



# Charter Subcommittee Report

## City of Newton In City Council

**Wednesday, March 21, 2018**

Present: Councilors Baker (Chair), Krintzman, Kalis and Albright

Also Present: Councilor Rice

City Staff Present: Sue Dzikowski (Comptroller), Karyn Dean (Committee Clerk)

The Subcommittee began its review of Articles 1, 3, 5 and 6 of the Charter and the Charter Commission's recommendation.

### **Preamble:**

Councilor Baker noted that the proposed preamble to the Charter was accepted by the subcommittee at the last meeting.

### **Article 1: Incorporation; Form of Government; Powers of the City**

The subcommittee reviewed Article 1 and accepted proposed language for all sections. The proposed changes were clarifying in nature and not substantive.

### **Article 3: Executive Branch**

#### **SECTION 3-1. Mayor; Election; Term; Compensation**

The subcommittee accepted the proposed language in Section 3-1 (a), (b) and (d). The proposed changes were clarifying in nature and not substantive.

The subcommittee agreed to defer Section 3-1 (c), which deals with term limits of the Mayor, until the fall as a more substantive discussion is necessary.

#### **SECTION 3-2. Executive Powers; Enforcement of Ordinances; Assistants**

The subcommittee accepted the proposed language in Section 3-2 (a). The proposed changes were clarifying in nature and not substantive.

The subcommittee also agreed to change the word "Assistants" in the heading of Section 3.2. to "Staff" in order to track with the same change in language accepted in Section 3-2 (a).

Section 3-2- (b) was deleted by the Charter Commission and in its place, the role of Chief Administrative Officer was added. Councilor Krintzman explained that role of the Chief Administrative Officer has varied under each administration. Even the title has changed from time to time from Chief Administrative Officer to Chief Operating Officer. The Charter Commission felt the position should have particular recognition with a particular term stated in the Charter. This would ensure some consistent level of professional management within the City.

Councilor Baker questioned whether this should be in the charter or in an ordinance. Charter provisions are much more difficult to change than ordinances and there could be some unforeseen situation where there might be a desire by a new administration to fill this role with someone without the particular qualifications stated.

Members of the subcommittee were not opposed to the role of the Citizens Assistance Officer. There were questions as to how prominent the role was, how much the 311 system was coming into effect and the need for this recognition in the charter. The Charter Commission felt that this is a very important role and would be up to each mayor as to how it should be employed. Councilor Baker said this role has been very valuable and there was a feeling in the subcommittee that there should be language relative to citizens assistance and the language should be reviewed further.

The subcommittee agreed to further study and review language relative to both the Citizen's Assistance Officer and the Chief Administrative Officer offered in Section 3-2 (b). While it favored retaining some reference to citizen's assistance and the addition of a reference to a Chief Administrative Officer, it would like more time to consider alternate language.

#### SECTION 3-3. Appointments by Mayor

The subcommittee accepted the proposed language in Section 3-3 (a) and (b). The proposed changes were clarifying in nature and not substantive.

The subcommittee provisionally accepted the proposed language in Section 3-3 (c) provided the Law Department confirm that this language was added to codify provisions that had previously been adopted through home rule legislation, accepted by Newton, and did not represent a substantive change.

**Clerk's Note:** After consultation with the Law Department and Councilor Krintzman, Councilor Krintzman recalled that the language in Section 3-2 (c) was not related to any Home Rule Legislation, but was instead existing language relocated to Section 3 from Section 11-2 of the Charter, as follows:

*"Sec. 11-2. Appointments and Removals. All officers and city agencies shall, subject to the laws of the Commonwealth relating to the civil service, appoint their subordinates and employees to hold office until they are removed by the officer or city agency under whom they serve; but all appointments in the Police and Fire Departments shall be approved by the mayor, who shall also have the power of removal in said departments."*

The subcommittee accepted the clarifying language in Section 3-3 (d) as well as moving language relative to the City Council rejecting appointments by the Mayor with a 2/3 vote into a new Section 3-3 (e).

The subcommittee noted that appointments by the mayor of city officers and department heads take effect within 30 days unless the City Council rejects the appointment within that timeframe. For mayoral appointment of volunteer members of boards of commissions, that timeframe is 60

days. Both, however, would require a 2/3 vote of the city council for rejection. This is not a change from the original; the subcommittee was just noting the difference. There was some question as to whether the 60-day timeframe was being followed. The Clerk noted that the 60 days is counted from the docket date. Appointments are always scheduled within that period for City Council review. Practice has been for the appointees to be able to serve after the City Council has voted approval. The Charter seems to state that the appointments should not take effect until 60 days from the Mayor's appointment, however. This should be discussed as well as whether the 30 and 60 day timeframes should be uniform.

Section 3-3 (f) which discusses appointment to multiple member bodies needs to be discussed in more detail.

The subcommittee accepted the clarifying language in Section 3-3 (g).

The Charter Commission recommended deletion of the former Section 3-3(b) which reference the appointment of a collector treasurer. This reference was overly detailed, unnecessarily detailed and did not seem to mesh with the rest of the language which gives a lot of discretion to the Executive branch. Councilor Baker said there was some sense that the treasurer needed to be financially independent of the executive and he thought the way it was solved was to make the treasurer part of the city. The treasurer is appointed by the mayor but confirmed by the council. It was noted that the trend now with most new charters is to have consolidated financial functions such as treasury, assessors and comptrollers all consolidated and under the aegis of the mayor. Councilor Baker did not see any powerful reason to retain the reference to the treasurer as it seems to have been moved into the executive department.

The subcommittee will continue the review of these Articles at their next meeting.

Meeting adjourned.

**Respectfully Submitted,**

**R. Lisle Baker, Chair**

**PREAMBLE**

We, the people of Newton, in order to reaffirm the customary and traditional liberties of the people with respect to the conduct of our local government, adopt this charter with the expectation and intent that the charter will continue and enhance the city's strong traditions of active voter participation; ethical, transparent and responsive leadership; wise use of public resources; respect for all in the community; and an engaged populace. We expect and intend that our government will be welcoming and inclusive and will promote equality and respect for all people.

**ARTICLE 3.  
EXECUTIVE BRANCH**

**See SECTION 3-1. Mayor; Election; Term; Compensation:**

(a) There shall be a mayor, who shall be elected by and from the voters of the city.

**Comment [SC1]:** SC accepted changes in this section

~~(a)~~(b) The mayor shall be the chief executive officer of the city. The mayor shall devote full time to the office and shall not hold any other elective public office, nor actively engage in any other business, occupation or profession during the term of office as mayor. The mayor shall hold office for the term of 4 years from the first ~~secular~~ day of January following the election and until the mayor's successor is qualified.

(c) No person shall be eligible for election to the office of mayor for a fourth consecutive full term.

**Comment [JK2]:** Charter Commission proposed instituting term limit of 3 consecutive terms. Recommend holding for separate discussion.

~~(b)~~(d) The mayor shall receive such salary as the city council shall determine by ordinance ~~from time to time determine~~, but no change in such salary shall take effect during the current term of the mayor in office at the time of the adoption of the ordinance making such change.

**Comment [SC3]:** Reserved for the fall 2018 SC discussion

**See:**

**SECTION 3-2. Executive Powers; Enforcement of Ordinances; ~~Assistants~~ Staff.**

**Comment [SC4]:** SC accepted changes in this section

(a) In General—The executive and administrative powers of the city shall be vested solely in the mayor, and may be exercised by the mayor either personally or through the several city agencies under the mayor's general supervision and control. The mayor shall ~~cause~~enforce the laws, ordinances, and orders for the government of the city ~~to be enforced~~, and shall ~~cause~~keep a record of all official acts as mayor ~~to be kept~~. To aid the mayor with official mayoral duties, the mayor may appoint ~~1 or more assistants~~staff, fix their salaries and define their duties.

**Comment [SC5]:** Changed to Staff to track with change in paragraph (a) below

**Comment [SC6]:** SC accepted changes in this section

~~(b) Citizen Assistance Officer~~—~~The mayor shall appoint a citizen assistance officer in accordance with section 3-3 and fix the officer's salary. The citizen assistance officer shall be responsible for processing citizen complaints and inquiries that are directed or referred to the officer. The citizen assistance officer shall establish and maintain procedures for the examination and appropriate referral of requests for information or assistance on any municipal matter. The citizen assistance officer shall maintain a central file, open to the public, of all inquiries and complaints together with their resolutions. The citizen assistance officer shall analyze data on citizen complaints and inquiries and shall regularly submit reports as directed by the mayor.~~

**Comment [JK7]:** Charter Commission recommended removal of Citizen Assistance Officer from charter – but not necessarily from office. *See also* – letter submitted to city council recommending continued and robust 3-1-1 system.

**Comment [SC8]:** The SC favored retaining some reference to citizen assistance and the addition of a reference to a Chief Administrative Officer, but reserved to later when specific alternate language is available to consider.

**See:** (b) The mayor shall appoint a chief administrative officer to coordinate and direct the operations of the various departments and functions of municipal government. The chief administrative officer shall serve at the pleasure of the mayor and be appointed on the basis of having strong administrative and executive qualifications and shall be especially fitted by education, training and experience to perform the duties of the office.

**Comment [SC9]:** See comment above

**Comment [JK10]:** Recommendation was to add a charter requirement for Chief Administrative Officer, which most administrations have had – though the title seems to have varied causing confusion – this addition was designed to provide consistency.

**SECTION 3-3. Appointments by Mayor-**

~~(a)~~

(a) The mayor shall appoint all city officers, department heads and all volunteer members of city boards, commissions, committees and agencies for whom no other method of appointment is provided by this charter or by law.

(b) Appointments by the mayor of city officers and department heads shall ~~become effective~~ take effect 30 days from the date of the first regularly scheduled city council meeting after notice of the proposed appointment is filed with the city clerk, unless the city council rejects the appointment within ~~said~~ those 30 days.

(c) ~~All officers and city agencies shall reject such appointment, subject to the civil service laws of the commonwealth, appoint their subordinates and employees to hold office until they are removed by the officer or city agency under whom they serve; but the mayor shall approve all appointments in the police and fire departments, and the mayor shall have the power of removal in the police and fire departments.~~

~~(a)~~ (d) Appointments by the mayor of volunteer members of city boards, commissions, committees and agencies shall take effect 60 days from the date of the first regularly scheduled city council meeting after the notice of the proposed appointment is filed with the city clerk, unless the city council rejects the appointment within ~~said~~ those 60 days ~~shall reject such appointment. Rejection by the city council shall require a 2/3 vote.~~

~~(b) The mayor shall appoint a collector treasurer for a term coterminous with the mayor's term and until a successor for the position of collector treasurer is qualified unless removed by the mayor prior to the expiration of such term. The mayor shall submit the proposed appointment to the city council as soon as possible after the mayor's term commences or as soon as possible after a vacancy occurs in the collector treasurer's office. The city council must approve this appointment by majority vote of the full council within 90 days from the date on which notice of the proposed appointment is filed with the city clerk as provided in section 3-4, or the proposed appointment shall not take effect. Removal of the collector treasurer by the mayor prior to expiration of the collector treasurer's term in office shall not take effect until approved by majority vote of the full city council. The collector treasurer shall receive and pay out all money belonging to the city according to the order of its authorized officers. No other person shall have authority to pay any bill of any municipal department. The collector treasurer shall have such other powers and perform such other duties as the mayor may prescribe in addition to such duties as may be prescribed by law.~~

(e) ~~(c)~~ Rejection by the city council of an appointment by the mayor under (b) or (d) shall require a 2/3 vote.

(f) Appointments to multiple member bodies may include city employees only if allowed by the multiple member body's enabling language; provided that, unless otherwise required by law, such employees shall not serve as chair of the multiple member body. Unless otherwise required by law, no city employee shall serve on a multiple member body in a seat designated for a resident of the city.

**Comment [SC11]:** SC accepted changes in this section

**Comment [JK12]:** Charter provision stating that employees (outside of fire and police department) are hired by department heads and subject to civil service laws. This codifies provisions that had previously been adopted through home rule legislation - accepted by Newton, it did not represent a substantive change.

**Comment [SC13]:** The SC decided to accept this language if home rule legislation explanation was accurate. UPDATE: This reference was mistaken. This language was not added due to HRL, but is existing language relocated from Section 11-2

**Comment [SC14]:** SC accepted

**Comment [SC15]:** SC agreed to delete this section: has been moved to control of the mayor

**Comment [JK16]:** Removed specific language on collector-treasurer, which seemed unnecessarily specific and possibly based on a unique situation.

**Comment [JK17]:** Existing language (see above) that was relocated to clarify its applicability.

**Comment [SC18]:** SC accepted

**Comment [JK19]:** This provision prohibits city employees from serving on a board or commission, unless required by the enabling statute. Charter Commission sought to remove administration influence over boards and commissions designed to be run by citizens.

~~(b)(g)~~ The question on rejection of any appointment made by the mayor shall not be subject to charter objection as provided in ~~subsection (e) of section 2-9. (Acts of 1991, Chap. 50; Acts of 1992, Chap. 173.)~~ section 2-9(c).

**Comment [SC20]:** SC accepted changes in this section

~~(h) See. The~~ mayor shall regularly, but not less frequently than annually, provide to the city clerk and the city council a listing of all vacancies on city boards and commissions, along with an indication of the appointing authority responsible for filling the vacancy. The city clerk shall make the listing available to the public electronically.

**Comment [JK21]:** This adds an annual requirement for Mayor to submit listing of all vacancies on boards and commissions to city council and city clerk. Transparency was intended to prevent vacancies going unfilled for too long or retention of unnecessary boards and commissions.

#### **SECTION 3-4. Notice of Appointment.**

In making appointments, the mayor shall sign and file with the city clerk a notice of appointment, a copy of which shall be filed on the same day with the clerk of the council.

~~See.~~

#### **SECTION 3-5. Removal of Officials; Vacancy Notification**

(a) The mayor may remove any person appointed by the mayor by filing written notice ~~thereof~~ the removal with the city clerk.

~~(b) See. If the position of a city officer or department head becomes vacant, the mayor shall~~ notify the city clerk and the city council within 48 hours.

**Comment [JK22]:** Required notification from Mayor to city clerk and city council of key positions becoming vacant.

#### **SECTION 3-6. Temporary Appointments.**

~~Whenever~~

If there is a vacancy in an office appointed by the mayor ~~occurs~~, whether by reason of disability, death, resignation or removal from office for any reason, the mayor may appoint the head of another city office or agency, or a city officer or employee, or some other person to perform the duties of the office for a period not to exceed 3 months. ~~Whenever~~ if a vacancy continues beyond 3 months, the mayor may make a second 3-month appointment, but no temporary appointment shall be continued beyond 6 months without the approval of the city council.

~~See.~~

#### **SECTION 3-7. Communications to the City Council; Calling of Special Meetings of the City Council.**

(a) Communications— Within 6 weeks following the start of each fiscal year, the mayor shall submit to the city council, and make available to the public, a complete report on the financial and administrative activities of the city for the preceding fiscal year. The mayor shall ~~from time to time throughout the year~~ not less frequently than semi-annually, by written communications to

**Comment [JK23]:** Required communication every six months of municipal revenues and financial condition of the city.

the city council, ~~keep it fully informed as~~ provide full disclosure of municipal revenues and all information related to the financial condition and future needs of the city and shall recommend such measures to ~~the council~~ as the mayor ~~judges~~ determines the needs of the city require.

(b) Calling Special Meetings —The mayor may ~~at any time~~ call a special meeting of the city council by causing a notice of such meeting that specifies the matters which the mayor desires to be considered to be left at the usual place of residence of each councilor or given to in hand ~~and public~~. Public notice of the meeting ~~to~~ shall be posted at least 2448 hours in advance of the time set for the meeting; ~~or~~ for such lesser period as the mayor may determine in case of an emergency, of which the mayor shall be the judge.

See.

### SECTION 3-8. Adoption of Measures; Mayor's Veto.

Not sooner than 24 nor more than 96 hours after the adjournment of any meeting of the city council, the clerk of the council shall present to the mayor the record of the proceedings of the meeting and copies of all measures passed at the meeting. ~~If during the 24 hours immediately following such adjournment, a motion to reconsider is filed with the clerk of the council by any member of the city council who is entitled to make such a motion, the measure shall not be presented to the mayor but shall be presented to the city council for reconsideration at its next meeting.~~

, unless a city councilor has filed with the city clerk a motion to reconsider the measure under section 2-9(d). Every measure relative to the affairs of the city passed by the city council shall be presented to the mayor for the mayor's approval except: (i) any measure relating to the internal affairs of the city council; (ii) any measure relating to the election of officers whose election by the city council is authorized by law or this charter; ~~or (iii) the budget;~~ (iii) a matter exclusively within the jurisdiction of the city council; (iv) the budget; or (v) an action taken by the city council under section 10-2(d) or 10-3(a) in response to an initiative or referendum petition.

Within 10 days of receipt of a measure, the mayor shall return it to the clerk of the council with or without approval, or with a veto. Upon the mayor's approval of a measure it shall be considered adopted. If a measure is vetoed, the mayor shall attach a written statement explaining the reasons for the veto. Measures vetoed by the mayor shall be considered again by the city council at a meeting ~~not~~ not sooner than 7 days after receipt of the mayor's veto. If the city council, ~~notwithstanding such veto by the mayor,~~ shall again pass such vetoed measure by a 2/3 vote of the full council then in office, it shall then be considered adopted. Every measure not approved or vetoed by the mayor shall be considered adopted 10 days after it has been presented to the mayor.

See.

### SECTION 3-9. Temporary Absence from the Office of the Mayor.

**Comment [JK24]:** Doubled posting requirement for special city council meetings to provide at least 48 hour notice, in line with Open Meeting Law.

**Comment [JK25]:** No substantive edits here – simply re-written to incorporate provisions from other places in the charter that fit neatly here. However – the language is also dependent upon the re-write in Article 10, which included several of these provisions as well as the re-write of Article 2.

**Comment [JK26]:** This was re-located to Article 2 because it seemed to pertain to the powers of the city council more than the executive.

**Comment [JK27]:** Intended to clarify that veto override must be by 2/3 of the membership.



Whenever

If by reason of sickness, absence from the city or ~~other cause~~ otherwise, the mayor shall be  
unable to attend to perform the duties of the office of the mayor, the president of the city council  
or the vice president of the city council in the event of the president's disability through sickness or  
absence shall, as acting mayor, possess the powers of the mayor only in those matters not  
admitting of delay requiring immediate attention, but the acting mayor shall have no power to  
make permanent appointments. If neither the mayor nor the president of the city council is  
able to perform the duties of the office of the mayor, the vice-president of the city council shall  
possess the powers of acting mayor. The city council, with approval of the mayor, may provide  
by ordinance for the handling of certain administrative duties of the mayor by other city  
councilors during the temporary absence of the mayor.

**Comment [JK28]:** Added provision regarding succession for office of Mayor.

During any period in which the president or the vice-president of the city council is serving as acting mayor, the acting mayor shall not serve as the presiding officer of the city council.

The restriction contained in section 3-1 relative to holding other office or actively engaging in a business, occupation or profession shall not apply to an acting mayor holding office under this section. See.

### **SECTION 3-10. Vacancy in the Office of the Mayor.**

(a) If a vacancy occurs in the office of the mayor, by death, resignation, removal from office, failure to elect or otherwise at any time preceding the last 9 calendar months of the term for which the mayor was elected, the city council shall forthwith call, at its next regular meeting, introduce a measure calling for a special election to fill the vacancy for the remainder of the unexpired term— and shall, within 30 days, act on that measure. The special election shall be held within 150 days and, if a preliminary election is required under section 8-3, the preliminary election shall be held within 100 days of the calling of the election.

**Comment [JK29]:** Intended to clarify ambiguity of “forthwith” and provide a specific timeline for city council to take action.

**Comment [JK30]:** Timeline for special election developed in line with many other charters and advice from consultants.

~~(a)~~(b) If a vacancy occurs in the office of the mayor during the last 9 calendar months of the term for which the mayor was elected, the clerk of the council shall forthwith call a special meeting of the city council and the city council shall by majority vote of the full council elect 1 of its members as acting mayor for the remainder of the unexpired term. If the city council fails to elect an acting mayor as aforesaid within 30 days of the date of the meeting called by the clerk of the council, the president of the city council shall become acting mayor, shall exercise all the rights and powers of the mayor and shall be sworn to the faithful performance of the duties of the office. Upon the election and qualification of any member of the city council as acting mayor under this section, a vacancy shall exist in the member's council seat. president of the city council shall serve as the acting mayor until the next election for mayor is held. If the city council president is unable or unwilling to serve, the vice president of the city council shall serve as mayor. If both the council president and the council vice

**Comment [JK31]:** Changed contingency plan for vacancy in office of Mayor. Eliminated provision calling for city council to elect an acting mayor, definite succession plan included.

president are unable or unwilling to serve, the council shall elect from among its membership a councilor to serve as the acting mayor.~~The restriction contained in section 3-1 relative to holding other office or actively engaging in a business, occupation or profession shall not apply to an acting mayor holding office under this section.~~ The removal from residency within the city shall create a vacancy in the office. (Referendum of 11-04-75.)

(c) Upon the certification of the results from the next election, the person elected to be mayor shall be immediately sworn and begin serving as mayor and the new mayor shall, in addition to the term for which the member was elected, serve for the balance of the then-unexpired term.

The mayor's removal from residency within the city shall create a vacancy in the office.