

CITY COUNCIL WORK SESSION

CHARTER COMMITTEE REPORT

July 18, 2011 – 6:00 p.m.

Eileen Dondero Foley Council Chambers

City Council Present: Mayor Ferrini, Assistant Mayor Novelline Clayburgh, Councilors Lister, Hejtmanek, Spear, Dwyer, Coviello, Kennedy and Smith

Staff Present: Deputy City Manager Cindy Hayden, City Attorney Robert Sullivan and Valerie French, Deputy City Clerk

Also Present: Charter Committee Members, Peter Loughlin and John O’Leary, Fire Commission Chair Richard Gamester, Police Commission Chair Gerald Howe, and School Board Chair Mitchell Shuldman

I. Call to Order – Mayor Ferrini

Mayor Ferrini called the Work Session to order at 6:00 p.m.

City Attorney Sullivan began by discussing the timeline and procedures for putting a referendum question on the November 8, 2011 Municipal Election ballot, including a public hearing, Council vote and review by the Secretary of State and Department of Revenue Administration all with specific allotments of time.

Mayor Ferrini stated that the Charter Advisory Committee has presented a final report which includes a recommendation of 3 proposed amendments for Council consideration but it is up to the Council as to which, if any, to put forward to the voters.

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.

Councilor Spear stated he supports this recommendation but would add the Police and Fire Commissions and have it state that these individuals can apply at the end of the term to which they were elected.

Discussion ensued regarding the time period requirement.

Committee Member O’Leary stated that we should remember that this question will be on the ballot and feels that it should be as simple as possible and not complicated.

Mayor Ferrini asked what is considered a city job i.e. Coach, referee, etc. that some parents who may serve as Councilors, School Board members, etc. may volunteer to take on and are paid a stipend of some amount.

Committee Member Loughlin stated he also feels that for School Board members whose terms are 4 years, it could create a hardship to require them to wait out their full term to apply for a job that they may be in need of because of a change in circumstance.

Mayor Ferrini stated that it seems that the general consensus is that the elected official would have to resign before applying for city employment, but would not have to wait until the end of their term.

City Attorney Sullivan clarified that the Council will have to vote at a regular meeting to instruct the City Attorney to draft the questions and then refer those approved questions to a public hearing, with another vote after the public hearing to put on the ballot.

School Board Chairman Shuldman stated he still has questions regarding the soccer coach example and if that would be a part of this amendment. City Attorney Sullivan stated that this isn't an easy line to draw.

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.

City Attorney Sullivan explained that this was motivated by a recent experience where there was a School Superintendent candidate that the School Board negotiated a contract with and then there were discussions between the City Council and the candidate which could have resulted in the loss of the candidate.

Assistant Mayor Novelline Clayburgh stated the City Council should say yes or no to the proposed contract and then it should go back to the appropriate board or commission for further negotiation if necessary. She stated the Council should not be negotiating.

Committee member O'Leary stated this was a result of a letter from School Board Chairman Shuldman which related the example cited by Attorney Sullivan and the committee wanted to clarify that the Council does not participate in the negotiations.

School Board Chairman Schuldman read his initial letter outlining their concern and stated that the School Board has the ability to negotiate and settle the contract without Council approval and feels that it is already implied in various places throughout the Charter, but the process has become uncomfortable in the recent past.

Mayor Ferrini stated we need to be careful not to discuss anything that is meant for non-public sessions.

Councilor Dwyer stated that unlike other municipalities the school department is a City department and not separate although she doesn't understand how that happened, it does bear discussing.

City Attorney Sullivan stated that since the implementation of the current Charter in 1988, all high level department head contracts are approved by the City Council, and although he agrees that there is a contrary argument in the Charter, this has been done for 30 years.

School Board Chairman Schuldman discussed the recent issue that occurred that prompted this recommendation to the Charter Committee. Discussion ensued.

Police Commissioner Howe stated that he has been involved with 3 Police Chief contracts over the 10 years he has been on the Commission and he would want to know why the Council rejected a contract they brought forward.

Committee member O'Leary stated that it is the intent of the proposal that the City Council cannot have any discussion with the candidate in regards to the terms of the contract, but they can discuss any concerns in a non-public session with the Commission or Board.

Commissioner Gamester stated they have brought forward contracts that the Council has rejected even though they met the boundaries set by the Council.

School Board Chairman reviewed Section 6.3 of the Charter regarding the School Department and where there is contradiction because the Superintendent is an employee of the School Department.

Mayor Ferrini stated he understands the clarification and reiterated that if the Council takes no action, it will stay as is, and when another Superintendent is hired, this may or may not occur again.

Councilor Kennedy asked if we have looked at the RSA of the School Board's role in relation to this change.

City Attorney Sullivan stated that the Municipal Charter is at the same level of law as the RSA and our Charter is specific to Portsmouth. He stated that the 2 have to read together and feels that our current system is correct.

Discussion ensued.

City Attorney Sullivan explained that the School Department is the most autonomous of the City departments but it is part of the City incorporation. School Board Chair Schuldman asked about language to remove the School Department from the City. City Attorney Sullivan stated that would require a Charter revision process.

Assistant Mayor Novelline Clayburgh stated that this amendment is meant to clarify the language that the City Council has the final authority in the process and no negotiation authority.

Committee Member O'Leary stated that the committees' intent was to present the language to bring the Charter in line with current practice.

After further discussion, Mayor Ferrini found that there was no consensus to move this item forward.

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 attached be placed on the November ballot by the City Council.

Committee member O'Leary stated that this issue had a lot of discussion and originally it was in regards to doing away with the Commissions. He stated that after hearing the public input that most people are in favor of the work done by these bodies as the administrative arm handling those departments, they made a strong case for the benefits of having them in place. He stated that there are still some areas of concern specifically regarding negotiations as there is a feeling that the Council gives mixed messages. Another thing brought to light is that grievances can have a direct effect on the negotiation process so they are looking to take that aspect out of the process. He stated they also tried to keep in mind that the Charter is only reviewed every 10 years so they are trying to address these issues but not be too broad.

Commissioner Howe stated that all 3 of the police commissioners attended all of the Charter committee meetings and the public input received was for no changes. He continued that regarding contract negotiations there is a system of checks and balances in place as they get

their marching orders from the Council. He stated they represent the city in the negotiations and feels they have worked well together. He stated the process isn't broken and the Council has the ultimate decision. He stated that the Commissioners have the knowledge in place to address grievances and interpret the contracts. He stated that the City Attorney has stated that this change wasn't substantive enough to be considered a revision, but it would take away the responsibility of 94% of the budget, so it is a substantive change.

Police Commissioner Russo read a prepared statement stating that the Police Commission performs duties that Councilors would not have the time to do.

Police Commissioner Golumb stated he has talked to numerous people who want to see the duties of the Commissions remain the same.

Mayor Ferrini stated that the choice seems to be whether we take on the grievance process or not and wonders what percentage of the speakers in favor were not affiliated with the commission or departments. Assistant Mayor Novelline Clayburgh stated very few.

Councilor Dwyer stated that she felt the full public should have a chance to weigh in on this policy as it is all related to dollar amounts. She stated we need to figure out what the Commissions would do if it was not related to dollar amounts and feels it is difficult to draw the line on this half way. She stated that Portsmouth is one of a few cities in the State with Commissions and feels there is no more consistent issue at budget time than collective bargaining. She stated she does feel that the public should weigh in on something that is straight forward and feels this is not. She stated we need to have a Charter Commission instead of a Committee bring this forward and feels we should ask the public if they want a Commission.

Councilor Smith stated there are 16 bargaining units in the City and we do not have a strong Mayor form of government and feels that Commissions are our checks and balances. He asked if we remove the Police and Fire Commission will we remove the School Board too as he feels it should be all or nothing. He stated that this could create even more grievances and if we decide to go forward with this, then it should be in 2020 with a full Charter Commission.

Commissioner Gamester stated he wholeheartedly agrees with Commissioner Howes' statements and feels the problem is with the negotiation process. He reiterated the issues that have occurred over the last several years and feels that the Commissions were put in place for a reason and serves the citizens very well. He stated that the Commission should retain the negotiation power and the Council can approve or reject as currently is the practice.

Councilor Kennedy stated that the people who spoke at the public hearings shouldn't be criticized for their affiliations as they have the right to speak and the people who had opposing opinions didn't care as much if they didn't bother to show up. She stated she agrees that there was a reason that the Commissions were put in place and feels the process works fine and it is the economy that is making things bad and that is out of our control.

Councilor Hejtmanek stated that 85-94% of the budget is personnel costs and when he is running for election, the question always asked is why employee salaries are so high. He stated that he doesn't like being accused of changing the rules for negotiation so probably dealing more directly would cause less confusion. He stated he feels this question should be on the ballot.

Commissioner Gamester stated that he wants to clarify that they are working for the City the same as the city negotiator during the negotiation process. He stated that Commissioners have denied contracts before bringing them to the Council.

Councilor Lister stated that the Commissioners have made a good case to retain the current process and feels it is not a good time to make changes. He stated we should be working together better.

Councilor Dwyer suggested a Public Safety Commission which would oversee both departments stating there would be some positive benefits and help take a step towards looking at the broader issues.

Mayor Ferrini stated that he came prepared tonight thinking that we should take away the collective bargaining ability, but now feels that this actually may be bigger than this process and doesn't think there is enough support to put it forward on the ballot but look into as a future policy issue.

Assistant Mayor Novelline Clayburgh stated she voted in favor of bringing this forward because other communities don't have Commissions and feels that there are a lot of frustrations during the negotiation process. She also clarified that the Commissions were brought to the ballot by a Charter Committee so they can be eliminated via Committee.

Mayor Ferrini stated there is no consensus to bring this item forward and asked if there are any other issues to discuss.

Councilor Spear stated that there were several other items he suggested that were not brought forward by the Committee i.e., swearing in new Council members after the election results are certified instead of in January. He stated that after the last election in 2009, the sitting Council voted on a major zoning change at their last meeting and doesn't feel that was the right thing to do.

Assistant Mayor Novelline Clayburgh stated that she likes to have the last month of meetings with the old Council to give everyone a chance to say goodbye and have some closure. She stated regarding the zoning issue, the sitting Council had been the people who had been working on it, heard the public comment etc. and so should be the one's to make that decision.

Committee member Loughlin stated for newly elected Councilors, it gives them a chance to observe the meetings and get a feeling of the issues before starting.

Councilor Spear stated that his second issue was the length of terms for the School Board which came about by a letter submitted by current School Board member Rebecca Emerson. He stated that 4 year terms are challenging and feels that having the full board elected every 2 years like the Council would encourage more people to become involved. He stated that if the Council term was 4 years, he would have thought twice about running a second time. He stated that 2 year terms for the full board also allows the public to have a real say in if they are happy with what is going on or not by their votes.

Committee member O’Leary stated that they had this discussion but the person who wrote the letter didn’t appear before the committee. He stated there were 32 ideas brought forth and considered by the Committee and although the Council has the right to bypass the Committee and bring something else forward, he feels that this would be a disservice to the Committee process.

School Board Chairman Shuldman stated this discussion was held with the School Board members and there was not a majority that the 2 year term was better. He stated that there was discussion of 3 year terms, but that is not practical in terms of holding the election. He stated they were looking to get clarification about being able to replace members who resign, etc. by going to the most recent election for candidates rather than the election that the person was elected.

Assistant Mayor Novelline Clayburgh stated that there was discussion about this but no changes were brought forward.

Deputy City Manager Hayden clarified that the City Attorney will draft language to bring back Reference #2 for Council approval at the August 1, 2011 meeting and referral to a public hearing.

Mayor Ferrini closed the Work Session at 7:55 p.m.

Respectfully submitted by:

Valerie A. French,
Deputy City Clerk