

**CITY OF PORTSMOUTH
LEGAL DEPARTMENT
MEMORANDUM**

DATE: June 15, 2011

TO: HONORABLE MAYOR THOMAS G. FERRINI & CITY COUNCIL

FROM: CITY CHARTER ADVISORY COMMITTEE
Members: Nancy Novelline Clayburgh, Chair, Anthony Coviello, Peter Loughlin, John O'Leary, Joshua Cyr *JNC*

RE: FINAL REPORT

This is the final report of the City Charter Advisory Committee to the Mayor and City Council.

On March 15, 2010 the City Charter Advisory Committee was charged by the Council, "with determining public interest in potential changes to the City Charter and with presenting to the City Council such proposed changes arising from public interest..." In furtherance of this charge the Committee held meetings on March 10, 2011, March 24, 2011, April 7, 2011, April 19, 2011 and May 5, 2011. The meetings of March 10, 2011 and April 19, 2011 were specifically designated for public input. All meetings were advertised as required by the Right-to-Know law and the Committee sought media coverage of each proposed meeting in order to encourage public involvement. Meetings held on April 7, 2011, April 19, 2011 and May 5, 2011 were broadcast on Channel 22.

Attached hereto is a detailed list showing every suggested change to the Municipal Charter that was made during the foregoing process. The list indicates the person who submitted the proposal and the disposition of each suggested change as voted by the Committee. As your review will indicate there were thirty-four (34) separate concepts presented to the Committee for review.

Ultimately, the Committee chose to recommend the following proposed Charter amendments to the City Council:

1. Reference #2 - The Committee recommends that the City Council consider an amendment to the City Charter prohibiting City Council or School Board members from becoming an applicant for employment by the City. The intent was to require such officials to resign from their elected position before applying for City employment. One refinement of this concept discussed by the Committee was that no elected official would be able to apply for a City job until the completion of the time period of the term for which that person was elected. The Committee discussed but did not reach final conclusion on any particular time period to recommend to the City Council.
2. Reference #30 – In response to a concern raised by the School Board, the Committee recommends to the City Council that the Municipal Charter be amended to reflect what is believed to be the current practice regarding employment agreements for the Police Chief, Fire Chief, Superintendent of Schools and other ranking major department officials. Specifically, at the present time contracts for those individuals are negotiated

by the appropriate Commission or Board. After agreement between the Commission or Board and the employee, the employment contract is forwarded to the City Council for approval. The School Board expressed concern that the City Council might at that stage amend the terms or negotiate on its own with a Superintendent of Schools candidate, for example. A concept requested by the School Board, and with which the Committee agrees, is that with respect to any of the employment agreements under discussion, that the City Council vote be limited to approval or disapproval of the agreement as approved by the Commission or Board. In the event of disapproval, then negotiations would continue between the employment candidate and the respective Commission or Board. The end result sought by the School Board and this Committee is that the employment agreement of any Police Department, Fire Department or School official must be as negotiated by the Police Commission, Fire Commission or School Board as appropriate. The Council should not be able to change the terms approved by those entities.

3. Reference #32 – At the request of the Committee the City Attorney drafted a proposed Charter Amendment which would have the effect of centralizing the negotiation and administration of collective Bargaining Agreements, except those from the School Department, in the existing Department of Negotiation and Administration of All Collective Bargaining Agreements contained in the Charter. The proposed amendment drafted by the City Attorney to the Committee is dated May 5, 2011 and is attached to this memorandum. The Committee recommends to the Mayor and City Council that some amendment along the lines of this attachment be placed on the November ballot by the City Council.

It should be noted in all cases that the Committee is not bound to or recommending specific Charter language to the City Council. Rather, the Committee is recommending concepts to the Council. If the Council approves the concepts then it is anticipated that the Council would instruct the City Attorney to draft specific Charter language which would then be placed on the ballot for the November election after the Council had held the public hearing required by statute.

Prior to closing the Committee desires to address some comments apparently made by the School Board and published in the Portsmouth Herald on May 11, 2011 under the heading, "Portsmouth School Board Feels Snubbed by Charter Committee". Briefly, the comment from the School Board and the response of this Committee is as follows:

- a. The School Board appeared to be concerned that the Committee was not recommending the creation of a Charter policy for Board members to take jobs with the City. The Committee responds that it is in fact recommending to the City Council that exactly such a Charter policy be created. See item #1 above.
- b. The School Board expressed concern about the fact that the Committee was not recommending an amendment to the process for filling a vacancy on the School Board. The Committee responds that it chose not to recommend that an amendment be recommended in this regard because the exact same result sought by the School Board, looking to the most recent School Board election to find persons to fill a vacancy, can be achieved by the School Board without a Charter amendment. Essentially, if there are no persons in line to fill a vacancy under the current Charter provisions, the

School Board would be free to look to the last School Board election to find names that could be used to fill a vacancy. No Charter amendment is required.

- c. The School Board was also apparently concerned that the Committee chose not to include a recommendation that the School Board contain, in addition to a student representative, an employee representative and a SAU Unit 50 representative. The School Board did not wish these latter individuals to have voting authority but merely to be members of the Board. The Committee notes that although the student member is on the School Board pursuant to the Charter that the student does not have a vote. Therefore, the existence of the student member of the School Board does not truly affect the form of government in the City. The purpose of the Charter is to outline the form of government of the City. Therefore, it would have been a preferred approach if the School Board had placed the student member on the Board as a matter of School Board policy rather than Charter amendment. This same thinking applies to a non-voting employee member and a non-voting member from SAU 50. Moreover, at the May 5, 2011 meeting, a School Board member present indicated to the Committee that the School Board had withdrawn this particular request. Therefore, the Committee did not address this particular request and thus the comments in the media are misleading.
- d. Media reports also suggest that the School Board has expressed some displeasure that the Committee did not recommend placing a School Board member on the "10-year Charter Commission". There appears to be some confusion on the part of the School Board insofar as there is no 10-year Charter Commission. Rather, there has been a committee appointed by the Council on each of the last two (2) 10-year anniversaries of the adoption of the current City Charter. The makeup of that committee is not dictated by any charter or ordinance provision. Rather, the Mayor and City Council are free to place whatever individual they choose on the committee. Thus, if the same process should be repeated ten (10) years from now the Mayor and City Council could place a school board member on that committee without there being any Charter amendment made.

Members of the Committee express their appreciation to the Mayor and City Council for the privilege of being allowed to serve the City in the performance of this Charter review. We hope that you will find some value in our work product.

attachment

cc: John P. Bohenko, City Manager

2011
City Charter Review Committee
Listing of Suggested Amendments

<u>Reference #</u>	<u>Suggested Change</u>	<u>Submitted by</u>	<u>Disposition of Item</u>
1-5-2011-1	5 year term limits for Department Heads	David Kish	Voted 03/24/2011 not to recommend - Administrative policy
1-5-2011-2	Policy on elected board members taking city jobs	David Kish	Voted 05/05/2011 to recommend amendment to Charter
1-5-2011-3	Policy for retired high government department employees running for office	David Kish	Voted 03/24/2011 not to recommend
1-26-2011-4	Hiring new employees who are elected officials	Eric Spear	No action required. Addressed in Reference #2
1-26-2011-5	Swearing in new members after the election once results are certified	Eric Spear	Voted 03/24/2011 not to recommend
1-31-2011-6	Two-thirds majority for adoption of Budget	Martin Cameron	Voted 03/24/2011 not to recommend
2-14-2011-7	Stagger the City Council elections in a manner that is similar to the School Board	John O'Leary	05/05/2011 Withdrawn by Mr. O'Leary
3-9-2011-8	Place a question on the ballot to give citizens opportunity to weigh in on the continuation of Fire and Police Commissions or to have them appointed by Mayor/City Council.	Councilor Dwyer	To be discussed 04/07/11 Mtg/Agreed by Concensus 4/19/11 not recommend
3-10-2011-9	5 Ward Councilors and 4 At-large Councilors	Rick Becksted	Voted on 03/24/2011 not to recommend
3-10-2011-10	Full Time Mayor form of Government	Rick Becksted	Voted on 03/24/2011 not to recommend
3-10-2011-11	Term limit for City Manager	Bill St. Laurent	Voted on 03/24/2011 not to recommend - Council policy issue
3-10-2011-12	Strong Mayor form of Government, possibly ward councilors	Bill St. Laurent	Voted on 03/24/2011 not to recommend
3-10-2011-13	Citizen Comment Session monthly to allow for back and forth discussion with Council	Bill St. Laurent	Council Policy Issue
3-10-2011-14	Vote on final budget should be a 2/3 vote - not simple majority	Bill St. Laurent	Voted on 03/24/2011 not to recommend
3-10-2011-15	Term limit for City Negotiator	Bill St. Laurent	Administrative policy

2011
City Charter Review Committee
Listing of Suggested Amendments

<u>Reference #</u>	<u>Suggested Change</u>	<u>Submitted by</u>	<u>Disposition of Item</u>
3-10-2011-16	Clarify if 2/3 majority vote for budget not accomplished, goes back to previous year budget and not City Manager proposed.	Tony Coviello	Clarification of Item #6 - voted not to recommend
3-10-2011-17	Change terms of Fire/Police Commission and School Board members from 4 years to 2 years	Tony Coviello	Voted 05/05/2011 not to recommend
3-10-2011-18	Mayoral candidates run specifically for the position of Mayor	Harold Whitehouse	Advised by City Attorney is Revision not Amendment - Commission
03-10-2011-19	Independent Audit made available to Council within 120 days	Harold Whitehouse	Advised by City Attorney is a Council Policy Issue
03-10-2011-20	Change full-time Negotiator to either full-time or part-time (current one is part-time)	Harold Whitehouse	Advised by City Attorney is an Administrative Policy
03-10-2011-21	Establish a permanent Charter Review Committee	Harold Whitehouse	Advised by City Attorney not constitutional - State requires every 10 years
03-10-2011-22	All union contracts must be passed by 2/3 vote	Harold Whitehouse	Voted 05/05/2011 not to recommend
03-10-2011-23	Report on CIP projects at the first meeting in January each year	Harold Whitehouse	Advised by City Attorney is a Council Policy Issue
03-10-2011-24	Fire/Police Commission, add a section that would allow the City Council to appoint an alternate that could be a non-voting person to strengthen the 2 Commissions	Harold Whitehouse	To be discussed 04/07/11 mtg/Agreed by Concensus 4/19/11 not recomme
03-11-2011-25	Town Hall style meetings held 2-3 times a years for citizens to express concerns and get immediate feedback from Council.	Jerry Tostenson	Council Policy Issue
03-11-2011-26	Section 6.3.H - Student Member of School Board - add the teacher representatives to this section or remove section entirely	Nancy Novelline Clayburgh	05/05/2011 Withdrawn by School Board
04-07-2011-27	Changing the Public Hearing (2nd reading) on a proposal into a Town Hall discussion	Paul Mannle	Council Policy Issue

Revised 5/16/2011

2011
City Charter Review Committee
Listing of Suggested Amendments

<u>Reference #</u>	<u>Suggested Change</u>	<u>Submitted by</u>	<u>Disposition of Item</u>
04-15-2011-28	Section 6.3.H - Student Member, School Board Employee Representative, School Administrative Unit #50 - add positions to the Charter	School Board	Voted 05/05/2011 to not recommend
04-15-2011-29	Add language to Charter to say if there is no one eligible from the original election, then the candidates from the more recent election are used	School Board	Voted 4/19/2011 to not recommend
04-15-2011-30	Clarify the language in the charter that the School Board has authority to negotiate and agree upon the compensation and contract of the Superintendent of Schools	School Board	Voted 05/05/2011 to recommend amendment to Charter
04-15-2011-31	Include language to appoint a School Board representative to be a member of the 10-year Charter Commission	School Board	Voted 05/05/2011 to not recommend
04-19-2011-32	Remove Fire & Police Commissioners from the negotiation process	John O'Leary	Voted 05/05/2011 to recommend amendment to Charter
04-19-2011-33	Change terms of City Council members from 2 years to 3 years	Nancy Novelline Clayburgh	Voted 05/05/2011 to not recommend
04-19-2011-34	Add language to Charter that would create line item veto in the budget	Councilor Coviello	City Attorney reported this may have no further value

Color Key

=	Not Recommend
=	Recommend Amendment to Charter
=	No Action Required
=	Administrative or Council Policy
=	Revision
=	Not Constitutional
=	Withdrawn
=	No further value


CITY OF PORTSMOUTH

LEGAL DEPARTMENT

MEMORANDUM

DATE: May 5, 2011

TO: CHARTER COMMITTEE

FROM: ROBERT P. SULLIVAN, CITY ATTORNEY 

RE: PROPOSED CHARTER AMENDMENT REGARDING COLLECTIVE BARGAINING

This responds to the request of the Committee for a proposed charter amendment which would centralize both the substance and the procedure of Collective Bargaining for both the Police and the Fire Departments, including resolution of any grievance arising from collective bargaining agreements, in the general City government, while still maintaining the operational authority of the Police and Fire Commissions. One option would be as follows

PROPOSED AMENDMENT

The Municipal Charter of the City of Portsmouth is hereby amended as follows (deletions from existing language ~~stricken~~; additions to existing language **bolded**; remaining language unchanged from existing):

AMENDMENT B – DEPARTMENT OF NEGOTIATION AND ADMINISTRATION OF ALL COLLECTIVE BARGAINING AGREEMENTS

The Administrative Code shall provide for a municipal department which shall be solely responsible for the negotiation and administration of all collective bargaining agreements which are funded by the City of Portsmouth, including those agreements involving personnel of the Police Department, Fire Department, and School Department. **With respect to the negotiation and administration of all collective bargaining agreements, excepting only the School Department, all issues of substance and procedure shall be determined by this Department, working in cooperation with the appropriate administrative authority for each Department. At such time as determined to be appropriate by the Department established hereby or by the School Department in the case of a School collective bargaining agreement, all proposed collective bargaining agreements shall be submitted to the City Council. Final approval of any contract shall be by vote of the City Council.**

In implement the foregoing provision, the stricken language in the following charter provisions are hereby partially deleted as noted.

AMENDMENT A – FIRE COMMISSION

POWERS

The Fire Commission shall appoint such permanent Firefighters, Lieutenants, Captains, Deputy Chiefs, a Fire Chief and any call firefighters as they may deem necessary, subject to the approval of the City Council. ~~The Commission shall have authority to consider and act upon any complaint and/or employee grievance(s) brought to it through such procedures, as it shall establish.~~ Where the Commission determines there to be sufficient cause, the Commission may, after a hearing consistent with the requirement of due process, discipline or remove any Firefighter or Officer against whom such a complaint has been brought. ~~Appeals from such decisions shall be heard pursuant to such grievance procedures as shall be established by the Commissioners with the respective contracts (work agreements) through which such persons were employed.~~

The Commission shall assume all administrative responsibilities, which would otherwise be vested in the City Manager under this Charter relating to the administration of the Fire Department. Such power to include, but not be limited to, the following:

- A. Determine the number, location and type of facilities and installations, subject to the approval of the City Council;
- B. To determine the size of the work force and increase or decrease it's size, subject to the approval of the City Council.

AMENDMENT E – POLICE DEPARTMENT (POLICE COMMISSION)

POWERS

The Police Commission shall appoint such permanent patrol officers, sergeants, captains, commanders, and police chief, as they deem necessary. ~~The Commission shall have authority to consider and act upon any complaint and/or employee grievance(s) brought to it through such procedures.~~ Where the Commission determines there to be sufficient cause, the Commission may, after a hearing consistent with the requirements of due process, discipline or remove any employee of the Police Department against whom such a complaint has been brought. ~~Appeals from such decisions shall be heard pursuant to such grievance procedures as shall be established~~

~~by the Commissioners or as prescribed in respective collective bargaining agreements.~~
The Ceommission shall assume all administrative responsibilities, which would otherwise be vested in the City Manager under this charter relating to the administration of the Department. Such power to include, but not limited to, the following:

A. Determine the number, location and type of facilities and installations, subject to the approval of the City Council

B. To determine the size of the work force and increase or decrease it's size, subject to the approval of the City Council

Whatever action the committee might take on this issue, it remains very early in the charter amendment process. Accordingly, the foregoing language should not be considered a final draft but rather a starting point for discussion. Input from Fire and Police Departments would be important in determining the final language. Ultimately, the critical form of the amendment is that which might be placed on the November ballot by the City Council.

cc: John P. Bohenko, City Manager
David Ferland, Chief of Police
Christopher LeClaire, Fire Chief
Dianna Fogarty, Human Resources Director
Thomas Flygare, Esq. (City Negotiator)

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