


CITY OF NEWTON  
LAW DEPARTMENT  
INTEROFFICE MEMORANDUM

DATE: April 7, 2017  
TO: Newton Charter Commission  
FROM: Ouida C. M. Young, Deputy City Solicitor  
RE: Call and Timing for Special Elections

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I have offered comments to several members of the Charter Commission regarding the tight timing proposed for special elections which raises serious practical problems and would like to bring those comments to the attention of entire Commission.

The Law Department does not take policy positions or express opinions regarding policy positions. However, the Law Department's experiences working with the current charter may be helpful to the Charter Commission in terms of some of the proposed provisions in a new charter.

Call and Timing of Special Elections

The proposed charter retains the current provision in the charter requiring special elections to be held within 120 days from the call of that election as well as the requirement that a preliminary election be held for a mayoral special election if more than two candidates are running. Proposed Secs. 8-3(a) and 8-4. The proposed charter changes, however, when the City Council must call for the special election from "forthwith" to "...at its next regular meeting call a special election to fill the vacancy." Proposed Secs. 2-5(a), 3-10\*<sup>1</sup>, and 4-6(a). Some of the concerns I am identifying are present under the charter's current language, although my concern regarding when the special election must be called is new based on the new language replacing "forthwith."

July/August Special Election

I have staffed the Land Use Committee of the City Council for many years and am well aware of the difficulty presented when a public hearing is scheduled during July and August. I was also a member of the Law Department when Mayor Mann died and the 120 day requirement for scheduling a special election would have resulted in a special election during July or August. Given that many Newton residents have vacation plans that take them out of the City during those two months, the City Council's Rules pertaining to special permit procedure have a black-out period which prevents new special permits from being accepted when a public hearing would have to be scheduled in July or August. Similarly, the City received home rule legislation (which generated controversy as well as a law suit) allowing the special election to fill the vacancy created by Mayor Mann's death to be held beyond the 120 day period in order to avoid scheduling the election in July or August.

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<sup>1</sup> Sec. 3-10 deals with a mayoral vacancy and includes the 120 day period in this section. The provisions dealing with a councilor vacancy and school committee vacancy (secs. 2-5(a) and 4-6(a) respectively), do not expressly include the 120-day period. Rather, the 120 day period for special elections is found in sec. 8-4. The Commission may want to consider eliminating the reference in sec. 3-10 to the 120 day period since the timing for all special elections is addressed in sec. 8-4 and there is no need to include the 120 period in sec. 3-10 as well.

If the Charter Commission is concerned about holding special elections in July or August, the language in sec. 8-4 could be modified to expressly prevent a special election in July or August, moving the special election to a date in September recommended by the Election Commission.

### Call of the Special Election

As noted above, the proposed charter changes when the City Council must call a special election, i.e., from “forthwith” to “...at its next regular meeting call a special election to fill the vacancy.” Proposed secs. 2-5(a), 3-10, and 4-6(a). This language seems to ignore the way in which the City Council acts, with items being formally docketed, referred to committee for a recommendation, and then back to the full City Council for a vote. More importantly, sec. 2-9(a) of both the current and proposed charters expressly prohibit a measure from being passed on the day it is introduced except in an emergency.

City Clerk David Olson has also pointed out that there are a number of steps that must be taken in order to determine when an election can be held, or “called.” Those steps include figuring out when nomination papers will be available to candidates; when nomination papers must be returned; when polling places would be available for this special election; whether a preliminary election is required for a mayoral vacancy; how long it will take to print up the ballots and get the voting machines to the polls; getting an appropriation from the City Council to pay for the special election; and finally, whether the special election can be piggy-backed on to an already scheduled election.

I would suggest that to resolve this problem the language in secs. 2-5(a), 3-10, and 4-6(a) be changed to require that the “city council shall at its next regular meeting introduce a measure calling for a special election to fill the vacancy.”

### Mayoral Special Election and 120 Day Period

City Clerk Olson has confirmed that the work it takes to get a special election underway can be accomplished within the 120 day period. He pointed to the time line followed with regard to the special election held following the death of Alderman Carlton Merrill.<sup>2</sup> The 120 period, however, becomes very challenging if a preliminary election required. The current charter and the proposed charter require a preliminary election for a mayoral special election if more than two candidates run. There is no similar requirement for councilor or school committee special elections. Fortunately, in the single instance when a mayoral special election was held, there were only two candidates. But holding to the 120 day period would be extremely difficult according to City Clerk Olson if there were three candidates running. In order to accommodate the possibility of a preliminary election, the time period to collect nomination papers would be shortened to about 2 weeks.

The Charter Commission may want to consider whether there is a need to retain the current language requiring a preliminary and special election for the mayoral candidates if there are more than two candidates running (sec. 8-3(a)) or if the timing for the preliminary and special elections might be lengthen a bit, e.g., preliminary election within 100 days of the call and special election within 150 days from the call.

Please let me know if you have any questions regarding my comments and thank you for the opportunity to offer comments.

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<sup>2</sup> Ald. Merrill died on January 25, 2013. The request to hold a special election was docketed with the Board of Aldermen on February 19, 2013 and on March 18, 2013, the date for the special election was set for June 25, 2013, which was also the date for Senate Special Election, allowing both special elections to be held on the same day.