

Charter Review Committee
Tuesday, May 21, 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), Patty Healey (ward 6), Lyn Simmons, Chief of Staff (Executive Branch), City Councilor Bill Dwight (Legislative Branch), Attorney Alan Seewald, City Solicitor (non-voting member)

Absent: Mollie Fox (ward 7)

The meeting opened at 6:31 p.m.

Chair Moulton announced that the meeting is being audio and video recorded.

- **Approval of minutes for public forum April 30, 2019, and regular meeting May 7, 2019**

Councilor Dwight moved acceptance of the April 30, 2019, public forum minutes was written. Lyn Simmons seconded. The motion passed unanimously 8-0.

Sam Hopper moved acceptance of the May 7, 2019, minutes as written. Robbie Sullivan seconded, with an amendment of deleting “an item of great significance” from Bill Newman’s public comment. The motion passed with the amendment 7-0-1 with Councilor Dwight abstaining.

- **Public comment**

None

- **Updates from committee members**

Robbie Sullivan asked the committee what kind of questions they would like answered and/or what kind of information they would like to see relative to the elected vs. appointed city clerk research.

Councilor Dwight would like to see how other cities address the embedded conflict of city clerk’s presiding over their own elections.

Attorney Seewald stated it would be beneficial to speak to appointed city clerks since the city doesn’t have any experience with appointed city clerks. For example, if they feel any pressures of being part of the executive branch as opposed to being an elected official. Speaking to local appointed clerks would be good i.e. Amherst.

Councilor Dwight offered that speaking with former Northampton city clerks would be beneficial.

Chair Moulton stated that the committee will dedicate some time to this topic and invite public officials and will plan for the second meeting in June.

Attorney Seewald stated he spoke with City Clerk Pam Powers who is going to reach out to the Massachusetts City Clerks Association, the Massachusetts Town Clerks Association, and the New England City and Town Clerks Association.

Bob Boulrice believes it is relevant to examine the staffing capacity in regards to administering elections. For example, is an elected or appointed city clerk more likely to have election commissioners at his/her disposal? It is germane to the issue of what our city clerk may require staffing wise going forward.

Chair Moulton reopened the discussion around section 7-6, independent audit. There has been some discussion of possibly allowing for a three-year contract. In addition, it seems the date of September 15 is not realistic and should be looked at.

Councilor Dwight stated that whatever problems have arisen, Lyn Simmons and Finance Director Susan Wright would be aware of but it hasn't been problematic for the city council. A three-year contract would be optimal unless the city was to get stuck with a bad auditor.

Bob Boulrice stated it is no fun task to break in new auditors every year and with a three-year contract there are typically termination clauses. He believes it makes sense to have a three-year contract.

Chair Moulton stated it makes sense to ask Susan Wright to reply to the committee's questions via a memo, specifically whether the September 15 date should be moved earlier and whether the contract should be three years instead of one year. Lyn Simmons will ask Susan Wright to reply to the questions.

Chair Moulton mentioned section 7-3 temporary absence of the mayor.

Lyn Simmons is working on identifying language.

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

Section 5-2 (Trustees under the will of Charles E. Forbes): Five members shall be elected by and from the voters of the city at large for a term of four years, so arranged that all members are not elected at the same time. **Vacancies shall be filled in a like manner as a city clerk vacancy.**

Replace bolded sentence with: **Whenever a vacancy occurs on the board of trustees under the will of Charles E. Forbes, the chair of the board shall declare a vacancy and, within 30 days following the date of the vacancy, call a meeting of the trustees to fill the vacancy. The board of trustees shall choose a person to fill the vacancy from among the voters entitled to vote for the office. Persons elected by the trustees to fill a vacancy shall serve only until the next regular city election, when the office shall be filled by the voters. The candidate elected to an office filled by appointment prior to the election shall be sworn to the office immediately, and shall serve for the unexpired term of the seat to which such candidate was**

elected. If the seat to which the candidate was elected would have been on the ballot for the next regular city election notwithstanding the vacancy, such candidate shall be elected for a full four-year term. No vacancy shall be filled under this section if a regular city election is to be held within 120 days following the date the vacancy is declared to exist. Persons appointed by the trustees to fill a vacancy under this section shall not be entitled to have the words "candidate for reelection" printed with that person's name on the election ballot.

Councilor Dwight motioned to remove the tabling. Lyn Simmons seconded. The motion passed 7-0 with Dylan Gaffney, employee of Forbes Library, not participating. He recused himself from discussion and removed himself from the table.

Chair Moulton noted two further changes to the language that is on the agenda. "Whenever a vacancy occurs on the board of trustees under the will of Charles E. Forbes, the ~~chair~~ **president** of the board..." The second change is, "Persons ~~elected~~ **appointed** by the trustees to fill a vacancy shall serve only until the next regular city election..."

Russ Carrier, President of the Forbes Library Trustees, was present and stated that the trustees haven't seen or voted on the final wording because their meeting isn't until May 23rd. The trustees are on board with the spirit of what is trying to be done but can't sign off until May 23rd.

Councilor Dwight stated that the trustees don't have to come back to the next meeting. However, if they have concerns about the last wording change they can send those via a memo.

The committee decided to vote on this item and will make an amendment in the future if needed.

Bob Boulrice moved to approve the language with the two wording changes. Robbie Sullivan seconded. The motion passed 6-0-1 with Patty Healey abstaining.

Dylan Gaffney returned to the table.

Section 4-6 (School Committee Filling of Vacancies): Whenever a vacancy occurs on the school committee, the president of the city council shall, within 30 days following the date of the vacancy, call a joint meeting of the city council and school committee to fill the vacancy. **The city council and school committee shall choose a person to fill the vacancy from among the voters entitled to vote for the office.**

Replace bolded sentence with: **The city council and school committee shall elect, by majority vote of those present, a person to fill the vacancy from among the voters entitled to vote for the office.**

Councilor Dwight stated that to avoid confusion and to avoid people saying, "this is how it has always been done", wording should be included that indicates how and by which the joint committee recruits and conducts its selection.

Attorney Seewald stated that language could be included stating the procedures for special elections

are defined by ordinance so that the procedures can be changed more easily.

After a brief discussion which included clarifying some of the language, the committee agreed that the appropriate changes to this section are as follows:

Whenever a vacancy occurs on the school committee, the president of the city council shall, within 30 days following the date of the vacancy, call a joint meeting of the city council and the school committee to fill the vacancy. The city council and school committee shall **choose appoint, by majority vote of those present**, a person to fill the vacancy from among the voters entitled to vote for the office. Persons **elected appointed** to fill a vacancy by the city council and school committee shall serve only until the next regular city election, when the office shall be filled by the voters. The candidate elected to an office filled by appointment prior to the election shall be sworn to the office immediately to complete the then unexpired term in addition to the term for which elected. No vacancy shall be filled under this section if a regular city election is to be held within 120 days following the date the vacancy is declared to exist. Persons serving as school committee members under this section shall not be entitled to have the words "candidate for reelection" printed with that person's name on the election ballot. **The process and procedures by which the city council and school committee shall jointly fill vacancies under this section shall be established by ordinance.**

Councilor Dwight moved to approve the changes to section 4-6 as indicated above. Patty Healey seconded. The motion passed 8-0 by roll call vote.

- **Discuss suggestion by Attorney William Newman to add language to Section 1-3 (Division of Powers) specifying legislative power of the City Council**

Patty Healey stated she thinks it is reasonable to look at the city council's role and whether city council has the authority to make certain changes in the city. She doesn't want to make changes to the power balance but she wants to have an understanding of how the city council operates when there is a problem or issue. She wonders if there are there examples of where the city council isn't able to fully make changes and policy because the mayor controls all of the functions of the city departments.

Councilor Dwight stated that Attorney Newman indicated that the city council can't create ordinances which is ironic because Attorney Newman was part of the camera debate which was by ordinance. The reason the council had authority over this scenario was because it wasn't dictating policy for the police department, it was establishing law for the public way, because the city council has that oversight. The reason legislative powers are not prescribed in the charter is because they are embedded in Massachusetts General Laws. The issue with the Trust Act, which Attorney Newman brought up, was because the city council was trying by law to dictate a policy for the police department which conflicts with the separation of powers. Attorney Newman seemed to be asking for more city council influence and authority over policies within departments but the city council already has that authority; for example, zoning laws. However, determining how a department functions falls solely under the executive branch.

Attorney Seewald stated it is important to understand that the mayor organizes departments and

he/she can only do that with the approval of the city council. Once the agencies of the city are established, there is a lot that goes into deciding how the agencies operate, like staffing. Staffing issues and knowing how much money is available at every moment is something that needs to be handled by the executive branch.

Attorney Seewald furthered that the Trust Act purported to tell police officers what they were going to do when they stop someone which is policy that is to be made by the police chief. If the city council starts dictating what police officers are saying and doing when they stop someone, then they would be operating agencies.

Patty Healey stated that the city council doesn't need to be operating agencies but they could say that the city is not in the business of stopping immigrants on the streets.

Attorney Seewald stated that the city council passed a resolution to that effect. He furthered that other than dictating agency policy, the city council is involved in a vast array of policies, i.e. zoning policies, what buildings are going to be used for, public ways, land-use, etc.

City Councilor Gina-Louise Sciarra stated that she sits on the Committee on Community Resources and just recently the committee took up five pieces of zoning around marijuana cultivation and creation of new laws around this new industry. This is a good example where both branches are creating law and policy together. The ordinances are submitted by recommendation of the mayor but the committee spends a lot of time tweaking and demanding more information and ultimately the city council is the body to pass the ordinances.

Patty Healey asked if the city council wanted to limit the number of dispensaries in Northampton and the mayor disagreed, how he/she would handle that.

Councilor Dwight stated the mayor would veto it and it would go back to city council and a supermajority is required to override the veto.

Robbie Sullivan stated that the final check is the city council.

City Councilor Alisa Klein stated she believes it gets fuzzy around the power balance because the city council creates legislation then policy needs to be formed to carry out that legislation. For example, if the city council voted to put cameras downtown that would mean policy would need to be created on how the police interacts with the cameras. The Trust Act is a good example because it allowed the city council to say they wanted to be a sanctuary city and Northampton won't hand over immigrants to the federal authorities. This triggered the need for policy to be created on how the police department enforces what the city council was asking them to do.

Councilor Klein furthered that if the city council doesn't agree with city solicitor decisions then the city council should be able to hire counsel for another legal opinion.

Councilor Dwight stated that the city council does have that right and has called upon other legal counsels in the past.

Councilor Klein stated that the city council just passed a resolution to create a select committee on pesticide reduction. Hypothetically, if the committee comes up with a recommendation to ban glyphosate (Roundup) in the city, that could be interpreted as setting policy because the DPW is the department that uses roundup in municipal areas. Could the city solicitor then say that the city council can't pass legislation because they would be telling the DPW what chemicals they can and cannot use and setting internal policy for how they manage turf in the city? This is Councilor Klein's concern regarding what qualifies as policy vs. legislation.

Attorney Seewald stated that, very hypothetically, the city council has authority over municipal property which is different than telling a police officer what they can and cannot say when they take someone into custody.

Councilor Klein stated that the city council can tell police if they stop someone on a municipal street they can't turn them into ICE.

Attorney Seewald stated they can't do that because that is not land-use. The city council makes policy as it relates to land-use but can't ban glyphosate in the city, only on city property. It depends on what policy the city council is making. There are areas that the state Legislature has carved out for city councils and controlling municipal property is one of them. There are very few areas the city council is not involved in and the day-to-day operations of departments and policies around departments is one of them.

Lyn Simmons stated she does not support Attorney Newman's proposed language and has a hard time with it because it is contradictory. He states that the legislative power shall have the right to prescribe goals and functions of a city agency and then says that the day-to-day operations of a city agency are an executive power. She furthered that department heads might struggle with who they are answering to because city council would set goals but the mayor is the overseer of day-to-day operations.

Robbie Sullivan stated that it seems that the city council wants to be involved when they want to be but not when it's not important to them. There needs to be a clear line or nothing is going to get done.

Councilor Dwight stated that ambiguities are going to exist. Most importantly the language that Attorney Newman was referring is already embedded or established by state law.

Attorney Seewald stated it is dangerous to have the city council organizing agencies without a finance director or a staff. There is no way the city council could do that.

Councilor Klein clarified that she does not think the city council should have jurisdiction over departments or tell department heads what to do. She believes the executive branch should manage departments and department heads and the city council should be able to create philosophical direction for the city. The city council should not write how departments carry out their work but should be able to legislate broadly saying what their vision is, which in turn is the responsibility of the executive to figure out what that looks like in departments. She wonders if there is a way that this could be written into the charter.

Chair Moulton reiterated the two issues that he heard from Councilor Klein. The first being to

specifically define legislation and what powers does city council have around setting philosophical goals. The other issue is defining the parameters of the city council in establishing legislation that set forth philosophical goals that then department heads use to guide their policy making.

Bob Boulrice stated that the city council has the right to prescribe how the city is going to run which can be done during the budget process because all budgets have some sort of goals and objectives. He furthered by saying he is dubious about what Attorney Newman said because creating agencies and prescribing policies and goals is clearly an executive function.

Councilor Dwight and Patty Healey had a brief discussion around the budget and the city council's role in decreasing the budget and collective bargaining.

Attorney Seewald cited case law from 1981 in which the City of Boston's City Council and mayor were in a fight about staffing and salaries. The Supreme Judicial Court said that the city council's authority is limited largely to a check on the mayor's executive function to the power of appropriation. Every penny that is spent by the mayor has to be appropriated by the city council which is an enormous power.

Patty Healey stated she supports Attorney Newman's proposed language because when she votes for her city councilor she wants to know that the city council is representing her values. Her question is that when Mayor Narkewicz is not mayor and the city council and the mayor don't agree, will the city council still be able to do what it does now.

Councilor Dwight cited section 1-4 of the charter which says, "Subject only to express limitations on the exercise of any power or function by a municipal government in the constitution or General Laws, it is the intention and the purpose of the voters of Northampton, through the adoption of this charter, to secure for themselves and their government all of the powers it is possible to secure as fully and as completely as though each power were specifically and individually enumerated in this charter." Councilor Dwight stated that this section says that Massachusetts General Laws already establishes the legislative authority of the council so it doesn't need to be in the charter.

Dylan Gaffney stated this he hopes this discussion can continue but it doesn't seem that the committee supports the current proposed language.

Chair Moulton agreed it is an important discussion and should be continued in the future.

Vote on possible recommendations adding subsections to Article 8 (Elections) allowing the city to:

1. Lower the municipal voting age to 16

Councilor Dwight moved to approve lowering the municipal voting age to 16. Sam Hopper seconded.

Sam Hopper clarified that this vote is solely for lowering the age and the committee will continue the discussion on who can run for office in the future.

Attorney Seewald stated that the current charter defines a voter as "a registered voter" and any voter

shall be eligible to hold the office of the mayor so the definition of voter needs some tweaking.

Bob Boulrice stated that the individuals from Voter Choice Massachusetts informed him that state law says that any eligible voter may run for any seat.

Lyn Simmons stated that all the special acts she looked at exempted voters under the age of 18 from running for office.

Councilor Dwight stated that his personal feeling is if the voters elected them, they should be able to hold office. He furthered by saying he would like it to be justified in the language as to why 16-year-olds can't run for office, i.e. signing contracts.

The motion to approve lowering the municipal voting age to 16 was approved 8-0 by roll call vote.

2. Adopt ranked-choice voting for municipal elections

Councilor Dwight moved approval of adopting ranked-choice voting for municipal elections. Sam Hopper seconded.

Robbie Sullivan questioned whether the city and the city clerk could handle all of these changes at once.

Attorney Seewald stated that the committee should put all its recommendations through with the understanding that they either won't all be approved or won't all be implemented at once.

The motion to adopt ranked-choice voting for municipal elections was approved 8-0 by roll call vote.

3. Mail ballots for municipal elections to all registered voters

Councilor Dwight moved approval of mailing ballots for municipal elections to all registered voters. Sam Hopper seconded.

Dylan Gaffney reminded the committee that if the city council decides to adopt mailing ballots for municipal elections to all registered voters than the question of absentee ballots becomes moot.

The motion to approve mailing ballots for municipal elections to all registered voters passed 7-0-1 by roll call vote with Lyn Simmons abstaining.

4. Remove the need to cite a specific reason to receive an absentee ballot for municipal elections

Councilor Dwight moved approval of removing the need to cite a specific reason to receive an absentee ballot for municipal elections. Sam Hopper seconded. The motion passed unanimously 8-0 by roll call vote.

- **Discuss outreach to under-represented communities**

Chair Moulton stated he would like to push this discussion to the next meeting when Mollie Fox is present.

There was a brief discussion on reaching out to under-represented communities. These communities include the Northampton Housing Authority, tenant associations within the housing authority and speaking with Peg Keller of the Mayor's office to see if she could reach out to certain groups.

Lyn Simmons stated that one area of under-representation is when voters can't read the ballot because it is only printed in English.

Councilor Dwight suggested meeting at JFK because it is accessible with more parking, closer to Florence Heights and Meadowbrook, and reaches out deeper into the community.

Chair Moulton stated that the location and timing of the committee's regular meetings might not be convenient for all constituents.

- **Discuss summer schedule**

After a brief conversation, the committee decided to hold one meeting in July and one meeting in August. These meetings will be Tuesday, July 16 and Tuesday, August 20.

- **Adjourn**

Councilor Dwight moved to adjourn at 8:43 p.m. Lyn Simmons seconded. The motion passed unanimously 8-0.