

CITY OF BEVERLY

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PUBLIC MEETING MINUTES

2021 JUN 21 A 9:13

Committee: Charter Review Committee
DATE: June 10, 2021
LOCATION: City Hall Council Chambers
BOARD MEMBERS PRESENT: Timothy Flaherty (Chair), Stacy Ames, Hannah Bowen, Julie DeSilva, Richard Dinkin, Michael Pinciario
BOARD MEMBERS ABSENT: Paul Guanci
RECORDER: Sharlyne Woodbury
Others present: Marilyn Contreas; Stephanie Williams, City Solicitor; Brendan Sweeney

City Council Appointee(s): Chairperson and City Councilor-at-Large Timothy Flaherty; Ward Councilor Stacy Ames
Mayor Appointee(s): Paul Guanci, City Council President-at-large
By Ordinance:
Ex Officio: Gerard Perry

1. Opening Remarks

Chair Flaherty calls the meeting to order at 7:11 p.m.

Flaherty informs the members Councilor Houseman will supply an addendum in support of supplemental legislative tools and positions to assist in the checks and balances of the branches. The document is not available presently, but hopes to be available at the next meeting.

2. Review and approval of prior meeting minutes

a. Approval of June 3, 2021 minutes

DeSilva moves to approve the minutes as amended. Ames seconds. The motion carries 6-0.

3. Review of Articles 8-9:

a. Article 8

i. A8 s. 8-1(a)

Bowen moves to accept the Collins Center recommendation. Pinciario seconds. The motion carries 6-0.

ii. A8 s. 8-5

Dinkin moves to accept the Collins Center recommendation. Ames seconds. The motion carries 6-0.

iii. A8 s. 8-6

DeSilva addresses the bulletin board language and phrasing. Contreas explains it is the physical (bulletin) posting place. Ames confirms the city does, by law, post a physical and electronic notification.

DeSilva moves to accept the 48 hours and language edits as recommended by the Collins Center. Ames seconds. The motion carries 6-0.

iv. A8 s. 8-11*

Members begin discussion. Ames inquires of Contreas if this recommendation is consistent in language and if it is the most democratic process presently. Williams raises concerns on this section and provides clarification on the policy versus legal issues. Williams cites the current Boston City Council vote to change or vote out of office the council president. This is significant because as it stands the current council president is now acting mayor of Boston. The council voted 10-1 to change rules so that members with two thirds majority vote can replace the city council president. If the council president ceases to be, by extension they would also cease to be acting mayor. Williams points out the policy issues. Dinkin politely rebuffs the point of preference in terms of establishing a rule on exceptional circumstances. Flaherty informs the council they will return to this section for further debate.

Hyperlink(s):

<https://www.wgbh.org/news/politics/2021/06/09/boston-city-council-fires-warning-shot-across-janeys-bow>

<https://www.boston.com/news/politics/2021/06/09/boston-city-council-power-to-recall-acting-mayor-kim-janey/>

There being no further comments.

Dinkin moves to accept the Collins Center recommendations. Pinciario seconds. The motion carries 6-0.

v. A8 s. 8-13*

Members start discussion. Bowen question if this language change simply about notification. Bowen and Contreas discuss the declaration and notification to fill the vacancy. Members further discuss the language specifics. Dinkin provides clarification. Dinkin informs the council why “appointing authority” is the most appropriate language instead of specifically identifying an individual, i.e., the mayor. Ames asks if the council president would be the appointing authority. DeSilva and Bowen are looking for continuity and transitional language between sections 8-13, 8-14- 8-15. Williams suggests transitional phrases, and Dinkin provides one of two modal auxiliary verbs, “may” or “shall” as contextually appropriate. Contreas informs the members this section will need to be rewritten to accommodate language changes. Dinkin inquires should the council have the right to dismiss a delinquent member. Williams raises the legalities of dismissing an elected official by the voters. Contreas clarifies this is a member of an appointed committee member, not an elected committee member. Flaherty recommends to review sections 8-13 and 8-14 at the next meeting. Contreas agrees Dinkin’s point is valid, noting a return to section 2 may be prudent.

There being no further comments. No action required at this time.

b. Article 9

i. A9 s. 9-6

Contreas reviews the provisional changes and removal as they are affected by any legislation after 1996. The language can be removed because the date of implementation (July 1, 1996) is now long past. Contreas suggests they can vote on everything except A9 s. 9-6(i).

DeSilva moves to vote on the provisional changes of A9 s. 9-6 with the exception of A9 s. 9-6(i). Ames seconds. The motion carries 6-0.

**denotes a return to the section for further review/clarification*

4. Topical discussion for proceeding forward

Flaherty seeks to establish a timeline for presenting the document to city council and holding a public hearing. Perry suggests the members hear Contreas timeline of proposals. Contreas proposes the council submit two home rule petitions. Act 1 captures all the housekeeping and technical items that do not require a referendum. This is effective upon passage. Act 2 would propose the voter approval changes should be presented to the ballot for 2023. Perry suggests hearing legal concerns from city solicitor before submitting to city council. Perry understands this process slows down the momentum, but it is a smoother process. Williams is comfortable and willing to review the document at any point in time. She recommends the city council in totality review the document too since a few of them are not represented on this committee. Then she can further review the policy changes and recommendations for any legal concerns. DeSilva and Bowen agree the process may be lengthier, but more thorough, efficient and transparent. Dinkin comments educating the public is critical; there's nothing worse than the public losing interest. Ames notes there has been very little discussion amongst councilors about the proposed changes. Ames mentions her thoughts have changed over time and think modernizing this document is crucial. Flaherty points out with the access to zoom meetings the council members have had plenty of opportunity or access to participate in the processes of this committee. Flaherty does not want to lose any time and feel as if they are starting over. Many concerns and questions are addressed throughout this committee's meetings. Councilors have the opportunity to review the minutes and to view the zoom links.

There being no further comments.

Dinkin moves to accept the recommendation to proceed in two acts: 1) separate out the minor and major changes, and those changes are submitted to city solicitor for legal review. Perry interjects. He inquires if the major changes of A) extending mayoral term to 4 years, and B) addition of 2 school committee members should specifically defined as "Act 2". Members discuss and digress opting for momentary ambiguity. Simply stated there will be "Act 1" and "Act 2". Dinkin continues, and moves to implement the two-act process as suggested by Contreas. DeSilva seconds. The motion carries 6-0.

5. Remaining Items to be addressed: Articles 1-7

i. s. 2-8(e)

DeSilva moves to accept the recommended changes. Pinciaro seconds. The motion carries 6-0.

ii.s. 2-9(c)

DeSilva moves to accept the recommended changes. Ames seconds. The motion carries 6-0.

iii. s. 2-11(c)

Members further discuss the processes and review s. 2-11(a). The members review various scenarios. DeSilva and Ames agree with the Collins Center recommendations. If someone performs the work of collected signatures, doing the mental and physical campaigning they deserve the opportunity to be considered.

DeSilva moves to approve the Collins Center suggestions. Ames seconds. The motion carries 6-0.

iv. Other – Legal Assistance to the Council

**denotes a return to the section for further review/clarification*

Flaherty asks the committee if they can further discuss at the next meeting. Councilor Houseman is not able to be at present meeting. The committee is amenable to wait for discussion. DeSilva asks Williams to weigh in. Williams believes this is more of a policy issue, she would like to hear what Councilor Houseman has to opine before offering comments.

There being no further comments. No action required at this time.

v. A3 s. 3-8(a)(b)

Ames seeks clarification on "b" if that is standard. Contreas informs that is an attempt to recognize an emergency or an accident.

DeSilva moves to accept the proposed language changes in "a" and "b". Pinciario seconds. The motion carries 6-0.

vi. A3 s. 3-9

Contreas goes into further explanation and clarification on the available options for vacancy of the mayor. Ames what happens when council president cannot become mayor. Contreas, the council can elect another council member to become mayor. Ames has strong feelings and issues with electing an appointed councilor for another ward she does not represent. She has carryover concerns for the mayoral vacancy, however; this vote is for the mayor and finds selecting from elected council members less traumatizing. Dinkin addresses Ames concerns. Dinkin does not have any reservations or issues with never having a special election for filling mayoral vacancy. Speaks to the efficiency of government and the democratic process. DeSilva raises concerns with part time councilors who are unable to fulfill the permanent position of mayor. DeSilva strongly feels a special election is necessary. Bowen agrees with DeSilva. She is more comfortable with having a special election with low voter turn-out, as opposed to a small body that elects amongst themselves. Dinkin believes there is no one on the city council today who he would not be comfortable fulfilling the roles. DeSilva mentions the availability. Per charter and ordinance, anyone on the city council cannot be mayor if they have a business. Bowen suggests having a provision in the charter that would provide for special election when none of the councilors are able to take on the full-time role. Dinkin suggests business owners could put their businesses in a trust. Ames asked the Collins Center draft a provision for the council voting on a city manager to fill the role. Ames sees both points of having a special election. Dinkin cautions and warns the members of defining specific charter situations that could be legally cumbersome, awkward, or restrictive. Members further debate. Contreas weighs in on a position that would balance managerial and political accountability where state law does not define such entities. Flaherty agrees with Bowen and suggests if the city council president cannot serve that a special election be considered.

There being no further comments.

Dinkin moves to accept the plan that the charter specify in the event of a mayoral vacancy, the president of city council becomes acting mayor; if the city council president is unable to or declines, then the vice president of city council becomes acting mayor; if the vice president is unable to or declines, then the city council elects amongst themselves another council member; if that individual is unable to or declines, unless then next regular election is within 120 days, selection of an acting mayor will be delayed until the next regular election. DeSilva seconds. The motion carries 6-0.

vii. A4 s. 4-1(a)

Bowen seeks clarification for the division of wards. Dinkin explains the upper and lower wards are equal. Flaherty will dissent on the vote. He would not like the at-large positions. Flaherty would prefer instead of at-large positions, the two additional members are appointed with verifiable criterion and qualifications specific to school committee needs. Dinkin rebuffs, an appointed school committee is no more professional or no less political than elected members.

Dinkin moves the proposed Collins Center text be accepted. DeSilva amends with the inclusion of section 4,5,6. Ames seconds. Flaherty dissents. The motion carries 5-1.

viii. *A4 s. 4-1(f)*

Dinkin moves to accept the proposed recommendations. DeSilva seconds. The motion carries 6-0.

ix. *A5 s. 5-1*

Bowen and Contreas discuss the provision. Dinkin, does the mayor have the unilateral authority to reorganize. Contreas clarifies the council has 60 days review and vote on it noting this is item already voted on. Discussion continues for further clarification on the provision and language clarification.

x. *A5 s. 5-4*

Perry asks, does this provision allow the Finance Director and City Treasurer to play both roles. Dinkin inquires if the auditor is a separate role. Contreas confirms yes to all questions.

Bowen moves to accept the proposed changes. Dinkin seconds. The motion carries 6-0.

xi. *A6 s. 6-9**

Discussion begins with specifics on procurement for who signs the contract. Williams points out the audit is a legal binding contract. Contreas said the city council will have the sole authority to sign the contract. Perry suggests council president could sign the contract. Williams inquires of the members can the language be clearer noting the executive branch as the power of procurement. The mayor usually signs any city contracts. Dinkin points out this is a matter of the ability to commit the credit of the city. If the charter were to provide the city council had the authority to commit the credit of the city in this one narrow circumstance.

DeSilva believes the language should reflect awarding and executing abilities. DeSilva suggests a compromise approach, could the city council have the power to select the auditor, and "request" the mayor sign the contract. Contreas points to North Addams and Pittsfield, noting both municipalities are a comparable form of government. Williams is unclear in this matter, looking for distinct clarification, not to get bogged down in the specifics. Dinkin is reluctant to have a charter provision that would bind one independent branch of government to another; reiterating the narrow circumstance that can commit the credit of the entity. Williams moves on inquiring who will supervise the audit. Dinkin replies the entity being audited supplies the staff to the auditor. Perry provides further clarification on the scope of services. Perry comments, as a Budget Analyst Mayor Cahill did not sign his contract, he has an employment contract with his position appointed by the council. Williams poses the legal question, seeks clarification from Contreas. Flaherty recommends the committee vote tonight with the Collins Center will providing further clarification.

There being no further comments.

**denotes a return to the section for further review/clarification*

Dinkin moves to adopt the changes as recommended. Ames seconds. The motion carries 6-0.

xii. *A7 s. 7-8*

Contreas simply wanted clarification on the 250 signatures. Dinkin believes the number is doable.

There being no further comments. No action required at this time.

Additional comments:

Ames praises the non-elected members participation on the committee. Dinkin thanks the Collins Center for their work and dedication.

Contreas notes there are still questions on the vacancy provisions. Seeks clarification from the members for the filling of vacancies on the council and school committee as they are different in several aspects. The Collins Center provides an attachment for the members to review and discuss at the next meeting.

DeSilva asks for a calendar of events or time management of the procedures to come.

6. Adjournment

Flaherty adjourned meeting at 9:17 p.m. Charter Review meeting June 17, 2021 at 7 p.m.