

**Charter Review Committee
Tuesday, April 2, 2019, 6:30 p.m.
City Hall Hearing Room 18
210 Main Street, Northampton, MA 01060**

Meeting Minutes

Present: Stan Moulton (ward 1), Robbie Sullivan (ward 2), Dylan Gaffney (ward 3), Sam Hopper (ward 4), Bob Boulrice (ward 5), Lyn Simmons, Chief of Staff (Executive Branch), Mollie Fox (ward 7), Attorney Alan Seewald, City Solicitor (non-voting member)

Absent: City Councilor Bill Dwight (Legislative Branch), Patty Healey (ward 6)

The meeting opened at 6:31 p.m.

- **Approval of March 19, 2019, minutes**

Sam Hopper moved acceptance of the March 19, 2019, minutes as written. Dylan Gaffney seconded. The motion passed unanimously 7-0.

- **Public comment**

Ward 2 City Councilor Dennis Bidwell was present to speak to the budget process and legislative priorities. When he became a city councilor, attention was given to the firm line between the legislative and executive branches. The clarity of the new charter was appreciated however he believes there is room for discussion between the branches without stepping on toes. Understanding that the budget is purely a mayoral function and a joint meeting of the city council and school committee is mandated by charter, it doesn't map out policy and legislative priorities. When the budget arrives at the city council in April, the councilors tend to raise substantive questions and are told that it is too late in the process. He would like to see more of a substantive process earlier on with conceptual give and take before the document is put together. He suggests a conversation earlier in the process in January. On the legislative side, there used to be a city council rule stating that once a year the council will adopt a resolution that details their legislative priorities but it never happened so the rule was discarded. The school committee agrees on a set of legislative priorities and it seems like it's a free for all with the city council. It would be productive to have a conversation with the mayor to discuss legislative priorities so the council tried to put the rule back in. The council then agreed to table this rule because if the council wants to have this conversation, they can just do it and don't need a rule to do it. This wasn't the case and this conversation didn't seem to happen so Councilor Bidwell suggests putting it in the charter. Councilor Bidwell emailed sample language to Chair Moulton for consideration. See attached email.

Chair Moulton read a piece of mail from ward 1 resident Audrey Bausten (sp?). “As ward 1 resident, I am writing to ask you to support ranked-choice voting in Northampton. It is a promising development that would support increased accuracy in our voting process.”

Roberta Sullivan passed out an Excel sheet of the city clerk research which will be helpful for discussion.

- **Clarify purpose of Attachment 1-Related Laws**

Attorney Seewald believes that the Attachment 1 – Related Laws were special acts as part of the old charter. In particular, the Board of Public Works is listed in the attachment and the idea was they would remain in effect until the charter is ratified and after the mayor reorganized, then they would go away. It was a transitional provision and it can certainly be cleaned up to avoid confusion.

Looking at the attachment and discussing a way to clean up the language will be added to the agenda for the next meeting.

- **Discuss and vote on four possible changes to:**

1. Section 2-2 (b) Powers and Duties: The president shall prepare the agenda for City Council meetings in consultation with the mayor **and city clerk**. (Remove phrase **and city clerk**.)

Lyn Simmons passed out a track changes version of four changes for discussion and a vote. See attached. In regards to Section 2-2 (b), it currently states that agendas for city council meetings are prepared by the president, in consultation with the mayor and city clerk. The mayor does not set or prepare the agenda so the proposed change is to strike the entire sentence, *“in consultation with the mayor and the city clerk”*. The new language will read, *“The president shall prepare the agenda for city council meetings”*.

Lyn Simmons moved to remove, “in consultation with the mayor and the city clerk”. Sam Hopper seconded. The motion passed unanimously 7-0 by roll call vote.

2. Section 2-6 (c-iv) Rules of procedure: A full, accurate, up-to-date account of the proceedings of the City Council shall be maintained by the **city clerk** ... (Replace **city clerk** with **administrative assistant to the City Council** and add following sentence to end of this section: **The city clerk maintains archived records of the proceedings of the City Council.**)

Chair Moulton moved to not vote on this item on the agenda. Sam Hopper seconded. Lyn Simmons explained that after looking at this section, the city clerk does maintain the proceedings of the city council. While the city clerk isn’t at the meetings taking minutes, after the meeting, the records and documents are maintained by the city clerk.

Attorney Seewald offered that the clerk to the city council is not a statutory position and the position doesn't have to exist. Under the laws of the Commonwealth, the city clerk is the repository of the official records of the city and Attorney Seewald doesn't believe it should be changed in the charter. That doesn't mean that records aren't kept by the clerk to the city council but it is the official duty of the city clerk's office to maintain those records.

Bob Boulrice added that there are annual documents that reflect the actions of city council that have to be presented for bonding purposes, and to the DOR, and those documents can only be stamped by the city clerk, so in that capacity the repository is in the city clerk's office.

The motion to not make any changes to Section 2-6 (c-iv) passed unanimously 7-0.

3. Section 2-10 (City Council confirmation of certain appointments): The City Council shall refer each name submitted to a standing committee of the council, which shall review each candidate for appointment and shall make a recommendation to the full City Council not **less than 7 nor** more than 45 days after the referral. (Remove phrase **less than 7 nor** and add **except during July and August** to the end of the sentence.)

Roberta Sullivan moved to adopt the recommended changes. Sam Hopper seconded. Due to city council only having one meeting in July and August, there may be a need for special meetings.

Attorney Seewald questioned what would happen in July and August and what the time limit would be. He further stated that sometimes the city council has to have special meetings and there are reasons for these time limits. If positions are going to be left open for an extended period of time then work isn't getting done and the committee could fail to have a quorum. Northampton is fortunate to have a city council and a mayor that work very well together however if there is a situation in the future where that is not the case, then the city council can sit on an appointment all summer if they'd like. If there is going to be a recommendation of an extension, there should be a cap.

City Clerk Pam Powers offered that another issue is that city council will refer an appointment to the committee on city services and they meet the following Monday, they won't take up the appointment at that meeting because it is less than seven days. She stated this was a bigger issue than July and August.

Lyn Simmons offered that the city council rules could be changed in the future and the committee on city services could meet on a different day or time. It is easier to change council rules than it is the charter.

Attorney Seewald stated he was more concerned with capping the length of time because there needs to be notice in case people want to be there.

Sam Hopper stated she is concerned to get rid of the seven days because the committee could rush people through the process without giving people time to speak on the appointment. The committee on city services chooses their meeting schedule and it could always change.

Councilor Bidwell added that there have been times where a regular city council meeting is adjourned to take up a meeting of city services right then and there so there is flexibility to work around it.

Lyn Simmons added that when the administrative code was drafted, a lot of the board and committee terms were changed to expire at the end of the fiscal year. It is getting to the point where staggered membership happens and the mayor's office is doing its best to get appointments in before the first meeting in June as to avoid the summer slump.

Attorney Seewald added that instead of having something different for July and August, just extend the time a little bit to account for July and August.

Chair Moulton moved to table this item until the April 16th meeting or the next meeting that Councilor Dwight will be present at. Sam Hopper seconded. The motion passed unanimously 7-0.

4. Section 5-2 Trustees Under the Will of Charles E. Forbes: Vacancies shall be filled **in a like manner as a city clerk vacancy**. (Replace **in a like manner as a city clerk vacancy** with **by unanimous vote of the remaining trustees for a temporary appointee to serve until the next municipal election**.)

Sam Hopper moved to adopt the recommended changes. Roberta Sullivan seconded.

Dylan Gaffney, being a library employee, recused himself from this discussion.

Attorney Seewald stated he doesn't have a strong view on this item.

Lyn Simmons asked if the committee would include the sentence, *"A person serving as city clerk under this section shall not be entitled to have the words "candidate for reelection" printed next to that person's name on the election ballot"*, with the proposed change or if the committee wanted to let that happen. This is the last sentence of 5-1(e).

Chair Moulton stated that this is the practice of filling other temporary vacancies like the school committee.

Attorney Seewald added that the second to last sentence of 5-1(e) should also be included, *"No vacancy shall be filled under this section if a regular city election is to be held within 120 days following the date of the vacancy."*

Chair Moulton added that this is consistent with how other boards are filled.

Sam Hopper asked if there needed to be any language indicating that they would be taking office immediately.

Lyn Simmons stated that there may be a need to put in language about filling the vacancy within 30 days, or at least a time limit.

Chair Moulton asked that given the recent court case, if it is reasonable to include language in the charter directing the trustees of the library to fill a vacancy within 30 days.

Attorney Seewald stated that in some ways the library is part of the city and in some ways it's not. They are part of the city charter, they are elected, and the charter establishes the procedures in which ways government is formed. So yes, the charter deals with the trustees and can deal with those issues as well. There is no prohibition against requiring the vacancy to be filled within 30 days.

Chair Moulton clarified that the proposed language is, *"Vacancies should be filled within 30 days following the date of that vacancy, by unanimous vote of the remaining trustees for a temporary appointee to serve until the next municipal election. The person elected at such regular city election shall take office immediately. No vacancy shall be filled under this section if a regular city election is to be held within 120 days following the date of the vacancy. A person serving as Forbes Library trustee under this section shall not be entitled to have the words "candidate for reelection" printed next to that person's name on the election ballot."*

Sam Hopper stated that filling all other vacancies is done in conjunction with elected officials but the language to elect the Forbes trustees does not include consultation with elected officials. For example, when a school committee vacancy is filled, this happens in conjunction with the city council.

Attorney Seewald added that he believes Forbes wants this because they are trying to exert their independence from the city. The school committee and Forbes trustees are analogous in some ways, as the school committee oversees the school department, and the Forbes trustees oversees the library. When the school committee has a vacancy, the city council is involved.

Roberta Sullivan added that under the current charter it is up to the city council alone to fill the vacancy – which has never occurred because of the “murky” area of not knowing whether the library is part of the city.

Chair Moulton stated that there has been some resolution of this “murky area” because of the court ruling.

Mollie Fox asked for clarification of the court ruling.

Attorney Seewald stated that Forbes Library is part of the city. They are the city's library, they are elected officials of the city of Northampton. We aren't talking about the day to day control of the library which is under the control of the trustees, but we are talking about filling the vacancy in a governmental position and that's what the charter deals with. Since the Forbes trustees are on the city's ballot, the charter can decide how the vacancies are filled. But to say they are not part of the city is not exactly accurate, they operate outside of the city government, but the city provides 90% of its budget out of tax money.

Bob Boulrice added that the charter is in place to facilitate getting the trustees to the next city election and believes the charter should let them do what they want as long as they appoint someone who is a registered voter.

Sam Hopper added that she likes consistency and doesn't necessarily understand why the trustees get an insular way to appoint someone when the other elected official vacancies don't.

Lyn Simmons likened this to the school committee being an elected body but can't fill their vacancy amongst themselves so why should Forbes trustees be treated entirely differently than the school committee if they are both elected bodies. When the charter review committee changed the language for filling vacancies of Smith Vocational trustees, the committee did not impose this same language.

Roberta Sullivan stated she is leaning towards a compromise of allowing trustees to fill a vacancy in a similar way to the school committee which would mean the remaining trustees would meet with the city council to appoint someone to fill the vacancy. She questioned whether this would actually happen.

Sam Hopper stated she would like to amend the motion but would also like to know the thoughts of the library director and the trustees. **Sam Hopper moved to table this discussion until the next meeting assuming a representative from the library was available. Mollie seconded. The motion to table this amendment passed 6-0 with 1 abstention.**

Lyn Simmons has identified two additional wording changes, which are in Section 3-3 and Section 3-6 (see attached document). In section 3-3, it seems that the superintendents of smith vocational school are left out again. An alternative option would be to include a definition of a school committee because they operate as a school committee.

Chair Moulton stated that by adding the superintendents of Smith Vocational School would be consistent with the previous change that was made to section 7-2.

Attorney Seewald concurred that if someone sees "school committee" they are not going to go in search of a definition of school committee.

Another recommendation, in section 3-6 approval of mayor, veto, is striking the word resolution because the mayor would not veto a council resolution because resolutions are generally the opinion of the council, and striking the word memorial and adding non-binding because resolutions are not binding, and striking the word selection and adding the word confirmation because they don't necessarily select, but they confirm city officials that are put forward.

Mollie Fox asked for clarification of non-binding and memorial and if they mean the opposite of each other.

Attorney Seewald added that non-binding is not the opposite of memorial.

Chair Moulton will include these items on the next meeting agenda for discussion.

Dylan Gaffney left the meeting at 7:30 p.m.

- **Discussion of issues raised by residents and city officials March 19:**

Chair Moulton explained that the intent of the following discussion is to take the temperature of the committee to see if any of the items should definitely be considered or if the items, because of the time constraint, aren't worth the discussion.

Attorney Seewald added that the mayor's signature is required on any recommended changes so talking about, for example, eliminating the mayor, he suggests not spending too much time on that issue.

- 1. Replace mayor with city manager**

Attorney Seewald explained the lengthy process of what it would take to replace the mayor with a city manager form of government.

Bob Boulrice stated that he believes there are existing mechanisms in place that can address the kinds of issues that Councilor Klein and Councilor Bidwell brought forward with regard to the legislative and executive, strong mayor/weak mayor, and in particular the budget process. If these mechanisms were used, a lot of these issues would go away. For example, the city is required to do a five year financial forecast and a five year capital improvement plan which are opportunities for the city council to participate. There is also an opportunity for the finance committee to have its input in the annual budget setting process. There are ways to address these circumstances using existing mechanisms instead of filing for a new form of government. If complaints are being expressed about not having the opportunity to provide input, look for opportunities to provide input. Bob further stated that every year he led planning initiatives for capital improvement program bonding and financial forecast, would hold a public meeting and nobody including councilors would show up. People can't complain

if they are given the opportunity. It seems that there are plenty of opportunities for people to come forward, express opinions and are being heard. It doesn't suggest that there is an endemic problem that needs to be cured through a different form of government.

Attorney Seewald stated that after the charter was ratified, councilors were surprised by what it meant to have a strong mayor form of government. The important thing to understand is that there can't be 10 bosses in city hall. This has been seen and proven to be a problem with weak mayor forms of government.

Mollie Fox stated she also heard that communication and visibility is an issue and wonders why there can't be a conversation between the mayor and city council.

Bob Boulrice stated that if councilors are running as a district councilor and are co-opted by an at-large councilor, they probably feel that they get more action. This is just how government works and they have to have a relationship with the mayor's office which is where everything flows through.

The committee agreed they did not want to spend more time discussing a different form of government.

2. Remove mayor's veto power from Section 3-6

Lyn Simmons stated she believes this section is fine as is and the only thing she would entertain is changing the wording around resolutions that has already been discussed tonight.

Attorney Seewald stated he has never thought about eliminating veto power because that would mean anything that the city council did would go into effect. Attorney Seewald suggests that although he hasn't researched this question, he believes it is not legally permissible to allow the city council to do whatever they'd like without a check and balance procedure by the executive branch.

Chair Moulton believes that veto power is a well-accepted form of check and balance in government. The committee was in agreement.

3. Establish term limits for all elected positions

Attorney Seewald stated this is definitely within the authority of a charter however the frequent response for determining whether terms should have limits is that there already are term limits, which are elections. Term limits was extensively debated when the charter was first adopted.

Chair Moulton pointed out that term limits generally encourage turnover and discourage people who serve indefinitely, but he agrees that elections are a form of limit.

Roberta Sullivan stated she is okay not spending more time on this discussion but one thought is that people don't necessarily want to run against incumbents.

Mollie Fox stated she is not comfortable with saying we don't have enough time to spend on this topic and would like to understand more about what the concern is for establishing term limits.

Attorney Seewald stated that when the charter was first adopted there were certain individuals who felt that councilors who have been on the council a long time have more experience and are better councilors and then there were arguments that turnover is good because being a councilor is not intended to be a lifelong endeavor but to represent the community for a period of time and then let someone else step up.

Lyn Simmons will look for records that exist from the last charter review committee that will hopefully detail the conversation regarding term limits. She will get these minutes before the next meeting so a discussion can be had and if the committee wanted, add it to the public forum because it falls under elections.

4. Change terms for city councilors and School Committee members to three years and elect on a staggered schedule

Sam Hopper stated that she is interested in this issue because at one point there were staggered terms for school committee and she would like to understand why this was changed.

Attorney Seewald reminded the committee that municipal elections are every two years in the odd year.

Sam Hopper stated that the spirit behind the three year term is to build experience but Councilor Klein had mentioned that four years was too long.

Mollie Fox questioned whether there was another way to address the experience piece.

Sam Hopper stated that she has heard from individuals that two year terms is not enough time and she believes that four years isn't too long.

Bob Boulrice concurred that elected officials that have to run every two years feel like they are always running but that's the job.

Chair Moulton stated there is clearly interest in the concept of changing the term limit to four years so this item will be left on the agenda for further discussion.

5. Create an appointed, independent ombudsperson who responds to citizen complaints

Attorney Seewald stated he doesn't see why adding an ombudsperson couldn't be put into the charter.

Bob Boulrice stated he has seen ombudsperson not work. However, the role of the city council and the essential part of their job is to take concerns and grievances and handle constituent services so why would the city need an ombudsperson. The city councilors should be the one fielding questions and solving problems.

Sam Hopper stated that not every complaint should be going to the mayor's office and there are already people in place to answer constituent questions.

Attorney Seewald asked if this would be a paid position and a part-time position.

Bob Boulrice asked why this role is needed as opposed to a city councilor and why potential conflicts can't be solved by councilors.

Mollie Fox felt the committee is missing key information that should be considered before voting.

Attorney Seewald stated there is a distinction between conflicts with the city and constituent services. Attorney Seewald views an ombudsperson as someone who assists when there is conflict between, for example, the DPW and a citizen. If this would be an appointed position, it would be part of the executive department and would answer to the executive department which would mean this person would not be independent or neutral.

Mollie Fox stated she would like to ask Councilor Klein what purpose this person would serve, get some clarifying information and report back to the committee at the next meeting.

6. Allow City Council to hire its own legal counsel

Prior to discussion, Attorney Seewald left the table and sat in the audience.

Bob Boulrice suggested that Attorney Seewald should be the full time attorney for the city. He also offered that if there was a matter before the city council that they believed would be a conflict by using existing representation, they could request hiring someone, but he is not aware of why this is required or why city council needs its own attorney.

Chair Moulton stated that he believes the reasoning for this argument was because if there was a matter between the city council and the mayor, the city solicitor would have to choose between the two branches.

Bob Boulrice stated that whether the city attorney is appointed by the mayor or he is contracted in some other fashion, the attorney's job is to cite the law as it relates to matters

before the city. If the council has experience to discount the city attorney's rulings as it relates to the law, that's a whole other matter.

Lyn Simmons suggested that the committee postpone this discussion until the council representative is present. She also pointed out that Councilor Klein was not speaking for the entire council, she was speaking for herself. This is a matter that would impact the entire council, not just the ward 7 councilor.

Lyn Simmons stated that the city solicitor is not outlined in the charter but it is in the administrative code. Prior to the formation of the administrative code, the city solicitor was selected and appointed by the mayor only and the administrative code looped in the city council for confirmation so the administrative code added more opportunity for city council to have a say in the city solicitor selection.

Chair Moulton recognized that Attorney Seewald has left the table but requested a ruling as to whether this is something that could be addressed in the charter since the administrative code outlines the city solicitor.

Attorney Seewald stated he cannot participate in a matter that affects his financial interest.

Chair Moulton delayed this discussion until a future meeting in which Councilor Dwight is present.

Attorney Seewald returned to the table.

Chair Moulton summarized the topics that were discussed. It was decided that there would be no more time spent on item #1 and #2 on the agenda; item #3 will be discussed at the next meeting subject to being able to review minutes from the prior charter review committee meetings; item #4 will be discussed at a future meeting and the committee will not consider a three year term length instead a four year term length; item #5 will be discussed at a future meeting once Mollie Fox receives some clarification from Councilor Klein relating to the ombudsperson; and item #6 will be delayed until Councilor Dwight is present to be part of the discussion.

- **Details of April 30 public forum on election issues**

Lyn Simmons confirmed the community room at JFK middle school is available for the night of the forum. Lyn Simmons will also make a request to NCTV to broadcast it. Lyn Simmons has also made two flyers to choose from and would like to discuss the presentations for the forum because she is not clear on the structure.

Bob Boulrice stated he will be inviting the advocates for a ranked-choice voting presentation and they would only need 15 minutes. This group will present how the city would benefit from ranked-choice voting.

Chair Moulton sees the forum being set up with advocates, opponents and the general public.

Sullivan stated it makes sense to have all the presentations first then take questions.

Attorney Seewald questioned whether there will be opponents to ranked-choice voting.

Chair Moulton stated he doesn't believe there is organized opposition to ranked-choice voting.

Lyn Simmons doesn't necessarily agree that no excuse voting is something under the purview of the charter. Her concern is that she doesn't know if the city can do this because state law would need to be changed.

Attorney Seewald stated that that would be a special act of the legislature and they can do whatever they want to do and believes that Northampton could be authorized for no excuse voting but isn't sure if the legislature would do it for just one community. If it can be done for a state, it can be done for the city.

Pam Powers informed the committee that no excuse voting is on the agenda for the next meeting of the board of registrars for a discussion.

Lyn Simmons will invite public officials to the forum and include the youth commission with that invitation.

Chair Moulton will turn the flyer into a press release and send it to the media.

Lyn Simmons asked who is speaking to election scheduling and no excuse voting.

Chair Moulton stated that the city clerk will be addressing the issues relating to scheduling such as the issue with special elections and the window of time for pulling out papers.

Pam Powers stated that if discussing time constraints is more of a planning issue and not necessarily a policy changing issue.

Attorney Seewald stated that the time constraints are outlined in the charter so they would indeed need to be addressed.

Attorney Seewald stated that ranked-choice voting is a substitute for preliminary elections so the tight deadlines might be solved if ranked-choice voting was adopted.

Bob Boulrice stated that the city clerk could propose no excuse voting as an alternative to ranked-choice voting because the ranked-choice voting advocates will say that the way to solve preliminary election problems is ranked-choice voting.

Attorney Seewald stated that no excuse voting does not sound like it will solve the issue of the preliminary election problem.

Pam Powers stated she will not take a public position on any of these issues and her job was solely to bring issues to the committee. Pam Powers will need 5-10 minutes to discuss the issue around elections scheduling and will get back to the committee regarding the timing of no excuse voting once the board of registrars has met.

There was a brief discussion on the length of time for presentations and taking public comment. Sam Hopper suggested a 3 minute cap on public comment and a 15 minute cap on presentations.

Chair Moulton stated that the concept of the forum is to gather information to help guide the committee's discussion.

Lyn Simmons stated that staff at JFK leaves at 10 p.m. so the forum would need to be done by that time. She will look into logistics of keeping the building open later because school committee runs past 10 p.m. She also stated that if there a huge turnout there is a chance to have additional forums.

After a brief discussion on the timing of the forum it was decided that 15 minutes will be given to invitees, three minutes given to members of the general public and depending on the turnout, the three minutes can be revisited.

Lyn Simmons stated this forum is intended to get the temperature on these issues and the bigger concern is whether there will be someone present that is considered the expert on the topics.

Chair Moulton stated that the city clerk will address election scheduling issues and no excuse voting, Voter Choice Mass will present for ranked-choice voting and the youth commission will address lowering the voting age to 16.

Attorney Seewald suggested giving everyone a fixed amount of time to speak, no matter the topic, no matter who the individual is and that way the committee can take that information and further its discussion.

Lyn Simmons suggested striking out election scheduling from the flyer because it seems to be more administrative and different from than the topics that will be discussed.

Bob Boulrice asked whether the committee envisions having a sign-up sheet.

Chair Moulton would like a sign-up sheet and maybe a brief description about the issue they will be raising.

Mollie Fox wondered if it would make sense to have a large piece of paper with four sections indicating the various topics and individuals could write down their questions and as the committee makes their way through the speakers, could choose which questions to answer from there.

The committee decided to use the black and white flyer. Lyn Simmons will remove elections scheduling from the flyer.

Sam Hopper will handle promoting the forum through social media. Mollie Fox will send the information out to political groups and Lyn Simmons will put the information on the city Facebook page, city Twitter and the city website.

- **Adjourn**

Lyn Simmons moved to adjourn at 8:59 p.m. Mollie Fox seconded. The motion to adjourn passed unanimously 7-0.