

Minneapolis Charter Commission Minutes

August 5, 2009 - 4:00 p.m.
Room 317 City Hall, Minneapolis, Minnesota

Commissioners Present: Bernstein (Chair), Bujold, Clegg, Connell, Dolan, Ferrara, Lazarus, Lichy, Rubenstein, Stade, Street
Commissioners Excused: Jancik, Kadwell, Metge, Remme

Also Present: Lisa Needham, Assistant City Attorney
Dana Banwer, Assistant City Attorney

1. Roll Call

Vice Chair Lazarus called the meeting to order at 4:13 p.m. Roll call was taken.

2. Adopt Agenda

Dolan moved adoption of the agenda. Seconded.

Clegg moved to amend the agenda to add a new Item No. 6, "Review of Correspondence Received by the Charter Commission". Seconded.

Adopted upon a voice vote.

Absent - Jancik, Kadwell, Metge, Remme.

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

Absent - Jancik, Kadwell, Metge, Remme.

3. Approve minutes of July 1, 2009

Dolan moved approval of the minutes of June 3, 2009. Seconded.

Ferrara moved to amend page 7 of the minutes to add to his comments the phrase, "Ferrara spoke against the motion". Seconded.

Adopted upon a voice vote.

Absent - Jancik, Kadwell, Metge, Remme.

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

Absent - Jancik, Kadwell, Metge, Remme.

Chair Bernstein noted that Assistant City Attorney, Lisa Needham, would be leaving the City Attorney's Office and thanked her for her hard work and commitment on behalf of the Charter Commission.

Lisa Needham, Assistant City Attorney, introduced Dana Banwer who would represent the City Attorney's Office on the Charter Commission in the future.

Dana Banwer, Assistant City Attorney, stated that she had headed up the Criminal Division in the City Attorney's Office for the past six and a half years and recently returned to the Civil Division. She looked forward to working with the Charter Commission.

New Business

4. Proposed Park Board Amendment by Petition: Tentative Report by City Attorney's Office.

Bernstein stated that at their last meeting, the Park Board had passed a proposal to change the Charter by petition to in effect declare independence from the city.

Clegg stated that a letter received from Scott Neiman, Citizens For Independent Parks, stated that the petition would be filed with the City Clerk on Monday, August 10. Minnesota Statute 410.12(3) stated that "the proposed amendment shall be assembled and filed with the Charter Commission". He questioned whether delivering the petition to the City Clerk would violate the statute.

Lisa Needham, Assistant City Attorney, stated that it was her understanding, and what the League of Minnesota Cities advises smaller municipalities as well, that the City Clerk, or the Charter Commission Clerk, may act as an agent to receive the filing. However, that did not dispose the Charter Commission of its ministerial duty to transmit the petition to the City Council.

Clegg inquired when it would be transmitted to the City Council, given that there was not another regularly scheduled Charter Commission meeting until September 2, 2009.

Needham stated that in the event the petition was received on the tenth, the Charter Commission would be under a ministerial duty to transmit at their next meeting, be that a special meeting or at their regular meeting in September.

Bujold inquired as to the required number of signatures for the petition, and if the petition did not contained the requisite number of signatures, if it was subject to the provision allowing for resubmission.

Needham stated that under Minnesota Statute 410.12, the required number of signatures is five percent of the total votes cast at the previous state general election; in this case 10,449. While any petition generally is allowed resubmission, in this case they are running up against specific state statutory timeframes to get the item on the ballot. August 11 is the last day under Minnesota Statute 410.12 that a ballot initiative may be submitted. September 11 (53 days prior to the general election), is the last date at which the City may inform the county auditor that a ballot initiative will appear and submit the ballot language to the county.

Discussion ensued on the responsibilities of the Charter Commission in the transmittal process.

Ferrara inquired if the 10,449 signatures must be from registered Minneapolis voters and if the City Elections Department was responsible for verification of the signatures.

Needham stated that the City Clerk's Office, which houses the Elections Department, would perform the verification. It would be done by Elections Department and City Clerk staff.

Street inquired as to the meeting requirements for transmittal and ballot language.

Needham stated that the City Council would be responsible for drafting and passing ballot language by September 11. The only meeting requirement for the Charter Commission would be to transmit.

Lazarus stated that the letter of transmittal should note that the Charter Commission is not conceding that the submission is in compliance with the statute, if indeed there is no verification, and that they are doing a ministerial act which may or may not be required.

Needham stated that she believed that the Charter Commission's only duty was to transmit. They would not be attesting that it is a proper amendment or that the proper steps had been taken. The Charter Commission would be attesting that it was received and filed with the City Clerk's Office.

Lazarus requested that the Commission receive advice from the City Attorney's Office to set forth in the transmittal letter that the Commission is not conceding that what is transmitted is, in fact, a legal submission.

Needham stated that the City Attorney's Office would be happy to opine on that prior to the next meeting.

Clegg stated that with the medicinal marijuana proposal, the Charter Commission concluded that it was their duty to transmit it even though they thought it was illegal. The transmittal letter noted that the Commission didn't think it was appropriate to be placed on the ballot, and the City Council concurred and did not place it on the ballot. If the Charter Commission has doubts about the statutory or constitutional compliance of this language, they could act similarly.

Needham agreed. The Charter Commission could not refuse to transmit, but in the transmittal letter could ask the City Council or the City Attorney's Office to address any pertinent issues.

Rubenstein inquired if the Charter Commission was required to vote to transmit the petition to the City Council and, if so, if no one voted in favor of it, would it nevertheless be transmitted.

Needham stated that it was the duty of the Charter Commission to transmit the document as an official action. She couldn't speak to what would happen if they refused to vote except that most Attorney General opinions and case law have simply said that it is required.

Clegg noted that the statute states, "the charter commission may propose amendments to such Charter and shall do so upon the petition of voters". He felt the Commission would be breaching their duty if they failed to take that action.

Street inquired if the transmittal was required to start the verification process.

Needham stated that it had been decided that, given the time considerations, the verification process would begin upon receipt of the petition.

Street inquired about the procedures for calling a special meeting of the Charter Commission.

Bernstein stated that the Commission held regularly scheduled meetings. Special meetings could be called at the discretion of the Chair. The City Council could also order the Commission to hold a meeting; however, that provision was usually only followed in cities where the Charter Commission did not meet regularly.

Street clarified that if the Chair chose not to call a special meeting and the Commission was not forced to call a special meeting, then the next Charter Commission meeting would be held on September 2, which would leave 9 days between which the Commission would transmit the amendment, ballot language would be approved, signatures would be validated, it would be adopted by the City Council, and then transmitted to the County.

Needham stated that was correct.

Ferrara stated that he felt the signatures should be validated before any action was taken by the Charter Commission. He was concerned that with this type of practice someone could just submit something and start a whole process that would quickly be a waste of everyone's time.

Bernstein stated that the Charter Commission was adhering to the rules as written in the statute.

Ferrara inquired who was responsible for validating the signatures.

Needham cited Statute 410.12(3): "Within 10 days after such petition is transmitted to the city council, the city clerk shall determine whether each paper of the petition is properly attested and whether the petition is signed by a sufficient number of voters. The city clerk shall declare any petition paper entirely invalid which is not attested by the circulator thereof as required in this section. Upon completing an examination of the petition, the city clerk shall certify the result of the examination to the council."

Street stated that in his interpretation of 410.12(3), the signature verification process would not begin until the Charter Commission had completed the transmittal process.

Needham stated that in the most generous reading of 410.12(3), there is a restriction as to how quickly the verification process must be performed, but not a restriction as to when the verification process can start.

Street inquired if Ms. Needham was aware of any precedents for that interpretation.

Needham stated that she was not. However, it was the conclusion of the City Attorney's Office in terms of advising the council.

Connell stated that from time to time the Charter Commission changes its meeting dates by a vote of the Commission and inquired what would happen if the Commission voted to hold its next meeting on September 15, rather than September 2.

Needham stated that then the material would not be transmitted until that meeting. She could not speak to the Charter Commission's Rules regarding changing meeting dates, but noted that the Commission must comply with the requirements of the Open Meeting Law.

Bernstein noted that Charter Commission Rule 2.2.1 stated: "Special meetings of the Charter Commission may be called by the Chairperson or by an affirmative written request given to the Charter Commission Coordinator by at least one-third of the Commissioners. Notice of the time and place of a special meeting must comply with statutory requirements and must be mailed or otherwise delivered at least five days prior to the special meeting."

Ferrara suggested that in the future, the Commission could schedule the August meeting date soon after 10th so that if this situation arose again, the Commission could take action sooner.

Bernstein stated that he had been on the Charter Commission for ten years, and this was the first time this had occurred. He thought it was just as instructive that organizations or individuals proposing charter amendments do so prior to 30 days before the deadline.

5. Ballot Language for proposed Charter Amendment regarding the Board of Estimate and Taxation:

"Should the City of Minneapolis adopt a change in its charter to the composition of the Board of Estimate and Taxation so that the Board's membership consists of the members of the City Council, with the actions of the Board subject to the powers and duties of the Mayor?"

Bernstein stated that the ballot language was placed on the agenda for the Commission's review. The ballot language was approved by the Intergovernmental Relations Committee at its July 28 meeting and by the full City Council on July 31.

6. Review of correspondence received by the Charter Commission.

Clegg stated that the Commission had recently received a number of pieces of correspondence, some of which had already been discussed such as the letter from Scott Nieman on behalf of Citizens For Independent Parks regarding the petition. However, the Commission had received a letter from Carol Becker basically suggesting some sort of revision to statute or ordinance to prevent the Charter Commission from initiating referendum proposals, which she felt could be accomplished by a 13-0 vote. Clegg did not believe that a 13-0 vote of the City Council could change State Statute.

Bernstein stated that he had responded personally to Ms. Becker's email indicating the same.

Rubenstein noted that Ms. Becker stated in her letter that the "Charter Commission exists to vet proposals to go before voters". The Charter Commission does not have that kind of discretion.

Lazarus stated that regarding the letter from Scott Nieman asking to be advised if the City Clerk was not the appropriate agent to receive the petition, he felt that it was not the function of the Charter Commission to provide opinions which should come from the City Attorney.

Ferrara inquired if the letter had been sent yet requesting that the presidents of the City Council and Park Board proceed with assembling a study group to study the Ostrow proposals related to the Park Board and the City Administrator.

Bernstein stated that he had drafted a letter. He asked if there was any interest in the Charter Commission undertaking that study, perhaps under the guise of the League of Women Voters, rather than continuing to urge the Council and Park Board presidents to undertake the study.

Ferrara stated that there was a letter signed by the City Council and Park Board presidents stating that they wanted to form a study group, and at the time it was received, he had voiced that it was nothing more than a political ploy. In fact, they changed a City Council Member's support of putting the existence of the Park Board on the ballot. Elected officials should be held accountable for the things they say. The City Council and Park Board proposed the study, and he did not think it was the role of the Charter Commission to do so, although he would be happy to participate.

Clegg stated that the Charter Commission had no paid staff and he didn't think this could be a volunteer effort on the part of a few Commissioners. He didn't feel the Charter Commission was the appropriate body to undertake the task.

Bernstein stated that the League of Women Voters had in the past offered to help coordinate such a study. Also, the Commission had heard from a number of people at the public meetings who had a lot of experience and insight and offered to help review the issues in more depth.

Ferrara noted that the League of Women of Voters had done a study some years ago on efficiency in government and addressed the Park Board and the independent boards specifically. Those studies were presented to the Charter Commission at that time. He felt it would be appropriate and useful to mention in the letter the possibility of involving the League of Women Voters, the Citizens League, or other bodies.

Street stated that he would be supportive of the Charter Commission taking over the study if the City Council and Park Board did not follow through.

Connell agreed with Commissioner Ferrara that those who signed the letter proposing the study group should be held accountable. The Commission should send the letter asking them to follow up. He didn't think this issue would go away, and was interested in the idea of organizing a parallel course of study and reflection on the issues, but agreed with Commissioner Clegg that the Commission couldn't do it themselves.

Clegg stated that Chair Bernstein should send the letter and see what kind of response is received. If there is no response, the Commission can then decide whether they want to take additional action.

Lichty agreed with sending the letter and if there was no action within 30 or 60 days, then perhaps proceed with Commissioner Connell's plan of a parallel course of study.

Bernstein stated that the Commissioners would receive a draft copy of the letter by Monday, August 10.

Lazarus moved to adjourn. Seconded.
Adopted upon a voice vote.
Absent - Jancik, Kadwell, Metge, Remme.

The meeting was adjourned at 5:04 p.m.

Peggy Menshek
Council Committee Coordinator