

Charter Commission Meeting

February 1, 2017, 7p.m., Room 211

Present: Josh Krintzman, Chair, Jane Frantz, Howard Haywood, Anne Larner, Karen Manning, Chris Steele. Bryan Barash and Rhanna Kidwell arrive late.

Approval of January 24, 2017 Minutes:

Anne makes a motion to approve. Chris seconds. 3 minor edits will be made (2 to public comment, 1 to Sec. 5-1 discussion). Motion passes 6-0.

Public Comment:

Nancy Tenor, 23 Stafford Rd., attended the Ward 6 Democratic Committee. She heard members of the Commission speak for the first time and thought the presentation was unconvincing. She would vote “no” if voting today, as would her friends and neighbors. She objects to term limits which exist in the form of elections, and officials willing to serve should not be “forced out”. The School Committee having term limits does not seem like a good reason [for this proposed change] - conforming to a bad idea is not a good idea. Reducing the council to 12 members is shrinking representation for 90,000 Newton residents. 12 is too few to register the diversity of our city and examine the important issues brought to the Council. Finally, she opposes electing all officials at-large. Electing ward councilors by ward allows for better connectivity. Their campaigning door-to-door enables meeting the candidates and knowing where they stand. She objects to the use of the word “efficiency” at the Ward 6 Dem. Committee meeting. Democracy requires deliberation and sometimes it takes a lot of back and forth to reach a good decision.

Howard Shrute, 107 Gavin Rd. Newton Centre is a long term Newton resident. He believes councilors should come from [someone’s] neighborhood because it “makes it more personal”. Democracy does get “messy” and having more people can be complicated, but his support is for the old model rather than the proposed.

Sallee Lipshutz asks for clarification about the Ward 6 Democratic Committee. Josh confirms there was no violation of OML. In the future she requests publicizing of where Commission members will be speaking. Josh will look into it.

Nathaniel Lichtin, 53 Pinecrest Rd. thanks those who turned out at Ward 6 Democratic meeting and for the modifications to Article 12 regarding the area councils’ transition provisions.

He still has concerns about Sec. 11-2 and the word “influence”. In state law, the word is typically used with modification, i.e. unduly. If left ‘as is’/as defined, it would include public comment, behind the scenes meetings, consulting a principal or the superintendent about a matter, etc. The Commission should be careful not to restrict city volunteers from discussing matters outside the scope of their official business. Someone who works on the Angino Farm Commission, for instance, should not be prohibited from trying to remove a principal, superintendent, etc. in the role of parent.

Bryan Barash joins the meeting.

George Mansfield is a member of the Ward 6 Dem. Committee and attended the meeting. He would find it unfortunate if the charter proposal were to fail because of the Article 2 proposal, which does not include ward councilors (elected by ward). He is a former ward alderman and believes the role is important for the structure and culture of the city. He will attend the Mar. 15 public hearing but does not expect the proposal will change. If it does not, he expects to oppose the proposed charter when it is time to vote. He is concerned about the upcoming election [Nov. 2017 municipal] because already there is evidence of people who do not want to run for the ward seats, but at-large instead [in anticipation of the position not continuing if charter passes]. Who will

want to run for an open ward seat [for 2 years only] if this is on that ballot and passes? In referring to educational materials, he questions a slide highlighting benefits of the proposed model. He does not agree that reducing the size of the council is a benefit. Also, the new model will not increase accountability, transparency and responsiveness, but will result in the opposite effect.

Jane points out that currently 2 people are running for the Ward 1 ward councilor open seat. It is difficult to speculate about what will happen moving forward.

Jennifer Abbott, Whitney Rd, Newton responds to George Mansfield. She does see reduction of the board as a benefit and believes the new structure would increase competition for the seats. She points out that this board with its size is an outlier compared to other cities in MA. She is in support of the Commission's work which seems well researched. She also a benefit of the proposed model is being able to vote for all of the representatives.

Draft of Revised Charter

There is discussion of "Full Council" definition, referred to throughout charter, i.e. in clauses involving quorums and emergency measures (i.e 2-9(b), Chapter 7).

Some in the group interpret the current definition of "Full Council" with the clause "notwithstanding any vacancies which might exist" differently.

In Sec. 2-6, [Josh ensured] language in school committee section was mirrored and the section now reads "majority then in office".

Bryan - This should be uniform throughout unless there is a very good reason the "full 12" needs to be specified somewhere.

Chris raises concern there could be a representation problem, i.e. with an emergency measure, re: ward councilors elected at large [absences/vacancies].

Anne - In this case in the School Committee, the group has moved forward. It's difficult to account for all "what ifs".

Rhanna and Jane- There is no distinction with regard to roles and responsibilities of the two roles.

Josh - There is less ambiguity ~ the proposed charter is more prescriptive about filling seats.

Bryan is less concerned with Chris's point since this is not a majority ward councilor model.

After discussion, the group agrees to use "majority of city council then in office" in 2(9)-b.

Josh will go through the rest of the charter to ensure this is used consistently.

Sec. 11-2: Chris leads the discussion. We are still not clear about what we mean by "influence"~ undue influence vs. proper advocacy.

Tanya shares a similar provision from Oakland, CA which has specifics, and was put together by their legal department:

"The city councilors, school committee members, and area councilors shall not give orders to any city official, either publicly or privately; nor shall they attempt to coerce or influence the Mayor or any city official, in respect to any contract, purchase of any supplies or any other administrative action. This provision shall not prohibit assistance to constituents in dealing with city officials or personal advocacy on issues.

Chris believes concerns are addressed through what Tanya has proposed.

Bryan - The word “issues” is broad. Should the word “public” be used here, or is private advocacy still acceptable?

Josh - 11-2(c) addresses the concerns being described. The state conflict of interest law is adequate to address concerns about undue influence, abusing positions of power on local and state level. 11-2(b) could affect how people communicate with one another ~ we are creating more problems than we are solving.

Bryan wishes to confirm if we are trying to prevent private advocacy.

Jane shares concern that people in positions in power using their power to pressure members of the staff or usurp their job description(s).

Anne is drifting toward Josh’s position. It’s not always possible to legislate or prescribe all good action. It’s important to avoid overkill that keeps good or appropriate things from happening.

Jane describes lines that can be crossed with city officials and city staff. In the school it is an issue. It’s an important values statement - something should be included.

Howard agrees with Josh that the state law is adequate.

Rhanna- We cannot do too much to publicize and emphasize avoiding conflict of interest. At least four people on the Commission have seen this first hand. At the very least we can re-emphasize what is in the state law.

Anne does not mind redundancy in some cases because people on the local level don’t look at the state law and this brings it home a bit more. It’s important to avoid unintended consequences that could tie people’s hands. Part of this might be addressed on the executive level if support is offered and employees are encouraged to speak up.

Chris makes motion to remove 11-2(b). Seconded by Anne.

Discussion: Bryan is wondering if there could be a middle ground, using a clarifying modifier for “influence” such as “unduly” to align more closely with state law.

Rhanna - ...so perhaps “not seek to have undue influence”?

Anne - The vagueness is the issue. Rhanna's suggestion is an improvement.

Karen recommends including “coerce” as well.

Bryan - perhaps “unduly influence or coerce”. If including undue influence and coercion, [perhaps] we could get rid of the exceptions.

Josh - in 2009, state conflict of interest law was investigated by a commission. Another commission is currently looking into whether this needs to be overhauled. The recommendations usually involve increasing penalties. This is difficult and lengthy to write.

He likes that we have referenced the state law but does not think we should include our own provision. The state law can handle violations and complaints. Even with proposed edits, he would like to remove 11-2(b).

Rhanna - This is a matter of re-emphasizing and highlighting the importance of this principle.

Howard - This charter is also for citizens, not just for elected officials. If people are violating the state ethics laws, we should be speaking up.

Jane recalls we had wanted this to be included as a values statement as far as boundaries regarding conflict of interest. State law will be more complex and change over time. This can be a good reminder and help protect people who are less powerful.

Anne - when the motion comes to a vote, she'll vote against it. If the motion fails, she hopes someone will modify "influence" in 11- 2(b), include the word "coercion", and remove the subsection.

Howard points out there can be different interpretations of "conflict of interest". The values statement is the mention of the state law and the expectation that people will abide by it. Re-emphasizing doesn't strengthen it. The extra language adds confusion.

3 are in favor of removing 11-2(b). (Josh, Howard, Chris). 5 oppose. (Jane, Rhanna, Karen, Bryan, Anne). The motion fails. [note: original draft corrected].

Rhanna moves rewording 11-2(b) and eliminating the exceptions that follow. The sentence would read:

"The city councilors, School Committee members, and area councilors....shall not seek to unduly influence or coerce the official acts of any city official or to interfere in any way with the performance by such officers of their duties."

Anne seconds the motion.

Karen asks Collins whether they have seen similar language in charters. Tanya has not in a MA charter but her proposed language came from Oakland and there are other examples around the country. Marilyn states most just reference 268(a) without additional verbiage.

Jane - This came from Manchester.

Josh - But we have altered this significantly.

Rhanna - Manchester inspired [the section].

Karen views this as a good compromise. Language like this has been used in other charters, but the proposed language is not too complex.

Bryan questions whether "...to interfere in any way" should be included.

Howard prefers not tinkering with state law language and questions how the Attorney General might respond.

Marilyn - The AG will confirm the language is not in direct conflict with 268(a).

Tanya points out we have included 2-4(b), Interference with Administration, which is fairly standard.

Bryan maintains the "interfering" component may not be necessary.

Rhanna does not have problem with the word "interfere".

1:08 audio

4 are in favor of the motion (Rhanna, Karen, Jane, Anne). 4 are opposed: (Chris, Josh, Howard, Bryan). The motion fails.

Bryan makes the same motion Rhanna had made, except using this sentence:

“The city councilors, School Committee members, and area councilors...shall not seek to unduly influence or coerce the official acts of any city official.”

Anne seconds.

Jane asks Bryan what troubles him about “interference”.

Bryan - Unduly interfere or coerce are more in line with the state law. Interfere is a broader word and might cause problems causing concern to Josh and Howard.

Josh might support if including “This provision shall not prohibit assistance to constituents in their dealings with city officials”.

Bryan considers this a friendly amendment.

Rhanna views “interference” as separate from unduly influence.

Josh rereads the motion/proposed language:

“The city councilors, School Committee members, and area councilors...shall not seek to unduly influence or coerce the official acts of any city official. This provision shall not prohibit assistance to constituents in their dealings with city officials”.

All in favor (5 - Anne, Karen, Jane, Bryan, Josh). Opposed: (Howard, Chris, Rhanna). The motion passes.

Bryan raises whether the group wants to add “appointed” within:

The city councilors, school committee members, and members of multiple member bodies shall not seek to individually influence appointment or removal of any person to or from *appointed* office”.

The group agrees to no change.

Sec. 10-3(a) - Jane puts forward David Olson’s recommended change:

...Within 20 days following the date...a petition *shall* be signed by a number of voters...

The group accepts the change.

Sec. 10-3(b) - David Olson has also proposed modifications. Karen has forwarded his email to the group and suggests Brooke review drafting of 10-3(a).

Jane - David is pleased with the language with the exception of 10-3(b). His suggestion is that the language from Free Petition/Initiative measures be repeated in 10-3(b) instead of referencing back.

Josh - He also raised that the finds references to signature thresholds in 10-3 vs. 10-2(a) confusing. Perhaps David can make suggestions [on clarifying]. Josh hesitant to “drop in” language creating too long a section.

Jane - David is conveying that clear language is very important to understand the process.

Sec. 3-10 - Karen raises that at the last meeting, there was discussion about expanding the section to describe who would fill mayoral vacancy if not President or Vice President of Council. Collins was going to propose language.

Marilyn- Josh had made a point in meeting or conversation that we can include a line: “A succession order can be determined by ordinance”.

A couple of people remember this was decided but there is not language included.

Josh affirms it had not been resolved.

Marilyn - there are council provisions that councilors shall elect one of their own.

Josh - We also talked about an ordinance or not making changes.

Rhanna would rather spell out the succession order in the charter - vice president, then election of someone from the council if the President or Vice President do not want to serve. She does not want to leave it to ordinance.

Anne makes the motion and Rhanna seconds.

Collins will send language, but the succession will be President, Vice President, then member of Council.

8 are in favor. 0 are opposed. The motion passes.

Sec. 5(1) - Anne will verify the drafting.

12-7(m) - Karen raises whether the intent was to specify "board" resolutions (which are now "council" resolutions.) Right now a modifier is not included. The group agrees to no change.

Sec. 11-2(c): Bryan raises whether someone making a public comment may call for someone's removal. Solutions include use of word "unduly" or making an exception for public comment.

The group agrees to replace "individually with unduly", so sentence would read:

"The city councilors, school committee members, and members of multiple member bodies shall not seek to unduly influence..."

Discussion of Report Draft

Overview: Jane reminds group that we agreed to include rationale for changes in this draft, specifically city council size/composition and term limits. This section is now placed right after the introduction but has not yet been edited.

Some people had supported including some rationale for the highlighted topics.

Charter Review Process, Highlights, and Conclusion have been cut down and have significant revisions.

Several items that had been deleted were re-inserted. Jane has italicized sentences she believes could use extra work.

Chris had sent over information for term limits section The section is still in rough draft form and requires more rationale and explanation for why the 3 branches have different limits. Jane describes the section as a placeholder, and more work will go into it.

Introduction: The group agrees to Rhanna's proposal that "unanimously" is put in brackets in the first sentence to ensure it is included if there is unanimous support for proposed charter.

The group agrees to Karen's edit: change "activists" to active.

Josh - The sentence about 5 men and 4 women needs to reflect that the experience described applies to all commissioners.

The group accepts Bryan's edit: "The group includes five women and 4 men, all of whom bring unique experience..." and agrees to remove the sentence starting with "Some are lifelong residents..."

The group agrees to Rhanna's edit: "Voters citywide would elect one councilor from each of Newton's eight wards. The remaining four seats would be elected at-large."

Rationale:

All agree to:

1. Reversing order of City Council and Term Limits.
2. A photo page that includes the description of the Commission (5 women, 4 men, etc.) This would cut down on text in report and flow more smoothly.
3. A cover page, followed by the page with the picture, with the description underneath.

Bryan raises that the report is dense with text. The group discusses including charts and there is some but not total support for including in the report.

Anne does not support including charts within the prelim. report, but emphasizes the importance of strong formatting which makes the report scannable.

The group agrees to discuss which slides from the educational materials might be included.

Further discussion on Rationale:

Rhanna wishes to confirm whether it was over 30 or 60 years that the Council turnover has decreased.

Howard raises referencing non-binding referendums supporting downsizing of Council.

Chris reads the term limits rationale wording he provided to Jane.

Rhanna supports the points and suggests some re-wording.

Jane views the term limits section as needing the most work prior to the 2/15 meeting.

City Council:

Rhanna recommends looking at the big picture first, and she can incorporate edits.

The group supports including reference to the non-binding referendum(s)/a in support of the smaller council (as Howard has raised). This is evidence that the people of Newton desire a smaller council.

Jane suggests first paragraph edit: We spent a great deal of time studying alternative city models.

Karen recommends including description of the current structure and explaining that if 8 out of 12 councilors were elected by ward only, then each voter would only have a voice in electing 5 out of 12 councilors.

Bryan and Josh suggest including concept in Paragraph 3 that the new proposal increases each voter's ability to influence the elections of (or actions?) of the Council.

Chris - Perhaps emphasize that instead of having one councilor accountable to you (the voter), all are accountable to you. This personalizes it.

Jane would like to see the concept of accountability come through.

Josh - Is it possible to capture in one sentence that each person has a say in all 12 elections making each councilor accountable to each voter?

Jane and Josh -[We should] stress importance that there is a higher likelihood of contested elections with the at-large pool.

Anne recommends changing “never” to “rarely”.

Chris - Be careful with [terminology for] ward-based seats. A suggestion is ward-based at-large seats.

Bryan suggests a graphic could be helpful here ~ Rhanna agrees but it needs to be well done.

Jane is not certain about the use of “radical shift”. Bryan recommends using two sentences to avoid confusion.

Rhanna is not sure that is the best approach.

Howard raises discussion of sentence about bloc voting or trading votes quid pro quo. There is concern about how the sentence could be viewed.

The group agrees to the following: “...*Our research demonstrated* that in cities with a majority of ward-elected councilors, they often vote as a bloc or trade votes quid pro quo...”

Jane provided feedback that many she spoke with had expected a reduction to 16 councilors - 8 being ward councilors.

Anne has heard positive feedback as far as the proposal for a 12-member council. People understand that a majority of ward councilors does not work with the smaller body.

Jane clarifies that she has heard the same thing, [but] she had sought out the people who want to retain ward councilors.

Josh would like to include (in the section’s second paragraph) that we have a commitment to geographic diversity and our proposal continues our longstanding practice of ensuring that every neighborhood has a voice.

Bryan - We may want to [include in the report that we] recognize the value of a ward only councilor and be clear that on balance we believe our recommendation is the best way to go. We valued it but weighted out the other factors and decided to go another way.

Josh - Responsiveness to the ward is a function of how the person did the job, not the job description. It would be my hope that in the future [the ward councilors elected at-large] would be responsive to their wards and take ownership over their wards. However, the charter does not need to have them only elected from the ward to do that.

Rhanna - We want to emphasize that every ward will have a councilor who [though not] elected by the ward, will hopefully be the person tied into the ward issues.

Bryan - I would walk away from this thinking that ward councilors are not valued. Some kind of recognition is valuable.

Josh agrees but this is not about value we are willing to give up. Each ward continues to have a representative so people will gain the same benefits as they do now from ward councilors or ward councilors at-large.

Chris - I don't think we have to apologize too much. Maybe we can just acknowledge we have that ongoing commitment. Also, he is concerned about using the phrase "every neighborhood has a voice". There are a lot of neighborhoods and only 8 wards.

The group agrees to "every part of the city" to address this concern.

Rhanna tries to hone in on edits. The group agrees to: "Under our proposal, voters citywide would elect one representative from each of the city's eight wards. We believe Newton will be best served if these councilors are accountable to the whole city. One representative per ward is a universally observed practice that avoids redundancy and duplication of effort."

Josh - Do we want to say something about responsiveness being retained or ensured by the geographic diversity?

Jane, Anne - Pointing out 2/3 of the City Council and the School Committee have been elected this way indicates this is a structure that works.

Rhanna restates the point we are making that every part of the city has a voice and that we are emphasizing this a lot.

Josh - Bryan is talking about how people feel they have "their person".

Chris suggests "accountable to the whole city" be changed to "accountable to all voters". The group agrees.

Bryan suggests including "In exchange for a stronger influence over a single councilor, voters have more power when they can vote for all councilors." You have a larger share in a ward race, but you're giving up influence in the 7 other races.

Chris - I am concerned about "in exchange for". He loves the back half of the sentence.

Charter Review Process:

Jane wants to avoid misinterpretation that "efficiency" was one of our objectives. We have always said we need an effective and responsive government. We need to outline clearly what our 3 objectives are.

Rhanna - When we wrote these originally, we did not wordsmith them to have them included in a report like this. It's different how the rest of the report is written, so maybe they could be in a paragraph. (vs. bullets). For responsive government with great citizen engagement." This would capture the spirit of our objectives.

Jane suggests using various text features to draw people's attention in to various parts of the report, i.e. headings, bullets, graphics.

Josh and Chris like including the bullets.

Bryan - This section is process oriented and perhaps the bullet points (re: objectives) should be elsewhere in the report. The group leaves "as is".

The group agrees to "coalesced around a vision" in last paragraph.

In paragraph starting with "Newton citizens participated"...edit is made to "and engaging in discussions with individual Commissioners".

Edit to the last sentence accepted: "Ultimately all nine Commissioners agree it would modernize and improve Newton's government.

Highlights of the Charter Proposal:

The Mayor: The second sentence is removed.

Rhanna proposes and the group accepts: The strong Mayoral form of government has served Newton well so the proposed charter would retain this structure”.

School Committee: The group removes “popular” from first sentence of “The School Committee” section.

Anne proposes and the group accepts: The school committee structure, term lengths, and term limits *have been effective* and would remain the same under the proposed charter.

The City Council: The group agrees to “All councilors *can* serve for up to eight consecutive two-year terms.”

Financial Procedures: The group agrees to “ In keeping with current financial practices that are widely *accepted* ensure...”

Planning:

The group accepts Bryan’s suggested edit: “Under the proposed charter, the state mandated comprehensive plan that provides a roadmap for planning and development for the city would be subject to a periodic review”.

“The charter does not have the authority to determine what body may grant special permits” is removed.

The group accepts Karen’s proposed edit: “According to state law, the city council determines which bodies have special permit granting authority”.

Initiative, Petition, and Referendum: The group accepts Josh’s proposed edit: “To support and continue the strong tradition of Newton in facilitating its residents to petition its government, the proposed charter would update the process in accordance with modern standards.” .

The second sentence is removed.

Conflict of Interest: The group agrees to “A clear and explicit conflict of interest statement would clarify that elected officials and members of boards and commissions could not seek to *unduly* influence the official acts of any city employee.”

Ten Year Review: The group agrees to “To ensure that the charter is reviewed regularly, a charter review committee established by ordinance would conduct a review every ten years”. 2nd sentence is removed.

Conclusion: Josh proposes including the following sentences after “Newton is fortunate to have so many dedicated public servants at every level”:

“Nothing contained in this charter or this report should be construed as a reflection on the way any incumbent municipal officer has performed or is performing the office or duties. The Commission members believe that Newton has been fortunate to have so many competent persons serving it over the years acknowledging positions at every level.”

The group agrees to Bryan’s proposed edit - “We offer sincere thanks to all Newton’s elected officials and city employees who participated in our process (or work)”. The word “cheerfully” is removed.

Josh - specify the link for newtonma.gov/charter.

The group agrees to edits Rhanna proposes to Paragraph 2 so we are not repeating our objectives. Sentence 3 (after the word deliberation) is where we should capture we have tried to produce something “enduring”, i.e. “we have aimed to create an enduring charter” (or “a charter that will serve our city for generations”).

Also, instead of the sentence that begins “It is intended to reflect”, she proposes:

“We believe our proposal will allow for a more effective and responsive government and enable greater citizen engagement and participation”.

Anne’s proposed edit to Paragraph 4 is accepted: “Newton is fortunate to have so many dedicated public servants”.

Josh’s two proposed sentences would be next.

Next steps:

Rhanna will send revised rationale, City Council. Chris and Jane will have a sit down and agree on Term Limits.

Jane will incorporate changes and send by Monday [Feb. 6]. She will put in revisions, and send the draft. People should share if anything is missed. She'll send again by Thurs. (Feb. 9)

Bryan - Any edits after Monday (Feb. 6) are needed in writing ahead of time (of the 2/15 mtg.) if we're really going to vote at the next meeting.

Jane - we have to have them in writing?

Bryan - If I think a paragraph should be different, I send that to you advance of the meeting so everyone can have that in the materials to look at side by side. If we're crossing stuff out and writing stuff on the spot we're not going to have a final draft in 2 weeks.

Josh - I agree.

Jane - I would go farther. Send me your draft. We can send out that draft as long as there is not a serial [conversation]. Ouida has been very clear with me on this. As long as it has been sent to me, I can then send it out to the group.

Josh - I think it's more that if anyone has a proposal, you consolidate them in the report so that when we review it, everyone has everyone's suggestions.

Jane - Then we're going to go through this all over again.

Bryan - I think if anything, we'll just have a list of suggested edits.

Rhanna - We're allowed to disseminate meeting materials. If you send a thing and Bryan wants to rewrite a paragraph, he can send it out to the group. We can't talk about it but there's no restriction on him sending something out that we're all going to discuss at the mtg.

Josh - what he and Rhanna are both saying is that everything someone wants to discuss, everyone should have before the meeting...

Jane - Absolutely.

Bryan and Josh - They should provide a textual recommendation/actual wording.

Jane will send out Monday and seeks feedback by that following Wed. This will prevent last-minute feedback that she experienced with this draft.

Josh confirms steps.

The meeting adjourns at 10:30.

Documentation used:

1. Agenda
2. Minutes
3. Draft of Clean Charter
4. Draft of Educational Materials