

**CHARTER REVISION COMMISSION
MINUTES FOR REGULAR MEETING
MAY 15, 2008**

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The Charter Revision Commission conducted a regular meeting on Thursday, May 15, 2008, in Council Chambers, 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, Eric W. Booth (left 9:15 p.m.), James Orlowe and Karen Rodia.

Others Present Richard J. Buturla and Bryan L. LeClerc (Town Attorney's Office).

CALL TO ORDER

- Chairman Florek called the special meeting to order at 7:09 p.m.

Distributed to Commission Members:

1. *Drafted changes (red-line) to Charter (prepared by Town Attorney's Office).*
2. *April 10, 2008 letter from the Finance Dept regarding Town Attorney Fees, with hand-written note from John Norko.*
3. *Revised Language for Section 3.1.1 (prepared by Mr. Proto).*

WAIVE THE RULES

- MR. PROTO MOVED TO WAIVE THE RULES TO ADD APPROVAL OF THE MAY 10, 2008 MINUTES TO THE AGENDA. MS. McMELLON SECONDED AND THE MOTION CARRIED 9-0.

MR. FREDETTE MOVED, SECONDED BY MR. ORLOWE, TO APPROVE THE MINUTES OF THE REGULAR MEETING OF MAY 10, 2008. MOTION TO APPROVE CARRIED 9-0.

1. THE FORMATION OF SUB-COMMITTEES - no business.
2. SOURCES OF INFORMATION FOR THE COMMISSION - no business.

THE AGENDA PROCEEDED IN THE FOLLOWING ORDER:

4. DISCUSSION OF AREAS FOR POSSIBLE AMENDMENT.

4.1. PRIORITY AREAS [TABLED]

- a. ~~Power of Investigation (§ 2.2.15, etc.)~~
- 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.).

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4.2. OTHER AREAS FOR CONSIDERATION [TABLED]

- 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).
- n. Budget referendum.
- ~~p. Other employment/business pursuits of Mayor (§1.2).~~
- ~~s. Chief Administrative Officer (§§ 5.1.1 – 5.1.4).~~
- t. Residency requirement for Department Heads.
- w. Police Commission.
- x. Technical Changes
- z. Term Limits for Mayor, Council, Commission Members.

- MR. PROTO MOVED, SECONDED BY MR. FREDETTE, TO TAKE ITEMS 4.1 AND 4.2 OFF THE TABLE IN THEIR ENTIRETY. MOTION CARRIED 9-0.

- Mr. Proto asked to discuss Agenda Item 4.1.h, Office of the Town Attorney. Since Chairman Florek is currently handling a few matters for the Town Attorney's Office, he recused himself from discussions and turned the chair over to Mr. Fredette, the Acting Chairman.

- Town Attorney Richard J. Buturla addressed the CRC. The Town Attorney is similar to a corporation counsel and is the chief legal advisor to the Town of Stratford. Attorney Buturla believes the Town Attorney should be chosen by the Mayor, as is done in most Connecticut municipalities.

- There are approximately 318 active files in the Town Attorney's Office, 224 of which are either workers' compensation claims or involve litigation. Over the last two years, the Town Attorney's Office has been involved in nine trials in either the United States District or Superior Courts, and the Town Attorney has spent approximately fifty-three full trial days in court. This does not include time spent in court for short calendar motions, status conferences, pre-trials, etc. In addition, the Town Attorney spends a great deal of time each week meeting with administration and employees, answering phone calls and e-mails, reviewing contracts, and responding to requests from the Mayor, Council, and various Town departments. The Town Attorney's Office bills \$150/hourly; there are no retainers. The Town is basically self-insured for the first \$500,000 and there is excess coverage after that. Attorney Buturla can only remember one occasion when the excess carrier made a payment. The Town Attorney's Office has also brought in revenue to the Town, i.e., Gas Pipeline funds, Holmes and Peace Street foreclosures, Pilot Agreement at the Airport, recovery of workers' compensation liens, tax lien sales, and brownfields and environmental work. The Board of Education hires its own legal counsel which is funded through the Board's budget. In addition, Bond Counsel is not paid through the Town Attorney's budget and Human Resources has its own budget for collective bargaining.

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- In Attorney Buturla's opinion, the volume of files currently in the Town Attorney's Office could not be handled in-house unless the Town funded a large legal staff, including several attorneys, paralegals, secretaries, etc. In addition to a salary, most of these employees would also be entitled to a pension, vacation, sick time and health benefits. And the Town Attorney would still have to send a lot of files to outside counsel because in-house you wouldn't get the breadth of resources and experience the Town Attorney's Office currently draws on, i.e., the services of Berchem, Moses and Devlin, or in the past, Zeldes, Needle and Cooper, all at the hourly rate of \$150.

[After his presentation, Attorney Buturla left to attend another meeting.]

- The CRC discussed the Town Attorney's Office. Mr. Fahan would like the Town Council to be able to either approve or disapprove the Mayor's nomination for Town Attorney. Mr. Proto would like to see a disapproval process. In his opinion, the Town Attorney is different from a Director because he also has a working relationship with the Town Council. Mr. Fredette would also agree with a disapproval process.

- Mr. Proto presented his proposed revisions to Section 3, Legal Department. He added the requirement that the Town Attorney must be a member of the Connecticut Bar for a period of not less than five years. He also added language to Section 3.1.3 which he took from the East Hartford Charter.

[CRC recessed at 8:23 p.m. and reconvened at 8:40 p.m.]

- The CRC discussed Mr. Proto's proposed revisions. The first sentence of Section 3.1.1, Subsection (b), states that "*The Town Attorney shall serve at the pleasure of the Mayor....*" Mr. Booth suggested changing this to the Town Attorney is an "at will" employee. Attorney LeClerc pointed out that the Town Attorney is not a Town "employee." However, the words "*at the pleasure of the Mayor*" could be deleted from that sentence.

- Mr. Proto had proposed a new Section 3.1.5, as follows: "*Settlements. Any settlement of any matter which involves the payment of funds in excess of \$XXX shall be approved by a majority vote of the Town Council.*" Mr. Booth was opposed to stating an actual monetary figure in the Charter. He felt this should be left to the discretion of the Council. Mr. Proto advised that during the recess, he was informed there is already an Ordinance in the Town Code giving the Town Attorney authority to settle matters up to \$2,500 without Council approval.

- It was pointed out that in Subsection (a) the words "appointment" and "appoint" should be changed to "***nomination***" and "***nominate.***" Also in that section, per Mr. Proto, the end of the last sentence should be changed as follows: "*.....nominate a Town Attorney, subject to the disapproval provisions of this Section.*"

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- Mr. August pointed out that other Charters have as prerequisites that the Town Attorney be an elector and/or resident of the municipality during the period of appointment. Also, in other Charters the Council is not involved in the removal of a Town Attorney and only a few are involved in the appointment process. He is not in favor of giving the Council the authority to remove the Town Attorney. Mr. Fahan thought giving the Council the power to remove may be opening up the door to politics.

- Mr. Proto asked for the CRC's thoughts on the language he had added to Section 3.1.3. regarding written legal opinions, as follows: *"The Town Attorney shall, upon request of the Mayor, Town Council, Department Head, Chief Administrative Officer, or Chairman of any Board, Commission, Committee, or Agency, furnish a written opinion on any question of law involving their respective powers or duties, or upon any course of action contemplated by the entity or office. In rendering said written opinion, the Town Attorney shall indicate whether the conclusion reached by the Town Attorney follows with substantial certainty from the applicable law or whether the opinion represents the Town Attorney's best judgment as to the applicable law and that there is some degree of uncertainty in determining what a court or other tribunal may ultimately decide."* Mr. Proto stated that he was trying to address issues raised by both the current and former Council Chairmen. Mr. Fahan thought this may be overlegislating. Mr. August pointed out that it is almost impossible to determine what a court or Judge will do. Also, the Council has the authority now to seek an outside legal opinion if it disagrees with the Town Attorney. However, as the chief legal advisor, the Town Attorney's opinion is final. The real issue is whether the Council or other boards and commissions are opening themselves up to personal liability if they go against the Town Attorney's advice.

- Mr. Proto moved to approve his proposed revisions to Section 3 as amended by the above suggestions. Acting Chairman Fredette asked that the CRC members vote on each subsection separately.

- MR. PROTO MOVED TO REVISE SECTION 3.1.1., SUBSECTIONS (a) and (b), AS FOLLOWS:

"(a) THE MAYOR SHALL, WITHIN THIRTY DAYS OF TAKING OFFICE, NOMINATE A TOWN ATTORNEY WHO SHALL BE ADMITTED TO PRACTICE LAW IN THE STATE OF CONNECTICUT FOR A PERIOD OF NOT LESS THAN FIVE (5) YEARS.

THE MAYOR SHALL, WITHIN TWO (2) BUSINESS DAYS OF MAKING THE NOMINATION, NOTIFY THE TOWN CLERK, THE COUNCIL CHAIRMAN, AND THE COUNCIL CLERK, IN WRITING, OF SAID NOMINATION. NOT LATER THAN THIRTY (30) DAYS FOLLOWING RECEIPT OF THE NOTICE OF NOMINATION BY THE COUNCIL CHAIRMAN, THE TOWN COUNCIL MAY, BY AN AFFIRMATIVE VOTE OF

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TWO-THIRDS OF THE ENTIRE MEMBERSHIP, VOTE TO REJECT THE NOMINATION. IN THE EVENT THE TOWN COUNCIL FAILS TO ACT, OR FAILS TO REJECT THE NOMINATION, THE NOMINATION SHALL BE DEEMED APPROVED. IN THE EVENT THE NOMINATION IS REJECTED, THE MAYOR MAY APPOINT AN ACTING TOWN ATTORNEY, BUT IN NO EVENT SHALL THE PERSON SERVE IN THE POSITION FOR A PERIOD OF TIME IN EXCESS OF NINETY (90) CALENDAR DAYS. THE MAYOR SHALL, WITHIN SAID NINETY (90) DAYS, FOLLOWING THE DISAPPROVAL BY THE TOWN COUNCIL OF THE APPOINTMENT, NOMINATE A TOWN ATTORNEY, SUBJECT TO THE DISAPPROVAL PROVISIONS OF THIS SECTION. SAID NOMINEE MAY BE THE SAME PERSON PREVIOUSLY SUBMITTED, BUT SAID PERSON SHALL NOT BE SUBMITTED FOR APPROVAL MORE THAN TWICE."

"(b) THE TOWN ATTORNEY MAY BE REMOVED BY THE MAYOR FOR ANY REASON AT ANY TIME. IF THE MAYOR SHALL REMOVE THE TOWN ATTORNEY, THE MAYOR SHALL, WITHIN TWENTY-FOUR HOURS OF REMOVING THE TOWN ATTORNEY, NOTIFY THE TOWN CLERK, THE COUNCIL CHAIRMAN AND THE COUNCIL CLERK OF SUCH REMOVAL AND SHALL ALSO NOTIFY THE TOWN CLERK, THE COUNCIL CHAIRMAN AND THE COUNCIL CLERK OF THE ATTORNEY WHO HAS BEEN NAMED AS ACTING TOWN ATTORNEY. THE MAYOR SHALL, WITHIN THIRTY (30) DAYS OF REMOVING THE TOWN ATTORNEY, NOMINATE A TOWN ATTORNEY, WHOSE NOMINATION SHALL BE SUBJECT TO THE PROVISIONS OF SUBSECTION (a) OF THIS SECTION."

- MR. FAHAN SECONDED MR. PROTO'S MOTION AND THE REVISIONS TO SUBSECTIONS (a) and (b) WERE APPROVED 8-0 (with Chairman Florek not voting).

- Mr. Proto's proposed Subsection (c), allowing for removal of the Town Attorney by a vote of eight members of the Council, is deleted from the revisions.

- MR. PROTO MOVED TO REVISE SECTION 3.1.2 AS FOLLOWS:

"THE TOWN ATTORNEY SHALL APPOINT ASSISTANT TOWN ATTORNEY(S) AS REQUIRED TO DEAL WITH THE WORKLOAD OF HIS OR HER OFFICE. ASSISTANTS TO THE TOWN ATTORNEY SHALL BE COMPENSATED IN A MANNER AND IN AN AMOUNT APPROVED BY THE TOWN COUNCIL."

- MS. RODIA SECONDED AND THE REVISION TO SECTION 3.1.2 WAS APPROVED 8-0 (with Chairman Florek not voting).

- MR. PROTO MOVED TO REVISE SECTION 3.1.3 AS FOLLOWS:

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“THE TOWN ATTORNEY SHALL BE THE CHIEF LEGAL ADVISOR OF ALL OFFICES, DEPARTMENTS AND AGENCIES AND OF ALL OFFICERS AND EMPLOYEES IN MATTERS RELATING TO THEIR OFFICIAL POWERS AND DUTIES. THE TOWN ATTORNEY SHALL REPRESENT THE TOWN IN ALL LEGAL PROCEEDINGS. THE TOWN ATTORNEY SHALL PERFORM ALL SERVICES INCIDENT TO HIS OR HER POSITION AS MAY BE REQUIRED BY THE GENERAL STATUTES, BY THIS CHARTER OR BY ORDINANCE.” (The new language proposed by Mr. Proto regarding legal opinions is deleted from the revision.)

- MS. RODIA SECONDED AND THE REVISION TO SECTION 3.1.3 WAS APPROVED 8-0 (with Chairman Florek not voting).

- There were no changes to Section 3.1.4. and proposed Section 3.1.5 is deleted from the revision.

- Acting Chairman Fredette now turned the meeting over to Chairman Florek.

3. REPORT FROM/QUESTIONS TO TOWN ATTORNEY

- The CRC reviewed its prior changes.

For consistency of language, MR. PROTO MOVED, SECONDED BY MR. FAHAN, TO AMEND THEIR PREVIOUS REVISION TO SECTION 1.2 AS FOLLOWS: *“NOTHING IN THIS PROVISION SHALL PROHIBIT THE MAYOR FROM POSSESSING AN OWNERSHIP INTEREST IN ANY BUSINESS ENTITY AND FROM EXERCISING THE RIGHTS AND DUTIES INHERENT THEREWITH, EXCEPT THAT THE MAYOR SHALL NOT ENGAGE IN THE DAY-TO-DAY OPERATIONS OF SUCH BUSINESS ENTITY.”* MOTION CARRIED 8-0 (with Mr. Booth absent).

In response to Chairman Florek’s previous question as to who does the hiring under the current Charter, Attorney LeClerc advised that this falls under the powers of the Mayor. However, the Mayor delegates this power to various Department Heads and personnel.

- Mr. Proto presented the Technical Changes. A number of sections of the current Charter are obsolete due to changes in the state statutes over the years. Other sections were not well-written and had long, run-on sentences. The words “orders” and “votes” were found throughout the Charter and were deleted as their meaning is unclear. Anytime there was a specific statutory reference, some of which have since been amended, they were replaced with the phrase *“as may be amended from time to time.”* The Charter sections dealing with Sewerage Districts were rewritten to provide for the Water Pollution Control Authority and the current statutes. One substantive change was in Section 2.1.3. He is suggesting changing written notice of a special

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Council meeting to 24 hours instead of 48 hours in order to comply with the FOIA. Also, Attorney LeClerc still needs to check on the current Election District deviations in Section 7.1.5. Mr. Proto pointed out all the Town Attorney notes appearing throughout the Charter.

- Mr. August questioned whether the CRC was going to recommend changes to allow for the appointment of Alternates to the Board of Assessment Appeals? However, per the Connecticut General Statutes, the Town Council has the power to appoint Alternates. Chairman Florek thought that this issue should be addressed through the Council rather than by a Charter amendment.

- One section that troubled Mr. Proto is Section 6.5.2 dealing with Contracts for Public Work or Improvement. The Charter does not define any type of structure or building, i.e., the new Firehouse, as a Public Work or Improvement. Yet, only Public Works or Improvements in excess of \$7,500 have to be bid. For next week, Chairman Florek asked Attorney LeClerc for an opinion as to whether the current Charter language in Sections 6.4, et. seq., mandates competitive bidding and awarding the contract to the lowest responsible bidder when constructing a building or any project other than a public road or sewage system?

- MR. PROTO MOVED TO APPROVE THE TECHNICAL CHANGES. MR. FREDETTE SECONDED AND THE MOTION CARRIED 8-0 (with Mr. Booth absent).

- MR. FAHAN MOVED TO STRIKE AGENDA ITEM 4.2.i (An Unreserved Fund Balance Ordinance was passed by the Town Council in 2005.) MR. PROTO SECONDED AND THE MOTION TO STRIKE CARRIED 8-0 (with Mr. Booth absent).

- MR. FREDETTE MOVED TO STRIKE AGENDA ITEM 4.2.k (Because of time constraints the CRC won't be able to review P&Z.) MR. PROTO SECONDED AND THE MOTION TO STRIKE CARRIED 8-0 (with Mr. Booth absent).

- MR. PROTO MOVED TO STRIKE AGENDA ITEM 4.2.n (Budget Referendum). MS. McMELLON SECONDED AND THE MOTION TO STRIKE CARRIED 7-0 (with Mr. Fredette opposed and Mr. Booth absent).

- MR. FREDETTE MOVED TO STRIKE AGENDA ITEM 4.2.w (Police Commission). MR. FAHAN SECONDED AND THE MOTION TO STRIKE CARRIED 8-0 (with Mr. Booth absent).

- MR. PROTO MOVED TO STRIKE AGENDA ITEM 4.2.z. MR. AUGUST SECONDED. Mr. Fredette and Mr. Booth requested that Term Limits be left on the agenda and the MOTION TO STRIKE WAS WITHDRAWN.

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- MR. PROTO MOVED TO STRIKE AGENDA ITEM 4.2.t. MR. FREDETTE SECONDED. Ms. Rodia requested that Residency Requirement be left on the agenda and the MOTION TO STRIKE WAS WITHDRAWN.

- Mr. Proto asked if the CRC wanted to add a Charter provision requiring a standing charter revision commission? Chairman Florek stated that the Council can appoint a charter revision commission when necessary. He didn't like the idea of the Charter being continually opened and changed.

- MR. FREDETTE MOVED, SECONDED BY MR. ORLOWE, TO PUT ITEMS 4.1 AND 4.2 BACK ON THE TABLE IN THEIR ENTIRETY. MOTION CARRIED 8-0 (with Mr. Booth absent).

5. NEW BUSINESS - none.

6. ADJOURNMENT

- ON MOTION BY MR. FREDETTE AND SECONDED BY MR. ORLOWE, THE MEETING ADJOURNED AT 11:06 P.M. MOTION CARRIED 8-0 (with Mr. Booth absent).

Respectfully submitted,

Gail J. Nobili, Secretary