



containing the actual Charter language organized by Charter Section.<sup>1</sup> These various documents are meant to be a guide through substantive and editorial modifications proposed by issue and/or Charter section.

## **Draft Report**

### **Issues 1-6 Substantive Modifications Recommended**

#### **Issue 1. Reservation of Rights and Alternative Remedies**

This was a non-controversial issue that had unanimous support from the Commission. It concerns the fact that several sections of the Charter<sup>2</sup> provide mechanisms for the Mayor, the Board of Aldermen or the City to enforce various rights. In many of these instances there may be more effective or practical alternatives under state or federal legislation, regulations or perhaps common law. The Commission recommended language in various sections<sup>3</sup> that clarifies the City's rights to pursue alternative or multiple options. The language in new §11G, Reservation of Rights, is representative of the intent of these modifications.

##### **Sec. 11G. Reservation of Rights (New)**

The City's right to exercise the powers enumerated in these Special Acts and Historical Charter Provisions, including but not limited to §11A-1, §11A-2, §11A-3, §11A-4, §11A-5, §11A-6, §11A-7, §11C-1, §11C-2, §11C-3, shall be in addition to or in the alternative to its right to exercise any and all powers conferred upon it by federal and state law, constitutions, statutes and regulations.

#### **Issue 2. Appointments to Boards**

This issue, one with which several Charter Revision Commissions have struggled in the past, arises out of the language in §4-2(b)(1) which restricts the normally unfettered right of the Mayor to make appointments to various Boards by requiring that he select "minority" positions from a list provided by the "minority" leader. This restriction, which is unique to Waterbury, is the result of a 1947 Special Act that itself applied only to Waterbury. There is no other municipality in the state that has a similar restriction. The Mayor or Chief Executive of the vast majority of municipalities has the right to make the appointments subject only to minority representation requirements and legislative body approval. In no other city does an opposition leader have a Charter mandated role in the selection of board or commission members.

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<sup>1</sup> It should be noted that in the "Proposed Charter Amendments" although the footnotes/endnotes are appropriately referenced, the numbering and lettering is different than in the actual Charter. When the Amended Provisions are placed back in the full Charter the footnotes/endnotes will appropriately renumbered.

<sup>2</sup> Specifically §1B-5, §3C-1, and several sections in Chapter 11 Special Act and Historical Provisions.

<sup>3</sup> See modifications in §1B-5, §§3C-1 and 11G. Reservation of Rights (New)

Because of the uniqueness of the language and the colorful political history of Waterbury this language has been fairly described by the 2004 Charter Revision Commission as “at best, an ambiguous process subject to interpretation and misunderstanding”. After six years and significant litigation, the situation has only become worse. The charter language, which had functioned only marginally and which was frequently the subject of dispute even in the two party system for which it was designed, became completely unworkable with the advent of a viable third party in the Waterbury political arena. Predictable litigation ensued and is ongoing. The only positive outcome of this morass is the virtually universal agreement that the current language unmodified cannot stand. As a result of recent court rulings, the City is mandated to proceed in certain ways that were never intended by the Charter. For example, under current court decisions, unaffiliated voters are essentially precluded from serving on Boards. Moreover, the process as currently mandated is simply unworkable in the event of a plurality on the City’s Board of Aldermen.

With this as background the Commission explored alternative language. There was some substantial, but not majority, support for adopting that which the rest of the state already employs, i.e. unrestricted Mayoral appointments, subject only to minority representation requirements and Board of Alderman approval. Without majority support for that approach but with the acknowledgment that the problematical language still had to be addressed, the Commission recommends the attached language. It is a compilation of several ideas that came from office holders, the general public and various commission members. It attempts to address the ambiguities that both gave rise to and arose out of litigation. The Commission is convinced that the proposed language would be workable regardless of the makeup of the Board of Alderman and that it significantly enhances the opportunities for unaffiliated electors to serve on Boards. It is intended to supersede both existing Charter language and court decisions. The new language creates unrestricted and restricted mayoral appointments to Boards and eliminates majority party and minority party nomenclature. It is somewhat less restrictive on mayoral discretion in that the Mayor will have a larger list of potential appointees from which to choose. It also provides for broader Aldermanic involvement.

### **Issue 3. Town Clerk and City Clerk No Longer Elected Positions**

There was strong support for making both the Town Clerk and City Clerk appointed rather than elected positions. There were three primary reasons for recommending this change.

The first consideration is the fact that a period longer than two years is generally necessary to completely learn the myriad aspects of the job. The state training to be certified as a Town Clerk is only offered to individuals who already work in that capacity and requires three plus years to complete. The City’s current Town Clerk testified that mastering all the complexities of the position takes at least that long. The position of City Clerk shares some of the same challenges, although there is no state training for the job. Several persons familiar with both offices testified at the hearing. They were uniform and unanimous in their opinion that a two-year revolving door cycle for holders of these offices was detrimental to

the efficient and effective functioning of the offices. They expressed the view that skilled, competent office holders should not be subject to removal solely on the basis of the popularity of the mayoral candidate on whose ticket they might run.

Secondly, in reiterating and reinforcing the widely held belief that these positions are not appropriate for the changing winds of political fortune, it was noted that it is not the function or responsibility of either position to establish policy or set political direction. Rather, by both State statute and City Charter, these offices are responsible for the legal recording of the actions of those who do set policy and for the preservation of necessary and important records.

Finally, it is believed that because of the nature of their duties, these positions should be as removed from political influences as is possible. The modifications recommended are intended to accomplish that objective.

There was some discussion about converting these offices into departments and the holders of such offices into department heads. The Commission concluded that a restructuring of that nature was more appropriately within the purview of the Board of Alderman. However, the Commission did recommend that the process for appointment and, in the case of the City Clerk, removal, would be the same as those used for Department Heads.<sup>4</sup> In addition, some language with regard to the Assistant, now “Deputy Town Clerk and “Deputy City Clerk” was modified for consistency and fairness.

#### **Issue 4. Residency Preference for All Classified Service Examinations**

The majority of the Commission voted to grant for all civil service examinations the same five-point preference for city residents that the Charter previously provided only for entry-level positions. Proponents argued that the poor economic environment, coupled with Waterbury’s high unemployment rate, warranted providing Waterbury citizens with that which effectively constitutes a significant, if not insurmountable, advantage for all examinations, including those positions of higher skill level and responsibility. Opponents expressed the view that such a substantial advantage in testing for residents is very likely to result in less qualified applicants being appointed to important positions over significantly more qualified applicants.

#### **Issue 5. Hydro Electric Power Production**

This issue resulted from court decisions that redefined the term “surplus water” used in the Historical Sections of the Charter in such a manner as to preclude the City’s ability to contract to develop electrical energy by water power from any water within the City’s municipal waterworks system. This was a situation that the Commission determined should be corrected. Because of a reluctance to alter any of the Special Act and Historical language a new §4-10 was added. §4-10 is specifically meant to supersede the existing language in

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<sup>4</sup> A Town Clerk may only be removed from office pursuant to Connecticut General Statutes §7-22.

§11A-2(b) and §11A-7, thus reestablishing the City's ability to enter into such an arrangement.

#### **Issue 6. Board of Education to Appoint Superintendent without Civil Service Screening**

This change eliminating the §8B-2(a) requirement that the Board of Education appoint the Superintendent of Schools through Civil Service procedures was raised upon request from the Board of Education and supported by the current School Administration. Proponents of the change articulated three specific reasons for the proposed modification. First, under Connecticut General Statutes §10-157 it is the responsibility of the Board of Education to select the Superintendent and inherent in that is the right to determine what the selection process should be. Second, this is the overwhelmingly prevalent practice not only in the state but also throughout the country. Finally, a number of talented candidates in the past have declined to apply because of the unusual requirement of going through a civil service process for this type of position.

#### **Issues 7. and 8. - Editorial Modifications Recommended**

##### **Issue 7. Clarify “Water Charges and Sewer Charges”**

The term “water rents” is replaced throughout the Charter with the more accurate and appropriate term “water charges and/or sewer charges”.

##### **Issue 8. Clarify Proper Job Titles**

This recommendation is to replace antiquated or no longer used job titles with the appropriate titles. The following job titles were changed throughout the Charter: “Superintendent of Police” to “Chief of Police”; “Chief Engineer” to “Fire Chief”; “Health Officer” to “Health Director”; “Director of Personnel” to “Director of Human Resources”. In addition the term “Personnel Department” was changed to “Department of Human Resources”.

#### **Issues Discussed but No Modifications Recommended**

##### **Issue 9. Provisions regarding Financial Write-offs**

The Commission initially received correspondence from the Mayor's office that some Charter language needed to be modified with respect to financial write-offs. The Commission was later informed that it was not an issue. No action taken.

##### **Issue 10. Qualifications for Alderman**

The Commission received correspondence stating that the Charter did not even

require that Aldermen be citizens. This was determined not to be correct and no action was taken.

### **Issue 11. Bonding Removed for Various Positions**

The City's Risk Manager requested that the Commission remove from the Charter the requirement to bond certain positions that were not required to be bonded by state law. He submitted such request because the current Charter provision prevented those positions from being covered under the City's insurance policies, which provided better protection for the City. The Commission initially voted to approve this change. When the insurance company later modified its position because our current Charter language was discretionary not mandatory, the Commission rescinded its initial vote. No modifications recommended.

### **Issue 12. §6C-3(f) Two-Year Restriction on Leasing for Board of Park Commissioners**

This was a concern brought forward by a Park Commissioner. It was determined through consultation with the Corporation Counsel's office that while that restriction did in fact apply to the Park Commission it did not restrict and has not restricted the City from entering into longer term leases and thus was not an issue that needed to be addressed. No action taken.

### **Issue 13. Four-Year Term for Mayor**

This item was brought before the Commission at the request of the Mayor's office. The argument in support of the proposal was that a mayor would be better able to focus on the tasks at hand and would be less influenced by political considerations in the decision making process if he or she did not have to be concerned with reelection every two years. The major concerns of those opposed arose out of the lack of recall provisions in state law, the difficulty, time and expense of removing an unsuitable elected official and Waterbury's own less than stellar history with respect to past Mayors. It did not receive majority support and was voted down.

### **Issue 14. Alderman by District**

Although the Commission recommends no modifications to the Charter with respect to this issue and although no proposal on this issue received more than two votes, the Commission spent more time listening, discussing, debating, researching, reading and thinking about this issue than all of the other issues combined. This issue, its fervent supporters and the diligent and conscientious efforts of this Committee warrant a more detailed analysis than the other items in this section.

Frequently in situations like this, when a group of people strongly support a position and the appropriate authority does not respond as the group would like, there are accusations of "They didn't listen" or "How could they not hear us." Such a conclusion is patently erroneous in this case. The Commission heard the message loudly and clearly. The difficulty

arises neither from what the Commission heard, nor from a blind adherence to current provisions governing elections, but from a legitimate, good faith disagreement about a solution to the expressed concerns.

What the Commission heard was a significant number of citizens who strongly expressed their belief that their neighborhoods are not represented in city government and that they have no effective voice. The majority of these citizens are residents of the north or south ends of the City where there are large numbers of minority residents. Thus the issue is made more complex and sensitive by the racial implications. This is, as it should be, of great concern to the Commission and to all the citizens of Waterbury. Whether or not it is factually accurate that these neighborhoods receive inadequate attention is not of particular importance in the analysis of this issue. When a group of citizens vehemently perceives itself not to be represented, then, in effect, it isn't.

The solution that was most strongly advocated by citizens who addressed the Commission was the enactment of a Charter provision that would provide for elections conducted solely on a district basis, with head to head elections and no minority party protection. It was very clearly communicated to the Commission that the overwhelming majority of those that supported this proposal was adamantly opposed to any hybrid system. Although several hybrid concepts were discussed, there was no significant community support for any concept and thus very limited support for it on the Commission. The focus then was primarily on the pure "Alderman by District".

It is difficult to condense weeks of meetings, discussions and debates about this issue but we will attempt to summarize the arguments. The "Alderman by District" supporters argued that it would:

1. provide greater "accountability";
2. significantly increase voter involvement and turnout; and
3. provide for a better, more representative government.

Those who argued against "Alderman by District" contended that:

1. it would be more divisive, pitting neighborhood against neighborhood;
2. without the minority party protection the result upon the City's government would soon be single party domination;
3. there was simply no probative evidence that alderman by district would lead to more accountability, greater voter participation or more representative government.

The Commission listened carefully to the arguments and did its research. Legal Counsel examined the charters of every municipality in Connecticut and prepared a report which provided an analysis of every community, identified the twenty-one (21) out of approximately 167 communities that had some type of "by district" system and provided the Commission with the actual charter language from twenty (20) of the twenty-one (21)

communities. All this material was thoroughly analyzed by the Commission. The Secretary of State's website was also a useful source of historical election data.

When the arguments are examined in the light of the actual data and evidence, the following conclusions are reached:

1. There is some logic to the argument that there could be greater accountability and responsiveness by a representative from a smaller area than citywide. It is true, however, that those attributes are equally a function of the individual representative's talents, dedication to duty, integrity and priorities. In any event there is no objective evidence one way or the other.

2. There is likewise some logic to the argument that it could be divisive, but again, there is no objective, measurable evidence.

3. The argument that there would be greater voter participation is not supported by the data. The cities most comparable to Waterbury that have a "by district" form of government are New Haven and Bridgeport. The election data available on the Secretary of State's website shows that Waterbury's voter participation is consistently greater than either of those communities.

4. The argument that a "by district" system would provide for a better, more representative government also does not appear to be supported by the evidence. The major complaint stated repeatedly by supporters was that there were four (4) Aldermen from one area of the City and none from some other areas in the City. While that may or may not be detrimental to sound city government one can understand the appeal of the argument. Given the expressed level of frustration, if there were no significant downside, there is a strong argument that "Alderman by District" should be explored. Unfortunately, there a significant downside to pure "by district" elections in a community like Waterbury. The data indicates the concerns expressed about single party dominance are well founded and accurate. Again, looking at New Haven and Bridgeport, there is no longer any functioning, effective opposition party in either city. Thus this important "checks and balances" aspect of proper governance is essentially eradicated.

5. Based upon factual analysis, the majority of the Commission concluded that whatever the perceived risk to effective representation that may arise out of having a disproportionate number of aldermen from the same section of the city, such a deficiency pales in comparison to the significant risk to sound democracy and good government that inevitably stems from institutionalized de facto single party political dominance.

There is a last argument raised that should be addressed. A number of individuals suggested that even if the Commission did not support "Alderman by District", it should recommend it because there was significant community support demonstrated. It was



argued that placing the issue on the ballot would “let the people decide”. This argument fails because the role of a Charter Revision Commission is not to simply recommend a change to the City Charter because there may be political support for it. The Commission’s charge, as dictated by Connecticut General Statute §7-190(b), is clear. The Commission can consider for inclusion those items that the Commission “deems desirable or necessary.” Upon a thorough and careful analysis of the possibilities, risks and facts available to it, the strong majority of the Commission determined that a pure “Alderman by District” recommendation was neither “desirable nor necessary.”

The Commission submits this draft report with the full recognition that while some of these proposed amendments were relatively easy and uncontroversial others have been both extremely difficult and divisive. It has been only through a truly non-partisan process of research, discussion, debate and compromise that the Commission reached these conclusions.

We are grateful for this opportunity to have served our City.

Respectively submitted,  
2010 Charter Revision Commission  
Of the City of Waterbury

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