

**Charter Review Committee  
Tuesday, April 16, 2019, 6:30 p.m.  
City Hall Hearing Room 18  
210 Main Street, Northampton, MA 01060**

**Meeting Minutes**

Present: Stan Moulton (ward 1), Dylan Gaffney (ward 3), Sam Hopper (ward 4), Bob Boulrice (ward 5), Patty Healey (ward 6), Mollie Fox (ward 7), Lyn Simmons, Chief of Staff (Executive Branch), City Councilor Bill Dwight (Legislative Branch), Attorney Alan Seewald, City Solicitor (non-voting member)

Absent: Robbie Sullivan (ward 2)

The meeting opened at 6:32 p.m.

Chair Moulton announced that the meeting will be audio and video recorded.

- **Approval of minutes for April 2, 2019**

**Mollie Fox moved to amend a sentence on page 10 in which Bob Boulrice actually made the statement and not Mollie, and Mollie recalled saying that she felt the committee is missing key information that should be considered before voting. Dylan Gaffney seconded. The minutes passed, with the amendment, 7-0 with Councilor Dwight abstaining.**

- **Public comment**

Mike Kirby of Prospect Street was present to offer frustrations as to why the city manager idea that he and Fred Zimnoch raised at a previous meeting, isn't going to be discussed. Mr. Kirby stated that a lot of times citizens feel invisible because issues that citizens raise are not always discussed. Mr. Kirby would like to see the charter committee acknowledge these ideas in some way.

Chair Moulton explained to Mr. Kirby that the committee did discuss the city manager form of government at some length at the April 2 meeting and it is reflected in the minutes.

- **Updates from committee members**

Chair Moulton explained that the Forbes Library representatives prefer to come to the May 7, 2019, meeting to discuss vacancies.

Patty Healey arrived at 6:41 p.m.

- **Discuss Special Municipal Employee status for Charter Review Committee members**

Attorney Seewald offered an explanation of special municipal employees. Under the conflict of interest law, anyone who holds any position whether paid or unpaid, temporary or permanent, including members of this committee, qualify for special municipal employee status. There are two ways in which being a special municipal employee loosens the ethics law. A special municipal employee is allowed to represent someone else's interests before any other board or committee as long as it is not related to the charter review committee. A regular municipal employee can't do that. For example, if your aunt needs a special permit from the planning board and you want to be your aunt's agent in front of the planning board, if you are a regular municipal employee, you can't do that, but if you are a special municipal employee you can because that agency has nothing to do with charter review committee. The other area is holding contracts with the city. There are prohibitions against regular municipal employees holding contracts with the city outside of the employment contract. If you are a special municipal employee and as long as the contract is executed in accordance with public bidding and disclosure forms are filed, then a contract can be held. The process of becoming special is having the city council take a vote and having the mayor sign off.

Lyn Simmons asked how long after the committee ceases to exist does this still apply.

Attorney Seewald clarified that after the committee disbands, any matter that came before the committee, special municipal employees are forever prohibited from taking up that matter for a private party. Regular municipal employees have to wait a year since leaving the committee to participate in a matter.

Dylan Gaffney asked about sitting on multiple unpaid boards.

Attorney Seewald clarified that this only applies if you are getting compensated for sitting on a board.

Councilor Dwight stated that he and Lyn Simmons are already precluded from presenting business before any board or committee.

Attorney Seewald furthered that if someone wants to be a special municipal employee on the committee, everyone has to be. It's either everyone or no one.

Attorney Seewald called the State Ethics Commission because Councilor Dwight and Lyn Simmons can't be special municipal employees because they are paid for their duties, Councilor Dwight as a city councilor and Lyn Simmons as a full-time employee. However, they can be special municipal employees for this committee but it doesn't help them because if they want to claim special municipal status, they have to be a special municipal employee in all roles.

Patty Healey asked if she can represent herself or others in city matters if she is a member of this committee and a special municipal employee. For example, can she represent an organization in front of the city council?

Attorney Seewald stated she cannot if she is acting as an agent or an attorney for an organization.

Patty Healey asked, for example, if she could act as an agent of the nurses' union at the hospital if a matter came before the city council.

Attorney Seewald explained that special municipal employees can always represent themselves but they can't act as an attorney or an agent for someone else in a matter in which the city has direct and substantial interest.

Councilor Dwight recalls Patty coming before the city council advocating for a referendum for nurse staffing issues which is not a conflict because the city has no direct and substantial interest.

Bob Boulrice stated he is a member of the community gardens and suppose a flood occurred and members of that organization appealed to the city council for help, would he be prohibited in engaging with the city council in that matter.

Attorney Seewald stated he would be prohibited from acting as its agent but could always speak for himself or have another member of the community gardens be its agent.

Chair Moulton questioned whether there is a downside to being special municipal employees. Seeing there being no downside, Chair Moulton suggested that the committee members become special municipal employees.

Attorney Seewald stated that he will see that this gets added to the May 2<sup>nd</sup> agenda of the city council for approval.

- **Discuss and vote on possible deletions from Attachment 1-Related Laws**

Chair Moulton stated that the attachment is not exhaustive, and the first editor's note states, "Editor's Note: Included in this attachment are special acts of the General Court which are current amendments to the Charter or special acts which may be of current interest to the user. It is by no means a comprehensive reproduction of all special acts related to the City and is presented merely for the convenience of the user." Chair Moulton stated that there was a specific question related to the act of 2002 that established the board of public works. Some of the footnotes point out that acts were repealed since the implementation of the charter in 2012. Chair Moulton suggested putting a similar footnote with the act of 2002 which established the BPW noting that that section was repealed.

Attorney Seewald recalled that the reason for the items in the attachment being in place was because after the charter was ratified, the mayor had a year to file the administrative code so this attachment needed to be left in place because there was no other way to have the board of public works without the act. The acts in the attachment are all irrelevant now and have been superseded by either the charter or the administrative code. Furthermore, if anyone wanted to view the attachment they could find it in the historic acts and resolves repository of the commonwealth.

Lyn Simmons stated she believes this could be resolved with a simple email to the code company for it to be removed because it isn't a part of the charter.

Councilor Dwight stated the old document had anachronisms attached to it once upon a time and it was difficult to navigate. For accessibility and convenience sake, its best to eliminate as much confusion as possible. The cleaner the document the better.

**Sam Hopper moved to make a recommendation to the city council to delete attachment-1 from the charter. Patty Healey seconded. The motion passed unanimously 8-0 by roll call vote.**

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

1. 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.)

**Councilor Dwight moved to take this agenda item off the table for discussion. Sam Hopper seconded. The motion passed unanimously 8-0.**

Councilor Dwight stated that with a short meeting schedule in July and August, it is generally understood that there may be a need for a special meeting in July or August. Councilor Dwight stated he is ambivalent on this item.

Councilor Dwight stated that once the clock starts ticking sometimes public discussion is sacrificed which is the part that concerns him but thus far the city council has been able to accommodate any anomalies. However, the committee on city services would be impacted the most.

Sam Hopper reminded the committee that the calendar for the committee on city services is subject to change.

Attorney Seewald stated that it might make sense to extend the deadline a little or the committee would have to have a special meeting to accommodate but July and August shouldn't be exempted altogether without implementing a timeline.

Councilor Dwight stated that 45 days is sometimes restrictive but a deadline is in place so the committee has to make a determination, to make sure the nominee is qualified and to make sure that vacancies don't stay vacant for too long. He can't remember a time where the timeline was unsolvable.

Chair Moulton questioned if extending the deadline to 60 days would be a solution.

City Clerk Pam Powers stated that 60 days would work because when appointments have been missed in the past it was by a few days, not weeks.

Attorney Seewald stated that the committee might restrict boards that aren't able to function because they don't have a quorum. There needs to be a balance between a generous amount of time and allowing the committees to have a quorum. An additional two weeks seems like too much time but a couple of days would make more sense. Possibly from 45 days to 50 days.

Lyn Simmons stated that with the administrative code, all of the term limits were changed from July to June with staggered three year terms so most appointments cycle off at the same time. The appointments that are set to expire in June will be put forward in May. She doesn't recall a problem within the last two years.

Dylan Gaffney stated that he serves on a board that has trouble meeting a quorum so he believes 60 days is too much and 45 days is fine but wouldn't be opposed to 50 days.

Councilor Dwight stated that the less than seven days is a harder window to manage. There is no wiggle room with seven days which is technically less than five because of the weekend when no meetings are held.

Pam Powers stated that when city council meets on Thursday and refers an appointment to the following Monday, the referral technically can't be put on the agenda for the following Monday's meeting so it ends up waiting an additional month, which happens particularly in the summer. It might work if there was a coordinated effort of putting the referral on the Monday city services agenda as a placeholder, assuming that city council will refer the appointment at a Thursday meeting, that way the referral could be discussed at the following Monday's meeting.

Councilor Dwight concurred that there could be a presumption that the appointment would be referred and if it doesn't make it to referral, it could be deleted from the agenda.

**Councilor Dwight moved to strike, “less than 7 nor”, so it will read “... shall make a recommendation to the full City Council not more than 45 days after the referral.” Sam Hopper seconded.**

Lyn Simmons wondered if the seven days is present to give the public adequate notice to speak on the appointment and give the city council time to do its due diligence in vetting the appointment.

Councilor Dwight stated it might be in there because the concern was that in order to kill a nomination, it could be “sat” on so the less than seven days mandates that it be referred.

Attorney Seewald clarified that there is no prohibition of city services having a meeting and starting the process three days after the city council meeting. They just can’t make a recommendation before seven days. The commencing process and the process of making a recommendation back to city council is being conflated. He furthered that the committee has to take at least seven days to make a recommendation to the city council but take no more than 45 days.

Pam Powers stated that the strict interpretation that the city council has taken is that the committee on city services doesn’t take up the appointment in less than seven days.

Attorney Seewald stated that the charter says that the committee cannot make its recommendation to the city council in less than seven days, it doesn’t say anything about when the process can commence.

Pam Powers asked if it would be a violation for city services to take up and discuss an appointment the following Monday after a Thursday city council meeting, and if a recommendation was determined, then wait until the next city council to make a positive recommendation.

Attorney Seewald stated it would not be a violation.

Attorney Seewald furthered that if the city council feels that it is too rushed to pass a recommendation in seven days, it should be put in its rules.

**Councilor Dwight withdrew his amendment after further debate.**

Chair Moulton stated there is no amendment on the floor so no further discussion or vote is necessary.

2. Section 3-3 (Appointments by the mayor): The mayor shall appoint, subject to review by the city council under section 2-10, all city officers and department heads and the members of multiple-member bodies for whom no other method of appointment or selection is provided by the charter; provided, however, this shall not include persons

serving under the school committee, **(add) superintendents of Smith's Agricultural School** and persons serving under the city council.

Attorney Seewald stated that the city council and the mayor don't make appointments to the school committee. It is a different process because they are elected officials that make their own appointments.

Attorney Seewald stated that the wording proposed on the agenda is not consistent because "persons serving under" isn't included before "superintendents of Smith's Agricultural School", which it is for the school committee and the city council.

**Lyn Simmons moved to add "... persons serving under superintendents of Smith's Agricultural School..." in section 3-3. Councilor Dwight seconded. The motion passed unanimously 8-0 by a roll call vote.**

3. Section 3-6 (Approval of mayor, veto): Every order, ordinance, **(delete) resolution** or vote adopted or passed by the city council relative to the affairs of the city, except non-binding **(delete "memorial" and replace with non-binding)** resolutions, the confirmation **(delete "selection" and replace with confirmation)** of city officers by the city council and any matters relating to the internal affairs of the city council, shall be presented to the mayor for approval within 3 business days of such adoption or passage.

Lyn Simmons recalled that these items are simply cleaning up language.

**Sam Hopper moved to approve the three word changes in section 3-6. Councilor Dwight seconded. The motion passed unanimously 8-0 by a roll call vote.**

4. Section 7-2 (Annual budget policy): Before the commencement of the budget process, the City Council president shall place on the agenda of a regularly scheduled City Council meeting a general discussion with the mayor about spending priorities and revenue potential for the coming fiscal year. **(Add sentence as second paragraph.)**

**Councilor Dwight moved for purposes of discussion. Sam Hopper seconded.**

Councilor Dwight stated he has discussed this item with Councilor Dennis Bidwell for two years. He is reluctant to put it in the charter because it is granular and better suited for city council rules. He furthered that the mayor is very transparent on budgetary issues and this item is more of a general discussion of legislative challenges. This was proposed to the committee on legislative matters but didn't pass.

Bob Boulrice wonders if this opportunity is already present in the calendaring of financial events that happen every year per the state statute. There is a required five year financial forecast presentation, 30 days after that a presentation of the five year capital improvement

plan, and 60 days after that is the filing of the annual budget. Within these deadlines, there is abundant opportunity for the mayor to present these things and the city council has an opportunity to respond. Within the five year forecast the mayor should specify what his goals are and at that time the city council should respond with its priorities. This is already in the state code and doesn't need to be put into the charter.

Councilor Dwight stated that these discussions happen in a number of forms but recalls that Councilor Bidwell wants something a little less formal for legislative priorities and a more open budget discussion. The last two mayors have conducted public meetings and discussed the budget granularly with a joint hearing of the school committee, but then budget hearings are held with no turnout. As far as legislative matters are concerned, they are addressed when they present themselves. Part of the problem comes from constituencies and the level of engagement.

Chair Moulton recalled what Councilor Bidwell had said in his email, "We've talked about doing it through city council rules (which didn't go anywhere) and by just hoping that it would happen organically (which hasn't happened), so I'd like to propose we provide for these conversations in the charter."

Councilor Dwight stated that he thinks it's the wrong mechanism because the city council has broad authority with creating its rules so to embed this in the charter diminishes the charters function. He furthered that he thinks it's appropriate for Councilor Bidwell to formally propose this to the city council.

### **Councilor Dwight withdrew his motion.**

Bob Boulrice stated that the committee should speak to this via a motion so it can say that it was discussed at length but didn't feel it needed to be included in the charter.

**Bob Boulrice moved upon considerable discussion the committee votes no on incorporating this notion into the city charter. Patty Healey seconded. The motion passed unanimously 8-0 by a roll call vote.**

- **Discuss issues raised by city officials March 19 and April 2:**

#### **1. Establish term limits for all elected positions**

After reading the minutes from the 2010-2011 charter review committee, Chair Moulton stated that he didn't see why the previous committee chose not to include term limits in the charter.

Attorney Seewald recalled that there was a robust discussion but the prevailing view was that the city wants experienced people running its government and if elected officials aren't doing a good job, there are term limits, called elections.

Councilor Dwight stated there was healthy discussion on the city council floor regarding term limits but ultimately the decision was term limits were unnecessary. However, Councilor Dwight stated he doesn't want to limit the discussion around it.

Mollie Fox stated that currently Northampton doesn't have a corrupt government. However, term limits is something to consider as a check and balance in the event that this is no longer the case.

Councilor Dwight stated that the discussion comes from individuals who are frustrated with the incumbents but these people generally vote back in the incumbent. There is a plus side of having long-term incumbents which is legacy, institutional memories and a more sophisticated understanding of the process and sometimes long-term incumbencies can be problematic but term limits are not the mechanism to deal with that.

Patty Healey stated that imposing term limits for all positions does not answer the problem of the occasional long term incumbent.

Councilor Dwight stated that long term incumbencies are the exception not the rule because there is pretty high turnover. Councilor Dwight also stated that he would never want to limit the mayoral term because the city wants someone in that seat long term to do long term planning.

Dylan Gaffney concurs with not needing to set term limits and if someone believes there is a problem, they should run for office. With the recent climate more people are getting involved and he doesn't feel that term limits needs to be discussed further but also doesn't want to limit discussion.

After discussion, Chair Moulton concluded that this is not an issue the committee wants to spend more time on so it will be taken off the list.

## **2. Create an appointed, independent ombudsperson who responds to citizen complaints**

Mollie Fox reached out to Councilor Alisa Klein for clarification regarding the ombudsperson and relayed the information to the committee. See attached email.

Patty Healey stated that an ombudsman is someone who should be independent from government and someone who can navigate between parties. She can't imagine the city hiring someone without it being a conflict of interest. She is not opposed to have some sort of entity that assists in conflict resolution and city council matters. She is not sure an ombudsman would really serve the need she is hearing from Councilor Klein.

Councilor Dwight stated that it sounds like Councilor Klein is describing the administrative assistant to the city council position. Ombudsmen are usually in corporations with no legislative branch. What Councilor Klein is describing is embedded into the job description of city councilors. An ombudsman reinforces the idea of me vs. the city instead of the city councilors being on their constituent's side. An ombudsman would be hired by a combination of the executive and legislative branch but would have no accountability. Councilor Dwight loves the idea of having one person in the community that can help with difficult problems but then there wouldn't be a need for a city council.

Bob Boulrice sees two issues. The first is the conflict between the legislative and the executive and the frustration that the city council has by being part-time and un-staffed. The biggest problem is to resolve interdepartmental problems which is clearly an executive function. If part-time legislative folk are asking for an opportunity to get more involved in executive functions, they will get more frustrated, not less frustrated.

Councilor Dwight stated that what Councilor Klein described already exists in Lyn Simmons' position, Annie Lesko's position and Court Cline's position in the Mayor's office; Laura Krutzler's position as the administrative assistant to the city council; and the positions in the City Clerk's office.

Mollie Fox wants to make sure that there isn't an underlying reason as to why this person might be needed.

Councilor Dwight stated that he can't think of a particular incident that would prompt the need for this person. If people are having trouble finding out certain information they can call a number of offices, the mayor's office, the city clerk's office or the city council office. An ombudsman would be no different.

Patty Healey wonders if it's not so much about having someone mediate but possibly city councilors are overburdened by minutiae. Even though there is a clear boundary, some city councilors are hammered and Councilor Klein may be one of those people.

Attorney Seewald clarified that no ombudsperson is going to mediate disputes between executive departments. The decider of disputes between executive departments is the mayor. He is not saying that an ombudsperson couldn't help people in communication but the idea that this person is going to solve problems is a fallacy.

Mollie Fox asked if there is possibly a real issue that isn't being addressed and would it be under the committee's purview to address it?

Councilor Dwight stated that even if the committee is talking about adding another staff person it has no business here. It's not the committee's job to try and define the role of an ombudsman or try to relieve the city councilors of some of their duties. The best relief for a city councilor is not running for reelection.

Lyn Simmons stated that she doesn't think the position is a good idea. Northampton is a small enough community that it can still work together and come up with a solution to a problem. There is genuine interest in the mayor's office to try and solve these problems because that's why we are working in municipal government. She furthered that she doesn't believe there is any office in the city that can't call another department and get the information they are looking for. This has also been the case with city councilors and an ombudsman would cloud this.

Sam Hopper stated she doesn't think it should be in the charter.

After thoughtful discussion, Chair Moulton reiterated that the committee feels it is not the proper venue for considering an ombudsperson so it will be taken off the list for discussion.

### **3. Allow City Council to hire its own legal counsel**

Attorney Seewald left the table and sat in the audience.

Councilor Dwight stated that the city council can hire its own legal counsel. When a previous councilor sued the city council, the city council hired its own legal counsel. A previous councilor brought up this often because he was an attorney and he disagreed with some of the advice that was coming from Attorney Seewald. However, Attorney Seewald's charge is not to serve the mayor, but to advise the city. He advises the mayor and advises the city council the same way. Councilor Dwight feels that the city council has always had the opportunity to solicit alternative opinions if it wanted to. Councilor Dwight furthered that he believes Councilor Klein was referring to having legal counsel on staff but that opens the door of competing attorneys. He furthered that he doesn't believe this is something that would go in the charter.

Bob Boulrice reiterated that he believes Attorney Seewald should be a full-time in house legal counsel in a community this size.

Lyn Simmons stated that 20 years ago there was a full-time city solicitor with a staff. A full analysis was done in terms of cost, and hiring out and needing special attorneys and it turned out that it was less expensive to contract out legal representation.

Bob Boulrice says this isn't a cost issue. It involves all sorts of considerations because the job is more complex now, legislation is more volatile, demands of the organization are more rigorous.

Councilor Dwight stated that when there was a full-time solicitor there were a lot of problems. Attorney Seewald's job is to review how the city and the city council function under Massachusetts General Law. Adding another attorney for the city council is an expense that

shouldn't be a consideration. The city and city council want one city solicitor serving the interests of the city of Northampton, not a solicitor for the executive branch and not a solicitor for legislative branch.

Chair Moulton stated that changing the structure of the city solicitor is not under the committee's purview but wonders if there is a process to access funds in the event that a separate attorney is needed.

Councilor Dwight believes that Attorney Seewald could recommend an attorney for the city council if it was being sued.

Chair Moulton stated he is hearing that this topic is not worth the committee's time to keep discussing.

Councilor Dwight stated he feels uncomfortable when he rejects proposals and stands in opposition because he has more influence in this respect than the city councilors who are lobbying for the proposals.

Lyn Simmons stated that this doesn't preclude the city councilors from bringing these matters up in a different venue. It is just saying that the charter review committee feels like that these proposals are under its purview.

Chair Moulton stated he is not regarding Councilor Dwight as the final voice. He is one of nine voices and his voice represents the perspective of having served on the city council.

Sam Hopper stated that without Councilor Dwight's input, which is very much appreciated, she thinks this committee is an inappropriate place to make these changes.

Chair Moulton explained that if anyone feels they want to continue the discussion on any topic, it can be left on the table for discussion.

Patty Healey offered that with respect to city council retaining counsel, she doesn't think it should be in the charter but since there isn't a process in place to retain counsel if necessary, she'd like to see that.

Councilor Dwight stated that this committee could ask the city solicitor to draft a memo describing the ways by which the city council could hire an alternate attorney.

Attorney Seewald returned to the table.

Attorney Seewald stated that there is a reason the city council president selected Councilor Dwight to be the representative of the city council. He is present to give perspective but it doesn't mean he is superseding the process, and he was chosen for a very good reason.

Councilor Dwight reiterated that he wants to make clear he is not speaking for the entire council but only speaking for himself.

**4. Add section requiring in January the City Council president to place on the agenda of a regularly scheduled City Council meeting a general discussion with the mayor about the city's legislative priorities in the upcoming state legislative session.**

Councilor Dwight believes this item has already been spoken to and appreciates Councilor Bidwell's frustration but thinks Councilor Bidwell should put it on the city council floor by either introducing it as an ordinance or a city council rule because embedding it into the charter is not necessary.

Attorney Seewald pointed out in section 2-7(c) of the charter, "The city council may request specific information from the mayor on any municipal matter and may request that the mayor be present to answer written questions relating to that information...", so there is already a process of getting the mayor to the city council for discussions and he does this without even being asked.

Chair Moulton concurred that this item will be taken off the list for discussion.

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

Lyn Simmons stated she made the changes to the flyer which was taking off election scheduling, NCTV is confirmed for the forum, and the forum should plan on be done by 9:30 p.m.

There was question about putting an end time on the flyer. After a brief discussion the committee decided they will gauge the turnout and make an announcement prior to beginning the forum regarding the time frame.

Councilor Dwight asked for clarification on the format and rules of the forum. Voter Choice Mass. has been invited, Pam Powers will speak to no-excuse voting and the youth commission will address lowering the municipal voting age. Invitees will have 15 minutes to present and there will be a sign-up sheet for public comment at which each member of the public will have three minutes, depending on the crowd.

Patty Healey stated that the forum should be structured to having the three presentations then allowing panelists to respond to questions so it avoids the confusion of the committee advocating or taking a stance for anything in particular because this is for informational purposes only.

Councilor Dwight stated his concern is that without clear parameters people will be debating from the audience. Each person who wishes to speak must step up to the podium, formally

identify themselves and speak to a point but not to speak against someone or something. Comments should be directed to the chair.

Lyn Simmons clarified that the table will be set up in a horseshoe with name tags for committee members, the presenters will be at the podium and there will be a general sign-up sheet for public comment.

Chair Moulton has sent press releases out and he expects the Gazette and Valley Advocate will be writing a story about the forum. Lyn Simmons will post the flyer on the city's social media platforms and Mollie Fox will be sending out the press release to the Pioneer Valley Resist Coalition.

- **Adjourn**

**Councilor Dwight moved to adjourn at 9:05 p.m. Lyn Simmons seconded. The motion to adjourn passed unanimously 8-0.**