

REPORT OF CHARTER REVIEW COMMISSION  
OF THE CITY OF NEWBURGH

AUGUST 2011

CITY OF NEWBURGH 2011  
CHARTER REVIEW COMMISSION

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CITY OF NEWBURGH  
CHARTER REVIEW COMMISSION

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To the Citizens of Newburgh:

Based upon the authority contained in New York State law, the Mayor of the City of Newburgh, Nicholas Valentine, appointed a Charter Review Commission (“Commission”), comprised of eleven (11) resident citizens of the City and one alternate member, to explore whether revisions should be made to the City Charter.

Although initially comprised of eleven (11) members, the actual working Commission numbered 9 throughout most of its term of service. Commission members received no remuneration.

Funding for the Commission was provided by a New York State Department of State High Priority Local Government Efficiency Grant.<sup>1</sup> Funds from the grant were utilized to retain the services of Jonathan Drapkin, ~~Director~~ President/CEO of Hudson Valley Pattern for Progress, Professor Gerald Benjamin of the State University of New York at New Paltz, and Lester D. Steinman, Esq. of Wormser, Kiely, Galef & Jacobs LLP, and former Director of the Edwin G. Michaelian Municipal Law Resource Center of Pace University, to provide research and legal assistance to the Commission. Legal assistance was also provided by Michelle Kelson, Newburgh Corporation Counsel and Bernis Nelson, former City Corporation Counsel.

Beginning in January, 2011, the Commission met every two weeks. All meetings were open to the public. A website was established for the Commission to detail its proceedings.

At the outset, the Commission inquired into the history of prior charter review efforts in the City. Unlike the unsuccessful 2007 Charter revision effort, the 2011 Charter Review Commission was vested with independent authority to submit its recommendations for Charter change to the citizens of the City of Newburgh without the prior approval of the City Council.

As advised by Lester Steinman and Professor Gerald Benjamin, under the State law authorizing its creation, the Commission was obligated to review the entire charter and determine which, if any, portions were to be changed. If Charter revisions were to be proposed, it was up to the Commission to decide when to submit those changes for a vote of electorate. However, any such submission had to take place no later than the November 2012 general election.

With this time frame in mind, the Commission commenced its review of the City Charter. After a review of the executive and legislative structure of city government set forth in the Charter, the Commission identified its priorities and focused its examination on (1) the structure and organization of the City Council; and (2) the role of the City Manager as chief executive officer of the City, and the Council’s power to appoint and remove the City Manager. Ultimately, due to time constraints and the magnitude and extent of other issues involving the current Charter that would require significant additional study, the Commission determined to leave the remainder of the Charter unchanged and to concentrate its efforts on Charter changes to

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<sup>1</sup> This grant also provided funding for a Shared Service Feasibility Study to review municipal offices, departmental compositions and duties to determine opportunities for increased efficiency, including consolidation. The development of a Sustainability Plan addressing these issues was undertaken independently of the work of the Charter Review Commission by Hudson Valley Pattern for Progress in order to ensure the Commission could meet the timetable established for bringing the identified changes to the public on time. Pattern’s work is ongoing.

address these priorities in time for submission to the electorate at the November 2011 general election.

The Commission received a presentation by Acting City Manager Richard Herbek on the City's current organizational structure and the role of the City Manager. During the course of its meetings, Commission staff presented the Commission with extensive research regarding alternative structures for city government, summarized below.<sup>2</sup> Jonathan Drapkin shared his experience as a former County Manager of Sullivan County. The advantages and shortcomings of the existing government structure were thoroughly debated.

To promote a more effective and efficient government structure to better represent the interests of all the citizens of Newburgh, the Commission voted to submit the following Charter changes to the electorate at the November 2011 election:

- 1) Legislation changing the structure of the City Council, from a five (5) member body comprised of the Mayor, and four (4) council members all elected at-large, to a seven (7) member body comprised of a Mayor and two (2) council members elected at-large and four (4) council members elected, one each from four (4) wards into which the City is to be divided.
- 2) Legislation establishing a districting commission to divide the City into four (4) compact and contiguous single member wards in compliance with the established standards of federal and state law for equal and fair representation of all the people in the City of Newburgh. The wards would be initially established by the districting commission in time for the 2013 general election. .

At the November 2013 general election, one resident elector of each of the four (4) wards would be elected by the voters of those respective wards as a council member for a four (4) year term. No election shall be held at the 2013 general election to fill the two (2) Council member positions whose terms expire on December 31, 2013. The Mayor and the two (2) council members elected at-large at the November 2011 general election would continue to serve in those positions until the expiration of their terms on December 31, 2015. At the November 2015 general election, these three (3) at- large offices would be filled for four (4) year terms commencing January 1, 2016 .

A new districting commission would be appointed every ten (10) years to evaluate the then existing wards and redistrict them as necessary so that they remain compact and contiguous and in compliance with federal and state law.

- 3) Legislation changing the method of selection and the qualifications of the City Manager and the procedures for the removal of the City Manager. Appointment and removal of the City Manager would require the vote of a

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<sup>2</sup> Presentations made to the Commission and minutes of its meetings may be found and reviewed at [www.cityofnewburgh-ny.gov](http://www.cityofnewburgh-ny.gov).

majority plus one of the entire membership of the Council. At the Council's option, the City Manager may be appointed for an indefinite period to serve at the will of the Council or for a definite term not to exceed two (2) years, subject to reappointment at the Council's discretion for additional two (2) year terms, with or without a written contract of employment.

The City Manager would be appointed solely on the basis of specified executive, administrative, academic and professional qualifications. The City Manager would be required to be a city resident, but, upon initial appointment, the City Manager could be given up to one hundred eighty days (180) to establish residency.

A majority plus one of the entire membership of the Council would be required to remove the City Manager. Prior to such removal the Council would:

- (i) Adopt a preliminary resolution of removal stating the reasons for removal;
- (ii) Afford the City Manager an opportunity to be heard at a public meeting.

A demonstration of cause would not be required to remove the City Manager.

The proposed legislation would also provide for the appointment of an appointed officer of the City to serve as Acting City Manager in the event of the absence or disability of the City Manager. In the event of a vacancy in the position of City Manager due to death, resignation or otherwise, the Council would designate an officer of the City to serve as Interim City Manager until a new City Manager is appointed. The Interim City Manager could serve no more than six (6) months, with one six (6) month extension permitted.

- 4) Technical revisions to certain other provisions of the Charter to make them consistent with the previously described Charter changes.

The Charter changes relating to the establishment of the ward system, the election and composition of the City Council and the appointment, replacement and removal of the City Manager shall be effective upon their adoption by the voters of the City of Newburgh at the November 8, 2011 general election, provided, however, that the increase in the number of Council members from five (5) to seven (7) shall take effect on January 1, 2014.

The full text of all these Charter revisions is set forth in Section IV of this report.

The Commission presented the proposed Charter revisions to the City Council on August 4, 2011.

The Commission held a public hearing on the proposed Charter revisions on August 11, 2011.



The Charter revisions are to be placed on the ballot for the November 8, 2011 general election.

Sincerely,

NEWBURGH CHARTER REVIEW COMMISSION

Charles Woodard, Chair  
Brigidanne Flynn, Vice Chair

## ISSUES IN DEPTH

### I. Form of Government Structure

Professor Gerald Benjamin presented a power point presentation entitled “Alternative Local Government Structures”. Professor Benjamin outlined the structural options for city government including the weak mayor, strong mayor and council manager forms of government. Professor Benjamin pointed out that all general purpose local governments in New York State have boards in which governing power resides. In cities, it is the city council where the governing power resides.

Under a “weak mayor” system, one council member is designated to facilitate the council’s work. Usually in cities that person is call the “mayor”. Under this system the mayor and council members usually work part-time. The council retains most governing authority – policy making by local law and resolution, hiring department heads, adopting the budget and overseeing administration. The mayor presides over meetings and represents the city at ceremonial occasions and in meetings with outside officials and groups. He or she performs specified duties to facilitate the city council’s work (e.g. initial preparation of a budget). The mayor has one vote as do all other council members.

There are several ways to pick the presiding officer, or mayor. Election at-large from the entire city (the practice in Newburgh now); election in a district with designation by a vote of the entire board; or rotation of responsibility (and title) among members of the board, elected at-large or in districts.

The council manager system is currently used in the City of Newburgh. The Council retains all legislative powers and ultimate governing authority, including the enactment of local laws, the adoption of a budget, authorization of borrowing and overseeing performance of the government. The Council hires a professional to act as the City’s chief executive. This is the City Manager in Newburgh. The executive, responsible to the Council, operates the government but is not a member of the Council.

Under the council manager form of government, the council is akin to a “board of directors” making policy, overseeing performance and being responsible to the voters. The city manager is tantamount to the chief executive officer and appoints department heads, prepares the budget, directs day-to-day operations, recommends policy and is accountable to the city council for the government’s performance.

By contrast, in the strong mayor system, the voters elect a city council and vest it with legislative powers. The voters also elect an executive, the mayor, and vest him or her with executive powers. The executive has no vote in the council.

Professor Benjamin also discussed the commission system which has mostly been abandoned where tried and now rarely in use.

Professor Benjamin opined that the most practicable alternatives for Newburgh are the council manager and strong mayor systems. He reviewed the strengths and weaknesses of the council manager system and the strong mayor system.

The Commission debated the pro and cons of the current system versus the strong mayor system. The Commission then voted in favor of continuing the council manager form of government.

## II. Structure of the City Council

Former Corporation Counsel Bernis Nelson spoke about the history of the ward system in the City of Newburgh. The City was created as a village in 1800. In 1836, the Village Charter provided for seven (7) trustees at-large. In 1865, the Village became a City, with four (4) wards, a Mayor at-large, and two (2) aldermen in each ward, adding up to nine (9) on the Council. In 1895, the four (4) wards were increased to six (6) wards, with two (2) aldermen in each ward, and with a City Council President elected at-large, for a thirteen (13) member Council. In the 1917 Charter, there were originally six (6) wards for the sole purpose of electing County Supervisors, with a Mayor and four (4) council people all elected at-large to a five (5) member Council and with a City Manager appointed by the City Council. In 1952, the number of wards was increased to nine (9), only for the purpose of electing County Supervisors. The mayor and four (4) council members continued to be elected at-large.

With regard to the current wards in the Newburgh City Charter, as former Corporation Counsel, Bernis Nelson, stated, the nine (9) wards were designed for the selection of Supervisors to represent the City in County government under the former Board of Supervisors system. The County now has a legislature system and these wards have no County function. These nine (9) wards were never used to elect the City Council. Nor can these nine (9) wards be used for electing Council members as they are not “substantially equal in population” and therefore their use would violate the one person/one vote standard of the United States Constitution.

Professor Benjamin presented a power point presentation entitled “Structure of an Election to the City Council.” Professor Benjamin outlined the matters to be considered in structuring a city council - the size of the council; the method of selection of council leadership; the electoral system for selecting members; term lengths and limits; staggered or simultaneous election of members; and partisan versus non-partisan election.

Based upon his research, Professor Benjamin identified the practicable range for the number of council members in a mid-sized New York State city as between five (5) and eleven (11) members. For the eighteen (18) cities in New York State with populations between 18,000 and 50,000, six (including Newburgh) have five (5) council members; six have seven (7) council members, one has eight (8) council members, four (4) have nine council members and one has eleven (11) members.

Options for selection of the council leadership include at-large election with general voting rights as a council member (City of Newburgh); at-large election with limited voting rights (City of Kingston); selection by elected council members at an organization meeting, after general election (Poughkeepsie, Long Beach); and automatic designation from among elected members (e.g. Troy – leading vote getter from among three (3) at-large members presides).

Based upon his research, Professor Benjamin observed that cities with professional managers tend to have smaller councils and use at-large elections, not districts (wards). Of the six New York State cities with the council manager system, among the eighteen (18) considered, five (5) have councils with five (5) members (one had seven). Five (5) elected all council members at-large, not from districts (one used six (6) districts, and elects a mayor – who sits on the council – at-large).

Professor Benjamin then outlined the pros and cons of electoral systems, at-large versus wards systems. Arguments in favor of at-large elections include (1) avoids restricting the recruitment base for candidates; (2) advances consideration of the general interest; (3) members are elected in the whole city and represent the whole city; and (4) gives women a better chance to win.

By contrast, opponents of at-large elections argue that (1) such elections disconnect people in neighborhoods from their representatives; (2) may result in all or most members being elected from a small part of the city; and (3) the at-large system is suspect under the federal Voting Rights Act in places with protected, geographically concentrated racial or ethnic minority populations as a way of denying them power.

Conversely, those who favor the ward system argue that the interest of every geographic part of the city is represented; representatives are most familiar to and preferred by the voters; and, if minorities are geographically concentrated, the ward system assures their representation by a person of their choice.

Those who oppose the ward system say that it produces no voice for the general, city-wide interest and in districts with low turnouts it may result in a council member being elected with very few votes.

District (ward) elections are widely used in New York cities. Of the eighteen (18) cities studied, ten (10) elected at least some council members from districts (wards). But, as noted, only one council-manager city used districts (wards).

Mixed systems made up of at-large and district based council members are not uncommon in New York State. For example, both Jamestown and Troy have a nine (9) member council with six (6) members elected from districts (wards) and three (3) members elected at-large. Places with larger councils sometimes use multi-member districts for some seats and at-large elections for others. Ithaca has five (5) districts, each of which is used to elect two (2) council members. The mayor, who has a vote on the council, is elected at-large. Middletown has four (4) districts, each of which is used to elect two (2) council members, with a council president elected at-large.

Surveying term lengths, Professor Benjamin stated that both two or four year terms are used. From his research, manager systems in cities studied tend to have four year terms. Two year terms enhance accountability to voters, but result in “continuous campaigning”. By contrast, four year terms may make hard decisions easier for council members, but diminish their accountability.

Professor Benjamin also discussed the pros and cons of term limits and partisan versus non-partisan elections. The Commission debated, but did not adopt, a Charter change limiting the number of terms a Council member may serve.

Based upon Professor Benjamin's presentations and his accompanying research, the Commission engaged in a spirited discussion regarding whether to restructure the City Council. The Commission voted to increase the size of the Council to seven (7) representatives and to create four (4) districts (wards) with the Mayor and two (2) council members to be elected at large and one council member to be elected from each of the districts (wards).<sup>3</sup>

The Commission then received a presentation from Professor Benjamin on methodologies for creating city council districts. Professor Benjamin reviewed the one-person one-vote standard established by the United States Supreme Court. That principle requires legislative districts to be "substantially equal in population." City council districts designed for Newburgh must meet the one-person one-vote federal standard.

Once created, wards or districts must be redefined every ten (10) years to ensure that they still comply with the one-person one-vote constitutional standard. The ward lines or district lines are established based on United States census population counts and these lines have to be adjusted after every federal census.

Accordingly, a process is needed to initially establish district boundaries, and redesign them every decade. This responsibility may be given to the city council or a special commission may be established in the Charter to perform this task.

If the Charter is silent, council districts will be designed by the Council and adopted by local law. While this is a most common practice, a disadvantage is that legislators can be self interested and may design districts to assure their own and their own political party's success.

Factors to be considered in establishing a districting commission are the independence of the commission, the size of the commission, the appointing authority, the pool of eligible people and the criteria for service, the selection of leadership, the process and timetable and the finality of the decision.

Based upon Professor Benjamin's review of the cities who use districting by commission, the size of the commission varies from as few as five (5) (Yonkers) to as many as fifteen (15) (New York City). Various formulas are employed for appointing members of the commission and various characteristics are specified for eligibility to serve on the commission. There are also variations in the method of selection of leadership, the process and timetable and the staffing of the commission.

As to the criteria governing the work of the districting commission, adherence to the one-person one-vote doctrine is mandatory. New York City specifies that the difference between the most populous and least populous districts shall not exceed ten percent (10%). Several cities state the wards must be "compact", meaning the variation between length and width of a district should be minimized. Two cities, New York and Buffalo, have stipulations that maintain areas

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<sup>3</sup> Mr. Penney dissented from this vote.

with specific ethnic, social or racial ties. Ulster County requires consideration be given to municipal boundaries, defining geographic features and communities of interest, while partisan factors may not be formally considered.

In several municipalities with districting commissions, the legislative body has the final say. In Yonkers, a mandatory referendum is required. In New York City, the districting commission's proposal is adopted unless the city council rejects it by a majority vote.

Professor Benjamin reviewed the federal Voting Rights Act and its impact on recent litigation involving the City of Port Chester. As a result of that litigation, Port Chester chose to adopt cumulative voting to cure the voting rights problem caused by at-large election. Voters were each given six (6) votes. They were free to distribute their votes as they wished. A voter can give one vote to each of six (6) candidates, or all six (6) votes to one candidate, or any variant in between.

The Commission debated the issues presented by Professor Benjamin. Ultimately, the Commission voted to create a districting commission for the City of Newburgh to establish and maintain the ward system.<sup>4</sup> The districting commission would have seven (7) members. The Commission determined that elected officials and elected party officials would be precluded from serving on the districting commission. The Commission determined that the City's Citizens Advisory Committee would be tasked with collecting a pool of names and assuring that the candidates for the districting commission met eligibility requirements for service. The Commission determined that the initial districting commission would be constituted within six (6) months from the November 2011 election. The Commission determined that the districting commission's decision would be final upon the submission of the districting plan to the Board of Elections and City and County Clerks for filing. Procedurally, the districting commission would hold a public hearing prior to adoption of the districting plan. Districts are to be compact and contiguous and in compliance with established standards of state and federal law for equal and fair representation of all people in the City of Newburgh. Appropriate staff is to be provided by the City to support the efforts of the districting commission.

The Commission also discussed the method of implementation of the seven (7) member Council. Initially, the Commission voted to terminate the terms of all members of the Council as of December 31, 2013. Staggered terms would be provided for the initial members of the seven (7) member board to be newly elected at the November 2013 general election. Members elected from wards would serve two (2) year terms initially and members elected at-large would serve four (4) year terms. Thereafter, all Council members will be elected for four (4) year terms.

Subsequently, however, the Commission voted to change the method of implementation previously adopted for the increase in the City Council from five (5) to seven (7) members. Under the changed method of implementation, at the November 2013 general election, one resident elector of each of the four (4) wards to be established by the districting commission shall be elected for a four (4) year term. No election shall be held at the November 2013 general election to fill the two (2) at-large Council member positions whose terms expire on December 31, 2013. The Mayor and two Council members elected at-large at the November 8, 2011 general election shall continue to serve in those positions until the expiration of their terms on December

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<sup>4</sup> Mr. Penney dissented from this vote.

31, 2015. At the November 2015 general election, these three at-large positions shall be filled for four (4) year terms commencing January 1, 2016.

### III. City Manager

Professor Benjamin prepared a summary of the legislation in place governing the city manager in thirteen (13) cities in New York State that have the council manager form of government.

The current Newburgh Charter provides that “the City Manager shall be the chief administrative and executive officer of the City. He shall be selected by the Council upon the basis of administrative and executive qualifications. He may be suspended or removed from office at the pleasure of the Council.”

The power to appoint the City Manager in all charters reviewed was vested in the city council. In one instance, the City of Auburn, a supermajority is required to appoint the City Manager.

Most charters specify that the City Manager’s term is “indefinite” or that he or she serves “at the pleasure of” the Council. This practice is endorsed by the National Civic League because it “discourages contracting for a specified term or an arrangement that reduces the discretion of the council to remove a manager.”

Several City Charter provisions provide for a contractual term of office. The City of New Rochelle Charter provides that “the City Manager may be appointed for an indefinite period to serve at the will of the Council.” However, that Charter also provides that “the City Manager may be appointed for a definite term not to exceed two years, at the expiration of which term the City Manager may be reappointed from time to time in the discretion of the Council, but in no event shall any one period of appointment be for more than two years.”

Most charters include language similar to Auburn’s provision that “the City Council shall choose a City Manager solely on the basis of executive and administrative qualifications.” Several charters have specific requirements for education and/or experience or unspecified equivalents. Peekskill requires graduation from an accredited college or university and “at least three years experience as a city, village, town or county manager.” A number of city charters are silent regarding qualifications. The International City Managers Association considers the following to be the minimal qualification for City Manager:

“A master’s degree with a concentration in public administration, public affairs or public policy and two years’ experience in an appointed managerial or administrative position in the local government or bachelor’s degree and five years of such experience.”

Residency requirements for City Manager vary among the cities studied. None of the charters examined required residence in the city at the time of hiring. Most charters require a newly appointed manager to take up residence in the city after appointment. In Corning, he or she must do so within one hundred twenty days (120). In certain cities, council action may

authorize residence outside the city. The City of Rye requires residence in Westchester County. Long Beach requires residence within a fifty mile radius. Where the city charter is silent, and no specific exception has been made, state law requires residency in the municipality by public officers such as the City Manager.

Most charters are silent on whether a sitting elected official may be appointed City Manager. Other charters have specific prohibitions on the appointment of sitting elected officials to the position of City Manager.

Discussions of the method for the appointment and removal of the City Manager consumed a number of Commission meetings. At the culmination of those discussions, the Commission voted to make changes to the procedure for hiring and firing the City Manager. At the outset, the Commission determined that the hiring procedure should require a majority plus one vote of the Council. The Commission also voted to provide that the City Manager be appointed for a definite term, not to exceed two (2) years, and that the City Manager's reappointment at the expiration of that term be at the discretion of the Council. This procedure was to be drafted along the same lines as the provisions of the City of New Rochelle's Charter. Although provision would be made for an employment contract, the terms of that contract, the Commission agreed, should not be addressed in the Charter.<sup>5</sup>

As to qualifications, the Commission determined that the City Manager must have a masters degree with a concentration in public administration, public affairs or public policy and two (2) years experience in an appointed managerial or administrative position in local government or a bachelor's degree and five (5) years of such experience. Consideration may also be given to experience and education in a related field or discipline.

As to residency requirements, the Commission voted to require the City Manager to reside in the City within one hundred twenty (120) days of hiring with one permissible extension by the Council of sixty (60) days.

Professor Benjamin led a discussion of key considerations regarding removal of the City Manager. Options include a required vote to remove or suspend, notification of the Manager and right to respond, request for public hearing, final action to remove, compensation during the removal process or suspension period, and a bar to review in a court of law.

Based upon his research, Professor Benjamin advised that removal of the City Manager is generally a prerogative of the Council. Both initiation of removal, and final removal, are most commonly done by a majority vote of those elected. However, extraordinary majorities are provided for in certain cities in New York State.

City charters often require a preliminary resolution for removal in which reasons are specified. The preliminary resolution may suspend the Manager for a specified time. Other charter provisions provide for removal "on charges, after a hearing".

Most charters require "prompt" or "immediate" notification. A time period is specified, usually five (5) days, during which the Manager may request a public hearing. If requested, a

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<sup>5</sup> Ms. Dillard dissented from this vote.

hearing must be held within a specific period. The Manager may prepare a written response, most typically within a specified time period before the scheduled hearing. Some cities have no response/appeal process for the Manager in their charters.

Options for final removal include, if no hearing is requested, a resolution adopted at a meeting held a specified period after adoption and delivery of a preliminary resolution. If a hearing is requested, removal may be effected by adoption of a resolution after the hearing is held, either at the same meeting or the next scheduled meeting. Most charters specify that the effect of the final removal vote may be immediate.

As to compensation during the removal process, charters generally provide that compensation of the Manager continues during the removal process, or a period of suspension, until removal is final. Severance pay is authorized in certain city charters.

Most charters do not address the question of finality of removal. Some charters provide that the action by a City Council in removing the City Manager shall not be subject to review by any court or agency.

The Model City Charter provides for the following procedural steps on removal:

1. Opportunity to resign offered by Council
2. If no resignation is forthcoming, suspension by majority of council members elected, setting forth reasons
3. Presentation of resolution to Manager
4. Fifteen (15) days to reply
5. Public hearing on request, must be held no sooner than fifteen (15) days from date of request
6. Second vote required to remove
7. Full salary paid until effective date of removal

The Commission voted to approve the adoption of a Charter revision which would incorporate a required vote to remove or suspend the City Manager; notification of the Manager and the right to respond; opportunity for a public hearing; final action by the Council to remove; compensation during the removal process; and an expedited procedure for conducting the steps of the process. The provisions of the Model City Charter were to be considered in drafting this new Charter provision.

The Commission also discussed the process for City Manager succession. Professor Benjamin distributed a memorandum noting that all thirteen (13) city charters he studied provided for the City Manager to appoint an acting, interim or deputy City Manager, or whatever the designation was. Seven (7) cities required council approval for the appointment. The City of Rye Charter provides for an acting City Manager to serve in the event of the absence or disability

of a Manager and for an Interim City Manager should the position become vacant. The Commission approved a resolution providing for the adoption of a Charter change that would reflect procedures for appointing an appointed officer of the City to serve as an Acting City Manager or an Interim City Manager and, in the case of the Interim City Manager to fill a vacancy, a limitation on the term of an Interim City Manager to six (6) months with one six (6) month extension.<sup>6</sup>

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<sup>6</sup> Mr. Penney dissented from this vote.

IV. Revisions to the City Charter to be Presented to the Electorate

Note: Proposed new matter is underlined. Matter proposed for deletion is [bracketed].

Section C1.20. Ward boundaries.

The city shall be divided into four (4) wards, bounded and described as shown on the map of the city most recently filed by the districting commission in the office of the City Clerk.

[The city shall be divided into nine (9) wards, bounded as follows:

A. The First Ward shall be that portion of the city included within the following boundaries: bounded on the north by the center line of Broadway, on the east by the east line of the city, on the south by the south line of the city and on the west by the center line of William Street and the same extended to the south line of the city.

B. The Second Ward shall be that portion of the city included within the following boundaries: bounded on the north by the center of Third Street, on the east by the east line of the city, on the south by the center line of Broadway and on the west by the center line of Dubois Street.

C. The Third Ward shall be that portion of the city included within the following boundaries: bounded on the north by the center line of South Street, on the east by the east line of the city, on the south by the center line of Third Street and on the west by the center line of Carpenter Avenue.

D. The Fourth Ward shall be that portion of the city included within the following boundaries: bounded on the north by the north line of the city, on the east by the east line of the city, on the south by the center line of South Street and on the west by the center line of Carpenter Avenue.

E. The Fifth Ward shall be that portion of the city included within the following boundaries: bounded on the north by the center line of Broadway, on the east by the center line of William Street and the same extended to the south line of the city, on the south by the south line of the city and on the west by the center line of Lake Street.

F. The Sixth Ward shall be that portion of the city included within the following boundaries: bounded on the north by the center line of Third Street, on the east by the center line of Dubois Street, on the south by the center line of Broadway and on the west by the center line of West Street.

G. The Seventh Ward shall be that portion of the city included within the boundaries: bounded on the north by the north line of the city, on the east by the center line of Carpenter Avenue, on the south by the center line of Third Street and on the west by the center line of West Street and Gidney Avenue.

H. The Eighth Ward shall be that portion of the city included within the following boundaries: beginning at the intersection of the south line of the city with the center line of Lake Street and running, thence northerly along the center line of Lake Street to the center line of Broadway;

thence, westerly along the center line of Broadway to the center line of West Street; thence, northerly along the center line of West Street and the center line of Gidney Avenue to the north line of the city; thence, westerly along the north line of the city to the west line of the city; thence, southerly along the west line of the city to the center line of Pierce's Road; thence, southerly from the center line of Pierce's Road to the center line of South Street; thence, southeasterly from the center line of South Street and along the center line of Pierce's Road south to the center line of Thompson Street; thence, southwestwardly along the center line of Thompson Street to the center line of Dupont Avenue; thence, southeasterly along the center line of Dupont Avenue to the center line of Wisner Avenue; thence, southerly along the center line of Wisner Avenue and on the extension of same to the south line of the city; thence, easterly along the south line of the city to the place of beginning.

I. The Ninth Ward shall be that portion of the city included within the following boundaries: beginning at a point in the southerly line of the city where the same is intersected by the extension of the center line of Wisner Avenue and running, thence westerly along the southerly line of the city to the westerly line of same; thence, northerly along the westerly line of the city to the northerly line of the city; thence, easterly along the northerly line of the city to the center line of Pierce's Road; thence, from the center line of Pierce's Road and southeasterly along the center line of Pierce's Road south to the center line of Thompson Street; thence, westerly along the center line of Thompson Street to the center line of Dupont Avenue; thence, southeasterly along the center line of Dupont Avenue to the center line of Wisner Avenue; thence, southerly along the center line of Wisner Avenue and on the extension of the same to the place of beginning.]

Section C1.21. Establishment of ward system; terms of office; districting commission.

Within one hundred-eighty (180) days of the adoption at the November 2011 general election of a proposition for the establishment of a seven (7) member City Council comprised of a Mayor and two (2) council members to be elected by the qualified voters of the City and four (4) council members to be elected by the qualified voters in each of four (4) wards into which the City is to be divided, there shall be established a commission on districting to divide the City into four (4) single-member wards. The wards shall be drawn to be compact and contiguous and in compliance with the established standards of State and Federal law for equal and fair representation of all people in the City of Newburgh.

Every ten (10) years thereafter, not later than one hundred-eighty (180) days following the availability of the necessary decennial federal census data, such a districting commission shall again be established and shall meet to evaluate the then existing wards and redistrict them as necessary so that they remain compact and contiguous and in compliance with established standards of State and Federal law for equal and fair representation of all people in the City of Newburgh.

The districting commission shall be comprised of seven (7) members who are City residents, are eligible to register and to vote and are not elected government or political party officials. Each member of the City Council shall appoint one member of the initial districting commission and the five (5) members so appointed shall appoint the remaining two (2) members. All appointments shall be made in the manner set forth in this section. For all districting commissions subsequently empanelled every ten (10) years thereafter, each member of the seven

(7) member City Council shall appoint one member to the districting commission as provided herein.

The City's Citizen Advisory Committee shall be responsible for developing a pool of individuals interested and qualified to serve on the districting commission. To establish that pool, the Citizen Advisory Committee, at least ninety (90) days prior to the anticipated first meeting of the districting commission, shall widely solicit interest in serving on the districting commission through such means as direct mail and email contact with civic groups, public service announcements on radio and television and in daily and weekly newspapers and announcements on the City's website. Persons wishing to serve on the districting commission shall indicate their interest in writing in the manner provided for by the Citizens Advisory Committee, setting forth the reasons for their interest and identifying parts of their background and experience that they believe might qualify them for this task.

The Citizens Advisory Committee shall review the applications submitted, verify that they meet the eligibility criteria of this section and provide a listing of qualified applicants to the City Council no later than forty-five (45) days prior to the anticipated first meeting of the districting commission. Within twenty-one (21) days after the submission of the pool of applicants, each council member shall make his or her appointment to the districting commission. For the initial districting commission, the five (5) members so appointed shall then make the final two (2) appointments from the Citizens Advisory Committee's pool within twenty-one (21) days thereafter. In the event of a vacancy created by death, resignation or otherwise, the vacancy shall be filled in the same manner as used to select the member whose absence created the vacancy.

Prior to finally determining the boundaries of the wards, the districting commission shall hold a public hearing and accept public comment on its proposed districting plan. No later than April 1, 2013 and, in subsequent decades, no later than April 1 of the first year of the decade ending in "3", the districting commission shall finally determine the boundaries of the wards and shall cause a map of the City to be prepared showing in detail the location of each ward and the boundaries thereof. The original map so made shall be filed in the Office of the City Clerk and copies thereof shall be filed in the Offices of the County Clerk and the Board of Elections of the County. The ward boundaries shall be deemed established after such filing is complete.

At the first biennial City election held not less than one hundred twenty days (120) after the establishment of such ward system, one resident elector of each of the four (4) wards shall be elected as a Council member there from for a term of four (4) years beginning on the first day of January next succeeding such election. No election shall be held at the November 2013 general election to fill the two (2) at-large Council member positions whose terms expire on December 31, 2013. The Mayor and the two (2) Council members elected at-large at the November 2011 general election shall continue to serve in those positions until the expiration of their terms on December 31, 2015. At the November 2015 general election, these three (3) at-large offices will be filled for four (4) year terms commencing on the first day of January next succeeding that election.

The Corporation Counsel of the City shall be the legal advisor to the districting commission. The City shall provide for such other appropriate staff and support for the Commission as may be necessary for the districting commission to properly discharge its duties.

Any districting commission created in accordance with the provisions of this section shall go out of existence not later than sixty (60) days after it has adopted and filed, as required herein, the final map of the wards of the City. In the event that the ward boundaries so established are declared to be invalid by a final judgment of the highest court of competent jurisdiction ruling on their validity, the districting commission shall be reactivated to study and prepare new ward boundaries subject to the procedures and requirements above.

Section C3.00. Municipal officers enumerated.

The officers of the City or municipality shall be as follows:

- A. One Mayor, [four (4)] six (6) Councilmen and one City Judge [,.]. The Mayor and two (2) Councilmen elected by the qualified voters of the City [.] and four (4) Councilmen elected by the qualified voters of the wards from which they are elected.

Section C3.10. Terms of office.

The terms of office of the elective officers of the City shall be as follows: Mayor, four (4) years; Councilman, four (4) years; and City Judge, six (6) years. The terms of office of the Civil Service Commissioner shall be six (6) years. Except as otherwise provided in Section 5.00, [T]the terms of office of the City Manager and of the City Clerk shall be at the pleasure of the Council. The terms of office of all City officers appointed by the City Manager shall be at the pleasure of the City Manager. Any or all such appointive City officers may, by action of the City Manager and with the approval of the Council, be placed in the competitive class of the municipal civil service. No such action shall be taken less than ninety (90) days prior to a general City election.

Section C3.11. Residential qualifications of elective officers.

All elective officers of the City shall be qualified electors of the City[,.]. Council members elected from wards shall be residents of those wards. [t]The removal of any such officer from the City, or from a ward in the case of a Council member elected from a ward, during his term of office shall render the office held by him vacant.

Section C3.22. Vacancies in office.

Any vacancy in an elective office occurring from any cause other than expiration of term shall be temporarily filled by appointment of the Council. When a vacancy occurs in the position of a Council member elected from a ward, the person selected to fill that vacancy shall be both a qualified elector of the City and a resident of that ward. Such temporary appointment shall continue in effect until the first day of January next following the next general election held after such appointment. At the next general election following any such vacancy in an elective office, a successor shall be elected to serve the unexpired portion of the term for which the vacating

officer was elected, unless such term shall expire on or before the first day of January next following such general election in which case such successor shall be elected for a full term.

Notwithstanding the provisions hereof, the City Manger shall have the power and authority to designate a person to fill any such vacancy, except that of member of the Council, until the same shall be filled by temporary appointment of the Council.

#### Section C4.00. Legislative powers fixed in Council.

All the legislative powers of the city, however, conferred upon or possessed by it, are hereby fixed in a board to be known as the "Council of the City of Newburgh" and to be composed of the Mayor and [four (4)] six (6) Council members. It shall be, for all purposes, the Common Council of the City. The Mayor and the other [four (4)] six (6) members of the Council shall each receive an annual salary of nine thousand dollars (\$9,000.00), payable in equal monthly installments.

#### Section C5.00. Selection; qualifications; removal from office.

A. Selection. The Council, by a majority plus one vote of its entire membership, shall appoint a City Manager who shall be the chief administrative and executive officer of the City.

##### The City Manager may be appointed:

- (1) for an indefinite period to serve at the will of the Council;
- (2) for a definite term not to exceed two years, at the expiration of which term the City Manager may be reappointed from time to time in the discretion of the Council, but in no event shall any one period of appointment be for more than two years; or
- (3) for a definite term not to exceed two years under a written contract of employment, which contract shall contain such terms and conditions as may be specified by the Council. Nothing in such contract of employment shall conflict with the provisions and requirements of this Charter. In the event of any such conflict, the provisions and requirements of this Charter shall be controlling. Such contract of employment may be renewed from time to time in the discretion of the Council but no one renewal period shall be for a period in excess of two years.

B. Qualifications. The City Manager shall be appointed solely on the basis of executive, administrative and professional qualifications. The City Manager shall have (1) a master's degree with a concentration in public administration, public affairs or public policy, or an equivalent graduate degree, and two years experience in an appointed managerial or administrative position in a local government or other related experience; or

(2) a bachelor's degree with a concentration in public administration, public affairs or public policy, or an equivalent degree, and five years of experience in an appointed managerial or administrative position in a local government or other related experience.

No elected official of the city shall be eligible for the position of City Manager until the expiration of at least one year after separation from the city government.

C. Residency. The City Manager shall be subject to the residency requirements set forth in Section C3.00 of the Charter provided, however, upon initial appointment, the City Manager shall be permitted to establish residency in the city within 120 days of appointment. The Council, where circumstances warrant, may grant one 60 day extension of this period.

D. Removal. Notwithstanding whether the City Manager is appointed for an indefinite period or a definite term, and without any requirement that cause be demonstrated, the Council may remove the City Manager from office in accordance with the following procedures:

(1) The Council shall adopt by affirmative vote of a majority plus one of all its members a preliminary resolution for removal, which must state the reasons for removal, and which may suspend the City Manager from duty for a period not to exceed 30 days. Such suspension shall not deprive the City Manager of salary for such period, but no reimbursable expenses may be charged to the city or to a city department by the suspended City Manager for the term of such suspension. A copy of the resolution shall be delivered to or served upon the City Manager personally or by leaving it at the office of the City Manager in the city within five days after its adoption.

(2) The City Manager, within five days of the service or delivery of the preliminary removal resolution, shall have the right to file a written request with the Council for an opportunity to be heard at a public meeting of the Council. In the event that the City Manager makes such request, the opportunity to be heard shall be afforded at a regular or special meeting of the Council to be held within 15 days of the Council's receipt of such request. The Council may adopt a final resolution of removal, which may be made effective immediately, by affirmative vote of a majority plus one of all its members at any time after the City Manager is afforded the opportunity to be heard at a Council meeting or, if no opportunity to be heard is timely requested, after five days from the date when a copy of the preliminary resolution was delivered to or served upon the City Manager.

(3) The City Manager shall continue to receive salary until the effective date of the final resolution of removal. The action of the Council in suspending or removing the City Manager shall be final and binding.

[The City Manager shall be the chief administrative and executive officer of the city. He shall be selected by the Council upon the basis of his administrative and executive qualifications. He may be suspended or removed from office at the pleasure of the Council.]

Section C5.01. Acting or Interim City Manager.

The City Manager may designate any appointed officer of the city to act as City Manager during the absence or disability of the City Manager, and the person so designated, during the continuance of such absence or disability, shall perform all the duties and have all the powers of the City Manager. In the absence of a designation by the City Manager, the Council may make such designation.

In the event that a vacancy occurs in the office of City Manager due to death, resignation or otherwise, the Council shall immediately commence the process for selecting a new City Manager in accordance with the requirements of Section C5.00 of the Charter. Within ten (10) days of the occurrence of the vacancy, the City Council shall designate an appointed officer of the city to serve as Interim City Manager. The Interim City Manager shall serve in that position until a new City Manager is appointed, provided, however the Interim City Manager may not serve more than six months unless the Council, by resolution, certifies the necessity for the continuation of the Interim City Manager and sets forth the reasons why a new City Manager has not been appointed. Upon the adoption of such resolution, the Interim City Manager may continue to serve for no more than an additional six months.

[The City Manager may designate any officer of the city to act as City Manager during the absence or disability of the City Manager, and the person so designated, during the continuance of such absence or disability, shall perform all the duties and have all the powers of the City Manager. In the absence of a designation by the City Manager or in the event of a vacancy in the office of City Manager, the Council may make such designation.]

The Charter changes set forth in Sections C1.20, C1.21, C3.10, C3.11, C3.22, C5.00 and C5.01 shall be effective upon their adoption by the voters of the City of Newburgh at the November 8, 2011 general election. The Charter changes set forth in Sections C3.00 and C4.00, if adopted by the voters of the City of Newburgh at the November 8, 2011 general election, shall become effective on January 1, 2014.

## FOR MORE INFORMATION

A complete record of the Charter Review Commission's proceedings is contained on its website [www.cityofnewburgh-ny.gov](http://www.cityofnewburgh-ny.gov). Included are minutes of each meeting, memoranda and documents prepared by Commission advisors and other materials.