



# **Newburyport Charter Commission**

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## **FINAL REPORT**

**May 2011**

Steven P. Cole, Chairman  
Kathleen E. Bailey, Vice Chair  
Sheila A. Mullins, Clerk  
Paul M. Bevilacqua  
Roger Gagnon  
Hugh Kelleher  
Denis J. Kennedy  
Bruce M. Menin  
James Stiles

Submitted in accordance with the provisions of Massachusetts General Laws, Chapter 43C, Section 9(c)

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## **ARTICLE 1**

### **INCORPORATION; SHORT TITLE; DEFINITIONS**

#### **SECTION 1-1: INCORPORATION**

The inhabitants of the City of Newburyport, within the territorial limits established by law, shall continue to be a municipal corporation, a body corporate and politic, under the name "City of Newburyport".

#### **SECTION 1-2: SHORT TITLE**

This instrument shall be known and may be cited as the City of Newburyport Home Rule Charter.

#### **SECTION 1-3: DIVISION OF POWERS**

The administration of the fiscal, prudential and municipal affairs of Newburyport, with the government thereof, shall be vested in an executive branch headed by a mayor and a legislative branch consisting of a city council. The legislative branch shall never exercise any executive power, and the executive branch shall never exercise any legislative power.

#### **SECTION 1-4: POWERS OF THE CITY**

Subject only to express limitations on the exercise of any power or function by a municipal government in the constitution or general laws, it is the intention and the purpose of the voters of Newburyport through the adoption of this charter to secure for themselves and their government all of the powers it is possible to secure as fully and as completely as though each such power were specifically and individually enumerated herein.

#### **SECTION 1-5: CONSTRUCTION**

The powers of the city of Newburyport under this charter are to be construed liberally in favor of the city, and the specific mention of any particular power is not intended to limit the general powers of the city as stated in section 1-4.

## **SECTION 1-6: INTERGOVERNMENTAL RELATIONS**

Subject only to express limitations in the constitution or general laws, Newburyport may exercise any of its powers or perform any of its functions, and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with the commonwealth or any of its agencies or political subdivisions, or with the United States government or any of its agencies.

## **SECTION 1-7: DEFINITIONS**

Unless another meaning is clearly apparent from the manner in which the word or phrase is used, the following words and phrases as used in this charter shall have the following meanings:

- (1) "Charter", this charter and any adopted amendments to it.
- (2) "City", the city of Newburyport.
- (3) "City agency", any multiple member body, any department, division, or office of the city of Newburyport.
- (4) "City office", a position having charge of a city department.
- (5) "City officer", when used without further qualification or description, shall mean a person having charge of an office or department of the city who in the exercise of the powers or duties of that position exercises some independent statutory authority.
- (6) "City website", a site established and maintained by the city as its online repository of municipal information, whether on the Internet or accessed through another comparable technology.
- (7) "Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.
- (8) "Full city council", "full school committee" "full multiple member body", the entire authorized membership of the city council, school committee or other multiple member body notwithstanding any vacancy which might exist.

- (9) "general laws", laws enacted which apply alike to all cities and towns, to all cities, or to a class of 2 or more cities, or to a class of cities and towns of which Newburyport is a member.
- (10) "General Laws", the General Laws of the Commonwealth of Massachusetts, a codification and revision of statutes enacted on December 22, 1920, and including all amendments thereto subsequently adopted.
- (11) "Initiative measure", a measure proposed by the voters through the initiative process provided under this charter.
- (12) "Local newspaper", a newspaper of general circulation within Newburyport, with either a weekly or daily circulation.
- (13) "Majority vote", when used in connection with a meeting of a multiple member body shall mean a majority of those present and voting, unless another provision is made by ordinance or by its own rules, provided however that General Law provisions related to any vote to meet in "executive session" shall always require a majority of members of the body.
- (14) "Measure", any ordinance, order, or other vote or proceeding adopted, or which might be adopted, by the city council or the school committee.
- (15) "Multiple member body", any council, commission, committee, sub-committee or other body consisting of 2 or more persons whether elected, appointed or otherwise constituted, but not including the city council, the school committee or an advisory committee appointed by the mayor.
- (16) "Organization or reorganization plan", a plan submitted by the mayor to the city council which proposes a change in the organization or the administrative structure of the city administration or organization, or a change in the way in which a municipal service or services are delivered.
- (17) "Quorum", a majority of all members of a multiple member body unless some other number is required by law or by ordinance.

(18) "Referendum measure", a measure adopted by the city council or the school committee that is protested under the referendum procedures of this charter.

(19) "School department website", a site established and maintained by the school department as its online repository of information concerning the public schools and the school committee, whether on the Internet or accessed through another comparable technology. Said site may be part of the city website, but shall be considered a separate site for the purposes of Article 6-4.

(20) "Voters", registered voters of the city of Newburyport.

(21) "Year", unless otherwise specified, shall mean a calendar year.

## **ARTICLE 2**

### **LEGISLATIVE BRANCH**

#### **SECTION 2-1: COMPOSITION, TERM OF OFFICE**

*(a) Composition* - There shall be a city council of 11 members which shall exercise the legislative powers of the city. Five of these members, to be known as councilors-at-large, shall be nominated and elected by and from the voters at large. Six of these members, to be known as ward councilors, shall be nominated and elected by and from the voters from each ward; 1 such ward councilor to be elected from each of the 6 wards into which the city is divided under section 7-7.

*(b) Term of Office* - The term of office for all councilors shall be for 2 years each, beginning on the first Monday in the January succeeding their election, except when said first Monday falls on a legal holiday, in which event the term shall begin on the following day, and until their successors have been qualified.

*(c) Eligibility* - Any voter shall be eligible to hold the office of councilor-at-large. A ward councilor must be a voter in the ward from which election is sought. If a ward councilor or a councilor-at-large removes from the city

during the term for which elected, such office shall immediately be deemed vacant and filled in the manner provided in section 2-11. If a ward councilor removes from the ward from which elected and less than 6 months of the term remain, the ward councilor who remains a resident of the city may continue to serve during the term for which elected.

## **SECTION 2-2: PRESIDENT**

*(a) Election and Term* - As soon as practicable after the councilors-elect have been qualified following each municipal election, as provided in section 9-11, the members of the city council shall elect from among its members a president who shall serve for a 1 year term. The method of election of the president shall be prescribed within the rules of the city council.

*(b) Powers and Duties* - The president shall preside at all meetings of the city council, regulate its proceedings and shall decide all questions of order. The president shall appoint all members of all committees of the city council, whether special or standing. The president shall have the same powers to vote upon all measures coming before the city council as any other member of the city council. The president shall perform any other duties consistent with the office that may be provided by charter, by ordinance or by other vote of the city council.

## **SECTION 2-3: PROHIBITIONS**

*(a) Holding Other City Office or Position* - No member of the city council shall hold any other city office or city employment. No former member of the city council shall hold any compensated appointed city office or appointed city employment until 1 year following the date on which the former member's service on the city council has terminated. This provision shall not prevent a city officer or other city employee who has vacated a position in order to serve as a member of the city council from returning to the same office or other position of city employment held at the time the position was vacated, but no such person shall be eligible for any other compensated appointed

municipal position until at least 1 year following the termination of service as a member of the city council.

*(b) Interference with Administration* - No city council or any member of the city council shall give orders or directions to any officer or employee of the city appointed by the mayor, either publicly or privately.

*(c) Felony Conviction* - Any councilor who has been finally convicted of a felony criminal offense involving misconduct in any elective or appointive public office, trust or employment at any time held by said councilor shall have deemed to have vacated office and shall not be eligible to serve in any other elective or appointive office or position under the city.

#### **SECTION 2-4: COMPENSATION; EXPENSES**

*(a) Compensation* - The members of the city council shall receive such salary for their services as may from time to time be set by ordinance. No ordinance increasing or reducing the salary of the members of the city council shall be effective unless it shall have been adopted by a 2/3 vote of the full city council. No increase or reduction in such salary shall take effect during the term in which such increase or reduction is voted, and no change in such ordinance shall be made between the election of a new council and the qualification of the new council. Subject to appropriation, members of the city council shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their duties.

#### **SECTION 2-5: GENERAL POWERS**

Except as otherwise provided by general law or by this charter, all powers of the city shall be vested in the city council which shall provide for their exercise and for the performance of all duties and obligations imposed upon the city by law.

## **SECTION 2-6: EXERCISE OF POWERS; QUORUM; RULES**

*(a) Exercise of Powers* - Except as otherwise provided by general law or by this charter, the legislative powers of the city council may be exercised in a manner determined by it.

*(b) Quorum* - The presence of 6 members shall constitute a quorum for the transaction of business. Except as otherwise provided by general law or by this charter, the affirmative vote, taken by roll call vote, of 6 members shall be required to adopt an appropriation order. Except as otherwise provided by law or this charter, the affirmative vote, taken by roll call vote, of a majority of the full city council shall be required to adopt any ordinance.

*(c) Rules of Procedure* - The city council shall from time to time adopt rules regulating its procedures, which shall be in addition to the following:

(i) Regular meetings of the city council shall be held at a time and place fixed by ordinance. All regular meetings of the city council shall provide for a period of public comment, provided however, the city council may promulgate rules that regulate such period of public comment as deemed appropriate.

(ii) Special meetings of the city council shall be held at the call of the president or at the call of any 6 or more members, for any purpose, by causing a notice of the meeting to be delivered in hand or to the place of business or residence of each member of the city council. This notice shall, except in an emergency of which the president shall be the sole judge, be delivered at least 48 weekday hours in advance of the time set and shall specify the purpose or purposes for which the meeting is to be held. A copy of each such notice shall immediately be posted in accordance with applicable laws.

(iii) All sessions of the city council and of every committee or subcommittee of the council shall at all times be open to the public unless another provision is made by law.

(iv) A full, accurate, up-to-date account of the proceedings of the city council shall be kept by the city clerk, which shall include a record of each vote taken, and which shall be made available with reasonable promptness following each meeting. Unless otherwise provided by law, the minutes of any executive session shall be made available as soon as their publication would not defeat the lawful purposes of the executive session.

### **SECTION 2-7: ACCESS TO INFORMATION**

*(a) In General* - The city council may make investigations into the affairs of the city and into the conduct and performance of any city agency.

*(b) City Officers, Members of City Agencies, Employees* - The city council may require any city officer, member of a city agency or city employee to appear before it to give any information that the city council may require in relation to the municipal services, functions, powers, or duties which are within the scope of responsibility of that person and within the jurisdiction of the city council.

*(c) Mayor* - The city council at any time may request from the mayor specific information on any municipal matter within its jurisdiction, and may request the mayor to be present to answer written questions relating thereto at a meeting to be held not earlier than 7 days from the date of the receipt by the mayor of said questions. The mayor shall personally, or through any designated city officer or employee, attend such meeting and respond to said questions. The person so attending shall not be obliged to answer questions relating to any other matter.

*(d) Notice* - The city council shall give a minimum of 7 days' notice to any person it may require to appear before it under the provisions of this section. The notice shall include specific questions on which the city council seeks information, and no person called to appear before the city council under this section shall be required to respond to any question not relevant or related to those presented in advance and in writing.

## **SECTION 2-8: APPOINTMENTS OF THE CITY COUNCIL**

The council shall, by a majority vote, elect a city clerk to hold office for 3 years and until said city clerk's successor is qualified. The city clerk shall have such powers and perform such duties as the council may prescribe, in addition to such duties as may be prescribed by law. The city clerk shall keep the records of the meetings of the city council. Subject to appropriation, the city council may employ such additional staff as it deems necessary.

## **SECTION 2-9: ORDINANCES AND OTHER MEASURES**

*(a) Measures-* No measure shall be passed finally on the date on which it is introduced, except in the case of an emergency. Except as otherwise provided by the charter, every adopted measure shall become effective at the expiration of 10 days after adoption or upon the signature of the mayor, whichever occurs first. No ordinance shall be amended or repealed except by another ordinance adopted in accordance with the charter, or as provided in the initiative and referendum procedures.

*(b) Emergency Measures-* An emergency measure shall be introduced in the form and manner prescribed for measures generally except that it shall be plainly designated as an emergency measure and shall contain statements after the enacting clause declaring that an emergency exists and describing its scope and nature in clear and specific terms. A preamble which declares and defines the emergency shall be separately voted on and shall require the affirmative vote of 2/3 of the full city council. An emergency measure may be passed with or without amendment or rejected at the meeting at which it is introduced. No measure making a grant, renewal or extension, whatever its kind or nature, or a franchise or special privilege shall be passed as an emergency measure, and except as provided by the laws of the Commonwealth, no such grant, renewal or extension shall be made

otherwise than by ordinance. An emergency measure shall become effective upon adoption or at such later time as it may specify.

*(c) Charter Objection-* On the first occasion that the question on adoption of a measure is put to the city council, if a single member present objects to the taking of the vote, the vote shall be postponed until the next meeting of the city council whether regular or special. If 2 members present shall object, such postponement shall be until the next regular meeting; but for an emergency measure at least 4 members present, in all, must object. This procedure shall not be used more than once for any specific matter notwithstanding any amendment to the original matter. A charter objection shall have privilege over all motions but must be raised prior to or at the call for a vote by the presiding officer and all debate shall cease.

#### **SECTION 2-10: CITY COUNCIL CONFIRMATION OF CERTAIN APPOINTMENTS**

The mayor shall submit to the city council the name of each person the mayor desires to appoint to any city office as a department head or as a member of a multiple-member body, but not including any position which is subject to the civil service law. The city council may refer each name submitted to it to a standing committee of the council which shall review each candidate for appointment and may make a recommendation to the full city council not less than 7 nor more than 45 days after the referral. The committee may require any person whose name has been referred to it to appear before the committee, or before the city council, to give any information relevant to the appointment that the committee, or the city council, may require. Appointments made by the mayor shall become effective on the forty-fifth day after the date on which notice of the proposed appointment was filed with the city clerk unless approved or rejected by the city council within the 45 days.

## **SECTION 2-11: FILLING OF VACANCIES**

If a vacancy occurs at any time in the office of a councilor elected by and from the voters at large, such vacancy shall be filled forthwith by a majority vote of all the remaining members of the city council for the remainder of the unexpired term. If a vacancy occurs, before the last 6 months of the term, in the office of a councilor elected by and from the voters of a ward, the city council shall forthwith order an election to fill such vacancy for the remainder of the unexpired term. If a vacancy occurs in the last 6 months of the term of said office, such vacancy shall be filled forthwith by a voter of the ward as elected by a majority vote of all the remaining members of the city council for the remainder of the unexpired term.

## **ARTICLE 3**

### **EXECUTIVE BRANCH**

#### **SECTION 3-1: MAYOR: QUALIFICATIONS; TERM OF OFFICE; COMPENSATION; PROHIBITIONS**

*(a) Mayor, Qualifications* - The chief executive officer of the city shall be a mayor, elected by and from the voters of the city at large or, in the case of a vacancy, as provided in section 3-10. Any voter shall be eligible to hold the office of mayor. The mayor shall devote full time to the office and shall not hold any other elective public office.

*(b) Term of Office* - The term of office of the mayor shall be 4 years beginning on the first Monday in the January succeeding his election, except when said first Monday falls on a legal holiday, in which event the term shall begin on the following day and continue until his successor has been qualified.

*(c) Compensation* - The city council shall, by ordinance, establish an annual salary for the mayor. No ordinance increasing or reducing the salary of the mayor shall be effective unless it shall have been adopted by a 2/3 vote of the full city council. No increase or reduction in such salary shall take effect

during the calendar year in which such increase or reduction is voted, nor within 6 months of enactment, whichever is longer, and no change in such ordinance shall be made between the election of a new council and the qualification of the new council. Subject to appropriation, the mayor shall be entitled to reimbursement of his actual and necessary expenses incurred in the performance of his duties.

*(d) Prohibitions* - The mayor shall hold no other city office or city employment for which a salary or other emolument is payable from the city treasury. No former mayor shall hold any compensated appointed city office or city employment until 1 year following the date on which the former mayor's city service has terminated. This provision shall not prevent a city officer or other city employee who has vacated a position in order to serve as mayor from returning to the same office or other position of city employment held at the time the position was vacated, if such position exists, but no such person shall be eligible for any other municipal position until at least 1 year after the termination of service as mayor. This prohibition shall not apply to persons covered under the leave of absence provisions under the civil service law.

*(e) Felony Conviction* – Any mayor who has been finally convicted of a felony criminal offense involving misconduct in any elective or appointive public office, trust or employment at any time held by said mayor shall have deemed to have vacated office and shall not be eligible to serve in any other elective or appointive office or position under the city.

### **SECTION 3-2: EXECUTIVE POWERS; ENFORCEMENT OF ORDINANCES**

The executive powers of the city shall be vested solely in the mayor and may be exercised by the mayor either personally or through the several city agencies under the general supervision and control of the office of the mayor. The mayor shall cause the charter, the ordinances and other orders for the government of the city to be enforced, and shall cause a record of all

official acts of the executive branch of the city government to be kept. The mayor shall exercise general supervision and direction over all city agencies, unless otherwise provided by law or by this charter. Each city agency shall furnish to the mayor, immediately upon request, any information, materials or otherwise as the mayor may request and as the needs of the office of mayor and the interest of the city may require. The mayor shall supervise, direct and be responsible for the efficient administration of all city activities and functions placed under the control of the mayor by law or by this charter. The mayor shall be responsible for the efficient and effective coordination of the activities of all agencies of the city and for this purpose shall have authority, consistent with law, to call together for consultation, conference and discussion at reasonable times all persons serving the city, whether elected directly by the voters, chosen by persons elected directly by the voters, or otherwise. The mayor shall have a right to attend any meeting of any appointed multiple member body of the city, at any time, including executive sessions, and to participate in the discussions.

### **SECTION 3-3: APPOINTMENTS BY THE MAYOR**

The mayor shall appoint, subject to the review of such appointments by the city council under section 2-10, all city officers and department heads and the members of multiple-member bodies for whom no other method of appointment or selection is provided by law or this charter, excepting only persons serving under the school committee, and persons serving under the city council. All appointments to multiple-member bodies shall be for terms established under section 5-1. Upon the expiration of the term of any member of a multiple member body, a successor shall be appointed in like manner. The mayor shall fill any vacancy for the remainder of the unexpired term of any member of a multiple member body. All persons classified as department heads shall, subject to the approval of the mayor, appoint, promote and discipline all assistants, subordinates and other employees of

the agency for which that person is responsible. All appointments and promotions made by the mayor shall be made on the basis of merit and fitness demonstrated by examination, past performance or by other evidence of competence and suitability.

**SECTION 3-4: REMOVAL OR SUSPENSION OF CERTAIN OFFICIALS**

*(a) City Officers and Department Heads* – Unless some other procedure is specified in a collective bargaining agreement or by civil service law, the mayor may, in writing, remove or suspend any city officer, or the head of any city department appointed by the mayor by filing a written statement, with the city clerk, setting forth in precise detail the specific reasons for the removal or suspension. A copy of the written statement shall be delivered in hand, or mailed by certified mail, postage prepaid, to the last known address of the city officer or department head. The city officer or department head may make a written reply by filing such a reply statement, with the city clerk, within 10 days after the date the statement of the mayor has been filed; but, this reply shall have no effect upon the removal or suspension unless the mayor shall so determine. The decision of the mayor in suspending or removing a city officer or a department head shall be final, it being the intention of this provision to vest all authority and to fix all responsibility for such suspension or removal solely with the mayor.

*(b) Other City Employees* - Unless some other procedure is specified in a collective bargaining agreement or by civil service law, a department head may suspend or remove any assistant, subordinate or other employee of the agency for which that person is responsible. The decision of the department head to suspend or remove any assistant, subordinate or other employee shall be subject to review by the mayor. A person for whom a department head has determined a suspension or removal is appropriate may seek review of this determination by the mayor by filing a petition for review, in the office of the mayor, in writing, within 10 days following receipt of notice

of this determination. The decision of the mayor shall be final, it being the intention of this provision to vest all authority and to fix all responsibility for suspension or removal solely in the mayor. Nothing in this section shall be construed to be a bar to any other review as may be provided by law.

*(c) Removal of Members of Multiple Member Bodies* - The mayor may, with the approval of a majority of the city council, remove a member of a multiple member body before the expiration of said member's term of office. The person so removed shall receive a written statement of the reasons for such removal and may contest the same before the city council.

### **SECTION 3-5: TEMPORARY APPOINTMENTS TO CITY OFFICES**

Whenever a vacancy, either temporary or permanent, occurs in a city office and the needs of the city require that the office be filled, the mayor may designate the head of another city agency or a city officer or city employee or some other person to perform the duties of the office on a temporary basis until the position can be filled as otherwise provided by law or by this charter. The mayor shall file a certificate in substantially the following form, with the city clerk, whenever a person is designated under this section:

I designate *(name of person)* to perform the duties of the office of *(designate office in which vacancy exists)* on a temporary basis until the office can be filled by *(here set out the regular procedure for filling the vacancy, or when the regular officer shall return)*. I certify that said person is qualified to perform the duties which will be required and that I make this designation solely in the interests of the city of Newburyport.

(signed)

Mayor

Persons serving as temporary officers under this section shall have only those powers of the office essential to the performance of the duties of the office during the period of the temporary appointment. Notwithstanding any general or special law to the contrary, no temporary appointment shall be

for more than 90 days, but not more than two 30-day extensions of a temporary appointment may be made when a permanent vacancy exists in the office.

**SECTION 3-6: COMMUNICATIONS; SPECIAL MEETINGS**

*(a) Communications to the City Council* - The mayor shall, from time to time, by written communications, recommend to the city council for its consideration such measures as, in the judgment of the mayor, the needs of the city require. The mayor shall, from time to time, by written communication, keep the city council fully informed of the financial and administrative condition of the city and shall specifically indicate in such reports any financial or administrative problems facing the city. At least once each year, the mayor shall report to the city council and the public on the state of the city. The mayor shall have the right to attend any meeting of the city council and to address the city council on any subject. Such right to address the city council may be subject to the council's rules, but shall not be unreasonably denied or restricted.

*(b) Special Meetings of the City Council* - The mayor may at any time call special meetings of the city council, for any purpose, by causing a notice of the meeting to be delivered in hand or to the place of business or residence of each member of the city council. This notice shall, except in an emergency of which the mayor shall be the sole judge, be delivered at least 48 weekday hours in advance of the time set and shall specify the purpose or purposes for which the meeting is to be held. A copy of each such notice shall immediately be posted in accordance with applicable laws.

**SECTION 3-7: APPROVAL OR VETO BY MAYOR OF MEASURES, ETC, OVERRIDING VETO**

Every order, ordinance or vote adopted or passed by the city council relative to the affairs of the city, except resolutions, the selection of city officers by the city council and any matters relating to the internal affairs of the city

council, shall be presented to the mayor for approval. If the mayor approves of the measure, the mayor shall sign it; if the mayor disapproves of the measure, the mayor shall return the measure, with the specific reason or reasons for such disapproval attached to it, in writing, to the city council. The city council shall enter the objections of the mayor in its records, and not sooner than 7 days, nor later than 30 days from the date of its return to the city council, may again consider the same measure. If the city council, notwithstanding the disapproval by the mayor, shall again pass the order, ordinance or vote by a 2/3 vote of the full council, it shall then be deemed in force, notwithstanding the failure of the mayor to approve it. If the mayor has neither signed a measure nor returned it to the city council within 10 days following the date it was presented to the mayor, the measure shall be deemed approved and in force.

### **SECTION 3-8: TEMPORARY ABSENCE OF THE MAYOR**

*(a) Acting Mayor* - Whenever, by reason of sickness, disability, absence from the city or other cause, the mayor shall be unable to perform the duties of the office, the president of the city council shall be the acting mayor.

*(b) Powers of Acting Mayor* - The acting mayor shall have only those powers of the mayor that are essential to the conduct of the business of the city in an orderly and efficient manner and on which action may not be delayed. The acting mayor shall have no authority to make any permanent appointment or removal from city service unless the absence or disability of the mayor shall extend beyond 60 days, nor shall an acting mayor approve or disapprove of any measure adopted by the city council unless the time within which the mayor must act would expire before the return of the mayor. During any period in which any member of the city council is serving as acting mayor, that councilor shall not vote as a member of the city council.

### **SECTION 3-9: DELEGATION OF AUTHORITY BY MAYOR**

The mayor may authorize any subordinate officer or employee of the city to exercise any power or perform any function or any duty which is assigned by this charter, or otherwise, to the mayor, and the mayor may rescind or revoke any such authorizations previously made, but all acts performed under any such delegation of authority during a period of authorization shall be and remain the acts of the mayor. Nothing in this section shall be construed to authorize a mayor to delegate his power of appointment to city office or employment or the power to sign or return measures approved by the city council.

### **SECTION 3-10: VACANCY IN OFFICE OF MAYOR**

*(a) Special Election* - If a vacancy in the office of mayor occurs during the first 3 years of the term for which the mayor is elected, whether by reason of death, resignation, removal from office, incapacity, or otherwise, the city council shall immediately, in the manner provided in section 7-1, order a special election to be held within 90 days following the date the vacancy is created, to fill the vacancy for the balance of the then unexpired term. If a regular city election is to be held within 120 days following the date the vacancy is created, a special election need not be held and the position shall be filled by vote at such regular election.

*(b) President of City Council To Serve As Mayor* - If a vacancy in the office of mayor occurs in fourth year of the term for which the mayor is elected, whether by reason of death, resignation, removal from office, or otherwise, the city council president shall serve as mayor. If, however, the city council president is unable or unwilling to serve as mayor, the city council shall then elect by majority vote one of its remaining members to serve as mayor. Upon the qualification of any member of the city council as mayor, under this section, a vacancy shall exist in that seat on the city council which shall be filled in the manner provided in section 2-11. A city councilor serving as

mayor under this subsection who subsequently stands for office as mayor shall not be entitled to have the words "candidate for re-election" printed against their name on the election ballot.

*(c) Powers, Term of Office* - The mayor elected under section 3-10(a) or (b) shall have all the powers of the mayor. A person elected under subsection (a) or (b) shall serve for the remainder of the unexpired term.

## **ARTICLE 4**

### **SCHOOL COMMITTEE**

#### **SECTION 4-1: SCHOOL COMMITTEE**

*(a) Composition, Term of Office* - There shall be a school committee which shall consist of 7 members. Six of these members shall be nominated and elected by and from the voters at large. The seventh member shall be the mayor who shall serve as the chair.

*(b) Term of Office* - The term of office for elected school committee members shall be for 4 years each beginning on the first Monday in the January succeeding their election, except when said first Monday falls on a legal holiday, in which event the term shall begin on the following day and until his successor has been qualified. The terms of office of elected school committee members shall be so arranged that at least 3 such seats shall be filled at each regular municipal election.

*(c) Eligibility* - Any voter shall be eligible to hold the office of school committee. If a school committee member removes from the city during the term for which elected, such office shall immediately be deemed vacant and filled in the manner provided in section 4-6.

#### **SECTION 4-2: SCHOOL COMMITTEE CHAIR**

*(a) Powers and Duties* - If present, the mayor shall preside at all meetings of the school committee, regulate its proceedings and decide all questions of order. In the absence of the mayor, the member to serve as the chair shall be prescribed within the rules of the school committee. The mayor shall

appoint all members of all sub-committees of the school committee, whether special or standing. The mayor shall have the same powers to vote upon all measures coming before the school committee as any other member of the school committee. The mayor shall perform such other duties consistent with the office as may be provided by this charter or by vote of the school committee.

*(b) School Committee Meetings* – Except in the case of an emergency, the school committee shall not meet on the same day as a regular city council meeting.

### **SECTION 4-3: PROHIBITIONS**

*(a) Holding Other School Department Employment* - No elected member of the school committee shall hold any other compensated school department position. No former elected member of the school committee shall hold any compensated appointed employment in the school department until 1 year following the date on which the elected member's service on the school committee has terminated. This provision shall not prevent a city officer or other city employee who has vacated a position in order to serve as an elected member of the school committee from returning to the same office or other position of city employment held at the time the position was vacated, but no such person shall be eligible for any other compensated school department position until at least 1 year following the termination of service as an elected member of the school committee.

*(b) Felony Conviction* – Any elected school committee member who has been finally convicted of a felony criminal offense involving misconduct in any elective or appointive public office, trust or employment at any time held by said member shall have deemed to have vacated office and shall not be eligible to serve in any other elective or appointive office or position under the city.

*(c) Interference with Administration* - No school committee or any member of the school committee shall give orders or directions to any employee of the school department appointed by the superintendent, either publicly or privately.

**SECTION 4-4: COMPENSATION; BENEFITS; EXPENSES**

The city council shall, by ordinance, establish an annual salary for elected school committee members. No ordinance increasing or reducing the salary of elected school committee members shall be effective unless it shall have been adopted by a 2/3 vote of the full city council. No increase or reduction in such salary shall take effect during the calendar year in which such increase or reduction is voted, and no change in such ordinance shall be made between the election of a new council and the qualification of the new council. Subject to appropriation, the elected school committee members shall be entitled to reimbursement of their actual and necessary expenses incurred in the performance of their duties.

**SECTION 4-5: POWERS AND DUTIES**

The school committee shall have all powers which are conferred on school committees by general laws and such additional powers and duties as may be provided by the charter, by ordinance, and/or otherwise and not inconsistent with the grant of powers conferred by general laws. The powers and duties of the school committee shall include the following:

- (1) To elect a superintendent of the schools who shall be charged with the administration of the school system, subject only to policy guidelines and directives adopted by the school committee, and upon the recommendation of the superintendent, to establish and appoint assistant or associate superintendents as provided by law.
- (2) To make all reasonable rules and regulations for the management of the public school system and for conducting the business of the school committee as may be deemed necessary or desirable.

(3) To adopt and to oversee the administration of an annual operating budget for the school department, subject to appropriation by the city council. The school committee shall have general charge and superintendence of all school buildings and grounds and shall furnish all school buildings with proper fixtures, furniture and equipment. The school committee shall provide ordinary maintenance of all school buildings and grounds; unless a central municipal maintenance department which may include maintenance of school buildings and grounds is established in accordance with law. Whenever the school committee shall determine that additional classrooms are necessary to meet the educational needs of the community, at least 1 member of the school committee, or a designee of the school committee, shall serve on the agency, council or committee to which the planning or construction of such new, remodeled or renovated school building is delegated.

#### **SECTION 4-6: FILLING OF VACANCIES**

Whenever a vacancy shall occur in the office of elected school committee member, the president of the city council shall provide public notice, including on the city and school department websites, that a vacancy exists and, within 30 days following the date of the vacancy, call a joint meeting of the city council and the school committee to act to fill the vacancy. The mayor, if present, shall preside at such meeting. Vacancies shall be filled by a majority vote of those present. Persons elected to fill a vacancy by the city council and school committee shall serve for the remainder of the unexpired term, but if the vacancy occurs during the first 18 months of the term for which school committee members are elected, the person so chosen shall serve only until the next biennial city election, at which election the remainder of the term shall be filled by the voters. Persons serving as school committee members under this section shall not be entitled to have the

words "candidate for reelection" printed against their names on the election ballot.

## **ARTICLE 5**

### **ADMINISTRATIVE ORGANIZATION**

#### **SECTION 5-1: ORGANIZATION OF CITY AGENCIES**

The organization of the city into operating agencies for the provision of services and the administration of the government may be accomplished only through an administrative order filed with the city council by the mayor. No administrative order may originate with the city council. The mayor may, subject only to express prohibitions in a general law or this charter, propose to reorganize, consolidate or abolish any city agency, in whole or in part, or to establish such new city agencies as is deemed necessary, but no function assigned by this charter to a particular city agency may be discontinued or assigned to any other city agency unless this charter specifically so provides. The mayor may from time to time prepare and submit to the city council administrative orders that establish operating divisions for the orderly, efficient or convenient conduct of the business of the city. These administrative orders shall be accompanied by a message of the mayor which explains the benefits expected to ensue and advises the city council if any provision of an administrative order shall require amendments, insertions, revisions, repeal or otherwise of existing ordinances. Whenever the mayor proposes an administrative order, the city council shall hold one or more public hearings on the proposal giving notice by publication in a local newspaper, which notice shall describe the scope of the proposal and the time and place at which the public hearing will be held, not less than 7 nor more than 14 days following said publication. An organization or reorganization plan shall become effective at the expiration of 60 days following the date the proposal is submitted to the city council unless the city council shall, by a majority vote, within such period vote to disapprove

the plan. The city council may vote only to approve or to disapprove the plan and may not vote to amend or to alter it.

**SECTION 5-2: MERIT PRINCIPLES**

All appointments and promotions of city officers and employees must be made on the basis of merit and fitness demonstrated by examination, past performance or by other evidence of competence and suitability. Each person appointed to fill an office or position shall be a person especially fitted by education, training and previous work experience to perform the duties of the office or position for which chosen.

**ARTICLE 6**

**FINANCE AND FISCAL PROCEDURES**

**SECTION 6-1: FISCAL YEAR**

The fiscal year of the city shall begin on the first day of July and shall end on the last day of June, unless another period is required by general law.

**SECTION 6-2: ANNUAL BUDGET MEETING**

The mayor shall call a joint meeting of the city council and school committee, to include the superintendent of schools, before the commencement of the annual budget process to review the financial condition of the city, revenue and expenditure forecasts, and other relevant information prepared by the mayor in order to develop a coordinated budget.

**SECTION 6-3: SUBMISSION OF OPERATING BUDGET; BUDGET MESSAGE**

No later than May 15 of each year, the mayor shall submit to the city council a proposed operating budget for all city agencies, which shall include the school department, for the ensuing fiscal year with an accompanying budget message and supporting documents. The budget message submitted by the mayor shall indicate the mission statement of the city and explain the goals of the operating budget in fiscal terms and in terms of work programs for

services provided by all city agencies. It shall outline the proposed fiscal policies of the city for the ensuing fiscal year, describe important features of the proposed operating budget and indicate any major variations from the current operating budget, fiscal policies, revenues and expenditures together with reasons for these changes. The proposed operating budget shall provide a complete fiscal plan of all city funds and activities and shall be in the form the mayor deems desirable. The school budget, as adopted by the school committee shall be submitted to the mayor at least 10 days before the submission of the proposed operating budget to the city council. The mayor shall notify the school committee of the date by which the proposed budget of the school committee shall be submitted to the mayor. The mayor and the superintendent of schools shall coordinate the dates and times of the school committee's budget process under the General Laws.

**SECTION 6-4: ACTION ON THE OPERATING BUDGET**

*(a) Public Hearing* - The city council shall publish in at least 1 local newspaper a notice of the proposed operating budget as submitted by the mayor. The notice shall state (1) the times and places where copies of the entire proposed operating budget are available for inspection by the public, and (2) the date, time and place not less than 14 days after its publication, when a public hearing on the proposed operating budget will be held by the city council.

*(b) Adoption of the Budget* - The city council shall adopt the proposed operating budget, with or without amendments, within 45 days following the date the proposed budget is filed with the city clerk. In amending the proposed operating budget, the city council may delete or decrease any amounts except expenditures required by law, but except on the recommendation of the mayor, the city council shall not increase any item in or the total of the proposed operating budget, unless otherwise authorized by the general laws. If the city council fails to take action on any item in the

proposed operating budget within 45 days after its receipt, that amount shall, without any action by the city council, become a part of the appropriations for the year, and be available for the purposes specified.

*(c) Availability of the Operating Budget* – In addition to any other posting requirements under law, immediately after the submission of the proposed budget to the city council, the mayor shall cause the entire budget document to be posted on the city's website. Said proposed budget document shall remain posted during the city council review process contained in this Article. After the enactment of the budget, it shall be posted on the city's website and shall remain there throughout the fiscal year for which it is in effect. Said budget document shall reflect any amendments made by the city council and approved by the mayor and shall indicate that it is the final budget of the city.

*(d) Availability of the School Budget* – In addition to any other posting requirement under law, immediately after the submission of its approved school budget to the mayor, the school committee shall cause it to be posted on the school department website. Said budget document shall remain posted there during the review process contained in this Article. The final school budget as enacted shall be posted on the school department's website and shall remain there at least throughout the fiscal year for which it is in effect. Said budget document shall specify any revisions made to reflect any action by the city council and the mayor and it shall indicate that it is the final budget of the school department.

#### **SECTION 6-5: CAPITAL IMPROVEMENT PROGRAM**

(a) Submission no later than April 1 of each year, the mayor shall submit a capital improvement program to the city council. The capital improvement program shall be consistent with the mission statement of the city and shall include:

(1) a clear and concise general summary of its contents;

(2) a list of all capital improvements proposed to be undertaken during the ensuing 5 years, with supporting information as to the need for each capital improvement;

(3) cost estimates, methods of financing and recommended time schedules for each improvement; and,

(4) the estimated annual cost of operating and maintaining each facility and piece of major equipment involved.

This information is to be annually revised by the mayor with regard to the capital improvements still pending or in the process of being acquired, improved or constructed.

*(b) Public Hearing* - The city council shall publish in at least 1 local newspaper a notice stating: (1) the times and places where entire copies of the capital improvements program are available for inspection by the public; and, (2) the date, time and place not less than 14 days after such publication, when a public hearing on said plan will be held by the city council.

*(c) Adoption* - At any time after the public hearing but before June 1 of each year, the city council shall by resolution adopt the capital improvements program with or without amendment, provided that each amendment must be voted separately and that any increase in the capital improvements program as submitted must specifically identify the method of financing proposed to accomplish such increase.

*(d) Availability of Capital Improvement Program* - In addition to any other posting requirement under law, immediately after the submission of the proposed capital improvement program to the city council, the mayor shall cause the entire capital improvement program document to be posted on the city's website. After the enactment of the program, a copy of the capital improvement program document as approved shall be posted on the city website indicating its approval by the city council, and it shall remain posted

at least until the enactment of any subsequent capital improvement program.

**SECTION 6-6: INDEPENDENT AUDIT**

The city council shall annually provide for an outside audit of the books and accounts of the city to be conducted by a certified public accountant, or a firm of certified public accountants, which has no personal interest, direct or indirect, in the fiscal affairs of the city or any of its officers. The mayor shall annually provide to the city council a sum of money sufficient to satisfy the estimated cost of conducting the audit as presented to the mayor, in writing, by the city council. The award of a contract to audit shall be made by the city council on or before September 15 of each year. The city clerk or his designee shall coordinate the work of the individual or firm selected. The report of the audit shall be filed in final form with the city council not later than March 1 in the year following its award.

**SECTION 6-7: EXPENDITURES IN EXCESS OF APPROPRIATIONS**

Except as otherwise may be provided by law, no official of the city of Newburyport shall knowingly and intentionally expend in any fiscal year any sums in excess of the appropriations, duly made in accordance with law, or involve the city in any contract for the future payment of money in excess of these appropriations. It is the intention of this section that section 31 of chapter 44 of the General Laws shall be strictly enforced. Any official who violates this section shall be personally liable to the city for any amounts so expended to the extent that the city does not recover these amounts from the person to whom the sums were paid.

**ARTICLE 7**

**ELECTIONS**

**SECTION 7-1: PRELIMINARY ELECTIONS**

A preliminary election for the purpose of nominating candidates for mayor shall be held on the third Tuesday in September in each odd-numbered year

in which a mayor is to be elected. Whenever a special election to fill a vacancy in the office of mayor is to be held, a preliminary election shall be conducted, if necessary, 28 days before the date established for the special election. A preliminary election for the purpose of nominating candidates for city councilors and school committee members who are to be elected shall be held on the third Tuesday in September in each odd-numbered year in which a city councilor or school committee member is to be elected. The city clerk may, with the approval of the city council, reschedule these elections to the fourth Tuesday to avoid a conflict with any civil or religious holiday.

### **SECTION 7-2: PRELIMINARY ELECTION PROCEDURES**

*(a) Signature Requirements* - The number of signatures of voters required to place the name of a candidate on the official ballot to be used at a preliminary election shall be as follows: for the office of mayor, not fewer than 50 such certified signatures; for the office of councilor-at-large or elected school committee member, not fewer than 50 such certified signatures, for the office of ward councilor, not fewer than 50 such certified signatures. Signatures of voters shall be made on a form prescribed by the registrars of voters. Said forms must be submitted to the city clerk on or before 4 o'clock in the afternoon on the forty-fifth day prior to such preliminary election. An individual may appear on the ballot for only one office at any preliminary or regular municipal election.

*(b) Ballot Position* - The order in which names of candidates for each office appear on the ballot shall be determined by a drawing, by lot, conducted by the city clerk at least 40 days before the election. Such drawing shall be open to the public.

*(c) Determination of Candidates* - The 2 persons receiving at a preliminary election the highest number of votes for nomination for an office shall, except as provided by subsection (d) of this section, be the sole candidates for that office whose names shall be printed on the official ballot to be used

at the regular or special election at which such office is to be voted upon, and no acceptance of a nomination shall be necessary to its validity. If 2 or more persons are to be elected to the same office at such regular or special election, the several persons equal in number to twice the number so to be elected receiving at such preliminary election the highest number of votes for nomination for that office shall, except as provided by subsection (d) of this section, be the sole candidates for that office whose names shall be printed on the official ballot. If the preliminary election results in a tie vote among candidates for nomination receiving the lowest number of votes which, but for said tie vote, would entitle a person receiving the same to have their name printed on the official ballot for the election, all candidates participating in said tie vote shall have their names printed on the official ballots, although in consequence thereof there shall be printed on such ballots the names of candidates exceeding twice the number to be elected.

*(d) Condition Making Preliminary Unnecessary* - If at the expiration of time for filing statements of candidates to be voted upon at any preliminary election not more than twice as many such statements have been filed with the city clerk for an office as candidates are to be elected to such office, the candidates whose statements have been filed with the city clerk shall be deemed to have been nominated to such office, and their names shall be voted upon for such office at the succeeding regular or special election, and the city clerk shall not print their names on the ballots to be used at said preliminary election and no other nomination to such office shall be made. If in consequence it shall appear that no names are to be printed upon the official ballot to be used at any preliminary election in any ward or wards of the city, no preliminary election shall be held in any such ward or wards.

### **SECTION 7-3 REGULAR ELECTIONS**

The regular city election shall be held on the first Tuesday following the first Monday in November in each odd-numbered year.

**SECTION 7-4: BALLOT POSITION, REGULAR ELECTION**

The order in which names of candidates for each office appear on the ballot for each office shall be determined by a drawing, by lot, conducted by the city clerk at least 40 days before the election. Such drawing shall be open to the public.

**SECTION 7-5: NON-PARTISAN ELECTIONS**

All elections for city offices shall be non-partisan, and election ballots shall be printed without any party mark, emblem, or other political designation.

**SECTION 7-6: WARDS**

The territory of the city shall be divided into 6 wards so established as to consist of as nearly an equal number of inhabitants as it is possible to achieve based on compact and contiguous territory, bounded as far as possible by the center line of known streets or ways or by other well-defined limits. Each such ward shall be composed of voting precincts established in accordance with general laws. Every 10 years in years ending with 1, the city council shall review these wards to ensure their uniformity in number of inhabitants.

**SECTION 7-7: APPLICATION OF STATE GENERAL LAWS**

Except as otherwise expressly provided in this charter and authorized by law, all city elections shall be governed by the laws of the Commonwealth relating to the right to vote, the registration of voters, the nomination of candidates, voting places, the conduct of preliminary, regular and special elections, the submission of charters, charter amendments and other propositions to the voters, the counting of votes, the recounting of votes, and the determination of results.

## **ARTICLE 8**

### **CITIZEN PETITION MECHANISMS**

#### **SECTION 8-1 FREE PETITION**

The city council or the school committee shall hold a public hearing and act with respect to every petition which is addressed to it, which is signed by 100 or more voters, and which seeks the passage of a measure. The hearing shall be held by the city council or the school committee and the action by the city council or the school committee shall be taken not later than 6 weeks after the petition is filed with the city clerk or the secretary of the school committee. Hearings on 2 or more petitions filed under this section may be held at the same time and place. The city clerk or the secretary of the school committee shall mail notice of the hearing to the 10 persons whose names appear first on the petition at least 7 days before the hearing. Notice, by publication, of all such hearings shall be at public expense.

#### **SECTION 8-2: CITIZEN INITIATIVE MEASURES**

*(a) Commencement* - Initiative procedures shall be started by the filing of a proposed initiative petition with the city clerk or the secretary of the school committee. The petition shall be addressed to the city council or to the school committee, shall contain a request for the passage of a particular measure which shall be set forth in full in the petition, and shall be signed by at least 250 voters. At least 25 signatures must be certified from each ward. The petition shall be accompanied by an affidavit signed by 10 voters and containing their residential address stating they will constitute the petitioners committee and be responsible for circulating the petition and filing it in proper form.

*(b) Referral to City Solicitor* - The city clerk, or if the petition is filed with the school committee, the secretary of the school committee, shall, immediately following receipt of a proposed petition, deliver a copy of the petition to the city solicitor. The secretary of the school committee shall simultaneously

deliver a copy of a proposed petition to the city clerk. The city solicitor shall, within 15 days following receipt of a copy of the petition, in writing, advise the city council or the school committee whether the measure as proposed may lawfully be proposed by the initiative process and whether, in its present form it may be lawfully adopted by the city council or the school committee. If the opinion of the city solicitor is that the measure is not in proper form, the reply shall state the reasons for this opinion, in full. A copy of the opinion of the city solicitor shall also be mailed to the person designated as clerk of the petitioners committee.

*(c) Submission to City Clerk* - If the opinion of the city solicitor is that the petition is in a proper form, the city clerk shall provide blank forms for the use of subsequent signers, and shall print at the top of each blank form a fair, concise summary of the proposed measure, as determined by the city solicitor, together with the names and addresses of the first 10 voters who signed the originating petition. Within 30 days following the date the blank forms are issued by the city clerk, the petitions shall be returned and filed with the city clerk signed by at least 10 per cent of the total number of voters as of the date of the most recent regular city election. Signatures to an initiative petition need not all be on 1 paper, but all papers pertaining to any one measure shall be fastened together and shall be filed as a single instrument, with the endorsement on it of the name and residence address of the person designated as filing the same. With each signature on the petition there shall also appear the street and number of the residence of each signer. Within 10 days following the filing of the petition, the registrars of voters shall ascertain by what number of voters the petition has been signed, and what percentage that number is of the total number of voters as of the date of the most recent city election. The registrars of voters shall attach to the petition a certificate showing the results of its examination and shall return the petition to the city clerk, or the secretary of the school

committee, depending on how the petition is addressed. A copy of the registrars of voters' certificate shall also be mailed to the person designated as clerk of the petitioners committee.

*(d) Action on Petitions* - Within 30 days following the date a petition has been returned to the city clerk or the secretary of the school committee, and after publication under subsection (f), the city council or the school committee shall act with respect to each initiative petition by passing it without change, by passing a measure which is stated to be in lieu of the initiative measure, or by rejecting it. The passage of a measure which is in lieu of an initiative measure shall be deemed to be a rejection of the initiative measure. If the city council or the school committee fails to act with respect to any initiative measure which is presented to it within 30 days following the date the measure is returned to it, the measure shall be deemed to have been rejected on the thirtieth day. If an initiative measure is rejected, the city clerk or the secretary of the school committee shall promptly give notice of that fact to the person designated as the clerk of the petitioners committee, by certified mail.

*(e) Supplementary Petitions* - Within 60 days following the date an initiative petition has been rejected, a supplemental initiative petition may be filed with the city clerk or the secretary of the school committee, but only by persons constituting the original petitioners committee. The supplemental initiative petition shall be signed by a number of additional voters which is equal to at least 5 per cent of the total number of voters as of the date of the most recent city election, and the signatures on the initial petition filed under subsection (c), and the signatures on the supplemental petition filed under this subsection, taken together, shall contain the signatures of at least 15 per cent of the total number of voters in the city. If the number of signatures to this supplemental petition is found to be sufficient by the city clerk, the city council shall call a special election to be held on a date fixed

by it not less than 35 nor more than 90 days following the date of the certificate of the city clerk that a sufficient number of voters have signed the supplemental initiative petition and shall submit the proposed measure, without alteration, to the voters for determination, but if any other city election is to be held within 120 days following the date of the certificate, the city council may omit the calling of such special election and cause the question to appear on the election ballot at the approaching election for determination by the voters.

*(f) Publication* - The full text of any initiative measure which is submitted to the voters shall be published in at least 1 local newspaper not less than 7 nor more than 14 days preceding the date of the election at which the question is to be voted upon. Additional copies of the full text shall be available for distribution to the public in the office of the city clerk. The city clerk shall simultaneously cause the full text of the question to be posted on the city's website.

*(g) Form of Question* - The ballots used when voting on a measure proposed by the voters under this section shall contain a question in substantially the following form: Shall the following measure which was proposed by an initiative petition take effect?

(Here insert a fair, concise summary prepared by the petitioners, and approved by the city solicitor.)

YES

NO

*(h) Time of Taking Effect* - If a majority of the votes cast on the question is in the affirmative, the measure shall be deemed to be effective immediately, unless a later date is specified in the measure.

### **SECTION 8-3: CITIZEN REFERENDUM PROCEDURES**

*(a) Petition, Effect on Final Vote* - If, within 21 days following the date on which the city council or the school committee has voted finally to approve

of any measure, a petition signed by a number of voters equal to at least 12 per cent of the total number of voters as of the date of the most recent regular city election and addressed to the city council or to the school committee as the case may be, protesting against the measure or any part of it is filed with the secretary of the school committee or city clerk, the effective date of such measure shall be temporarily suspended. The school committee or the city council shall reconsider its vote on the measure or part of it at a special meeting, or at its next regularly scheduled meeting, whichever comes first, and if the measure or part of it is not rescinded, the city council shall provide for the submission of the question for a determination by the voters either at a special election which it may call at its convenience, or within such time as may be requested by the school committee, or at the next regular city election. Pending this submission and determination, the effect of the measure shall continue to be suspended.

*(b) Certain Initiative Provisions to Apply* - The petition described in this section shall be termed a referendum petition and the applicable provisions of section 8-2 as they relate to the filing and certification of signatures shall apply to such referendum petitions, except that the words "measure or part thereof protested against" shall be deemed to replace the word "measure" and the word "referendum" shall be deemed to replace the word "initiative". The measure or part protested against shall be null and void unless a majority of those voting on the question shall vote in favor of the measure or part protested against at the election.

#### **SECTION 8-4: INELIGIBLE MEASURES**

None of the following shall be subject to the free petition, initiative or the referendum procedures:

- (1) proceedings relating to the internal organization or operation of the city council or of the school committee;
- (2) an emergency measure adopted under the charter;

- (3) the city budget or the school committee budget as a whole;
- (4) any appropriation for the payment of the city's debt or debt service;
- (5) an appropriation of funds to implement a collective bargaining agreement;
- (6) proceedings relating to the appointment, removal, discharge, employment, promotion, transfer, demotion, or other personnel action;
- (7) any proceedings repealing or rescinding a measure or part of it, which is protested by referendum procedures;
- (8) any proceedings providing for the submission or referral to the voters at an election; and
- (9) memorial resolutions and other votes constituting ordinary, routine matters not suitable as the subject of a referendum petition.

#### **SECTION 8-5: REQUIRED VOTER PARTICIPATION**

For any measure to be effective under initiative procedure and for any measure to be declared null and void under any referendum procedure, at least 30 percent of the voters as of the most recent regular city election must vote at an election that includes on the ballot submission of one or more initiative or referendum questions to the voters.

#### **SECTION 8-6: SUBMISSION OF OTHER MATTERS TO VOTERS**

The city council may of its own motion, and shall, at the request of the school committee if a measure originates with that body and pertains to affairs under its jurisdiction, submit to the voters at any regular city election for adoption or rejection any measure in the same manner and with the same force and effect as are hereby provided for submission by petitions of voters.

#### **SECTION 8-7: CONFLICTING PROVISIONS**

If 2 or more measures passed at the same election contain conflicting provisions, only the one receiving the greatest number of affirmative votes shall take effect.

**ARTICLE 9**  
**GENERAL PROVISIONS**

**SECTION 9-1: CHARTER CHANGES**

This charter may be replaced, revised or amended in accordance with any procedure made available under the state constitution, or by statutes enacted in accordance with the state constitution.

**SECTION 9-2: SEVERABILITY**

The provisions of this charter are severable. If any provision of this charter is held invalid the other provisions shall not be affected by this holding. If the application of this charter, or any of its provisions, to any person or circumstance is held invalid, the application of the charter and its provisions to other persons and circumstances shall not be affected thereby.

**SECTION 9-3: SPECIFIC PROVISION TO PREVAIL**

To the extent that any specific provision of this charter shall conflict with any provision expressed in general terms, the specific provision shall prevail.

**SECTION 9-4: RULES AND REGULATIONS**

A copy of all rules and regulations adopted by any city agency shall be placed on file in the office of the city clerk no later than their effective date and shall be available for review by any person who requests such information at any reasonable time. Unless an emergency exists as determined by the mayor, no rule or regulation adopted by any city agency shall become effective until at least 5 days following the date it is so filed.

**SECTION 9-5: PERIODIC REVIEW OF ORDINANCES**

Not later than the first day of July, at 5 year intervals, in each year ending in a 5 or in a zero, beginning in 2015, the mayor and city council shall provide for a review to be made of the ordinances of the city for the purpose of preparing a proposed revision or recodification of them, without substantive change. This review shall be made by a special committee to consist of 9 members, 4 of whom shall be appointed by the city council president and 5

of whom shall be appointed by the mayor. At least 2 of the persons appointed by the city council president shall be members of the city council. All members of said committee shall be voters of the city. The appointing authority shall fill any vacancies within 14 days. The special committee shall file its report with the city clerk not later than the first day of May in the year following the year in which the committee is appointed. The recommendations of the special committee shall appear on the city council agenda for action before the fifteenth day of June in that year and if not so scheduled by the city clerk, the matter shall come before the city council for action at its next meeting held following the fifteenth day of June, and no other business shall be in order until the report has been acted upon, by roll call vote. The review of city ordinances shall be under the supervision of the city solicitor. Copies of the revision, recodification or republication shall be made available to the public at a cost not to exceed the actual cost of the reproduction. In each year between these reenactments, an annual supplement shall be published which shall contain all ordinances and amendments to ordinances adopted in the preceding year.

#### **SECTION 9-6: PERIODIC REVIEW OF CHARTER**

Not later than the first day of July, at 10 year intervals, in each year ending in a 9, the mayor and city council shall provide for a review to be made of the city charter. This review shall be made by a special committee to consist of 9 members, 4 of whom shall be appointed by the city council president and 5 of whom shall be appointed by the mayor. At least 2 of the persons appointed by the city council president shall be members of the city council. All members of the committee shall be voters of the city. The appointing authority shall fill any vacancies within 14 days. The special committee shall file its report with the city clerk, not later than the first day of May in the year following the year in which the committee is appointed. The recommendations of the special committee shall appear on the city council's

agenda for action before the fifteenth day of June in that year and if not so scheduled by the city clerk the matter shall come before the city council for action at its next meeting held following the fifteenth day of June, and no other business shall be in order until such report has been acted upon, by roll call vote.

**SECTION 9-7: UNIFORM PROCEDURES GOVERNING MULTIPLE-MEMBER BODIES**

*(a) Meetings* - All appointed multiple member bodies of the city shall meet regularly at the times and places that they by their own rules prescribe. Special meetings of any multiple member body shall be held on the call of the chairman or by a majority of the members of the body by written notice delivered in hand or to the place of residence of each member at least 48 hours in advance of the time set, which shall contain notice of the subjects to be acted upon. A copy of the notice shall also be posted in accordance with law. Except as may otherwise be authorized by law, all meetings of all multiple member bodies shall at all times be open to the public.

*(b) Meeting Documents and Submissions* - Each appointed multiple member body shall determine its own rules and order of business and shall provide for the keeping agendas, minutes and related submissions of its proceedings. All such documents shall be a public record, and certified copies shall be placed on file in the office of the city clerk and in the Newburyport Public Library within 15 days of their approval.

*(c) Voting* - If requested by any member, any vote of any appointed multiple member body shall be taken by a call of the roll and the vote of each member shall be recorded in the minutes, but if the vote is unanimous, only that fact need be recorded.

*(d) Quorum* - A majority of the members of an appointed multiple member body shall constitute a quorum. Unless some other provision is made by the multiple member body's own rules while a quorum is present, except on

procedural matters, a majority of the full membership of the body shall be required to vote on any matter representing an exercise of the powers of the multiple member body, and that General Law provisions related to any vote to meet in "executive session" shall always require a majority of members of the body.

*(e)Residency* – Unless otherwise allowed by law, regulation, ordinance, or by this charter, all members of multiple member bodies must be residents of the city at all times during their entire term of office. If a member of a multiple member body removes from the city during the term for which appointed, such seat shall immediately be deemed vacant and filled in the manner provided for in section 3-3.

#### **SECTION 9-8: NUMBER AND GENDER**

Words importing the singular number may extend and be applied to several persons or things; words importing the plural number may include the singular; and words importing the masculine gender shall include the feminine gender.

#### **SECTION 9-9: REFERENCES TO GENERAL LAWS**

All references to General Laws contained in the charter refer to the General Laws of the Commonwealth of Massachusetts and are intended to refer to and to include any amendments or revisions to such chapters or sections or to the corresponding chapters and sections of any rearrangement, revision or recodification of such statutes enacted or adopted subsequent to the adoption of this charter.

#### **SECTION 9-10: COMPUTATION OF TIME**

In computing time under this charter the day of the act or event after which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall be extended to the next day which is not a Saturday, Sunday or legal holiday. When the period of time designated

is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall not be included, when the period is 7 days or more, every day shall be counted.

**SECTION 9-11: OATH OF OFFICE OF MAYOR, CITY COUNCIL, AND SCHOOL COMMITTEE**

A mayor-elect (as applicable), the city council-elect, and the school committee members-elect (as applicable) shall, on the first Monday in the January of each even-numbered year, except when said first Monday falls on a legal holiday, in which event on the following day, meet and be sworn to the faithful discharge of their duties by the city clerk. In the absence of the city clerk, oaths may be administered by the assistant city clerk, or by a judge of a court of record, or by a justice of the peace. Upon receiving the oath, each said official shall document the same by entering his name in a journal maintained by the city clerk. After the oath has been administered to the city council members present, they shall organize by electing from among their number a person to serve as the president, as provided in section 2-2. If the city clerk is unable to preside during this election, the city council member senior in years of service on the city council shall preside during this election. If 2 or more members are equally senior in years of service on the city council, the member senior both in years of service and age shall preside. The president shall be sworn by the city clerk, or, in the case of the absence of the city clerk, by any person qualified to take oaths or affirmations. In the case of the absence of the mayor-elect or any member-elect of the city council or school committee on the day the oath is administered, the oath may at any time thereafter be administered to that person.

**SECTION 9-12: CERTIFICATE OF ELECTION OR APPOINTMENT**

Every person who is elected, including those elected by the city council, or appointed to an office of the city, shall receive a certificate of such election

or appointment from the city clerk. Except as otherwise provided by law, every person who is elected, including those elected by the city council, or appointed to an office of the city before performing any act under this appointment or election, shall take and subscribe to an oath to qualify to enter upon the duties. A record of this oath shall be kept by the city clerk.

**SECTION 9-13: LIMITATION ON OFFICE HOLDING**

Unless otherwise allowed by law, this charter, or personnel policy of the city, no person shall simultaneously hold more than 1 city office or position of employment. This provision may be waived by the mayor upon the appointment of any person to any additional office or position of employment by filing a notice of such waiver with an explanation and justification with the city clerk.

**SECTION 9-14: ENFORCEMENT OF CHARTER PROVISIONS**

It shall be the duty of the mayor to see that the charter is faithfully followed and complied with by all city agencies and city employees. Whenever it appears to the mayor that any city agency or city employee is failing to follow any provision of this charter the mayor shall, in writing, cause notice to be given to that agency or employee directing compliance with the charter. If it shall appear to the city council that the mayor personally is not following the provisions of the charter it shall, by resolution, direct the attention of the mayor to those areas in which it believes there is a failure to comply with charter provisions. The procedures made available in chapter 231A of the General Laws may be used to determine the rights, duties, status or other legal relations arising under this charter, including any question of construction or validity which may be involved in such determination.

## **ARTICLE 10**

### **TRANSITIONAL PROVISIONS**

#### **SECTION 10-1: CONTINUATION OF EXISTING LAWS**

All general laws, special laws, city ordinances, and rules and regulations of or pertaining to Newburyport, including special acts creating regional entities and arrangements of which the city is a member, that are in force when this charter takes effect, and not specifically or by implication repealed by this charter, shall continue in full force and effect until amended or repealed, or rescinded by law, or until they expire by their own limitation. In any case in which the provisions of this charter are found to be inconsistent with the provisions of any general or special law that would otherwise be applicable, the provisions of this charter shall be deemed to prevail. Every inconsistency between the prior law and this charter shall be decided in favor of this charter.

#### **SECTION 10-2: CONTINUATION OF GOVERNMENT AND ADMINISTRATION**

All city agencies shall continue to perform their duties until re-elected, reappointed, or until successors to their respective positions are duly appointed or elected, or until their duties have been transferred and assumed by another city agency.

#### **SECTION 10-3: TRANSFER OF RECORDS AND PROPERTY**

All records, property and equipment whatsoever of any city agency, or part thereof, the powers and duties of which are assigned in whole or in part to another city agency, shall be transferred immediately to that agency.

#### **SECTION 10-4: EFFECT ON OBLIGATIONS, TAXES, ETC.**

All official bonds, recognizances, obligations, contracts, and other instruments entered into or executed by or to the city before the adoption of this charter, and all taxes, assessments, fines, penalties, forfeitures, incurred or imposed, due or owing to the city, shall be enforced and

collected, and all writs, prosecutions, actions and causes of action, except as otherwise provided in this charter, shall continue without abatement and remain unaffected by the charter; and no legal act done by or in favor of the city shall be rendered invalid by reason of the adoption of this charter.

**SECTION 10-5: DISPOSITION OF CERTAIN SPECIAL LAWS**

(a) Certain Special Laws Recognized and Retained – The following special acts are hereby retained: Chapter 54 of the Acts of 1851; Chapter 374 of the Acts of 1947; Chapter 473 of the Acts of 1947; Chapter 636 of the Acts of 1956; Chapter 94 of the Acts of 1960; Chapter 444 of the Acts of 1963; Chapter 611 of the Acts of 1974; Chapter 606 of the Acts of 1986; Chapter 429 of the Acts of 2008 relative to land dispositions. Chapter 64 of the Acts of 1917; Chapter 77 of the Acts of 1920 relative to the Newburyport Trust. Chapter 433 of the Acts of 1955 relative to Greenhead Fly Control. Chapter 702 of the Acts of 1967; Chapter 771 of the Acts of 1972; Chapter 522 of the Acts of 1974 relative to the Newburyport Redevelopment Authority. Chapter 22 of the Acts of 1973 relative to the Andrew J. Gillis Memorial Bridge. Chapter 995 of the Acts of 1973 relative to the Henry Graf, Jr. Skating Rink. Chapter 31 of the Acts of 1876 relative to the harbormaster. Chapter 160 of the Acts of 1901 relative to the fire department. Chapter 403 of the Acts of 1908; Chapter 56 of the Acts of 1956; Chapter 73 of the Acts of 1980; Chapter 207 of the Acts of 1981 relative to water supply. Chapter 261 of the Acts of 1963 relative to the sewer system. Chapter 430 of the Acts of 1958 relative to the Little River. Chapter 316 of the Acts of 1873 relative to the harbor line. Chapter 14 of the Acts of 1983 relative to a building lease. Chapter 270 of the Acts of 1984 relative to the licensing board. Chapter 116 of the Acts of 1985 relative to the treasurer/collector. Chapter 229 of the Acts of 1986; and Chapter 247 of the Acts 1980 relative to certain city employees.

(b) Certain Other Obsolete Special Laws Repealed – The following acts hereby stand repealed: Chapter 468 of the Acts of 1911; Chapter 219 of the Acts of 1939; Chapter 128 of the Acts of 1948; Chapter 546 of the Acts of 1950; Chapter 399 of the Acts of 1953; Chapter 546 of the Acts of 1956; Chapter 97 of the Acts of 1956; Chapter 489 of the Acts of 1980; relative to certain city employees. Chapter 95 of the Acts of 1920 relative to preliminary elections. Chapter 446 of 1935; Chapter 598 of the Acts of 1941 relative to marine fisheries. Chapter 576 of the Acts of 1950 relative to the school committee and biennial elections. Chapter 367 of the Acts of 1957 relative to the school committee. Chapter 514 of the Acts of 1960 relative to ward divisions.

**SECTION 10-6: TIME OF TAKING EFFECT**

This charter shall take effect upon its ratification by the voters and in accordance with the following schedule:

(1) All city officers and employees shall continue to perform their duties in the same manner and to the same extent as they have performed the same prior to the ratification by the voters of the home rule charter.

(2) The first election of officers under this charter shall be held on the first Tuesday following the first Monday in November 2013 for the purpose of electing a mayor, a city council and 3 members of the school committee. A preliminary election for the purpose of nominating candidates to be elected shall be held on the third Tuesday of September 2013, if necessary, as provided in Article 7 of this charter. The 3 members of the school committee elected in the 2011 municipal election shall continue to hold office until the election of 2015 at which time 3 school committee members shall be elected for 4 year terms.

(3) On the first Monday in January 2014 the persons elected as mayor, city council members, and school committee members shall be sworn to the faithful performance of their duties.

(4) Not later than 30 days following the date of the ratification of this charter by the voters, the city clerk shall give to each member of the General Court who represent any part of Newburyport a copy of the vote ratifying this charter.

(5) Immediately after the election at which this charter is adopted, the city council shall appoint 4 persons to a committee, at least one of whom shall be a member of the charter commission that was elected in November 2009, to begin a review of the city ordinances for the purpose of preparing such revisions and amendments as may be needed or necessary to bring them into conformity with the provisions of this charter and to fully implement the provisions of this charter. The city clerk shall be the fifth member and chair of this committee. The committee shall submit a report, with recommendations, within 1 year following its creation and may submit interim reports with recommendations at any time. The city solicitor, or special counsel appointed for this express purpose, shall serve as an advisor to the committee.

(6) No later than September 30, 2014, the mayor shall promulgate a series of administrative orders providing for the organization of city government into operating agencies in accordance with Article 5-1. Said administrative orders shall include the establishment of a finance department responsible for the fiscal and financial affairs of the city and for the coordination and overall planning and supervision of all fiscal and financial activities of all city agencies, which may include, to the extent allowed by law, the school department. The finance department shall include the functions of assessing, auditing, collecting, purchasing and treasury. The finance department shall be managed by a finance director who shall be responsible to and be appointed by the mayor, subject to the approval of the city council, for a term of 3 years. Said director shall not be subject to chapter 31 or chapter 150E of the general laws. The director may serve, ex officio, as the auditor

or treasurer/collector; provided however that no director shall serve, ex-officio, as both auditor and treasurer/collector. In addition, the mayor shall promulgate an administrative order establishing a human resources department. Said human resources department shall be responsible for the supervision and coordination of all aspects of human resources management, including, but not limited to, making recommendations on the terms and conditions of city employment, including, but not limited to, the methods of recruitment and selection, classification and compensation, discipline, training and development and equitable treatment of applicants and employees. The human resources department shall be managed by a human resources director who shall be responsible to and be appointed by the mayor, subject to the approval of the city council, for a term of 3 years. Said director shall not be subject to chapter 31 or chapter 150E of the general laws.

(7) Forthwith following the 2013 municipal election, the persons elected as members of the city council shall meet for the sole purpose of reviewing and revising policies and procedures, rules, or interim rules that will govern the conduct of the business of the city council until such time following the taking of the oath of office when the city council adopts permanent rules. Such meetings shall be called by the council member-elect most senior in age and shall be open to the public, although the business of any such meetings shall be confined to the topics identified here. The city clerk shall serve as an advisor to the city council-elect in this endeavor.

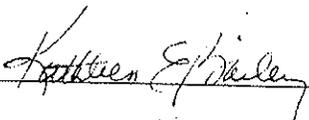
(8) Until such time as another salary is established in accordance with the provisions of this charter, the initial of salary for the mayor shall be not less than \$98,000 per annum, the initial salary of a city councilor shall be that which is in effect for a city councilor on the date of the 2013 regular election and the initial salary for a school committee member shall be that which is in

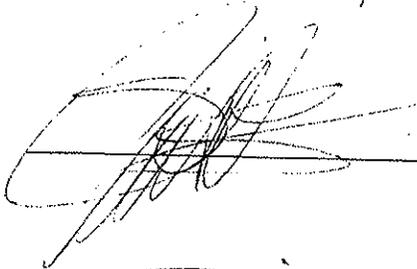
effect for a school committee member on the date of the 2013 regular election.

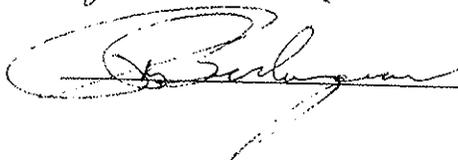
(9) The mayor and the city council in office at time this charter is adopted, and the mayor and successor city council elected pursuant to this charter, shall have the authority to adopt measures that clarify, confirm, or extend any of the transitional provisions in order that such transition may be made in the most expeditious manner possible.

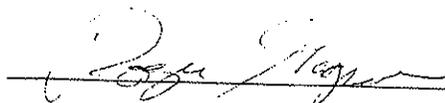
Signed April 22, 2011

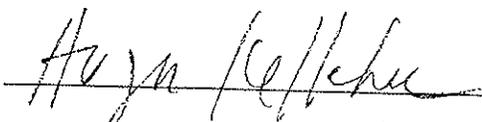
  
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Steven P. Cole, Chairman

  
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Kathleen E. Bailey, Vice Chair

  
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Sheila A. Mullins, Clerk

  
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Paul M. Bevilacqua

  
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Roger Gagnon

  
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Hugh Kelleher

