

TOWN OF TIVERTON

TOWN COUNCIL

January 22, 2019

[PROPOSED] RESOLUTION RE: TOWN SOLICITOR CONTRACT

WHEREAS, Section 803 of the Tiverton Home Rule Charter (the “Charter”) states that the Town Solicitor shall be “appointed by the Town Council to serve at the pleasure of the Town Council,” such position being an independent contractor relationship and at will;

WHEREAS, at-will relationships do not inherently require a contract;

WHEREAS, not each and every single binding contract and legal obligation of the Town is in fact, or need be, expressly approved by an affirmative vote of the Town Council;

WHEREAS, the Charter gives the Town Council authority to appoint:

- The Board of Canvassers (Section 201)
- Members of the Tax Assessment Board of Review (Section 605)
- The Municipal Court Judge (Section 805(a))
- Members of the Tiverton Housing Authority (Section 906)
- Members of the Planning Board (Section 1001(b))
- Members of the Zoning Board of Review (Section 1002(a))
- Members of the Conservation Commission (Section 1003)
- Members of the Open Space and Land Preservation Commission (Section 1004)
- Members of the Recreation Commission (Section 1005)
- Members of the Cemetery Commission (Section 1006)
- Members of the Personnel Board (Section 1007)
- Members of the Tiverton Harbor and Coastal Waters Management Commission (Section 1008)
- Members of the Historical Cemeteries Commission (Section 1012)
- Members of the Tree Commission (Section 1013)
- Members of the Economic Development Commission (Section 1014)

and the details for all of these positions are established through law, policy, custom, practice, inherently, or even the budget process itself rather than by contract;

WHEREAS, the Municipal Court Judge and members of the Board of Canvassers receive payment for service in their positions, but they do not have contracts;

WHEREAS, in conspicuous contrast to the foregoing, Section 1008(c) gives the Town Council authority to appoint a Harbormaster *but specifically requires* that the “selection process shall comply with the provisions of this Charter concerning the hiring of municipal employees”;

WHEREAS, even so, the Town does not appear to have a signed contract with the current Harbormaster appointee;

WHEREAS, in conspicuous contrast, Section 501 gives the Town Council authority to appoint the Town Administrator *but specifically requires* that the appointment be for “an initial contract period not to exceed three (3) years”;

WHEREAS, the Charter gives the Town Administrator authority over every other municipal appointment (excluding vacancies for elected positions);

WHEREAS, Section 407(13) *specifically* gives the Town Council authority to “review and ratify all tentative agreements negotiated for the Town *by the Town Administrator*”;

WHEREAS, it would be nonsensical to suggest that the Town Administrator be the Chief Negotiator for the Town in the case of a contract for the Town Administrator, and yet the Charter does not provide any language distinguishing this position from other Town Council appointments;

WHEREAS, Section 407(13) also requires “the details of any tentative agreement shall be made public at least three days prior to the meeting at which the final approval vote is to be taken,” *but only* for “labor or collective bargaining agreements requiring approval of the Town Council”;

WHEREAS, the position of Town Solicitor is neither “labor” nor “collective bargaining”;

WHEREAS, at the March 18, 2015, meeting of the Tiverton Town Council, the council emerged from executive session and appointed Anthony DeSisto Law Associates as Town Solicitor (and zoning attorney), with then-President Denise DeMedeiros stating, according to the minutes of the meeting, that “the Town Administrator [would] meet with the firm[] appointed in the morning and prepare an agreement of terms”;

WHEREAS, no ratifying vote for those terms appears to have ever been taken;

WHEREAS, Solicitor DeSisto appears to have operated as Town Solicitor for three years and nine months under the terms of a draft proposal submitted prior to the March 18, 2015, meeting at which his firm was appointed, rather than a signed contract;

WHEREAS, on November 16, 2018, shortly after the November 6, 2018, election, Solicitor DeSisto submitted a letter to the Town Clerk requesting that his firm not be reappointed, which letter appeared on the newly elected council’s first meeting agenda, on November 26, 2018, as “Town Solicitor Anthony DeSisto Resignation,” which the Town Council accepted as such at its November 29, 2018, meeting;

WHEREAS, at the December 10, 2018, meeting of the Tiverton Town Council, Vice President Justin Katz proposed a special meeting to interview and appoint Attorney Giovanni Cicione (Cameron & Mittleman, LLP) as Town Solicitor, and the council set said meeting for December 27, 2018, the agenda of which allowed for the consideration of other attorneys;

WHEREAS, on December 11, 2018, Vice President Katz provided the Town Administrator with contact information for Attorney Cicione to be available for council members and others;

WHEREAS, on December 26, 2018, Attorney Cicione transmitted to the Town Administrator a proposed written contract to reflect his possible at-will engagement;

WHEREAS, at the December 27, 2018, meeting of the Town Council, Attorney Cicione had copies of his proposed at-will engagement letter with him, and he was prepared to discuss those terms at his interview by the Town Council;

WHEREAS, at the December 27, 2018, meeting, three members of the Town Council recused from participation in the interview, but not the vote;

WHEREAS, at the December 27, 2018, meeting, the existence and salient terms of the proposed at-will engagement letter were discussed;

WHEREAS, at the December 27, 2018, meeting, the Tiverton Town Council voted to appoint Attorney Giovanni Cicione (Cameron & Mittleman, LLP) “as new Town Solicitor through June 30, 2019,”

WHEREAS, on December 28, 2018, the Town Clerk and/or the Town Administrator distributed the at-will engagement letter to the members of the Town Council;

WHEREAS, the administrative effectuation of the intent and purpose of the vote is implicit, inherent, and customary in votes of bodies, such as the vote on December 27, 2018;

WHEREAS, in the presence and witness of the Town Clerk, Town Council President Robert Coulter signed the at-will engagement agreement authorized by that vote and requested that the agreement be posted online and made public;

WHEREAS, nonetheless, some Town Council members, including former President DeMedeiros, even after recusing from the matter, asserted on January 14, 2019, that a ratifying vote of the at-will engagement agreement is required;

WHEREAS, although at least a majority of the members of the Town Council and the Town Solicitor do not believe that another vote is required, the Town Council wishes to document, approve, ratify, and confirm the appointment of Attorney Cicione pursuant to the executed at-will engagement agreement for the avoidance of any doubt;

NOW, BE IT THEREFORE:

RESOLVED, that the Tiverton Town Council approves, ratifies, and confirms in all respects (1) the appointment of Attorney Giovanni Cicione (Cameron & Mittleman, LLP) as the Town Solicitor effective December 27, 2018, and (2) the at-will engagement agreement as executed and delivered, to the extent such resolution may even be necessary, but in any case for the elimination of all doubt.