

**CHARTER REVISION COMMISSION
MINUTES FOR REGULAR MEETING
APRIL 3, 2008**

1

The Charter Revision Commission conducted a meeting on Thursday, April 3, 2008, at 7:00 p.m., in the Council Chambers of the Town Hall, 2725 Main Street, Stratford, CT.

Members Present: John A. Florek, Beth McMellon, Benjamin S. Proto, John E. Fahan, Richard Fredette, Jon A. August, James Orlowe and Karen Rodia.

Members Absent: Eric W. Booth.

Others Present: Attorney Bryan L. LeClerc (Town Attorney's Office).

CALL TO ORDER

- Chairman Florek called the meeting to order at 7:05 p.m. Mr. Booth e-mailed the Secretary that he is ill and cannot attend the meeting.

1. APPROVAL OF MINUTES:

a. Meeting of March 27, 2008

- ON MOTION BY MR. FREDETTE AND SECONDED BY MS. RODIA, THE MINUTES OF MARCH 27, 2008 WERE APPROVED 8-0 (with Mr. Booth absent).

b. Meeting of March 29, 2008

- MR. FREDETTE MADE A MOTION TO APPROVE THE MINUTES OF MARCH 29, 2008. MS. McMELLON SECONDED. Discussion followed.

- Chairman Florek noted two clarifications on page 4 of the Minutes for the record. On the top of page 4 (continued from page 3), the Mayor has the right to be the tie-breaker on Ordinances and can be the Sixth Affirmative Vote for the passage of both Ordinances and Resolutions **only in the event of a 5-5 tie**. Also, in the last paragraph on page 4, the **Council Chair will serve as Acting Mayor during periods of the Mayor's temporary absence or disability**, as well as when there is a permanent vacancy.

- THE MINUTES OF MARCH 29, 2008, AS AMENDED, WERE APPROVED 8-0 (with Mr. Booth absent).

2. THE FORMATION OF SUB-COMMITTEES - No business.

3. SOURCES OF INFORMATION FOR THE COMMISSION. - No business.

4. REPORT FROM/QUESTIONS TO TOWN ATTORNEY - No report.

- Ms. Rodia requested two legal opinions:

1.) Is parliamentary procedure a resolution? (Issue brought up by Mr. Henrick at public hearing.)

**CHARTER REVISION COMMISSION
MINUTES FOR REGULAR MEETING
APRIL 3, 2008**

2

2.) Is there any statute or case law prohibiting imposing an impeachment or suspension process for the CEO if he violates the Charter, etc. (other than Recall)?

- In response to Mr. Fredette, Mr. Proto gave an update on the Legislature's progress regarding the enactment of recall for Mayors.

5. DISCUSSION OF AREAS FOR POSSIBLE AMENDMENT

5.1. PRIORITY AREAS [TABLED]

- a. Power of Investigation (§ 2.2.15, etc.) **[Tabled pending legal opinion]**
- b. ~~Veto power of the Mayor (§ 1.2(6), § 2.2.2, § 2.2.9, etc.)~~
- c. Powers of Mayor/Council (§ 1.2, § 2.2.1, etc.)
- d. Appointments to Boards/Commissions.
- f. Line of Succession in the event of vacancy/disability/absence of Mayor (§ 1.2, § 1.3, § 5.1.1, etc.).
- g. Hiring/firing/administration of Town Employees (Section 5, etc.).
- h. Office of the Town Attorney (Section 3, etc.).
- r. Length of Mayor's term (§ 1.1, etc.).

5.2. OTHER AREAS FOR CONSIDERATION [TABLED]

- j. Employment of CRC members (§ 9.8.1). **[Tabled pending legal opinion]**
- k. Planning and Zoning Boards (§ 4.2.1, § 4.2.2, § 4.2.5, § 4.2.6).
- l. Emergency fiscal measures/Rainy Day Fund/Council oversight of spending (§§ 6.2.1 - 6.2.3).
- m. Recall/Referendum/Initiative (Section 8). **[Tabled pending legal opinion]**
- n. Budget referendum.
- o. Salary/stipend/expenses of Council members (§ 2.1.6).
- p. Other employment/business pursuits of Mayor (§1.2).
- q. Relation of delinquent taxes to appointed/elected officials. **[Tabled pending legal opinion]**
- s. Chief Administrative Officer (§§ 5.1.1 - 5.1.4).
- t. Residency requirement for Department Heads. **[Tabled pending legal opinion]**
- u. Composition of Town Council (§ 2.1.1, § 2.1.5, § 1.2, § 1.3).
- w. Police Commission.
- x. Technical Changes
- y. Council Term
- z. Term Limits for Mayor, Council, Commission Members.

- UPON MOTION BY MR. PROTO AND SECONDED BY MR. FREDETTE, ITEMS 5.1 AND 5.2 WERE TAKEN OFF THE TABLE IN THEIR ENTIRETY. MOTION CARRIED 8-0 (with Mr. Booth absent).

**CHARTER REVISION COMMISSION
MINUTES FOR REGULAR MEETING
APRIL 3, 2008**

3

- The CRC took up the issue of the trigger for declaring the absence or disability of the Mayor. Mr. Proto again referred to Section 1.3(a) of his earlier proposal which had defined the temporary absence or disability of the Mayor as being unable to perform the duties of the Office of Mayor because of such absence or disability. He agreed with Mayor Miron that with the numerous forms of communication now available, the physical absence of the Mayor does not necessarily mean that he cannot perform the duties of office.

- Chairman Florek questioned the "mechanism" for determining that the Mayor is unable to perform the duties of Mayor? Ms. Rodia suggested that the Town Council enact an Ordinance establishing a Policy. Mr. Proto preferred a Charter provision instead because an Ordinance can be easily modified. He suggested the affirmative vote of a specific number of Council members with the concurrence of the CAO or someone else from the administration. Mr. Fahan pointed out that the Chair may have to act quickly and it could be difficult to contact other Council members during the day. Mr. Fredette suggested that the Chair, the Majority and Minority Leaders of the Council, and the administration confirm the Mayor's absence or disability. Ms. McMellon stated that the CAO is the link. If the CAO cannot communicate with the Mayor, then the CAO will contact the Council Chair. Chairman Florek questioned who decides that the CAO should call the Chair? Mr. August warned against trying to micro-manage the process and noted that the other Charters he reviewed did not address a trigger for declaring the Mayor's absence or disability. Mr. Fredette suggested adding "unable to communicate with CAO" to Mr. Proto's earlier definition of the Mayor's absence or disability.

- MR. PROTO MOVED THAT THE TEMPORARY ABSENCE OR DISABILITY OF THE MAYOR BE DEFINED AS FOLLOWS: "IN THE EVENT THAT THE MAYOR IS TEMPORARILY ABSENT OR TEMPORARILY DISABLED AND IS, BECAUSE OF SUCH ABSENCE OR DISABILITY, UNABLE TO COMMUNICATE WITH THE CHIEF ADMINISTRATIVE OFFICER OR UNABLE TO PERFORM THE DUTIES OF THE OFFICE OF THE MAYOR, THE CHAIRMAN OF THE TOWN COUNCIL SHALL ASSUME THE OFFICE OF MAYOR." MR. FREDETTE SECONDED AND THE MOTION CARRIED 8-0 (with Mr. Booth absent).

- Mr. Proto's proposal gives the Temporary Mayor all the powers of the office of Mayor except the power to hire or terminate any Director or Department Head, and the Temporary Mayor would perform the duties of the Mayor only until such time as the Mayor is able to resume said duties.

- Mr. Fredette suggested clarifying how long the Chair can serve as Temporary Mayor. Section 1.3(4) of the current Charter already declares the Office of Mayor vacant if the Mayor is absent from office for any reason for a continuous period of ninety days. After ninety days, the Temporary Mayor would permanently fill the vacancy and would have the full powers of the Mayor, including the power to hire and fire.

**CHARTER REVISION COMMISSION
MINUTES FOR REGULAR MEETING
APRIL 3, 2008**

4

- Chairman Florek questioned the current language in Section 1.3(4) of the Charter which states that after an absence of ninety days, it shall be "presumed" that the Mayor has resigned. What if the Mayor is ill or has been in an accident, but has every intention of resuming the office of Mayor after his recovery (which could take longer than ninety days)? "Presumed" is not an absolute and cannot be used to set a definite time period. Also, the first sentence of Section 1.3 of the Charter states "[T]he office of Mayor shall be deemed vacant upon the occurrence of any of the following events:..." The word "presumed" in Section 1.3(4) should be replaced with the word "deemed" for consistency.

- Another issue Mr. Proto raised is whether the Temporary Mayor can fill a Department Head vacancy if one should occur, or should he or she appoint an Acting Department Head to serve until the Mayor's return?

- In conjunction with the definition of absence or disability previously adopted, MR. PROTO MOVED THAT SECTION 1.3(A) OF HIS PROPOSAL BE AMENDED TO READ, IN ITS ENTIRETY, AS FOLLOWS : "IN THE EVENT THAT THE MAYOR IS TEMPORARILY ABSENT OR TEMPORARILY DISABLED AND IS, BECAUSE OF SUCH ABSENCE OR DISABILITY, UNABLE TO COMMUNICATE WITH THE CHIEF ADMINISTRATIVE OFFICER OR UNABLE TO PERFORM THE DUTIES OF THE OFFICE OF THE MAYOR, THE CHAIRMAN OF THE TOWN COUNCIL SHALL ASSUME THE OFFICE OF MAYOR, AND SHALL POSSESS ALL OF THE POWERS OF THE OFFICE OF MAYOR, EXCEPT THAT HE OR SHE SHALL NOT HAVE THE POWER TO TERMINATE OR PERMANENTLY HIRE ANY DIRECTOR OR DEPARTMENT HEAD, AND SHALL PERFORM THE DUTIES OF THE MAYOR UNTIL SUCH TIME AS THE MAYOR IS ABLE TO RESUME THE OFFICE OF MAYOR." MR. FREDETTE SECONDED AND THE MOTION CARRIED 8-0 (with Mr. Booth absent).

- Mr. Proto brought up the issue of a salary for the Temporary Mayor. He suggested that the Temporary Mayor be paid a pro rata share of the Mayor's salary for the time he or she acts for the Mayor. But what if the Acting Mayor only serves a few hours or one day? Mr. Fredette suggested that the Acting Mayor have to serve more than 48 hours before receiving compensation. Mr. August pointed out that per compensation laws, after three days the salary dates back to Day 1. Also, need to clarify that the compensation for the Acting Mayor does not include benefits. Ms. Rodia suggested also clarifying that the Acting Mayor must serve more than 48 consecutive hours to receive a salary.

- MR. FREDETTE MOVED THAT IN THE EVENT THE ACTING MAYOR ASSUMES THE DUTIES OF THE OFFICE OF MAYOR FOR MORE THAN FORTY-EIGHT CONSECUTIVE HOURS, THEN HE OR SHE SHALL RECEIVE A PRO-RATA SALARY BASED ON THE MAYOR'S SALARY AND DATING BACK TO DAY ONE;

**CHARTER REVISION COMMISSION
MINUTES FOR REGULAR MEETING
APRIL 3, 2008**

5

HOWEVER, THE ACTING MAYOR WOULD NOT BE ENTITLED TO ANY OTHER BENEFITS OR PERKS ASSOCIATED WITH THE OFFICE OF MAYOR. MR. ORLOWE SECONDED THE MOTION AND IT CARRIED 8-0 (with Mr. Booth absent).

- Mr. Fahan questioned whether the Council Chair would have to vacate his Council seat while serving as Temporary Mayor? The Chair should not have to vacate his Council seat in this situation, but Ms. Rodia was concerned that the Chair's District would not be represented on the Council during this period. She asked whether a Temporary Council person could be seated for the interim? This issue was deferred until receipt of a Town Attorney opinion clarifying whether an unelected person could represent the Chair's District?

- The CRC next discussed the issue of a permanent Vacancy in the office of Mayor. Mr. Proto noted that the sections concerning a temporary and permanent vacancy in the office of Mayor should be together in the Charter.

- Mr. Proto suggested some minor changes to his earlier proposal for filling a permanent Vacancy. He replaced the pronouns "*he or she,*" with "*the Mayor*" or "*their.*" In Section 1.3(b)(4) he replaced "*resigned*" with "*the Mayor has vacated the office.*" Per earlier discussions, he would change the word "*presumed*" to "*deemed.*" Also, he would reword the beginning of Section 1.3(b)(4) to read, "*If the Mayor is temporarily absent or temporarily disabled from office for any reason....*" It was suggested that the second sentence of Section 1.3(b)(4) concerning use of vacation time by the Mayor be stricken.

- Based on Mr. Proto's suggestions, MS. McMELLON MOVED AND MS. RODIA SECONDED THAT SECTION 1.3(4) OF THE CHARTER BE AMENDED TO READ AS FOLLOWS: "IF THE MAYOR IS TEMPORARILY ABSENT OR TEMPORARILY DISABLED FROM OFFICE FOR ANY REASON FOR A CONTINUOUS PERIOD OF NOT LESS THAN NINETY DAYS, IT SHALL BE DEEMED THAT THE MAYOR HAS VACATED THE OFFICE." MOTION CARRIED 7-1 (with Mr. August opposed and Mr. Booth absent).

- Referring to Section 1.3(5), Mr. Proto questioned whether a DUI is a felony? He also questioned the phrase "*has been convicted of a felony*" because if a person's voting rights have been restored, you cannot prevent them from running for office.

- UPON MOTION BY MS. RODIA AND SECONDED BY MR. FAHAN, THE WORDS "HAS BEEN" WERE DELETED FROM SECTION 1.3(5) OF THE CHARTER. MOTION CARRIED 8-0 (with Mr. Booth absent).

CRC recessed at 8:35 p.m. and reconvened at 8:50 p.m.

- Getting back to the DUI issue, Attorney LeClerc researched the penal code during the recess. A felony carries a prison term of in excess of one year. DUI is not in

**CHARTER REVISION COMMISSION
MINUTES FOR REGULAR MEETING
APRIL 3, 2008**

6

the penal code and is actually found in the motor vehicle section of the Statutes. The first offense for a DUI carries a prison term of six months. A second offense carries a possible prison term of two years so a second offense could be read as a felony.

- Mr. Proto questioned whether the last CRC was thinking about the prison time or the actual offense when it adopted the word "felony" in the Charter? There are other offenses that might not be deemed a felony in the penal code, i.e., possession of a controlled substance, dumping of hazardous waste, etc. The word "felony" might not be broad enough to address the realm of possible bad behaviors for which the Mayor should vacate the office. Chairman Florek requested a Town Attorney opinion on the "felony" question.

- Regarding a permanent vacancy in the office of Mayor, Mr. Proto's proposal calls for the Chair to assume the office of Mayor and exercise all mayoral powers until the next regular municipal election. However, if the next regular municipal election is not a mayoral election, then the Council would call a special election to fill the remainder of the Mayor's term. Chairman Florek questioned what would happen if a mayoral vacancy occurred a month or two before the next municipal election? Also, State election law has built in time periods for primaries, etc. [It was noted that Section 2.1.7, "Council Vacancies" of the current Charter erroneously refers to C.G.S. § 9-164b. This should be **C.G.S. § 9-164(b)**.]

- Chairman Florek suggested modifying Mr. Proto's language to read that the Temporary Mayor shall serve until such time as a special election is held per C.G.S. 9-164(b); provided that if a special election falls within six months of the next mayoral election, then the Council Chair serves until the next mayoral election.

- This issue will be deferred pending receipt of a Town Attorney opinion regarding special elections and State election law.

- Chairman Florek suggested discussing Item 4.1.r, "Length of Mayor's Term." Mr. Fredette is in favor of leaving it as four years although he would like to see the State Legislature adopt recall. Ms. Rodia is not comfortable with a four year term unless there is recall or some other recourse for the electors. This issue was deferred pending more research.

- Mr. Proto brought up Item 5.2.m and the Town Attorney's opinion that Recall is invalid after the last charter revision. As this issue has not been directly addressed by the courts, Mr. Proto is hesitant to remove Recall from the Charter. Although Chairman Florek is not in favor of Recall for a two-year term, he agrees with Mr. Proto that this issue should be left to the courts. He also acknowledged that it is the duty of the Town Attorney's Office to point out possible illegalities in the Charter.

**CHARTER REVISION COMMISSION
MINUTES FOR REGULAR MEETING
APRIL 3, 2008**

7

- MR. PROTO MOVED TO STRIKE ITEM 5.2.m FROM THE AGENDA AND LEAVE RECALL/REFERENDUM/INITIATIVE IN THE CHARTER "AS IS." MS. RODIA SECONDED AND THE MOTION TO STRIKE CARRIED 8-0 (with Mr. Booth absent).

- UPON MOTION BY MR. PROTO AND SECONDED BY MR. FREDETTE, ITEMS 5.1 AND 5.2 WERE PUT BACK ON THE TABLE IN THEIR ENTIRETY. MOTION CARRIED 8-0 (with Mr. Booth absent).

6. NEW BUSINESS/FURTHER SUGGESTIONS AS TO POSSIBLE TOPICS

- No new business.

7. ADJOURNMENT

- ON MOTION BY MR. FREDETTE AND SECONDED BY MS. RODIA, THE MEETING ADJOURNED AT 9:45 P.M.

Respectfully submitted,

Gail J. Nobili
Secretary