

OFFICE OF THE CITY SOLICITOR

M E M O R A N D U M

TO: Jeanne-Marie Napolitano, Mayor and Members of the City Council
for the City of Newport

CC: Joseph J. Nicholson, Jr., Esq., City Manager
Girard Galvin, Esq., Assistant City Solicitor

FROM: Christopher J. Behan, Esq., City Solicitor *CJB*

DATE: June 28, 2022

RE: Comments and Recommendations Concerning Charter Review
Commission's Suggested Charter Revisions

The following are staff comments and recommendations concerning the Newport Charter Review Commission's suggestions for Charter revisions as contained in its recently submitted Report to the Council.

In making these comments and recommendations, we are well aware of the amount of time and hard work the Commission members expended in performing their review and in arriving at their recommended revisions. However, the Commission's role is advisory in nature and the Council cannot delegate its duty to determine which, if any, of the recommendations should be approved as referendums to be placed on the November 8, 2022 ballot for the voters.

Staff reviewed the various recommendations to see if they had sound legal basis, and constituted a material change or addressed a needed change in order to submit them to the electorate for adoption. For many, it will be up to the Council to determine if they will advance policy or governance changes that the electorate should pass on at this time. Finally, due to the volume of recommendations (37 in number) and the potential confusion and distraction they could cause for the electorate, we have recommended that some proposals, although neutral in nature, not be approved to go to the electorate since they do not advance a material purpose or needed change.

Commission Proposals

1. Section 1-1 – Form of Government

COMMISSION PROPOSAL:

The municipal government provided by this Charter shall be known as the “Council-Manager Government.” Pursuant to its provisions and subject only to the limitations imposed by the State Constitution and by this Charter, all powers of the City shall be vested in an elective Council, hereinafter referred to as “the Council”, which shall enact local legislation, adopt budgets, determine policies, and appoint the City Manager, who shall execute the laws and administer the government of the City. See also Chapter 2 and Chapter 5.

RECOMMENDATION: We are recommending adding this reference to these two chapters.

RATIONALE: It will make further information on this subject easier for the reader to find.

STAFF RECOMMENDATION: This revision does not need to be adopted. The Charter already has a Table of Contents and Index and is not overly difficult to navigate through.

2. Section 1-3 Existing Ordinances, Resolutions, Rules and Regulations to Continue in Effect.

COMMISSION PROPOSAL:

Except insofar as they are inconsistent with this Charter, all the ordinances, rules, resolutions, and regulations heretofore made by the representative Council ~~or the Board of Aldermen~~, or any board or commission shall continue in effect until superseded by action of the Council.

RECOMMENDATION: Remove Board of Aldermen

RATIONALE: There is no Board of Aldermen.

STAFF RECOMMENDATION: This revision does not need to be adopted. While the Commission is right that no Board of Aldermen exists, the language of Section 1.3 addresses action taken “heretofore” by a Council or Board of Aldermen. Since there still may be ordinances, rules, resolutions or regulations in effect through the action of former Boards of Aldermen, the language should remain. In addition, Section 10.3 dealing with the construction of the Charter states that the term “Board of Aldermen” should be construed to refer, describe or include the Council.

3. Section 2-1 – The Council

COMMISSION PRPOOSAL:

There shall be a Council which shall consist of seven Councilors, ~~one from each of the three wards of the City who shall be elected solely by the qualified electors within their respective wards, and four~~ from the City at large to be elected by the qualified electors of the City.

RECOMMENDATION: Eliminate election by ward and have all Council members elected at-large. This decision to move to an at-large council should be addressed by the voters of Newport at the polls.

RATIONALE: The future issues facing the City are such that a holistic viewpoint will be necessary to tackle them and an at-large system will allow councilors to concern themselves with the problems of the entire community. The Commission recognizes the importance of this long-debated issue, considered repeatedly by past charter review commissions. Since it continues to be a debatable issue with the public, the time has come to hear from the voters.

STAFF RECOMMENDATION: This proposed Commission recommendation involves a governance policy issue which the Council should decide whether it should be sent to the voters for consideration and approval.

4. Section 2-2 – Terms of Office

COMMISSION PROPOSAL:

The terms of office of the members of the Council shall be for two years and shall begin on the first day of December next following their election.

~~Councilors shall serve no more than four terms consecutively.~~

RECOMMENDATION: Create term limits.

RATIONALE: Term limits provide more people in the community the opportunity to serve in elected office.

STAFF RECOMMENDATION: This proposed Commission recommendation involves a governance policy issue which the Council should decide whether it should be sent to the voters for consideration and approval.

5. Section 2-3 – Vacancies

COMMISSION PROPOSAL:

Any vacancies arising from death, resignation or any reason in the membership of the Council shall be filed by the candidate from the prior election who received the next highest number of votes for the seat that is vacated, or absent such a candidate (1) four affirmative votes of the remaining members of the Council

within thirty (30) days after the Council learns of the vacancy, or in the event of a tie vote or inability to elect, the vacancy shall be filled as soon thereafter as possible by a majority vote of all the remaining members of the Council; provided, however, the Council shall provide for the public solicitation of applicants. Add application detail here. (2)

~~*The Council shall fill any vacancy arising from death, resignation or any reason in the membership of the School Committee within thirty (30) days after learning of the vacancy or as soon thereafter as may be possible by a majority vote of all members of the Council, provided, however, the Council shall provide for the public solicitation of applicants. Any person appointed to fill a vacancy on the School Committee by the Council shall serve only until a person is elected and qualified at the next City election under this Charter. (3)*~~

RECOMMENDATION:

Note (1) Revert to the procedure adopted in the 2008 review process.

Note (2) The process that takes place (i.e. application, interview, etc) should be added here.

Note (3) Delete paragraph here and add to Chapter 8 – Schools

RATIONALE:

Note (1) This process more accurately reflects the will of the voters.

Note (2) Adding the process information or referencing an ordinance that has the process details should be included. A Council member is a significant position and the process should be clearly outlined.

Note (3) This paragraph relates directly to the School Committee and would seem to belong in Chapter 8 with all other School Committee items.

STAFF RECOMMENDATION: The proposed amendments should not be adopted. This section was most recently amended through Charter amendments adopted on November 4, 2014. The need to fill vacancies occurs on sporadic occasions. The 2014 amendment adopted by the voters providing for the existing language accurately speaks best to the will of the voters since they rejected the language being proposed by the Commission and adopted the existing language less than eight years ago.

In addition, there is no need to go into detail in the Charter on the application process when a vacancy occurs. If it is needed, it can be addressed by ordinance.

Finally, we would recommend against moving the language dealing with the School Committee vacancies to Chapter VIII since such a change does not serve a material purpose.

6. Section 2-5 – Mayor; Presiding Officer

COMMISSION PROPOSAL:

~~The Council shall choose one of its members who were elected at large as Chair and another of its members as Vice-Chair. The elected Councilor (at-large) with the highest number of votes shall be Chair~~ (1), shall have the title of Mayor, shall preside at all meetings of the Council, and shall be recognized at the official head of the City for all ceremonial purposes. ~~The Council shall choose another of its members as Vice-Chair.~~ (2) He or she shall sign and execute all contracts or other evidences of indebtedness on behalf of the City, make all proclamations in the name of the City and shall be the executive head of the City to the extent required by this Charter. In the absence of the Mayor, or in case of a disability, the Vice-Chair of the Council shall perform all duties of the Mayor.

RECOMMENDATION:

- (1) Replace council section of Mayor with public selection by highest number of votes.
- (2) Move the Vice-Chair election text to this location.

RATIONALE:

- (1) This commission recognizes the importance of this long-debated issue, considered repeatedly by past charter review commissions. Since it continues to be a debatable issue with the public the time has come to hear from the voters.
- (2) Sentence moved.

STAFF RECOMMENDATION: The proposed Commission recommendation dealing with the appointment of the Chair of the Council involves a governance policy issue which the Council should decide whether it should be sent to the voters for consideration and approval.

7. Section 2-9 – Officers Not to Make Contracts in Which They are Interested.

COMMISSION PROPOSAL:

No officers or employees of the City shall directly or indirectly make a contract with the City or receive any compensation, discount, bonus, gift, contribution or reward from any share in, the profits of any person, firm or corporation making or performing such contract unless, immediately upon learning of the existence of such contract, or that such contract is proposed, they shall notify the Council in writing of the nature of their interest in such contract, and shall abstain from doing any official act on behalf of the City with reference thereto.

In case of any such interest on the part of any officers whose duty is to sign such contract on behalf of the City, the contract may be signed by any other officer of the City duly authorized by the City Manager. When a contractor with the City is

a corporation or a voluntary stock association, the ownership of less than five percent of the stock or shares actually issued shall not be considered as involving an interest in the contract within the meaning of this section, and such ownership shall not affect the validity of the contract unless the owner of such stock or shares is also an officer or agent of the corporation or association, or solicits or takes part in the making of the contract. (Add reference here to ordinance memorializing the Code of Ethics.)

RECOMMENDATION: Adopt a Code of Ethics and create ordinance, then reference in text. Use of existing codes (ex. The ECMA Code of Ethics (Amended June 2020)) are available for review in drafting.

RATIONALE: The Commission was concerned that this area needed – and lacked – best practice language related to a Code of Ethics. Upon consultation with the City Solicitor, it was deemed not effective to include the ethics language in the Charter because the Charter is too difficult to amend. The recommendation was to have code of ethics best practice in an ordinance which is capable of being more readily updated and to indicate that in this section. The ECMA reference is cited as a model.

STAFF RECOMMENDATION: This Commission Recommendation should not be adopted. The Commission is correct that the provisions of Section 2-9 are outdated. The recommendation is for the adoption of a Code of Ethics by way of ordinance with a reference to the ordinance in the Charter language. With the adoption of Article III, Sections 7 and 8 of the Rhode Island Constitution, the need for the City of Newport to adopt its own Code of Ethics has been minimized. Section 8 of Article III of the Rhode Island Constitution requires the establishment of an independent non-partisan Ethics Commission which shall adopt a Code of Ethics including provisions relating to conflicts of interest, confidential information, use of position, contracts with government agencies and financial disclosure. In addition, it provides that all elected and appointed officials and employees of state and local government, of boards and commissions and agencies are subject to the Code of Ethics. The Ethics Commission has established a Code of Ethics.

While the City of Newport can adopt its own code of ethics, such code would have to supplement the state code of ethics and not be inconsistent with the same, keeping in mind the state has pre-empted local governments on this issue. If so, this should be done by ordinance, and a determination would need to be made beforehand as to whether there is a need for the same in the first place. This determination would take time. The existing Section 2-9 could be replaced with a provision setting forth ethics principles such as those contained in Section 7 of Article III of the state constitution.

8. Section 2-10 Contract to be Voidable; Penalties.

COMMISSION PROPOSAL:

A violation of any provision of the preceding section shall render the contract with respect to which such violation occurs voidable in whole or in part at the option of the City. Any person violating the provisions of said section shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than one year, or both. Any person violating the provisions of said section will be subject to prosecution and fined under the law. A conviction for a violation of said section shall be deemed a crime involving moral turpitude.

RECOMMENDATION: Replace current sentence with new one provided.

RATIONALE: The fine and violation shall be indexed to whatever the charges are.

STAFF RECOMMENDATION: This section should not be adopted. See comments made for Section 2-9. This is a penalty provision contained in the Charter and the penalty language should remain. Charges would allege a violation of the provisions of Section 2-9 with the penalties noted.

9. Section 2-12 – Action by Resident or Taxpayer

COMMISSION PROPOSAL:

If the City Manager shall fail to perform any act required of him or her by the preceding section of this Charter, any resident or taxpayer may require him or her to perform such act by filing with the City Clerk a demand in writing signed by such resident or taxpayer for such performance, which shall contain a recital of the facts upon which such demand is based.

RECOMMENDATION: Change Manager to City Manager.

RATIONALE: Consistency and Accuracy.

STAFF RECOMMENDATION: This is a neutral recommendation from the Commission. However, there remain other references using just “Manager” in the Charter that are not being addressed, particularly in Sections 2-11, 5-2, 5-3, 9-2, 9-3, 9-4-, 9-5, 9-10, 9-11 and 9-23. In addition, the Commission has recommended further revisions of this nature infra. Perhaps a better choice would be to include language in Section 10-3 dealing with the construction of the Charter providing that a reference to “Manager” should be construed to include City Manager.

10. Section 2-14 – Power of Referendum

COMMISSION PROPOSAL:

EDIT FOR CLARITY: The electors shall have the power to approve or reject at the polls any ordinance passed by the Council, or submitted by the Council to a vote of the electors, such power being known as the referendum. Ordinances submitted to the Council by initiative petition and passed by the Council without change shall be subject to the referendum in the same manner as other ordinances. Within thirty (30) days after the enactment by the Council of any ordinance, a petition signed by the qualified electors of the City equal in number to at least ten percent of the number of persons registered to vote at the last regular Municipal election may be filed with the City Clerk requesting that any such ordinance be either repealed or submitted to a vote of the electors. A majority of those casting votes at such election shall determine whether such ordinance is repealed or sustained.

When a referendum petition has been certified as sufficient by the City Clerk, the ordinance specified in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until and unless approved by the electors, as hereinafter provided.

RECOMMENDATION: Tighten up and clarify this language so the process is more clearly outlined. This is confusing as written.

RATIONALE: The Charter should be written so it is understandable and the processes are clear to the reader.

STAFF RECOMMENDATION: The Commission does not provide a specific revision for Section 2-14. They call for the language to be edited for clarity, claiming the provision is confusing as written. Staff disagrees with the Commission that the language is confusing. It must be read in conjunction with Section 2-13.

11. Section 2-18 Quorum; Procedure

COMMISSION PROPOSAL:

A simple majority of all the members of the Council shall constitute a quorum. All members of the Council present must vote on any question coming before it, unless they disclose a personal interest therein and are excused by vote of the remaining members, or a barred by law. ADD: “unless they recuse themselves on the question before the Council on ethical or other legal grounds.” (1)

The Council shall from time to time establish rules for its proceedings (2) The Council shall establish rules for proceedings by Resolution, in December following elections and as needed.

RECOMMENDATION:

(1) Replace the deleted text with the replacement text which was provided by the City Solicitor.

(2) Update the language.

RATIONALE:

(1) Current language is outdated in terms of recusal provisions.

(2) It is more consistent with the actual process.

STAFF RECOMMENDATION: The first recommended change updates this Charter provision and should be adopted. There does not appear to be a need for the second revision.

12. Section 2-19 – Adjournments by Less than Quorum; Compelling Attendance

COMMISSION PROPOSAL:

If there is no quorum a majority of the members of the Council present may adjourn from time to time and be authorized to compel the attendance of absent members in such manner and under such penalties as ~~may be prescribed by the rules of the Council~~ (1) prescribed in the City of Newport Rules of the Council. (2)

RECOMMENDATION:

(1) Delete text and replace with (2)

(2) Add clarifying text.

RATIONALE: (1) and (2) – Provides the source of the information for further reference if needed.

STAFF RECOMMENDATION: There does not appear to be any need for this revision. The term Council is used throughout the Charter.

13. Sections 2-20 through 2-23

COMMISSION PROPOSAL:

RECOMMENDATION: Change the order of the Sections 20-23 from current sequence to the following sequence: 2-20/2-23/2-22/2-21

RATIONALE: Makes it easier to follow.

STAFF RECOMMENDATION: The Council should decide if there is a need to adopt the recommended revision to change the sequence order for Sections 2-20 through 2-23.

14. Section 2-20 Introduction and Passage of Ordinances and Resolutions

COMMISSION PROPOSAL:

Every ordinance and resolution shall be introduced only in written or printed form, and digital form. No ordinance or resolution shall be so amended in its passage as to change its original purpose. Any ordinance adopting a budget or making appropriations shall be confined to the subject of the budget or the appropriations. No ordinance shall be acted upon until it has been read on two separate days, nor until at least forty-eight hours shall have elapsed between such two readings, except in the case of an emergency ordinance as hereinafter provided. The second reading of such ordinance shall be in full unless a copy thereof shall have been furnished to each member of the Council prior to such reading.

The enacting clause of all ordinances shall be "Be it Ordained by the City of Newport."

RECOMMENDATION: Add additional information provided and delete move one word.

RATIONALE: Allows for the use of digital methods and allows the dissemination to grow into digital and ensures a prepared Council.

STAFF RECOMMENDATION: This recommendation will require ordinances and resolutions to be introduced in digital form. The Council needs to determine if this is advisable.

15. Section 2-22 Authentication and Publication of Ordinances and Resolutions

COMMISSION PROPOSAL:

Upon its final passage, each ordinance or resolution shall be authenticated by the signature of the City Clerk and shall be recorded in a book kept for that purpose and maintained in the Office of the City Clerk.

RECOMMENDATION: Add text to the last sentence.

RATIONALE: Make it simpler and clearer.

STAFF RECOMMENDATION: The Council should determine if there is a need for the recommended revision.

16. Section 3-2 – Nomination Petition; Signatures

COMMISSION PROPOSAL:

The nomination of all candidates for elective office in the primary election provided for by this Charter shall be by petition. The petition of each candidate for ward Councilor, ~~Councilor at Large and School Committee~~ shall be signed by not less than fifty qualified electors of the City. ~~The Petition of each candidate for Councilor-at-Large and School Committee shall be signed by not less than one hundred qualified electors of the City.~~ A voter may sign any number of nomination papers for any office the voter may lawfully vote for at the general election.

RECOMMENDATION: Delete text marked with strikethrough and insert text where indicated. *NOTE:* If Ward Councilors are changed to At-Large per earlier recommendation, there is a text change that will need to take place here.

RATIONALE: "Section 3-2 of the charter says that each candidate needs 50 signatures; however, RIGL 17-14-7(f) says "provided that the City of Newport, for at-large candidates or candidates for school committee, at least 100 signatures shall be required." That is a contradiction to the Charter. RIGL 17-1-5 says if there is a conflict with the Charter, 17-14-7(f) prevails. Which in my understanding means then that school committee and at large candidates need 100 signatures.

Ward council candidates would only need 50 because ward council isn't addressed in 17-14-7(f) therefore no conflict and the charter language would stand." This change was submitted by Tracy A. Nelson, CMC Canvassing Clerk/Elections Administrator. The City Solicitor has reviewed and agrees.

STAFF RECOMMENDATION: This recommendation of the Commission should be adopted.

17. Section 3-4 Primary Election; School Committee

COMMISSION PROPOSAL:

At each primary election, the candidates for School Committee receiving the highest number of votes, double the number of each respective office to be filled, shall be deemed and declared to be the candidates for the office of School Committee.

RECOMMENDATION: Move this section to Section 8 "Schools"

RATIONALE: Since there is a section devoted to "Schools" it would be easier to have all items related to "Schools" in one section rather than by the activity they describe.

STAFF RECOMMENDATION: This recommendation should not be adopted. This section should remain in Chapter III of the Charter dealing with elections. Chapter VIII dealing with schools has only three sections.

18. Section 4-2 – Probate Court

COMMISSION PROPOSAL:

The Council shall elect a ~~Judge of Probate~~ Probate Judge for a term concurrent with the term of office of said Council. The Probate Judge shall be a member of the bar of the State of Rhode Island. Whenever the Judge of Probate Court is a party, or is interested in any proceeding about to be heard in the Court, or is absent or unable to perform the duties, or there is a vacancy in such office, the duties shall be temporarily performed by the Municipal Court Judge, and the fact of such interest, absence, inability or vacancy shall be recorded in the records of said Court.

RECOMMENDATION: Change title.

RATIONALE: Consistency

STAFF RECOMMENDATION: There does not appear to be a need to adopt this revision. It does not change the second reference to Judge of Probate made later in the section.

19. Section 4-3 – Board of Tax Appeals

COMMISSION PROPOSAL:

There shall be a Board of Tax Appeals for the City of Newport consisting of three members who shall be elected by the Council. Biennially, the Council shall elect a member of said Board for a term of office of six years. Two alternates shall be appointed by Council to serve in instances where a member would need to recuse themselves from a vote. (1)

Said Board shall receive and consider appeals from property owners regarding the amounts of their assessed valuation as determined by the Tax Assessor, provided such appeals are properly filed in accordance with state law. Said Board shall have authority to adopt rules and regulations as to the procedure in presenting, considering and disposing of appeals and may hold hearings, administer oaths and receive testimony and exhibits. It shall have the power to order the Tax Assessor to change any assessed valuations appealed and reviewed, but only after the Tax Assessor has been given an opportunity to appear before it or otherwise present the case, provided that this provision shall in no way alter Council power of abatements, as provided by law. Hearings of the Board of Tax Appeals shall be open to the public. Nothing herein contained shall be construed in any way to limit or extend the right of a taxpayer to apply to the superior court in accordance with law for relief from the assessment as originally made by the Tax Assessor.

The members of said Board shall be selected upon the basis of their knowledge of the subject of property taxation and real estate value. ~~and shall at the time of their appointment have been residents of the City for at least five years immediately preceding and shall continue as residents during their terms of office. If members of such Board shall cease to be a resident, their office shall thereby become vacant.~~ (2) No member of said Board shall hold any elective public office. The members of said Board shall elect one of their number as Chair. The members of said Board shall receive such compensation as may be fixed from time to time by the Council.

RECOMMENDATION:

- (1) Appointment of alternates in the case of board members needing to recuse themselves.
- (2) The removal of the stipulation that a member of the Board be a resident of Newport.

RATIONALE:

- (1) This recommendation was given to the Commission by the Chair of the Board of Tax Appeals. According to their communication that have already made this request to Council and the Tax Assessor.
- (2) This recommendation was shared with the Commission by the City Solicitor. He indicates that removing this stipulation will help to get qualified individuals to serve and mentions that this is a very important board where decisions can cost the City substantial amounts of money. He stresses that this is a strong recommendation from the city administration.

STAFF RECOMMENDATION: These revisions should be adopted but it is recommended that the additional language in the first paragraph of Section 4-3 read as follows:

“The Council may appoint up to two alternates to serve on the Board of Tax Appeals to act in instances when a member needs to recuse themselves or is otherwise absent from a meeting.”

20. Section 4-4 – Planning Board

COMMISSION PROPOSAL:

There shall be a Planning Board to administer the laws and ordinances relating to planning, whose members shall be elected by the Council. ~~The Council shall strive to select a diverse group of individuals from throughout the City to serve on this board.~~

RECOMMENDATION: Ensure diversity of members.

RATIONALE: This board plays a pivotal role in the growth and stability of the city. It is vital that members making decisions have the proper breadth of knowledge to make these decisions on behalf of the city and its residents.

STAFF RECOMMENDATION: The Council should decide if there is a need to adopt such a revision. Such a policy may be better addressed in our ordinances dealing with boards and commissions.

21. Section 4-5 – **Zoning** (1) Board of Review

COMMISSION PROPOSAL:

There shall be a Board of Review to administer the laws and ordinances relating to zoning, whose members shall be elected by the Council. The Council shall strive to select a diverse group of individuals from throughout the City to serve on this board. (2)

RECOMMENDATION:

- (1) Add Zoning to the section name.
- (2) Change text.

RATIONALE: This board plays a pivotal role in the growth and stability of the city. It is vital that members making decisions have the proper breadth of knowledge to make these decisions on behalf of the city and its residents.

State the commitment to find diverse members for representation of all resident.

STAFF RECOMMENDATION: The Council should decide if there is a need to adopt such a revision. Such a policy may be better addressed in our ordinances dealing with boards and commissions.

22. Section 4-6 – Canvassing Authority

COMMISSION PROPOSAL:

There shall be a Canvassing Authority pursuant to the General Laws of the State of Rhode Island.

~~There shall be a Canvassing Authority as provided by the provisions of the Constitution and laws of the State. The Council shall elect one member for a term of two years, one member for a term of four years and one member for a term of six years. On the first day in November following all subsequent elections the Council shall elect a member of the Canvassing Authority for a term of six years. All powers and duties now vested in the Board of Canvassers and Registration shall vest in the Canvassing Authority. The Council may designate one member to be Clerk.~~

RECOMMENDATION: Delete the current paragraph and replace with the sentence supplied.

RATIONALE: The change was requested by Tracy A. Nelson, CMR Canvassing Clerk/ Elections Administrator because the current language conflicts with the General Laws of the State of Rhode Island.

STAFF RECOMMENDATION: The deletion of the present Charter language is recommended. However, the replacement language should be as follows:

“There shall be appointed a Canvassing Authority having the functions, powers and duties as provided for by the General Laws of Rhode Island.”

23. Section 4-7 - Trust and Investment Commission

COMMISSION PROPOSAL:

There shall be a Trust and Investment Commission, which commission shall consist of five members who shall be chosen on the basis of their knowledge of investments and financial management. This commission shall have custody and control of all funds now held or hereafter held for the payment of pensions and health benefits and premiums for city and school department employees; and said commission shall have the power to sell, exchange, invest or reinvest said funds and to receive, collect, and hold all income thereof and to pay and appropriate the same in such manner and for the purposes prescribed by law or by said will, deed, gift or indenture. Said commission shall have such other powers and duties, and its members shall be appointed and serve for such terms, as the council may by said ordinance prescribe.

Replace with:

There shall be a Trust and Investment Commission, which commission shall consist of five members who shall be chosen by the City Council on the basis of their knowledge of investments and financial management of pension and other post-employment benefit funds. This commission shall be responsible for overseeing the investments, including the selection and monitoring of all funds now held or hereafter held: (a) the payment of pensions for city police and fire department employees and health benefit and premiums for city and school department employees; and (b) as trusts and scholarship funds donated or bequeathed to the city to be used for specified purposes, but excluding any funds held by the city in cash to pay current benefits and expenses. Said commission shall have the power to sell, exchange, invest or reinvest said funds and to receive, collect and hold all income thereof and to pay and appropriate the same in such manner and for the purposes prescribed by law or by said will, deed, gift or indenture. Said commission may recommend the engagement by the city of an investment advisor to help meet its responsibilities and shall have such other

powers and duties, and its members shall be appointed and serve for such terms, as the Council may by said ordinance prescribe. The commission shall be indemnified by the city pursuant to R.I. General Laws §45-15-16.

RECOMMENDATION: Delete current section and replace with text provided.

RATIONALE: The change was requested by Patrick Sheerin, Chair of the Trust and Investment Commission. We defer to the Commission's recommendation.

STAFF RECOMMENDATION: This proposal should be adopted. However, we are recommending that the version with the changes noted below be adopted to go before the voters for consideration and approval.

There shall be a Trust and Investment Commission, which commission shall consist of five members who shall be chosen by the City Council on the basis of their knowledge of investments and financial management of pension and other post-employment benefit funds. This commission shall be responsible for overseeing the investments, including the selection and monitoring of all funds now held or hereafter held **for the benefit of police and fire pensions;** (a) the payment of pensions for city police and fire department employees, including health benefits and premiums for **retired** city and school department employees; and (b) as trusts and scholarship funds donated or bequeathed to the city to be used for specific purposes. **The Commission's oversight does not extend to,** but excluding any funds held by the city in cash to pay current benefits and expenses. Said commission shall have the power to sell, exchange, invest or reinvest said funds and to receive, collect and hold all income thereof and to pay and appropriate the same in such manner and for the purposes prescribed by law or by said will, deed, gift or indenture. Said commission may recommend the engagement by the city of an investment advisor to help meet its responsibilities and shall have such other powers and duties, and its members shall be appointed and serve for such terms, as the Council may by said ordinance prescribe. The commission shall be indemnified by the city pursuant to R.I. General Laws §45-15-16.

24. Section 4-11 – Council Not to Interfere with Administration.

COMMISSION PROPOSAL:

Neither the Council nor any of its members shall direct or request the appointment of persons to, or their removal from office by the City Manager or by any of his or her subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative service of the City or interfere in any way with any administrative division or department. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager and neither the Council nor any member thereof shall give orders to any subordinates of the City Manager, either publicly or privately. ~~Any Councilor violating the provisions of~~

~~this section shall be guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000.00) or be imprisoned for not more than sixty (60) days, or both, and shall forthwith cease to be a Councilor. Any Councilor violating the provisions of this section shall be subject to prosecution under the law and shall forthwith cease to be a Councilor.~~

RECOMMENDATION: Strike and replace copy.

RATIONALE: The fine and violation should be indexed to whatever the charges are.

STAFF RECOMMENDATION: This revision should not be adopted. The inclusion of the penalty language is appropriate.

25. Section 4-2 – Power to Compel Testimony

COMMISSION PROPOSAL:

In connection with any investigation which may be conducted by the Council, or any committee thereof, the Council or committee may compel the attendance of witnesses and the production of books, papers and other evidence, and for that purpose may issue subpoenas which shall be signed by the Mayor or the Chair of any such committee. If witnesses shall refuse to testify to any facts within their knowledge, or to produce any papers or books in their possession, or under their control, relating to matters under inquiry, before the Council, or any such committee, the Council by resolution may cite such witness in contempt and upon conviction thereof such witness shall be ~~fin~~ed not more than one thousand dollars (\$1,000.00) or be imprisoned for not more than sixty (60) days, or both. subject to prosecution and fined under the law.

Witnesses shall not be excused from giving information touching upon their knowledge of the matter under investigation in any such inquiry, but such testimony shall not be used against them in any subsequent criminal prosecution except for perjury committed upon such inquiry, unless witnesses shall, in writing at the time of so testifying, waive their rights not to have such testimony used against them.

RECOMMENDATION: Strike and replace copy.

RATIONALE: The fine and violation should be indexed to whatever the charges are.

STAFF RECOMMENDATION: This revision should not be adopted. The inclusion of the penalty language is appropriate.

26. Section 4-13 – Public Hearings

COMMISSION PROPOSAL:

When any ordinance or resolution shall be referred by the Council to a committee for further **investigation review**, (1) said committee may hold public hearings thereon. If a petition shall be presented to the City Clerk signed by at least fifty (50) qualified electors of the City, then said committee shall hold a public hearing or hearings thereon. The City Clerk shall give notice thereof at least two days in advance of any such public hearing by posting a notice thereof on a bulletin board placed conspicuously in the City Clerk's office **as well as on city's website and social media** (2) so as to be clearly visible to members of the public.

RECOMMENDATION: Change "investigation" to "review".

RATIONALE: Add digital outlets to distribution channels.

STAFF RECOMMENDATION: The Council should decide whether the suggested revisions are needed.

27. Section 5-4 Duties

COMMISSION PROPOSAL:

The duties of the Manager shall include the following:

- (a) To see that the laws and ordinances are enforced;*
- (b) To see that all terms and conditions imposed in favor of the City in any contract or franchise are faithfully kept and performed;*
- (c) To keep the Council informed at all times concerning the financial condition and needs of the City and other pertinent matters relating to its administration;*
- (d) To recommend to the Council such measures as the Manager may consider necessary or expedient;*
- (e) To prepare and recommend to the Council an annual budget;*
- (f) To prepare and present to the Council a comprehensive annual report of the financial transactions and other activities of the City following the close of each fiscal year;*
- (g) To make any study or investigation which in the Manager's opinion may be for the best interest of the City or which may be ordered by the Council;*
- (h) To approve all rules and regulations of the several administrative officers and departments under the Manager's jurisdiction before they shall become effective;*
- (i) To perform such other duties as may be required of him or her by the Council.*
- (j) To be known as the City Public Safety Officer when circumstances require the title (1).**

*(k) It shall be the duty of the Manager to attend meetings of the Council.
(previously Section 5.5)(2)*

RECOMMENDATION:

- (1) Add the title City Public Safety Officer.*
- (2) Move Section 5.5 to the list of Duties.*

RATIONALE:

- (1) There are references to the Public Safety Office in the Charter. This identifies who that person.*
- (2) Since Section 5-4 is the list of Duties there seems no reason to not include in the list.*

STAFF RECOMMENDATION: The Council should determine if there is a need for these revisions. This proposed revision itself continues to use the term “Manager” instead of “City Manager”. See comments made supra on this issue. In addition, there does not appear to be any other references to City Public Safety Officer in the Charter. There are references to a Director of Public Safety in the ordinances. Finally, there doesn’t appear to be any compelling reason to move the language in Section 5.5 to this Section thereby requiring Section 5.5 to be repealed as a further revision to the Charter.

28. Section 5-6 – Appointment of Administrative Officers

COMMISSION PROPOSAL:

Except as otherwise provided by this Charter the City Manager shall appoint all administrative officers and heads of departments including the City Clerk and Probate Clerk. All such appointments shall be for indefinite terms determined by at the pleasure of the City Manager.

Notice of the appointment by the City Manager of any department head or other principal officer shall be in writing and filed with the City Clerk.

The City Manager may serve as the head of any administrative department.

RECOMMENDATION: Insert “City” to modify Manager.

RATIONALE: Since the Charter did not write the term “City Manager” and then specify the contracted form “Manager” the full term should be used throughout.

STAFF RECOMMENDATION: The Council should determine the need to change any references to Manager in this section to City Manager. There will remain other references to Manager in Sections 2-11, 5-2, 5-3, 5-4, 9-2 through 9-5, 9-10, 9-11 and 9-23. See previous comments made on this issue and again, the language “at the pleasure of the City Manager”

should not be revised. Perhaps it would be better to add language in Section 10-3 dealing with construction of the Charter stating the term “Manager” should be construed to also mean City Manager.

29. Section 5-7 – ~~Absence or Disability of Manager.~~ Designation of Acting City Manager (1)

COMMISSION PROPOSAL:

The City (2) Manager may designate an administrative officer of the City to exercise and perform the powers and duties during the City Manager's temporary absence or disability. Such designation shall be made in writing and filed with the City Clerk. Any such designation shall not be for a period greater than thirty (30) days. (3) In the event that the City Manager is unable to make such a designation, then the Council shall be empowered to make such a designation. (3) ~~Such designation shall be made in writing and filed with the City Clerk. Any such designation shall not be for a period greater than thirty (30) days.~~

RECOMMENDATION:

- (1) Change the Section Title.
- (2) Insert “City” to modify Manager.
- (3) Move the last sentence in the current text to become the second sentence.

RATIONALE:

- (1) The recommended title seems to more accurately reflect the Section content.
- (2) Since the Charter did not write the term “City Manager” and then specify the contracted form “Manager”, the full term should be used throughout.
- (3) The new placement creates better flow of information.

STAFF RECOMMENDATION: Again, the Council should determine the need to revise references from “Manager” to “City Manager”. There does not appear to be any need to adopt the remaining revisions to Section 5-7.

30. Section 5-8 – ~~Acting Manager~~ – Appointment of Interim City Manager (1)

COMMISSION PROPOSAL:

The Council shall appoint some capable person as ~~Acting Manager~~ Interim City Manager (2) during a vacancy in the office. Such appointment shall be on a temporary basis until a City (3) Manager has been appointed and has assumed the duties of City Manager. Such person while in the capacity of ~~Acting Manager~~ Interim City Manager (4) shall have all the powers and duties conferred by this Charter on the City Manager.

RECOMMENDATION:

- (1) *Change the Section Title.*
- (2) *Make title consistent.*
- (3) *Insert "City" to modify Manager.*
- (4) *Make title consistent.*

RATIONALE:

- (1) *The recommended title seems to more accurately reflect the Section content.*
- (2) *A change to the title would require an edit.*
- (3) *Since the Charter did not write the term "City Manager" and then specify the contracted form "Manager" the full term should be used throughout.*
- (4) *A change to title would require an edit.*

STAFF RECOMMENDATION: There does not appear to be a need to adopt the revisions recommended for Section 5-8.

31. Section 6-2 – Compensation of Employees

COMMISSION PROPOSAL:

The Council shall have the power to fix the compensation of all officers and employees of the City through the budget process.

RECOMMENDATION: Add some clarifying language.

RATIONALE: The addition makes the process clearer.

STAFF RECOMMENDATION: There does not appear to be a need to adopt the revisions recommended for Section 6.2.

32. Section 6-4 – Oath of Office

COMMISSION PROPOSAL:

~~Every officer, elected or appointed, shall take and subscribe the following~~ Any elected or appointed individual assuming a city role or job, may be required to take and subscribe to the following (1) oath of office: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the State of Rhode Island and Providence Plantations, and that I will faithfully discharge the duties of such office to the best of my ability," and shall file such oath, duly certified by the officer before whom it was taken, as a public record in the office of the City Clerk.

RECOMMENDATION:

- (1) *Remove text and replace*
- (2) *Remove outdated name*

RATIONALE:

(1) *Make the explanation of who takes an oath clearer. The text reviewed by Mike Coury, Director of Human Resources, City of Newport.*

(2) *The state name was altered in November, 2020. This text change was reviewed by Mike Coury, Director of Human Resources, City of Newport.*

STAFF RECOMMENDATION: The Council should determine the advisability of adopting the recommended revisions. If so, it is recommended that the word “role” in the second sentence of the proposed revised language be changed to “position”.

33. Section 6-5 ~~Surrender of Books, Papers, Money and Effects~~—Surrender of City Issued Property (1)

COMMISSION PROPOSAL:

Whenever any officers or employees shall resign or be removed from office, or the term for which they shall have been elected or appointed shall expire, they shall, immediately, surrender to their successor or superior in office all ~~the books, papers, moneys and effects of the City~~ (2) city issued property in their custody. ~~In the event there is no successor said books, papers, moneys and effects shall be surrendered to the City Manager.~~ (3) ~~In the event there is no successor or superior said city issued property will be surrendered to the office of the City Manager.~~ Every person violating this provision shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than one year. shall be subject to prosecution under the law. (4)

RECOMMENDATION:

- (1) *Change the section title and replace with new section title.*
- (2) *Remove outdated text and replace more accurate text.*
- (3) *Remove inaccurate language and replace with accurate language.*
- (4) *Edit sentence and replace text.*

RATIONALE:

(1) *New Section title more accurately represents the items an employee may need to surrender. This text change reviewed by Mike Coury, Director of Human Resources, City of Newport.*

(2) *New text more accurately represents the items an employee needs to surrender. This text change reviewed by Mike Coury, Director of Human Resources, City of Newport.*

(3) *New text more accurately communicates the supervisory chain. This text reviewed by Mike Coury, Director of Human Resources, City of Newport.*

(4) *The section dealing with a fine amount is not appropriate since city issued property has such a large range of value and at the higher end of the value the*

legal consequences are larger. This text change reviewed by Mike Coury, Director of Human Resources, City of Newport.

STAFF RECOMMENDATION: The Council should determine the advisability of adopting the recommended revisions. There should be no change to the penalty language.

34. Section 9-1 – Fiscal Year and Strategic Plan

COMMISSION PROPOSAL:

The Council shall provide by ordinance for the fiscal year of the City.

The Council is responsible for having, approving and adhering to a five-year strategic plan for the City and scheduling progress review workshops. The strategic plan is used as guidance in setting budget priorities and The strategic plan (1) should be updated and approved each year no later than the first council meeting in March. Implementation should be managed by the City Manager. The strategic plan will include:

- *Vision and Mission Statements that project over ten years (2)*
- *Long-term goals projecting forward at least five years*
- *Short-term goals with two-year projections*
- *Corresponding revenue and expense projections*
- *Milestones and individuals/departments accountable*
- *Performance measurements*

The City's Strategic Plan will be reviewed periodically and progress reported no less often than annually at a public hearing.

RECOMMENDATION:

- (1) *Remove text and add new text referencing the budget.*
- (2) *Add a time frame.*

RATIONALE:

- (1) *Stating that the strategic plan should be informing budget priorities and decisions is important and we believe should be clearly stated in this section.*
- (2) *Vision and mission statements help decision makers to anticipate and envision longer term desired states. They help ensure that shorter term decisions enable and do not impede desired futures.*

STAFF RECOMMENDATION: The Council should determine the advisability of adopting the proposed revisions.

35. Section 9-19 – Capital Improvement Program

COMMISSION PROPOSAL:

No later than February 1 of each year, the City Manager shall prepare and submit to the City Council a five-year capital improvement program, including a capital budget.

The City Council, by resolution, shall adopt in concept a capital improvement program on or before the first regularly scheduled Council meeting in April; the first year of the program shall be incorporated into the proposed operating budget for the ensuing fiscal year. The City Council, at least one week before the adoption in concept of the capital improvement program, shall hold a public hearing thereon.

*No later than February 15 the City Manager shall publish in a newspaper **and digital outlets** of general circulation a general summary of the capital improvement program and a notice stating:*

- (1) The date, time and place for a public hearing on the program; and*
- (2) The location where copies of the program are available for inspection.*

The definition of capital improvement, the contents of the program, and the general criteria used in determining priorities of projects, shall be prescribed by ordinance.

RECOMMENDATION: Add digital outlets.

RATIONALE: Newspapers are not the most read and accessed communication vehicles. Any communication coming from the city should include digital outlets.

STAFF RECOMMENDATION: The Council should determine the advisability of adopting the proposed revision.

36. Section 10-4 Existing Boards and Commission

COMMISSION PROPOSAL:

All commissions and boards in existence on the first day of November, 1953, shall continue in existence until discharged by action of the Council.

QUESTION FROM THE CHARTER COMMISSION – Is there a purpose for this Section or is it outdated?

STAFF RECOMMENDATION: There is no recommended revision. However, it could be said that the existing provision does provide historical context and should remain.

37. Section 10-10 Charter Review

COMMISSION PROPOSAL:

The Council shall provide for periodic review of this charter by appointing a Charter Review Commission no more than 10 years from the date of appointment of the most recent Charter Review Commission.

The Charter Commission shall be given eight months to complete their task and shall supply a completed report to the Council for review and action. Upon review and action of the Charter Review Commission's report, the City Council will create a report that references the changes that were accepted and/or rejected by the Council.

RECOMMENDATION: Add the paragraph supplied.

RATIONALE: Having a longer timeline allows the Charter Review Commission members to work at a reasonable and steady pace. Having a finished document that shows accepted and rejected recommendations created by City Council after they review will be very informative to future Commissions in their deliberations.

STAFF RECOMMENDATION: The adoption of this revision is not recommended. Such requirements should be addressed in the resolutions appointing the Charter Review Commission and also providing for its charge.