



Charter Subcommittee Report

City of Newton In City Council

Monday, April 9, 2018

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

City Staff Present: Sue Dzikowski (Comptroller), Jonathan Yeo (Chief Operating Officer), Karyn Dean (Committee Clerk)

The Subcommittee continued its review of Article 3, 5 and 6 of the Charter and the Charter Commission's recommendations. Please refer to redlined Charter language, attached, which tracks the Charter Commission recommendations and the recommendations/comments of the Charter Subcommittee.

Article 3: Executive Branch

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

Section 3-2-(b) Jonathan Yeo, Chief Administrative Officer, stated that he spoke with Mayor Fuller and Maureen Lemieux about the Chief Administrative Officer and Citizens Assistance Officer positions and their place in the Charter. They observed that each administration has organized the Mayor's office in their own way using different titles for positions. While the positions, are important, they did not feel specific titles should be written into the Charter. There should be some latitude given to a Mayor to define the roles.

Councilor Krintzman said the Charter Commission felt that from a citizen perspective there could be confusion from one administration to next who the Chief Administrative or Operating Officer might be and their role. Perhaps the qualifications do not need to be written into the Charter, but the problem the Charter Commission was trying to solve was to make it clear to the public to provide predictability.

Councilor Baker said he would work with the Committee Clerk and draft language that will reference the roles, but not specific titles for review at the next meeting.

Section 3-3(h) Councilor Krintzman said the Charter Commission recommended this new language to address the problem of unfilled vacancies on boards and commissions. The language is intended to provide transparency rather than demand a stringent timeline for reporting vacancies. This is also a way to have an ongoing review of boards and commissions to determine if they are still necessary or productive. Councilor Kalis felt that reporting the vacancies should take place more frequently than once a year, as proposed. Councilor Baker would like to add that the listing of the vacancies should be made available not only electronically, but also by other means for those who may not be using computers. The subcommittee agreed to that amendment.

Councilor Albright also noted that members of boards and commissions would often continue serving even though their official appointments had expired. The practice has been that members continue to serve until a successor is appointed. She did not agree this was a good way to do this. When terms expire, there should be either re-appointments or new appointments. Anne Larner, former Charter Commission member, agreed that while this is a problem, the Charter Commission did not focus on that. They focused more on the vacancies. Councilor Baker said this would be a new language and since this Subcommittee is focusing on the Charter Commission's recommendations, this is something that could be put aside and looked at again.

SECTION 3-5 Removal of Officials; Vacancy Notifications

Councilor Krintzman explained that this language refers to more critical positions such as department heads or city officers. The Charter Commission felt that there should be a more stringent timeline on notification of vacancies of any of those critical positions and suggested 48 hours. Councilor Baker wondered if the 48 hours could be problematic due a holiday weekend for example. Others noted that notification can easily take place via email. The subcommittee accepted the changes in this section.

It was noted that "city officer" is not a defined term in the Charter. Councilor Krintzman explained the Commission was working from the definition of "city agency", which was defined as board, commission, committee, council, department or office, and the two that seemed to be crucial for this section were departments and offices and derived "city officer" from that.

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

Section 3-7(a) The Charter Commission proposed changing the timeliness of providing a complete report on the financial and administrative activities of the city for the preceding fiscal year from "time to time" to "not less frequently than semi-annually". The Commission also added providing a "full disclosure of municipal revenues and all information related" to the financial condition and future needs of the city..."

Sue Dzikowski, Comptroller, pointed out that it is the Comptroller who provides this financial information and not the Mayor as stated in the current language of the Charter. She said that the fiscal year ends on June 30th, however, books continue to be closed over the summer. A recap is not available until at least September, so the providing the information within 6 weeks, which is the current requirement in the Charter, is not possible, in her opinion. She would like to have language that could be problematic with any extenuating circumstances that may arise. For example, the City is about to launch a new financial accounting system. Newton has a bond rating and the institutions will not rate the City without financial statements. The financial product that comes through the auditing process takes many months. The audit firm is attending the Finance Committee to discuss the results of their audit. Councilor Baker asked if there should be a requirement that there be a public statement on the City's financial situation, in the Charter.

Councilor Krintzman said that the Charter Commission wanted transparency and wanted to have that financial information provided at reasonable intervals. Ms. Larner said the current Charter or the proposed language from the Commission was not referring to audited financial statements. This is a reference to providing the council and the citizens with the current financial conditions of the City at that point in time. No one could expect audited financial statements within 6 weeks.

Councilor Baker asked Ms. Dzikowski to look at this language in more detail, perhaps with the Chief Financial Officer, and with the Chair of the Finance Committee.

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

The proposed language in this section is for clarifying purposes and is not substantive. It adds a reference to Article 10, which references certain subjects that cannot be brought up at certain times. The subcommittee accepted the proposed language.

In the second paragraph of this section, there is a reference to what constitutes a 2/3 vote when voting on a vetoed item. Councilor Baker noted the proposed language changes the current regime. Currently a 2/3 vote is considered 16 of 24 votes. The proposed change states that a 2/3 vote is 2/3 of council *then in office*. Councilor Krintzman said if there were 5 vacancies on the City Council, should the system operate such that 2/3 of the 19 is needed for a successful vote, or 16 of the 19 members. Vacancies refer to empty seats, not absent Councilors. The Charter Commission felt it should be the latter. Vacancies should be independent of the City Councils ability to act. Councilor Baker said this language would not apply for zoning or special permit votes. Ms. Dzikowski was not sure what the scenario would be for a bond vote, but she would check. The subcommittee agreed that the 2/3 calculation should be based on 24 Councilors.

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

Section 3-10 (a) and (b) Councilor Baker explained that in the current charter, the Council elects an acting Mayor as the first order of business, and if it does not act, then the President or the Vice President become acting Mayor. The proposed language reverses that presumption so that if the President and Vice President are not able to serve, then the Council may elect someone. This is a major change because it gives more authority to the President and Vice President and it is a policy shift. Councilor Krintzman said that spelling this out, the City Council knows that when they are voting for President or Vice President that there is the possibility they could be Mayor and could be advantageous is that person is running for Mayor to permanently fill the position.

Also, the proposed language requires a special election within 150 days. For example, when Mayor Mann died, this language would have required the special election in the summer, when many residents are not in town. The City went to court and a Home Rule Petition was put forth which allowed the mayoral election to be delayed and tacked onto the regular upcoming state election. Councilor Krintzman said the Commission was trying to balance the urgency of getting the position filled and also providing sufficient time for residents to know the candidates and that the election was held at an appropriate time of year. They looked at other Charters and timelines, looked at overseas ballots, getting balanced printed, etc. Even after all this, if this put an election in the

summer, a home rule petition could remedy that problem. The Commission felt this language was the most inclusive and workable. Rhonna Kidwell said the 150 days was meant to be broad enough to extend past the summer if necessary.

This section requires further discussion.

There is a question as to whether there should be this timeframe provision. The Charter Commission felt using "forthwith" is too ambiguous. The subcommittee agreed.

Meeting adjourned.

Respectfully Submitted,

R. Lisle Baker, Chair

**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 Admin 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

Comment [SC22]: SC agreed to add "and otherwise" after "electronically" as not all people use technology. Accepted language

Comment [SC23]: SC accepted

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

Comment [SC24]: SC accepted

(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 [SC25]: . SC accepted language, but City Officer is not a defined term in definitions section

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.

Comment [JK26]: Required notification from Mayor to city clerk and city council of key positions becoming vacant.

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 [SC27]: Comptroller says timeframe is not reasonable. Larner says this refers to snapshot of finances at that time and not a report of the audited statements. Comptroller to consult with Gentile on language to bring back to Committee

Comment [SC28]: Comptroller provides the information. Is it proper to have Mayor here?

Comment [JK29]: 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 ~~no~~ 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 [SC30]: SC accepted language in this paragraph

Comment [JK31]: Doubled posting requirement for special city council meetings to provide at least 48 hour notice, in line with Open Meeting Law.

Comment [JK32]: 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 [SC33]: SC accepted changes in this paragraph

Comment [JK34]: This was re-located to Article 2 because it seemed to pertain to the powers of the city council more than the executive.

Comment [JK35]: Intended to clarify that veto override must be by 2/3 of the membership.

Comment [SC36]: SC did not accept this language. Retain "full council"

Comment [SC37]: SC needs to discuss further. Language seems ok

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 [JK38]: 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 [JK39]: Intended to clarify ambiguity of "forthwith" and provide a specific timeline for city council to take action.

Comment [SC40]: SC would like to discuss more as well as 150 days provision

Comment [JK41]: Timeline for special election developed in line with many other charters and advice from consultants.

Comment [SC42]: Reverses presumption of succession. Needs further discussion

(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 [JK43]: 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.