

March 25, 2019

Nathan Poore, Town Manager
Town of Falmouth
271 Falmouth Road
Falmouth, ME 04105

RE: Long Range Planning Advisory Committee

Dear Nathan:

You have asked for my interpretation of certain town charter and ordinance provisions related to the Long Range Planning Advisory Committee (“LPAC”) and the applicable term limits for LPAC members. The purpose of LPAC is “to advise the council on the land use policies of the town.” See Code of Ordinances, Art. II (“Ordinance”), Sec. 2-70(b). LPAC membership is governed both by charter¹ and by ordinance.²

¹ A 2009 amendment to the Town Charter established LPAC as a committee and set forth terms for committee members as follows:

Long Range Planning Committee. There shall be a Long Range Planning Committee which shall be appointed, and have such powers and perform such duties as are provided by the laws of the State of Maine and ordinances duly adopted by the Council. Members of the Long Range Planning Committee shall be eligible for three consecutive three-year terms. For the purposes of this section, an appointment as an alternate member or an appointment to an unexpired term of less than 18 months shall not be considered a term.

Falmouth Town Charter, Section 704.

² Section 2-71 of the Ordinance addresses the appointment and the term of LPAC members as follows:

- a. The town council shall appoint a standing committee of seven town residents made up of one member of the town planning board and six citizens of the town. The town council shall appoint up to six additional residents to the standing committee on an ad hoc basis to assist with the development or update of the comprehensive plan.
- b. The initial standing committee shall consist of two members appointed for one year, two members appointed for two years and three members appointed for three years. Thereafter members shall be appointed for periods of three years.
- c. Ad hoc members assisting with the update of the comprehensive plan shall serve one three-year term or through completion of the project, whichever comes first.
- d. All committee members shall serve without pay.
- e. The committee shall annually choose one of its own members to serve as chair.
- f. Any member of the council may serve as the council liaison to the committee.
- g. The town council shall have the power to remove any member, standing or ad hoc, for cause, and shall also have the power to replace appointees who voluntarily leave the committee.

March 25, 2019

Page 2

The Town Council is authorized to appoint a standing committee of up to seven (7) residents who are the regular members of the committee. *See* Ordinance Section 2-71(a). Except for the staggered terms that applied upon the initial formation of LPAC, regular LPAC members are appointed for three-year terms, and the terms are consecutive to each other whether or not there is a vacancy. *See* Ordinance Section 2-71(b); *see also* Ordinance Section 2-43(b) (“All appointments [to LPAC] shall be for three-year terms.”). These regular LPAC members are thus subject to the “three consecutive three-year” term limit provided in Section 704 of the Charter.

In addition to the seven regular LPAC members, the Council is authorized to appoint up to six (6) ad hoc members to the committee when necessary to assist the regular standing committee on a temporary, project-specific basis.³ *See* Ordinance Section 2-71(a). Ad hoc members are not regular standing committee members of LPAC, and their role is expressly limited under the Ordinance. Section 2-71(c) requires ad hoc members of LPAC to serve as limited members of the committee for a term of variable length lasting only until a specific project is completed but in no case more than three years. Unlike regular standing committee members, ad hoc LPAC members do not serve fixed, three-year terms.

You have inquired whether the “three consecutive three-year term” limitation contained in Section 704 of the Town Charter applies to both regular and ad hoc members of LPAC such that no LPAC member, whether regular or ad hoc, could be eligible to serve more than a total of nine (9) consecutive years. More specifically, the question you have posed is whether an individual who has recently completed three consecutive three-year terms as a regular LPAC member may thereafter be appointed as an ad hoc LPAC member for a specific project without violating Section 704 of the Charter. Based on my review of the relevant charter and ordinance provisions, it is my opinion that this is permissible. I reach this conclusion for four reasons.

First, when viewed in the context of the ordinance provisions governing LPAC, I believe that Section 704 of the Charter should be interpreted to impose a three consecutive three-year term limit for regular standing committee LPAC members only, not ad hoc members. Ad hoc members of LPAC are not addressed at all by the relevant charter language, and unlike regular members, ad hoc members are created by ordinance, not by charter. Moreover, the term limitation for LPAC members in the charter describes three consecutive three-year terms. But under the ordinance, ad hoc members do not serve three-year terms, only regular standing committee members do. *See* Ordinance, Sections 2-71(b), 2-43(b). Nor are ad hoc members appointed for consecutive terms; instead, they may only serve one term the duration of which is tied to the completion of a specific project. *Id.*, Section 2-71(c). For this additional reason, it would be illogical to apply the charter’s term limit for regular LPAC members to ad hoc members. *See Fryeburg Trust v. Town of Fryeburg*, 2016 ME 174, ¶ 5, 151 A.3d 933, 936 (the terms of a charter provision should be “construed reasonably, considering its purposes and structure and to avoid absurd or illogical results.”).

³ It is my understanding that, over the years, ad hoc members of LPAC sometimes have been informally referred to as “LPAC-Plus” members although that term does not appear either in the Charter or Ordinance.

March 25, 2019

Page 3

Second, there is nothing in the Charter or the Ordinance that prohibits LPAC members who have served three consecutive three-year terms as regular members of the standing committee from then serving a separate single temporary, project-specific term as an ad hoc member.

Third, it is also worth noting that the Ordinance and Charter both recognize other situations in which a short-term appointment to a committee is permitted in addition to the three consecutive three-year (or 9 consecutive year) term limit. For example, under Section 704 of the Charter, “an appointment [to LPAC] to an unexpired term of less than 18 months shall not be considered a term.” Under this provision, if, in addition to serving 9 consecutive years as a regular standing committee member, a member also was appointed to an unexpired term of less than 18 months created by a vacancy, that LPAC member would have served a total of 10 ½ consecutive years. Another example is the appointment as an alternate member to the Planning Board, the Board of Zoning Appeals or LPAC, which is also not considered a term under Sections 701, 703 and 704 of the Charter, respectively. Similarly, Section 2-43(m) of the Ordinance states: “Upon the expiration of their terms on December 31 of each year, all members serving on the boards, committees, and commissions for the town shall continue to serve until their successors are appointed and qualified.” This section acknowledges that notwithstanding the three consecutive three-year term limit for certain boards and committees found in the Charter, these members can continue to serve on a temporary basis beyond nine consecutive years without violating the Charter.

Finally, this separate treatment of regular and ad-hoc members makes sense. Unlike regular standing committee members who are appointed by the Council for three-year terms to work on a broad range of land use policy issues, ad hoc members serve a more limited role when appointed by the Council on an as needed basis for a term that ends upon completion of the project subject to a three-year maximum.

For all of the reasons discussed above, it is my opinion that a reviewing court would likely conclude that it would not violate the Town Charter for the Town Council to appoint an individual who has previously served nine consecutive years as a regular LPAC member to serve as an ad hoc LPAC member on a temporary, project-specific basis.

I trust that this is helpful and responsive to your inquiry. Please let me know if you would like further assistance with this matter.

Sincerely,



Amy K. Tchao