

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: January 3, 2019

TO: Members of the Charter Subcommittee

FROM: Maura O’Keefe, Assistant City Solicitor

RE: Comments on Draft Revisions to the Newton City Charter

You asked the Law Department to review the draft revisions the Charter Subcommittee has suggested be made to the City Charter as of December, 2018. The revisions range from simply moving current sections of the Charter to new locations, to “wordsmithing”, to adding new provisions and making policy changes. As you appreciate, the Law Department does not comment on policy issues, although policy changes will be noted. This review will focus on whether the revisions being suggested address current problems in the text of the Charter or could create new and unintended problems.

The Law Department’s review is also guided by several general principles. First, a Charter establishes the very structure of a municipality’s government. It is meant to be a lasting document that provides a solid, concrete framework within which the business of government operates. As such, everyday functions or procedures are more appropriately addressed by ordinance or internal policies and a Charter should avoid micromanaging the daily functioning of the government. Second, wordsmithing for the sake of wordsmithing can impact or undermine the original intent of a particular phrase as well as create unintended problems. If there is no delineated reason to change the language of the Charter aside from the desire to wordsmith, it is probably better to avoid rewriting that language. Third, incorporating reinterpretations of existing statutes to which the City is already bound can have deleterious effects. Doing so gives rise to the possibility of impermissible conflict between the Charter and the guiding statute. Finally, certain words appear repeatedly in the Charter and the same word needs a consistent meaning whenever it is used. Hence, when new definitions are added, whether this definition

works wherever the defined word appears in the Charter needs to be double checked. The current definitions should also be double checked.

Bearing these thoughts in mind, the Law Department offers comments below that attempt to identify proposed changes that may have some negative impact, whether by running contrary to general principles of charter creation, creating a conflict with the General Laws, or by altering existing obligations with what are likely unintended consequences. Of course, it is impossible to identify all unintended consequences.

This collection of comments is not exhaustive. In general, there were many changes that seemed to have an unidentified purpose. Such changes always open the door to a novel and sometimes unwelcome interpretation. Where changes have no obvious legal impact or only implicate changes in policy, the Law Department refrains from commenting or making any recommendation.

1) The following sections pertain to areas of the law that are already addressed by statute or are better left to be addressed by ordinance or policy. In general, the Law Department recommends refraining from rephrasing or reinterpreting existing statutes to which the City is already bound in order to avoid conflict.

- Article 4: Many aspects of the administration on the part of the School Committee are addressed by the Education Reform Act at M.G.L. c. 71. To the extent that there are redundancies or conflicts with the General Laws, the following proposed changes may prove problematic. These are examples, only:
 - Section 4-2(b): The School Committee's quorum is defined by the General Laws. If the statute is revised, a conflict with the charter will arise.
 - Section 4-3: In general, this section pertains to issues of policy to be generated by the School Committee.
 - Section 4-4: The requirement to provide educational specifications would be a hinderance to the acquisition of property in certain circumstances where expediency is needed.
- Article 11: The proposed changes in this article pertain to areas of the law that are already addressed by statute or are more appropriately addressed by ordinance or policy.
 - Section 11-2: This section creates inconsistencies, redundancies and direct conflicts with the Conflict of Interest Law at M.G.L. c. 268A.

- Section 11-3(a): This is a policy issue that is already addressed in section 7 of the Ordinances. It also appears to create a cause of action that has no remedy.
- Section 11-3(b): has the potential of creating a conflict with the Public Records Law as to time requirements
- Section 11-12(a-e): Generally, the subjects addressed here are minute matters of everyday functions and are better left to policy creation. Moreover, they are largely redundant of existing section 7 in the ordinances. Lastly, they also create inherent conflicts with existing laws (Secs. (a,c) conflict with the Open Meeting Law; Sec (b) is redundant of Ordinance Section 7; Sec (e) conflicts with the public records laws and open meeting law).

2) The following sections are areas where wordsmithing creates the possibility of unintended consequences due to a potentially novel interpretation of the Charter. The Law Department recommends further discussion by the Subcommittee to determine the actual intent of the proposed revisions in order to avoid unintended consequences.

- Definitions:
 - Multiple member board: By defining a multiple member board so broadly, the Charter is likely creating new public bodies as defined by the OML. Imposing a “one size fits all” procedural requirements in the Charter may impose a burden on small groups that may have limited, narrow responsibilities.
- Section 1-5: Intergovernmental Relations: changing the word from requirements to limitations may be interpreted to alter the parameters of the relationship between the Charter and the General Laws.
- Section 2-6(c): Imposing a notice requirement of 48 hours may create a conflict with the provisions of the Open Meeting Law that allow for emergency meetings.
- Section 2-6(c): In accordance with general rules of statutory construction, the omission of the word “press” here connotes an intent to be able to exclude the press, specifically, from open meetings.
- Section 2-9(c): The addition of the sentence “The City Council may, by rule, limit the application of the charter objection procedure” gives rise to the question whether the City Council may, by rule, limit the application of any other provision in the charter. By imposing this phrase here and nowhere else, the implication is that no other provision may be limited at all by the City Council.
- Section 3-2(a): The proposed revision changes the responsibilities of enforcement of the ordinances from a delegated power to one solely belonging to the Mayor. This conflicts with existing provisions of the ordinances that already provide for designated enforcement.

- Section 5-4(b): Establishment of an ordinance that imposes requirements for age, condition, maintenance and repair history of capital assets will completely remove the City's defense of immunity from tort litigation under the discretionary function exemption of M.G.L. c. 258.

3) The following sections require further consideration by the Law Department to determine whether, and to what extent, the proposed changes have any impact.

- Generally: Further inquiry is needed to ascertain the impact of moving certain sections as a whole, thereby readopting them by implication.
- Article 7: Further historical research pertaining to the special acts that shaped the Planning Board and Planning Department into their existing form to provide a cohesive response.
- Articles 8 and 10: Additional information is required as to interplay of state law and proposed changes.
- Article 12: Requires detailed analysis of accepted statutes in order to provide comment.