

**CHARTER REVIEW COMMITTEE
RECORD OF MINUTES AND PROCEEDINGS
November 24, 2009**

The Charter Committee of the Town of Weymouth held a public meeting on Tuesday, November 24, 2009, at 7:00pm at Town Hall Council Chambers, 75 Middle Street, Weymouth, MA

Present: Barbara Deacon, Chairperson
Sandra Williams, Vice-Chairperson
Michael Smart
Arthur Mathews
James Wilson
Claire Cunningham
Michael Gallagher
John Reilly
Sean Guilfoyle
Recording Secretary: Janet Murray

Chairperson Deacon called the meeting to order at 7:10 pm.

OLD BUSINESS

Minutes

A MOTION was made by Council President Smart to ACCEPT the 11/10/09 minutes as corrected and was seconded by Councilor Mathews and PASSED on a 8-0-1 with Mr. Gallagher abstaining.

NEW BUSINESS

Introduction of Attorney Michael P. Curran

Chairperson Deacon invited Mr. Curran to come forward. She stated that the committee had many questions. Mr. Curran was given a copy of the list of questions.

Article 1: Incorporation: Short Title Definitions

Definition of a multi-member body

Mr. Curran stated that the intent of this term was to be all inclusive. He noted that there are many different names for these bodies; such as committees, commissioners, boards of trustees. He noted that this term was intended to include any body consisting of two or more members, whether elected or appointed.

Mr. Reilly noted that Weymouth's charter makes a note that the town council and school committee are excluded. Mr. Curran noted that this is because it is dealt with specifically elsewhere and other boards are lumped together. He stated that could be a deficiency because in some instances some of the general rules may apply to them.

Article 2: Legislative Branch

(Citizen Concern) Section 2-1 (b) Term of Office

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Chairperson Deacon stated that the committee cannot make changes to the consistency of the Board. She stated that the question is can this committee make a recommendation to stagger the terms of the town councilors?

Mr. Curran replied that the home rule amendment states that any change in the charter that relates in any way to the composition, mode of election, or term of office of a legislative body must be made by a charter commission and cannot be made by the amendment process.

Mr. Curran stated that the courts have ruled that the limit in section 3 is a limit on what a city or town may do by itself; it is not a limit on what they legislature may do.

Mr. Curran stated that the committee is not precluded from dealing with the question; a petition to the legislature for a special act could be used to make this type of change in terms. This requires the approval of the council and the mayor.

The home rule amendment provides in section 8 that the legislature can act in relation to cities and towns but only by general laws that apply alike or special laws that the municipality petitions for, and regional matters. He further stated that the second paragraph reads 'that pursuant to the foregoing procedures the legislature can provide a model form of city or town government which can be accepted or rejected by the voters of the town.' He stated that he believes that a provision to come back to the people after the legislature approves the change would be required.

Mr. Reilly asked if there were any restrictions as to what the committee can recommend to the council. Mr. Curran stated that there are no restrictions on what is recommended.

Mr. Curran recommended that any changes be submitted to the council in a form that is ready for adoption with the proposed legislation attached as part of the recommendation.

Section 2-1 (c) Eligibility

Chairperson Deacon noted that the question is can/should the committee recommend changing the wording so that the article is easier to understand.

The example given was replace the word "remove" with "move", "if such removal occurs" with "if such a move occurs".

Mr. Curran stated that all editorial changes that are not substantive can be bundled together as one question. He stated that in his opinion the above example would fall into this category.

Section 2-1 (c) Eligibility versus Section 2-11 (a) Filling of Vacancies

Chairperson Deacon noted that the question is can/should the committee recommend making some wording more consistent.

The example give was in section 2-1(c) "If a district councilor shall during the first sixteen months of a term of office move" and then "If such removal occurs after the first sixteen months of term of office" and then in section 2-11(a) "If a vacancy shall occur in the office of councilor-at-large during the first eighteen months of a term."

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Ms. Williams noted an inconsistency between section 2-1(a) and 2-11(a) in the number of months: 16 months versus 18 months.

Mr. Curran stated that he did not see any reason for the time frames to be different.

Section 2-8 Officers elected by Town Council

Ms. Williams noted that the question is can/should the committee make recommendation to change wording to:

Town auditor: The town council shall choose a town auditor to serve for a term of three years and until a successor is chosen and qualified. The town auditor must receive a majority vote of approval by town council members present in order to be appointed.

Council President Smart asked if this type of change would need to go before the voters.

Mr. Curran stated that this could be bundled together with other housekeeping type changes, forwarded to the town council which would need to approve this by a 2/3 vote, and then sent to the voters for approval.

Section 2-10 Council Review of Certain Appointments/Section 3-3 Appointments by the Mayor

Chairperson Deacon noted that this question refers to the recommendation to add a paragraph about clarifying the appointments made to the Tri-Town Committee: Mayoral appointment vs. Town Council appointment, "separate entity, special legislature, standing committee like WETC Board."

Mr. Curran stated that a special act created the Tri-Town authority. This is a regional law that was created by legislation and does not relate solely to Weymouth; therefore Weymouth cannot vary the terms of this regional statute. The town must conform to whatever the provisions are of the special act that created the authority. If the special act related solely to the town, then the Charter would prevail and used to interpret the special act.

Mr. Wilson stated that it is his understanding that since the special act created the authority, the special act prevails over section 2 and that the mayor would be the sole appointing authority.

Solicitor Lane stated that his prior ruling was in keeping with Mr. Curran's assessment.

Article 3: Executive Branch

Section 3-1 (e) Prohibitions – (School Department) Section 4-3 Prohibitions

Chairperson Deacon noted that the question is looking for clarification of the "Leave of Absence" clause in relation to other state or civil service laws or provisions.

Mr. Curran stated that it is his interpretation that state or civil service laws will prevail over the charter.

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Chairperson Deacon pointed out that this question is about whether the mayor, after completing the term of office, goes back to their job only if the job is available.

Mr. Curran noted that in the city of Brockton, the job of a city employee who is elected mayor is left vacant while the individual serves the term of office. He suggested that the committee contact Brockton human resource for additional information.

Mr. Reilly asked if a town employee is elected mayor does Weymouth's charter mean that the town has no authority to appoint someone to the position permanently.

Mr. Curran stated that the intent of the charter was to allow a town employee to be able to run for office and return to their position when the elected service ends.

Mr. Lane stated that the civil service ruled that the former mayor of Weymouth had the right to return to the job.

Chairperson Deacon stated that terminology may need to be added to this section in order to clarify the meaning.

Section 3-5: Temporary Appointments to Town Offices

Chairperson Deacon noted that this question refers to the definition of and differences between "town agency" and "town officer".

Mr. Curran stated that a town officer is a position or single individual and the town agency is a multiple member body.

Councilor Mathews stated that this question was in regard to the temporary appointments to the conservation commission made by the mayor.

Mr. Curran stated that he speaking off the top of his head and has not had a chance to review specifics.

Mr. Guilfoyle stated that this has become an issue of which word is used when. He noted that this is an issue of consistency as opposed to a substantive change.

Section 3-8: Temporary Absence of the Mayor/Section 3-10(a): Vacancy in Office of Mayor

Chairperson Deacon noted that this question is has there been any language or conversations about the protocol or procedures used if the mayor were to become incapacitated and was unable or unwilling to acknowledge the situation.

Mr. Curran noted that he is aware of a charter that had extensive language in reference to this.

Ms. Williams asked if there was a state law dealing with this issue. Mr. Curran stated that there is no law of which he is aware.

Mr. Reilly noted that there was a question as to who would determine the incapacity.

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Council President Smart asked about the role of this committee.

Mr. Curran stated that this group is a study committee to suggest amendments and make recommendations. There are two practical ways to recommend. Petition legislature, or change through the town council and a town election.

He stated that if the committee recommended electing a charter commission; however this commission will not necessarily do what the committee recommended.

Mr. Curran gave the example of the town of Barnstable. A group got a petition to have a mayor; however the charter commission did not recommend a mayor.

Article 4: School Department

Section 4-1 (a): Composition, Term of Office

Chairperson Deacon does this committee have jurisdiction to make recommendations concerning the composition and/or term of office of school committee members?

Mr. Curran stated that the charter committee is not precluded from making changes to the school committee.

Mr. Guilfoyle asked why.

Mr. Curran stated that the intent was to keep people in office from making changes without the consent of the people.

Mr. Curran stated that the same thing does not apply to the school committee because they are not involved in making those types of changes. Somebody else has to make the changes about them, so it does not originate from the school committee.

Mr. Reilly noted that the committee has the right to make the recommendation.

Mr. Curran stated that this type of change can be made without going to the legislature; just to the council, the mayor and the voters.

Chairperson Deacon noted the question regarding whether the mayor elected to the school committee.

Mr. Curran stated that the mayor is not eligible to be elected to be chair under this specific language of the charter.

Chairperson Deacon noted that the charter states that the mayor has all other rights, duties, and responsibilities of those elected.

Council President Smart stated that he believes that this is contradictory.

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Mr. Curran stated that there is a provision in the charter that specific terms prevail over general terms. In specific terms it states that the mayor is not eligible to be elected as chair; in general terms it states that the mayor has all other rights, duties, and responsibilities of those elected.

Section 4-5 (3): School Committee Powers & Duties

Councilor Mathews spoke in regards to confusion over wording about the establishment of a central municipal maintenance department by town council versus by re-organization by the mayor.

Councilor Mathews asked if an ordinance can originate from the council.

Mr. Curran stated that it says that the council by ordinance can do it but it does not say how the ordinance originates. He pointed out that only the council can adopt an ordinance.

Mr. Curran stated that it originates through a re-organization subject to 5.1 or 5.2. This has to originate with the mayor.

Mr. Curran stated that this section does not talk about how the ordinance originates.

Review of Town Charter Article 5.1

Councilor Mathews noted that there have been some ordinances have come from the council.

Mr. Curran stated that if the mayor agrees with the proposal it can go forward. He noted that there is no provision for an override of a mayor's veto.

Mr. Curran stated that it is the intent of the charter is that the mayor is responsible for day to day delivery of services not the council; therefore it is the mayor who determines how the services are delivered. The council can offer advice and comment on proposals put forth by the mayor.

Councilor Mathews noted that with he had tried to establish an ordinance relating to the Community Preservation Act (CPA). He noted that it was ruled as a section 5.1 re-organization plan.

Mr. Curran referenced chapter 43b section 20 which provides a number of exceptions for general laws for charters.

Councilor Mathews stated that a number of ordinances that were originated by the council.

Mr. Curran stated that in effect these ordinances where originated with the implied approval of the mayor and that the mayor is able to prevent an ordinance from being introduced by the council.

Councilor Mathews stated that he had spoken with several charter commission members and they had stated that it was not the intent to prevent the council from originating an ordinance. He asked if the committee can recommend changes to section 5-1.

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Mr. Curran stated that changes to section 5-1 can be made but approval of the mayor is required.

Council President Smart asked about making changes to section 5-1 and if this needed to be done through the legislature.

Mr. Curran stated that this can be done with a 2/3 vote of the council, approval of mayor, and passage by the voters. He then noted that this can be done through a petition to legislature with a majority vote of the council and approval by the mayor. He pointed out that either way approval of the mayor is needed.

After the council vote, the proposal is to be put on ballot after 60 days. He noted that the vote is suspended for 30 and the order is sent to the Office of the Attorney General for review. An opinion is given if there is a problem with the vote otherwise if no problem is found the 30 day suspension is lifted.

Councilor Mathews asked if he considered this charter to have one of the strongest mayoral forms of government.

Mr. Curran stated that Weymouth's charter has the strongest mayoral form of government.

Chairperson Deacon asked Mr. Curran if he would be available to come before the committee again in March. Mr. Curran stated that he would be available and he encouraged the committee to contact him if there are any further questions.

PUBLIC COMMENT

Chairperson Deacon asked if there was anyone in the public who would like to speak there was the following response.

Chairperson Deacon noted that there was no contact from website. She did note that there was a concern forwarded to the committee from the council office regarding the agenda and minutes being posted on the website. She stated that this would be done.

Mr. Bob Montgomery Thomas, 848 Washington Street, stated that since the mayor is a de facto member of every board and has the right to speak but does not have the right to vote on all of these multiple member boards yet the mayor votes on the school committee. He suggested adding "with the exception of the school committee".

Mr. Thomas addressed the issue of the former mayor returning to his prior position as fire chief. He noted that the former mayor appointed Bob Leary fire chief not provisional fire chief. He stated that at the end of his term, the out-going mayor appointed the town's solicitor, Georg Lane, as acting mayor in order to be re-appointed to his prior position.

Mr. Thomas noted that a temporary mayor is not able to appoint or demote employees. He also noted that Mr. Lane is not a resident of Weymouth but appointed a temporary mayor. He noted this as a housekeeping matter; that anyone filling a temporary elected position should be a resident of the town of Weymouth.

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Mr. Thomas commented that he thinks that the committee is on the right track.

Mrs. Ann Hilbert stated that the intent of the original charter commission was that the council could make ordinances and send them to the mayor.

MEETING SCHEDULE

December 22, 2009

- section 5-2: Merit Principle
- section 5-3: Department of Public Works
- section 5-5: Department of Planning & Community Development
- section 5-6: Department of Human Resources
- section 5-7: Department of Municipal Licenses & Inspections

2010 meeting schedule

January 12, 2010

January 26, 2010

February 9, 2010

February 23, 2010

March 9, 2010

March 23, 2010

April 13, 2010

April 27, 2010

May 1, 2010

ADJOURNMENT

At 8:30 pm, there being no further business, a MOTION was made by Mr. Reilly to adjourn and was seconded by Councilor Mathews, and UNANIMOUSLY VOTED.

Barbara Deacon, Chairperson

Date