

**City of Plainfield, New Jersey
Charter Study Commission
Minutes of Meeting of Thursday, May 23, 2013, 7:30 p.m.
Plainfield City Hall Library**

Call to Order: Mr. Smiley called the meeting to order at 7:30 p.m.

Salute to the Flag: Mrs. Davis led the Commissioners in the Pledge of Allegiance.

The Open Public Meeting Act Compliance Statement: Ms. Criscione announced that the Notice Requirement provided for in the Open Public Meeting Law had been satisfied. Notice was properly given, amended notice having been transmitted to the Courier-News and the Star-Ledger on 5/13/13, as well as posting on the City website and on the City Clerk's bulletin board.

Roll Call: Mr. Smiley took roll call. Chair Rick Smiley, Secretary Mary Burgwinkle, Treasurer Jeanette Criscione, Vice Chair John Stewart and Assistant Secretary Marie Davis were all present.

Minutes: The Minutes of Meeting of May 16, 2013 were approved in a unanimous vote with no dissents or abstentions.

Presentation by Dr. Ernest Reock: Dr. Reock is the retired director of the Rutgers Center for Government Services, and an acknowledged expert on New Jersey government. He appeared at the meeting to discuss the Faulkner Act in general, the forms of government available to Plainfield and to answer questions from the Commissioners. He was provided with a list of questions in advance that the Commissioners discussed at the 5/16 meeting. He told us that he had a presentation to make, and that many of our questions would be answered in the course of the presentation. A detailed summary of his comments is attached as Exhibit A. A Full Length Recorded Copy of this Meeting is available by contacting the Charter Commissioners at <http://plainfieldcsc.blogspot.com/>.

Correspondence to Commission: Ms. Burgwinkle has emailed letters to Mr. White and Mr. Rath who will speak at our 5/30 meeting about Faulkner Act forms.

Treasurer Report: Ms. Criscione reported that she spoke to the Star Ledger about a cost estimate for publishing our final report in the event we decide to do that (another municipality's Charter Study Commission published its report in its official newspaper). In her initial conversation, the Star Ledger representative told her that it would cost 44 cents per line, and that we could get an estimate by sending a word document. Dr. Reock told us that that price was likely for legal notices. He suggested going right to the Editorial board at the paper to see if they will publish the Final Report as a public service.

New Business:

-Discussion of agendas for the next several meetings: At the next meeting we will hear presentations from Mr. James White, Township Administrator of East Brunswick (Mayor-Council form) and Mr. Chris Rath, Town Manager of Roxbury (Council-Manager form), and the Commissioners will continue

-Commissioner Working Meeting: The Commissioners briefly discussed the pros and cons of the Faulkner Act forms that are available to Plainfield, with more discussion on this for later meetings.

Announce date and time of next meeting: Thursday, 5/30/13 at 7:30 pm in City Hall Library

Public Participation: Members of the public were allowed to participate during the meeting and no one requested to be heard at this juncture.

Adjournment: The meeting was adjourned at 9:15 p.m.

A Full Length Recorded Copy of this Meeting is available by contacting the Charter Commissioners at <http://plainfieldcsc.blogspot.com/>.

EXHIBIT A

Dr. Reock began his presentation by noting that the Commissioners had sent him a fairly extensive list of questions. He indicated that he intended to do a general presentation on the forms of government in New Jersey and how they originated and that many of the questions would be answered in the course of the presentation. He gave the Commissioners a one page hand out "Summary of Forms of New Jersey Municipal Government in use as of July 1, 2012". A copy is attached to the end of Exhibit A and is also available on the Center for Government services website.

He began the substance of his presentation by telling us that if you look around the country, you can pretty much find three basic types of government forms. The oldest form involves citizens electing a group of their own citizens and residents who act as both the executive and legislative branch. This is the township form of government in New Jersey. Three or five citizens are elected to a committee and they act as legislature and set policy, and each gets responsibility for a department such as public works or welfare or finance, etc. and they run the township administration as well. A second form has an elected legislature and an elected executive. This mirrors the U.S. government and the state of New Jersey where we have a President/Governor and we have Congress/Legislature. One branch handles executive functions and the other legislates. The third form is unique to the municipal level. The citizens elect a legislature, and then they hire an administrator to act as chief executive.

In New Jersey, the structure of local government started in 1798 when the legislature passed a law creating 104 townships in New Jersey, covering the whole state. When it set up the townships, it set up the form of government that each would have. The law set up an annual town meeting, at which the citizens would set the agenda for the town for the year and elect a committee of citizens. That township form has persisted since then, with permutations and with the town meeting eliminated in 1896. Now, 141 Township governments in New Jersey still have elected groups that set the policy and supervise the departments of the town. However, the supervision part became too much work for part-time elected officials, and many have passed local ordinances creating township administrators, with the elected officials dealing only with the legislative aspects.

As we proceeded through the 19th century, the legislature began to create more municipalities. When the 104 townships were created, there were only three other municipalities in the state, a few places that had colonial charters as a borough or a city. Each of the new charters was unique, and set up the form for that community. Every time the legislature created a new municipality, they would give it a new form, and that is when we started to get the names borough, city, village. Each was based on a unique act of the legislature. That practice persisted up to the 1870s. After the Civil War, politics in New Jersey became vicious, and the legislature began creating more municipalities. The legislators realized that they had a lot of power to interfere with the government in local municipalities. For instance, they passed a law for Jersey City that abolished the government there, ousted all elected officials and replaced them with officials appointed by the legislature, so that the legislature was actually running these communities. This happened so often that there was a backlash and in 1875, there was an amendment to the state constitution that provided that the legislature could not pass separate laws for separate municipalities, that municipalities would be dealt with under the General Laws that govern everyone in New Jersey.

The legislature tried to comply with that amendment but it was cumbersome as towns had different needs, so they started to come up with laws that had classifications of municipalities, and the courts accepted that as compliant with the constitution. Laws were passed that classified cities into classes,

and defined towns and villages (Loch Arbor was the last to use the Village form, but the law is still on the books). If you looked at any borough in any county, they would have the same government and be governed by the same law, but that law was the law that governed the municipality forever, there was no ability to update or restructure the form of government.

Around 1900, the idea developed that authority to restructure or reorganize should be given to the people who lived in the municipalities, and the idea of optional municipal charter laws came about. The first instance of it to hit New Jersey arose after a hurricane in Galveston, Texas in 1900. Six thousand people were killed and the city was almost wiped out. The Governor of Texas appointed a five person commission to run Galveston. An Army officer was put in charge of public safety, a local engineer in charge of public works, a local banker in charge of finance, for instance, and that commission took over reestablishing Galveston. It did such a good job that it became the reform movement of the time.

In 1911, New Jersey passed the Walsh Act, which established the Commission form of government. The law said that if citizens did not like their current form they could petition to have the Commission form. The form has no central administration, it sets up 5 departments with a Commissioner in charge of each, really running the departments, doing appointments, hiring and firing. All of the big cities in New Jersey adopted this form except Paterson, and about 40 total municipalities took the form. It hit its peak in about 1948, but it was being criticized already because it did not contain a mechanism for bringing the five departments together to really run the city government. Frequently, the Commissioners stopped talking to each other and went in separate directions. There are still 31 Commission forms in New Jersey, including some larger Hudson County municipalities. Recently, the Village of Loch Arbor (population under 200) adopted the Commission form in place of the Village form. This was the first adoption since 1950, but the form is still on the books. Most of the places using Commission form are small seashore communities with three commissioners.

The next optional form that hit New Jersey was the municipal manager form. In or about 1915, the view existed that government is big business and should be run like big business, by a board of directors (the Council) who hire a chief executive (the Municipal Manager). The Municipal Manager Law of 1923 was passed, but was never wildly popular (7 municipalities as of July 2012). It was much more popular in the midwest, west and south. As originally written, the law provided that the Municipal Manager was hired by the Council, but got tenure after four years and could not be fired. That was the reason that the form lacked popularity. The tenure provision has now been removed from the law. As a side note, Asbury Park has this form, and your compatriot Charter Study Commission is at work there right now.

Thereafter in 1947, there was a New Jersey state constitutional convention that rewrote, extensively, the state constitution. They created a very strong chief executive, the Governor, where there had been a weak Governor with diffuse powers before. The form received great acceptance across the country and was widely recognized. It was viewed as a major step forward in state government. It was so popular that Governor Driscoll set up a commission to try to do the same thing for municipal government. It was called the Municipal Government Study Commission, and it was headed by former Mayor Faulkner of Montclair. They produced the Optional Municipal Charter Law of 1950 (Faulkner Act) that the state is operating under now.

As originally enacted, it set up three forms: Mayor- Council (a strong executive mirror of the new state government at the time); Council-Manager (people elect council, council hires/fires the manager, has lots of power to run the city on a day to day basis, Council may only deal with Manager as a body, no

interference with the municipal employees); Small Municipality form (hybrid of borough and town, pop. must be 12,000 or under to adopt, too small for Plainfield).

Mayor-Council gives the Mayor a lot of authority, appoint Department Heads, veto power over ordinances. Mayor in Borough form has less power even though a quick read of the statute would seem to confer power (for instance, there are six councilors in Borough form, need four to pass ordinances and the same four to overrule the Mayoral veto, so veto amounts to delay only; appointments are made by the mayor with advice and consent of council, but if the council has not approved the appointment in 30 days, the appointment can be made by council). Mayor-Council form mayor has strong powers of administration, draws up the budget. Council can increase amount of budget items by 2/3 vote, can decrease by a majority. The form was meant to mirror the state government. The largest number of people in New Jersey live under this form as compared to others, all of the big places have adopted it.

The disadvantages of Mayor-Council form are that you have a strong mayor and a council with checks on the Mayor, so the form sets up conflict between the two branches. Nonetheless, Dr. Reock only remembers two desertions from Mayor-Council (Oxford in Warren County and Mullica Township in Atlantic County, both small rural communities). Other municipalities have stuck with it despite conflict. There are some variations that can be chosen. Can have 5, 7 or 9 Councilors, can have at large or wards, can have partisan or non-partisan. Also can have staggered terms or concurrent terms.

Council-Manager form provides for a strong manager appointed by Council. Council can also fire the Manager and give them a hearing or severance. In practice, most fired managers don't want a hearing because the reasons for firing will be aired publicly. This is mostly used by medium sized suburban communities, with few defections, 42 places using it.

In the 1970's there was another study with a survey of what people thought of their forms of government. People in government seemed happiest with a borough form with an administrator added by ordinance. So, the Mayor-Council-Administrator form was added to the OMCL in the 1980's. It was adopted by North Brunswick, and then by West Milford and Berkeley Heights. Under the form, the municipality must have an administrator, must have a 6 person council and must have partisan elections. The Mayor presides over the Council, but only votes to break ties. This was an attempt to neutralize the conflict that occurs in the Mayor-Council form, where Mayors frequently don't even attend council meetings.

[At this juncture, Dr. Reock began to address the questions that the Commissioners had provided in advance. The questions will be placed in brackets above his answers.]

[1. Who is Faulkner, and what is the Faulkner Act? What were the circumstances in NJ that caused the Faulkner Act to be enacted?]

Regarding the questions that you sent to me, I have answered who is Faulkner and what is the Faulkner Act, we have covered that earlier tonight.

[2. How many municipalities existed in New Jersey when the Faulkner Act was enacted?]

You asked how many municipalities existed in 1950 when the Faulkner Act was passed and there were 567. We really have not created any new municipalities since 1950. Some have changed names, but few created, Loch Arbor was created in the 1950s as a Village, that was the last created.

[3. It appears to us that about 25% of the municipalities in NJ have adopted Faulkner Act forms. Did those municipalities change to Faulkner Act forms from their historic forms, or were they predominantly new municipalities? How many Charter Commissions have resulted in changes to Faulkner Act forms?]

Regarding the question how many of the 25% of municipalities in New Jersey that have Faulkner Act forms of government changed from their historic form, the answer is all of them. None were created to use Faulkner Act form. Regarding your question how many Charter Study Commissions resulted in changes to the form of government, 60% of Charter Study Commission reports have been successful and a little bit less for direct petitions, which is another method of changing forms of government.

[4. Have many municipalities that adopted Faulkner Act forms decided to abandon them that you know of? Reasons?]

Dr. Reock only knows of two municipalities that have abandoned Faulkner Act forms (Oxford and Mullica Township), but Parsippany-Troy Hills and Old Bridge have shifted between forms. The usual change is from Council-Manager and to Mayor-Council.

[5. What Faulkner Act forms are available to Plainfield?]

Regarding your question which Faulkner Act forms are available to Plainfield, the Mayor-Council, Council-Manager and Mayor-Council Administrator forms are available such that the Commission has the power to place them on the ballot for consideration. You could recommend on an advisory basis only the Commission form or the 1923 Municipal Manager form, but you do not have the power to put those on the ballot unless a petition was circulated.

[6. What are the advantages of Faulkner Act forms as compared to Special Charter or other forms?]

Regarding your question about the advantages of a Faulkner Act form as compared to one of the others or a special charter, I have not dealt with special charter, but it is available. After that 1875 Constitutional Amendment that prevented the legislature from enacting special charters for municipalities, there was thought that the legislature should not be able to impose a special act, unless the municipality asks for a special charter. If a municipality wants a special charter, a 2/3 vote of each house of the legislature is required, and when the legislature sends the special charter back, it can require either that the voters approve the charter or that the charter be approved by ordinance. So, one advantage of Faulkner Act form is that it is easier for you, you can put a Faulkner Act form on the ballot. For a special charter, the Commission must draft it, the existing governing body must ask the legislature to pass it, then you must find a legislator to shepherd it through, and that is the only way to get something through the legislature. Also, there is in existence a body of case law that has developed over the OMCL that can be helpful when interpreting provisions.

[7. Is there any conventional wisdom or empirical evidence that some Faulkner Act forms are better for cities with diverse populations than other forms?]

Regarding the best form for places with diverse populations, I don't know anything definitive, but the impression is that Mayor-Council is the best form for diverse communities that want strong political leaders. Council-Manager form does not foster the growth of strong political leadership in the community. The Council must deal with the manager in a group, cannot do it alone, so there is less opportunity to strive for political leadership. The footnote to that is that under the Council-Manager form as originally drafted, the council would choose a mayor with little power other than to preside over meetings. There was the feeling that people wanted to elect their mayor, and so the statute was amended with that as an option. It does not, however, give the mayor any more power, just the prestige of being elected. Dr. Reock's community, South Brunswick, made that choice. The general thought is that Council-Manager is better for more homogeneous places where people value administrative efficiency over political leadership, which is prized in the Mayor-Council form. It can go wrong in either form depending upon who is elected.

[8. If our Commission votes to recommend a Faulkner Act form, what is the process that needs to be followed after we file our report with the City Clerk? (Important to us that we and our constituents understand this, including the need for new elections where everyone runs.)]

After your final report is filed with the City Clerk, the Commission must develop a plan to print and get enough copies to distribute and publicize it; you must explain what you are recommending and why. The

Commission must distribute the whole report, not an executive summary. You must then “sell” the report to your community. You must avoid using public funds and public places during the process of advocating for your recommendations after the report is submitted. Printing your report can be funded by your City Budget Request, but after that, you cannot campaign for the recommendation using public money or public places. He has never seen a Commission get in trouble for advocating, only for using public money to advocate. (Ms. Burgwinkle mentioned that Charter Commissions can become campaign committees and need to set up ELEC reporting if they plan to raise money to publicize.) If the Commission recommends a special charter as compared to a Faulkner Act form, you need to have the City Council send the package to the legislature, and you need to have lined up a legislator to work with you. There is a lot more work involved in recommending a special charter, and the Commissioners remain as elected officials until the whole process is complete, can be another year or more. He believes that if a special charter was sent to the legislature, and the legislature had not acted by the end of that session, that the Commission would be discharged at that point.

Mr. Stewart posed a hypothetical question, asking if the Commission would still have to go through this process if we wanted to recommend one or two changes to our special charter. Dr. Reock responded that we would still need a legislator to introduce a bill for us and go through the legislature for any changes. He suggested that if the Commission is thinking that it will go with Special Charter, we should line up a meeting with the Office of Legislative Services to discuss the process. Mr. Smiley asked if any legislator could introduce the bill and Dr. Reock responded that any legislator could do it, but that one of our legislators would be the best choice. Ms. Burgwinkle asked if we had a local legislator working with us, would other legislators from other parts of the state be inclined to vote yes rather than no. Dr. Reock said that we would need to do a selling job, but that they probably would go along with a local legislator.

Mr. Smiley asked if in the two cities that changed their charters to Faulkner Act forms, did they have to have all of their elected officials re-elected? Dr. Reock indicated that he would have to check the revision procedure, but that was likely. Ms. Burgwinkle asked the hypothetical question whether all elected officials would need to run again at the next election if the Commission recommended adopting the Mayor-Council form and it passed in a referendum. Dr. Reock said that all elected officials (mayor and council) would have to run again and some of them would have their terms shortened in that election. He said that our ordinances would continue, but we would also need to have a new Administrative Code drafted within 90 days. He said to think of the Charter as a skeleton and the Administrative Code as the meat on the bones, dealing with our department structure and other topics. Mrs. Davis said that she recalled a referendum when the City went from an appointed to elected school board, and Dr. Reock emphasized that Board of Education would be governed by Title 18, that adoption of a Faulkner Act form would not change that, and that all of the General Laws of New Jersey would continue to apply to many different aspects of municipal activities as they do now. All the Charter does is deal with the structure of the government and tell people what powers they have to do things within the government. That is just the beginning, all of the General Laws that apply to Education, Health, Planning and Zoning, etc., still apply to the municipal activities.

Ms. Criscione asked Dr. Reock to explain again when does a charter change have to go to the legislature or when is it a referendum. Dr. Reock answered that if we want something other than a pre-packaged OMCL form, you have to go to the legislature.

Mr. Smiley asked Dr. Reock if he would take questions from our observers at the meeting and he agreed.

Mr. Rowand Clark (former Corporation Counsel) asked what the relationship was between the Mayor-Council form and partisan or non-partisan elections. Dr. Reock said that partisan or non-partisan is an option, and the charter commission would need to select the options and put them into one package for the referendum.

Mr. Clark also indicated that as far as concurrent elections go, he counted 47 non-partisan, concurrent election municipalities on the Rutgers CGS website. He asked Dr. Reock whether he had an opinion how well this scenario works. Dr. Reock said that he did not know how well this works, but he observed that more places go for staggered terms. It is likely that most of the 47 municipalities that have non-partisan and concurrent elections are Commission forms of government because those are the only options in that form. The Commission and the 1923 Municipal Manager Act is not like OMCL forms, there are no available options. OMCL forms have options, and the Commission could choose and build a form, put them in a package and that would go to the voters.

Mr. Robert Edwards asked Dr. Reock to clarify for him whether a special charter can be amended. Dr. Reock said that it can, but through the legislature. Dr. Reock also told him that a special charter amendment or initiation can come from the governing body and go to the legislature, it does not have to be through a Charter Commission. It can also be initiated by a petition of the voters.

Ms. Burgwinkle asked how much it would cost to adopt a Faulkner Act form, for instance the election would be larger, there would be the need to get an Administrative Code drafted. Dr. Reock said that most Commissions fit into the general election cycle, so no need for a special election, but an Administrative Code can be costly to draft. He said that some Charter Commissions include as an advisory recommendation that they will volunteer to be a study committee for the administrative code that needs to be drafted, that was done in South Brunswick. Must look at all the general laws and make recommendations on the policy that should go into the administrative code. It is expensive to draft and to keep up an administrative code.

Ms. Criscione asked mentioned that in our examination of the Faulkner Act forms, we did not see anything about requirements for running for office, while there are requirements in our charter (mayoral candidate must have been a resident and a registered voter for four years). Dr. Reock observed that there may be provisions in the Faulkner Act about what would disqualify a candidate for office, there are no qualifications because that is covered by the General Election Law. He suggested that we really don't need to put things in the charter that are covered by the General Law. Mr. Rowand Clark (former Corporation Counsel who was an observer at the meeting) told us that Mr. Bob Ferraro litigated the provisions in our charter regarding qualifications to run for mayor (legal voter and resident for 4 years) in or about 1989. He had lived in Plainfield for many years, but had not been a registered voter for the required time. The court held that state General Law controlled and he got to run for mayor. He told us that he believed that a four year residency and registered voter qualification was put into the charter by the party that controlled Plainfield at the time of the enactment of the charter so that they could have a better chance of maintaining controlling the mayoral position for at least four years, as many minority residents were not registered to vote at that time. A discussion ensued about the number of provisions in the Plainfield Charter (1968) that are actually outdated and controlled by other general law, how confusing that is for citizens and how having provisions that cannot be enforced can expose the city to potential suits.

The Commissioners thanked Dr. Reock and he agreed to come back to meet with us again.

SUMMARY OF FORMS OF NEW JERSEY MUNICIPAL GOVERNMENT
IN USE AS OF JULY 1, 2012

		Elected Legislature And Elected Executive	Elected Legislature And Appointed Executive	Elected Legislator- Executives
Township Form (1798)				Township Committee (141)
City Form (1880s-1890s)		Mayor-Council (14)		
Town Form (1880s-1890s)		Mayor-Council (9)		
Borough Form (1880s-1890s)		Mayor-Council (218)		
Village Form (1880s-1890s)				
OPTIONAL FORMS				
Commission Form (1911)				Board of Commissioners (31)
Municipal Manager Form (1923)			Council-Manager (7)	
Optional Municipal Charter Law	1950	Mayor-Council Form (71)	Council-Manager Form (42)	
		Small Municipality Form (18)		
	1981	Mayor-Council- Administrator Form (3)		
Special Charters		(9)	(3)	
Totals		(342)	(52)	(172)

Numbers in parentheses indicate number of municipalities using form as of July 1, 2012.

Forms of New Jersey Municipal Government in Use as of July 1, 2012

	Number of Municipalities	Total 2010 Population	Mean Average 2010 Population	Percentage of State Population	Largest Municipality	Smallest Municipality
City Form	14	208,608	14,758	2.4	East Orange (64,270)	Corbin City (492)
Town Form	9	128,439	14,271	1.5	Kearny (40,684)	Belvidere (2,681)
Borough Form	218	1,530,921	7,023	17.4	Sayreville (42,704)	Mantoloking (296)
Township Form	141	1,574,329	11,165	17.9	Lakewood (92,843)	Walpack (16)
Village Form	1	194	194	-	Loch Arbour (194)	Loch Arbour (194)
Commission Form	31	364,514	11,759	4.2	Union City (66,455)	Tavistock (5)
Municipal Manager Form (1923)	7	202,098	28,871	2.3	Clifton (84,136)	Teterboro (67)
Optional Municipal Charter Law: Mayor-Council Form	71	3,302,762	46,518	37.6	Newark (277,140)	Avalon (1,334)
Optional Municipal Charter Law: Council-Manager Form	42	964,478	22,964	11.0	Franklin Twp. (Som.) (62,300)	Beach Haven (1,170)
Optional Municipal Charter Law: Small Municipality Form	18	132,678	7,371	1.5	Stafford (26,535)	Island Heights (1,673)
Optional Municipal Charter Law: Mayor-Council-Administrator Form	3	79,775	26,592	0.9	North Brunswick (40,742)	Berkeley Heights (13,183)
Special Charters	12	305,292	25,441	3.5	Middletown (66,522)	Hardyston (8,213)
Total	566	8,682,661	15,340	100.0	Newark (278,980)	Teterboro (17)