

Minneapolis Charter Commission Minutes

Regular Meeting

**Wednesday, September 6, 2006 - 4:00 p.m.
Room 317 City Hall, Minneapolis, Minnesota**

Commissioners Present: Bernstein (Chair), Lazarus, Bujold, Connell, Dolan, Ferrara, Ponsford, Remme, Stade, Street

Commissioners Excused: Clegg, Klassen, Lichty, Rubenstein

Commissioner Absent: Metge

Also Present: Lisa Needham, Assistant City Attorney

1. Roll Call

Chair Bernstein called the meeting to order at 4:07 p.m. Roll call was taken.

2. Adopt Agenda

Commissioner Ponsford moved adoption of the agenda. Seconded.

Chair Bernstein moved to amend the agenda in order to consider Item 5 prior to Item 4. Seconded. Adopted upon a voice vote.

Ponsford's motion, as amended, was adopted upon a voice vote.

3. Approve Minutes of August 2, 2006

Commissioner Lazarus moved approval of the minutes of August 2, 2006. Seconded. Adopted upon a voice vote.

New Business

Referred by Intergovernmental Relations Committee 8/29/06:

5. Minneapolis City Charter:

Consideration of the following proposed ordinance amendments establishing a Department of Public Works and creating the position of Director of Public Works, for referral to the City Council for adoption by unanimous vote:

Subject matter of ordinances amending Chapter 3 of the Minneapolis City Charter relating to Powers and Duties of Officers:

- a. Section 4, amending the power of the executive committee on appointments and removals.
- b. Section 8, amending the existence of the City Engineer as the head of the Public Works Department by creating a Department of Public Works and a Director of Public Works.
- c. Section 9, amending the powers of the City Engineer and providing the duties and powers of the Director of Public Works.
- d. Section 10, amending the maintenance of surveys, plans and estimates.

Subject matter of ordinances amending Chapter 8 of the Minneapolis City Charter relating to Public Highways and Bridges:

- a. Section 2, amending the way profiles and grades are maintained and the staff who will provide advice to the Commissioners.
- b. Section 6, repealing so that the City Engineer is not responsible for grading and construction of public ways.
- c. Section 7, amending so that the Director of Publics Works cannot have interest in contracts.
- d. Section 8, amending who is prohibited from accepting bribes.

- e. Section 13, amending by providing duties of the Director of Public Works regarding the repair of sidewalks.
- f. Section 14, amending by providing the Department of Public Works is responsible for sidewalk repairs.
- g. Section 22, amending the location of copies of plats.

Subject matter of an ordinance amending Chapter 9, Section 5 of the Minneapolis City Charter relating to Water Works, amending the location for the preservation of records and the certification of the cost of construction.

Subject matter of ordinances amending Chapter 10 of the Minneapolis City Charter relating to Local Improvements—Assessments:

- a. Section 1, amending the process for proposing suitable land for public improvements.
- b. Section 5, amending the street improvement process by having the Department of Public Works provide advice and assistance instead of the Engineer.
- c. Section 8, amending the local improvement process by having the Department of Public Works provide assistance instead of the Engineer.
- d. Section 10, amending the sidewalk building process by having the Department of Public Works provide a description of property and cost estimate instead of the Engineer.
- e. Section 15, amending who certifies that an improvement has been made by the owner of a property.
- f. Section 29, amending who must work with the Auditor regarding improvements.

Subject matter of ordinances amending Chapter 16 of the Minneapolis City Charter relating to Parks and Parkways:

- a. Section 2, amending the location for the filing of plats of the Park and Recreation Board.
- b. Section 3, amending the location for the filing of plats for land condemned by the Park and Recreation Board.
- c. Section 15, amending reference to the process used by the City in building sidewalks and assessing for the construction.

Subject matter of an ordinance amending Chapter 19, Section 4 of the Minneapolis City Charter relating to Civil Service, amending the unclassified service to include the Director of Public Works and eliminate the City Engineer.

Peter Wagenius, Senior Policy Aide, Mayor Rybak's Office, was present and handed out a summary of the proposed amendment. The Mayor's Office has been working collaboratively with Council Members, in particular the Chair and Vice Chair of the Transportation and Public Works Committee (T&PW), as well as the Chair of the Intergovernmental Relations Committee (IGR) with the objective to separate what is currently the single position of Director of Public Works/City Engineer into two positions: (1) Director of Public Works, and (2) City Engineer. The Director of Public Works would be the department head and may or may not be an engineer. The City Engineer, a Certified Public Engineer, would be the final authority to sign off on any engineering documents, as required by statute. This objective is not unusual by any means. Many of Minneapolis' peer cities have separated these two positions into administrative and engineering components; local examples include St. Paul and Hennepin County. Two searches for a Director of Public Works have taken place during Mayor Rybak's term of office. In each case, a Search Committee and a search firm provided a small list of qualified candidates. Minneapolis should not have to choose from among a small handful of qualified candidates for the Director of Public Works. Some of factors which limited the pool of candidates were salary, which is under the governor's cap, and the fact that Minneapolis, unlike many other cities, requires the candidate to be an engineer. This separation would allow Mayor Rybak and future Mayors and City Councils to fully utilize administrative skills in the administrative position, and engineering skills in the engineering position. Before this amendment would be voted upon by the City Council, the Executive Committee would establish the position of City Engineer and establish the Director of Public Works as head of the department to make sure there is no gap in continuity and that there would be a City Engineer at all times. After Council approval, there would be a best practices analysis to divide the responsibilities in these two

positions. Ordinances would then be amended to reflect that division, since they currently repeatedly refer to the Director of Public Works and the City Engineer as the same person. The Charter currently doesn't allow the City to separate these positions. The proposed amendment would create the Department of Public Works, designate the Director of Public Works as the head of that department, and delete the words "City Engineer" and insert either the words "Director of Public Works" or "Department of Public Works".

Commissioner Bujold inquired if the positions of Director of Public Works and City Engineer, as separated, would be in the classified service. He also inquired as to the cost imposed by creating the new position.

Pam French, Director of Human Resources, was present and stated that both positions would be in the unclassified service. The Director of Public Works position would be established as the department head through the Charter, and the City Engineer position would be created through ordinance by the City Council.

Mr. Wagenius stated that at this point there are unfilled positions in the Department of Public Works. As part of the process, they are studying the entire the Public Works administrative team. There will be no additional funding for the position.

Commissioner Lazarus didn't find any reference in the proposed amendment to the City Engineer having the authority to certify all things needed to be certified by an engineer for the City.

Mr. Wagenius stated that it is required under state statute that the City designate someone who is a City Engineer to sign off on all City engineering documents. However, it is not required by state law that that person also be the head of the department.

Commissioner Connell inquired as to the vote in the IGR Committee on this amendment.

Betsy Hodges, Thirteenth Ward City Council Member and Chair of the IGR Committee, was present and stated that the vote was unanimous.

Commissioner Connell asked if there were any sort of state statute governing the types of items that need to be signed off by the City Engineer and if the appointment would have to comply with that state statute.

Mr. Wagenius stated that the City Attorney's Office would play a key role in the work team to make sure that the job description for the City Engineer conformed to statute requirements.

Commissioner Lazarus moved approval of the proposed Charter amendments. Seconded.

Adopted upon a voice vote.

Commissioner Dolan noted as opposed.

Unfinished Business

4. 9th Draft to City Charter Revisions (submitted February 7, 2006): Update on status of review by outside counsel.

Chair Bernstein stated that former Council Member Barret Lane, an attorney in private practice who was retained as outside counsel by the City Attorney's Office to review the revised Charter adopted by the Commission, was present to summarize his analysis.

Barret Lane, 5775 Wayzata Boulevard, Suite 600, Minneapolis, 55416, stated that he was retained initially to review Draft 8E, and ultimately Draft 9, of the proposed Charter revision. The first major City Attorney review of the project that he was aware of took place after Draft 5. At that point, the

City Attorney went through a nine-month process associated with a team of lawyers and paralegals in order to comb through the entire document and produce a report with a line-by-line level of granularity. The Charter Commission received that review and resolved some of those issues in Draft 6. A shorter summary was prepared by the City Attorney's Office on Draft 6. Given the time-frame that he was retained under, the decision was made that he take the Draft 5/6 analysis and update that to Draft 9. He had used the side-by-side document prepared by former Commissioner Melendez to help identify parallel citations within the current Charter and the proposed Charter. He focused primarily on the issues that were in play at the end of Draft 6.

By and large, the concerns that the City Attorney raised with respect to Draft 6 still remained valid in Draft 9. Based upon the review of Draft 9, it is the opinion of the City Attorney's Office's that substantive changes have been made, either changes in legal relationship or changes that otherwise would require policy action. There is no question that the Charter Commission succeeded in making a shorter, better organized Charter. The question is whether the Commission was able to do that without making any substantive changes. One substantive change he noted was with respect to power. The current Charter has a self-contained source of its own authority. It is organic in the sense that it invokes its own power. The proposal reaches out to state law to get that power. That is a substantively different approach. Other substantive changes include changes made to the following:

- Executive Committee
- Redistricting
- Public Works, Water Works, and Special Assessments
- Powers of Park and Library Boards

Mr. Lane stated that it was not always clear to him in Draft 9 whether some things were simply being deleted from the Charter or moved to ordinance. To his knowledge, there has not been a list of provisions that were being stricken outright from the Charter versus those that were recommended to be put into ordinance. There is also the issue of whether moving something from the Charter to ordinance is a substantive change. Regardless of how the Commission proceeded, he hoped they would move forward in some fashion, but there would have to be transitional considerations, such as the drafting of the proposed ordinances.

Chair Bernstein explained, for the benefit of the newer Commissioners, that the revision process began more than two years ago. Also, the Commission did not have to adopt the City Attorney's report; it did not require any action by the Commission except to decide how they want to proceed.

Commissioner Bujold felt the Commission should form five committees of three people. Each committee could be assigned four of five pages of Mr. Lane's analysis. The chair of each committee would have the responsibility to work with his or her fellow committee members, and then engage with Mr. Lane to determine where there was room for change.

Mr. Lane stated that at the direction of the City Attorney's Office, he would continue to provide whatever services were required. While he didn't have a recommendation on how the Commission should proceed, there were at least two options. The Commission could continue to attempt to make the language truly non-substantive, which could take a long time; or the Commission could agree that while some of the changes are substantive, they feel those changes are better than what is in the current Charter and recommend them as substantive changes.

Commissioner Ponsford stated that she had had conversations with Mr. Melendez about the work Mr. Lane has been doing and he said he is very willing to come back and make a Draft 10 or work with the Commission, with the caveat that he's busy until after the election.

Commissioner Ferrara stated that it seemed that Mr. Lane's duty was to the City Attorney's Office and the City Council. The outside review was for their benefit. The Commission voted on and

passed Draft 9, and he felt, in order to move forward, the City Council would need to be engaged in the process.

Mr. Lane stated that he had been retained as outside counsel by the City Attorney's Office in the same way that any other outside counsel would represent the City of Minneapolis.

Assistant City Attorney Needham stated that retaining Mr. Lane as outside counsel was due to the fact that the sheer scope of a line-by-line analysis was a bit beyond what the City Attorney's office could undertake. Mr. Lane speaks for the City Attorney in terms of opinions, suggestions, and legal advice on the matter.

Commissioner Connell stated that the revision is an attempt by the Charter Commission to simplify the Charter, bring it up-to-date, and make it a more easily used document. In order to accomplish that, and have it either approved by the City Council by unanimous vote or approved by the voters, the goal had been to avoid substantive changes. The question now is has the document changed as little as possible from a substantive standpoint so that it can be presented to either the City Council or the voters, and can the Commission honestly state there are no substantive changes? It seemed that Mr. Lane had answered that question by stating that the Commission has done a great deal of work toward that goal, but didn't quite yet have a document that had not changed from a substantive standpoint on a number of issues, specifically the five identified in Mr. Lane's letter. The Commission now needs to decide how to move forward.

Commissioner Lazarus stated, for the benefit of the newer Commissioners, that former Commissioner Melendez' grasp of the Charter was extraordinary; far beyond his, and probably far beyond many others on the Commission. The problem is that the Charter itself is a political document. In order to make something more difficult to amend, the City Council would make it part of the Charter. Part of what the Commission tried to do was to take out what should be in ordinance, and move it to ordinance, and try to maintain, for the benefit of the body politic of the City of Minneapolis, the Constitution of the City by revising the Charter. But now the Commission had to face the fact that, although their efforts were pure and sincere, certain changes which they believed were appropriate may constitute a change in policy. He felt the Commission had two choices: either to work with the City Council, who is the ultimate body that will either give the revision a 13-0 vote or not, or face the fact that if this goes before the voters it will be an uphill process. He also felt the Commission needed to try to work with the City Council and Mr. Lane and attempt to seek compromises with the intent of trying to make the Charter a simpler document and avoid substantive changes. He suggested that the Commission work with the City Attorney, Mr. Lane, and the IGR Committee to determine appropriate compromises.

Commissioner Ferrara inquired if Mr. Lane felt the Charter could be rewritten without making any substantive changes. Mr. Lane stated that anything is possible; it is just very, very difficult.

Commissioner Ferrara didn't feel it was possible to revise a document in the scope in which the Commission had revised the Charter without someone saying there were substantive changes. The Commission will need to work with the City Council and the City Attorney to determine what they feel are substantive changes. However, he did not feel it could be revised without substantive changes. The Commission is working on changing the Constitution of the City in the spirit of not playing favorites, and they have tried to do it in the least substantive, fairest, and most logical manner possible.

Chair Bernstein stated that the Commission was no longer under any time constraint. The revision would not go to the voters this year. There is no city-wide election in 2007. The earliest it could be on the ballot would be in 2008; so there is a fair amount of time to work on it.

Mr. Lane suggested the Commission take a phased approach to the revision. Consider which elements could be moved first in order to reach their goal over time, rather than the current approach of rewriting the entire Charter.

Chair Bernstein stated that the Commission had a presumptive offer from former Commissioner Melendez to review the City Attorney's report. Mr. Melendez was the principal author of the document. Chair Bernstein proposed that the City Attorney's opinion be forwarded to Mr. Melendez for his review, knowing that it will not happen until November. Mr. Melendez had made an offer through Commissioner Ponsford to continue to work on and review the revision, and Chair Bernstein felt Mr. Melendez was owed that and that his opinion would be invaluable.

Commissioner Ferrara agreed with having Mr. Melendez review the City Attorney's opinion; however, he felt if the Commission was going to waste any more effort on this, the City Council must be engaged. He believed that the Commission created a very good draft, although it may need a few more revisions. However, he felt that the City Council should vote it up or down so the Commission could move on.

Chair Bernstein stated that the City Council would not be engaged in working with the Commission in redrafting the City Charter. That is the Charter Commission's job. The City Council would be willing to consider and debate whatever document the Commission submitted. The City Attorney's opinion will influence them greatly in how they vote on the revision. Going forward, the Commission can decide to submit the Draft 9 as is, knowing that the City Attorney's opinion states there are substantive changes in the granting of powers and the roles of Boards and Commissions, but it is unlikely the Council will accept the revision. Chair Bernstein recommended that the Commission take advantage of Commissioner Melendez's offer to review the City Attorney's analysis. Perhaps there are some issues that are not resolvable because they are just differences of opinion between very smart, very talented attorneys; or there may be some areas where compromises could be made.

Commissioner Bujold agreed with having Mr. Melendez respond to the City Attorney's concerns, but also felt the Commission had a responsibility to take into consideration Mr. Lane's concerns and collaborate with him and respond affirmatively to views and insights regarding the revision.

Commissioner Connell stated that it had taken 82 years to get the Charter to the point that it was at in 2002 when the decision was made to revise it; and so far it has been a four-year process. He appreciated that some Commissioners felt they had put forth a tremendous effort and would like to either see that effort come to fruition or have it rejected; however, it was his opinion that the Commission was still in the middle of the process and should continue that process.

Commissioner Ferrara felt it would be a good idea to ask Mr. Melendez to review the City Attorney's opinion, but at the same time, follow up with Commissioner Bujold's suggestion of forming committees.

Chair Bernstein was not opposed to drafting committees, but didn't know what the drafting committees would do until after the principal author, the only person who had drafted anything since the summer of 2003, had a chance to review the analysis. Mr. Melendez wrote virtually the entire document. Drafting committees assisted early on, but the last five or six drafts were written almost solely by Mr. Melendez. The Commission voted and asked questions, but Mr. Melendez wrote and revised the document. Since Mr. Melendez had offered to be a resource after the November elections, it would be remiss not to accept his offer.

Commissioner Ferrara moved that the City Attorney's analysis be referred to former Commissioner Melendez for review, and that five committees of three members each be formed to review the points raised in the City Attorney's analysis. Seconded.

Commissioner Connell suggested that the motion be divided into two parts. Personally, he would like to spend a little more time with the revision as it stands, look at the City Attorney's comments once again, receive comments back from Mr. Melendez, then decide where he would like to be in the drafting committee process. He liked the idea of drafting committees, because changes would have to be made before something could be presented to the City Council.

Commissioner Ferrara moved to divide the motion. The first motion being that the City Attorney's analysis be referred to former Commissioner Melendez for review. The second motion being that five committees of three members each be formed to review the points raised in the City Attorney's analysis. Seconded.
Adopted upon a voice vote.

Commissioner Bujold stated that he envisioned that the committees would respond proportionately to Mr. Lane's concerns set forth in the annotation. They could work as committees, work with Mr. Melendez, and also work with the City Attorney in an effort to fully understand the concerns and determine ways of addressing those concerns in an effective way.

Commissioner Ponsford suggested that the more experienced Commissioners be placed on committees with the newly appointed Commissioners.

Mr. Lane requested clarification since this would involve some input or a request for the City Attorney's continued support. Was the objective of the drafting committees to further remove things which may be substantive, or to fully understand, in a disclosure sense, those things which were in the analysis, whether substantive or not? He would prepare for each a bit differently. He asked that as the Commission debated the motion, that they also address how they plan to proceed.

Chair Bernstein noted that the first motion was to simply refer the City Attorney's analysis to Mr. Melendez for his review. He was still a little confused about the second motion.

Commissioner Ferrara moved to withdraw the second motion until after a vote on the first motion. Seconded.
Adopted upon a voice vote.

Commissioner Ferrara's first motion to refer the City Attorney's analysis to former Commissioner Melendez for review was adopted upon a voice vote.

Commissioner Ferrara moved that the Chair create committees to review the current draft along with the analysis of the City Attorney to disclose the substantive or objectionable matters. Seconded.

Commissioner Connell agreed that before the Commission could move forward in an attempt to reduce the substantive changes, or move forward with the spirit of accepting those substantive changes as they are, they first needed to understand what those substantive changes were. His goal would be to understand those items the City Attorney had identified as substantive changes. Then, in his opinion, the committees could be tasked with the purpose of deciding how to move forward.

Commissioner Street was in favor of forming committees, but was confused as to the stated goal of the committees. If the goal was to identify areas of potential problems, how was that different from the identification of potential problems that was just submitted to the Commission by Mr. Lane?

Commissioner Ferrara stated that he felt attorneys could have their opinion and the Commission could have a different opinion, and then decide how to move forward. He felt it was inherent to revising the Charter that some of the changes would be perceived as substantive by attorneys.

Chair Bernstein was opposed to the motion to form committees at this point because, until after the Commission receives a report from Mr. Melendez, he didn't know what the committees would do. The annotations prepared by the City Attorney's Office describe, in detail, where the disagreements lie. The decision that needs to be made is if the Commission is going to proceed with the City Attorney's opinion incorporated into Draft 9 in total, or if they are going to modify it Draft 9 in some way. He felt that until the Commission heard from Mr. Melendez, that decision could not be made.

Commissioner Bujold viewed the responsibility of the committees as simply to understand one area of Mr. Lane's concerns within a smaller context, and then, if necessary, to be of assistance to Mr. Melendez. Each committee could be assigned a certain area of work responsibility and then be knowledgeable in that area.

Commissioner Ferrara felt the committees could also inform the Charter Commission of their opinion on the controversy.

Commissioner Stade felt that serving on a committee would be beneficial in educating the newly appointed Commissioners on just a small part of revision, and then when former Commissioner Melendez responds, there will be some experts on certain parts of the revision.

Lazarus called the question. Seconded.
Adopted upon a voice vote.

Commissioner Ferrara's motion that the Chair create committees to review the current draft along with the analysis of the City Attorney to disclose the substantive, or objectionable, matters was adopted. Yeas, 9; Nays, 1 as follows:

Yeas - Lazarus, Bujold, Connell, Dolan, Ferrara, Ponsford, Remme, Stade, Street.

Nays - Bernstein.

Commissioner Ferrara suggested that the committees be formed at the October Charter Commission meeting.

Commissioner Ferrara moved to adjourn. Seconded.
Adopted upon a voice vote.

The meeting adjourned at 5:49 p.m.

Peggy Menshek
Charter Commission Coordinator