

# MINUTES

## Special Meeting of the **MINNEAPOLIS CHARTER COMMISSION** Wednesday, September 29, 2004

Commissioners present: Jim Bernstein, Chair; Barry Lazarus, Barry Clegg, Karen Collier, Margaret Dolan, Karen Dziedzic, Todd Ferrara, John Klassen, Marshall Lichty, Brian Melendez, Jana Metge, Sue Ponsford, James Theurer (Quorum - 8)

Excused: Gary Thaden.

Absent: Tyrone Bujold.

Staff present: Burt Osborne and Larry Cooperman, City Attorney's Office

Bernstein called the meeting to order at 7:08 p.m. in the Council Chamber, 317 City Hall, Minneapolis, MN

### **1. Welcome new Commissioners John Klassen and Marshall S. Lichty**

Bernstein introduced Commissioners Klassen and Lichty, the newest members of the Charter Commission.

### **2. Roll Call**

### **3. Adopt Agenda**

By unanimous consent, the agenda was adopted.

Melendez provided the 5th Draft, Reporters Revision B for distribution. He incorporated comments he had received, including more than 100 comments from the public. This draft has not been approved by the Charter Commission.

Char Bernstein opened the public hearing.

*Cheryl Morgan Spenser, Minneapolis Urban League, 2100 Plymouth Av N, Minneapolis 55411*  
She represented Clarence Hightower, President and CEO of the Minneapolis Urban League. She read a letter from Mr. Hightower addressed to Chair Bernstein that was placed on the record.

Bernstein reported that he will be speaking to Mr. Hightower on Thursday, September 30 to respond to his letter.

*Anita Duckor, Member of the Minneapolis Public Library Board of Trustees, 3141 Dean Court, Minneapolis, MN.*

She represented the Library Board to communicate concerns regarding the Charter revision process. The Library Board submitted a detailed written response during the comment period for the June revision. Their key concerns:

- They believe substantive changes are proposed in the June 2004 5th draft.
- The streamlined organization makes it more difficult to locate all the information on the powers of the Library Board.
- They believe the independent boards must continue to each have an individual section in the Charter in order to understand the powers granted to each board.

- Two of the most substantial changes deal with the functions and powers of the Library Boards and its financial autonomy.
- The Charter must be specific on powers that presently exist.

Additional substantial changes are noted in their written response. The Library Board was created by an act of the Minnesota Legislature in 1885 to control, govern and administer the library system within the City of Minneapolis. This Board not only has governing autonomy, but Chapter 17, Section 1, it also gives the Library Board the ability to act as a separate legal entity. In addition, there have been special laws applicable to the Library Board and its specific powers such as the authority to invest funds received as gifts, devices or bequests. The Charter is silent on a general rule of municipal law. A governing body does not have the authority. Moving sections of Chapter 17, Library Board, from the Charter to the Code of Ordinances provides the City Council greater control over the operation of the library system and particularly its finances. This would be a substantive change with regard to the financial autonomy of the Library Board and, in addition, it is not clear whether the Library Board retains its power to request the Board of Estimate and Taxation to issue bonds for library capital improvements. These are significant issues that need to be clearly stated to maintain the specific authority with regard to these important powers.

The Library Board will consider the latest draft and may submit comments specific. She requested that the Charter Commission postpone further hearings on the Charter revision until such time as the elected bodies have had the opportunity to respond to this version.

*Jon Olson, President of the Minneapolis Park & Recreation Board, 4234 Washburn Av N, Minneapolis, MN*

He agreed with some of the comments relating to the Library Board. They have similar concerns and he would like the opportunity to review the document in full.

*Brian Rice, Attorney for the Minneapolis Park & Recreation Board*

He expressed appreciation for the efforts of Commissioner Melendez and for his willingness to listen to their comments. Revisions A & B of the 5th Draft answer some of their questions about separate chapters for the Park Board, Library Board and Board of Estimate & Taxation. He has worked with Commissioner Melendez over the summer months and some of their comments have been incorporated into the latest revision. He will continue working with Melendez on various issues such as specific authority from either the legislature or the Charter. In his June 25 correspondence with Melendez, approximately 21 different powers that the Park Board had were enumerated. Many of those have been incorporated into the latest revision. There are other powers that he believes are important to continue. Some deal with things like vacating and closing public roads and highways that pass or divide through the park lands; also bridges and viaducts. One of the unique powers incorporated into the draft was that in the Charter the Park Board has the ability to regulate. If the Park Board owns all the land around a body of water, particularly a lake, they can regulate the lake in its entirety.

It's important for the Park Board, the Library Board, and the Board of Estimate & Taxation to identify the particularized powers so they do survive this revision. There are unique features that need to be considered. Also, there are a number of positions in the Park Board that are exempt from Civil Service law that need to be identified.

He believes the goal of the Charter Commission is to bring together a unifying document. Jon Olson, President of the Park Board will bring the next draft to the Board for specific recommendations. He recommends another draft be completed and then allowing a comment time.

Melendez stated that issues covered by special laws would not be removed from the Charter.

Rice stated that the City Attorney's analysis is a challenge. The Charter pulls 140 years of municipal history and a myriad of special laws and legislative enactments into one document. He believes the revision is a good way to protect all those things. When the Park Board was created by the legislature in 1883, they had the ability to run a park system in and adjacent to the City of Minneapolis. Approximately half of this park system is outside this city. The Park Board has the right to pass ordinances and regulations in those communities. That authority came from the legislature and it is important to continue that. Even though those laws were merged with the Charter in 1920 when the city adopted a home rule Charter, those powers have never been repealed by the legislature, nor could they be. That's the important part about doing this.

*Evelyn Eubanks, representing Council Member Natalie Johnson Lee, 5th Ward*

She is a resident of the 5th Ward. They heard about the proposed changes and there was some question as to whether it is an abbreviated version of the same document or are there definite changes? They advise caution. If the purpose is to clarify and make clear; if the wording that stands is not cumbersome and does not cause a problem, they suggest that no changes be made other than a correction that says that it's a Civil Commission and it's not a Civil Rights Department. They support the Civil Rights Department and their quest to make sure this document remains as it is.

*Jane Baccus Khalifa, Director of the Civil Rights Department*

Thanked those who came to testify on behalf of what appeared to be a move on the part of the Commission to eliminate the language from the Charter that speaks to the Civil Rights Department. In the document she received on Sept 22, that is the statement that was made that the language that specifically stated that, notwithstanding any other Charter provision or ordinance to the contrary, all City departments, boards, commissions, agencies and branches of the City of Minneapolis shall be subject to jurisdiction of the Minneapolis Civil Rights Commission. No exemption of jurisdiction conferred by this section shall be allowed to exempt any city departments, boards, commissions, agencies or branches of the City of Minneapolis, Charter Chapter 11, Section 18. She has since been told by Commissioner Melendez that the version that she received from the City Attorney's office last week is not the most recent version and, in fact, the language that retains this information on the Civil Rights Dept has been retained in another proposed section of the Charter. She has reviewed Revision B and she doesn't see that language there.

As a new employee to the city who has been on the job for less than 90 days, this is a confusing process because of the various versions of the revision. She feels responsible for keeping the people whose rights the department were designed to protect informed of what is going on in City Hall.

She proposed only one word in the current language that exists in the Charter section dealing with the Civil Rights Department be changed and that would be the Minneapolis Civil Rights Commission. The exception would be to change the word "Commission" to "Department". When the Department of Civil Rights was created, the name of the department was the Civil Rights Commission. The current name of the department is the Civil Rights Department because it will be confused with the Commission that is on the side of the department now. She recommended retention of the language exactly as it is written in the current Charter. She thinks it is very important, particularly at this time when we have more diversity in the city than at any other time in the history, that it would just be bad public policy to send the wrong message to that citizenry.

She received the analysis from the City Attorney's office. She was not aware of the proposed revision until that time.

Melendez stated that the version Khalifa had reviewed was the 5th draft that had been put out for comment. At the suggestion of the Library Board, the independent boards were divided into their own

separate articles in Revision B and renumbering occurred. He asked Khalifa to define the relationship between the Civil Rights Department and the Civil Rights Commission.

Khalifa stated that the Civil Rights Department, when it was created, was called the Civil Rights Commission. That was the name of the office that took complaints of discrimination. She believes there was a board attached to it at that time. That board is now called the Minneapolis Civil Rights Commission and it is an appointed body of approximately 32 people who are appointed by the Mayor and the City Council. Their primary function is to carry out the intent and the functions of the Civil Rights ordinance. They provide education and information and consider areas that warrant research and comment and action on their behalf. They are a group of citizens that serve adjacent to the department. They also hear contested cases. If we make a decision on a complaint and we are unable to resolve it, if it is a probable cause decision and we are unable to resolve it in conciliation, then it goes before the Commission and they hear the case and will make a decision on the merits of the case. They are the body to which a party may appeal a no probable cause decision. If a party is not satisfied with the decision of the Civil Rights Department, they may appeal to the Civil Rights Commission. They are not a governing board for the Civil Rights Department. The current language is inadequate and it is insufficient in the version.

Melendez reported that the distribution list for the revisions has included the Mayor's office, the City Coordinator and the independent boards. He offered to add anyone interested to his electronic mail distribution list. Ms. Khalifa has provided her business card. He warned that the amount of materials sent out is often burdensome. The 5th Revision was posted on the web but is currently not available on line. To receive only the basic revisions, check the Commission's web site.

Bernstein stated that the Commission will take into consideration the comments that are received at the public hearings to determine whether the language should be revised.

*Cheryl Lugar, 4936 37th Av S, Minneapolis*

She is speaking for the independent boards (she does not belong to any official organization; she is a community volunteer). She spoke to the changes that go beyond simplifying the Charter which are substantive and involve possibly a shift in the balance of powers and the checks and balances which define the City/Mayor/Council relationship and those reserved who are independently elected partisan boards. There are unaddressed issues affecting the balance of power between the city and the Park and Library Boards that need to be addressed before the revision is approved. Those include:

- o Unspecified inherent power
- o Control of assets
- o Sale of real estate and the role, particularly in the Library Board, the role of Trustee.
- o Employee/union relationships and the integrity of bargaining units.
- o Impact on fees, charges and income generation as far as the section that says you may specify certain charges in the library system.
- o The right of association with other governing bodies and NGOs which is in the original Charter but not in the revision. The original Charter states that the Library Board will be allowed to enter into agreements with various libraries of other municipalities. That involved partnerships and the authority to act in partnership with other related groups and was left out.
- o The transference of decision-making functions to what would amount to a simple Council majority vote that is changing from the Charter to the ordinance.
- o Election dynamics and partisan party labels. The revision she had stated that the Park and Library Boards could run non-partisan or they could designate a 3-word political label.
- o A change in the focus of power between basically the City Council's vision for the city and those of the independent boards where there might be some disagreement. The implications and unintended consequences would change the library status in this city.

Not all of these are strictly housekeeping details. She understands that the Commission is not dealing with the political implications of the wording. As further evidence of substantive changes, she cited the Star Tribune editorial of May 28 where it is stated that an overhaul of the City Charter would be needed to avoid this sort of problem. The problem involves a dispute between the city and the Library Board involving asset use and disposition. This reference to the Charter raises concerns that some Charter revisions are intended to change the board's autonomy. She requests that the Charter Commission work closely with the independent boards to incorporate the changes that have been suggested to avoid any confusion later on and to work to avoid any substantive changes being put into a position where they could be changed by a simple majority vote on the Council. Substantive changes should be put on the November 2005 ballot to let the voters decide issues relating to the Library Board, Park Board, and other independent boards.

This revision has not been a particularly visible item in Minneapolis and requires more investigation. She recommended two changes. One is to delete all references with regard to non-partisan boards about having the option of placing a party designation. The second is that all trustees be elected to the Library Board similar to the Park Board. The Charter is the city's constitution and is a covenant between the municipality and its residents. Revisions require the highest level of transparency and public discourse.

Melendez asked Ms. Lugar to submit a written copy of her suggestions.

Lugar will mail her suggestions to Melendez.

*Roger Banks, 2101 Bryant Av S, Minneapolis, representing the State Council on Black Minnesotans*  
He is a research policy analyst. He supports the efforts of the Civil Rights Department in making sure all specifications pertaining to that department are present in the new draft. The State Council was developed by the 1980 legislature for the purpose of advising the Governor, the legislature, other policy makers at all levels on issues affecting African Americans. He learned of this revision this week. He would like to work in partnership and act as a liaison to the African American communities, etc, for the purpose of insuring that the types of changes being proposed meet the needs of the populations of the constituency.

*Todd Pufahl, Business Manager for Local 363, President of the Minneapolis Board of Business Agents*

Labor has had input into this process. Melendez has been available and open to their input and has also come to the Board of Business Agents to provide an update. Many of them are on his readers list and he has been very open to their suggestions. Labor supports these changes and the effort to update and bring up to speed the language in the Charter with the intent not to change any of the substantive portions of the Charter. One thing we consider a substantive change is moving portions to the Code of Ordinances. He has not seen the latest update on the Civil Service area. Another concern is losing the specificity in the area of exam plans and the components of exam plans. Recently the City has been considering an update of the civil service rules and changing some things that labor has very strong opinions on such as seniority and exam plans, etc. The only way to retain those components of exam plans in the civil service rules was by citing the Charter. They would like continued involvement with feedback and input through Commissioner Melendez.

Melendez reported that Jim Michels commented on the civil service provisions. The provision about the classified service was expanded from approximately 2 ½ pages to about 10 over the weekend. It is now much more specific. He is open to additional comments. If something is not in the revision, it may be that they didn't recognize and appreciate its importance.

Lazarus requested that comments be as specific as possible and linked to a particular section of the Charter.

*Carol N. White, Member of the Civilian Police Review Mediation Board, 4728 Washburn Av N*

She was not aware of this meeting until she read it in the Spokesman Recorder. Her concern is with the African American community. She expressed concern that there was no minority representation on the Charter Commission. The types of event occurring in 2004 are the same problems occurring when the civil rights component was established. She will submit comments out of concern for the whole city and not just for a few.

*Ron Edwards, Resident of the City of Minneapolis*

He concurs with the observations made by Ms. White. He is aware that an additional public hearing will be held on this revision. He will return with a more detailed series of observations. He spoke with Ms. Khalifa and learned that what appeared to be an area of serious concern has been modified to the extent that there may have been a misunderstanding, some general miscommunication. He understands the battle fought with respect to the importance of the Civil Rights Department. One concern is any manipulation of the Charter Commission or provisions of the Charter by any other entity such as the Civilian Review Authority because of some kind of rupture as it pertains to the relationship between the two entities. Two years ago the City Council was clear and distinct about what is expected with respect to the relationship between the Civilian Review Authority and the Civil Rights Department and the importance of subordinates by the Civilian Review staff and the Board. There is a rumor of an attempt to manipulate the process and to manipulate the Charter Commission because of a very serious breach with respect to a clear understanding, with respect to the lines of authority. There is strong support for Jane Khalifa in the African American community. He is relieved to some degree to hear that there is a sense that whatever the problem is it can be worked out, but I think there are some questions that have been posed to actually strengthening the Civil Rights Department, and by extension the Commission, because they need to be strengthened. So I just wanted to put those remarks in. He thinks there is some concern about the position of the Charter Commission with respect to the Rule of 1 vs. the Rule of 3.

Collier moved to close the public hearing for this evening. Seconded.  
Lost upon a voice vote.

Bernstein requested that the public hearing remain open for another 15 minutes.

Collier stated that the City Attorney's analysis was terrific. She recommended that the timetable be amended for completion of the work on the Charter to give the Commission time to digest the City Attorney's analysis. To extend the timetable would also give Melendez time to incorporate the comments submitted. Consideration should also be given to whether this issue should be considered by the Executive Committee also.

Collier moved that consideration of a revised timetable be on the agenda for the next Charter Commission meeting. Seconded.  
Adopted upon a voice vote.

Melendez supports Collier's motion. Based on the comments received and the volume of useful information received from the City Attorney's office, it is clear that the previous completion date was inappropriate. We are not at the point we thought we would be at this time. The Library Board recommended an additional comment period and he supports that recommendation. When the Commission gets to a point where we are satisfied with a 6th draft, the comment period could be reopened to provide an additional 30 or 45 days for the independent boards to respond and then take

it to the City Council. Tonight we learned that there are communities that are hearing about this revision for the first time. He will provide an amended timetable at the next meeting.

Melendez stated that a statement of our philosophy in this process has never been adopted. The letters sent out to the independent boards and the City Council in September 2003 provided an explanation. He is willing to provide a statement for the web site to introduce what is being proposed.

Bernstein stated that additional public hearings may be needed when we get to the point that we have a final draft. A notice was sent to all the neighborhood newspapers regarding the Charter revision, but some did not get published.

*Diane Hofstede, Library Board*

She asked whether the Charter Commission would be placing a statement indicating that the intent of the Charter Commission is not to make substantive changes in the Charter.

Bernstein responded that a brief summary will be prepared, from the Charter Commission's perspective, of the purpose, the goals, and the objectives are of this revision of the Charter which is a technical rewrite. There are no substantive changes proposed.

Lazarus moved to close the public hearing. Seconded.  
Adopted upon a voice vote.

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Burt Osborne updated the Commission on the status of the medicinal marijuana issue. The City Council made findings and directed the Elections Director to not put the proposed amendment regarding the licensing of medicinal marijuana on the ballot. A lawsuit was filed in District Court asking the Judge to force the Elections Director to place the issue on the ballot. Judge Richard Sheerer in Hennepin County denied that motion and dismissed the case and properly made a finding that this needs to go up on an appeal immediately because of the timing. The Plaintiffs appealed to the Court of Appeals and the Court of Appeals petitioned for accelerated review to the Supreme Court. We were notified on Friday of last week that they wanted a brief prepared by 9:00 a.m. on Monday. The brief was delivered. On Monday, before noon, the Supreme Court denied the petition for accelerated review. The next day, the Plaintiffs went back to the Court of Appeals for a normal appellate procedure of an expedited basis at the Appeals Court level rather than the Supreme Court level. Another brief was delivered this morning and they are awaiting a decision as to whether the Court of Appeals will entertain expedited review of the underlying issue. He believes the City has a very strong position and that this appeal will also be denied.

At the Charter Commission meeting on Wednesday, October 6, there will be a short business meeting and then the public hearing will be held.

Collier moved to adjourn. Seconded.  
Adopted upon a voice vote.

Jan Hrcir  
Chief Council Committee Coordinator and  
Charter Commission Coordinator