Minneapolis Charter Commission Minutes

Regular Meeting
Wednesday, February 4, 2009 - 4:00 p.m.
Room 317 City Hall, Minneapolis, Minnesota

Commissioners Present: Bernstein (Chair), Clegg, Connell, Ferrara, Jancik, Lazarus, Metge, Rubenstein, Stade, Street
Commissioners Excused: Bujold, Dolan, Klassen, Remme
Commissioner Absent: Lichty

Also Present: Lisa Needham, Assistant City Attorney

1. Roll Call

Chair Bernstein called the meeting to order at 4:06 p.m. Roll call was taken.

2. Adopt Agenda

Lazarus moved adoption of the agenda. Seconded.

Bernstein moved to amend the agenda to add Item 6 under "New Business". Seconded.
Adopted upon a voice vote.

The agenda, as amended, was adopted upon a voice vote.

3. Approve Minutes of January 7, 2009

Lazarus moved approval of the minutes of January 7, 2009. Seconded.

Ferrara moved that the minutes be amended to note that a discussion had taken place that all meetings with Council Members should be concluded prior to the Charter Commission's February meeting. Seconded.
Adopted upon a voice vote.

The minutes, as amended, were adopted upon a voice vote.

New Business

6. Presentation by Council Members Ostrow, Remington, and Samuels regarding proposed Charter amendments eliminating the Minneapolis Park and Recreation Board, Board of Estimate and Taxation, and changes to City governance.

Clegg suggested that Item 6 be heard out of order.

Council Member Paul Ostrow was present and thanked the Commission for allowing him to speak regarding proposed Charter amendments authored by himself and Council Members Remington and Samuels. He stated that the proposed amendments had been forwarded to the Charter Commissioners via email and included the following:

Creation of a city administrator position. Every department head currently has 14 bosses which leads to inefficiency and a lack of accountability. Under this proposal, department heads would report to a city administrator. While the council and mayor would retain appointment authority, the city administrator would have the authority to discipline and terminate department heads.

Elimination of the Minneapolis Park and Recreation Board. This proposal would create a Park Advisory Committee which would have a role in advising the mayor and council on capital planning and long term vision and operations of the parks. It would eliminate redundancies such as two police departments and two planning departments.

Elimination of the Board of Estimate and Taxation. The activities of the Board of Estimate and Taxation would be taken over by the City Council.

Ostrow requested that the Charter Commission place on their next agenda a discussion regarding holding public hearings to receive input from the public on the proposed amendments.

Remington added that the way the city government is currently structured is not effective. The redundancy in services between the Park Board and the city is a tremendous burden on the system. We have the ability to have a more effective government. Not doing so would be a gross negligence on our part.

Samuels stated that the reasonableness of the proposal is clear and he would venture that most reasonable people would agree with just about everything proposed. He looked forward to the support and help of the Charter Commission on this very timely issue.

Lazarus stated that he was concerned that the Commission could possibly be wasting six years of their work revising the Charter on a non-substantive basis. The revised Charter might be confused with the new proposals. He inquired if it would be possible to achieve some kind of agreement for the City Council to take up the Charter Revision and ultimately pass it on a 13-0 vote so that the voters wouldn't have to consider both the Commission's Charter Revision and the new amendments proposed by the three Council Members.

Ostrow gave his commitment to help the Commission get the Charter Revision in front of the City Council as soon as possible.

Rubenstein inquired if the City could hire an administrator to coordinate all the departments without the need for a Charter amendment. She also inquired if there was support for the proposals from the City Council and Mayor's office.

Ostrow stated that giving the authority to a city administrator to discipline or terminate department heads would require a Charter amendment. He felt there was support on the City Council for different pieces of the proposal. It would be premature to have a discussion with the City Council regarding the proposals until there had been a process to gain public input, which is where he felt the Charter Commission could be a valuable resource. Then the decision of the City Council as to whether or not to put the proposals on the ballot will be informed by the Charter Commission's process.

Rubenstein inquired if the Commission would have the benefit of staff input on what the actual cost savings might be if the proposals were put into effect.

Ostrow stated that it was his assumption that if the Charter Commission requested information from any department, the request would be honored.

Metge stated that there was vast confusion in the public regarding whether the changes proposed by the Council Members were related to the Charter Revision that the Charter

Commission has been working on for many years. It is important to the credibility of the Commission that they pass the Revision and then move on to discussions about substantive changes. She was concerned that offering public hearings on the new proposals, before the Revision was passed, would be very confusing to the public.

Connell inquired if it would be possible to sketch out a plan where a 13-0 vote could be achieved for the Charter Revision, and at the same time sketch out a plan for the presentation of the new proposals.

Ostrow stated that he and Council Members Remington and Samuels would first need to visit with their colleagues. He felt there was a lot of support for the Charter Commission's efforts.

Connell inquired what action was necessary on the part of the Commission in order to get the proposal on the ballot in the fall.

Ostrow stated that the preferred option would be for the City Council to agree to put the item on the ballot; however, the jury is out as to whether that is achievable. The other option is a petition process to obtain the signatures of a specified percentage voters. Their hope is that a majority of Council Members will agree to put it on the ballot. If that does not happen, they would need sufficient time to undertake a petition campaign.

Clegg requested more information as to the choice of a city administrator as opposed to a strong mayor or council-manager system.

Ostrow felt that either system could work. The key is to have department heads report to one person. This proposal is true to the current traditions of the City in terms of the role of the council and mayor. It does not change that balance, but adds accountability to the system.

Ferrara stated that the Commission had passed the Charter Revision and it was now out of their hands. If the City Council doesn't pass it on a 13-0 vote, then the Commission will have to work to put it on the ballot. He also requested that before the March 4 meeting, Council Member Ostrow make suggestions in writing as to what sort of cost savings could be achieved with his proposed amendments.

Ostrow requested that Commissioners keep in mind that staff is buried in the challenges of the current financial issues, but he would come back to the Commission with some suggestions in March.

Bernstein thanked the Council Members, noting that the Commission could not take a formal vote on the issue since no information on the topic had been on the printed agenda. He would place on the March agenda the topic of consideration of holding public hearings regarding the proposed amendments.

Lazarus suggested that the Commission not take a position on the three new proposals until the passage of the revised Charter. If the Commissioners take positions regarding the three new proposals, they will appear biased.

Clegg stated that it was not up to the Commission to decide who can or cannot bring matters forward with respect to amending the Charter. It is the duty of the Commission to consider Charter amendments to make sure they are legal, that the wording is correct, etc.; and if so, it is

their duty to forward the amendments to the City Council. The Supreme Court has stated that the Commission does not have to consider amendments that are against state law, but nothing that is being proposed would be against state law. He felt it would be exceeding the Commission's authority to say they would not hear any more proposed changes until the ones they like are adopted.

Metge stated that she didn't feel anyone was saying that the Commission should not entertain discussion on substantive changes. She had always assumed that at some point in the future the Commission would recommend substantive changes because there has always been a desire to discuss other possible amendments. The issue is timing. It is important to get done with one article of business and then move ahead with another.

Ferrara stated that there was nothing more for the Commission to do regarding the Charter Revision. There should be public discourse regarding the new proposed amendments at next month's meeting. It is important that the public get a chance to weigh in on the proposals at some point in time.

Michael Katch, 111 Marquette Avenue South, was present and stated that he knew of at least three other groups that were beginning petition drives for Charter changes, including limiting Council Members to two-year terms, and inquired if the Charter Commission would consider those changes as well.

Bernstein stated that any citizen who wishes to petition to make Charter changes must at some time appear before the Charter Commission. He suggested that Mr. Katch encourage the individuals leading the petition drives to contact the Charter Commission Coordinator or himself, to get calendared as soon as possible.

Old Business

4. Charter Revision:
Update on visits with Council Members.

Bernstein stated that the Commission had adopted Draft 11 as the final draft of the revised Charter, but had not yet formally transmitted it to the City Council. He read a standard form letter used by the Clerk's Office for transmitting Charter amendments to the City Council.

Former Commissioner Brian Melendez was present and stated that the transmittal report that the Commission had adopted at the same time it adopted Draft 11 of the Charter Revision was in the appropriate format to be used in place of the standard form letter and satisfied all statutory requirements. He felt the transmittal letter should also contain language that the Commission would like a unanimous vote of the City Council to pass the Revised Charter, but if that does not occur, they would then like it on the ballot. He had not yet prepared the final version of the Revised Charter or transmitted it to the City Council because he was awaiting the Commission's instruction to do so. It was his understanding that the Commission had decided they wanted to obtain feedback from their meetings with the Council Members to determine if any tweaking would be required or if the Council Members requested a Study Session before the final version was delivered to them.
Needham stated that the issue was not the format of the transmittal letter, but the fact that the Commission had not yet formally transmitted the document to the City Council.

Lazarus stated that Brian Rice, attorney for the Minneapolis Park and Recreation Board, had been in contact with him regarding two minor changes to the Revision. Mr. Rice pointed out that the Legislature had enacted two laws granting the Park Board and the City Council the ability to jointly enact a park dedication fee and felt that it would be appropriate to reference that change in the Revision. Also, Mr. Rice was confused by the use of the word "it" in section 1.3(c). These requests were submitted to Mr. Melendez who suggested adding the following sentence to section 7.2(c): "The Park Board and the City Council may jointly by ordinance impose a park dedication fee as provided by law". In section 1.3(c) the word "it" would be changed to "the law".

Street moved that the two changes, as outlined by Commissioner Lazarus, be incorporated into Draft 11 of the Charter Revision. Seconded.
Adopted upon a voice vote.

Ferrara moved that the Commission direct Former Commissioner Melendez to transmit Draft 11 of the Charter Revision, as amended, to the City Council. Seconded.
Adopted upon a voice vote.

Ferrara added that there was an urgency to have the transmittal take place prior to the next meeting of the Charter Commission.

Bernstein noted that in order to avoid confusion between the Charter Revision and the new proposal by several Council Members, he had suggested waiting to send the letter to neighborhood organizations informing them of the proposed Charter Revision until the Commission had a chance to revise the letter at today's meeting.

Lazarus drafted the following language to add to the letter to neighborhood organizations: "Please note, the amendments drafted by the Charter Commission are non-substantive amendments and do not include the recent substantive proposals made by Council Members Ostrow, Samuels, and Remington regarding the Minneapolis Park and Recreation Board, the Board of Estimate and Taxation, and changes in City governance."

Ferrara requested that the letter be sent before the next meeting in written and email form.

The Clerk advised that hard copies would be mailed to those neighborhood organizations that did not have email addresses. All other neighborhood organizations would receive the information via email.

Metge stated that she would send the Clerk the information necessary to get the same information in the NRP quarterly newsletter.

Rubenstein was pleased to see that Draft 11 of the Revision and the Executive Summary were both linked to the Charter Commission website and felt if the letter to the neighborhood organizations could also be linked, it could help avoid some confusion.

The Commissioners discussed their visits with Council Members. Chair Bernstein's meeting with Council President Johnson had been delayed and was rescheduled for the following week. Rubenstein stated that Council Member Hodges had expressed concerns that if certain provisions that had been in the Charter were moved to ordinance, what would happen if the ordinances were not in place when/if the Charter Revision is approved?

Lazarus inquired if it was in the Commission's authority to ask the Assistant City Attorney to draft the ordinances.

Ferrara did not feel it was within the Commission's scope of responsibility to begin to draft ordinances. It would be more reasonable to list the new ordinances that would need to be created if the revised Charter was adopted.

A discussion followed regarding whether the Revision could only be passed by a 13-0 vote of the City Council, or if it could be passed by a unanimous vote of those Council Members present at that meeting. Assistant City Attorney Needham stated that it was her opinion that a 13-0 vote was required, but she would verify that and inform the Commission at the next meeting.

New Business

5. Charter Commission Website:
Discuss addition of Charter Commissioners' email addresses to the Charter Commission membership list on the City's website.

Bernstein moved that the email addresses of Charter Commissioners be added to the membership list on the Charter Commission website. Seconded.

Lazarus opposed the motion. He would prefer comments be directed to either the Chair or the Clerk, and then distributed to the membership.

Street inquired if Commissioners would be allowed to opt-in or opt-out.

Rubenstein was concerned that having access to Charter Commissioners' email addresses might give the impression that the Commissioners will respond to questions. She would feel uncomfortable responding to emails on behalf of the Charter Commission.

Lazarus pointed out that it was the policy of the Charter Commission that only the Chair respond to requests for information.

Metge agreed that communication should go through the Clerk and the Clerk could forward any emails to the entire membership. That way the Commissioners wouldn't be put in a position of responding on a personal basis. Also, she did not have the authority to publicly post her work email address.

Connell stated that he didn't want to be put in a position where his personal "in box" could be opened to the public in the event of litigation that would make it subject to a discovery request. Perhaps the city could dedicate an email address, and possibly make it a group distribution email address, so that there is one point of contact.

Ferrara stated that after hearing the discussion, he had changed his thinking on the subject. However, there should be some way for the public to reach the Charter Commissioners. Bernstein stated that currently the Clerk's email address is listed.

Needham noted that in the 2008 legislative session, the legislature passed an amendment to the Data Practices Act specific to members of appointed boards such as the Charter

Commission. It states that once an individual is appointed to a public body, the following items of data are public: “Residential address, either a telephone number or an electronic mail address where the appointee can be reached, or both”. However, it goes on to say, "notwithstanding paragraph (b) any electronic mail address or telephone number provided by a public body for use by an appointee shall be public. An appointee may use an electronic mail address or telephone number provided by the public body as the designated electronic mail address or telephone number at which the appointee can be reached." There is still some debate as to what the legislature meant and whether or not they intended for a group point of contact, as the Commission uses right now via the Clerk, or whether they intended members to set up publicly available emails. Until that is resolved, she preferred that the Commission take no action on the subject especially given the fact that some Commissioners had reservations about doing so. Also, in relation to issues of litigation and data practices, if Commissioners are using their personal email for Charter business, they are discoverable under a data practices request. She suggested that Commissioners set up a dedicated email or at least a dedicated folder for Charter business.

Bernstein withdrew his motion.

Ferrara requested placing an item on the March agenda relating to consideration of a strategy for the Commission to follow if the City Council either fails to vote or does not reach a unanimous vote on the revised Charter.

Lazarus moved to adjourn. Seconded.
Adopted upon a voice vote.

The meeting was adjourned at 5:45 p.m.

Peggy Menshek
Charter Commission Coordinator