



City Council Special Meeting Minutes Monday, August 30, 2021 - 6:00 p.m. Council Chambers, City Hall

Council in attendance: Interim Mayor Olivia Zink, Councilor Jo Brown, Councilor Scott Clarenbach, Councilor Bob Desrochers, Councilor Jay Chandler, Councilor Paul Trudel, Councilor Ted Starkweather, Councilor Testerman.

Absent: Councilor April Bunker.

Others in attendance: City Manager Judie Milner, and members of the public.

Interim Mayor Zink called the meeting to order in Council Chambers at 6:00 p.m.

Salute to the Flag was led by Councilor Testerman.

Agenda Item I.

City Council to discuss the recommended change from the regulatory agencies to possible charter change language submitted by the City.

Interim Mayor Zink asked City Manager to discuss the letter received from the Attorney General's Office, the Secretary of State's Office, and City Attorney Paul Fitzgerald. Any charter language change must be reviewed by these entities prior to any changes being proposed which would then go onto the ballots for the next City election. They are ok with the changes regarding allowing the Interim Mayor the right to vote as a Councilor.

Milner further explained the response from the Attorney General's office. The incoming "Interim" Mayor would serve the current term that was left. If the outgoing Mayor left their seat with a year remaining, then the Interim Mayor would only serve the remaining term and need to run to be elected if they wanted to continue.

Milner suggested that we accept the recommended charter change language otherwise the City would not be able to meet the deadlines for making any charter language change at this year's election.

Members asked for some clarification on when a newly elected Mayor can take their oath and seat and were in agreement to accept the recommended language relating to the Interim Mayor casting a vote as a City Councilor.

Motion – Councilor Desrochers moved that the Franklin City Council modify the Charter language per the Attorney General's recommendations. Seconded by Councilor Trudel.

There was no further discussion.

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Roll call:

Councilor Chandler	<u>Yes</u>	Councilor Zink	<u>Yes</u>	Councilor Bunker	<u>Absent</u>
Councilor Desrochers	<u>Yes</u>	Councilor Brown	<u>Yes</u>	Councilor Trudel	<u>Yes</u>
Councilor Starkweather	<u>Yes</u>	Councilor Clarenbach	<u>Yes</u>	Councilor Testerman	<u>No</u>

Motion PASSED.

Agenda Item II.

Other business

Councilor Desrochers stated that the Council voted to terminate the solar one & two contract last year. Desrochers requested that there be some answer by the September 13, 2021 meeting.

Desrochers also stated that the Council voted to use \$125K towards roads and sidewalks particularly not on Central Street. He requested information on the status of that also at the September 13, 2021 meeting.

There was no further discussion.

Motion to adjourn was made by Councilor Clarenbach and seconded by Councilor Starkweather.

All in favor. Motion PASSED.

Meeting adjourned at 6:12 p.m.

Respectfully submitted,

Audrey Lanzillo

*Attachments/handouts:

-Letter sent to the Council from the Attorney General's Office regarding the recommended Charter change language.

-Meeting minutes from the June 7th, 2021 City Council meeting.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

August 26, 2021

SENT VIA EMAIL ONLY

City of Franklin
c/o Paul T. Fitzgerald, Esq.
Wescott Law P.A.
pfitzgerald@wescottlawnh.com

Re: Franklin Charter Amendment

Dear Attorney Fitzgerald:

On July 27, 2021, the City of Franklin sought review of proposed amendments to the city charter. Pursuant to RSA 49-B:4-a, the Secretary of State, the Department of Revenue Administration, and the Attorney General's Office ("the agencies") are required to "review the proposed [...] charter amendment to insure that it is consistent with the general laws of this state." RSA 49-B:4-a, I(d).

After review, the agencies partially object to the City's proposed amendment. However, the agencies believe that non-objection can be conditioned on a minor textual amendment.

The City's proposal seeks to (1) clarify the interim mayor's voting powers and (2) state that the mayor elected at the next city election would start a two-year term. The first component appears consistent with existing law. 49-C:16 covers the manager/mayor participating in council discussions but not having the right to vote. 49-C:8 envisions a mayor selected by the council from its own members, and at least implies that the mayor may still hold title as a council member. The agencies do not object to this component of the City's proposal.

The second component conflicts with 49-C:10 concerning vacancies. The City's language calls for the interim mayor to serve until the next city election. The then-elected mayor would be sworn in for a two-year term. However, 49-C:10 states that a charter shall provide for filling a mayoral vacancy until the next election "at which time an election shall be held for the unexpired term" (emphasis added).

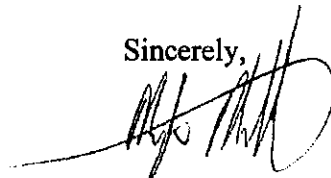
The agencies understand that Franklin has annual elections. Franklin's proposal is incompatible with 49-C:10, at least for mayoral vacancies that occur in the first year of a two-

year term, as the mayor-elect would be voted into a two-year term, rather than the unexpired term as necessitated by the statute.

This incompatibility can be fixed by amending Franklin's proposal, for example, so that the last sentence reads: "The Interim Mayor shall so serve until the next scheduled City election at which time a Mayor shall be elected to serve for the unexpired mayoral term and inaugurated as soon as practical."

Based on the foregoing, the reviewing agencies condition their non-objection to a modification of the mayoral term language consistent with the discussion above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Myles Matteson', written over a horizontal line.

Myles Matteson
Deputy General Counsel
New Hampshire Department of Justice
(603) 271-3650
myles.b.matteson@doj.nh.gov

cc: David Scanlan, Deputy Secretary of State
Bruce Kneuer, Department of Revenue Administration
Derek Kline, Department of Revenue Administration

Chapter C. Charter

§ C-11. Vacancies.

[Added by Ch. 153 of the Laws of 1979; amended 11-26-1979; 11-25-1986]

If the Mayor, a member of the City Council or other elected city official is unable or unwilling to serve out his or her full term of office for any reason and the office becomes officially vacant during said term, then in any such event a new city official shall be appointed by the City Council for the remainder of that calendar year in which the vacancy occurred. An election shall occur at the next municipal election to fill the balance of the term caused by the vacancy. If the office of Mayor becomes vacant, the City Council shall designate one of its members to act as interim Mayor until a new Mayor is elected and qualified.

QUESTION: - To Appear on all Ballots in all Wards

"Shall we allow the Charter Revision in Chapter C, C-11. Vacancies. as shown below?"

Yes or No

Charter Revision

Under Chapter C, C-11, Vacancies. to be read as follows:

If the Mayor, a member of the City Council or other elected city official is unable or unwilling to serve out his or her full term of office for any reason and the office becomes officially vacant during said term, then in any such event a new city official shall be appointed by the City Council for the remainder of that calendar year in which the vacancy occurred. An election shall occur at the next municipal election to fill the balance of the term caused by the vacancy. If the office of Mayor becomes vacant, the City Council shall designate one of its members to act as interim Mayor. ~~until a new Mayor is elected and qualified.~~

The Interim Mayor shall retain his/her vote as a Councilor and shall exercise all general duties as Mayor but shall not have the ability to cast an additional deciding vote in the event of an equal division of the Council nor shall he/she have the authority to veto any action of the Council. The interim Mayor shall so serve until the next scheduled City Election at which time a Mayor shall be elected to serve for the unexpired mayoral term and inaugurated as soon as practical.

The above change reflects the wording from the June 7th Council meeting minutes and the letter from the Attorney General's Office dated August 26, 2021.

Roll Call:

Councilor Brown	<u>Yes</u>	Councilor Chandler	<u>Yes</u>	Councilor Testerman	<u>Yes</u>
Councilor Clarenbach	<u>Yes</u>	Councilor Desrochers	<u>Yes</u>	Councilor Trudel	<u>Yes</u>
Councilor Bunker	<u>Absent</u>	Councilor Starkweather	<u>Yes</u>	Councilor Zink	<u>Yes</u>

All in favor. Motion PASSED.

Agenda Item VIII.

Council to consider approval of Ordinance #06-21, an Ordinance which adds a new section to the Zoning Ordinance addressing Solar Energy Collection Systems.

Motion – Councilor Trudel moved that the Franklin City Council vote to adopt an amendment to Ordinance #06-21, which adds a new section to the Zoning Ordinance addressing Solar Energy Collection Systems. Seconded by Councilor Desrochers.

Councilor Desrochers requested an additional amendment to the Ordinance on page 6, item 8, #3. Desrochers requested the language be changed from “recommended” to “as required.”

Desrochers expressed concern of allowing the Special Use Exceptions in Conservation Zones and loss of conservation habitat in this City. Planning and Zoning Director Dick Lewis replied that removing the Commercial Utility Solar language would make the Ordinance too restrictive therefore causing the Ordinance to go back to the Planning Board for a new public hearing. If the Council wishes to remove Commercial Solar in Conservation zones, Lewis recommends approving this Ordinance tonight and bringing it back again for further review and possible updates. Desrochers disagreed and stated that there is time before the moratorium expires to make the language changes and hold a public hearing.

Testerman recommends removing the language and bring it back to public hearing. Trudel would like to have something on the books rather than nothing at all. Brown agreed with Councilor Trudel. Chandler asked if the non-glare language was part of the Ordinance. Lewis replied there is language that states non glare panels under commercial use.

Reference Ordinance #06-21, passed on June 7, 2021 by the City Council.

Roll call:

Councilor Brown	<u>Yes</u>	Councilor Chandler	<u>Yes</u>	Councilor Testerman	<u>Yes</u>
Councilor Clarenbach	<u>Yes</u>	Councilor Desrochers	<u>Yes</u>	Councilor Trudel	<u>Yes</u>
Councilor Bunker	<u>Absent</u>	Councilor Starkweather	<u>Yes</u>	Councilor Zink	<u>Yes</u>

All in favor. Motion PASSED.

Agenda Item IX.

Council to consider the Charter change language.

Motion – Councilor Desrochers moved that the Franklin City Council approve the following Charter change under Chapter C, C-11, Vacancies to be read as follows: The Interim Mayor shall retain his/her vote as a Councilor and shall exercise all general duties as Mayor but shall not have the ability to cast an additional deciding vote in the event of an equal division of the Council nor shall he/she have the authority to veto any action of the Council. The Interim Mayor shall so serve until the next scheduled City election at which time a Mayor shall be elected for a two-year term and inaugurated as soon as possible. Seconded by Councilor Starkweather.

Interim Mayor asked if there was any discussion. There was none.

Seven in favor. One opposed. Motion PASSED.

Agenda Item X.

Council to consider waiving vendor fees for the Farmer's Market at Marceau Park and for Winni River Day in Trestle View Park and Mill City Park.

Motion – Councilor Trudel moved that the Franklin City Council waive the vendor fees for the Farmers Market at Marceau Park. Seconded by Councilor Clarenbach.

Interim Mayor asked if there was any discussion. There was none.

All in favor. Motion PASSED.

Motion – Councilor Trudel moved that the Franklin City Council waive the vendor fees for the Winni River Day in Trestle View Park and Mill City Park. Seconded by Councilor Desrochers.

Interim Mayor asked if there was any discussion. There was none.

All in favor. Motion PASSED.

Agenda Item XI.

- 1. Committee Reports – none**
- 2. City Manager's Update provided by City Manager Milner**
 - a. Contingent Grant Line Activity for this month was in receipt of \$4,300 from the state of NH for Fire Radio Reprogramming. An additional \$400 was received for the beautiful kayak flowers. Milner thanked all of the volunteers who helped put them together.
 - b. The Trust Funds for School funding is at \$146.04
 - c. Milner congratulated the Fire Department and Municipal Services Water Department for the ISO Public Protection Classification in Franklin which has increased. This means lower insurance premiums for the residents.
 - d. Webster Lake will be treating milfoil in Chance Pond on June 17th. There will be NO SWIMMING signs posted in those areas for six hours following treatment.
 - e. Welcome Fire Department Secretary Nicole Havey and Planning and Zoning Director Seth Creighton who is joining our staff on June 28th.