

THE CITY CHARTER ADVISORY COMMITTEE

Tuesday, April 19, 2011 – 7:00 p.m.

Levenson Room, Library

Present: Assistant Mayor Novelline Clayburgh, Chair; Councilor Coviello; Joshua Cyr; John O’Leary; Peter Loughlin; Robert Sullivan, City Attorney; and Kelli L. Barnaby, City Clerk

I. Call to Order

Assistant Mayor Novelline Clayburgh called the meeting to order at 7:00 p.m. She announced that this evening the Committee will be hearing public input regarding the list of suggested amendments to the City Charter.

II. Acceptance of Minutes – April 7, 2011

Councilor Coviello moved to accept and approve the City Charter Advisory Committee minutes of the April 7, 2011 meeting. Seconded by Joshua Cyr and voted.

III. Public Input regarding City Charter

Assistant Mayor Novelline Clayburgh asked that individuals come forward to address the City Charter Advisory Committee to speak on the list of suggested amendments to the Charter.

Rich Duddy said that his firing was the key instrument to the creation of a Fire Commission. He read Section 1.8 of the Charter regarding future Charter Commission questions.

SECTION 1.8 - FUTURE CHARTER COMMISSION QUESTIONS

Commencing in the year 2000, the City Council shall vote at its first meeting of each decade on the following question, "Shall a Charter Commission be created to review and make recommendations concerning the provisions of the Charter of the City of Portsmouth?" If a majority of the Council shall vote in the affirmative, then the Council shall take whatever action is required under state law to bring about the formation of a Charter Commission prior to the next municipal election.

Mr. Duddy said he does not feel that this Committee should be making a recommendation to the City Council whether to have a question on the ballot to abolish the Police and Fire Commissions. He stated that this type of change should require a Charter Commission.

Assistant Mayor Novelline Clayburgh requested that City Attorney Sullivan explain the difference between a committee and commission. City Attorney Sullivan said that this is a committee that was created by the City Council as advisory. He stated that the City Charter Advisory Committee has not determined what they would provide to the City Council as a recommendation at this point.

City Attorney Sullivan said that a Charter Commission is a complicated matter and a great deal is involved. He further stated that he does not feel that too much has been discussed or brought forward to recommend the creation of a Charter Commission.

Mr. Duddy asked if the City Council can place a question on the ballot and bypass the City Charter Advisory Committee and create a Charter Commission. He also stated that he feels a question to abolish the Fire and Police Commissions would be a revision to the Charter and not an amendment. City Attorney Sullivan reported that the Committee can make a recommendation to the City Council and a question whether to abolish the Fire and Police Commissions is considered an amendment.

Mr. Duddy indicated that a Charter Commission should have been created in 2010 and not a City Charter Advisory Committee. He feels that the Committee was created because the City Council is not getting along with the Fire and Police Commissions.

City Attorney Sullivan reported that the Committee has the authority to bring a recommendation to the City Council to abolish the Fire and Police Commissions and have that question placed on the ballot. City Attorney Sullivan also stated that the Fire and Police Commissions were created through the amendment process to the Charter and not a revision.

Councilor Coviello stated if a charter amendment can create a Commission it can also abolish a Commission.

Harold Whitehouse spoke about the 1986 Charter Commission. He stated it was a long process with many meetings and public hearings. He indicated that the public wanted a change and voted for the creation of a Fire and Police Commission. Mr. Whitehouse further stated that the Commissions are needed as a go between with the City Council and City Manager and feels that the Commissions should be strengthened.

Ralph DiBernardo said he is opposed to the City Charter Advisory Committee making a recommendation to the City Council to have the Fire and Police Commissions abolished. He further stated that the public feels that the Committee was created to abolish the Commissions. Mr. DiBernardo said that the majority of the people that have spoken relative to this matter have expressed their opposition to a question being placed on the ballot to abolish the Fire and Police Commissions.

Bill Mortimer stated the review by the Committee of other communities that don't have Fire and Police Commissions has nothing to do with this City. He feels that the Fire and Police Commissions are efficient, work well and are vital to the community. He also said that he agrees with Mr. Whitehouse that the Commissions serve as a buffer between the City Council and the City Manager. Mr. Mortimer informed the Committee that this question has been placed on the ballot in the past twice and has failed each time. In addition, he said that he is also opposed to the City Council and City Manager given the authority to appoint members to the Commissions.

Ann Walker, Vice Chair of the School Board, read a letter from Dr. Shuldman, Chair of the School Board regarding items to be considered by the Committee. The 4 items are as follows:

- 1) The Portsmouth School Board, by Charter Section 6.3H, has a Student Member on the School Board. Throughout the years, the School Board has had an Employee Representative and School Administrative Unit #50 Representative. They have had all the rights of a school board member except they may not vote or attend executive sessions. The School Board would like to see these positions recognized in the charter revision. A School Administrative Unit #50 seat would only exist as long as School Administrative Unit #50 sends its students to Portsmouth High School.
- 2) In recent years, the Portsmouth School Board has had to fill vacancies when a member has been unable to complete his/her four year term. The Charter requires the City go back to the original election. If there is no one eligible from that election, filling the vacancy has been left to the discretion of the board. The Board would ask that language be included to say if there is no one eligible from the original election, then the candidates from the more recent election are used. The Board is in agreement that it is best to have someone on the Board who reflects some level of confidence by the electorate, if only by the simple fact that the person ran for the seat and received votes. If no one is willing or eligible to serve, the Board would continue to have its discretionary options.
- 3) 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.
- 4) Include language to appoint a School Board representative to be a member of the 10-year Charter Commission.

Jim Varotsis said that the City Charter Advisory Committee is going in the wrong direction and too much power will be created at the City Council and City Manager level if the Commissions are abolished.

Jack Kelley asked the real reason why we are hear talking about abolishing the Fire and Police Commissions and what the objective is.

City Attorney Sullivan reported that the City Council by Charter is required at its first meeting of each decade to decide on the following question, "*Shall a Charter Commission be created to review and make recommendations concerning the provisions of the Charter of the City of Portsmouth?*" If a majority of the Council shall vote in the affirmative, then the Council shall take whatever action is required under state law to bring about the formation of a Charter Commission prior to the next municipal election. He said the City Council did not know if changes were required and a Committee was created to study the Charter and report back.

Mr. Kelley said that he enjoyed serving as a Police Commissioner. He would like the City Council to become more familiar with the Fire and Police Departments. He spoke to the number of grants that the Police Department was successful in obtaining which served to help the budget. He further stated that the Commissions are important to the operation of the City and spoke to the various responsibilities of the Commissioners.

Michael Hughes, Fire Commissioner, said that he has been a Commissioner for the last 11 years and asked the Committee why we are here and what the Commissions have done to offend the Council. He said the only intent of the Fire Commission is to protect the public. He spoke to the working relationship between the Commission and the Council and addressed how the Commission always meets the budget guidelines as set by the Council. Commissioner Hughes stated that there are people that want to abolish the Commissions and it is disturbing to him.

Paul Mannle said he attended the last public hearing of the City Charter Advisory Committee, and there have been over 20 people that have spoken between the last meeting and tonight's meeting opposed to the abolishment of the Fire and Police Commissions. He spoke to the City Charter and how it is online and that anyone could go to the website to view the responsibilities of the Commissioners. He does not believe that there is any confusion regarding the responsibilities of the Commissions.

Richard Gamester, Fire Commissioner said when you are having a public hearing on an item it would be helpful to know what issue will be addressed. He stated that this public input is on a generic item this evening; the agenda indicates public input regarding City Charter. He said that there is no one here to speak against the Fire or Police Commissions. Commissioner Gamester feels it would be more appropriate for a public hearing to be held after the City Charter Advisory Committee has made a decision, what, if anything, will be brought forward as a recommendation to the City Council.

Jack Kelley asked if the Committee will be rebroadcasting this meeting. City Clerk Barnaby stated that a date has not been determined for the rebroadcasting of the meeting however, she will have the dates listed on the webpage for the public.

Bill Mortimer said that the Police Department is one of the best in the United States. He urged the Committee not to make a recommendation to place a question on the ballot to abolish the Fire and Police Commissions. He said it is important for the Committee to take careful consideration of this matter before a decision is made.

Jim Varotsis said that there is an old saying "if it isn't broke, don't fix it". He urged the Committee to leave the issue alone.

Ralph DiBernardo said there is a question about the credibility of public hearings with the residents.

Assistant Mayor Novelline Clayburgh called for additional speakers, with no further speakers; Assistant Mayor Novelline Clayburgh declared the public input regarding the City Charter to be closed. She asked what the Committee would like to do at this point.

Councilor Coviello said we need to address this issue this evening. He said people have come out to hear what the decision of the Committee will be relative to this matter.

Joshua Cyr, John O'Leary and Peter Loughlin stated they would like to move forward with discussion.

Mr. O'Leary thanked the public for coming out tonight to address the City Charter. He said there have been certain assumptions made this evening and in the last few days. He stated when he was asked to serve on the committee he was not asked a single question on his feelings of the Fire and Police Commissions. There was not a vetting process and any questions posed by Mayor Ferrini when he was asked to serve. Mr. O'Leary stated that there were issues in the past when the Commissions were appointed by the Governor. He further stated that this Committee was not appointed to dissolve the Fire and Police Commissions. He said he would hope that people that know him would give credit for always listening and following the process that is required.

Mr. Loughlin also spoke regarding Mayor Ferrini asking him to serve on the Committee.

Mr. O'Leary said the Committee has 4 options available to them.

- 1) Abolish the Commissions
- 2) Appoint members to the Commissions
- 3) Make adjustments to the responsibilities of the Commissions
- 4) Do nothing

He said he has heard that there are inconsistencies with negotiations. He said the City would be better off if we had the City Negotiator and Human Resource Director without the involvement of the Commissioners. He stated that he would recommend changing the negotiation relationship and taking the Commissioners out of the process. He feels that is something worth doing. Mr. O'Leary said he would recommend keeping the Commissions and making an adjustment in the negotiation process.

Councilor Coviello said his opinion is evolving with the process. He agrees with 99% of the things said by Mr. O'Leary and believes in keeping the Commissions in place. He indicated he would like to see changing the terms for the Fire and Police Commissions from 4 year terms to 2 year terms. In addition, he stated that negotiations is an added layer of confusion and spoke to the process followed. Councilor Coviello stated in the end nothing can happen without the City Council approving the contract. He further stated he would like to discuss a line item veto on the budget. He said he does not have an opinion either way and would like to hear what the Committee thinks and suggested adding the item to the list of possible amendments.

Assistant Mayor Novelline Clayburgh said she would like some clarification on a line item veto in the budget process. He said the City Council can't do that now, they can only vote on a bottom line figure.

City Attorney Sullivan reported that there is no line item in the Charter regarding a line item veto in the budget. He said there is a provision to allow for a line item transfer in the budget. He said with the line item transfer allowed, a line item veto may have no further value. He indicated the Charter is silent on a line item veto for the budget.

Assistant Mayor Novelline Clayburgh asked if Councilor Coviello would like to add that as an item to the list of amendments.

Mr. Loughlin said he agrees with the 4 options available to the Committee as outlined by Mr. O'Leary. He indicated that he would like to hear more about changes in the contract negotiations for the Fire and Police Commissions.

Mr. Cyr said that there is not a great deal of interest in abolishing the Fire and Police Commissions. He said a line item veto has no value to it and there is no need to spend time on it. In regards to negotiations, he would need to hear more on the issue before making a decision.

Assistant Mayor Novelline Clayburgh thanked everyone for coming this evening to the meeting. She said that she would like to see the terms for the City Council changed from 2 years to 3 year terms. She spoke to the value and hours of work that is done by the Commissions. In addition, Assistant Mayor Novelline Clayburgh expressed her opposition to an appointed Commission. She further stated that the negotiation process is frustrating and she would vote in favor of not having the Commissioners involved in the negotiation process, it would make it smoother and more efficient.

John O'Leary requested that City Attorney Sullivan bring back at the next meeting of the City Charter Advisory Committee, a vehicle to affect the negotiation process such that the negotiations go through the City Negotiator and the Human Resource Director with the unions. City Attorney Sullivan said he would review the Charter and bring something back to the Committee.

Mr. Loughlin asked what options are available to the City Council. City Attorney Sullivan said that the City Council could ignore the recommendation brought forward from the City Charter Advisory Committee. He said he will review the Charter and try to come back with 1 or 2 ways to address Mr. O'Leary's suggestion.

Assistant Mayor Novelline Clayburgh said we should not vote on any matters this evening based on Mr. Cyr's recommendation to allow more time to review the new items presented by the School Board and the other listing of amendments.

Councilor Coviello said we have a concept that is on the table. City Attorney Sullivan said the concept may be implemented in different ways and he will review the different options and report back with his thoughts at the next meeting.

Assistant Mayor Novelline Clayburgh asked if the discussion on the Fire and Police Commissions is over. The City Charter Advisory Committee agreed that no further discussion will be needed on the Fire and Police Commissions.

At 8:30 p.m., Assistant Mayor Novelline Clayburgh declared a brief recess. Assistant Mayor Novelline Clayburgh called the meeting back to order at 8:32 p.m.

Assistant Mayor Novelline Clayburgh asked the Committee if they would like to continue discussion regarding the 9 other items on the listing of amendments.

Mr. O'Leary said he would like to discuss the letter from the School Board at this time.

Assistant Mayor Novelline Clayburgh indicated that there is a student representative that serves on the School Board. The student may not vote or attend executive sessions. She said the School Board also has an employee representative and a School Administrative Unit #50 representative and the Board would like to see these positions recognized in the Charter the same as the student representative is.

Mr. O'Leary stated that this issue does not belong in the Charter. Assistant Mayor Novelline Clayburgh said with the student listed, the Board feels that the other representatives should also be listed or the Charter should not list the student representative. Mr. O'Leary said if we place a question on the ballot to remove the student as a representative from the Charter people would not understand the purpose of the question. Councilor Coviello said he agrees with Mr. O'Leary regarding the request. It would not change the function of the City or have an effect on what the School Board does. Mr. Cyr said it would just cement the issue and the change is not needed. Mr. Loughlin said the issue does not belong in the Charter.

Ann Walker, Vice Chair of the School Board, said the reason the employee representative was added was due to a student being added and listed as such in the Charter. She reported that SAU #50 would like to be able to vote on issues as part of the School Board.

Assistant Mayor Novelline Clayburgh asked how the student was added to the Charter. City Attorney Sullivan responded it was added with the last revision to the Charter. She said because the student is part of the Charter the other two representatives should be as well.

Mr. O'Leary said what if this item is placed on the ballot and does not pass. He said he would rather not have it there than take a chance that the question would be defeated.

Mr. O'Leary moved to not recommend this provision Item 1 – Recognize Employee Representative and SAU #50 Representative in the Charter. Seconded by Mr. Loughlin.

Councilor Coviello said he was indifferent about the item until Mr. O'Leary spoke. He said he doesn't know what we would do as a City if the question did not pass on the ballot.

Assistant Mayor Novelline Clayburgh feels that the representatives are important to the School Board. She said she would vote opposed to the motion.

Councilor Coviello suggested postponing a vote on this matter to ask the School Board what they would do if the question did not pass. Mr. O'Leary said he would have no issue with tabling this matter until the next meeting.

Assistant Mayor Novelline Clayburgh asked Ms. Walker if she could come forward at the next meeting with how the School Board feels relative to this issue. Assistant Mayor Novelline Clayburgh requested an analysis from the School Board on this matter at the May 5, 2011 meeting.

Assistant Mayor Novelline Clayburgh discussed the filling of vacancies on the School Board. Mr. O'Leary stated he feels that filling the vacancies could be a policy of the School Board.

City Attorney Sullivan informed the Committee if a large number of items are placed on the ballot it would trigger the revision process. He said looking at the questions the Committee needs to place some items in lower priority as to not trigger the revision process. He said during the last review of the Charter the Committee decided that no more than 4 items would be placed on the ballot without triggering the revision process.

Mr. O'Leary said that the Committee should review the list of amendments at the next meeting. He suggested that City Attorney Sullivan review Item 2 – Filling Vacancies in the School Board and put something together that could fit the Charter.

City Attorney Sullivan said that we need further clarification from the School Board as to what they actually are seeking with this proposed amendment.

Mr. O'Leary moved to not recommend Item 2 – Filling Vacancies in the School Board. Seconded by Mr. Loughlin.

Discussion followed relative to this issue. Assistant Mayor Novelline Clayburgh indicated that this is an instance whereby it is a policy of the School Board.

Motion passed.

VI. Adjournment

At 8:55 p.m., Mr. O'Leary moved to adjourn. Seconded by Mr. Loughlin and voted.

Respectfully submitted by:

Kelli L. Barnaby, CMC/CNHMC
City Clerk