

# Minneapolis Charter Commission Minutes

*Rescheduled Meeting*

**Wednesday, February 8, 2006 - 4:00 p.m.**

**Council Chamber, Room 317 City Hall, Minneapolis, Minnesota**

Commissioners Present: Bernstein, Lazarus, Clegg, Dolan, Ferrara, Melendez, Metge, Thaden, Theurer

Commissioners Absent: Bujold (excused), Collier (excused), Dziejczak (excused), Klassen (excused), Lichty (excused), Ponsford

Also Present: Burt Osborne, City Attorney; Mary Al Balber, City Attorney

## **1. Roll Call**

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

## **2. Adopt Agenda**

*Chair Bernstein moved that the agenda be amended to postpone Item 4 to the March 1, 2006 meeting. Seconded.*

Adopted upon a voice vote.

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

## **3. Approve Minutes of January 4, 2006 and Public Hearing Notes of January 18 and February 1, 2006.**

*Commissioner Clegg moved approval of the minutes of the January 4, 2006 meeting, and the notes of the January 18, 2006 and February 1, 2006 public hearings. Seconded.*

Adopted upon a voice vote.

## **Announcement**

Chair Bernstein announced that City Attorney, Burt Osborne, had accepted a new position in the Licensing Division and would no longer be the legal advisor to the Charter Commission. He thanked Mr. Osborne for all of his work with the Charter Commission and wished him luck in his new position.

Burt Osborne stated that it had been his pleasure to serve the Commission, and it had been an exciting time. He introduced Mary Al Balber who will be replacing him as the City Attorney for the Commission.

## **New Business**

### **4. Proposed Charter Change: Increase the pay of Board of Estimate and Taxation Members (Bernstein).**

Postponed to March 1, 2006 by Chair Bernstein in previous action.

## **Unfinished Business**

- 5. 8th Draft to City Charter Revisions (submitted Aug 31, 2005):**  
**Consider input from public hearings for approval of final revision.**  
***Action taken at January meeting: Public hearings to be held on the 8th draft of revisions, as well as the separate comments of the Library Board, Park Board, and Business Agents. At the February 8 meeting, the Commission will act on the comments received.***

*Commissioner Melendez moved that the Reporter's Draft No. 8E be approved by the Commission as the 9th draft of the Minneapolis City Charter and be forwarded to the City Council. Seconded.*

Annie Young, Minneapolis Park and Recreation Board Commissioner, 2601 Cedar Avenue South, was present to speak on behalf of the Park Board and stated that the Park Board Commission felt that all of their concerns had been addressed. She commended the Commission for doing an incredible job, and Brian Melendez for all of his outstanding work.

Chair Bernstein stated that the Commission would now review the draft article by article.

#### **Article I General Provisions**

Chair Bernstein called for discussion on Article I.

***Article I, as presented, was adopted upon a voice vote.***

#### **Article II Boundaries**

Chair Bernstein called for discussion on Article II.

***Article II, as presented, was adopted upon a voice vote.***

#### **Article III Elections**

Chair Bernstein called for discussion on Article III.

***Article III, as presented, was adopted upon a voice vote.***

#### **Article IV City Council**

Chair Bernstein called for discussion on Article IV.

Melendez stated that the only change in Article IV concerned the definition of "act" which had been moved into Article V.

Commissioner Thaden questioned the phrase [Omitted.] in §4.5(a), asking if that item would later be deleted, and the section renumbered.

Melendez stated that it had been the suggestion of one of the subcommittees that each of the City's boards, including the Executive Committee, follow the same structure in the Charter. The Park Board, Library Board, and the Board of Estimate all have an initial section that declares a policy about what the body does. There is nothing in the current Charter that explains the policy of the Executive Committee.

*Thaden moved to amend §4.5 by deleting §4.5(a) "Policy. [Omitted.]", and renumbering so the current (b) and (c) become (a) and (b), respectively. Seconded.*

**Adopted upon a voice vote.**

The amended language of §4.5 will read as follows:

**§4.5. Executive Committee**

**(a) Functions and powers. . .**

**(b) Organization. . .**

***Article IV, as amended, was adopted upon a voice vote.***

**Article V  
Boards**

Chair Bernstein called for discussion on Article V.

*Melendez moved that §5.3(f)(A) be amended by deleting the word "act" the first time it appears, and inserting in lieu thereof the word "action." Seconded.*

**Adopted upon a voice vote.**

The amended language of §5.3(f)(1)(A) will read as follows:

**§5.3(f)(1)(A) means any ordinance, resolution, appropriation, any other lawful action of a legislative nature, and any action amending, repealing, or otherwise affecting any such act; but**

Thaden stated that personally he was satisfied with the changes that Commissioner Melendez made regarding the Library Board and he had communicated his feelings to representatives of the Library Board's.

Melendez stated that the changes Commissioner Thaden had recommended regarding the Library Board had been incorporated in §5.6 and §5.7.

***Article V, as amended, was adopted upon a voice vote.***

**Article VI  
Board of Estimate & Taxation**

Chair Bernstein called for discussion on Article VI.

Melendez stated that there had been no recommended changes in Article VI since the 8th draft.

Bernstein inquired if Article VI still contained the compensation issue for members of boards and commissions.

Melendez stated that there had been a provision in Chapter 15 of the current Charter that limited compensation. From the second draft forward, the Commission has recommended that that provision be moved to Ordinance.

***Article VI, as presented, was adopted upon a voice vote.***

**Article VII  
Library Board**

Chair Bernstein called for discussion on Article VII.

Thaden stated he was also satisfied with the changes made to Article VII regarding the Library Board. However, he had suggested that the Library Board have its Human Resources staff look at § 7.2(f)(2).

***Article VII, as presented, was adopted upon a voice vote.***

**Article VIII  
Park & Recreation Board**

Chair Bernstein called for discussion on Article VIII.

Commissioner Lazarus suggested that the first paragraph of Article VIII be amended to change the Roman Numeral from "VII" to "VIII." Hearing no objection, Chair Bernstein stated the Commission would adopt the change without a vote.

Melendez stated that in §8.2(d), relating to the Park Museum, the second and fourth sentences were bracketed. He personally felt both sentences could be eliminated.

*Lazarus moved to amend §8.2(d) by deleting the first bracketed sentence (the second sentence) which states, "The Board must take care that the City honors those terms." Seconded.*

Brian Rice, Attorney for the Park & Recreation Board, was present and stated that the park museum property was donated to the Park Board in order to construct a Park Museum, gallery, or school for the arts and crafts. It is a donation the Park Board has honored for a long period of time. Similar language appears in Statute. The language in the first bracketed sentence is not in the current Charter, and he was in favor of its deletion.

John H. Herman, Faegre & Benson, representing the Minneapolis Institute of Arts, was present and stated that this language indicates the commitment of the City to follow the terms under which the contractual gift was accepted, but it is not a point of extraordinary intensity for the Institute. They wished to have the recognition of the unique character of the transaction -- its gift and contractual nature -- and also the concept of the mandatory tax. Addressing the second bracketed sentence, that language is already in Statute, and is also noted in other places in the Charter. Therefore, they were agreeable to deleting the second bracketed sentence.

The motion moved to amend §8.2(d) by deleting the first bracketed sentence was **adopted upon a voice vote**.

*Commissioner Ferrara moved to delete the second bracketed sentence (the fourth sentence) in §8.2(d) which states, "The Board enjoys the same powers of government with respect to any such park, museum, gallery, or school as with respect to any other facility in the park system."* Seconded.

Rice stated that the Park Board recommended that this sentence not be deleted. They would like to see in the Charter the provision that the Park Board is required to levy a tax for the park museum. Currently, there is very close similarity between both the Charter provision and the State law, which allows the Park Board to levy a County-wide tax. Both laws contain provisions allowing the Park Board to make and adopt rules and regulations for the use and governance of such land and buildings. Commissioner Melendez has done an excellent job in taking at least 2 full pages in the Charter and reducing it down to two sentences. However, the history of this special provision is being reduced to two tersely worded sentences that do not tell much of the story. It's important to note that the Park Board levies this tax and, as a ministerial duty, turns it over to the Minneapolis Institute of Arts. The Museum is not typical park land. It is a very special case in terms of its relationship to the Park Board. As Commissioner Melendez had stated, a Charter amendment can trump a State law; the later enactment rules. So when this new Charter goes into effect, it will preempt all other laws on this topic. He felt it was both helpful and necessary to have this language remain in the Charter to make it clear that the Park Board does have some control and is able to regulate this facility in some ways, and it continues some level of accountability.

Melendez stated that §8.2(a)(1)(D) specifically spells out that the Park Board governs any gallery, museum, or school in the park system. Also, §8.2(a)(1) lists the Charter powers of the Board. §8.2(a)(3) lists legislatively-granted powers, which basically states that the Park Board may exercise any right provided by Statute, without regard to the Charter. Chapter 450 is a general law and doesn't apply just to the Morrison Grant; it applies to parks throughout the state. A Charter only trumps a special law, it does not trump a general law, and Chapter 450 is a general law. While he didn't disagree with the bracketed language, since this provision was already in the Charter in two separate places, he felt it did not need to be repeated.

*Thaden moved to amend §8.2(a)(1)(D), by adding the word "park" before the word "museum," to read "any gallery, park museum, or school in the park system."*

Chair Bernstein ruled the motion out of order since it regarded a different subsection than the motion currently on the floor pertaining to the bracketed language. After acting on the previous motion, Thaden's motion would be in order.

*Thaden moved a substitute motion to delete the second bracketed sentence in §8.2(d), and insert the word "park" in front of the word "museum" in §8.2(a)(1)(D).*

Chair Bernstein moved the motion out of order, since it was actually two separate motions. He felt it was more appropriate to make a decision about the bracketed language first. If the bracketed language is deleted, the motion to insert that language somewhere else would be in order.

Melendez stated that although he was in favor of deleting the bracketed language, he would rather keep the bracketed language than add the word "park" to §8.2(a)(1)(D).

Chair Bernstein called for a vote on Ferrara's motion to delete the second bracketed sentence from §8.2(d). **The motion was adopted upon a voice vote.**

*Thaden moved that §8.2(a)(1)(D) be amended by adding word "park" before the word "museum," to read "any gallery, park museum, or school in the park system."* The motion failed for lack of a second.

Thaden noted that there were three spots where language was in parenthesis. He had never seen parenthesis used in Statutes. He also asked why a "note" was used in §8.2(a)(3).

Melendez stated that the use of parentheses in Statutes and contracts was fairly common. Some people draft with them, some don't. Often parentheses will organize the sentence more easily. He often used them when he didn't want to clutter the sentence with too many comma-bound phrases. The reason there is a "Note" is to include references to particular special laws. Notes, typically, are not part of the document, unless specifically adopted as part of the document.

Thaden asked if the motion to adopt the Charter would include this note.

Melendez stated that it would not.

Commissioner Theurer asked if the intent of not including both the County-wide nature of the park museum tax and the amount of the tax was because it's covered under Statute.

Melendez stated that was correct. Also, a Charter cannot impose County-wide taxes, since it is only a City Charter.

Melendez stated that another issue in Article VIII ties back into the other Boards as well. §8.3(a) reads, "Composition. The Board comprises nine commissioners, elected in each general election in which a Mayor is elected;" There is an analogous provision in Articles IV, VI, and VII. One of the drafting subcommittees, after the second draft, suggested that rather than have every Board's election tied to the Mayor's election, they should each have independently parallel language. So now Articles IV, VI, and VII state, "...in each year following a year whose number is evenly divisible by four." Melendez felt the language should be consistent throughout the Charter. However, if the date of the election of the Mayor is changed, it will change the date of the election of the Boards, also.

Rice stated that State law governs the Park Board election and specifically ties the Park Board election to the election of the Mayor.

*Melendez moved that §4.2(b), §6.3(a)(6), and §7.3(a)(3) be amended to conform to the language in §8.3(a) which reads "in each general election in which a Mayor is elected."* Seconded.  
**Adopted upon a voice vote.**

The amended language will read as follows:

- §4.2(b)** Term; election. Each Council member's term is four years. Each ward's voters elect their Council member in each general election in which a Mayor is elected.
- §6.3(a)(6)** two members elected by the voters in a regular election held in each general election in which a Mayor is elected.
- §7.3(a)(3)** six trustees elected by the voters in a regular election held in each general election in which a Mayor is elected.

Rice stated that the Charter currently requires the Park Board to levy a tax on the property in the City for the benefit of the museum, but that language is being deleted from §8.6. He was reluctant to be taking a tax out of a Charter that's been there for quite some time.

Melendez stated that the tax actually wasn't taken out. It was moved to §8.2(d) because the taxes in §8.6 are subject to the budgeting procedure in Article XI. The Board still has the power to levy the tax, but it is not subject to the same limitations as the taxes mentioned in §8.6.

Rice stated that his concern was that there was no amount for the tax.

*Melendez moved to amend §8.2(d) by inserting in the current the second non-bracketed sentence, after the word "tax" the words "up to 0.0125% of the total value of the property in the City." Seconded.*

**Adopted upon a voice vote.**

After all amendments, the language of §8.2(d) will read as follows:

**§8.2(d) Park museum. The Board has accepted a gift of property for the benefit of a park, museum, gallery, or school of arts and crafts, which a donor-designated nonprofit organization administers according to the terms under which the gift was accepted. The Board must annually levy a tax up to 0.0125% of the total value of the property in the City whose proceeds go to a fund that pays for the park, museum, gallery, or school, and may not be diverted for any other purpose."**

There being no further discussion on Article VIII, Chair Bernstein called for a vote on the Article, as amended.

**Article VIII, as amended, was adopted upon a voice vote.**

## **Article IX Administration**

Lazarus stated that he didn't feel the Planning Department was intended to be part of the Charter based on Minnesota Statute 415, which was the Statute that created the Department of Community Planning and Economic Development (CPED). Per the Statute, the City Council can adopt any Department, which can include the Planning Commission, if it so desires. The Statute states the functions previously assigned to the Planning Department are transferred to CPED. *Lazarus moved that §9.2 be amended to delete §9.2(a)(7). Seconded.*

Ferrara stated that, although he agreed with Commissioner Lazarus, citizens of Minneapolis who spoke to the Commission made the argument that removing the Planning Commission from the Charter would be a substantive change. He agreed that it would be a substantive change. The Commission is attempting to create an update of the language of the Charter. Issues such as eliminating the Planning Commission from the Charter would be better taken up after this process is complete. Therefore, he was not in favor of the motion to delete §9.2(a)(7) at this time.

Thaden stated that he had been persuaded that the Planning Commission, not the Planning Department, should remain in the Charter because of its inter-jurisdictional aspects. It includes people from governmental bodies outside of the Charter such as the County, Library Board, Park Board, and Public Schools.

Lazarus stated that, it seemed to him, the Charter was passed well before the Statute. If the Commission is amending the Charter, it ought to be amended to be consistent with current Minnesota law. He felt Minnesota Law stated that if the City of Minneapolis wants a Planning Commission, it can adopt it by Ordinance. It doesn't have to be in the Charter.

Commissioner Metge stated that legislation comes and goes and can change. The Charter Commission needs to protect the community process and not take something substantial out of the Charter.

Rice stated that a special law eliminated the Department, not the Commission. Not only did it not eliminate it, the law was passed three years ago and there is still a Planning Commission.

Lazarus felt the Statute was inconsistent. But after reading the Statute as a whole, he felt the intent of the Statute was to inadvertently eliminate the Planning Commission from being referenced in the Charter.

Melendez stated that the Statute transferred the functions of the old Planning Department to CPED, and it effectively accomplished that. Whatever the intent, the old Planning Commission is still in existence. When the revision uses the word "Planning Department" it's not reviving the old Planning Department, it is using the word "department" for consistent terminology to fit the Planning Commission in. The revision's "Planning Department" is just the "Planning Commission" which is technically a department of the City. It is not reviving the old apparatus that was superceded by the CPED Statute.

Bernstein called for a vote on Lazarus' amendment to delete §9.2(a)(7).  
The amendment lost.

*Thaden moved to amend §9.2(a)(7) by deleting the word "department" and inserting in lieu thereof the following language: "commission, and an appropriate office and staff". Further, to amend §9.2(e) by deleting the following language "department. The planning department consists of a planning commission, as the department's head, and an appropriate staff." and inserting in lieu thereof the word "commission". Seconded.*

**Adopted upon a voice vote.**

The amended language will read as follows:

**§9.2(a)(7) a planning commission, and an appropriate office and staff;**  
**§9.2(e) Planning commission.**

There being no further discussion on Article IX, Chair Bernstein called for a vote on the Article, as amended.

***Article IX, as amended, was adopted upon a voice vote.***

### **Article X Officers and Other Employees**

Melendez stated that there were relatively few changes in this Article, and they were all consistent with the recommendations that Jim Michels sent to the Commission.

Jim Michels, attorney representing the Minneapolis Board of Business Agents, was present and thanked Commissioner Melendez and all of the Commissioners for their consideration of the concerns of the employees of the City of Minneapolis.

There being no discussion on Article X, Chair Bernstein called for a vote on the Article, as presented.

***Article X, as presented, was adopted upon a voice vote.***

### **Article XI Finance**

Melendez stated that there had been no changes in Article XI since the 8th draft.

There being no discussion on Article XI, Chair Bernstein called for a vote on the Article, as presented.

***Article XI, as presented, was adopted upon a voice vote.***

***Chair Bernstein called for a vote on draft 8E of the revised Charter, as amended.  
Seconded.***

***The revised Charter was adopted unanimously.***

Lazarus implored everyone to use their influence with anyone on the City Council to seriously consider adopting this amended Charter by a 13-0 vote, rather than refer it to the body politic of the City of Minneapolis for a vote, which would essentially be suicide for the document. The Charter revision is long overdue. The Commission has completed an exhaustive effort. None of this would have happened without Commissioner Melendez, but the entire Commission and many others spent much time in creating the final document. It is important that everyone do their part to convince the Council to pass it by a 13-0 vote.

Bernstein agreed, stating that if the City Council does reject the revision, it will be extremely difficult to get it on the ballot and get it passed.

Melendez asked if the Commission wished to transmit the revised Charter to the Council immediately, or allow him 60 days to create a summary report as a cover for the document, and a side-by-side comparison.

Bernstein felt the Commission was under no time constraints. The Commission is not seeking to put this on the ballot, although there would still be time if they waited 60 days.

Lazarus felt the longer the Commission waited, the easier it would be for the revision to be defeated. He felt something should be in front of the Council within 30 days to give them time to start reviewing it.

Melendez stated that the City Attorney would be reviewing the draft, and he would rather the City Attorney have the side-by-side comparison in front of him or her as they go through it.

Osborne stated that he didn't feel there was any urgency. There are some Council Members who are already viewing this with skepticism. A side-by-side comparison would help to alleviate that skepticism and increase the chances of getting a 13-0 vote.

Bernstein stated that the Commission would ask Commissioner Melendez to take up to 60 days, if necessary, to prepare a summary report and a side-by-side comparison.

### **Receive and File Items**

#### **6. 2006 Calendar for Placing Proposed Charter Amendment(s) on the Ballot: Receive and file calendar of information.**

Received and filed by unanimous consent.

#### **7. 2006 Tentative Election Calendar: Receive and file tentative election calendar.**

Received and filed by unanimous consent.

The meeting adjourned at 6:00 p.m.

Peggy Menshek  
Charter Commission Clerk