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TO: Brooke Lipsitt and Jane Frantz, Article 10 Leaders – Newton Charter Commission

CC: Josh Krintzman, Chair – Newton Charter Commission

FROM: Collins Center staff

DATE: June 30, 2016

SUBJECT: ARTICLE 10 – Initiative, Referendum, etc.

Article 10 is probably the article that most “shows its age” from the 1971 Newton charter. There are several reasons for this; the Newton home rule charter was one of the first, and there was little guidance other than the provisions relating to the state initiative process, and the standard procedure provided in MGL, c. 43, which predated the home rule amendment. However, in the intervening years Massachusetts had a complete recodification of the state’s election laws (standard use of terms throughout the affected chapters, reorganization of material, and removing redundancies and other possible instances of multiple/conflicting interpretations), and laws specifically relating to various actions by petition were further modified in 1988, making the specificity of some of the directions in the 1971 charter (e.g., collection and validation of signatures) no longer necessary. Such features do not appear in charters of the last 30 years. However, several of the provisions have “stood the test of time” and appear in the attached version.

The formatting in the 1971 charter document is not standard when compared to more recent similar provisions; for example, there are numerous sections relating to steps in the initiative process; charters usually provide for clauses to provide all the steps relating to one section – e.g., the Initiative would be one section (e.g., Section 10-2) and all actions relating to the Initiative would follow as 10-2 (a), 10-2 (b), 10-2 (c), etc.

The timeline for action on the Initiative in the 1971 charter is rather leisurely when compared to more recent charters. There is now an emphasis on moving this process along, with a much shorter time to collect signatures so that the issue at hand has higher visibility; allowing a “hold” on the petition for the collection of additional signatures over the course of 6 months (as the 1971 charter provides) appears in no other charter. It also suggests the possibility that the focus on the issue would fade, making signature collection more difficult.

It is also now standard practice to include a voter participation requirement so that the action taken reflects at least a modest level of support among the electorate (the usual “turnout” requirement is 20%). The 1971 charter has no such requirement.

To assure voter knowledge of the proposals, charters now contain a requirement that both initiative and referendum proposals be published prior to the ballot vote; the 1971 charter left publication to the discretion of the board of election commissioners.

The 1971 charter in s. 10-19 places some strictures on the mayor re: vetoes of initiative and referendum petition actions; I could not find another charter with a similar provision. If it is to be retained, we should consider moving it to Article 3, s. 3-8 where other constraints on vetoes by the mayor are described.

While I recognize that the commission has preferred to work from the 1971 charter to make its revisions, I am recommending here that you examine text from a newer charter in deliberating on how to proceed.

I do not think the new text represents a wholesale “sea change” in how Initiative and Referendum will be handled. Certain standard provisions now appearing in Article 10 will still be there (e.g., Measures not subject to initiative and referendum, Form of Question, Submission of Other Matters).

I also note that this Article is often where charters describe the process for using recall; I know that the commission members indicated that they did not want recall for the council and the school committee, but did not know if it was to be discussed in the case of the mayor. Should you want to review recall provisions, please let me know.

The text attached is based in part on the Beverly charter of 1996, and a few of the more recent home rule and special act charters.

Among the questions we would need to discuss:

Providing for a petitioners committee – 10 voters vs. 1 voter to be contacted re: various steps in the process.

Number of signatures required for each step (usually expressed as a percentage, except for commencement of initiative)

Timelines for signature collection

Publication requirement prior to council vote and prior to ballot vote (publication prior to council vote not in attached version, but can be added).