

TO: Bryan Barash and Anne Larner, Article 11 Leaders – Newton Charter Commission
FROM: Marilyn Contreas and Tanya Stepasiuk, Collins Center for Public Management/UMass-Boston
SUBJECT: Commentary – Article 11: Newton Home Rule Charter

Overview: This article is more detailed in some respects than more recent charters. This is understandable, as Newton’s charter was one of the earliest adopted under the Home Rule Amendment, and there was significant attention to assuring that the charter was both thorough and provided sufficient direction to the municipality over time. The discussion below centers on the present text of the Article and makes suggestions re: removal, modification, relocation, and/or additions.

Section 11-1: Certificate of Election and Appointment

The commission might want to consider moving much of this to Article 3 (Mayor) where there is already a reference to “Notice of Appointment.” Similar language can also appear in Article 2 (Council) and Article 4 (School Committee)

However, several charters, including Braintree (St. 2005, c. 189), Pittsfield (St. 2013, c. 72) and the Weymouth home rule charter, adopted 1999, retain a similar provision in the “General Provisions” article.

Section 11-2 Appointments and Removals

This can be moved to Article 3 (Mayor), noting that the Mayor appoints department heads, and department heads appoint employees, subject to civil service where applicable, with the caveat that the Mayor approve police and fire department appointments (if the commission chooses to retain this exception)

Section 11-3 Rules and Regulations

This section should be modified to provide that city agencies shall file such regulations with the city clerk within X days of their approval by the agency, and that such regulations must be on file prior to taking effect. A similar provision from the Braintree special act charter (St. 2005, c. 189) appears below:

A copy of all rules and regulations adopted by any town agency shall be placed on file in the office of the town clerk and shall be available for review by any person who requests such information at any reasonable time. No rule or regulation adopted by any town agency shall become effective until 5 days after the date it is so filed.

Section 11-4 Re-enactment and Publication of Ordinances

Re-number to Section 11-5

NEW: Section 11-4 Periodic Review of the Charter

Commentary: It is now customary for charters to include a provision for periodic review of the charter, usually at 10-year intervals. There is usually a year specified in the provision – for example, if the Newton charter proposal is adopted in 2017, the charter would provide that a charter review occur in

every year ending in a “7”. The provision from the Pittsfield special act charter (St. 2013, c. 72) appears below as an example:

Not later than July 1, at 10-year intervals, in each year ending in a 3, the mayor and city council shall provide for a review to be made of the city charter. This review shall be made by a special committee to be determined by ordinance. All members of the committee shall be voters of the city. The special committee shall file its report with the city clerk at a date specified by ordinance. Copies of any recommendations shall be made available to the public at a cost not to exceed the actual cost of the reproduction.

11-5 Re-enactment of Publication of Ordinances (to be moved/modified)

Review of the ordinances would then follow the review of the charter, e.g., in years ending in “8” and “3” (if the commission continues this process at 5-year intervals)

The Pittsfield provision appears below as an example:

Not later than July 1, at 5-year intervals, in each year ending in a 5 or in a 0, the mayor and city council shall provide for a review to be made of some or all of the ordinances of the city to prepare a proposed revision or recodification of them. This review shall be made by a special committee to be established by ordinance. All members of the committee shall be voters of the city. The special committee shall file its report with the city clerk at a date specified by ordinance. The review of city ordinances shall be under the supervision of the city solicitor. Copies of any recommendations shall be made available to the public at a cost not to exceed the actual cost of the reproduction.

Alternatively, several charters combine charter review and ordinance review in one provision.

Section 11-5 Liability of City Officers and Agencies

Few charters make a specific reference to this, relying on state law to address the matter. The commission would need to decide if the provision should continue to appear in the charter, thus guaranteeing that all relevant information relating to office holding in the city continues to appear in the charter.

Section 11-6 Prohibition

The commission would need to decide if the prohibition as appearing in the state’s Conflict of Interest law (all newly elected officials receive a copy) is sufficient warning, or if it should continue to appear for the reasons as stated in the Discussion of 11-5, above.

Section 11-7 Meetings of Qualified Voters

The commission may want to consider a higher threshold than 50 voters; voters already have access to the legislative body via free petition (Article 10) and the council must hold a public hearing if 50 or more voters petition for passage of a measure; thus, the city is providing a venue for citizen access and action.

For example, if the threshold for the City Council to call such a meeting was a minimum of 50 voters from each ward, the threshold would be 400 voters. If this provision is retained, the commission would

probably need to find a formula that would assure that such meetings be held only on issues where city-wide interest has been reasonably demonstrated.

The commission may be aware of the use (or lack of use) of this provision over time – this knowledge may also provide some insight on whether this provision is retained.

Section 11-8 Construction of Public Facilities

I have not found a charter with a “designer selection committee” reference. Both Greenfield (2002) and Beverly (1996) home rule charters provide for a Planning and Construction Committee”; while the Newton provision calls for the committee(s) to be established by ordinance, and provides flexibility (i.e., a single committee or a committee established for each project), these charter provisions create the body, and define its membership and duties in the charter.

Newton’s current provision focuses on new construction, while these Planning and Construction Committees focus on both new construction and ongoing maintenance of existing facilities.

The commission might want to consult with the city’s purchasing agent regarding the relationship between such committees and state construction requirements.

The Greenfield provision appears below:

PLANNING AND CONSTRUCTION OF MUNICIPAL BUILDINGS AND OTHER FACILITIES

(a) Compensation, Mode of Appointment and Term of Office - There shall be a Planning and Construction Committee (which may be referred to as the "Planning and Construction Committee") consisting of seven (7) members. Six (6) of the committee members shall be appointed by the Mayor for terms of three (3) years each so arranged that the term of two (2) members shall expire each year. In making appointments to the committee, the Mayor shall seek persons having experience in the fields of architecture, engineering, construction, real estate, or law. The seventh member of the committee shall be designated, annually, by the School Committee and may, be a member of the School Committee.

(b) Powers and Duties - The Planning and Construction Committee shall be responsible for monitoring the physical condition of all municipal buildings and other facilities. The committee shall meet from time to time with representatives of municipal agencies to evaluate the need for additions, renovations, or remodeling of any existing building or facility or for the construction of new buildings or other facilities. The committee shall file written reports, at least annually, with the Mayor in which, it shall make recommendations as to the need for any project or projects. Whenever any construction work on any municipal building or other facility is authorized, the Planning and Construction Committee shall be responsible for all work in connection with the project including site planning, surveying, engineering studies, architectural plans and specifications and the supervision of construction.

Section 11-9 Severability - This is a standard provision appearing in all charters and should be retained.

Section 11-10 Specific Provisions Shall Prevail - Also a standard provision that should be retained.

Section 11 - 12 Computation of Time

I would recommend modification, certainly to include Saturday as a “not counted” day in the initial 7 days since City Hall is not generally open on Saturdays. The Pittsfield provision re: computation (which resembles several recent others including Everett and Northampton) appears below:

In computing time under this charter the day of the act or event after which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall be extended to the next day which is not a Saturday, Sunday or legal holiday. When the period of time designated is fewer than 7 days, intermediate Saturdays, Sundays and legal holidays shall not be included, when the period is 7 days or more, Saturdays, Sundays and legal holidays shall be included.

Section 11- 13 Definitions

Many charters include the definitions in Article 1 – see, for example,

Pittsfield, St. 2013, c. 72

Northampton, St. 2012, c. 277

Braintree, St. 2005, c. 189

Melrose, St. 2005, c. 105

Everett, home rule charter adopted 2011

Newburyport, home rule charter adopted 2011

OTHER:

NEW: Many city charters contain a uniform procedures provision relative to boards and commissions. This is intended to assure a measure of uniformity/consistency in the operation of such entities, which may experience membership turnover; these standards assure that changes in membership do not lead to confusion re: basic expectations of meetings, records, etc. An example appears below:

UNIFORM PROCEDURES GOVERNING MULTIPLE-MEMBER BODIES

(a) Officers – All appointed multiple-member bodies shall elect a chair, a vice-chair and a secretary and any other officer it deems necessary.

(b) Meetings - All appointed multiple-member bodies of the city shall meet regularly at the times and places that the multiple-member body, by the body’s own rules, prescribe. Special meetings of any multiple-member body shall be held at the call of the chair or by a majority of the members of the body. Notice of the meeting shall be posted as required by law. Except as may otherwise be authorized by law, all meetings of all multiple-member bodies shall at all times be open to the public.

(c) Meeting Documents and Submissions - Each appointed multiple-member body shall determine its own rules and order of business. Each multiple-member body shall provide for the

keeping of agendas, minutes and related submissions of its proceedings. All such documents shall be a public record and certified copies shall be placed on file in the office of the city clerk within a reasonable period from the date of approval.

(d) Voting - If requested by a member, a vote of an appointed multiple-member body shall be taken by a roll call vote and the vote of each member shall be recorded in the minutes, but if the vote is unanimous, only that fact need be recorded.

(e) Quorum - A majority of the members of an appointed multiple-member body shall constitute a quorum. Unless some other provision is made by the multiple-member body's own rules while a quorum is present, except on procedural matters, a majority of the full membership of the body shall be required to vote on any matter representing an exercise of the powers of the multiple-member body. General Laws related to a vote to meet in "executive session" shall always require a majority of members of the body.

NOTE: Except in the discussion above re: Sections 11-4 and 11-5, all references here are to the current Newton charter provisions.