Davidson noted that he was hoping that Mr. Savino's rationale for his proposal of a two-year term would be that it would result in better governance rather than just be more interesting. Mr. Savino said it would result in better governance.

Mr. Savino next discussed his proposal for reducing the number of signatures of electors needed to call a town meeting. Ms. Burns questioned Mr. Savino, noting

how easy it would be to get 80 signatures, which is the first tier in Mr. Savino's proposal. Mr. Savino responded that he was more into the proposed thresholds in the second and third tiers in making his proposal. Specifically, he said that for the highest tier, five percent is a bit much.

Mr. Shapiro asked Mr. Savino whether he had seen petition efforts fail because of the percentages of electors whose signatures are required under the current Charter provisions. Mr. Savino responded that he has not, and if you want it badly enough you get it.

5. Mr. Baldelli, Director of Planning and Zoning.

Mr. Seem recited to Richard Baldelli, Director of Planning and Zoning, that the February 5, 2018 letter transmitting to the CRC the recommendations of the Board of Selectmen included a recommendation to have the Director of Planning and Zoning report on a day-to-day basis administratively to the Office of the First Selectman.

Mr. Baldelli began by referring to a letter dated February 21, 2018, from Rebecca Mucchetti, the Chair of the Inland Wetlands Board and the Planning and Zoning Commission (P&Z), transmitting comments on the proposed change in the reporting relationship of the Director of Planning and Zoning. He explained the staffing in his office and the responsibilities.

Mr. Baldelli noted that P&Z develops policy, and it is conceivable that the First Selectman would have a different policy, which would put the Director of Planning and Zoning in a difficult position. He said that if a future First Selectman had a political agenda, which is not the case with Mr. Marconi, it could make it very difficult for the Director of Planning and Zoning to perform the job. He explained the various responsibilities of the Director of Planning and Zoning and how the change in reporting would impede the job of the Director of Planning and Zoning if there were a First Selectman who put pressure on the Director of Planning and Zoning not to act independently as he does now. Mr. Hancock noted that there could be a focus on better communications rather than focus on reporting relationship.

6. Any other business

Mr. Seem noted that there will be a full agenda for the CRC's March 12th meeting with the Conservation Commission, the Police Commission, and Chief Roche. He stated that he did not propose that there be a review of the Change Request Tracker at the current meeting. Mr. Shapiro noted that he plans to tweak some of the text in the tracker and that there are several new proposals, but not much. Mr. Walsh

suggested that new items should be in blue text rather than in red text. Mr. Shapiro agreed to change the color of the text for new items.

Mr. Shapiro also noted that he is periodically filing with the Town Clerk all written Charter Revision comments received by the CRC so that those comments are available to the public.

Mr. Seem noted that one new proposal is from CRC member Chuck Hancock. Mr. Hancock suggested that the First Selectman, as the CEO of the town, be a voting member of the Board of Finance because the CEO of any organization rightly considers the financial health of the organization to be a core part of his responsibility. He stated that this was his observation in many years with IBM calling on CEOs and COOs, including those of municipalities. There was some discussion as to whether the membership of the Board of Finance should be kept as five members plus the First Selectman. It was noted that there is something similar in New Canaan, and Mr. Davidson reported that in Brookfield, the First Selectman gets to break a tie. Mr. Walsh asked whether the CRC should invite the Board of Finance to speak about this proposal. Messrs. Hancock and Steinman noted that by and large, voters look to the First Selectman as being responsible for the government.

Mr. Steinman reported on his communications with the town counsel. Counsel responded with a detailed memorandum. A copy of that Research Memorandum dated February 14, 2018 is attached to these minutes and made a part of these minutes.

Mr. Steinman reported that shortly after receiving the memorandum from the town counsel, he sent the town counsel the next set of questions. He described briefly the questions posed to the counsel.

Mr. Steinman noted that the CRC is waiting for Mr. Marconi to send to the CRC a copy of the letter from the town counsel expressing the opinion that the Board of Education budget is not a line item for purposes of the Charter.

Ms. Burns distributed a map of Fairfield County showing whether members of the ZBAs in most towns are elected or appointed and the duration of their terms of office.

Mr. Seem noted that two members of the CRC will not be available for the March 26th CRC meeting. He proposed sticking with that meeting date. There was no objection.

Mr. Davidson noted that he did some research on how many towns have elected town clerks and how many have appointed town clerks. He explained that he obtained the information from the Connecticut Conference of Municipalities (CCM). He said he would send the information to CRC members. He reported that 122 towns have elected town clerks and 45 have appointed town clerks, and the CCM said that they do not know for two towns.

7. Adjournment

**Mr. Shapiro moved and Mr. Walsh seconded the motion to adjourn at 9:18 p.m.
Motion carried 8-0.**

Respectfully submitted,
Joe Shapiro, Recording Secretary

RESEARCH MEMORANDUM

TO: DLG
FROM: JDS
RE: 260688-059 – Town of Ridgefield Charter Revision Commission – Elected Office
Eligibility Requirements
DATE: February 14, 2018

ISSUES

1. Establishing Qualifications for Elective Office:

- a. To what extent, if any, does Connecticut law impose eligibility requirements (e.g. age, citizenship, residency, etc.) for elected Town offices?
- b. To what extent, if any, does the Town of Ridgefield (“Town”), through its Charter, have the authority to establish its own eligibility requirements for elected Town offices, not inconsistent with Connecticut law?
- c. By way of example, for a position such as Treasurer, could the Town Charter be amended to impose requirements pertaining to a specific degree in designated academic disciplines (e.g., MBA in Finance) or the attainment of a professional license or credential (e.g., CPA) as a condition of eligibility for running for that office?

2. Oath of Office:

- a. Does Connecticut law require an elected official to take the oath of office prior to performing the duties of the office?
- b. If so, does Connecticut law prescribe a specific period after the commencement of the term of office in which the oath must be taken? If it does, is there any penalty (such as forfeiture of the office) prescribed for failure to timely take the oath of office?
- c. If Connecticut law is silent on the issue, or if Connecticut law does not otherwise preempt the Town from addressing the issue in its Charter, could the Charter be amended to require that the oath of office be taken by an elected official within a prescribed time (e.g., 60 days from the commencement of the term of the office)? Could the Charter be further amended to provide that, upon failure of the elected official to timely take the oath of office, the right to assume the office would be

forfeited, the office would become vacant, and it would be filled as otherwise provided in the Charter for the filling of a vacancy in such office?

ANALYSIS

1. Establishing Qualifications for Elective Office

Subparts a and b: A review of Connecticut law indicates that for a person to be eligible to be an elected official of a municipality, the person must be a qualified “elector,” meaning in essence that the person must be: (1) a United States citizen, (2) at least eighteen years old, and (3) a bona fide resident of the municipality during his or her time in office. As a preliminary matter, the current Ridgefield Charter provides in relevant part that “[a] person who at the time of his or her election is not both an elector and resident of the Town shall not be eligible for election to any Town office, and any person ceasing to be either an elector or resident of the Town shall immediately notify the Town Clerk, in writing, and thereupon cease to hold elective office in the Town and the office shall be deemed vacant and filled pursuant to Section 4-7.” Ridgefield Charter, § C-4-5. This provision is lawful in its current form.

Section 1 of article sixth of the Connecticut Constitution provides that “[e]very citizen of the United States who has attained the age of eighteen years, who is a bona fide resident of the town in which he seeks to be admitted as an elector and who takes such oath, if any, as may be prescribed by law, shall be qualified to be an elector.” Conn. Const., art. VI, § 1. Section 10 of article sixth of the Connecticut Constitution provides in relevant part that “[e]very elector who has attained the age of eighteen years shall be eligible to any office in the state, but no person who has not attained the age of eighteen shall be eligible therefor, except in cases provided for in this constitution.” Conn. Const., art. VI, § 10. Thus, pursuant to the Connecticut Constitution, an elector—and by virtue of the Ridgefield Charter, a candidate for elected office—must meet these requirements.

As for statutory requirements, Connecticut General Statutes § 9-12 provides the qualifications for an “elector.” This statute provides the following:

- (a) Each citizen of the United States who has attained the age of eighteen years, and who is a bona fide resident of the town to which the citizen applies for admission as an elector shall, on approval by the registrars of voters or town clerk of the town of residence of such citizen, as prescribed by law, be an elector, except as provided in subsection (b) of this section. For purposes of this section a person shall be deemed to have attained the age of eighteen years on

the day of the person's eighteenth birthday and a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector if such person's dwelling unit is located within the geographic boundaries of such town. No mentally incompetent person shall be admitted as an elector.

- (b) Any citizen who will have attained the age of eighteen years on or before the day of a regular election may apply for admission as an elector. If such citizen is found to be qualified the citizen shall become an elector on the day of the citizen's eighteenth birthday. The registrars shall add the name of any person applying under this subsection, if found qualified, to the registry list and, if applicable, to the enrollment list, together with the effective date of his registration. The registrars may place the name of each such person at the end of the registry and enrollment lists for the voting district.¹

Conn. Gen. Stat. § 9-12.² The General Statutes also provide that “‘Elector’ means any person possessing the qualifications prescribed by the Constitution and duly admitted to, and entitled to exercise, the privileges of an elector in a town.” Conn. Gen. Stat. § 9-1(e). The only difference between the constitutional requirements and the statutory requirements for an “elector” is that the latter requires that all electors be “mentally competent.” See Conn. Gen. Stat. § 9-12(a). Another relevant statute is Connecticut General Statutes § 7-6, which pertains to a person’s eligibility to vote at a town meeting. This statute provides that “[a]t any town meeting other than a regular or special town election or at any meeting of any fire, sewer or school district or any other municipal subdivision of any town incorporated by any special act, any person who is an elector of such town may vote and any citizen of the United States of the age of eighteen years or more who, jointly or severally, is liable to the town, district or subdivision for taxes assessed against

¹ Despite the residency requirement, it is worthy to note Connecticut General Statutes § 9-19e, “Cross-town application for admission.” This statute provides in relevant part that except during the period between the last session for admission of electors prior to an election and the day after an election, a town’s admitting official may accept applications for admission as an elector from persons from any other Connecticut town. The statute further provides that the admitting official may consider the applicant’s qualifications for admission and approve or disapprove the applicant as an elector, provided that the town clerk or registrar of voters of the applicant’s own municipality approves the application. Conn. Gen. Stat. § 9-19e. Thus, by implication, it may be possible for someone living outside of the municipality to be an elected official if properly admitted as an elector through this process.

² Other relevant statutes are General Statutes §§ 9-170 and 9-171, which provide requirements for a person’s eligibility to vote in town and city elections, respectively. These statutes provide in relevant part that a person must be registered as an elector on the revised registry list last completed in order to vote in an election. These statutes further provide that the person shall be permitted to vote unless he or she has lost the right by virtue of not being a bona fide resident or by being convicted of a disfranchising crime. Further, they provide that if the person is challenged as to these qualifications, the person shall prove his or her qualifications through testimony under oath of at least one other elector or through other “acceptable” evidence to the municipality’s moderator. See Conn. Gen. Stat. §§ 9-170 and 9-171.

him on an assessment of not less than one thousand dollars on the last-completed grand list of such town, district or subdivision, or who would be so liable if not entitled to an exemption under subdivision (17), (19), (22), (23), (25) or (26) of section 12-81, may vote, unless restricted by the provisions of any special act relating to such town, district or subdivision.” Conn. Gen. Stat. § 7-6.

Ridgefield must comply with these basic statutory and constitutional requirements in imposing any eligibility requirements for elective office candidates, and although it has wide discretion in imposing additional requirements pursuant to the home rule principle,³ it must be careful that any requirements imposed do not violate the Connecticut Constitution’s equal protection guarantee. This is borne out by several Connecticut decisions which have held that a *durational* residency requirement for municipal public office is unconstitutional because it violates several fundamental rights under the Connecticut Constitution, namely, the right to intrastate travel and the right to choose one’s political leaders.

In Schiavone v. Destefano, 48 Conn. Supp. 521 (Conn. Super. Ct. Feb. 1, 2001),⁴ a mayoral candidate who did not meet the city charter’s residency requirement of being a legal voter in the city and having lived in it for at least five years brought a declaratory judgment seeking to declare the requirement unconstitutional. The superior court granted the plaintiff summary judgment, holding that the requirement violated Connecticut’s equal protection guarantee.⁵ Id. at 546-47. Relying on the seminal Connecticut Supreme Court case of State v. Geisler, 222 Conn. 672, 684-85 (1992), the court engaged in a multi-factor analysis to interpret the Connecticut Constitution’s equal protection guarantee as applied to the charter’s requirement, looking at (1) the text of the guarantee, (2) holdings and dicta of Connecticut’s appellate courts pertaining to it, (3) federal precedent pertaining to it, (4) sister state decisions pertaining to it, (5) the history of the guarantee, and (6) economic and sociological considerations pertaining to the guarantee as applied. Schiavone, supra, at 529-47. The court noted that the Connecticut Constitution did not impose a durational residency requirement on state officials and only

³ See Conn. Gen. Stat. §§ 7-187 – 7-201; see also Conn. Const., art. X.

⁴ This decision is particularly informative as it contains a table in the appendix summarizing most Connecticut municipalities’ mayoral qualifications imposed by their respective charters and codes of ordinances

⁵ This is provided in the Twenty-first Amendment to the Connecticut Constitution, which provides: “No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability.” Conn. Const., amend. XXI. Note that this is more detailed than the U.S. Constitution’s Equal Protection Clause.

imposed a basic requirement that officials be electors of the state. Id. at 531-32.⁶ The court also noted that economic and sociological considerations established that the durational residency requirement was ill suited to modern civic and political conditions in Connecticut and not reflective of pertinent Connecticut norms. Id. at 542-45 Ultimately, the court concluded that the requirement was unconstitutional because it was not “drawn with precision, [not] tailored to serve legitimate objectives,” it excluded some qualified candidates while including dubious ones, and it impinged on the following fundamental rights: (1) the right to intrastate travel; (2) the right of the people, under the Connecticut Constitution, to choose their political leaders; and (3) “a third right, which if not yet deemed fundamental is nevertheless a right of vital importance in a democracy—the right to seek elective office.” Id. at 546; see also Bruno v. Civil Service Com’n, 192 Conn. 335 (1984) (invalidating Bridgeport’s 5-year durational residency requirement because it violated equal protection rights).

Thus, although the court in Schiavone implied that a durational residency requirement may be permissible in limited situations—i.e., a residency requirement for only one year as opposed to five years—the Town of Ridgefield should be wary of the effect of this and other requirements to the extent they may impede on fundamental rights if the Charter Revision Commission chooses to implement them. The more likely such additional requirements are to impede on such rights, the more likely the Town exposes itself to potential constitutional claims.

Subpart c: In reliance on the analysis in response to the aforementioned questions, there does not appear to be any restriction in caselaw, the Connecticut Constitution, or Connecticut statutes⁷ which would prohibit the Town from imposing these candidacy requirements for positions such as Treasurer. I was unable to find any Connecticut case involving any litigation pertaining to a requirement such as one that a treasurer have a finance or accounting degree, but in one Ohio decision, a county charter was amended to include such a requirement. See State ex rel. King v. Summit Cty. Council, 789 N.E.2d 1108 (Ohio 2003). Although this case did not involve a constitutional challenge or the validity of the requirement per se, the Ohio Supreme Court impliedly upheld the amendment. That being said, aside from the fact that this decision has

⁶ The court also stated that “[t]he Connecticut constitution imposes no qualifications on elected municipal officers.” Id. at 531-32.

⁷ The only potentially relevant statute regarding municipal treasurers that I located was Connecticut General Statutes § 7-80, “Duties of treasurer. Appointment of deputy.” This statute provides in relevant part that the treasurer shall receive all money belonging to the municipality, pay it out on the proper authority, keep proper records of payments and receipts. Conn. Gen. Stat. § 7-80(a).

no binding effect on Connecticut law, the Town should be wary of potential constitutional challenges on grounds that such a requirement would violate the fundamental right of the people to choose their political leaders or the more nebulous right to seek elective office. See Schiavone, supra, 48 Conn. Supp. at 546; see also Bruno, supra, 192 Conn. at 346-51.

2. Oath of Office

Subpart a: The current Ridgefield Charter provides in relevant part that “[a]ll elective officers shall be sworn before taking office and the officer administering the oath shall record such fact in the office of the Town Clerk.” Ridgefield Charter, § C-4-5. The requirements under Connecticut law pertaining to oaths of office vary depending on the position.

Pursuant to article 11 of the Connecticut Constitution,⁸ the following state elected and appointed public officials are required to take an oath prior to assuming the duties of office: (1) state constitutional officers such as the governor, lieutenant governor, attorney general, secretary of the state, comptroller, and treasurer; (2) state senators and state representatives;⁹ (3) state judges; and (4) commissioners of state agencies.¹⁰

There are several statutes which require that certain municipal elected officials take an oath prior to entering office. Specifically, section 7-10 of the General Statutes provides that “[s]electmen, before entering upon the duties of their office, shall be sworn, and the authority administering the oath shall file a certificate thereof with the town clerk, who shall record the same.” Conn. Gen. Stat. § 7-10.¹¹ In addition to selectmen, town clerks, assessors, members of a

⁸ “Members of the general assembly, and all officers, executive and judicial, shall before they enter on the duties of their respective offices, take the following oath or affirmation, to wit: You do solemnly swear (or affirm, as the case may be) that you will support the constitution of the United States, and the constitution of the state of Connecticut, so long as you continue a citizen thereof; and that you will faithfully discharge, according to law, the duties of the office of to the best of your abilities. So help you God.” Connecticut Const., art. XI, § 1.

⁹ Conn. Gen. Stat. § 2-1 also requires that state senators and state representatives take an oath prior to taking office insofar as it requires that when the general assembly is called into regular session, an oath shall be administered to all senators and representatives at the beginning of their respective sessions.

¹⁰ Conn. Gen. Stat. § 4-1 also requires that commissioners of state agencies take an oath prior to assuming the duties of their offices: “Unless otherwise specifically provided by law, each person appointed or nominated for appointment by the Governor, with or without the advice of the General Assembly or either house thereof, and each person appointed or elected by the General Assembly or either house thereof, shall be sworn and shall hold office for the term prescribed by law and until his successor is appointed and has qualified. Such persons shall receive no compensation for services unless the same is prescribed by law, but shall receive their actual and necessary expenses incurred in the performance of their official duties.”

¹¹ Conn. Gen. Stat. § 1-24 provides that in any matter before the chief elected official of a municipality, the chief elected official may administer the oath.

board of assessment appeals, tax collectors, constables, and where appropriate, civil service commissioners, are required to take an oath prior to performing the duties of their offices.¹² See Conn. Gen. Stat. § 7-17 (“Town clerks, before entering upon the duties of their office, shall be sworn, and the authority administering the oath shall file a certificate thereof with the town clerk, who shall record the same. The moderator of any town election at which a town clerk has been elected may administer to such town clerk the oath required by law.”); Conn. Gen. Stat. § 7-88 (providing that each person elected as a municipal constable shall take the oath of office before the commencement of the term or within thirty days thereafter before “some proper officer” who must then certify that the oath was taken in writing and must record the certification with the town clerk “without delay”); Conn. Gen. Stat. § 7-105 (“Each person appointed an assessor or appointed a member of the board of assessment appeals or a collector of town taxes in any town shall be sworn before entering upon the duties of the office to which he has been elected or appointed.”); Conn. Gen. Stat. § 7-408 (providing in part that CEO of political subdivision shall appoint three persons as civil service commissioners to serve on civil service board, all of whom must take the oath prescribed for executive officers).¹³

Aside from the aforementioned officials, there are certain municipal officials who, although not required to take an oath prior to assuming office, nevertheless may be required to do so if the municipality implements such a requirement under its charter. For example, in a manner similar to Ridgefield, Madison implemented an oath requirement for all of its elected and

¹²An oath is also required for a registrar of vital statistics who is elected under special law. See Conn. Gen. Stat. § 7-39 (“The moderator of any town election at which a registrar of vital statistics elected under special law has been elected may administer to such registrar the oath required by law.”); see also Conn. Gen. Stat. § 7-37 (“(a) The town clerks of the several towns shall be, ex officio, the registrars of vital statistics in their respective towns, except in towns where such registrars are elected or appointed under special laws, and shall be sworn to the faithful performance of their duties as such. (b) If a registrar of vital statistics is appointed under a special law or a town charter, the appointing authority or, if none, the chief executive official of the town, shall, not later than ten days after such an appointment is made, file a notice of such appointment with the Secretary of the State, indicating the name and address of the person appointed, the date and method of such appointment and the law under which the appointment was made. Not later than ten days after a vacancy occurs in the appointed office of registrar of vital statistics, the first selectman or chief executive official of the town shall notify the Secretary of the State of such vacancy. (c) In addition to the requirements of subsection (b) of this section, any newly elected or appointed registrar of vital statistics shall, not later than ten days after the date of assuming office, provide written notification to the Commissioner of Public Health of such election or appointment. In the event of a vacancy, the first selectman or chief executive official of the town shall notify the Commissioner of Public Health of the vacancy not later than ten days after the date of such vacancy.”).

¹³ This statute only applies if a political subdivision of the state (i.e., a municipality), elects to adopt a merit system for selecting and promoting public employees within the subdivision. See Conn. Gen. Stat. § 7-407 (providing that political subdivision may elect to have such a merit system and how the subdivision must adopt the system if it so chooses).

appointed officials in its charter.¹⁴ Similarly, Hartford's charter requires that members of its city council ("Court of Common Council") swear to an oath prior to assuming the duties of office, and its code of ordinances further requires that other municipal officials take oaths when state laws or other laws require them.¹⁵ See Hartford Municipal Code Ch. 2, Art. II § 2-45. This suggests that a municipality may enact ordinances, bylaws, or provisions in its charter which require oaths for certain public offices.

Subpart b: Aside from a select few official positions, there are generally no specific provisions in the Connecticut Constitution or statutes that expressly require that an oath be taken within a specific period of time. As mentioned in the previous subpart, the only municipal official who is required to take an oath within a specific period of time is a constable. See Conn. Gen. Stat. § 7-88. This statute provides that if the person assuming the office of constable does not take an oath before "some proper officer" within thirty days of being elected, the office will be vacant and filled pursuant to Conn. Gen. Stat. § 9-220,¹⁶ which requires that the selectmen appoint someone for the position.

¹⁴ This provision provides the following: "**Oath:** All elected and appointed officers and members of permanent boards or commissions of the Town shall swear or affirm the faithful performance of their duties." Madison Charter, art. XI § 11.3. Bridgeport has implemented a similar blanket oath requirement in its charter and in its code of ordinances: "Every officer of the city shall, before he enters upon the duties of his office, make oath or affirmation before some competent authority for the faithful and impartial discharge of the duties of such office . . . A certificate of such oath or affirmation, under the hand of the authority administering it, shall be lodged and kept on file in the office of the city clerk." Bridgeport Municipal Code § 2.04.020.

¹⁵ Hartford's charter provides in part that "The mayor shall convene the council at 7:00 p.m. on the first Monday immediately following January 1st of each even-numbered year for an organizational meeting. The city clerk shall administer the oath of office to all members." Hartford Charter, Ch. IV, § 4. Hartford's ordinances further provide the following in relevant part: "Before any person required by the Connecticut General Statutes or by ordinance to be sworn shall be qualified to enter upon the duties of office, the individual shall receive from some individual qualified to administer oaths a form of oath specifying the office for which the individual is qualifying and requiring the individual to perform all the duties and obligations thereof, faithfully and uprightly, according to the best of the individual's ability, during the full term for which the individual shall hold or continue in such office by election or reelection. Such person shall receive from the individual administering the oath a certificate that the oath has been administered in due and legal form, and shall lodge the certificate with the city clerk, to be kept on file by the clerk; provided, however, that when any such oath shall be administered by any qualified individual at any meeting of the council, a record of the fact by the clerk of the council, as a part of the proceedings of such meeting naming the individual present and sworn, shall be sufficient without a certificate. Whenever any person continues in office by reelection or reappointment no new oath shall be required of said person." Hartford Municipal Code, art. II, § 2-45.

¹⁶ This statute, titled "Town office," provides the following: "If any town office in any town is vacant from any cause, such town, if such office is elective, shall, except as otherwise provided by law, fill the vacancy at the next town election or at a special election called for such purpose in accordance with the provisions of section 9-164, but, until such vacancy is so filled, it shall be filled by the selectmen. The selectmen shall fill all vacancies in offices to which they have the power of appointment."

As for other municipal officials, given that there are no requirements for the time period of taking an oath of office, there are no statutory penalties for one's failure to do so. That being said, however, cases illustrate what can happen in similar situations. In Furtney v. Simsbury Zoning Com'n, 159 Conn. 585 (1970), applicants for a zone change challenged the action of a municipal zoning commission on the ground that an alternate member had not taken the required oath prior to serving on the commission and should have been disqualified. Id. at 595-99. On appeal, the Connecticut Supreme Court affirmed the applicability of the de facto officer doctrine, which stands for the proposition that a public official's actions will still have legal effect even if he has not complied with all procedural requirements—i.e., he has not taken the required oath prior to acting—as long as he was publicly and validly appointed or elected to office. Id. at 595-96. Therefore, the Court affirmed the lower court's rejection of the applicants' challenge and held that the challenged commissioner was an officer de facto. Id. at 596. Other courts have acknowledged the applicability of this doctrine in cases where a public official merely fails to take an oath prior to taking some official action. See, e.g., Wysocki v. Somers Planning Com'n, 2010 WL 937278, at *2-3 (Conn. Super. Ct. Feb. 17, 2010) (selectman's failure to be properly sworn in before sitting on commission did not affect commission's de facto authority to rule on re-subdivision application); Sweeney v. Zoning Bd. of Appeals of Town of Fairfield, 2009 WL 2506302, at *3 n.2 (Conn. Super. Ct. July 10, 2009) ("In order to serve as member of a land use agency a person must be duly elected or appointed and take an oath of office. If no oath is taken, the member is, at best, a de facto member."); Summitwood Assocs. Phase IV v. Planning Com'n, 1998 WL 518594, at *3 (Conn. Super. Ct. Aug. 7, 1998) (22 Conn. L. Rptr. 660) (noting the four categories of de facto public officers). The practical effect of the de facto officer doctrine in situations where a public official fails to take an oath prior to or shortly after assuming the duties of office is that his or her actions will be deemed valid unless and until they are otherwise adjudged insufficient.

Aside from the aforementioned statute pertaining to constables, I was unable to find any statute, case, or other authority providing that a public official must forfeit his or her office if he or she does not take an oath within a specific period of time.¹⁷ There is the possibility that a party

¹⁷ Similarly, there are no recalls in Connecticut—aside from in a select few municipalities that adopted recall authority through special acts in their charters in the early twentieth century—by which the winner of an election who fails to take an oath at all or within a specific time period can be forced to forfeit the position to another candidate. See Simons v. Canty, 195 Conn. 524 (1985) (holding that

with proper standing brings an action in the nature of quo warranto to challenge a person's legal authority to hold public office; see, e.g., Marsala v. City of Bridgeport, 15 Conn. App. 323, cert. dismissed, 209 Conn. 808 (1988) (appointed city building official sought reinstatement by means of mandamus and quo warranto when he was terminated and replaced by mayor's appointment); however, I was unable to find any case where a party sought to do this on grounds related to failure to take a proper oath, let a case where someone was successful. Finally, the current Ridgefield Charter provides in relevant part that a Town official may be terminated for "other cause." Ridgefield Charter, § C-4-7. I was unable to find any authority indicating that "cause" as used in this context includes a failure to comply with a procedural requirement such as taking an oath of office.

Subpart c: In reliance on the analysis in the previous subpart, there does not appear to be any law restricting or preempting a municipality from implementing into its charter a requirement that an elected official take an oath within a prescribed time, as well as a provision that the officer forfeit the position if the oath is not taken. That being said, it should be noted that prior to 2002, Conn. Gen. Stat. § 7-104 provided in part that any elected official who refused to take an oath or to perform his or her duties would be fined anywhere from \$1 to \$30. In 2002, the Connecticut legislature repealed Conn. Gen. Stat. § 7-104; see 2002 P.A. 02-89, § 90; which suggests that fines may be disfavored in situations where a public official fails to take an oath. Ultimately, however, there is no statute, constitutional provision, or case that expressly prohibits a municipality from implementing these measures in its charter.

because General Assembly has not enacted legislation explicitly conferring power to recall elected officials and authority is not implied in other powers, towns cannot enact recall provisions by charter or ordinance).