



Town of Windham

Town Offices
8 School Road
Windham, Maine

Meeting Minutes - Draft

Town Council

Tuesday, September 3, 2024

6:00 PM

Council Chambers

Special Meeting.

I. Roll Call.

Present: 6 - David Nadeau, Brett Jones, Nicholas Kalogerakis, Mark Morrison, William Reiner and Jarrod Maxfield.

Absent: 1 - John Henry

II. Pledge of Allegiance.

Council Chair Morrison led the Pledge of Allegiance.

Present: 6 - David Nadeau, Brett Jones, Nicholas Kalogerakis, Mark Morrison, William Reiner and Jarrod Maxfield

Absent: 1 - John Henry

III. PUBLIC HEARINGS.

Council Chair Morrison read a Time Line he had prepared of things leading up to this meeting. (See attached)

24-166

To receive comment on proposed amendments to the town's charter pursuant to 30-A M.R.S.A. §2104(1) and summarized below pursuant to 30-A M.R.S.A. §2104(6) and order that language specific to the amendments be placed on the municipal ballot coincident with the State and Federal elections on Tuesday, November 5, 2024 for the purpose of voting on the charter amendments as summarized below:

To amend Article II, Section 3.B. to give the Town Council the authority to appoint and remove the Town Clerk on a vote of five members; Article II, Section 12 to allow the Council to waive the requirement that the Town Clerk be a resident of Windham; and Article VII, Sections 1 and 2 to remove the Town Clerk from provisions related to elected officials. These amendments will result in the Town Clerk being an appointed rather than an elected official.

Special Meeting Time Line
Scheduled 9/3/2024
Mark G. Morrison, Council Chair

Topic: Clerk position, elected vs. appointed

August council meeting 2023 - Clerk Discussion, elected vs. appointed – issue raised.

Proposed change to “appoint,” recommended by our Clerk Linda Morrell, with 30+ years in the clerk position for the Town of Windham. Agree to discuss merits further in future meeting.

July 9, 2024, scheduled council meeting. Agenda discussion item #CD 24-103, on clerk position - discussed in depth for approximately 30 minutes with 6 councilors present. J. Henry absent.

As conclusion to discussion, a Straw poll vote was taken, all 6 councilors were in favor of moving this item to the August meeting agenda for further council discussion and approval with a public hearing. Council consensus to move item forward as recommended by our clerk, to the voters in November.

Appoint clerk, require credentials as prerequisite, remove resident requirement.

8/20 scheduled council meeting, agenda item #24-084 discussed and voted by council, (Councilor Maxfield not present for vote but joined meeting later that night). Tie vote 3-3, 4 votes needed to pass. Motion failed.

8/23 Friday, Councilor Maxfield petitions me, as Chair with new language he would like to introduce for council consideration and vote. Language had a residency requirement with a waiver contingency.

Chair, deemed that this was new language and merited bringing up again as a new item/ article.

The Town Manager informed by of new language proposed. Manager initiates the purchase of an advertisement so as to provide notice of a special meeting regarding clerk. Requesting post asap, with need to post by 8/27.

8/26, Monday, Town leadership meets to finalize special meeting agenda
Present; B. Tibbetts, R. Burns, N. Kalogerakis, M. Morrison

All council members informed of special meeting scheduled 9/3/2024 by Chair.

8/27, Tuesday advertisement of public hearing published regarding special meeting to discuss and vote on clerk position posted in Portland Press Herald.

9/3, special meeting of council, 6pm. Agenda item #24-166 to discuss and vote on new clerk language. If item is passed, this language will be placed on the ballot for all townspeople to vote in the upcoming Presidential Election scheduled for 11/5/2024.

Deadline framework and conditions of note:

8/26 – inform council body of special meeting set for 9/3.

8/27 – post public announcement of special meeting set for 9/3, 7 days' notice.

9/2 – 7-day notice of special meeting met.

9/3 – hold special council meeting with public hearing.

9/5 – all items to appear on upcoming November ballot must be in final form and submitted to clerk so ballots can be printed for early voting and November 5th election.

11/5 – election. Amending charter requires 30% voter participation from last gubernatorial election. To pass, this minimum threshold must be met with at least 1 vote more than votes opposed.

Scheduling of Special Meeting 9/3/2024

All obligations met and rules of process followed per Windham Council Rules.

Ample notice given to public and council. All steps taken in support of holding this special meeting were reviewed by Windham Counsel, and determined to be in full order per attorney Mark Bower of Jensen, Baird, Law Firm.

Attachments: [24-166 Cover Sheet.pdf](#)
[Charter Question Town Clerk Complete&Summary](#)
[Memo Town Clerk Position.pdf](#)
[Legal Differences Chart re Windham Town Clerk.pdf](#)
[Town Clerk's Comments Appt-Elec 2024.pdf](#)
[Town Clerk DRAFT Job Description.pdf](#)
[Organizational Chart 2024 edit for TC appointed.pdf](#)
[Email_R_Woodbury.pdf](#)
[Email_R_Cummings.pdf](#)
[Emailed Comments to Town Council D Meehan Charter Amendment.pdf](#)
[Emailed Comments to Town Council J Whynot Charter Amendment.pdf](#)
[Councilor Henry email 8.27.24.pdf](#)
[R Cummings Previous FOAA Request Shared with Council 8.27.2024.pdf](#)
[Councilor Morrison_email J Whynot.pdf](#)
[Councilor Morrison_B Holmes_email.pdf](#)
[Town Clerk Elected vs Appointed Area Communities Survey.pdf](#)
[Email_E_Levesque.pdf](#)
[E_Gormley_email.pdf](#)
[9-3 wtc spec meeting time line.pdf](#)
[Clerk Survey 8.30.2024 MGM.pdf](#)

Public comment:

Clayton Haskell asked if we were following Robert's Rules or the Town Council Rules? Councilor Morrison said it has been a standard policy to follow Council Rules outlined in Section 29, which he read. Clayton said that is new to him and they have always gone by Roberts Rules of Order. He asked who wanted to have tonight's special meeting? Councilor Morrison said he spelled that out clearly in the timeline. Clayton said it was brought up by someone who was not at the previous meeting on August 20. Clayton said according to either rules, that cannot happen. He is against the Town Clerk be appointed.

Donna Chapman, South Windham and former Town Council member. She asked who the Parliamentarian is? Jarrod Maxfield spoke up. She asked what the rules for reconsideration are. He said that the rules are that anybody on the prevailing side can bring it up at the next meeting, and this was not a reconsideration. She noted that there was another straw poll done by, said, Councilor Maxfield on Facebook. Unfortunately, during that poll there were two other Councilors that chimed in. She said three Council members on any discussion is an illegal meeting. Where are we going from here? She said she agreed with them, the Town Clerk's position should be a hired position, but she also agreed that it needed to be done properly. If you open the Charter, you have a committee and you make the changes, these are not done in Council Chambers.

Councilor Maxfield stated that the Charter change rules are not addressed at all in the Windham Town Charter, nor in the Windham Council Rules, nor in Robert's Rules. They are dictated by the State of Maine. The State requires that if you open the entire Charter,

you need to have an elected Charter Committee. When you elect this committee, then the entire Charter is open to change. Statute 1024 is very specific and those are the rules we are going by. If you are dealing with one subject, and one subject could go across to multiple sections of the Charter, the Town Council can bring forward that information for an amendment and bring it to the town voters.

Rebecca Cummings resident of East Windham and former Town Councilor said she was throwing this out to the entire public who might be lawyers, people with municipal experience. She did look at State Statue Home Rule Chapter 111, Section 2104 under municipal officers, Section B and she wanted clarification under this section. It says alternative statements of a single amendment are prohibited. She'd like the Council, who might have more legal experience, to tell her whether the Council can legally open up the Charter for one single item, the Clerk position.

Rebecca said she has asked Linda and town staff a lot of questions regarding the 2020 election. She said "God bless you Linda, you answered every single one of my questions, even when I didn't like the answers." She has also asked about illegal's registering to vote and asked about the town giving assistance to illegal's or anyone who may have used the social security number 999-99-999 to do stuff within this town, and you answered every question."

She was part of the Council when members of this same Council sat with her and they kicked a citizen off a board or committee for not being a resident. We didn't amend the committee's or board's charge, or amend the Charter to save them, we just let them go. She said she happens to like Linda and appreciates what she does, but she also wants to protect and wants her right to vote. This is the last line of defense that we have, and if they take our ballot box, we are done. She said how ever this Council votes, remember two of these Councilors, William and Dave, are up for election this November and next year is John, Nick and Jarrod. Thank you.

Jen Marquis said she has lived in Windham her whole life. She has known the former Town Clerks Mrs. Strout and Mrs. Bernier and they were remarkable and fair, as Mrs. Morrell. She feels that the article in the most recent Windham Eagle was very misleading. Misleading in the fact that the Town Clerk's position is going to continue to be elected. When, in fact, there was a special meeting in the works for this specific agenda prior to press time. She asked if it was a way to sway the public's opinion into the false acceptance that's it's been dealt with? She implored the Council to keep this position elected, don't rush it.

Council Chair Morrison said to clarify on some of the points made he said the Windham Eagle is a weekly publication, and the problem is keeping the newspaper current, and their publishing deadlines did not fall within the means of having an ad and article written because it was past their deadline.

Mark Cobb a lifelong resident for 58 years, and he has known Linda for at least as long as she has been the Town Clerk and he said this is in no way pointed to her abilities, and this goes for Judy and a few others. He said he heard that there were four Councilors that made some decision, and he hopes that part is wrong as it should not be done before hearing from the public. You are going to make an argument about taking away an elected Windham's resident's position. It is almost like you are putting yourselves above the elected people in the Town of Windham.

He owned a business over 40 years, and he went through many years where you feel that you are the only one who can do what you are doing. He realized that there are other

people that can do what you do and even better. If we have gotten it right for so many years, what is the reason that all of a sudden we are going to take a vote of four people and change that? He says it makes no sense at all. It concerns him that we would go outside of the town because of people's allegiances, and in certain jobs it is probably not as big of a discussion, but he was comforted that she came from Windham and was looking out for Windham's best interest in everything she did.

Doris Meehan has been in town for 53 years and from what she understands is the only way the same issue that was voted on August 20 could have been brought up again was with a motion from one of the people who voted "No" last time. So, it could be brought up again if the wording was changed. So, one of the people who disagreed and felt they lost the vote, decided to change the wording, and in her opinion, as a pretense of this being a new issue, and with legal advice remained within the law. In her opinion, what has been done is not ethical. Instead of accepting a second loss on this issue, you found a way to bring it forth until it passes as you wanted it to pass.

It concerns her, due to the ethical aspect of it, that when this goes to a referendum, and if the people are persuaded by the articles that probably have already been written for the Eagle and social media, how soon will the Town Council still in all reality, be hiring, supervising and be responsible for the appointed Town Clerk? Because the Town Council was responsible for hiring, supervising, firing, etc. the Assessor until in January of 2020 it was virtually turned over, kept legal, to the supervision of the Town Manager. She said things seem shady rather than ethical and that is a concern.

Steve Napolitano said we have to be very careful when digging into the Charter. We had a vote that didn't pass and we are going to keep going until we get it to pass? That is setting a precedence that is very dangerous. He asked why are we rushing something that should have a Charter Committee and do the time that it takes to do this the right way, inform everybody the right way, but instead we are jamming this in there. He saw the emails, he put a FOAA in, it is costing us money to have the Attorney here. Bad timing, we just got our tax bills and there are a lot of unhappy people.

He saw the straw poll on Facebook and did not think that was appropriate. Town business should be here. Why are we fixing something that is not broke, do it the right way. He thinks it should be elected. Westbrook did move their Clerk to an appointed position but they have an elected Mayor. He thanked them for their time, he appreciates all of them, even though they do not agree on everything.

Council Chair Morrison wanted to make sure they were clear on something for the record. He said Steve made a comment about Ethics and a discussion that went down in regards to the Clerk discussion in July. He said that is a discussion that is on tape, and that discussion occurred at a Town Council meeting.

Councilor Kalogerakis called a Point of Order. This is a public hearing, the public speaks first, and the Council speaks after. Those are the rules.

David Brinkman a resident of 46 years on Tandberg Trail with his bride Terry, who tried to submit the conversation about this on the website. He gave the Clerk what he had printed off. He said the best justification with sticking with an elected Town Clerk is the unmistakable success that they have experienced in the 14+ years that Linda Morrell has held that office. The second best justification for that is Rita Bernier and before that Barbara Strout. Three excellent, elected Clerks from the population of Windham. In the wings is a willing understudy prepared to step up. Why must experts in clerking come from away? None of these Windham women were appointed to the Town Clerk's position

by a Council vote. They all acquired their knowledge by training and developing public service skills independent of political interference. After half a century, all of that town clerking history is dismissed. The Town Charter is suddenly in need of an amendment. Facebook is aglow with *ante* election opinions from a sitting Councilor. The Charter stipulates an elected Clerk. If it's not broken, don't fix it. Please.

Justin Whynot shared his concerns about the recent actions within the Town Hall and Town Council, regarding the Town Clerk position and the proposed Charter changes being rushed through. The Town Clerk should remain an elected position because an elected Clerk is directly accountable to the people of Windham. This ensures that the person in this important role understands our communities needs and values. Moving to an appointed model risks reducing the public's direct influence over key positions, which could erode our local democracy. The handling of this process has been deeply concerning. Democracy relies on transparency and full participation, not on secrecy and haste. The lack of notice to opposing Council members and failure to advertise in the local paper prevented a full debate, undermining the Democratic process. Local commitment is essential, while recruiting from a larger candidate pool, might seem appealing, it diminishes local accountability. A Town Clerk deeply rooted in our community understand Windham's unique context and challenges fostering trust. An outsider may have experience but they may lack the local knowledge and commitment that is crucial for this role. Consider training costs vs community trust. While there may be many costs while training a newly elected Town Clerk, the benefit of having someone chosen by the community far out weighs it. In conclusion, an elected Town Clerk reinforces transparency, accountability and local representation. The decision to change this should not be made hastily but with full consideration of its impact on our Democratic values. Thank you.

Ginny Woodman has lived in Windham for 47 years, and she is here to oppose the change to the Town Charter for three reasons. She does not want to give up her right to vote on anything that affects this town. If the Charter change is approved, all seven members should vote for the Town Clerk, not just five. The Clerk should be a resident of Windham. For those reasons the question of this amendment being put on the ballot for this November should be placed there. What really bothers her is the manner in which this item has been readdressed. One sentence in the original item has been changed. This apparently makes it a new issue and legal to readdress. This process is unprofessional, at best, and certainly is not what she expects from her town leaders. She refers to Eddie on the Leave it to Beaver show and how Eddie is sneaky and is not trusted. There are Council members who, because of this display, have lost her trust. She will be watching town government from now on.

Barb Maurais has been a resident for almost 70 years. She appreciated Chair Morrison's outlined sequence of events, and that the timing of this was properly done. She finds it interesting that people are urging that the people's voice be heard, yet are urging the Council not to send this forth to referendum in November so that our town's peoples voices can be heard. She has heard arguments in favor of keeping it elected. She is also looking forward to hearing arguments on why it is better to have it appointed. Appointed is an interview process, it is not willy-nilly and she appreciates that a proposed job description was posted in the materials that was made available for this hearing. She would recommend, so that the people's voices can be heard, that the Council pass this 24-166 order so that the people can have a voice. Thank you.

Alford Traylor from East Windham a four-year resident. He was in the Air force and has lived in a lot of places and he said it is a wonderful experience to go in the Clerk's Office. He walks in with his documents, he goes right to the counter, and he is in and out. He

has never had that anywhere else he has lived. Being in the military for almost 20 years, he wouldn't trade his ability to vote and have his voice heard. If that is our way of currently selecting the Clerk, it seems like passing a referendum asking the town to choose their right to vote for the Clerk is really, at the best, of someone else who doesn't want the town to have that choice. If the status quo is sufficient, the citizens are happy, why do we need to vote to maintain the right to vote? The government that governs best is closest to the people.

Judy Vance a Windham resident said she has worked beside of Linda for 27 great years. The Town Clerk's position has changed drastically over the past 15-20 years. This was brought up once before to a previous Manager but didn't go anywhere. She feels this should go out to the voters and let the people decide. It is a big position. Thank you.

Becky Woodbury said she also works along side Linda and Judy, and they have been great roll models for her. She never intended on participating in this meeting until there was a public vote on Facebook that had over 100 votes cast, which also stated that this was the view of the Town Council. She noted that the lawyer was in the room and asked if it was legal for the Council to have a public vote? It was a vote. She opposes this, she is the only one in the office that does. It has been made aware to her that the conversation was held from her because she opposed this. She said she was made aware that Bob was not in favor of doing it this way and she appreciates that, and in being Barry's successor, it makes you look good, not that you didn't look good anyways.

In regard to the timeline, every time this subject has been brought up, why is it always last minute and rushed to get on the ballot and not have time to discuss. Last year it was known that she opposed this, and not once did management approach her on why, and only a few Councilors did. Also, she would like to discuss that there is a succession plan in place for Linda, for someone who lives outside of the town. She asked why can't we be transparent?

Closed Public Hearing:

Manager Tibbetts said we have put in writing to the Council the concerns they have about whether it is elected or appointed, and they have also provided to the Council other information on what other communities have decided to do based on their populations. They have also put in comments on why we think it is important for having the right continuity and continuance of services.

Councilor Maxfield said we have multiple past Councilors that stood up and spoke tonight and seemed shocked that the Council Rules go to Robert's Rules. He said that has been in the Council's Rules the entire time. The entire time they sat on this Council, those were part of the rules, he asked the attorney for clarification,

Wording to Title 30-A Part 2, Municipalities Chapter 111, Home Rule was read by Councilor Maxfield. We do not need an entire Charter Committee to look at one thing. He asked the attorney for clarification on Section B - alternative statements of a single amendment are prohibited. Attorney Bower said what that is getting at is you do not want to have a situation where there is multiple Charter amendments proposed that are on the same ballot. He said that is different from what they are asserting; here there are two different version being in consideration. One which occurred at the August 20 meeting and the other which is occurring today. That is not what 2104-B is getting at. It is getting at voter confusion as to which provision would apply. That is different from what is being addressed tonight.

Councilor Maxfield said so whether at the August 20 meeting or tonight; however any votes went on either night, this is within the rules by Maine State Law on how a Charter can be amended. Attorney Bower said that is his opinion, this is a single item that does not fundamentally alter the way the town is governed. There are special circumstances where a Charter Commission may be needed, even if there was one change i.e. elect a Mayor or going from a Town Meeting form of government to a Council form of government. Those would be situations where you would need a Charter Revision and a Commission to address that, but here is one discrete topic that changes it from an elected to an appointed Clerk. That would be appropriate for an amendment procedure as opposed to a revision.

Councilor Kalogerakis spoke to the Attorney and said, so what was brought before us had to have some differences in it, correct? Attorney Bower said If you were to revoke what was on August 20, that would be a reconsideration on the exact same article, and could of happened if someone who voted in the negative on the motion wanted to bring it back again, it could be a reconsideration. What was brought before them is a legal proceeding and we are able to do this by Councilor Maxfield and seconded by the Chair. When this conversation started he heard substantive changes, does it has to be a substantive changes vs what was voted on? The Attorney said if it was a typographical error in the prior one, he did not think it would be a substantive or material change to the language and it could be argued. What we have here is language that adds a qualification to the position of the appointed Clerk that was not there before; a residency requirement and a waiver provision that allows the Council to waive it. In his legal opinion, that is a material change that makes this a different article than what was voted on August 20.

Councilor Reiner said he typed up a statement that he will read. (See attached)

Councilor Kalogerakis thanked everyone who came out and spoke, for and against. This is a strange meeting, as we all know the outcome. He said there really was no need for him to be there as he was in the nay, and his vote has not changed and neither has anyone else's. He said he has spoken to the Clerk about a few items, as well as town Managers. We are being told the sky is falling, and that concerns him as his point of view is very different. What we have a glaring need for in the town is succession planning, we are not good at it, and they had another department where we had a big problem.

When Linda ran for election she was a Deputy Clerk first and became a Clerk. She was trained as a Deputy Clerk and we have three Deputy Clerk's in the office. One definitely qualified but will be leaving from what he's been told, why aren't the other two ready to go? This is something the Council cannot control. He thinks the town must do a better job with who is staying in place and that number two is being trained so we do not run into this. We shouldn't have to make a change because we are fearful that if the next person that comes along is not able to handle the many various tasks of a difficult job. He does not think that seven people can speak as loud as loudly as fourteen thousand registered voters, but there are Councilors think that. He was told "what if they put somebody crazy in as Town Clerk, what if they circumvent an election." Really, fourteen thousand people are going to hire Bozo the Clown to do the job, he finds that hard to believe.

There has to be some type of legal ramification if a Clerk messes with an election and changes the outcome? He questioned what would happen if the Council, in ten years, is choosing the Clerk and what happens if you get two applicants and the vote is 4-3, 4-3? What will the solution be? The town must be prepared for when department heads leave, quit, get fired. That is not the Council's responsibility, that is leadership's responsibility. If they need help, we certainly have advice if they are not prepared. He is not prepared to

Comments for Special Meeting 9/3/24 – Councilor Reiner

General Statement;

Sorry for the back and forth on my availability to be here tonight, I am only able to be here as I was able to make changes in my schedule and will not likely be able to stay for its entirety. As always, I appreciate the public's input and will watch the video to see them all. My leaving early if needed will not be a hinderance to the vote this evening as currently I do not support tonight's revamp of the proposal as I do not feel that there is a substantial change between 24-084 with 24-166 which I will go into later.

Second, I would like to apologize to the Town Clerk, Linda Morrill, as these last 2 weeks have been a distraction of her service to the town for the last 21+ years. I do not wish for her last year or so to be remembered by these discussions.

So, here we are again almost exactly one year later under almost the same set of circumstances. An agenda / referendum item needs to be reworked, in a time frame that will most likely compromise public and open discussion on the issue, and we are to blame. Bringing this new proposal up for a one-night Special meeting review, public hearing, and vote does not present a good visual of the council. Yes, the prior proposal failed by a 3-3 vote, all councilors were not present, there is no blame being directed, but it is just a statement of fact. The thought that the prior proposal would have passed if all were present is an opinion, but not fact. To also state that bringing it back up tonight with added language is NOT an attempt to take a second bite at the issue is up to everyone's interpretation, but I believe it is.

Regardless, this process of poorly timed referendum discussions for the past 2 years shows something is broken and needs to immediately be addressed in the upcoming council sessions. I am sure that others up here, as well as myself do not wish to repeat this a 3rd time. In discussion with Councilor Maxfield over the last week there are ideas on how to fix this and these potential changes will likely have my full support

Social Media Comments:

I am speaking solely for myself on these and as I wrote within social media, I will not debate an agenda item in social media. I do though appreciate the apologies that were presented within social media for comments made

Preventing or blocking the public's right to vote;

I find this interesting that someone feels that as a councilor I am preventing the publics right to vote when in essence, this proposed referendum is asking for the residents to GIVE UP their right to vote for a Town Clerk which they currently hold. I for one when I no longer serve the town as a Councilor wish to retain all the rights I currently hold, and I would expect others to want the same.

Tailoring requirements to suit a specific candidate;

When comparing the two proposals the only written requirement is that of 'residency'. The process of appointment holds equal weight in both. In tonight's proposal, residency may be waived at the discretion of the council which in essence removes it as a requirement. Requirements can be specified under a position by appointment, but again they would likely be

equal for all so no advantage is given. No requirements equal no tailoring of the process. Every prospect is weighed and measured equally.

Straw polls:

Straw polls can be good to give direction, but they are Nonbinding. A statement that 'Work was performed, and a straw poll was taken so why are we now changing course' is an invalid comment in my mind. The final step of the process is that of a Public Hearing and then a vote. We have Public Comment for a very simple reason, to hear the public and only after completing that, do we register a vote. To feel that I as a councilor should be expected to hold to my straw poll decision, will never happen and I will fully reserve to vote my final decision at the proper time, which is after Public Comment. To do otherwise is simply disrespectful to our residents. Opinions, thoughts and decisions change and may directly related to what the public has to offer during Public Comment. It's the reason you all are here tonight.

Questions and Thoughts:

Appointment:

Since the position of Town Clerk is potentially moving to an appointed position is this an attempt to protect the Town Clerk from public recall which was passed just last year? Also since Town Clerk is a Department Head, will the council support all other Department Heads in the future, through attrition, to also be subject to Council Appointment? The last question is just a thought and does not have to be discussed tonight but goes to precedence.

Substantive change:

These are my thoughts on why this does not meet my standard of a 'Substantive Change'. So, I am going to bash my own prior suggestion here....

- 1- So, Appointment is the same in each proposal when comparing the language between the two, so that is a non-point.
- 2- The only change in writing in tonight's proposal is regarding residency and is the additional language of, 'unless the council waives this requirement' in Article 2, Section 12. Town Clerk Basically the change is removing residency as a requirement in 24-084, and keeping residency as a requirement but allowing it to be waived at a councils discretion, 24-166
- 3- To me there is only a Substantive change if there is a change in the process proposed. The following will be based off the guideline that 'all appointees of the council shall serve at the will of the council' thus we can terminate, and I feel we can hire an Appointed Position for ANY reasons as long as we don't;

Breach Contract

Discriminate

Retaliate

Actions that would be against Public Policy

So as a councilor I can either confirm, decline or remove an applicant for the appointment to the position of Town Clerk, for any reason at my discretion if I do not violate the 4 items above.

4- In an email from Town Manager Tibbetts dated 8/27, he provided what I assume to be answers to specific questions from our legal representatives. One of the questions was 'How would a Wavier be processed'? The answer provided was the following.

Practically speaking, if a non-resident is presented as a clerk candidate and there are 3 councilors who are not okay with a non-resident as clerk, they presumably will not vote for his/her appointment, and the candidate will not get the 5 votes needed for appointment

My words now....Specifically, there is no proposed process, no grading of a resident vs a non-resident, no point system or any other method suggested to validate a resident over a non-resident. There is no hard stop so to speak as the decision to validate the strength and weakness of a resident over a non-resident, and vis-a-versa, is solely at the discretion of the councilor. They are in essence an 'At-will' hire and serve at the will of the council and we as council are doing the hiring through the method of "appointment"

In either proposal, 24-084 (removal of residency requirement) and 24-166 (residency with the option to waive by council) I as a councilor could ignore that specific section as supported by Legal's Answer to the question of how to process a waiver. If a councilor did not agree with an applicant's residency status in either proposal, they just would just not vote for confirmation, AT-WILL HIRE. Without any gauge to show value of a resident vs non-resident, it becomes a matter of opinion without the need of explanation. We could place all the requirements we want on an application for Town Clerk, but during any application review where requirements (residency) are allowed to be waived, they become discretionary. Thus, allowing the resident requirement to be waived in 24-166 places it at the same standing as removing residency in 24-084. Furthermore, it shows that in the

process of appointment there is no substantial difference between the two proposals and tonight's proposal 24-166 should not be allowed to move forward for consideration due to lack of substantial change.

open the Charter just to change it so one person can take the job or so that we lose our right. He said they are elected by the people and represent the people. This is the second item he has seen in Town Hall where overwhelmingly people are telling us what they want and we are not voting that way. The majority of the people in two public hearings do not want this change, but we are going to do it anyways.

He spoke about how the notices are published using the Portland paper instead of the local paper, which is only weekly. He wanted to be very clear that the Council has done nothing illegal, the procedure that Councilor Maxfield and seconded by the Chair is legal. He'd like to know how the question is going to be worded on the ballot; a very simple do you want your vote for Town Clerk taken away or do you want the Town Council to decide? It should be very simple. Councilor Kalogerakis left the meeting after his comments, as he already knows the outcome, and he said when this passes fight it at the polls because they will have to respect it then. Thank you.

Councilor Maxfield - "Why bring it back? It's my fault, I missed the vote." He respectfully disagrees with Councilor Reiner, had he been here this would have passed. He made it clear where he stood and others made it clear where they stood. They had the exact same issue last year where Windham voters were denied their chance to vote on something because of a scheduling conflict. He said these are big issues and what is ironic, with this group, it that all of us are arguing, literally, for the exact same thing but on different sides of the coin. Folks want people to be able to vote on their Town Clerk and not have the Council decide. He agrees wholeheartedly, the people of Windham should be able to vote on whether they want to keep it as an elected official or an appointed official, and not have that vote be only the Council.

In his opinion, this has become a partisan issue. He spoke up the other day after seeing on a local political organization's website a Facebook post that really mislead what actually happened and what was going to happen. He engaged on that page, and they had a respectful back and forth sharing their views. He has been on the Council since 2016 and around 2017 people told the Town Manager that he shouldn't be allowed on Facebook. He said that is the new Town Square and he is an elected official, and if he wants to get his views out to people, he has a full right to do that. If he wants to get views back from his constituents, he fully has a right to do that, as does any Councilor or any member of the public. Just because they are Councilors they do not lose their freedom of speech, and he feels they should use it more to reach and find out what people are thinking. Not just this group or that group, but everybody as a whole.

He did not intend for any illegal meeting, and he guesses it would come down to legal. Asking a poll on Facebook is not against the rules. Two other Councilors chose to post on that, and in review, he did not see them discussing anything of substance. Councilor Reiner had an issue with a comment he made in his statement and maybe he could of said that better. After reading online what a local political group is saying about the Town Council, after reading online a fellow Councilor saying he is unethical, after reading online a fellow Town Councilor liking a post that he is scummy, he was a little worked up, and he wants the town's people, in our busy summer, to know what is going on because most people are not paying attention.

About the newspaper, if 5% of the people in town knew we published a public hearing in the newspaper, he would be surprised because most people are not reading the newspaper. In his post he did have a typo, and if people want to hang him on a typo, that is fine, he understands. Based on the Council Rule of Ethics he literally prefaced that with "this is my personal opinion", and he was supposed to say "and doesn't reflect the view of the Council." He thinks anybody who read that and is sensible knew that is what

he meant. As soon as it was pointed out he made an amendment to it. He immediately wanted to take it down, but with freedom of access acts he didn't know if he could because he wrote about a town issue. You cannot edit a poll on Facebook. He conferred with the Attorney, it was done on his own Facebook page in a public forum, not on the Town website and he immediately took it down. He is very sorry about that and it was clearly a typo. Over 100 people did vote and approximately 80% of the people said they did not want the Town Council to make this decision on their own. He stated he has no vested interest in how this goes, and he probably by any means will not be sitting here in over a year when this comes up. He might be, but he has done almost his nine years of service to the town and has worked hard.

If he hears about the succession plan again, he is going to go nuts. He does not know about any succession plan, or about the next person. He knows about getting them getting the best person for Windham. If he was sitting on a Council that had to vote, he would be looking, like they have done with the Town Manager, Assessor and he would look for the best person. In speaking to the Town Assessor he said the only change they made in 2020 is the Council gave the day to day operations to the Town Manager but the Assessor is still appointed by the Council.

He said he does not want to be in this position ever again. This issue was talked about for 30 minutes in July and a straw poll was done and it was agreed to move it forward to a vote in August. He was not able to attend that meeting, but the rules allow for that to come back and he made that change and he asked for it to come back. He is trying to defend Linda and her idea. He is kind of tired of hearing from people about how great Linda is and how we trust and love her, but by the way, I'm not going to listen to Linda. Linda is in a better position as a Town Clerk than any of us to know the pitfalls that this town could fall into. She has been warning us since our last Town Manager. A past Councilor stated that this has been talked about for 5 or 6 years. Never once, except for last August, has this ever been discussed in a meeting he has been part of.

Councilor Maxfield said on August 23 he called and spoke with each Councilor who dissented and he did not ask them to change their votes, he told them his exact thoughts and what he was going to do, and based on the timing, because Linda needs printed materials by the 5th of September, we would most likely have a special meeting. No one was not notified, there was notification, and it was moved forward. They've not broken the rules, and he doesn't think anyone on the Council is asking to take away anybody's rights. He said come November he wants to be one of fourteen thousand people who votes on whether we make this change or not. He does think it is an uphill battle for this to change, and most likely the people will vote it down. It is a lot of information if you do not research it, but he fully supports people having the ability to make the decision. If we have one person who might be qualified, who currently works here and that is the only person that runs, because they live in Windham, is that really giving the voters a vote or is it just giving the voters the only option that some people want them to have? He trusts in Linda and the people who work in her office, and more importantly, he trusts in the Windham voters to make the decision.

Councilor Nadeau said as far as Robert's Rules, it is a document that the Council runs the meeting by, but it isn't the only thing. What out weighs Robert's Rules is the Charter and the Council Rules; that is what they go by, not by Robert's Rules. Sadly, it is brought up by a gentleman who wants to sit here again and tells us that we are doing it wrong. He supports Linda, but he also did his homework. There is twenty-eight towns out there and twenty-four of them are appointed. All these Clerk's you call, they say "don't elect, appoint, it is too difficult a job." Linda was the one that initiated it, and he supports Linda, as he the last time and he will this time. He does believe that it has become political,

and to Nick's point of supporting the people who come in this room and tell you what they want, there are 14,000 voters, almost 20,000 residents in town that have a say too, but didn't come in this room to say it. They have to be support too.

Councilor Jones said he was in support of it when Linda came forward on August 20. Most of what was said tonight did not have anything to do with that. It was the fact that we are one of four towns in Southern Maine that still elects a Clerk. He feels that this position and the communities in this area have evolved where that is no longer what he thinks should be an acceptable way of doing it. We do not need to reinvent the wheel, but we need to look at other communities that are of equal size and challenges and take from them that this works for them. A lot of Clerks believe it should be appointed, as the job has evolved over the last 20 years and is no longer something that can just be elected every two years. He wouldn't want to have a career where he would have to reapply for his job every two years.

He said Councilor Reiner and Kalogerakis have made some excellent points about this meeting. He is concerned and disappointed how some of the events have happened over the last week or so, and he wished it hadn't happened. It hurts their working relationship within the Council that they have spent the last few years building. He hopes things can move forward and personal opinions do not factor in too much and they can do the business of the town. He does feel the people of Windham do have a right to make that decision and is in favor of moving it to the election in November and will support whatever choice is made by the voters.

Councilor Nadeau said that they, as a Council, should look at the Planning Board Rules. In their rules, if it is a 3-3 tie at any point in time, it automatically comes back at the next meeting. It would have gotten rid of all of this. He thinks they should look at that.

Councilor Maxfield would like to see a change made that anything they need to be voted on at the November election be completed and approved by June or July at the latest. Also, when he was first on the Council, they would have public hearings and meetings and then vote on them at the next meeting. He would like to see them go back to that. Exceptions could be made for things such as a liquor license, but for bigger issues like this, he finds it frustrating. Councilor Jones agreed.

Councilor Morrison said they were here tonight at the recommendation and behest of our current Clerk, Linda Morrell. For over 30 years. She is recommending that we move to an appointed position. Who better knows what is best for our town, who she loves so dearly, we should at least listen to this and take it seriously. His position is to move this on to the town's people, and to let them decide. It is not up to the Council to play gatekeeper; this is Linda's recommendation. If we do not move this forward, we are not doing our duty of informing the town's people what her recommendations are and for their consideration. That is what Council does.

Unfortunately, Councilor Kalogerakis left early after he made his point. We all sat here and listened very respectfully, unfortunately, he chose to leave and did not listen to the remaining Councilors who had not yet spoken to provide their point of view. That was not respectful and he finds that very frustrating and disappointing. Attached is the homework that Councilor Morrison did over the summer when this was first brought this up. (See attached) He said those are the reasons why he is in support of moving this forward, so the town's people can make a decision, do their research, and do their own due diligence on whether they want to have an elected clerk or an appointed clerk; where they can get the best candidate in that position based on merit, and having an option of having somebody outside of the town's borders fill that position if that is, in fact, the best person.

Municipal Clerk Interviews – Elected vs. Appointed

9/3/2024

Mark G. Morrison

Aggregated responses from those interviewed (6/3-9/3/2024)

Towns operating under “elected clerk model”

Favorable Points

- Pride serving townspeople, electorate
- Known more in the community and likely more involved in the town outside of work
- Accountable to townspeople only, doing the best job possible should yield reelection
- On par with town manager and council regarding authority
- Access to clerk after hours
- Autonomy with control – no manager or council control, only electorate
 - No manager or council influence
- Favorable hours and scheduling to clerk – they set their hours and could take time off with limited or no notice.
- Schedule to townspeople more flexible, after hours and Saturday availability if needed
- Clerk schedule is salary based and time off is at discretion of clerk
 - no limit to days off for sick time or vacation
 - hours worked may be 40 hrs./ week, but not required – option for more or less

Unfavorable Points

Competency and Election Integrity

- Complexity of Title 21A (Maine Election Law), 700+ page document. A clerk must take years to thoroughly understand and serve as a resource to the town for these elections laws which are modified and updated regularly. An elected clerk may not have the time (years) needed to build their foundation of knowledge. This is a risk to human capital resources for the town as well as continuity within the clerk's office. Clerk continuity - there is a 2 or 3 year election cycle that may produce clerk turnover impacting department consistency.
 - Competence requiring 2+ years exceeds Windham's election cycle – Huge Risk
- Town cannot require a minimum set of needed skills to fill position. Only requirement is residency per local election law.
 - Unqualified/ inexperienced person could be elected with a lengthy and complicated process to follow to remove (6 months to a year or more)
 - Someone incompetent could be in charge of overseeing elections severely impacting the integrity of that election
 - An inexperienced incompetent person could be in charge of millions of dollars in fees placing the town at great risk
 - Not subject to a background check – no way to prevent persons with questionable or criminal records – significantly exposing the town.
 - No citizen decides to run for election which leaves the town without a clerk and exposed
 - This is the current case with the Town of Wells. Current Clerk delayed retirement, and noone was elected.
 - Town voted to change clerk model from elected to appointed and this did no pass
 - Clerk retired 6-12 months past goal, and a Clerk had to be appointed from another town who had the needed experience and qualifications as an interim solution

- *See article; "Appoint the Town Clerk, Wells Mulling, Asking Voters" dated 8/14/2023 in Portsmouth Herald/ Seacoast Online detailing this "real life" problem Wells is still facing today*
- Complexity of Clerk position as towns increase in population, and technology advances, these factors require an advanced set of skills – election model is antiquated for this reason
 - Only 4 towns in Southern Maine are operating under the elected clerk model
 - 3 towns in York County and 1 town in Cumberland County
- All 4 "elected" Clerks interviewed, advocate for an appointed model versus elected, and see the council appointment and oversight as the preferred structure
 - Council body of 7 elected members still represents electorate for voter accountability
 - No one person has concentrated powers (manager appointed model)
- Popularity contest - does not get best person in clerk position necessarily
- Popularity contest could produce an embolden clerk acting in the best interest of the clerk and/or a small number of townspeople, especially when most voters are not engaged or "aware"
- Encourages nepotism/ favoritism – clerk can hire family or friends over merit/ competence
 - Wells clerk started with mother, to daughter to sister/ younger daughter spanning 50+ years
 - Special favors to individuals and groups to enrage which could be leverage to use against the best interest of the town and favor an individual, group or the clerk themselves
 - manipulation by clerk serving their self interests if embolden by a small but vocal group of voters
- Training – could refuse department training per State of Maine, possible to resist in the short run (2-3 years) which could put town and elections at serious risk. No way to remove.
- Clerk may be good at their duties, but can they manage and lead a team of deputies?
- Does not have to cooperate with council or town manager and could withhold information from both, or refuse to cooperate, resulting in stonewalling delays, increased costs and poor customer service to townspeople and a threat to voter integrity
- Difficult to replace if with an elected clerk
- Departure prior to end of term due to health reasons, family move etc. requires a special election or operation with an appointed clerk (either from inside or outside) town borders
 - Election must reach or exceed a 30% voter participation rate as required by charter referencing back to the last gubernatorial election. If the person wins and the turn out does not meet 30%, the position cannot be filled (Wells Elected Clerk problem - June, 2023)
- Replacing an elected clerk is complex and time consuming
 - special election needed with 30% voter participation of last gubernatorial
 - recall process must be followed per recall ordinance
 - 6 months before recall can be activated
 - proper papers must be filed and signed by town voters within a short time frame
 - a special vote must soon be scheduled and enacted
 - a defense process by recalled clerk must ensue
 - a clerk must be appointed as "interim" to oversee the special election to remove the clerk and this person must have the experience to run such an election. With minimal advance notice, this could be quite expensive for the town
 - Special election must be held to fill the newly vacated clerk position – also a complex and expensive process with limits of residency
 - only a Windham resident is allowed to run for clerk, significantly limiting the number of candidates eligible in the "pool"
 - Special elections are expensive, adversely affecting town budget
 - Length of time required to replace could take as long as one year, which leaves the town

highly exposed and with unbudgeted expenses occurring

- Clerk not obligated to transition knowledge, records, processes or assist with new clerk training if they are not reelected. This puts clerk continuity and general knowledge of position at serious risk. This can also cause huge operational problems, and lend itself to significant legal liability to the town as well as increased costs.
- Elected Clerk can manipulate against the best interest of the town and its residents by threatening to leave office early for self serving reasons. Here we have huge liability exposure to the town and townspeople. This is largely due to the complexity and time needed to replace an elected clerk with a residency requirement.

Clerk Appointed Model, Unfavorable

- Elected Clerk has more flexibility as they can make their own schedule giving citizens access after hours
- Elected Clerk is autonomous and is only accountable to electorate

Clerk Appointed Model, Favorable

- Clerk appointed due to merit, is superior to the elected model as prerequisites, experience and skills can be required as a means to hire. Residency requirements can be dropped or waived. Appointment thru merit, tells all concerned that they earned the position due to skill level, experience, reputation and other intangibles under a high degree of scrutiny through the hiring process. This should add a higher level of confidence in the person appointed because it is solely merit-based and under a competitive "open, rigorous and transparent process".
- Continuity – no election cycle, so long term planning and succession can be carefully carried out. An appointed clerk ensures the next person is ready for the position through on the job training and building experience so they can fill position when they are confident and ready to perform (town's can't count on deep bench strength for clerk position when limited by residency).
 - if the department bench strength is limited, alternatives and options can be taken, especially without a residency requirement so a broad and deep pool of candidates can be considered.
- No residency requirement – Clerk position can be filled from outside town borders and State borders to ensure the best person is hired/ appointed or residency requirements can be waived.
- Desired skills and experience can be required as a prerequisite to hire and credentials confirmed
- Experience – endorsements and letters of recommendation can be applied as part of appointment
- Background checks can be enacted to ensure professional standards are met, and they are a citizen in good standing
- Appointed Clerk performs duties at their very best as they strive to serve all stakeholders to the best of their abilities and are building and contributing to their professional reputation which is portable. They may choose to remain with the town or depart. Freedom to leave at any time ensures a "balance of power" is maintained
- knowledge – 3 years experience needed and a high functioning individual is needed to organize, research, stay current with all law while also engaging effectively with electorate, town employees, council and manager as well as their direct reports including deputies
- Higher voter integrity – the most competent fills clerk position and they run election for town to ensure election law (Article 21A) is followed, along with the proper process to ensure fair voting occurs without fraud and manipulation
- Replacing a clerk who retires, leaves position for any reason can be replaced in much quicker fashion with less complexity when compared to the elected model
- Replacing a clerk due to incompetence can also be replaced much more easily and quickly

when compared to elected

- Appointed by council, allows the electorate to be represented by the councilors requiring 5 members to hire or fire. This avoids a concentration of power of one and still maintains the connection to the electorate/ townspeople
- Integrity, accountability and long term department sustainability

8 town clerks interviewed and two deputy clerks = 10 clerks in total

All 8 clerks and 2 deputies, recommend and advocated for the “appointed by council” model as the best practice and most appropriate, over elected and manager appointed.

Conclusions:

The evidence I have discovered through interviews is overwhelming.

WINDHAM: Our Clerk, Linda Morrell has been advocating for the town to change to an appointed model going back to Manager, Tony Plante. She is not seeking reelection, and has 1 year left in her term. She wants the town to vote on changing to an appointed model and prefers to have the residency requirement removed to broaden the pool of candidates to fill her position upon her retirement. We have a beloved clerk of 30+ years advocating for the change to appoint. She is in the best position to know for our town. We must listen and put this to the townspeople so they can do their own research and vote. An elected clerk is an antiquated model. Virtually every town over 6,000 residents has already changed to some version of appointed. The four remaining in Southern Maine are taking action to change from elected to appointed. This is the direction Windham should go, not because we are “followers” but because we value having the best people in place for the positions they hold.

MAINE: I interviewed 8 clerks, and most had over 25 years of experience. All stated very clearly, the appointed model is the best for their town and for the integrity of the vote. Those clerks operating in an elected capacity are advocating for “appointment” over “elected” as the best long term model for their towns. They see the limitations of “elected” every day first hand and support change in their towns by moving to appointed. Each elected clerk said they want to move to appointed, in the next few years so when they decide to leave or retire, their town will be in a much better position to fill the clerk vacancy by hiring based on merit, credentials and from a broad pool of candidates - not limited by residency.

Sources:

Portsmouth Herald/ SeacoastOnline article published 8/14/2023 “[Appoint the Town Clerk, Wells Mulling, Asking Voters”](#)

Interviews:

Clerks interviewed operating under elected model

Linda Morrell, Clerk for Town of Windham, 30+ years experience

Lynn Osgood, Clerk for Town of York in position 4 years and was trained by predecessor who was clerk for 40 years.

Mary Beth Pordon, Interim Clerk for Town of Wells 1.5 years, 20+ years experience

does not live in Town of Wells, resident of Clinton and worked in Town of Lebanon as clerk under appointed model and that is where she gained her experience being applied to Wells today

Kim McLaughlin, Clerk for the Town of Old Orchard Beach, 24 years

Charlene, Deputy Clerk for the Town of Old Orchard Beach

Clerks interviewed operating under appointed model

Tody Justice, Clerk for Town of Scarborough, 30+ years experience
operates under appointed by manager model

Lisa Goodwin, Clerk for Town of Bangor, 30+ years experience
operates under appointed by council model

Abby, Deputy Clerk for City of Portland, 20+ years experience
operates under appointed model

Lori Nordfors, Clerk for Town of Gorham since 2016, 8 years experience
operates under appointed and this has been the model since the early 1980s

Jessica Hughes, Clerk for South Portland since May of 2024, operating under appointed model
background is within legal (paralegal for several years, and within higher education at the University of New England. Lives in Biddeford.

Noteable quotes:

“You need an appointed clerk to get the right person in the job with specific standards that need to be met and without a residency requirement. This gets you the best candidate and they will also do the best job for the town and the integrity of the election because you have professionals in charge running the show and they also know election law best with all the complexities of Title 21A, section 791.3”

“Appointed is the most fair as you are hiring based on merit and not as a popularity contest in the town”

“Too much risk to town and voters with elected as you just don't know who you'll get, are they going to be qualified?”

“I am an elected clerk for more than 20 years, and I have been advising our manager to change our charter so an appointed clerk can be adopted as that is best for the town” (Not Windham)

“Clerk position is too complex to put in the hands of an unknown if elected, also much better continuity within the department”

“You need to have the experience, integrity, organizational skills and commitment to the clerk profession to do the best job. You can't do that with elected”

“An appointed clerk is going to work just as hard or harder because of their commitment to their profession and they will do their best to build their reputation in their profession”

“An elected clerk is a popularity contest and the elected clerk could use this power against the town for their own benefit and cause great harm if they chose and it is very difficult to remove them.”

“I do not need to live in the town to feel close and in tune with the thoughts and needs of the residents/ voters. I do that because that is my job, and I take my profession very seriously.”

A motion was made by Councilor Nadeau, seconded by Councilor Jones, that the Order be approved. The motion passed by the following vote:

In Favor: 4 - Councilor Nadeau, Councilor Jones, Council Chair Morrison and Councilor Maxfield

Absent: 3 - Councilor Kalogerakis, Councilor Reiner and Councilor Henry

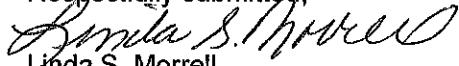
IV. ADJOURN.

A motion was made by Councilor Maxfield, seconded by Councilor Nadeau, that they be adjourned. The motion carried by the following vote at 8:14 p.m.

In Favor: 4 - Councilor Nadeau, Councilor Jones, Council Chair Morrison and Councilor Maxfield

Absent: 3 - Councilor Kalogerakis, Councilor Reiner and Councilor Henry

Respectfully submitted,



Linda S. Morrell

Town Clerk, CCM