



RESOLUTION

PROPOSING AN AMENDMENT TO THE CITY CHARTER RELATIVE TO FILLING VACANCIES ON ELECTED BOARDS BY MAJORITY VOTE OF THE REMAINING MEMBERS OF THAT BOARD

CITY OF NASHUA

In the Year Two Thousand and Eighteen

RESOLVED by the Board of Aldermen of the City of Nashua that pursuant to RSA 49-B:5, the following amendment to the Nashua City Charter is deemed necessary and shall be submitted to the voters by placing it on the ballot at the next regular municipal election on November 5, 2019, in the manner required by NH RSA 49-B with the following summary:

Shall the municipality approve the charter amendment summarized below?

This amendment changes the way that vacancies on the Board of Aldermen, Board of Education, Board of Public Works, and Board of Fire Commissioners are to be filled until the next municipal election. Currently, if there are more than six (6) months remaining in an unexpired term that has been vacated, the vacancy is filled by a special election held after forty (40) days but before one hundred and eighty (180) days following the creation of the vacancy, or, if the regular election timing is appropriate, the vacancy can be filled by the non-incumbent candidate who receives the most votes at the regular municipal election for the next term of office which is then vacant. This charter amendment would instead require vacancies on the Board of Aldermen, Board of Education, Board of Public Works, and Board of Fire Commissioners to be filled until the next municipal election by majority vote of the remaining members of that board within sixty (60) days following the creation of the vacancy. The amendment further clarifies issues concerning vacancies caused by death or declination of office before inauguration and when persons elected to fill vacancies assume office.

Amend the City Charter by adding new underlined language as follows:

“§ 44. Vacancy in office of aldermen

Vacancies occurring in the office of alderman [aldermen] from any cause shall be filled as follows: ~~If there is at least six (6) months and one (1) day remaining in the unexpired term, the vacancy shall be filled by a special election held on a date determined by the Board~~

~~of Aldermen which shall not be earlier than forty (40) days and not later than one hundred eighty (180) days after the vacancy occurs. All nominations for the office of aldermen shall be handled in the same manner as nominations for the office of aldermen at a regularly scheduled election with the exception that petitions and acceptances of nominations shall be presented to the city clerk not earlier than forty (40) days nor later than thirty (30) days before the election. Provided, however, that if the board of aldermen determines that the vacancy shall be filled on the date of the next regularly scheduled municipal election, the vacancy shall not be filled by a special election. Instead, the candidate who receives the most votes at the regular municipal election for the next term of the office which is then vacant, and who is not then an incumbent member on the board, shall be sworn in to complete the unexpired term as soon as the election results are final. If the vacancy occurs within six (6) months or less of the end of the unexpired term, the vacancy shall not be filled before the next regularly scheduled municipal election. The candidate who receives the most votes at the regular municipal election for the next term of the office which is then vacant, and who is not then an incumbent member on the board, shall be sworn in to complete the unexpired term as soon as the election results are final until the next municipal election by the election of some qualified person (see Charter §6a) by the recorded votes of at least a majority of all members of the board of aldermen at the next regular meeting or at a special meeting called for the express purpose of filling the vacancy within sixty (60) days following the creation of the vacancy. If the unexpired term is to conclude at the inauguration following said municipal election the election shall be conducted in the usual fashion. If the individual elected by the board of aldermen is elected at the municipal election, that individual shall continue in such office. If the individual elected by the board of aldermen is not elected at the municipal election, then the candidate receiving the greatest number of votes for that office who is not an incumbent shall complete the remainder of the unexpired term beginning at the next regular meeting of the board of aldermen. If the unexpired term continues for an additional period following the next inauguration then the municipal election shall include an election to that office for the remainder of the unexpired term and the candidate receiving the greatest number of votes shall complete the remainder of the term beginning with the next regular meeting of the board of aldermen unless said candidate is an incumbent member of the board in which case the person elected by the board of aldermen shall continue in office until the inauguration.”~~

[Board of Public Works]

“§ 59. How chosen: tenure of office

The board of public works shall be composed of the mayor and four members to be chosen by the qualified voters of the city at large, voting in their respective wards.... Vacancies shall be filled as follows: ~~If there is at least six (6) months and one (1) day remaining in the unexpired term, the vacancy shall be filled by a special election held on a date determined by the Board of Aldermen which shall not be earlier than forty (40) days and not later than one hundred eighty (180) days after the vacancy occurs. All nominations for the board of public works shall be handled in the same manner as nominations for the board of public works at a regularly scheduled election with the exception that petitions and acceptances of nominations shall be presented to the city clerk not earlier than forty (40) days nor later than thirty (30) days before the election. Provided, however, that if the board of aldermen determines that the vacancy shall be filled on the date of the next regularly scheduled municipal election, the vacancy shall not be filled by a special election. Instead,~~

~~the candidate who receives the most votes at the regular municipal election for the next term of the office which is then vacant, and who is not then an incumbent member on the board, shall be sworn in to complete the unexpired term as soon as the election results are final. If the vacancy occurs within six (6) months or less of the end of the unexpired term, the vacancy shall not be filled before the next regularly scheduled municipal election. The candidate who receives the most votes at the regular municipal election for the next term of the office which is then vacant, and who is not then an incumbent member on the board, shall be sworn in to complete the unexpired term as soon as the election results are final~~ until the next municipal election by the election of some qualified person (see Charter §59-a) by the recorded votes of at least a majority of all members of the board of public works at the next regular meeting or at a special meeting called for the express purpose of filling the vacancy within sixty (60) days following the creation of the vacancy. If the unexpired term is to conclude at the inauguration following said municipal election the election shall be conducted in the usual fashion. If the individual elected by the board of public works is elected at the municipal election, that individual shall continue in such office. If the individual elected by the board of public works is not elected at the municipal election, then the candidate receiving the greatest number of votes for that office who is not an incumbent shall complete the remainder of the unexpired term beginning at the next regular meeting of the board of public works. If the unexpired term continues for an additional period following the next inauguration then the municipal election shall include an election to that office for the remainder of the unexpired term and the candidate receiving the greatest number of votes shall complete the remainder of the term beginning with the next regular meeting of the board of public works unless said candidate is an incumbent member of the board in which case the person elected by the board of public works shall continue in office until the inauguration.”

“§ 73. Fire commissioners, how chosen

~~....At each subsequent general municipal election three or two members of the fire commission shall alternatively be elected for a full four-year term, in order to maintain a board of five members.... Vacancies shall be filled as follows: If there is at least six (6) months and one (1) day remaining in the unexpired term, the vacancy shall be filled by a special election held on a date determined by the Board of Aldermen which shall not be earlier than forty (40) days and not later than one hundred eighty (180) days after the vacancy occurs. All nominations for the Board of Fire Commissioners shall be handled in the same manner as nominations for the Board of Fire Commissioners at a regularly scheduled election with the exception that petitions and acceptances of nominations shall be presented to the city clerk not earlier than forty (40) days nor later than thirty (30) days before the election. Provided, however, that if the board of aldermen determines that the vacancy shall be filled on the date of the next regularly scheduled municipal election, the vacancy shall not be filled by a special election. Instead, the candidate who receives the most votes at the regular municipal election for the next term of the office which is then vacant, and who is not then an incumbent member on the board, shall be sworn in to complete the unexpired term as soon as the election results are final. If the vacancy occurs within six (6) months or less of the end of the unexpired term, the vacancy shall not be filled before the next regularly scheduled municipal election. The candidate who receives the most votes at the regular municipal election for the next term of the office which is then vacant, and who is not then an incumbent member on the board, shall be sworn in to complete the unexpired term as soon as the election results are final~~ until the next municipal election by the election of some person,

qualified to vote in the City of Nashua, by the recorded votes of at least a majority of all members of the board of fire commissioners at the next regular meeting or at a special meeting called for the express purpose of filling the vacancy within sixty (60) days following the creation of the vacancy. If the unexpired term is to conclude at the inauguration following said municipal election the election shall be conducted in the usual fashion. If the individual elected by the board of fire commissioners is elected at the municipal election, that individual shall continue in such office. If the individual elected by the board of fire commissioners is not elected at the municipal election, then the candidate receiving the greatest number of votes for that office who is not an incumbent shall complete the remainder of the unexpired term beginning at the next regular meeting of the board of fire commissioners. If the unexpired term continues for an additional period following the next inauguration then the municipal election shall include an election to that office for the remainder of the unexpired term and the candidate receiving the greatest number of votes shall complete the remainder of the term beginning with the next regular meeting of the board of fire commissioners unless said candidate is an incumbent member of the board in which case the person elected by the board of fire commissioners shall continue in office until the inauguration.”

“§ 75. Board of education: How chosen

....[F]our or five candidates shall be elected to the board at each general municipal election in order to maintain a board of nine members. Vacancies shall be filled as follows: ~~If there is at least six (6) months and one (1) day remaining in the unexpired term, the vacancy shall be filled by a special election held on a date determined by the Board of Aldermen which shall not be earlier than forty (40) days and not later than one hundred eighty (180) days after the vacancy occurs. All nominations for the board of education shall be handled in the same manner as nominations for the board of education at a regularly scheduled election with the exception that petitions and acceptances of nominations shall be presented to the city clerk not earlier than forty (40) days nor later than thirty (30) days before the election. Provided, however, that if the board of aldermen determines that the vacancy shall be filled on the date of the next regularly scheduled municipal election, the vacancy shall not be filled by a special election. Instead, the candidate who receives the most votes at the regular municipal election for the next term of the office which is then vacant, and who is not then an incumbent member on the board, shall be sworn in to complete the unexpired term as soon as the election results are final. If the vacancy occurs within six (6) months or less of the end of the unexpired term, the vacancy shall not be filled before the next regularly scheduled municipal election. The candidate who receives the most votes at the regular municipal election for the next term of the office which is then vacant, and who is not then an incumbent member on the board, shall be sworn in to complete the unexpired term as soon as the election results are final~~ until the next municipal election by the election of some qualified person (see above in this section) by the recorded votes of at least a majority of all members of the board of education at the next regular meeting or at a special meeting called for the express purpose of filling the vacancy within sixty (60) days following the creation of the vacancy. If the unexpired term is to conclude at the inauguration following said municipal election the election shall be conducted in the usual fashion. If the individual elected by the board of education is elected at the municipal election, that individual shall continue in such office. If the individual elected by the board of education is not elected at the municipal election, then the candidate receiving the greatest number of

votes for that office who is not an incumbent shall complete the remainder of the unexpired term beginning at the next regular meeting of the board of education unless said candidate is an incumbent member of the board in which case the person elected by the board of education shall continue in office until the inauguration. If the unexpired term continues for an additional period following the next inauguration then the municipal election shall include an election to that office for the remainder of the unexpired term and the candidate receiving the greatest number of votes shall complete the remainder of the term beginning with the next regular meeting of the board of education unless said candidate is an incumbent member of the board in which case the person elected by the board of fire commissioners shall continue in office until the inauguration.”

“§ 27 Vacancies prior to inauguration

In case any officer chosen at a municipal election shall decline the office, or die prior to the first Sunday following the first secular day of January next following his or her election, the incoming board of aldermen, public works, fire commissioners, or education as the case may be shall fill the vacancy at its first meeting in the manner hereinafter provided as to a like vacancy occurring after its inauguration.”

If approved by the voters at the November 5, 2019 regular municipal election, this charter amendment will be effective on that date.

LEGISLATIVE YEAR 2018

RESOLUTION:

R-18-073

PURPOSE:

Proposing an amendment to the City Charter relative to filling vacancies in elected boards by majority vote of the remaining members of that board

SPONSOR(S):

**Alderman-at-Large Brian S. McCarthy
Alderman-at-Large Shoshanna Kelly
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Jan Schmidt**

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE:

The City Clerk estimates the cost associated with a charter amendment as approximately \$200 during a regular municipal election.

ANALYSIS

This amendment would provide that vacancies in the Board of Aldermen, Board of Education, Board of Public Works, and Board of Fire Commissioners are to be filled by a majority vote of the remaining members of that board. Much of the proposed language is the former charter language relative to filling vacancies on the Board of Aldermen, before the charter was amended in 2006. In 2006, the language regarding filling vacancies on these four elected boards was put in place, which provides for special elections if more than six months remain in the unexpired term that has been vacated. This amendment further clarifies when individuals elected to fill vacancies take office and provides that vacancies caused by death or declination prior to inauguration are filled in a like manner.

The procedure for charter amendments is set forth in RSA 49-B:5. The Board of Aldermen must hold an initial vote to determine if the amendment is "necessary". If the amendment is determined to be necessary, the Board of Aldermen must order that notice be given for a public hearing on the amendment. Notice of the public hearing must be published in a newspaper of general circulation at least seven (7) days prior to the scheduled hearing. The notice must contain the text of the proposed amendment and a brief explanation.

Within seven (7) days after the public hearing, the Board of Aldermen shall file with the City Clerk a report containing the proposed amendment. Within ten (10) days of filing, the City Clerk files a certified copy of the report to the secretary of state, the attorney general, and the commissioner of the department of revenue administration pursuant to RSA 49-B:4-a. Within seven (7) days after receiving approval from the secretary of state, the attorney general, and the commissioner of the department of revenue administration, the Board of Aldermen may vote to order the proposed amendment to be placed on a ballot at the next regular municipal election.

Approved as to form:

Office of Corporation Counsel

By: _____

Date: _____