

CITY OF NEWTON
IN BOARD OF ALDERMEN
PROGRAMS AND SERVICES COMMITTEE REPORT
WEDNESDAY, NOVEMBER 3, 2004

Present: Ald. Johnson (Chair) Ald. Hess-Mahan, Parker, Merrill, Fischman, Sangiolo

Absent: Ald. Coletti, Baker

Also Present: Gayle Smalley, Associate City Solicitor.

#215-04 ALD. JOHNSON requesting that the City Charter be amended to allow more flexibility when filling a vacancy for Mayor, Board of Aldermen, and School Committee.

ACTION: **HELD 6-0**

NOTE: Chairman Johnson began the discussion by explaining this item had been discussed at a prior meeting. In fairness to the Committee, she wanted to share what would be presented during the public hearing, which is scheduled for November 17th, before the public hearing took place.

Chairman Johnson noted that the Mayoral election is a different situation. The School Committee only involves 8 people and only one representative from the ward. Even though everyone is elected at-large, generally you associate yourself with the person who sits in your own area. If the representative in the Newton North area moved out of town and that vacancy was there, probably the Ward 2 people would feel lost without the school committee person.

Associate City Solicitor Gayle Smalley joined the Committee and gave some background on this item noting that she had been at a meeting in April where the range of possibilities to amend the charter were discussed. At that meeting it appeared that the first approach which was to take the existing provision, at least for the aldermen, and look for words that soften the forthwith requirement. As she saw it, there are three basic possibilities.

Option 1 City Solicitor Dan Funk and Gayle Smalley discussed the phrase in the public records law, “unreasonable delay” which, in their opinion, was a good phrase. Simply delete the word forthwith and insert instead without unreasonable delay. “... The Board of Aldermen, without unreasonable delay, shall call a special election to fill such vacancy...:

Option 2 This has an additional requirement; no later than six months from the date of the vacancy and the third keeps the forthwith but puts in an exception. “

...the Board of Aldermen, without unreasonable delay and no later than six months of the date of the vacancy, shall call a special election fill such vacancy...”

Option 3 There would still be a forthwith requirement but in the event another election is scheduled, within eleven months, the board could instead put it onto that election. “the Board of Aldermen shall forthwith call a special election to fill such vacancy. If another election is scheduled to take place within eleven months from the date of the vacancy, the Board may call the election to take place on the same date...”

It is important to keep in mind that another provision of the charter notes that the election must take place within four months after the call.

Challenges that may be related to the use of the phrase *forthwith*. There was a question on the word forthwith and Ms. Smalley noted that when going to court on this before, the judge had no trouble concluding that forthwith basically means in legal terms as soon as possible. In that case the court ruled exactly one month to the date after the vacancy began. At that point the court said it was sometime in the past. Other cities and towns have been looked at to see if there was a great range of interesting language out there that might help but there were not many good choices. Ms. Smalley indicated that clearly this would be a policy decision to choose one of the three choices or a different choice.

Committee Member Thoughts and Opinions: Ald. Parker questioned if choice three meant a preliminary election or a general election? He further asked if you count eleven months; is it for the general or the preliminary? Ald. Parker raised the question that would you be constrained if you had knowledge that something is likely to happen but not yet scheduled. Ms. Smalley said you might want to say “is expected to take place,” or “is likely to take place.” In response to Ald. Parker’s question regarding type of election, Ms. Smalley indicated it meant a general election.

The advantage to choice 2, Ald. Hess-Mahan noted, was that it gives a date certain and he would support that. Ald. Fischman was also in favor of 2. Ald. Sangiolo preferred 3 over 2. Ald. Merrill liked choice 2.

In Ald. Merrill’s experience, he could not remember an individual elected to the board and all of a sudden decided not to be an alderman. Usually, he said, the vacancies occur primarily due to illness. Ald. Parker asked why the election couldn’t be called right away so people could have more notice. Gayle Smalley reiterated another provision in the Charter that states, “special elections to fill the office of Aldermen, Mayor, or School Committeeman as provided in Sec. shall be held within 120 days following the date on which the election is called. Persons elected at such elections shall immediately be sworn and assume their office.” She indicated that if you had a vacancy on January 1st and you knew you

wanted to have it in August, you wouldn't be able to take the formal full board vote to comply with the 120 days.

Ald. Parker moved hold and the Committee voted 6-0 in favor.

The meeting adjourned at 8:20 p.m.

Respectfully submitted,

Marcia Johnson, Chair