

Minneapolis Charter Commission Minutes

Regular Meeting

**Wednesday, September 5, 2007 - 4:00 p.m.
Room 317 City Hall, Minneapolis, Minnesota**

Commissioners Present: Bernstein (Chair), Bujold, Clegg, Connell, Dolan, Klassen, Lazarus, Lichty, Remme, Stade, Street

Commissioners Excused: Ferrara, Jancik, Metge, Rubenstein

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

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

3. Approve Minutes of August 1, 2007

Commissioner Lazarus moved approval of the minutes of August 1, 2007. Seconded.
Adopted upon a voice vote.

Unfinished Business

4. Report by Former Commissioner Melendez

Former Commissioner Brian Melendez distributed two documents to the Commissioners: 1) A redlined version of the revised Charter, entitled Draft 9C, containing only the changes made to the revision since Draft 9B; and 2) The completed draft of his response to the Barret Lane analysis, both documents dated September 5, 2007. He noted that he planned to meet with Mr. Lane prior to the October meeting to discuss questions regarding the Charter and Mr. Lane's analysis.

Mr. Melendez noted that the current Charter used the words "resident" and "citizen" interchangeably. For consistency, he planned to use the word "citizen" throughout the revision.

Chair Bernstein questioned whether someone could be a citizen of the city, as there is no recognized citizenship in the city of Minneapolis. Citizenship is a formal recognized status. The Charter governs how the City is organized and all the rights and responsibilities as applied to residents, whether or not they are citizens of the United States.

Mr. Melendez stated that he felt it was important to avoid using two words that could mean the same thing. Citizen is the narrower of the two terms.

Commissioner Connell stated that citizen, with a capital "C", is like a term of art as applied in the context of the Federal Constitution and felt that the revision was dealing with a different term.

Mr. Melendez stated that he would research the terms and report back at the next meeting.

Commissioner Stade stated that in looking up the definition of the word citizen, the first definition was “an inhabitant of a city”. He didn’t see any problem with using that term.

Commissioner Lazarus suggested placing in the Definition Section of the revision wording such as, “as used in this Charter, citizen and resident shall have the same meaning”. This would allow the revision to continue using both terms, as does the current Charter.

Commissioner Bujold agreed that might be a way of making sure that there is an understanding that the term is not being used as it might be in federal immigration law.

Mr. Melendez agreed with the suggestion.

On page 34 of Draft 9C, §9.2(b), Departmental Organization, Mr. Melendez stated that he had added a sentence stating that the Executive Committee appointment process applies to department heads, unless a law or an ordinance provides otherwise. There may be department heads right now that are not appointed through the Executive Committee process, but he felt that the added language captured 90% of the exceptions pointed out in Mr. Lane’s analysis.

Commissioner Clegg stated that in reading this section by itself, it seemed to create a strong mayor system. He wondered if the role of the Executive Committee should be specified in this section as well, even though it would perhaps be redundant.

Mr. Melendez stated that there are references throughout the Charter to §10.4(b), which outlines the Executive Committee process. Even under that process, the Mayor does the nominating and the Council does the appointing. The Executive Committee gives thumbs up or thumbs down.

Mr. Melendez stated that as a result of Mr. Lane’s analysis, he had added language to §11.6 allowing the Council to transfer any unused money in the Permanent Improvement Fund to the Sinking Fund.

Commissioner Lazarus inquired of both Mr. Melendez and Mr. Lane how long the money remained in the fund before it was deemed unused.

Mr. Melendez stated that he thought it was deemed unused when the permanent improvement was completed and unspent money remained in the fund.

Barret Lane, outside Counsel for the City Attorney’s Office, stated that these provisions may have been subject to previous clarification and City Attorney opinions. For a specific answer, he would have to turn to the Finance and Debt authorities to understand the context. Also, what Mr. Melendez refers to as the Lane Analysis is actually a recapitulation of work that goes back to Draft 5. While he was flattered that it was being referred to as the Lane Analysis, he felt that it was unfair to the many attorneys that have worked on it in the past. All of the revisions have been analyzed in terms of an objective set by the Charter Commission itself, which was to update the Charter without making any substantive changes. That was not an objective laid out by the City Attorney’s Office at any point.

Mr. Melendez stated that the revision could be made relatively litigation-proof by making it longer and defining every term. Right now the revision is approximately 60 pages. In terms of the philosophy with which the Commission has been approaching the revision, the timing issue regarding unspent money in the Permanent Improvement Fund is not the sort of thing that should be spelled out in the Charter. It should be left to past practice or outlined in an ordinance. A question of timing is not something that needs to be in a fundamental document that regulates the City government.

Mr. Lane stated the City Attorney's Office performed a very thorough review of the document after Draft 5 and has been working on subsets of that review since. Those subsets continually refer back to the original review. As these issues are narrowed down, it is important to be mindful of the fact that there are other issues within Draft 5 that may still be unresolved. It was his opinion that the City Attorney's Office had been waiting until the revision reached a more final draft before engaging bond counsel to deal with questions pertaining to things such as unspent money in the Permanent Improvement Fund.

Mr. Melendez agreed that more expert attorneys would need to analyze portions of the revision. He suggested that when Draft 10 was completed, the Commission request a review by the City Attorney's Office to include consultation with a municipal finance attorney.

Commissioner Clegg suggested that the October agenda include a report from Mr. Melendez and possible consideration of the 10th Draft, if it is ready by that date.

Commissioner Bujold inquired if an objection was raised to a proposed change in the Charter, if that amendment could be taken up at a different time.

Mr. Melendez stated that during the City Attorney's review, the Commission will have time to address any points that hadn't yet been ironed out. There is also the possibility of taking matters up outside of the revision process.

5. Review of Current Charter Process to fill a Vacancy in the Office of Council Members and Mayor (Chapter 2, Section 16)

Chair Bernstein stated that at the August meeting, the Commission had requested that Mr. Melendez change the revision in order to retain the intent of the current Charter regarding the process of filling a vacancy in the offices of Council Members and Mayor. It was also decided that the Commission would discuss the possibility of making that amendment separate from the revision process. Chair Bernstein had been assigned the task of arranging a meeting with the Mayor and the Council President to obtain their input on that amendment. Because of the bridge collapse, the Mayor's agenda has been full. Chair Bernstein was able to meet with Council President Johnson who stated that the amendment would not get a 13-0 vote. At this point, unless someone wanted to reopen the debate, the proposed revised Charter will keep the intent of the current Charter and this issue will no longer be pursued.

Commissioner Clegg moved to adjourn.

Carol Becker, elected member of the Board of Estimate and Taxation, was present and stated that it was her understanding that the Commission was making only non-substantive changes to the Charter. She felt that reducing the Board of Estimate and Taxation to a six-member Board would be a substantive change and would have a very large impact on how the Board would operate.

Chair Bernstein stated that because the Library Board will be abolished, there will no longer be a Library Board member on the Board of Estimate and Taxation, which would automatically reduce the Board's membership to six. From the Commission's perspective, to decide that the seventh member should be another elected public member, another member of the City Council, a Mayoral appointee, or another member of the Park Board, would be a substantive change. The Commission would prefer that City Council make that decision.

Commissioner Clegg stated that the Commission's intent was to footnote that specific provision and make a note to the Council that they may want to restore the membership to seven, and if so, they need to decide how they wish to fill that vacancy.

Ms. Becker inquired if the footnote would actually force a vote by the City Council. Her concern was that this not slide through with the change from seven to six members. She wanted to make sure that it was debated separate from the rest of the Charter discussion. A six-member Board would shift the power dramatically to the City.

Commissioner Street stated that as he understood it, the topic would be footnoted for the Commission's conversations with the Council, not for ratification by the voters. He had no intention of the Board of Estimate and Taxation becoming a six-member board.

Commissioner Connell agreed with Commissioner Street. He also didn't think anyone on the Commission wanted to have a six-member Board. One way or another, the question must be considered, and the Commission was trying to determine how to draw attention to that fact.

Chair Bernstein stated that the Commission is not recommending a six-member Board, but simply acknowledging that right now the provisions outlining who serves on the Board of Estimate and Taxation include a Library Board member, and the Library Board will soon no longer exist. It will be up to the City Council to determine if they want to keep the membership at six; however, that will not be the recommendation of the Commission.

Commissioner Connell suggested leaving the number at seven and drawing attention to the fact that there is no longer a Library Board.

Chair Bernstein stated that the Commission had just okayed the change to six members in the revision. The topic would have to be formally taken up again at the October meeting to change it back to a seven-member Board.

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

The meeting was adjourned at 5:10 p.m.

Peggy Menshek
Charter Commissioner Coordinator