

**SPECIAL MEETING
BOARD OF MAYOR AND ALDERMEN
(Called by the Mayor)**

June 23, 1997

**5:30 PM
Memorial High Gymnasium
One Crusader Way**

Mayor Wieczorek called the meeting to order.

Mayor Wieczorek called for the Pledge of Allegiance; this function led by Alderman Shea.

A moment of silent prayer was observed.

The Clerk called the roll. There were twelve aldermen present.

Present: Aldermen Wihby, Elise, Reiniger, Sysyn, Clancy, Soucy, Shea,
Domaingue, Pariseau, Cashin, Robert, Hirschmann

Mayor Wieczorek advised that the purpose of the special meeting was to review the new City Charter which becomes effective on July 1, 1997. Mayor Wieczorek requested Brad Cook, who was one of the Charter Commissioners, to make a presentation, noting he would be followed by City Solicitor Tom Clark.

Handouts had been provided to the aldermen and the public.

Mr. Cook addressed the Board stating there were several other members of the Charter Commission present. As you know the Charter Commission went out of business upon completion of its work last fall. I'm not here to advocate the Charter, or to debate the Charter, but to describe the Charter, and on the presumption that all of you are able to read as well as I, and I have already read this (handout), I am going to hit the high points.

Mr. Cook stated basically the new charter retains an awful lot of the terminology and structure of the old charter and therefore some of the changes in it and responsibilities and roles in it that have changed have changed within a context that is familiar. For example, we debated whether the Board of Mayor and Aldermen should be called the City Council, or the Board of Mayor and Aldermen and we retained what was familiar to the City. What I have tried to do is highlight the changes of note, and they are not all in here. But just following along on the first page, and this handout goes by topic not by section on the presumption that everyone can get a copy of the charter and read it cover to cover which I would encourage people to do before July 1.

Administrative functions are designed to be in the line administration starting with the mayor and going down through department heads. The mayor is the chief officer of the city and the charter says that the mayor has the power to supervise the administrative affairs of the city and "perform other duties as are consistent with those of a chief executive." He is suppose to have line authority over department heads all of whom he appoints, subject to the confirmation power of the Board of Aldermen. The department heads in turn have administrative and personnel

responsibility to run their departments without administrative interference from commissions or boards in those departments that have commissions and boards, and we will get to that. The difference here I think is that there is straight administrative responsibility and authority and accountability, and if you look at the sections on commissions and boards they are not as I said allowed to interfere with administrative functions. The mayor retains a two year term as do all elected officials under the charter. The mayor has other functions because this is not a corporation, this is a government. He's elected as are all elected officers on a non-partisan as opposed to non-political basis. And there is an increase in the base salary for the mayor, the aldermen allowed to raise it. He presides at the Board of Mayor and Aldermen meetings as is present, and has power to break a tie. He is charged with keeping aldermen informed on the condition of the city, enforce the charter and ordinances, he is the prime enforcer of the charter. The charter gives responsibility to all city officials to enforce the charter however. He establishes a budget format and procedures for adoption, reviews the requests, and has general powers. He has veto over aldermanic actions and that can be overridden by two-thirds of all of the aldermen elected. He has a line item veto over the budget - that's new. He appoints all department heads and/or commissioners unless there is specific reference either in statute or the charter that somebody else has appointing power, in which case somebody else has appointing power. He chairs the Board of School Committee and it was the intent I think of the Commission that he chair the School Committee and not just be called chairman. Obviously a mayor will have discretion on whether or not he wants to do that. The first mayor under the charter is required to submit ordinances that define the powers of the departments, flesh out the charter in other words, within nine months which means by next March 31st. He is designed to be the chief executive. We've tried to make line responsibility and accountability commensurate with the increased authority, it's a two way street.

Mr. Cook continued stating that the Board of Aldermen retain all of their legislative powers, as is appropriate in a government. The charter calls for fourteen aldermen, as you know there will be a vote in September on whether it will be fourteen with two at large or whether it will be twelve. There are majority number provisions in the charter, which presume the fourteen, but there is a transition provision which says for as long as the number of aldermen is twelve there are alternate numbers. Those primarily have to do with supermajorities that are called for in certain circumstances. As this says certain powers are enhanced with super majority for example calling a special meeting, confirming department heads, removing department heads, reorganizing or eliminating departments, removing appointed officers, removing members of boards and commissions, and other matters. In those matters in which a super majority is required, the offset that the charter commission attempted to put into the charter was along with the mayor's administrative power, the requirement that a consensus be reached on certain actions so that more than just a mere majority could accomplish certain things, and the effect of that you will note is that a tie doesn't make it and therefore the mayor's authority to break a tie also doesn't do it. There are certain officers, all officers of the city, other than the mayor who is elected and the welfare commissioner who is elected, are appointed or elected as it says in the statute, and those officers as defined by the charter are the Clerk, the three Assessors, and the Finance Officer. That is for the selection of the Board of Mayor and Aldermen. It remains the

policy body of the city, has ultimate policy authority, and has succeeded to much of the authority of the boards and commissions under the charter as it has ultimate policy decision making power for all of the departments. Aldermen no longer have any administrative authority if they had some and there is a non-interference provision which we will talk about in a minute requiring the Board to act as a body. The aldermen pass the budget and as some of you know from prior debates if they fail to pass a budget the mayor's budget becomes the budget of the city. The design of the aldermanic board is that the board set policy, supervise policy, and be the board of directors. And it has increased and decreased powers depending upon the specific provision.

Mr. Cook continued noting Commissions, there had been a lot of debate and discussion about commissions, a lot of commissioners are here. Mr. Cook stated that commissions are retained, and let me make one comment about departments and commissions, we did not as a charter commission try to reorganize the organizational chart of the city. We eliminated no departments. We combined no departments. We eliminated no commissions. All of the commissions and departments which existed prior to the charter will exist after the charter but their powers have changed in the commissions case. The commissions have power to "consult, advise and make policy recommendations to department heads and the Board of Mayor and Aldermen." Now certain boards and commissions because of statute and because of function have additional powers. And to the extent they have them under statute or under this charter they have them, but if it's just a departmental commission it is a policy body to consult, advise and make policy recommendations. The charter provides that the commissions have no administrative or personnel powers. However, the mayor may request a commission to act as the nominating committee for the selection of a department head if the mayor so desires, he does not have to. As I said all the present boards and commissions remain. There are limitations on membership. All commissioners cannot come from the same ward. They can't come from the same party and there are other limiting provisions. Commissioners have term limitations, they have three year terms under this charter and they are limited to two terms. The mayor nominates all commissioners. There is an interesting new provision 3.14(g), unique I think here in all of New Hampshire government, that says if there is a holdover, if the mayor doesn't reappoint a holdover within ninety days, the position is vacant. So a holdover loses his or her position if not renominated within ninety days the mayor is required to make a nomination, when a commission seat comes open within ninety days or that power is then automatically seeded to the aldermen who can fill the position.

Mr. Cook continued referring to Schools, stating the provisions governing schools haven't changed. There was an initial draft of the charter that received some comment, and the present school provision is the same as the new charter.

Mr. Cook referred to elections stating the election laws have changed to make them consistent with the non-partisan nature of the elections under this system. There are also political campaign contribution and expenditure report requirements and there is a job forfeiture provisions that says if an employee of the city or the school district runs for an elective office under the charter and is elected and accepts the office, they lose the job.

Mr. Cook referred to budgets and appropriations stating as you know it is a rather complicated area, the budget schedule has been changed slightly. The fiscal year remains the same. The mayor formulates the budget and reviews the provisions and makes the proposal and I am sure that will be subject of a lot of specific instruction next year at budget time.

Mr. Cook then referred to standards of conduct stating there was great debate in the Charter Commission over a so-called ethics code. What we came up with was a provision on standards of conduct in article IX, which is designed to promote "honest government, ethical conduct, the avoidance of conflicts of interest..." It covers the elected officials who are named in here, mayor, aldermen, school committee members and commissioner of welfare, under all of its provisions. It also pertains to appointed officials on certain other provisions. It prohibits certain things like undisclosed contracts and purchases with and from officials and their families or the businesses of their families as defined. It's not everybody you were ever related to but it defines what a family is. Participation in the appointment/employment of a family member. Disclosure of confidential information. Acceptance of a gift or a thing or value which is offered to effect the vote or action of an official or the solicitation of any such thing, and participation in the decision making process in any matter in which the official or a member of the family has a direct interest, which means an interest greater than the average person has, and other improper conduct. It requires financial disclosure by the covered officials on forms that are to be promulgated by the City Clerk's office within ninety days. And it has the non-interference clause we talked about before which reads as follows "The Board of Mayor and Aldermen, the various boards and commissions and the Board of School Committee shall act in all matters as a body, and shall not seek individually to influence the official acts of any city official, or to direct or request, except in writing, the appointment or removal or of any person to or from office; or to interfere in any way with the performance by such officers of their duties. This provision shall not prohibit assistance to constituents in their dealings with city officials if direct requests to the appropriate administrative officials have been unsuccessful, advocacy of particular outcomes on matters pending before the city when the matters are of a general nature, or submission of recommendations or references on behalf of a candidate for city employment which are not inconsistent with this code." The intent of this section is that the boards and commissions act in a policy way. For the Board of Mayor and Aldermen and the School Committee it is recognized that sometimes people get stuck in the process and when they get stuck in the process having approached the process first and failed, the city elected official is allowed to get involved in it. The charter calls for a five person conduct board to be appointed. The City Solicitor is one member, it calls for a former member of the Board of Mayor and

Aldermen to be a member, on the theory that they have actually been there and lived that experience and could be helpful in explaining how the real world works, and that board is given the authority to deal with cases sent to it, complaints made about it, to interpret the charter and to make recommendations to the Board of Mayor and Aldermen for action. It has no independent authority to act. And I think that will be an interesting body. As I said at the outset and after Tom speaks, I think your honor we are going to take questions, but this is not a complete recitation of everything in the charter. We've tried to set up the system with a rationale administrative structure. A policy structure and then to allow it to work. How it's going to work and how it's going to play out obviously will be the subject of the statutes and ordinances passed under it, and activity under it as well and I would encourage everyone who is going to deal with this charter to take a few minutes and two weeks from tomorrow and read it cover to cover.

Mayor Wiczorek asked Solicitor Clark to make a presentation.

Solicitor Clark stated at the last meeting of the Board I provided the mayor and aldermen with copies of a letter outlining the legal changes in the charter that will take effect on July 1st. Just to highlight some of those changes, it has been pointed out that the mayor will now appoint department heads. Department heads who are presently serving for a term, will continue to serve out that term, and they are not subject to any open market advertisement for the job to continue in after they have served out their term they will continue their term. To remove a department head the mayor will now have to give a written reason. The department head will be entitled to a public hearing before the aldermen and it will take a confirmation of eight votes of the aldermen at this point. In the event that the number of aldermen changes to fourteen, to remove a department head will now take nine votes. Under section 3.02 of the charter the mayor now has nine months to develop an administrative code. This code will be a series of ordinances which will outline the duties and responsibilities of each department. When someone is nominated for a position as a department head under 3.03, the Board of Mayor and Aldermen is authorized to set up a procedure for that selection. They now will be able to require advertising for qualified individuals, and that should be done through the enactment of an ordinance, which this Board will now have the power to do. Department heads will now have exclusive personnel authority within their departments subject to their collective bargaining agreements. There has been some discussion about the authority of the commissions and the boards of various departments. My reading of the new charter states that for the most part all commissions and boards are now policy makers and advisory only. There will be numerous exceptions to that. Those that come to mind immediately are the Water Works who have a general statute defining water utilities; the Trustees of Cemeteries who are also the Parks/Recreation Commission who have various duties under contracts that they have had over the years. The Airport Authority may retain some authority based upon the various grants that have been entered into between the City and the federal government, and other statutes. It is anticipated that questions will come up quite frequently over the course of time asking what authority a commission may have and each question is going to have to be researched based

upon the facts of that particular instance. Membership on commissions is now limited to two terms, however, the new charter does not state whether prior service before the effective date of this charter counts on that limitation. I believe the mayor is going to make a decision as to how he will interpret that, since it will be his nomination. The elections will now be non-partisan, our office has developed an election calendar in conjunction with the city clerk. The mayor's budget must now be submitted to the aldermen by March 31st. That is the budget that will be sent to public hearing every year. Amendments may be made at any time after that, and the Board is authorized to hold a second public hearing if it so desires, it is not required. If the Board does not adopt the budget by the second Tuesday in June then the mayor's budget as originally submitted becomes the budget of the City. The mayor is given a line item veto authority in the budget process and the aldermen have until the end of June of each year to override any line item veto. The charter itself does not require the budget to be in any particular format, it gives that to the mayor and to the aldermen. The extent of the line item veto will depend on how you adopt your budget, how many line items you put in each department. In the School Board's the bottom line is the line item. This charter now requires the aldermen to place the question of charter revision on the ballot every ten years, so that you may be seeing this process every ten years. I did provide copies of my letter to the mayor for the audience and if the aldermen have any questions on the implementation we will be happy to address them.

Mayor Wiczorek stated as the Solicitor mentioned the Charter Commission did not really clearly state whether the terms that your currently serving will count toward the terms that you have or you start fresh on July 1. I took a look at all of the commissioners and commissions that we have in the city and in a lot of cases it would appear as though we would really decimate those commissions if we did that, so I have decided that we would start to recognize the service starting, commencing with July 1, which I think will make it a little bit easier.

Alderman Wihby asked so July 1st is the first day of all the commissioners. Mayor Wiczorek responded some of them yes, but I mean they will be finishing out their terms but you would really start counting. Somebody could have let's say one year to serve, and they get appointed to another term they will have four years, that wouldn't count as two consecutive terms because it has to be at least two threes.

Alderman Wihby stated let's say somebody was on ten years already, July 1st it starts with the first year, so you could reappoint them if you wanted to. Mayor Wiczorek advised they could be reappointed two times, absolutely.

Alderman Wihby stated he had two questions, one was on the filing period on the nominations, the nominating petitions, it just says that we could bring in petitions it doesn't say if it's from the ward, or from the city.

Solicitor Clark stated that that provision to my knowledge is exactly the same as in the prior charter and will be interpreted the same way, and I believe it'll be from the ward.

Alderman Wihby asked on the budget, stating the mayor presents his budget, and normally by the time you present your budget the numbers change, so the first budget you give us is that the only budget we can get from you, or is it going to change every week cause you are going to give us a new budget every week or what happens.

Mayor Wieczorek responded that he did not think that was a very good provision to be honest with you because as I stated publicly in the past, when the mayor prepares his budget I'm preparing it with the numbers that are available to me. I mean I didn't know what we were going to get for state income, what the state was going to do, what the retirement board was going to charge, what the health insurance premiums are going to be, what the county tax is going to be I have all of these unknowns when I am preparing the budget. So all I can do is try to guess and that was the reason you say you look at the mayor's budget it's going up 3.3 and now its down but spending is up, and it's because we have additional revenues. I think as we look at this the mayor will have a line item veto authority over any of the line items, I think adjustments will be made as we move along, but in my estimation I would be very hard pressed to support the budget that is going to be submitted on March 31st because too many numbers would change, and I think it will be up to the mayor and the Board to try to work these things out so that we don't have a situation where that budget would become the budget.

Alderman Wihby stated my concern is that you give us a budget early on, then the aldermen want something in it, you are threatening to veto it, and the aldermen decide well we are going to go back to your budget, in the meantime numbers have changed and we all agree that those numbers have changed, are you going to be bringing us a second budget and the second budget is not the original budget or does it go back to that first one you gave us and that has to be adopted.

Mayor Wieczorek stated his understanding was it would go back to the very first one that has been adopted, and that is why I said if we were to go back to the budget that I presented the budget that is being acted on tonight, finalized tonight, the spending is \$2 million higher than my budget, but the allocation of the monies is what differs, and that's because there are a lot of things that I didn't have when I prepared the budge, and I don't see anything that is going to be changing, I don't know that we are going to get any of those numbers any quicker than we currently get them. I think regarding the state we will always have to wait until the legislature takes its final action to determine what it is we are going to get. We have to wait until the county delegation takes its final action before we know what the county tax is going to be and we can't get any numbers from the health insurance numbers from the retirement funds, these were all very soft numbers. These are things we would continue to have to work with.

Alderman Pariseau referred to the first page of the solicitor's letter dealing with Section 3.02(b) stating that the first mayor holding office under this charter, asking why isn't that changed to read January, instead of having the current mayor, he may not be here in November, or is here,

but gone in January, and then the new mayor would only have the three months to get this item submitted to the Board. Alderman Pariseau stated he did not think it was fair for the mayor that comes in in January. He stated that if we anticipate that the incumbent is going to win re-election if he seeks the office, then I don't have a problem with it.

Solicitor Clark responded that that was the way the language of the new charter reads. It says the first mayor who is holding office when the charter becomes effective, and that is July 1st, and that starts the clock ticking and he has nine months to prepare the code.

Alderman Pariseau stated relative to section 3.11 and 3.14, dealing with the commissions, dealing with not having anything to do with personnel responsibility, the current process of having say the Police Chief nominate patrol officers, the commissioners will not be able to confirm those appointments. Is that what that means.

Solicitor Clark responded it means that the department heads will now be responsible for hiring personnel, correct.

Alderman Pariseau asked would those nominees be submitted to the Board of Aldermen, or just left up to the department head.

Solicitor Clark responded it is my understanding that it would be left up to the department head.

Alderman Pariseau stated relative to the ninety days of expiration of the term, then the Board of Aldermen are entitled to nominate and confirm upon the vote of eight -- how about employees in a holdover situation.

Solicitor Clark responded that provision only applies to commissioners.

Alderman Pariseau stated there is nothing in the charter that, and I speak specifically of the Personnel Director.

Solicitor Clark responded no, department heads would not be affected by that. If you are in a holdover status, as a department head, you continue in that holdover status.

Alderman Pariseau referred to the item dealing with the supplemental appropriations asking are we dealing with specific departments or is that city overall, relative to the mayor seeking verification of the finance officer about an increase in revenues. Say the Building Commissioner came in and requested an additional \$50,000, if his revenues have increased that amount, is that what they were talking about, or were we talking city wide.

It was noted that the budget items referred to were in 6.01 to 6.14.

Solicitor Clark responded my interpretation is that you would be talking city wide, you wouldn't be talking individual departments.

Mayor Wiczorek noted that this was another departure because currently under the current charter you have 90 days to open a budget at the beginning of the fiscal year, that's now gone by the boards, you are not going to be able to do that. The only time you are going to be able to re-open a budget is if the finance officer tells you you have supplementary funds and you want to do something about allocating those. Mayor Wiczorek noted that Brad or Tom could give a legal opinion on what the charter commission was intending to do.

Mr. Cook stated it was designed to give more flexibility than there is now, I think reading the actual provision which is 6.05(a) might help. "Supplemental appropriations. If during the fiscal year the mayor certifies after consultation with and verification by the finance officer that there are available for appropriation revenues in excess of those estimated in the budget, the board of

mayor and aldermen may make supplemental appropriations for the year up to the amount of such excess, after observing the budget procedures set forth in Section 6.04 of this charter.” So there are a number of safeguards in that paragraph.

Alderman Pariseau stated section 8.14, currently the Board of Mayor and Aldermen allows public comment at the first meeting of each month. Is this saying that they have to have one at every meeting of the Board plus committee meetings.

Solicitor Clark responded no it does not. It just says that each board or commission has to provide for a public comment period, it doesn't mean you have to do it at every meeting.

Mayor Wiczorek noted for example the School Board does it now, and the Airport Authority has a period and maybe there are some others that do but this was saying that every commission will now permit the same thing.

Alderman Pariseau asked if he could be given an example of section 8.15 dealing with charter enforcement provision, stating he did not understand that.

Solicitor Clark responded my reading is that if the aldermen or the mayor believe that the charter is not being followed, they now do a review of what they believe the violation might be. If the mayor's review can't solve it then he will refer it to the city solicitor's office for review and report back to the aldermen within 90 days. And then the aldermen based upon that report would take action to see that if there was a violation that things would change so it didn't happen in the future. That's as far as this provision goes. It doesn't provide any other penalties.

Alderman Pariseau stated under section 9.01 to 9.04 the third paragraph, the non-interference provision, could they give an example or explain that paragraph.

Solicitor Clark stated basically that says that the Board of Mayor and Aldermen or the School Board or a commission or another board when acting should act as a body at a meeting. That they don't call up a department individually and recommend to hire somebody. If you wanted them to hire somebody or wanted them to consider someone for a job you would send it in writing. It does not prevent you from calling a department if a constituent calls you and says I have been trying to get this work done for a month and no one will answer my call - you can call the department head. It's going to take some practical work.

Mr. Cook stated your question I believe alderman was can we give you an example. Mr. Cook stated I think the distinction can be made and I will make one up but I think the distinction can be made if a School Board member wanted to know how the teachers of English were doing in a couple of schools the School Board member would be well within his or her rights to solicit information, try to gather information figure out how the teachers of English were doing. If the School Board member wanted to go in to x school in his or her ward or elsewhere and say this is who should be teaching English or this is what room they should teach English in, they wouldn't be able to.

Alderman Domaingue stated her questions were basically for the City Solicitor. Alderman Domaingue stated the first one was relative to Section 3.11 to 3.14 found on page two of your letter to us. As I was reviewing commission meeting minutes this past weekend, I found that the commissioners and the department heads sometimes go into executive session, with an employee with reference to a grievance, and I am wondering what bearing this wording of the section will have on the grievance policy will the employee in the department then take the

grievance before the Board of Mayor and Aldermen since it would appear that the commissions by wording shall have no responsibility for personnel decisions.

Solicitor Clark stated that grievance procedures are spelled out in the collective bargaining agreements. To the extent that those agreements still say that the commission shall be the grievance board, then they will continue as that until the collective bargaining agreement is amended in the future or a new one is drafted. I don't envision a situation where a grievance would come before the Board of Mayor and Aldermen, no.

Alderman Domaingue asked if he was saying that the collective bargaining agreements will need to be tailored to the wording of the charter on this issue.

Solicitor Clark responded yes, in the future if they wanted to have them read so the commissions don't have the personnel authority on grievances they will have to be tailored in the future, and I believe that has already started.

Alderman Domaingue stated at what body will the grievance be brought.

Solicitor Clark responded there are a number of ways of doing it. The Board of Mayor and Aldermen could determine that they want the commissions to still do it, or the department head could do it, it doesn't have to be a board. Some departments now that do not have commissions or boards handle it without that procedure.

Alderman Domaingue stated on page 4 of the handout she referred to the non-interference provisions and ask you if you can clarify if an alderman appears as several of us have done in the past before the Planning Board, or before the ZBA, or any other board on items of interest to constituents in our area, would that be seen as an interference in the process

Solicitor Clark responded in my opinion no.

Alderman Domaingue asked is it possible that it could be argued legally by the losing side that it was in fact an interference.

Solicitor Clark responded he did not believe successfully, no. The charter does give you the right to represent your constituents.

Alderman Soucy stated in relation to that last question relative to presenting yourself before the Planning Board or Zoning Board on behalf of your constituents, considering the new code of conduct provision what if the action that the board is entertaining that evening happens to involve you home or your own neighborhood. Would you then be in violation of the present charter if you went to speak out on behalf of your own neighborhood and your neighbors

Solicitor Clark responded no.

Mr. Cook concurred stating certainly not.

There being no further questions from members of the Board, Mayor Wiczorek asked if there were any commissioners or elected officials that had questions.

Gene Boisvert, Chairman of the MTA Commission referred to page 7 of the charter, Section 3.02 departments existing at adoption, noting that the MTA was not listed and questioned why.

Solicitor Clark stated that the Transit Authority is not a department of the city, they are a separate municipal corporation with their own authority.

Ira Roy, Elderly Services Commissioner, addressed the Board stating my question is why aren't we listed as commissioners on here.

Mayor Wiczorek stated that they were listed with the commissions.

Mr. Roy responded not with the whole list of commissioners.

Solicitor Clark responded it appeared that the charter commission may have had an oversight but you are a commission in existence at the time of this charter.

Mayor Wiczorek stated that as time went along he anticipated there would be some problems that would have to be resolved and I don't think that I would request that the City Solicitor make just a casual comment regarding a question that somebody has. As we go along I think there are going to be interpretations that are going to come up and he is going to have adequate time to address some of these things, because if this goes without a problem it will be about the very first thing I've seen go without a problem. So I think as we go along the City Solicitor's office is going to be fairly busy.

There being no further questions, no further business could be presented without unanimous consent, on motion of Alderman Pariseau, duly seconded by Alderman Wihby, it was voted to adjourn.

A True Record. Attest.

City Clerk