



Programs & Services Committee Report

City of Newton In City Council

Monday, September 11, 2017

Present: Councilors Rice (Chair) Leary, Auchincloss, Hess-Mahan, Sangiolo, Schwartz, and Baker
Absent: Councilor Kalis

Also present: Councilors Albright, Blazar, Brousal-Glaser, Crossley, Fuller, Gentile, Lappin, and Norton

City staff present: Joshua Krintzman (Chair; Charter Commission), Rhanna Kidwell (Charter Commission), Bryan Barash (Charter Commission), Brooke Lipsitt (Charter Commission) Chris Steele (Charter Commission), and David Olson (City Clerk/Clerk of the Council)

Referred to Programs & Services Committee

#138-17(2) Request to place question of new Charter on the November ballot

CITY CLERK requesting the City Council, as required by MGL 43B, Section 11, order the Newton Charter Commission's proposed new charter to be submitted to the voters of the City of Newton for their approval on the November 7, 2017 municipal ballot. The ballot question to read: "Shall the City of Newton approve the new home rule charter recommended by the Charter Commission as summarized below: Yes. No." [06/14/17 @ 2:42PM]

Action: Programs & Services Approved 7-0

Note: The Programs & Services and Finance Committee met jointly to discuss the above item. The Programs & Services Committee and the Finance Committee met on September 5, 2017 to discuss the item. At that meeting, the Programs & Services Committee held the item, as several Councilors requested that the Charter Commission meet again to review and possibly change the ballot question wording. The Charter Commission met and made changes to the ballot question. The redline version of the amended text is below:

Shall this city approve the new charter recommended by the charter commission, summarized below?

YES NO

SUMMARY

Effective with the 2019 municipal election the size of the city council will be reduced from 24 members to 12, with 8 members representing one councilor from each of the 8 wards and 4 members councilors who can live anywhere in the city. All members councilors will be elected by the voters citywide for 2- year terms. Voters will continue to elect a mayor as the city's chief executive officer

for a 4-year term and the school committee will continue to be a 9-member body with ~~8 members representing one member from each of the 8~~ wards plus the mayor, all elected citywide. Term limits, which currently exist for the school committee, will be added for the mayor (3 consecutive terms/12 years) and councilors (8 consecutive terms/16 years).

Effective with the adoption of this charter, school committee responsibilities will be updated to reflect ~~changes in current practice and~~ state law. ~~Modern~~Current practices will be ~~adopted~~codified for financial reporting, including an annual financial audit, ~~. A newly required~~ inventory of capital assets ~~and progress on~~will accompany the capital improvement plan. Voters' access to initiative petition and referendum will be maintained, ~~with~~adding a minimum of 20 per cent participation required in such votes. Public comment policies will be established by each city body. Charter review will be required every 10 years.

Councilor Baker expressed his appreciation to the Charter Commission members in attendance for their willingness to review the ballot language and make changes. Councilors Baker and Schwartz provided the attached memo to members of both Committees on the revisions to the Charter ballot language and questions pertaining to the proposed Charter amendments. In their opinion, the revised ballot language is an improvement but does not make it clear that the proposed changes eliminate all Ward Council seats and eliminate the second Councilor at-large seat from each Ward. They would suggest that the Law Department's summary of the proposed Charter, which will be included in the Election Commission mailing, further clarify what the proposed changes are and what is eliminated from the existing Charter. In addition, there is a question whether state law (attached) relating to new Charters would require a modified multi member body like the City Council to have an odd number of Councilors. The City's Law Department is not willing to give a formal legal opinion on this but informally indicated that the Charter Commission exempted the City Council in the definition of multi-member bodies in the proposed Charter and that Chapter 43B (attached) of state law "allows local Charters to have provisions that state law would not otherwise permit." It may make sense to contact the Attorney General's Office for a formal opinion on this matter. The memo also highlighted that there is a side-by-side comparison of the current Charter and proposed Charter available through the Clerk's Office, which, if the Election Commission approves, will be available to the public on the Election Commission website.

The Finance Chair spoke on the language in the ballot question related to financial reporting. The Chair thanked the Charter Commission for making amendments to the language, as he believe the revised ballot language addresses the concerns around the original financial reporting language. He pointed out that the current Charter has language specific to the Capital Improvement Program but understands that the Charter Commission believes that there is a specific need for a capital asset inventory.

Councilor Baker moved approval of the item with the understanding that the Council request that the Law Department consider clarifying what the proposed changes are and what is eliminated from the existing Charter in its summary for the Election Commission mailing. The motion carried by a vote of seven in favor and none opposed in the Programs and Services Committee. As the item is only referred to the Programs and Services Committee, only those Committee members will vote on the motion.

Referred to Programs & Services and Finance Committees

#259-17 Increase the number of years the City can lease Weeks House

HIS HONOR THE MAYOR requesting consideration of a request to petition the General Court for special legislation to increase the number of years the City of Newton is authorized to lease the Weeks House from the current period of sixty-five years, as authorized by the Acts of 1981, Chapter 330, to a period of up to ninety-nine years. [08/07/17 @ 2:23 PM]

Programs & Services Held 6-0 (Schwartz not voting) on 09/11/17

Action: Finance Held 7-0

Note: The Committee met jointly with the Programs and Services Committee to discuss this item. Director of Newton Community Development Foundation (NCDF) Jeanne Strickland and Counsel for NCDF Alan Schlesinger joined the Committees for discussion of the request that the city petition the General Court for special legislation that authorizes the City to lease the Weeks School for a term not to exceed ninety-nine years and to grant a lease extension to NCDF. The City sought and received special legislation in 1981 to lease the Weeks House for a term of 65 years. In 1983, the City and NCDF signed a 65-year lease agreement.

Attorney Schlesinger went on to explain that an extension of the lease would require the City to go through the procurement process including soliciting requests for proposals for the additional 24 years added to the lease if the special legislation is approved. It is likely that the only bidder will be NCDF, as the additional 24 years would begin in 2048. Attorney Schlesinger pointed out that it makes sense for the City to request special legislation to authorize the City to grant the lease extension for Weeks House to NCDF.

NCDF is investigating all refinancing opportunities for the Weeks House. The 75-unit building needs significant capital improvements. HUD and other lenders require that leases extend at least 10 years beyond a 25-year term loan. If the General Court approves the special legislation, the request to extend the lease would come before the City Council for approval.

There was a question regarding whether NCDF has ever had to pay the City the additional 20% of the amount by which gross effective rent for any year exceeds the amount projected by the original lender as of the date of first occupancy, as required by the lease

agreement. NCDF has paid the 20% payment every year except from 1996 to 2000 when the lease was amended to waive the 20% for five years.

Members of both Committees would like the Chief Procurement Officer's input before taking action on this item. Councilor Auchincloss moved hold in Programs & Services Committee and Councilor Lappin moved hold in the Finance Committee. The motions in both Committees were supported unanimously.

All other items before the Committee were held without discussion and the Programs & Services meeting adjourned at 7:55 PM.

Respectfully submitted,

John B. Rice, Chair



Memorandum

To: Members of the Programs and Services and Finance Committees

From: Councilors Baker and Schwartz

Date: September 8, 2017

Subject: Report about Charter ballot language and other questions related to #138-17(2)

Several questions were raised related to 138-17(2) relating to putting the Charter adoption on the Ballot in November which we discussed at our last meeting. This memorandum reports our understanding of those responses.

Charter Commission ballot question summary. The first question involved the accuracy of the Charter Commission Ballot Question summary where the term “representing” was used to describe Councilors and School Committee members residing in each ward but elected citywide. There were also questions raised about the description of financial language.

Several of us clarified those concerns in a letter to the Commission, attached. The Charter Commission has now offered a revised summary which removes “representing” and clarifies some financial language. The revised summary does not yet make explicit, however, the elimination of Ward Councilors or the loss of an additional Councilor at large from each ward, as major changes from the current Charter.

Even versus odd numbered new City Council. A provision of state law relating to new charters appended to this report, General Law c. 43B, sec. 20 (c) (3) appears to require “multi-member bodies,” such as a modified City Council, to have an odd number of members. (Indeed, the same chapter 43B requires a Charter Commission itself to have nine members). The Newton Law Department was not willing to give a formal legal opinion about this language, deferring to the Attorney General. Informally, the response was that the Charter Commission had in the Charter exempted the City Council from its definition of “multi-member bodies,” and that this was controlling over the state law because of the general purpose of chapter 43B was to allow local charters to have provisions that state law would not otherwise permit. Left unanswered, however, is how that would apply to a limitation which appears in the same law purporting to give Charter Commissions that authority, which means a definitive answer may ultimately require judicial interpretation.

Redlined changes from the current Charter. We had asked if there is a redlined version of the current charter showing the specific changes made by the proposed new language. City Clerk David Olson responded that there is no redlined version, but a side by side comparison of the two is available through his office, and may be placed on the Election Commission web site.

Conclusion. While the Charter Commission has improved its ballot question summary, we believe that Newton voters may still not be clear on what is being changed from the current Charter as well as what is being proposed. Therefore, we hope that the City Solicitor’s own summary, which will accompany the Charter Commission ballot summary in the Election Commission mailing, can help further clarify what is being changed as well as what is being proposed.

Cc: City Council; Newton Charter Commission; Newton Law Department

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Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 43B	HOME RULE PROCEDURES
Section 14	ENFORCEMENT OF THIS CHAPTER; DECLARATORY RELIEF; JUDICIAL REVIEW

Section 14. (1) The superior court shall, upon petition of ten or more registered voters or of the attorney general, have jurisdiction in equity to enforce the provisions of this chapter.

(2) The provisions of chapter two hundred and thirty-one A applicable to municipal by-laws or ordinances shall apply to charters, charter revisions, charter amendments, by-laws and ordinances of a city or town adopted under this chapter. In addition, a petition for declaratory relief under chapter two hundred and thirty-one A may be brought on behalf of the public by the attorney general or, by leave of the court, by ten or more registered voters of the city or town. In the case of a petition brought by ten registered voters, the attorney general shall be served with notice of the preliminary petition for leave, and may intervene as a party at any stage of the proceedings; and the petitioners shall be liable for, but may in the court's discretion also be awarded, costs, which may include reasonable counsel fees.

(3) Judicial review to determine the validity of the procedures whereby any charter is adopted, revised or amended may be had by petition of ten or more registered voters of the city or town brought within thirty days after the election at which such charter, revision, or amendment is approved. If no such petition is filed within such period, compliance with all the procedures required by this act and the validity of the manner in which such charter, revision or amendment was approved shall be conclusively presumed. No charter adoption, revision or amendment shall be deemed invalid on account of any procedural error or omission unless it is shown that the error or omission materially and substantially affected such adoption, revision or amendment.

Part I	ADMINISTRATION OF THE GOVERNMENT
Title VII	CITIES, TOWNS AND DISTRICTS
Chapter 43B	HOME RULE PROCEDURES
Section 20	PROVISIONS OF CHARTER OR AMENDMENT DEEMED CONSISTENT WITH CERTAIN OTHER LAWS

Section 20. The provisions of any charter or charter amendment adopted pursuant to the provisions of this chapter shall be deemed consistent with the provisions of any law relating to the structure of city and town government, the creation of local offices, the term of office or mode of selection of local offices, and the distribution of powers, duties and responsibilities among local offices. Such provisions may provide:

- (a) that any particular local office shall be either elected or appointed; provided, however, that in any town having a board of selectmen the members of such board shall always be elected; provided, further, that in any city or town having a school committee the members of such committee shall always be elected; and provided, further, that in any town having a form of town meeting open to all of its registered voters the town moderator shall always be elected and in every other case all of the members of the legislative body shall always be elected;
- (b) that any particular local officer or employee shall be appointed by any particular local officer;
- (c) for the number of persons to serve as members of any multiple member body; provided, however, that all such multiple member bodies shall always consist of an odd number of members;
- (d) for the term of office to be served by any local elected officer; provided, however, that no term of office of a local elected officer shall be for more than five years, and the members of multiple member bodies shall serve for terms which, as nearly as possible, expire in different years;
- (e) for the merger or consolidation of two or more local offices into a single office;
- (f) that the powers, duties and responsibilities of one local office be divided and exercised by two or more local offices;
- (g) for the confirmation of any appointment by another municipal agency.



August 28, 2017

Newton Charter Commission
c/o Josh Krintzman, Chair
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Re: Questions regarding the Charter Commission's upcoming Ballot Question Summary

Dear members of the Commission:

We are writing regarding the current Ballot Question summary of the Charter Commission's work that is to be sent to all Newton households prior to the November election, reproduced in an Appendix to this letter. We urge that the summary be rewritten to be more accurate in several respects.

First, the current language gives the impression that the Councilors at Large in the City Council would be "representing" their wards, rather than as they are now described in the current Charter as being "elected from the eight wards of the City," or as the proposed Charter states, "...domiciled in the ward from which elected but shall be nominated and elected by the voters of the city, 1 councilor to be elected from each of the 8 wards of the city." (See Appendix.)

Second, the Ballot summary contains no reference to the elimination of the existing Ward Councilors. Because they are being eliminated, the summary should say so to avoid any misunderstanding on the part of voters.

Finally, the language in the summary regarding the City's finances gives the inaccurate impression that certain financial practices, such as an annual audit and the Council's review of the Capital Improvement Plan, are not already in place, rather than being proposed for referencing in the Charter.

Regardless of whether one is in favor or against the proposed new Charter, we hope that you would agree that the voters should know in clear, unambiguous language what is being proposed, especially since the Charter Commission ends its summary with the important sentence: "These represent the major changes to the City Charter."

Therefore, the following is suggested remedial language for the references in the Commission's Ballot Question summary relating to Councilor and School Committee. (This is updated language initially provided at the Programs and Services Committee meeting.)

Effective with the 2019 municipal election the city council will be reduced from 24 members to 12, with 8 members ~~representing wards~~ **who live in their respective wards** and 4 members who can live anywhere in the city. All members will be elected by the voters citywide for 2-year terms. **Ward Councilors elected only by their wards would be eliminated from the Council, as would one councilor living in each ward elected by voters citywide.** Voters will continue to elect a mayor as the city's chief executive officer for a 4-year term and the school committee will continue to be a 9-member body with 8 members ~~representing wards~~ **who live in their respective wards**, plus the mayor, all elected citywide. Term limits, which currently exist for the school committee, will be added for the mayor (3 consecutive terms/12 years) and councilors (8 consecutive terms/16 years).

We leave it to the Commission to draft appropriate language regarding the financial aspects referenced earlier.

In summary, the undersigned respectfully request that the Commission rewrite its proposed Ballot summary to clarify it as indicated.

Sincerely,

Councilors Lisle Baker, Len Gentile, Marc Laredo, Amy Sangiolo and Greg Schwartz

Appendix

1. The current Charter:

There shall be a city council of 24 members which shall exercise the legislative powers of the city. Sixteen of these members to be known as councilors at large, shall be nominated and elected by the voters at large, 2 such councilors at large to be elected from each of the 8 wards of the city.... There shall be a school committee of 9 members, which shall exercise control and management of the public schools of the city. Eight of these members, who shall be known as school committee members, shall be nominated and elected by the voters at large, 1 school committee member to be elected from each of the 8 wards of the city.

2. The proposed Charter:

There shall be a city council of 12 members which shall exercise the legislative powers of the city. Eight of the council members, to be known as councilors-by-ward, shall be domiciled in the ward from which elected but shall be nominated and elected by the voters of the city, 1 councilor to be elected from each of the 8 wards of the city. The other 4 members, to be known as councilors-at-large, shall be nominated and elected by the voters of the city.... There shall be a school committee of 9 members; 8 of whom shall be known as school committee members. The school committee members shall be nominated and elected by the voters of the city, 1 school committee member to be elected from each ward of the city.

3. The current Charter Commission Ballot Question Summary:

“Shall the City of Newton approve the new charter recommended by the Charter Commission summarized below?

Yes ___
No ___

Effective with the 2019 municipal election the city council will be reduced from 24 members to 12, with 8 members representing wards and 4 members who can live anywhere in the city. All members will be elected by the voters citywide for 2-year terms. Voters will continue to elect a mayor as the city's chief executive officer for a 4-year term and the school committee will continue to be a 9-member body with 8 members representing wards plus the mayor, all elected citywide. Term limits, which currently exist for the school committee, will be added for the mayor (3 consecutive terms/12 years) and councilors (8 consecutive terms/16 years).

Effective with the adoption of this charter, school committee responsibilities will be updated to reflect changes in state law. Modern practices will be adopted for financial reporting, including an annual financial audit, inventory of capital assets and progress on the capital improvement plan. Voters' access to initiative petition and referendum will be maintained, with a minimum of 20 per cent participation required in such votes. Public comment policies will be established by each city body. Charter review will be required every 10 years.

These represent the major changes to the city charter.”