

Minneapolis Charter Commission Minutes

June 3, 2009 - 4:00 p.m.

Room 317 City Hall, Minneapolis, Minnesota

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

Also Present: Lisa Needham, Assistant City Attorney

1. Roll Call

Chair Bernstein called the meeting to order at 4:02 p.m. Roll call was taken.

2. Adopt Agenda

Lazarus moved adoption of the agenda. Seconded.
Adopted upon a voice vote.

3. Approve Minutes

Lazarus moved approval of the minutes of the regular meeting of May 6, 2009. Seconded.
Adopted upon a voice vote.

Bujold moved approval of the minutes of the community meetings of April 23, April 28, April 30, and May 7, 2009. Seconded.
Adopted upon a voice vote.

Bernstein stated that it was his intention to take no public testimony prior to consideration of the proposed amendments.

Metge requested that members of the audience be allowed to speak if the Commissioners had any clarifying questions. Bernstein agreed.

Bujold moved that the Charter Commission accept public testimony, for a limited period of time per person, from those who had not yet testified before the Charter Commission. Seconded.

Metge spoke in favor of the motion. The new amendment language provided by Council Member Ostrow was different than what was posted and what had been before the Commission and the public at the public meetings. There could be some relevant comments on the new language.

Ferrara spoke against the motion. The changes in the amendment language were not substantive enough to warrant opening it up to testimony again. It is time for the Commission to discuss the proposal and render a decision.

Lazarus spoke against the motion. He preferred to hear from fellow Commissioners.

Connell spoke against the motion. He was as concerned about the merits and the substance of the amendments as he was the question of whether to place the proposals on the ballot. He was also interested in listening to what fellow Commissioners had to say.

The Bujold motion lost upon a voice vote.

Consideration of Placing Proposed Amendments to the Minneapolis City Charter on the November 2009 Ballot

4. Creation of a City Administrator Position

Clegg suggested that the Commission discuss the standard that should be applied to all three of the proposals. The Charter Commission has several duties. The first is to weed out proposals that are not germane to the Charter. Once that is done, the Charter Commission's job is to examine proposals to determine if they are legitimate alternative governance proposals. Assuming they are, and assuming they have significant support, that is where the analysis stops. It is not the job of the Charter Commission to make substantive decisions and substitute their judgment for that of the voters. The Commissioners are not political appointees. They are appointed by the Chief Judge of Hennepin County. The job of the Charter Commission is largely ministerial; to look at proposals and if they are germane to the Charter and legitimate alternative forms of governance and have support, to put the proposals on the ballot.

Ferrara agreed; however, he questioned how Commissioner Clegg measured support. In his view, the Commission was not supposed to be only responding to public opinion, yet in some of these issues before the Commission, a political, organized body said the Charter Commission couldn't meet in their buildings. They put forth an effort of government resources, legal fees, and other resources, to present to the Charter Commission their ideas, which he felt was a legitimate thing for them to do. But he thought the Commission should be careful in how they measured support.

Lichty agreed with Commissioner Clegg that the Commission ought to vet legitimate alternative proposals as to governance of the city. However, even if a proposal may seem on its face to be legitimate, or a reasonable alternative to the current form of governance, it is also the Commission's responsibility to make determinations about how well vetted a particular proposal is. Placing a proposal on the ballot obviously encourages public debate, but if the Commission does so without actually knowing what the result would be, they are doing a disservice. He would add to Commissioner Clegg's standard that the proposal also needs to be well vetted.

Rubenstein respectfully disagreed with Commissioner Clegg. The purpose of the Charter Commission is not simply to pass on proposals to the voters. Their responsibility is not only to vet a proposal, but to consider how well thought out it is and to provide an opportunity to make sure that if they do forward something to the voters that it is done in an informed way where there are facts and foundation to back it up. If the Commission simply forwarded any proposal that could conceivably go to the voters, there would be no point in having a Charter Commission and the Commission would not be doing their job.

Lazarus stated that in addition to the reasons Commissioner Clegg listed for putting something on the ballot, there is also the issue of whether it is clearly unconstitutional or contrary to State Statutes. As far as the vetting process is concerned, he felt that the Commission owed the voters the opportunity to be fully informed about why something is placed on the ballot. He believed that Council Member Ostrow raised issues that obviously sparked a lot of interest as evidenced in the public meetings and in the email comments and letters. But he did not believe that the proposal was clearly thought out and measured in the context of what the cost really is and how much efficiency would actually be created. He felt that two of the three proposals should be put before some kind of blue ribbon commission to investigate their effects. He did not think that the evidence given was sufficient to enable him to be assured that the proposals should be placed on the ballot. If the proposals were placed on the ballot and defeated simply because there wasn't enough information, then the Commission would have done a disservice because it would not be likely that the proposal would come up again and be voted on next year. The proposals should only be put before the voters after there is a full and complete investigation or fact finding to determine whether the proposal has merit. It is untimely to place this on the ballot now.

Bujold stated that Charter Commissioners have a deeper responsibility than to simply look at a proposal for a Charter amendment and, if it is reasonably debatable, pass it on to the electorate. He felt the Commission should consider the merits of each of the proposals. He did not believe that the only thing required is that the proposal have a reasonable framework. The Charter Commission had worked for six years on the Revision with no substantive changes. These proposals clearly include substantive changes which invokes and requires the Commission to have a stronger role in whether to place them on the ballot.

Metge stated that she had been the sole "no" vote against the public meetings. When she started on the Commission and they began working on non-substantive changes, the first thing they did was map out an approach for participation, public meetings, input, discussion with department heads, attorney review, and one-on-one with Council Members. Now a proposal had come forward and all of a sudden public meetings were held. There were now also three more proposals received for Charter changes opening the door as to the Commission's process. She was in favor of having discussions on substantive changes, but taking the time to make sure they were thoroughly vetted. To her, the difference between eliminating the Board of Estimate and Taxation and the Minneapolis Park & Recreation Board and seating the Council Members in their place was a huge change that no one testified about. Those are the types of discussions that the Commission must have on these proposals and on future proposals going forward.

Ferrara moved to place on the 2009 ballot the question of whether to create a City Administrator position. Seconded.

Ferrara stated that plenty of meritorious comment had been received on this particular issue. The best way to vet an item is to have an election. It will provide an opportunity for the public and the press to truly hear and discuss the issue. He had been particularly moved by former City Coordinator John Moir's letter and several Council members who signed a letter supporting this proposal. It is hard to rule by committee, and in his view, the current Charter leaves the city rudderless. It doesn't clarify who is in charge. The proposal is timely, it makes sense, and it puts a professional managerial approach to how the city is operated. He was surprised by Council Member Goodman's comment that she was in favor

of a city administrator even if she would be giving up a little bit of control. He wholeheartedly supported placing this question on the ballot.

Metge stated that since the public meetings, the Commission had received a letter from City Attorney Susan Segal that raised some alarm. If the Commission's goal is to make sure things are properly vetted, then looking at Ms. Segal's letter and knowing what the ramifications of this amendment could be with other department heads is very important. She requested hearing from Ms. Segal or Peter Wagenius from the Mayor's Office, both of whom were in the audience, about how they felt about the city administrator proposal in light of the new information received after the public meetings.

Rubenstein spoke against the motion. She agreed that the point raised by the City Attorney was a very important one and it gave her a great deal of concern. It also made her wonder what the implications would be in other departments. The proposal received from four city officials to create a commission of elected officials from the Park Board, the City Council, the Minneapolis business community, and residents to try to forge solutions to bring greater efficiencies to the Park Board and city enterprises, would probably be a very good approach. Those testifying at the public meetings spoke from their hearts and their convictions, but they didn't necessarily speak from some kind of factual foundation. She had difficulty figuring out the real implications of changing the city's structure so drastically, and moving so quickly seemed to be irresponsible on the part of the Commission.

Lazarus spoke against the motion. Two or three years ago the Commission was asked to place before the voters whether or not to legalize medicinal marijuana. He was sorry to say that the proponents for the medicinal marijuana proposal had done a better job in proposing that Charter change than the proponents had for this amendment of adopting a city administrator position. There is not enough information available to inform the Commission, let alone the voters, on why the proposal is appropriate. In fact, if it were really appropriate, one would hope that the City Council would adopt it on a 13-0 vote. Putting the proposal prematurely on the ballot, whether it rises or falls, is not doing the Charter, the City, or the voters a service. What the Commission ought to know is what really would be the effect of the proposal, what are the costs, what staff is required, what are the effects of, for example, having the City Attorney subject to control by the City Administrator when the City Attorney is appointed by the Mayor. The other choice is not to throw away the proposal, but to create a commission, as suggested, to look into it and then, if it is meritorious, put it on the ballot when appropriate.

Connell didn't believe that that the proposal received from a number of Council members and Park Board President Nordyke was necessarily to consider this proposal and investigate it thoroughly as was being discussed. He believed that their proposal was to create a commission to look at ways to achieve some of the ends that the Ostrow amendments had set out to achieve.

Lichty also requested a brief clarification from the City Attorney and from Peter Wagenius on this particular issue. His specific question related to the May 28 letter written by Attorney Segal regarding her concerns about the City Attorney reporting to a City Administrator and if she had more overarching concerns regarding the City Administrator position that the Commission ought to take into consideration.

Susan Segal, City Attorney, stated that she didn't believe it was appropriate for her to comment on policy advisability. The goal of the City Attorney's Office, with the exception of what she addressed in her letter, was to vet the particular language of any proposals that went forward, not for any substantive or policy changes, but to make sure that there were not any inadvertent inclusions or exclusions from the Charter that would cause problems in the future and that the best language was used in the amendments.

Connell inquired at what point the City Attorney's Office would begin preparing specific language for the amendment if the Commission forwarded on the proposed amendments to the voters.

Segal stated that once the Charter Commission decided to forward a proposal onto the ballot, then whatever language was in front of the Commission was the Charter amendment. The City Attorney's Office would be involved in drafting the ballot language. She asked that if any of the proposals were placed on the ballot, that time be allowed for the City Attorney's Office to examine the language and report back to the Commission at their next meeting with a careful vetting of the wording for the actual Charter amendment language before the Commission finally passes on that wording.

Clegg stated that that was consistent with the way the Commission had acted in the past.

Ferrara stated that last month he had brought to the Commission's attention the fact that the language should be reviewed by the City Attorney to make sure that the wording was proper. This Commission had voted not to do so.

Bernstein clarified that the reason that the Commission voted not to do so was that it didn't want the City Attorney's Office to invest a significant amount time and commitment in reviewing language if the Charter Commission did not actually end up placing the proposals on the ballot. The intention was to wait until it was known if a proposal would be placed on the ballot, then the City Attorney's Office could properly do their review.

Rubenstein stated that as she recalled, the issue was whether Council Member Ostrow could have the benefit of the assistance of the City Attorney's Office in drafting the language. The Commission did not have draft language before them at that time. It was agreed that it was inappropriate because this was a request, at least in this form, from a citizen of Minneapolis rather than from the City Council. Her greater concern was that it took the Charter Commission six years to draft non-substantive changes to the Charter, and now they might have one month to draft some extremely substantive changes. It didn't feel right or comfortable to her and she felt it was inappropriate.

Lichty stated that the Charter Commissioners received the amendment language on May 22, which was consistent with their request of Council Member Ostrow to get them the language as soon as possible before the next meeting. To Commissioner Rubenstein's point, the Commission has had less than two weeks to examine the language. While they have had the benefit of the City Attorney pointing out a concern about its impact on the City Attorney's relationship with city governance, they haven't had the benefit of anyone else vetting it and pointing out other possible concerns.

Metge inquired if the Mayor's Office had any thoughts about the implications to other department heads, specifically with regard to Susan Segal's latest letter.

Peter Wagenius, Senior Policy Aide to Mayor Rybak, stated that he had the deepest respect for Council Member Ostrow and all of the comments where the virtues of a city administrator system had been extolled, and he didn't dispute those arguments. The question that has gone unasked is, "Is that the proposal before the Commission?" He submitted that it was not. A strong council/city administrator system is a very clear form of governance. Council Member Ostrow has diagnosed the correct problem: There are 14 bosses to whom department heads have to answer. But in order to change that to a more efficient, accountable, transparent system, one has to understand the current system. The current system is not a strong council system or a strong mayor system. It has significant features of both systems. The mayor has veto authority and the authority to develop the budget. Those don't exist in strong council systems. On the other hand, the Mayor doesn't have authority over the department heads which is more like a strong council system. Chapter 6, Section 1 of the amendment states, in part: "The mayor shall be vested with all the powers of said city connected with and incident to the establishment, maintenance, appointment, removal, discipline, control and supervision of its police force..." That is a clear line of authority. That is not amended. If the amendment overall passes, the very next section states that this person could be fired by the city administrator. What happens if the Mayor and the city administrator disagree about the performance of the Police Chief? This is an example of how this is not yet fully baked and more than any of the other proposals would benefit from further work. Broadly speaking, having two executives has problems throughout the enterprise. This is a particularly stark example because of the authority that already exists and because the service that is being provided is public safety. While all of the problems with the amendment are not as serious as this, this is just one example of the fact that this proposal needs more work.

Connell inquired if Mr. Wagenius' examples could be remedied by work within the City Attorney's Office if this proposal were approved for presentation to the voters.

Wagenius stated that that would be subject to debate. His opinion was that they could not be remedied in time to be on the ballot this year. The Ostrow proposal, as it exists, hybridizes a hybrid system, and that goes far beyond the Police Department. A subsequent conversation is needed about what is appropriate for Minneapolis. This proposal would make worse the situation that exists today. The Mayor's Office supports the proposal to form a commission that was brought forward by the Council Members and the President of the Park Board as a good process for the issues brought up earlier. Commissioner Connell had clarified that the proposal doesn't say they will come back with a different set of Charter changes. It says that they will look at it and it may result in Charter changes. They will see if there are other ways to address the issues outside the Charter.

Connell inquired if there was any guarantee that the discussion would actually take place and they would actually arrive at any result.

Wagenius stated that he could not provide a guarantee; however, he was confident that the discussion would produce fruitful results because of the nature of the relationships that exist currently. The relationship between the City Council and the Park Board might need more work. At the end of the day, there is no substitute for political accountability.

Rubenstein stated that if the process didn't happen, there was no reason why the proposals couldn't come back to the Charter Commission again.

Ferrara inquired why the Mayor's Office was raising objections today.

Wagenius stated that he wished this point had been reached earlier, but he felt that the conversation had been dominated by the controversy over the Park Board.

Lichty inquired, given the fact that language of the proposed amendments was provided on May 22, 2009, if it would have been possible for the Mayor to weigh in on the ramifications of the proposed amendments prior to having seen the language.

Wagenius stated that the seriousness of the inconsistencies, in terms of establishing multiple lines of authority, was in part inspired by the letter from the City Attorney identifying other issues, and it begged a further, deeper analysis.

Ostrow stated that he was profoundly disappointed that the Mayor, through Mr. Wagenius, waited until today to voice his opposition. He and Council Member Samuels had asked for a meeting with the Mayor several times, which they never received. The issue that the City Attorney raised is one that he had responded to in a letter that he provided the Charter Commission today where he indicated that he did not believe a central premise of the city administrator proposal was threatened by deleting the City Attorney from the supervision and oversight of the city administrator. Mr. Wagenius' comments represent a surprising lack of understanding of the proposal. Mr. Wagenius is talking about a city manager form of government. It was made very clear at each of the public meetings that this proposal honors the history of the city in terms of keeping a strong council. It provides one point of authority by providing a city administrator, not a city manager. Once appointments are made, the city administrator would have absolute supervision and firing authority. The issue with the Police Department is an issue he and Mr. Wagenius had spoken about at least two months ago. The current Charter sets up a rather nonsensical circumstance in which there is language saying that the police chief reports to the Mayor, but similarly the same Charter says that the firing and discipline authority is with the Executive Committee and the full City Council. That is absurd. The notion that somehow someone reports to one individual but another entity or group of individuals has supervision or firing authority makes no sense. He referred to the experience when the Mayor felt that Chief Olson should be removed and quickly learned that he could not be. This is an extremely important substantive proposal, and he hoped the Commission weighed it on its merits. Regarding the police chief, this is one area the City Attorney should probably look at and help with. The intention of the change related specifically to the position of police chief and the authority of the mayor over the police chief. The remainder of the Charter that relates to the police force itself has not been changed.

Bujold inquired if Council Member Ostrow agreed that there was an inherent conflict, or fundamental flaw, in the proposal for the establishment of a city administrator and the remaining powers that would exist with the mayor that needed to be corrected.

Ostrow stated that he did not believe that. He did believe that there was some language in the current Charter that was a bit confusing on this topic. However, this is not a strong mayor form of government. The premise that this amendment is somehow creating two executives is not accurate. The executive function is best defined as that individual to whom people report. In a city manager/city administrator form of government, it would be the manager or administrator. In a strong mayor form of government, it would be the mayor.

No one has suggested, and Mr. Wagenius has not suggested, that we have a strong mayor form of government where the department heads serve at the will of the mayor.

Street inquired if the Commission were to vote against putting one or all of the amendments on the ballot, would Council Member Ostrow be supportive of the proposal from President Johnson and President Nordyke that some sort of commission be formed to review the proposals in a longer term study process.

Ostrow stated that the proposal of Council Members Johnson, Goodman, and Benson, and Park Commissioner Nordyke were completely unrelated to Charter change. His view was that there had already been all sorts of studies, and he was not confident that another study would help. The study would just be a matter of looking at whether the police departments and other functions could be merged. He was very unclear regarding how the proposed study would relate to the city administrator proposal. He saw no path that would somehow bring the proposals back to the Charter Commission.

Lazarus called the question.

Bernstein asked for indulgence. He would call for the vote, but this was the appropriate time for Commissioners to have a chance to state why they would be voting for or against the motion.

Lichty stated that he thought Council Member Ostrow had hit upon an extremely important problem in city governance. However, he would be voting against putting the proposed amendment on the ballot in November because he believed that the Commission needed more time. As had been referenced repeatedly, the Commission had spent six years working on what amounted to making no changes at all. Now they were talking about making very meaningful changes that he felt were based on a sincere desire to make the governance of the city better. He hoped that the dialogue would continue; but at this point, he did not feel that the proposal had been properly vetted.

Connell spoke in favor of the motion. While he sympathized with those who had suggested that there hadn't been enough time, he felt it was not the Commission's role to take the time necessary to vet all of the proposals as thoroughly as many would want to see them vetted. This proposal in particular had been under discussion in one form or another in the city for the last forty years. He had faith that the City Attorney's Office would look at the language and make any necessary changes to resolve some of the conflicts that the Mayor's Office had pointed out. It was time for the voters to speak on the issue.

Clegg stated that he would be voting in favor, as well. Regarding the issue of vetting, probably .1% of the population of the city of Minneapolis is even aware of the proposal, and if the Commission decided to take a year or two to think about it and send it off to some commission to consider, there would still be .1% of the citizens that were aware of the proposal. The only way to really vet a proposal like this and have a thorough discussion about it is to put it on the ballot. Then people will start talking about it.

Ferrara stated that this is the Commission's opportunity to give the citizens a chance to really hear and weigh in on how their government is doing, and he believed that all the necessary vetting would happen and the City Attorney's Office would also do their job. The upcoming city election will provide an opportunity to talk about issues. This is great

opportunity for the Commission to promote a good Charter, to get people involved in their government, and really take responsibility for their democracy.

Kadwell stated that she would be voting against the motion even though she felt it was heading in the right direction. She was sufficiently concerned about the conflicts in the language itself to think that it was not something that could be resolved simply by a review by the City Attorney's Office because they were conflicts as opposed to simply language issues. She had been very moved by Lyall Schwarzkopf's statement because it described the waste of time involved in reporting to 14 people. This is the right direction, but she was not convinced that the proposal was ready.

Street stated that while he appreciated that Council Member Ostrow brought these proposals forward and that they touched upon some very important issues before the city, he would be voting no. However, he hoped to be voting in favor of putting something forward for the ballot next year.

Metge spoke in opposition of the motion. She was a firm believer in process. The Commission's analysis must be in facts and figures, yet she had heard no discussion regarding facts and figures. She heard people talk about 14 bosses, transparency in government, reducing expenses, and greater efficiency, but she didn't hear how a city administrator would accomplish that. She saw no numbers. She did hear in testimony by former Council Member Pat Scott and in a letter from Kris Brogan, former aide to Mayor Belton, that maybe another solution could be to reduce the size of the City Council to seven part-time council members.

Rubenstein thanked Council Member Ostrow. She appreciated the hard work that he put into raising issues that needed to be raised and hoped that the Commission would go forward in looking at them more closely.

Bernstein spoke in favor of the motion. He had heard from some very persuasive people who had a lot of experience in city government and that was a huge factor. In this case, while there may be some differences, he was convinced the details could be worked out. It was important that this structural change be advanced.

The Ferrara motion to place on the 2009 ballot the question of whether to create a City Administrator position lost. Yeas, 4; Nays, 11 as follows:

Yeas - Clegg, Connell, Ferrara, Bernstein.

Nays - Bujold, Dolan, Jancik, Kadwell, Lazarus, Lichty, Metge, Remme, Rubenstein, Stade, Street.

5. Elimination of the Board of Estimate and Taxation

Action Taken: Motion to place on the 2009 ballot the question of whether to replace the membership of the Board of Estimate and Taxation with the City Council was APPROVED.

Dolan moved to place on the 2009 ballot the question of whether to eliminate the Board of Estimate and Taxation and transfer its authorities to the City Council. Seconded.

Stade stated that right now, the Board of Estimate and Taxation has an even number of members. This proposal would fix that problem. He hadn't heard any other proposals that would fix that problem and would be voting in favor of it.

Metge responded that the Commission had received a letter from former Council Member Pat Scott who proposed another amendment that the 7th seat be filled by an elected Park Commissioner.

Ferrara spoke in favor of the motion. This will increase accountability and transparency. The Board of Estimate and Taxation is out-dated. If the people want to keep the Board of Estimate and Taxation, then the issue of the membership will need to be addressed.

Jancik spoke in favor of the motion. It is appropriate because the Board of Estimate and Taxation performs functions that are properly within the realm of the City Council. It will eliminate added bureaucracy and achieve efficiency.

Metge asked for a point of clarity. It was her understanding that what was published for the public meetings was the proposal to eliminate the Board of Estimate and Taxation. In reviewing Council Member Ostrow's amendment language, it now seemed to say that the 13 Council members would be seated as the Board of Estimate and Taxation. She was confused as to what the Commission was actually voting on.

Ostrow stated that the intention of the proposal had never really changed. The intention of the proposal was that these authorities and responsibilities ought to be with the City Council. The original proposal was to eliminate the Board of Estimate and Taxation and transfer its functions to the City Council. A concern was raised by Ms. Becker and others during the public meetings that the elimination of the Board of Estimate and Taxation could have some consequences to the city's bonding authority. There are mixed views about that, but because those concerns were raised, he then changed the proposal so that the Board of Estimate and Taxation's membership would become the members of the City Council and perhaps the motion should be restated. It was his understanding that the City Attorney believed that was something that would be within the Charter Commission's authority.

Lisa Needham, Assistant City Attorney, stated that she had sent a memo to the Charter Commission late yesterday indicating that it appeared to be possible to amend the Charter to replace the members of the Board of Estimate and Taxation with the members of the City Council, provided certain Charter provisions were addressed.

Lazarus inquired if the proposal would preserve the Mayor's veto authority.

Ostrow stated that he had added that language after Mr. Ginder raised the issue.

Metge stated that, as a point of information, this was another example of a later change to the proposal and was not something that was posted. When she received the amendment language, her initial reaction was that it should be thrown out because it was not what the Commission held the public meetings on. The public attending the meetings didn't testify on seating the 13 City Council members. If this is put forward to the ballot, it becomes the Commission's document. She didn't want her name on something that had never had public hearings.

Bernstein stated that one of the benefits of holding the public meetings was to have the deficiencies of the amendments pointed out.

Metge stated that while she didn't disagree with Chair Bernstein's statement, that was not the language posted for comment at the public meetings.

Ferrara respectfully disagreed with Commissioner Metge. The substance of the amendment had not changed. The Commission was simply deciding if the public should have an opportunity to make this decision. There would be plenty of opportunity prior to the election for discussion and debate. If this is not placed on the ballot during this city election year, an opportunity for citizen involvement will be missed, as well as an opportunity for the politicians running for office to comment and respond regarding the issues.

Lazarus spoke in favor of the motion. The Board of Estimate and Taxation is an anachronism. It is time to place the responsibility where it belongs — with the Council members. The only opposition he heard at the public meetings were that eliminating the Board of Estimate and Taxation would hurt the Park Board. Since, as Park Board Commissioner Dziedzic had previously stated, the room would be stacked with Park Board supporters, the Commission didn't get a true picture of why the Board of Estimate and Taxation should not be eliminated as the anachronism that it is. It is a legitimate function of the Charter Commission to try to move city government forward when it is the appropriate thing to do. Give the voters the chance to make that decision.

Street requested that the motion be either clarified or substituted to make sure that if the amendment passed, it would be sent to the City Attorney's Office for review of the language to return to the Commission.

Bernstein stated that the amendment language would be sent to the City Attorney's Office to be evaluated not for policy, but for any legal issues that would need to be addressed.

Rubenstein stated that while the arguments in favor of putting the question to the voters were extremely compelling, it seemed to her that this process began with a package of amendments to address increasing financial issues that the city is facing and to create the best possible government in the city. For that reason, she would like the issue to remain in the discussion and would reluctantly vote against it.

Clegg agreed that the Board of Estimate and Taxation was an anachronism. The vast majority of the citizens don't know who is on the Board of Estimate and Taxation. To have a group that no one knows set the maximum tax rates, when most people believed the City Council was responsible, didn't make sense. The only substantive issue raised at the public meetings and in the many letters received dealt with the audit function of the Board of Estimate and Taxation. He did not think it was a good idea for a board of six people, four of whom are either City Council members, Mayor, or Park Board officials, to be in charge of auditing the city. He was in favor of placing the amendment on the ballot.

Bujold spoke in favor of the motion. Accountability is vital in government and the persons who should be accountable for the maximum tax rate are the City Council and the Mayor.

The Dolan motion to place on the 2009 ballot the question of whether to eliminate the Board of Estimate and Taxation and transfer its authorities to the City Council was approved.

Yeas, 13; Nays, 2 as follows:

Yeas - Bujold, Clegg, Connell, Dolan, Ferrara, Jancik, Kadwell, Lazarus, Lichty, Remme, Stade, Street, Bernstein.

Nays - Metge, Rubenstein.

6. Elimination of the Minneapolis Park & Recreation Board

Action Taken: Motion to place on the 2009 ballot the question of whether to eliminate the Minneapolis Park & Recreation Board was DEFEATED.

Dolan moved to place on the 2009 ballot the question of whether to eliminate the Minneapolis Park & Recreation Board and transfer its authorities and responsibilities to the City Council. Seconded.

Lisa Needham, Assistant City Attorney, commented on the second letter from Brian Rice, legal counsel for the Minneapolis Park & Recreation Board, received on June 2, 2009. There were four separate concerns raised by Mr. Rice: (1) That Minnesota Statute 450.25 required the city to keep the Park Board as is to insure a county-wide levy for the Minneapolis Institute of Arts; (2) That the special laws that created the Park Board could be said to apply to more than one governmental unit and the city could not, therefore, overrule that special law via Charter change; (3) In Mr. Rice's opinion, Council Member Ostrow altered what was originally proposed and discussed at public meetings and now proposed to essentially transform the City Council into the Park Board; and (4) That the proposal eliminated a structural protection regarding the park land, namely that the Park Board may not lease land without a two-thirds supermajority vote of approval. She believed that Council Member Ostrow had already addressed No. 4 in his communication to the Commission today. A two-thirds supermajority vote is generally required for the City to dispose of any land or enter into those agreements, so presumably that authority would remain in relation to park lands. As far as discussing the difference between what was originally proposed and discussed, that is not a matter for the City Attorney's Office to weigh in upon. The Charter Commission has the authority to review whatever it would like in terms of the sequential proposals that have come forward. Regarding the special laws, Mr. Rice is essentially arguing that the Park Board has extraterritorial jurisdiction because it maintains park land in other jurisdictions, and therefore the city cannot in any way overrule by changing a special law via Charter. The special law referred to, Special Law 1889, Chapter 30, which was also discussed at length in the response to Mr. Rice's previous letter, refers to the Park Board as the Board of Park Commissioners of the city of Minneapolis and goes on to say the said Board of Park Commissioners, its successors shall be a department of the government of said city. To the extent that it is thought to confer any extra jurisdictional authority upon an entity, it sought to confer that authority on the city. Regarding Minnesota Statutes 450.25 relating to an annual tax levy upon all property in the county, in the event the City Council sat as the Park Board, she believed that the problem doesn't arise. She requested time to review Chapter 450 as a whole. In other sections, the legislature seemed to more strictly impose some specific control over charter cities such as Minneapolis. However, it was her belief that in the event that the Council absorbed the powers of the Park Board, they would presumably absorb that power, as well.

Clegg clarified that if the motion was approved, as with the Board of Estimate and Taxation, the amendment language would be forwarded to the City Attorney's Office for review, and the City Attorney could also review in greater detail Mr. Rice's letter and report back next month.

Lazarus spoke in opposition to the motion. He would have liked to have seen facts and figures to show what the real savings would be and the policy issues of why the facts and figures support the policy of eliminating the Park Board. The Park Board worked just fine when the Park Board Commissioners did their job, and he felt under President Nordyke there was now an effort to change the lackadaisical approach that the prior Board, under a different president, exhibited towards the Superintendent and the staff. He had found it annoying that many of the people who spoke at the public meetings were sent by the Park Board and very few addressed whether or not the issue should actually go on the ballot. That is why he believed the blue ribbon commission, proposed by three Council Members and the Park Board President, was needed to really analyze the issue. There needs to be a better relationship between what the Park Board does and what the City does and where real savings could take place. The Commission does not have enough facts and figures to analyze whether or not the Park Board should be eliminated, and for that reason, he couldn't support placing the question on the ballot this year. However, he believed that it ought to go on the ballot when there had been enough homework done so that the public and the Commission could make an educated decision on whether or not the institution should be modified, eliminated, or left independent.

Clegg spoke in favor of the motion. At the public meetings and in the hundreds of written submissions, this matter obviously received the most attention and everybody was very passionate about the issue on both sides. While both sides addressed the pros and cons, he didn't hear any good arguments as to why it shouldn't be put before the voters.

Ferrara spoke in favor of the motion. Questions have been raised such as what people are doing with the money and management of the parks. The ultimate authority doesn't rest with the Charter Commission, but with the voters. It rests with the people of Minneapolis who value their parks and want programs for kids in their parks. It has already been studied by the League of Women Voters. Placing this on the ballot will create a serious public debate. People need to take responsibility for their democracy and for their government, and the best way to do that is to put it before the voters.

Metge spoke in opposition to the motion. Again, the amendment language had changed since it was posted for the public meetings. Eliminating the Park Board versus seating 13 Council members is a big change which wasn't published for the public meetings. Second, she had attended all four public meetings, and there was overwhelming testimony for the Park Board. She had heard very little opposition through oral or written testimony. If the Commission held public meetings to ask people to give up their private time to come out and testify, then they are obligated to listen to them and to vote accordingly based on the input received. Third, the city doesn't run youth programs, or forestry programs. There has been no fiscal analysis of this or whether there is a cost savings. When she votes on issues, she expects them to be well vetted. Education campaigns will need to be launched which will cost both sides money during tight financial times. Lastly, the letter that was just received from Council Members Johnson, Goodman, Benson, and Park Board President Nordyke stated that "We believe that taking a year to study whether the stated benefits of the proposals could be achieved without adopting the changes to the charter would be

beneficial. We propose that a commission of elected officials from the Park Board, the City Council, the Minneapolis business community and residents meet together to try to forge solutions that could include streamlining our operations and bringing greater efficiencies to both the Park Board and City enterprises." This was also new information that the Charter Commission had just received.

Bujold spoke in opposition to the motion. He felt Mr. Rice's opinion was well grounded and that no one had the authority to eliminate the Park Board; that it is essentially a creature of the Minnesota legislature. Secondly, no ballot issue comes cheaply. It would be wrong for the Commission to send this issue to the ballot. It would seem wrong to just dispose of the Park Board's history and concern and passion for the maintenance of city parks and turn it over to the City Council. The one thing that is missing on the City Council is a level of expertise and experience in the running of the Park Board.

Rubenstein stated that while Commissioner Bujold's statements were well taken, and she agreed with his conclusion, she disagreed with his reliance on the letter from the Park Board Attorney. She and Commissioner Lazarus had consulted with Assistant City Attorney Needham regarding the letter and very much appreciated the analysis she had performed. In addition, they did their own analysis and came to exactly the same conclusion. Although there are other reasons to vote against bringing this proposal to the voters, that is not a basis.

Lichty stated that Commissioner Metge had articulated some great points and he echoed the vast majority of them. In addition, the public testimony had revealed some very meaningful criticisms of the Park Board and its governance, whether well grounded or not. To the extent there is any basis in those criticisms, he applauded Council Member Ostrow for his effort to unearth them and air them before the public and get feedback and input from the public on how to fix those problems. He encouraged the debate to continue because the testimony had convinced him that there were improvements that could be made. He also felt that if this proposal were to be on the ballot, it would be soundly defeated. Citizens would vote against it because there is value in the Park Board and its role. The proposal had not been as well vetted as he would like. If this were placed on the ballot and soundly rejected, as he predicted, it would say to the Park Board that the criticisms had been aired and put before the people, and the people were disinclined to buy into those criticisms. The result might be that the Park Board believed that there was nothing to fix or that the criticisms were less meaningful, which would be political folly because they would have missed an opportunity to improve the quality of the services provided by the Park Board. For those reasons, he would be voting against putting the proposal on the ballot in November.

Ferrara stated that while he valued and respected everyone's comments, the Commission should keep in mind that if this is not placed on the ballot, the citizens will not hear the facts or the debate. A great opportunity will be missed because there will be a city election starting up in a couple months. He had nothing against the Park Board. They do a great job. But if this is voted down, the debate about parks that should take place will not occur.

Connell thanked everyone for their comments. He was concerned about the expense that would be incurred by a number of parties, including the city, if the proposal was placed on the ballot. He was concerned that if it were to go on the ballot and pass, there would be great expense in creating the infrastructure within the city to facilitate the management of

the parks up to the level to which everyone has become accustomed. That said, he was very disappointed in the reaction of the Park Board that he witnessed after the first meeting. He did not appreciate some of the comments that he heard directed toward some of his fellow Commissioners, and contrary to some of the statements that were made, he believed that the Charter Commission had done an excellent job of weighing the issues and thinking about them and listening to the public. He encouraged the debate to continue with respect to this item and believed that forming the commission suggested in the letter presented by the three Council Members and Commissioner Nordyke was a good starting point. He would be voting against this proposal.

Kadwell spoke in opposition to the motion. She felt there was insufficient information about the analysis of how this was going to work, what the costs would be, etc. Also, if this proposal were placed on the ballot, it would be overwhelmingly defeated. It was necessary for the Commission to really understand the arguments and find good answers to the arguments.

Bernstein spoke in favor of the motion. When the debate began, he wondered why, 120 years after it was created, the Park Board still existed. He had not been persuaded that any reasons were ever advanced. Furthermore, he thought it was time for the voters to weigh in. With the city facing significant budget issues and making cuts, the question of whether or not an independent Park Board fits with the current government should be asked. The League of Women Voters did an excellent study about this several years ago. The Commission heard from people with a lot of experience in city government who questioned the need for the continuance of the existing Park Board. He did not think that a blue ribbon commission would come back with anything significant. Boards and commissions tend to not put themselves out of business. As far as merging the two institutions, he had the privilege, or responsibility, of merging two state government agencies. It can be done. It may not always be for the cost and the cost may not always be up front, but it is done to deliver more streamlined services to the citizens. He felt the proposal should be on the ballot because it had merit and because there has never been a referendum on an independent Park Board and if not now, then when? The time seemed right to do it, and he would support it for those reasons.

Stade stated that one thing the Park Board does is protect the assets of park land. He wondered what might happen if the city had direct control of those properties. The Minneapolis Library had a large amount of assets that are no longer owned by the city partially because of what the City Council did. He didn't see what would stop the City Council from giving those assets to another institution in hard times, such as Three Rivers Park District, and the city would lose those properties forever. He would be voting against the motion because more time should be spent on the issue. The decision to merge the Minneapolis Library with the Hennepin County system was done quite quickly, but had it gone slower, some things would have been better thought out.

Bernstein suggested that if the proposal was approved by the voters, and the City Council gave thought to selling Meadowbrook Golf Course, for example, the wave of people that had attended the public meetings would descend on City Hall.

Stade stated that he thought Council Member Ostrow's proposed date of November 2010 was moving way too fast.

The Dolan motion to place on the 2009 ballot the question of whether to eliminate the Minneapolis Park & Recreation Board and transfer its authorities and responsibilities to the City Council lost. Yeas, 3; Nays, 12 as follows:

Yeas - Clegg, Ferrara, Bernstein.

Nays - Bujold, Connell, Dolan, Jancik, Kadwell, Lazarus, Lichty, Metge, Remme, Rubenstein, Stade, Street.

Metge inquired what process would take place regarding the Charter proposals that had been received during the public meetings from Carol Becker, Scott Vreeland, and Pat Scott.

Bernstein stated that he had decided not to calendar those for today's meeting; however, if the Commission wanted to consider those tonight, they were free to do so, or they could be scheduled for the July or August meeting.

Discussion ensued on holding a meeting in July. It was decided that the July meeting would be held, as scheduled, on July 1. Segal and Needham indicated that they would have the review of the amendment language relating to the Board of Estimate and Taxation prepared for the July meeting, as well as proposed ballot language. The Vreeland and Becker/Scott proposals would also be considered at the July 1 meeting. Bernstein requested that Ms. Becker, Ms. Scott, and Mr. Vreeland have materials in writing at the next meeting regarding their proposed amendments.

Metge thanked Chair Bernstein for facilitating all the community meetings.

Public Comment Period

Pat Scott inquired how soon before the next meeting the amendment language would be available to the public.

Bernstein stated that when it is received from the City Attorney's Office, it will be linked to the next agenda on the city's website. The agenda is typically posted one week prior to the meeting. However, if the language is received earlier, the agenda can be posted earlier.

Council Member Diane Hofstede, Ward 3, thanked the Charter Commission for the great deal of time they spent at the public meetings. It demonstrated a true commitment to their involvement in the city.

Ostrow also thanked the Commission and particularly Chair Bernstein. He had been very impressed with the extent to which the Commissioners had been engaged in the discussion. What he gathered from the Commissioners comments was that they were not slamming the door on any of the proposals. One of the challenges of the process was that when questions arose requiring additional information, he would have liked to have had city staff be directed to do this work. Obviously he could not do that since it would have been an abuse of his office. He wanted to leave the Commissioners with that challenge. Whether a request by the Commission to city staff would have been honored was an open question. He again thanked the Commission and hoped they continued to attend to this issue.

Lazarus requested that the record reflect the gratitude of the Charter Commission to the City Attorney's Office, especially Lisa Needham. Her work was very helpful in making their decisions more clear.

Peter Wagenius also thanked the Commission.

Lazarus moved to adjourn. Seconded.

Adopted upon a voice vote.

The meeting was adjourned at 6:22 p.m.

Peggy Menshek
Council Committee Coordinator