

Charter Commission Meeting

December 7, 2016, 7p.m., Council Chambers

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

Bryan Barash arrives just after 7:05p.m.

Approval of November 30, 2016 Minutes: Anne Larner makes a motion to approve minutes with edits. (Clarifying comments by Anne Larner and Chris Steele on pages 2 and 9 respectively, and clarifying two votes). Brooke seconds. Motion passes 9-0.

Public Comment: None

Discussion of Article 10 Draft

The first item to discuss is proposed change in Sec. 10-1, Free Petition. The proposal is to provide 7 days notice to the public instead of 48 hours (in current charter) prior to a public hearing. The group agrees to this change.

The next section to discuss is 10-2, (g), Citizen Initiatives Measure.

Brooke has alternative language to propose.

She reads the second sentence:

The notice shall contain a fair, concise summary of the initiative measure as approved by the city solicitor...

She would like to include “prepared by the petitioners”, so the sentence would read:

The notice shall contain a fair, concise summary of the initiative measure *prepared by the petitioners* and approved by the city solicitor....

Also, in the next sentence,

“Such notice shall be delivered” raises concern. She prefers “sent” rather than “delivered” We can prove that we sent it, but not that it was delivered.

She also recommends: Such notice shall be sent *not fewer than 14 days preceding the date of the election at which such question is to be voted upon*. (instead of “not less than 7 nor more than 14 days”). Brooke makes the motion to incorporate the two edits. Seconded by Chris.

Discussion:

Marilyn – when the initial petition is filed under 10-2(b), it says the solicitor prepares the question that goes on the petition forms, which is a summary of the question.

Marilyn, Brooke, and Josh prefer use of “prepared” instead of “approved”. Brooke was trying to put more of the onus onto the petitioners, but that was taken care of in Section (b). This does not involve proponents or opponents but merely summarizes the question.

Brooke raises question of whether we should include proponents and opponents statements, as done for state ballots.

Brooke supports changing motion to use “prepared” instead of “approved”:

The motion for 10(2)g is updated to change “approved” to prepared.

- 1) The notice shall contain a fair, concise summary of the initiative measure as *prepared* by the city solicitor...
- 2) Such notice shall be sent not fewer than 14 days preceding the date of the election at which such question is to be voted upon

Marilyn also proposes:

- 3) “as prepared by the city solicitor” in Sec. 10-2(h) as well, for consistency. (third part of the motion).

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

Brooke mentions the need to ensure those changes don’t impact Citizen Referendum Procedures. She raises pros and cons statements, especially for initiatives. Chris points out 10-3 (b) and (c).

Marilyn has never seen this done in a charter. This is done more in the political realm. The conclusion is that the City Council can do this if they would like to, but the charter shouldn’t require it. Brooke drops the position.

Jane notes this is of particular concern with initiatives. Perhaps people have put together an initiative without a debate in the public arena, so pros and cons more meaningful here. (notwithstanding Marilyn’s comments).

Bryan wishes to point out this is applicable at state level. Citizen statements are being piloted. He’s not sure this is something that can be resolved in the charter.

Jane shares Brooke’s concern that initiatives could involve a small group of people, who i.e. through special election, could pass something that the larger community does not favor. Brooke describes 2 development questions on last ballot that passed “under the radar” because the supporters knew they were there and voted. This is fine, as long as public is informed. A mailing is helpful whether or not it includes pros and cons. [Again], she is prepared to drop the idea of pros and cons.

Bryan suggests pros and cons might be included in our Commission’s letter to the City Council, and there is agreement on this point.

The article leaders are pleased that the public will be notified of referendum questions, and will have the opportunity to become informed.

Marilyn questions use of the title “City Solicitor” and Brooke confirms it should be used.

Discussion of Use and Disposition of City Resources

Anne reminds the group that Councilor Crossley had spoken to the Commission about scenarios that had been frustrating to some Councilors, and the question of council approval in these cases (for checks and balances) was raised. One issue was over licensing/permitting. A nonprofit was provided license by the Mayor to use a building, which did not require approval of the Council. If it had been leased, the Council would have needed to approve. The Mayor was able to do this unilaterally. The second issue was about credits that were issued to the City due to installation of solar panels. The credits were provided to low income families through an Eversource and ABCDE Program.

Bryan and Anne spoke with a number of Councilors to see if these were common or more extraordinary

issues. Anne also spoke with the Comptroller, especially about credits and emailed Ouida Young about licensing. Ouida does not wish to take a policy stance, but was willing to provide information. Her email uncovered how complicated the issue of licensing is.

Bryan and Anne reviewed the information they gathered, as well as Deb Crossley and David Wilkinson's proposed language. They concluded [a change] would have unintended consequences that could be burdensome to people seeking licenses, and would be an intrusion into an administrative (Executive) area. They sympathized with the frustration of the Council(ors), but felt that addressing the issue in the charter in the way it was proposed (or even with edits) was not appropriate.

The credit issue seemed to be an anomaly, though again, they understand the frustration. A lot of the issues seemed to flow from the current position of the Dept. of Revenue that credits are not equal in any way to cash. Therefore, their use does not require approval by the City Council. It seems like overkill to go to the charter to address this one-time issue.

Their recommendation is not to address this issue in the charter. Instead, perhaps the Council could address this going forward through ordinance or political action.

Anne has shared her findings with the Councilors with whom she and Bryan worked.

The group supports the recommendation of no change to the charter related to this topic.

Discussion of Article 11, Sec. 2 – Conflict of Interest Provision

Josh raises whether the mayor should be included as part of Section 11-2(b):

SECTION 11-2. Conflict of Interest

This group discusses the current proposed drafting:

(a) All city employees shall be considered municipal employees under chapter 268A of the General Laws and shall comply with the state conflict of interest laws.

(b) **The mayor**, city councilors, school committee members and members of multiple member bodies shall not seek to individually influence the official acts of any city official, or to direct or request, except in writing, the appointment or removal of any person to or from office, or to interfere in any way with the performance by such officers of their duties. This provision shall not prohibit:

(1) assistance to constituents in their dealings with city officials if constituent requests to the appropriate administrative officials have been unsuccessful;

(2) advocacy of particular outcomes on matters pending before the city if the matter is of a general nature; or

(3) submission of recommendations or references on behalf of a candidate for city employment which are consistent with this charter.

Josh points out what is written is part of the Mayor's job.

The group agrees, so "The Mayor" will be removed from 11-2 (b).

Josh describes the importance the Council places on constituent services. The phrase that gives him pause is in 11-12 b (1): "...if constituent requests to the appropriate administrative officials have been unsuccessful". This would prevent people from ever going first to a City Councilor with an issue.

People seem to like the option of going to their councilors, so he would like to remove that phrase. The group discusses the issue raised.

Brooke describes her own hesitancy contacting department heads. She was more comfortable contacting her councilor. She agrees with Josh, even remembering the conversation(s) we've had. We

should not be tying the hands of the citizens or Councilors.

Chris brings up our interest in improving 311/executive dept., and points out the language reflects our commitment.

Anne agrees with Chris. Our goal is for the city to run as effectively as possible, not needing the intervention of the council unless other attempts [to resolve problems through other channels] are unsuccessful.

Bryan also has concerns about the change, and how councilors might influence decision making and resolution to problems. It could be a political tool in a way, rather than standard constituent services.

Brooke points out that removing the second half of the sentence does not suggest citizens should go to their councilors before they use the 311 system, etc. It just doesn't prohibit citizens and councilors from working together to solve a problem. She does not think anyone would miss the second part of the sentence.

Karen suggests an edit if we would like to stay with the current direction: "This provision shall not prohibit assistance to constituents in their dealings with city officials if constituent requests through other appropriate channels have not been successful".

Bryan supports encouraging contact elsewhere before contacting councilors.

Tanya highlights Article 2, Sec. 4 (b): Interference with Administration. She suggests the sections should be looked at together.

Josh does not see the sections as related, and as more of a separation of powers. Tanya believes the Article 2 clause could be interpreted in a broader way.

Howard wonders if we need anything in addition to the state conflict of interest laws that are already in place. Perhaps this could cause more problems. Trying to improve on what's there can lead to mistakes.

Josh sees the point about unintended consequences.

Jane asks Karen to repeat her proposed language.

Rhanna supports culture of calling 311 before a councilor, and the whole system is upset when it is not working consistently. However, she thinks we would be making it illegal to contact a councilor first, or the councilor, if first contacted, would be required to direct people to 311. She thinks this would be impossible to enforce, and does not know how sanctions would work. She is not a fan of a law that is difficult to enforce.

Bryan considers Howard's comments and wonders whether we need the subsection (b). It does dictate what city councilors can and can't do and some issues could be blurry when determining violations.

Rhanna likes subsection (b), except for the section Josh has highlighted.

Anne has been persuaded by Brooke's and Rhanna's points that simpler may be preferable.

Bryan is concerned that councilors and SC members and members of multi-member boards are policy-makers. Could their making a statement or taking a position violate the conflict of interest law?

Josh asks if Bryan is proposing the removal of subsection (b).

Bryan would be interested, but if no one else is he would drop the point.

Jane views the point as important (what is appropriate for 311 vs. City Councilors) but is uncomfortable with the subsection language.

Brooke makes motion that in 11-2(b)(1), the sentence ends after the word “officials”. (remove the words: “if constituent requests to the appropriate administrative officials have been unsuccessful”.)

Anne seconds.

7 are in favor (Rhanna, Josh, Jane, Anne, Brooke, Bryan, Karen). 0 are opposed. 2 abstain (Chris, Howard). The motion passes.

Brooke is not clear about 11-2(b)(2).

Jane asks Tanya for an example, but Tanya is also unclear.

Bryan believes this is related to the concern he raised. It should not be outside of a city councilor’s realm to advocate. However, this is fuzzy.

Brooke suggests we might want to remove: “if the matter is of a general nature”. The group agrees unanimously.

Josh recaps the changes.

Discussion of Article 8: Information on the Ballot

Rhanna reminds us that this topic is one of the first we deliberated, and we decided not to indicate that a candidate is an incumbent on the ballot. Does the group want to revisit? Whether or not the information gives an incumbent an advantage, it does take away some information from the voters.

Bryan points out that under the current charter, preliminary elections and general elections have different ballots. This could be confusing for voters, and he remembers we had a difficult time deciding on a system that would be consistent for both.

Jane has accessed the state law since our first review. She understands that “candidate for re-election” needs to be on the ballot. Question as to whether the information “can appear” or “shall appear”.

Tanya reads the statute, and the word “shall” is used.

State law notwithstanding, Brooke was uncomfortable with where to draw the line in providing voter information. In our goal to promote competition, we did not wish to give unnecessary advantage to incumbents. However, if the information [“candidate for re-election”] is required on the ballot, there is not anything we can do. The only question is whether we want to offer anything else.

Tanya states nothing re: veteran status is required, as she understands it.

Bryan believes there is proposed legislation to require designation of “veteran” on ballots. It could happen down the road.

Josh refers the group to 8-2(c) which has been struck out.

Bryan asks if the [candidate for re-election] information should be included on the preliminary ballot as well, based on the state law.

Rhanna points out we deliberated this. Bryan states we removed it on both, wanting to be consistent. Rhanna’s preference is that whether or not the law pertains to both, the two should be consistent.

Josh’s understanding is that the law pertains to general elections, since not all cities hold preliminary elections. Tanya will confirm and share if that is not the case.

Rhanna would like consistency for any city election.

Brooke – in an effort to level the playing field, she respectfully disagrees with Rhanna. She would only like the information there when it is required.

Jane agrees with Brooke – only where required.

Josh asks the group who prefers to see this exclusively in regular city elections.

7. (Brooke, Jane, Howard, Josh, Chris, Bryan, Anne).

Those who would like these in all city elections: Karen and Rhanna.

The motion passes to provide the information “candidate for re-election” only in general elections.

Rhanna brings up whether we should include “veterans” on the ballot. She thinks this is a nice show of respect and it might be viewed as anti-veteran if we take it away, since this was included in last charter.

Bryan agrees this is a nice show of respect, but it is difficult to know where to draw the line. He raises the question of those who have prior political experience, i.e. elected office, which can be standard practice re: what to include [on a ballot].

Rhanna – this would be for those who put their lives on the line so we are able to vote. Anything else is not relevant and completely different.

Brooke – what about police officers?

Rhanna – they are keeping the peace but not necessarily defending our freedom. We can vote at the ballot box because people have died so we can be there.

Chris brings up firefighters and thinks this is a fuzzy line.

Rhanna makes motion that we designate “Veterans” on the ballot. Anne seconds.
2 in favor (Rhanna and Anne). 6 opposed. (Chris, Josh, Karen, Howard, Brooke, Jane). 1 abstains (Bryan).

Rhanna raises whether the ward for those in the pool of at-large candidates should be included on the ballot. This would help with the concern people have raised about having too many candidates from one ward.

The only drawback she sees is that it may cause confusion. People may think they can only vote for someone from their ward, even though the directions could explain they may vote for any four candidates.

Bryan sees this as a double edged sword. Some people might be inclined to support candidates based on ward.

Jane suggests the group should think this question over. Rhanna will lead the discussion at the next meeting.

Beginning of the Term Provisions

The wording in question is:

(dc) Election and Term—**The terms of council members shall be 2 years beginning on the first secular day of January that is not a Saturday, Sunday or legal holiday, after their election continuing and until**

their successors are qualified. No person shall be eligible for election to the city council for a seventh consecutive term.

Rhanna highlights the longstanding tradition of swearing in elected officials on New Year's Day. The current charter (Article 2, 1(c)) says the terms shall start "the first secular day of January" which she understands to mean not Sunday. This still allows for the ceremony on New Year's Day if the city chooses.

Our proposed draft (above) says legal holiday. The language in the current charter would not exclude Saturday or legal holidays.

Josh points out we will need to harmonize these changes for the three articles impacted (Articles 2,3,4).

Anne agrees we should incorporate language that will allow the New Year's Day tradition to continue. (Swearing in Jan 1, or Jan. 2 if Jan. 1 is a Sunday).

Bryan is concerned about excluding Sunday but not Saturday given the diverse religious make-up of the city.

If Sunday is excluded, maybe Saturday should be as well.

Brooke points out Friday as significant to Muslims. Her concern is if New Year's day were to fall on a Saturday and there was a restriction requiring the election to occur on Monday, Jan. 3. Some people need to go to work, and people want their loved ones to attend, which could be affected. Perhaps leave only Sunday. If the 1st is a Sunday, then the first [Monday] is a legal holiday. If the first is a Saturday, New Year's is celebrated on Saturday.

Bryan asks if there is rationale for excluding any day.

Karen understands community service is allowed on the Sabbath, though she cannot speak for all faiths.

Howard is again concerned that we will put something in the charter that won't get followed because of the tradition.

Josh points out we may just need to remove the words "or legal holiday" from current draft.

Rhanna makes a motion to use the language: "The terms of council members shall be 2 years beginning on the first day of January after their election continuing until their successors are qualified."
Brooke seconds.

Josh clarifies this would be for Articles 2(1), 3(1) and 4(1).

All in favor: 9. 0 opposed. The motion passes.

Josh points out the change to "ninth consecutive term" for council members, based on the Commission's straw vote on term limits. All articles will reflect the vote.

Discussion of Article 11, Sec. 12: Uniform Procedures – Public Comment

Josh previews the document which includes our current proposed language and two possible revisions from Marilyn Contreas, Collins Center.

Marilyn wanted to address this as a professional and in response to comments Mr. Haywood had made about Boards and Commissions needing to accomplish their work. She agrees with the premise that we should not be too prescriptive, but there may be times when more direction is useful, and she thinks this is one of those times.

She does not think this is effective as a stand-alone provision. More direction is needed. The new

revisions would require the boards and commissions to create, post, and review their public comment policies.

She hesitates over the use of the word “convenient”, so removed it.

Revision 1 and 2 are not that different.

Rhanna and Bryan would like clarification on the difference between the two proposed revisions.

Marilyn explains “convenience” is less emphasized in Revision 2.

Anne points out Revision 2 is more vague (i.e. re: scheduling of public comment throughout the year) and prefers Revision 1, which is more directive.

Brooke points out the city has many...hundreds...of boards and commissions which have many styles of meeting. It would be difficult to have the policy available at every meeting. This is letting the “tail wag the dog”. Putting in a whole paragraph structuring how [boards and commissions] hear from public seems to her like overkill. She likes and approves of the currently proposed language.

Bryan likes the idea that there has to be a policy.

Marilyn explains this allows the Boards and Commissions to design unique policies.

Bryan points out the policy could be accessed via cell phone at a meeting. Online posting would be adequate.

Jane proposes we include “All bodies shall develop and adopt a public comment policy” with our currently proposed language.

Bryan makes a motion to adopt Revision 1, but excluding “make the public comment policy available at all meetings”. Chris seconds.

Discussion:

Brooke - if she is supportive of this at all, she prefers Jane’s approach. She is worried, as someone who has been there, that there will not be compliance. She will oppose this motion, but would support Jane’s revision.

Chris believes the public will ensure accountability and hold people to what is written in the charter.

Bryan agrees in part with both Brooke and Chris. Some bodies won’t comply. However, not all bodies have people trying to comment, but have instead more listeners. There won’t be much controversy there. But to Chris’s point, the expectations will be different for other bodies. This [provision] would be used for those if it is included in the charter.

Howard thinks this would be too inflexible and could cause tension, i.e. if the times set aside for comment strictly preclude someone from participating. Our charter review meetings do not provide an example. This is a broader issue. It would be different with meetings on housing and development issues, for instance. This [proposed revision] would disrespect the councilors. They would be affected by the constraints of their policy, but the people could still speak four minutes instead of three, repeat the same points as others, etc and not comply with rules [on their end]. He does not think this will work.

Karen is more in agreement with Howard and Brooke. Asking committees to create and uphold individual policies could become cumbersome. The current change reflects our values, and recommends including this topic in our letter to the Council.

Rhanna weighs in in favor in more citizen participation in government, an important part of the

process. We should attempt to make it easier for people. They could adjust their schedules as needed to show up at a meeting if they know what the policy is.

Anne thinks Revision 1 provides flexibility for the Boards and Commissions to create policies appropriate for their work. She thinks it is the way to go. It's not too prescriptive and respectful of the citizens. It's preferable to something too broad/not asking committees to think through policies that would work best for them.

Brooke, like Rhanna, wants greater participation. That's what this whole group is about. However, requiring strict rules flies in the face of citizen participation. A chairman could not take a comment because someone is 5 minutes late. Encouraging hard and fast rules instead of a values statement (providing frequent opportunity for public participation) will have the opposite effect of what we are looking for.

Howard is concerned about lack of flexibility. Marilyn points out that the polic(ies) would not need to be rigid. If the rules are posted, people know what to expect. Her intention is for Boards to recognize the need for public comment, and for the public to recognize the needs of the Board.

Howard asks if there is evidence that there is insufficient opportunity for public comment in the city at this time. Right now, there is the flexibility to extend public comment at the end of a meeting, if high turnout at a meeting for instance, so voices are heard. This could be affected.

Bryan points out that a committee's policy could be that "public comment will be at the call of the chair". At least people will know in advance.

Howard points out this would not assure public comment – only that there is a policy in place. That does not help with more public comment. This just ensures a rule.

Bryan thinks two things are accomplished [with the proposed revision]. It's a tool for people to suggest the policy should allow for public comment. It also provides flexibility, and at the very least people will know if public comment or when public comment will be available.

Rhanna would like to call the question.

Josh restates the motion to adopt Proposed Revision 1, without the phrase: "make the public comment available at all meetings".

5 in favor (Chris, Anne, Bryan, Kidwell, Jane). 4 opposed (Josh, Howard, Brooke, Karen). The motion passes.

Proposed Revision 1 is adopted.

Rhanna leaves the meeting.

Brooke raises a question about hyphenation for councilors at-large and councilors by-ward (vs. "at large" and "by ward"). She would like to see consistency and prefers to include hyphenation.

Chris makes a motion to include the two terms with hyphens in our draft. Seconded by Brooke. 7 are in favor: (Brooke, Josh, Howard, Jane, Anne, Chris, Karen). Opposed: (Bryan). The motion passes.

Josh reminds the group to think about whether to include ward designation for city council candidates running at-large.

Karen mentions that the Article 7 review leaders will likely get in touch about revisiting Article 7 after receiving comments from the new Planning Director, Barney Heath.

The agenda will likely include 4 things: Article 7, ward designation for councilors at-large, transition article, final report.

Howard states for the record that he will be supporting term limits and the vote that we took. He caught up on reading he had missed during his absence. Philosophically, he believes what we decided is best for the city and supports the term limits as voted.

Meeting adjourns at 8:42p.m.

Documentation Used:

1. [Agenda](#)
2. [Minutes](#)
3. [Article 10 Draft](#)
4. [Deb Crossley Memo: Use and Disposition City Resources](#)
5. [Memo Re: Assets/Deb Crossley Memo \(Larner/Barash\)](#)
6. Ouida Young Email: <http://www.newtonma.gov/civicax/filebank/documents/79508>
7. [Conflict of Interest](#)
8. [Ballot Info](#)
9. [Beginning of Term Provisions](#)
10. [Article 11, Sec.12 – Uniform Procedures - Public Comment](#)
11. [Public Comment Options](#)