

## Charter Commission Meeting

January 25, 2017, 7p.m., Room 211

Present: Josh Krintzman (Chair), Rhanna Kidwell, Vice Chair, Bryan Barash, Jane Frantz, Howard Haywood, Anne Larner, Brooke Lipsitt, Karen Manning, Chris Steele.

Approval of January 11, 2017 Minutes: Brooke makes a motion to approve minutes. Chris seconds. Motion passes 9-0.

### Public Comment:

Bryan asks about whether we can extend the 20 minutes allocated. Josh suggests we seeing how much progress can be made within the time already set aside.

Mark Alpert, 27 Victoria Circle wishes to speak against the proposal to eliminate ward councilors. He represents no one and is here on his own. This is an anti-democratic with a small “d” proposal. If we have everyone elected city-wide we will have no one representing the neighborhoods. Instead, the city could be taken over by an advertising campaign funded by a single company city-wide - no one would need to go door to door. They could hand out the leaflets, advertise in the Tab, which has its own agenda, and they’d get control over the city. A rich real estate developer must have developed this because this is a dream for them. He suspects a real estate developer or a whole bunch of them are behind this. A rich person in Chestnut Hill could decide to fund a campaign to get a slate elected that takes over the city. Who’s going to represent the neighborhoods? They’re not going to. He doesn’t know if any of the Commissioners supporting this are connected with real estate developers—can’t believe they could support this if not. [The proposal] is anti-democratic and removes neighborhood contributions. Wouldn’t it be great for a real estate developer if a slate were elected and the next year given a project like Austin St., the developer wouldn’t have to deal with those pesky ward councilors who are actually listening to the local people? Or this proposal would allow some right wing group to take over the city if no one is elected by the wards. It could be a group that doesn’t want any unions. It could also be someone left-wing as well. Someone could take over the city and run it and there would be nothing to do about it. He recommends eliminating some of the at-large councilors instead of the ward councilors. There are good things about the proposal but this portion could sink the whole project. There will be organized efforts to block the whole proposal.

Sallee Lipshutz, 24 Radcliffe Rd. speaks first on behalf of the Waban area Council which supports retention of election of ward councilors (elected by ward).

Second, they support inclusion of language in the Transitional article to ensure the complete functioning of area councils between the time the new charter’s enactment and until new ordinances [for area councils] are written. She reads an article from the Newton Upper Falls Area Council in support of the same two points.

Her own comments: She disagrees with the commission on many points but appreciates its openness. With this in mind, she requests an amendment to the preliminary report draft’s introduction to emphasize the proposed change to the size and composition of the current council (wording provided). She does not like doublespeak or when words are used to obfuscate/mislead in Newton. An example is “affordable housing”. This is not housing that someone can be afford, but is subsidized housing and should be called just that. Likewise, “accessory apartments” are not appendages to existing single or 2 family residences but can also be defined [as such] if they stand at the side or rear lot of a single family/2 family residence lots.

The [aforementioned] points should not be hidden on page 3 but included on page 1.

Joy Huber represents Newtonville Area Council which voted in alignment with the Waban Area and Upper Falls Area Councils (re: retention of ward councilors and specificity re: transition). Their council concerned about lack of direction before the City Council creates [neighborhood area council] ordinances.

Lynne Weisberg, 5 Alden St., has lived in Newton over 25 years. She has followed the Commission's work and agrees that suggesting the Commission has been "in cahoots" with developers is out of bounds. She believes the Commission's decisions are well-reasoned and well founded and that the proposed composition [w/8 councilors having residential representation] makes for a more democratically elected council. Every voter in the city will be able to vote for every member of the council.

Kathleen Hobson echoes Lynne's comments. She has been impressed with the process and though she does not agree with all of the proposed changes, they are arrived at in an informed and well reasoned way. She will accept the proposal because of the process that was followed.

Fran Godine, 19 Crawford Rd. also supports the process and encourages the Commission to adhere to its recommendations. It takes courage to stand up for the common good of citizens of Newton which she believes has been the Commission's mandate.

Nathaniel Lichtin, 53 Pinecrest Rd. will be opposing the [proposed] charter but commends the Commission for its work. The Newton Highlands Area Council has not yet had time to meet, but the majority if not all support retaining the ward councilors and Provision M [including aforementioned clause about continued operation].

Article 11, Sec. 2(b) provision concerns him. It is unclear, will not be followed or will cause dispute possibly causing litigation. It will not serve the city well and city voices need to be known. Article 2(a) is adequate. He states for the record that he opposes loss of role of ward councilors.

Don Ross speaks in support of area councils. They are working well. Some of the Commission's votes have been close and he would like to ensure area councils are "safe" particularly if the position of ward councilor is not retained. He thinks that a lot of people may vote "no" to the proposed charter because ward councilors not retained in proposal.

Nancy Zollers, Oliver Road, Waban. The Waban Area Council does not support her point of view. She hasn't read all the research but believes the Commission has done thorough work to inform its decisions and she supports where the proposal ended up.

Josh mentions Mar. 15 is the date of the Commission's public hearing, after submission of the preliminary report.

#### Review of Clean Draft of Charter (with comments from the Collins Center)

Definitions: "emergency" - : Group agrees to Collins Center suggestion and includes a commonly used definition of "emergency".

Brooke would like a definition for a "city officer". Marilyn explains it is defined in state law as someone who exercises statutory authority, i.e. treasurer or clerk. A definition is not required within our charter. She suggests moving definitions elsewhere within draft but the group agrees to keep where is, with header formatting matching "Preamble".

Karen raises whether a definition of "ad hoc committee" is needed, per a discussion reflected in the 1/11/17 minutes. Marilyn and the group do not believe it is necessary - the term is not used throughout.

Karen suggests including an adjective to describe functions within "Reorganization Plan" definition based on review of 1/11/17 audio. The group agrees to the change: "...a plan submitted by the mayor to the city council which proposes the abolition or consolidation of 1 or more city agencies, including the reassignment of *significant* functions from 1 agency to another..."

Article 1: Brooke asks whether School Committee should be included as a “Form of Government”. Marilyn clarifies it is a function assigned to the local level. No changes to Article 1, Sec. 2.

Article 2, Sec. (c), Removal of Residency: Brooke suggests “councilor by ward” should replace “member” regarding “removal from one ward of the city to another” since a change in ward does not apply to at-large councilors. The group agrees to the change.

Rhanna raises whether we should use the “notwithstanding” construction versus something more direct. Josh will edit Sec. (c) to: “If a Councilor by ward moves from one ward to another...” and will edit the removal provision similarly throughout.

Sec. 2-2 - The group accepts Collins edit: The president shall preside at meetings of the city council and perform such other functions as may be assigned by the charter, by ordinance, *by council rules*, or by vote of the city council.

Sec. 2-5(c) - Rhanna raises whether we can simplify the notwithstanding construction to start with “For” or “in the case” of a special election.

Josh uses this construction to avoid conflicting dates.

Chris and Jane prefer not having to reference other sections, in this case 2-1(b), and Brooke suggests going to 2-1(b) and changing to “in the case of a regular election..”.

Josh prefers laying out regular provisions and then indicating exceptions and the group decides “no change”.

Sec 2(4) Prohibitions- Brooke is looking for clarification about “Appointment After Expiration of Term”.

Marilyn explains that most charters currently allow people to go back to the job they held previously.

She and Tanya clarify that The Civil Service provision (which would override what is in a charter) enables someone in a civil service role, (i.e. firefighter) to return to his/her previously held office after serving.

Edit to make the clause clearer is accepted: ...This provision shall not prohibit a former city employee or city officer from resuming the *same duties* of a city officer or city employee at the conclusion of such service as a council member.

Sec. 2-2 - Bryan raises question about whether the charter should clarify who would act as president in the case of disability/absence of President and Vice President and the group agrees this would be covered through the council rules.

Sec. 2-6(b) - Marilyn makes the point that Open Meeting Law does not allow for meeting without a quorum, even if starting with a quorum.

The group accepts edit of removing “but a smaller number may meet and adjourn” as part of the first sentence and the edit: “The presence of a majority of *council members then in office* shall constitute a quorum for the transaction of business” after Brooke clarifies this should apply to the councilors then in office. (vs. a full council).

Sec. 2-6(c)- Collins edit accepted to reflect Open Meeting Law: Special meetings of the city council shall be held on the call of: the mayor as provided in section 3-7(b); the president of the city council; or any 4 or more members of the city council by written notice delivered to the place of residence or business of each member at least 48 hours in advance of the time set.

2-6(a) – Edit accepted: Except as otherwise provided by law or this charter, the legislative powers of the city council *shall* be exercised in a manner determined by the city council.

2-8(d) Edit accepted: Legal *Assistance* to the Council.

2-9(a) Edit accepted: Except as otherwise provided by this charter, every adopted measure shall become effective 21 days after adoption or at any later date specified in *the measure*.

2-9(b) – Edit accepted to remove clause Collins points out is covered by MGL: *No measure making a grant, renewal or extension, whatever its kind or nature, or any franchise or special privilege shall be passed as an emergency measure and, except as provided in sections 70 and 71 of chapter 164 of the General Laws and chapter 166 of the General Laws relating to utility lines. No such grant, renewal or extension shall be made other than by ordinance.*

Sec. 2-11 Collins edit accepted: The city council shall give at least *5 days* written notice of the general scope of the inquiry which is to be made to any person it shall require to appear before it under this section.

Sec. 3-1(b) - Brooke raises whether we wish to augment this section to address possibility of emolument, etc. The group agrees to no change.

Sec. 3-1(d) - Rhanna raises concern that a 4 year term is a long time allowing for no change in salary [Mayor]. The group agrees to no change.

Sec. 3-2(b) - The group agrees to remove “or such other qualifications” from this phrase: The chief administrative officer shall serve at the pleasure of the mayor and be appointed on the basis of having strong administrative and executive qualifications *or such other qualifications* and shall be especially fitted by education, training and experience to perform the duties of the office.

Sec. 3-3(b) and (d): Brooke requests parallel construction.

Sec. 3-3 (c) - Marilyn explains “strong chief laws”. The proposal language is commonly used if the city (such as Newton) has not adopted “strong chief laws”, which assign power of removal to the police and fire departments. No change to the 3-3(c) language is proposed.

Sec. 3-3(h) – Brooke’s recommended edit accepted: The mayor shall regularly, but not less frequently than annually, *provide to the city clerk and city council* a listing of all vacancies on city boards and commissions, along with an indication of the appointing authority responsible for filling the vacancy.

Sec. 3-5(b) – Brooke’s recommended edit to include a time frame is accepted: “If the position of a city officer or department head becomes vacant, the mayor shall notify the *city clerk* and the city council *within 48 hours*.”

Sec. 3-7(b) - Edit accepted in order to comply with Open Meeting Law: The Mayor may call a special meeting of the city council with public notice provided *48 hours* prior.

Sec. 3-8, Edit to second paragraph accepted to remove “notwithstanding such veto by the mayor”.

Sec. 3-9: The paragraph: “The City Council, with approval of the mayor, may provide by ordinance for the handling of certain administrative duties of the mayor in the temporary absence of the mayor by other city councilors” is combined with the first paragraph.

Sec. 3-10 - Rhanna recommends clarifying who would be chosen/next in line if the President of the Council were not to serve as Mayor given a mayoral vacancy. Collins will propose language for next meeting, and Marilyn points out that usually the Council elects a councilor.

Sec. 4-2(b) - Ensure the Quorum language is parallel to what was decided for City Council Quorums.

Sec. 4-1 - Edit to remove extra “the” in last paragraph.

Sec. 4-5 Prohibitions: Add the word “*same*” so clause reflects what was decided for City Council Prohibitions.

Sec. 5-1: Anne emphasizes that the Comptroller had wanted this language handled carefully, preserving financial terms of art. The following edit will be made: “The Mayor shall annually prepare a 5 year forecast of city revenues, expenditures, and the general financial condition of the city ....including all funds subject to...”.

Brooke notes “at least” has been removed. It would not be a problem if 10 years were forecast.

The group also accepts an edit to last line:...”provided however, that such an ordinances shall not take effect until the fiscal year *following its adoption*.”

Sec. 5-4(c) and (d) edits are accepted: (c) iv: the estimated annual cost of operating and maintaining the capital *assets* included.

(d) Submission— The mayor shall submit to the city council the inventory and the 5-year capital improvement program at least 6 months prior to the mayor’s submission *of the operating budget for the next fiscal year*.

Sec. 5-5: Collins edit accepted: All contracts entered into for or in behalf of the city by any officer or city agency shall be subject to the approval of the mayor, *unless otherwise provided by law*.

Sec. 6-1(b): The first sentence is edited to read: “Every reorganization plan shall, upon receipt *by the council*, be referred to an appropriate committee of the city...”

Brooke confirms the council receives the plan via docket and Jane states the definition of “reorganization plan” reflects this.

Sec. 7-2(a) – Edit accepted to (a) Content—There shall be a comprehensive plan containing the plan elements described in section 81D of chapter 41 of the General Laws; provided however, that the city may also undertake planning activities relating to particular services or specific geographic areas within the city.

Sec. 7-2(c) Effect - The group keeps the drafting “as is”: The ordinances of the city, including but not limited to the zoning ordinances, shall be not inconsistent with the comprehensive plan.

Two “stray commas” are removed in the second to last and last paragraphs.

On the note of smaller edits, Karen suggests using a professional resource to look after finer grammatical points. There is support from some of the group.

Bryan suggests emailing in smaller edits. Anne suggests reference to a style book could be helpful.

Sec. 7-3(b)-The group accepts Josh’s proposed rewrite: “If any proposed ordinance involves a matter addressed in the comprehensive plan concerning land use, development regulations, or capital improvement expenditures, the city council shall first refer the proposed ordinance to the planning and development board. The board shall report its recommendations in writing to the city council on the proposed ordinance in accordance with section 5 of chapter 40A of the General Laws. “

Sec. 8-1(d) - Bryan recommends: “..the phrase “Candidate for Re-election” shall appear beside the candidate’s name”.

The group confirms that there is no ward requirement relating to signatures.

Sec. 9-3(a) - Edit accepted: “...the number of residents contained within the service area shall *not be* greater than the average number of residents in a ward”.

Sec. 8-3(a) - Brooke believes the stipulations regarding preliminary elections may be unclear. The group accepts her edit: "For any special election called to fill a vacancy in the office of Mayor and for every regular city election there shall be held a special election for nominating candidates."

Sec. 9-5 - The group agrees to: Neighborhood area councils shall perform advisory and communications functions and such other functions as prescribed by ordinance. All functions allowed by ordinance shall apply *equally* to all neighborhood area councils.

Sec. 9-6: Karen confirms "its" structure and "its business" should be changed to "their structure" and "their business" based on the 1/11/17 discussion.

Chris requests 2 separate sentences instead of using a semicolon and "ordinances" is changed to "bylaws". With edits, 9-6 concludes with: The neighborhood area councils shall create bylaws conforming to the guidelines established by ordinances. Such bylaws shall require approval from the city council before implementation.

Sec. 10-2(a): A change is made to refer to "*each voter's* residential address".

Sec. 10-2(c) - The "board of election commissioners" is changed to "election commissioners".

Sec. 10-2(f) - For consistency with (c), the first sentence is changed to: If the number of signatures to such supplemental petition is found to be sufficient by the *election commission* for petitions...

Sec. 10-3(a) – Brooke points out the need to include "as certified by the election commissioner after the regular city election". She would like this sentence reworked and broken out into a couple of sentences. Josh will redraft.

Sec. 10-5- Bryan asks for more information on how we arrived at 20% of the voters for Required Voter Participation. Jane explained that supporters [of an initiative] could motivate a group for high turnout during an election marked by low voter turnout and bring about the change. The 20% is designed to ensure a threshold of participation. Marilyn points out the state threshold level is 30%. 20% is approximately 11,000 people. Brooke clarifies that 20% need to show up, not necessarily vote on the question.

Sec. 10-7 - Collins edit to reference MGL accepted: As authorized by chapter 127 of the acts of 2014, the city of Newton may place a non-binding public opinion advisory question on the ballot for either a regular or special municipal election under the procedures established by section 18A of chapter 53 of the General Laws.

The group has an extensive discussion about Article 11, Section 2 and Nathaniel Lichtin's and others' concerns about Sec. 2(b). Brooke is concerned the Commission's intent might be unclear. She recaps that we're trying to prohibit elected individuals from influencing official acts. What's written doesn't prohibit advocacy and is clear to her, but she supports additional discussion.

Anne suggests we may want to remove "members of multiple member bodies".

Josh - this would get at the concern raised tonight.

Rhanna - however this would eliminate neighborhood area councils

Brooke points out they are elected and that we can include what we think is appropriate. Anne points out area councilors are not official officers of the city.

Josh clarifies that state law is more general and does not address constituent services.

Howard points out difficulty with compliance and drawing the line.

Bryan agrees with Nathaniel it is unclear what constitutes "matters pending before the city".

Josh recalls the group's previous strong support of 11-2(a) and 11-2(b) was based on Manchester's language. He is open to removing (b).

Rhanna supports keeping the language to ensure people don't use their influence inappropriately.

Bryan would hesitate to take this out but believes we have work to do on the section.

Brooke - we should put in the work to fix this.

Howard believes parts of this section are too difficult to define, i.e. "undue influence". This doesn't lend itself to people understanding and complying with the charter.

Jane has seen problems [with influence] in the past, supports this, and sees it as a values statement.

Brooke suggests breaking this section down into three separate pieces and put back together.

Bryan - suggests separating out "appointment or removal of any person to or from office"

Jane is concerned about advocacy, which Howard points out it is "in the eye of the beholder".

A question is the distinction between advocacy and influence. There is agreement on the concept and that the drafted language could cause confusion.

Brooke suggests making advocacy broad, i.e. "advocacy on issues". This is a question of personnel matters vs. issues.

Rhanna suggests including neighborhood area councils in the first line in place of "multiple member bodies".

There is an edit in last line to: "...performance of such officers of their duties".

Howard suggests ending (b) there.

Anne raises question of including area councils.

Chris suggests defining the problem we are trying to solve.

Josh and Anne reiterate this is about abusing power within a role.

Bryan is comfortable with (1) but questions (2), advocacy, and how much influence there should be over a policy.

Anne - It's really in the back room. The objection is not to what is done in public.

Rhanna - perhaps "public advocacy"

Chris - so [these bodies] may not act in a way outside of their official duties than other citizens would. This could help avoid confusion and angst.

Bryan - However, a citizen could approach the Planning Director.

Brooke - without having the power to cut the planning department budget...

Bryan - Communication should be in a public forum

Howard raises implications of ward councilors fighting the charter proposal because it is of personal loss to them. Is that a conflict of interest? It's better to read and comply with the state law. Don't recreate this in Newton.

Brooke - These cases are not about personal gain but someone using leverage. Someone has control over a budget to unduly influence the actions of a city employee. That's not covered by the conflict of interest.

Bryan - This is a concern when a councilor cannot get the votes and leans on the decision maker.

Josh reads 268(a) from MGL. It's about inappropriately using position.

Others do not think this would address these situations which are not uncommon.

Josh recaps the proposed changes. Are there other changes?

Bryan again suggests separating out "appointment or removal of any person to or from office", and this would apply to multi-member bodies. Josh asks Bryan to email him the suggested edit.

Chris is still concerned people will see influence as advocacy. He wants this as clear as possible to as broad an audience as possible. He proposes possibly using "undue influence" to help make the distinction between influence and advocacy.

Josh will draft language based on the discussion and people should bring their comments to the next meeting.

Sec. 11-4 - "in" changed to "by".

Sec. 12-6: Group accepts proposed changes.

Chris raises point about Sec. "M" in Article 12 (as he had in 1/11/17 meeting). He does not believe the issue of area councils' continuing operation un[der current board resolutions until City Council drafts ordinance(s)] is covered under Sec. 12-1.

Chris makes a motion to add the following to "M": "As noted in Sec. 12-1, existing area councils shall continue to operate under the board resolutions that established them until the passage of new ordinances".

Anne seconds. The motion passes 9-0.

Sec. 11-9: Remove the "s" on Provision. (Brooke).

### Discussion of Final Report

Jane - people have different viewpoints on the purpose of the report, and whether it is a persuasive tool, educational, and/or a way to provide rationale for our decisions.

Marilyn believes the report can do all of those things.

Jane recaps that we have the content, which covers the education piece. However persuasion and rationale need to be included. She reread other reports and describes their different approaches.

Rhanna - by education and providing rational you persuade people (or not). It is a marketing tool but you need these two elements. It's all three.

Bryan agrees with these points.

Chris - additional persuasion needs to be made. Fundamental rebuttal and explanation of our approach are needed. It's more involved, but the report is not the right place.

Bryan and Anne agree.



Brooke – we should give a summary explanation of what the changes are and why we made them. The campaign will need to do the persuasion. We need to provide a document upon which the case may be built.

Bryan - Sallee had a good point to highlight the changes in composition.

Jane agrees. We need to provide rationale for most significant changes, i.e. composition and term limits.

Rhanna does not think all of Sallee's points need to be included as part of introduction – some might stay within city council section.

Howard - rationale for composition should be provided clearly up front.

Karen points out edits the group had agreed to on 1/11/17 that did not make it into the draft. Jane was keeping the draft succinct, but will re-include those points as part of the next draft.

Bryan - this is a different report than we voted on. This is based on more than comments provided at the meeting, as Jane continued to receive input after the meeting.

Jane - do we want to put those items back in?

Rhanna suggests re-including, then editing based on what the group decides.

Jane - ward vs. at large rationale is the focus for most people. The explanation should be in the report.

The group agrees guiding principles should be infused within the report but not as part of every section.

The group tries to figure out the layout and Brooke emphasizes proportionality - keeping the emphasis on the big changes. Rhanna points out the placement can be decided after its written.

Brooke suggests "Composition" and "Term Limits" as main headings.

Anne also supports getting the ideas on paper and then addressing the format.

Bryan suggests use of examples, maybe a chart, to illustrate that Newton is out of step with other communities, and Rhanna suggests this data could be presented as one or two sentences.

Josh confirms Mar. 6 is the preliminary report due date, and it will be sent to the Attorney General.

For next draft: Jane will write up the rationale, include the parts that were omitted, etc. Rhanna will write up the rationale re: composition and Josh will provide some language about guiding principles. Bryan will work with Rhanna on statistics, etc. showing how Newton has been out of step with other communities. Chris has information on term limits that he will turn over.

The final vote on the charter draft will not be taken until 2/15 when all commissioners will be present.

Karen raises importance of having an outside party take one last look. Tanya emphasizes they do not have copy editing skills, and Marilyn does not think it has to be pristine.

Josh explains it looks disjointed because some parts remained intact.

Bryan supports having someone look the draft over if it can be done within the timeline.

Jane - do we know a college professor or someone in the community who could do it?

Anne - Josh makes a good point that certain sections were [intentionally] not touched.

Brooke - it is pretty well edited. She had many comments today because it is the first time she read through.

Bryan worries about risk of accidentally changing meaning.

Josh, Chris, and Bryan will work on first draft of educational materials for review on 2/1 or 2/15. Bryan points out this not part of our official work. Josh would like to get started.

Anne raises the letter we intend to write to Mayor and Council. This will be addressed after completion of the preliminary report.

Meeting adjourns at 10:05p.m.

Documentation used:

Agenda

1/11/17 Meeting Minutes

Charter Draft

Preliminary Report Draft