

Minneapolis Charter Commission Minutes

Regular Meeting
Wednesday, June 7, 2006 - 4:00 p.m.
Room 319 City Hall

Commissioners Present: Bernstein, Lazarus, Clegg, Bujold, Connell, Dolan, Klassen, Lichty, Metge, Ponsford, Remme, Rubenstein, Stade, Street

Commissioner Absent: Ferrara (excused)

Also Present: Mary Al Balber, Assistant City Attorney

1. Roll Call

Chair Bernstein called the meeting to order at 4:06 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 May 3, 2006.

Commissioner Lazarus moved approval of the minutes of May 13, 2006. Seconded.
Adopted upon a voice vote.

Introduction of New Charter Commissioners

Corbin Connell
Kristy Remme
Andrea Rubenstein
Ian Stade
Aaron Street

Introductions were made.

Old Business

4. 9th Draft to City Charter Revisions (submitted February 7, 2006):

Chair Bernstein introduced former Charter Commissioner Brian Melendez, the principal architect and point man for the Charter revision, who was present to inform the Commission of his progress.

Former Commissioner Melendez stated that he had completed a side-by-side comparison of the 9th draft of the Charter with the 5th draft and had transmitted it to Barret Lane, outside counsel hired by the City Attorney's Office to review the proposed revision. He was now putting together a side-by-side comparing the current Charter to the 9th draft, which he hoped to transmit to Barret Lane next week. Commissioners had received, via e-mail, a copy of his report transmitting the revision to the City Council. Also, since IRV may be on the ballot this year and under consideration at the same time as the 9th draft, and since the IRV amendment is striking out and inserting language into the current Charter, there would need to be some kind of reconciliation so that IRV can be incorporated into the revised Charter. At the Commission's request, he would make those changes to the revision. He felt that if the City Council were to take action on the revision before November, the revision ought to include some type of contingency for the possibility of IRV passing in November. Commissioner Lichty was in favor of having alternate language.

Commissioner Stade inquired if the entire IRV language could be incorporated into the Charter revision now, so there would be only one Charter amendment on the ballot.

Former Commissioner Melendez explained that the Commission's goal was to keep the revision as neutral as possible, making only "non-substantive" changes to the Charter — rewriting, clarifying, reorganizing, and reclassifying some provisions as ordinance. There are people who would be in favor of the Charter revision who would not be in favor of IRV. The Commission would not want citizens voting against the revision just because IRV was included.

Chair Bernstein stated that the question before the Commission was to accept former Commissioner Melendez's report of the 9th revision of the City Charter for transmittal to the City Council, bearing in mind that the City Attorney's analysis is not yet complete.

Commissioner Bujold moved acceptance of former Commissioner Melendez's report of the 9th Revision of the City Charter for transmittal to the City Council. Seconded.

(The record indicates that Commissioner Metge entered at this time.)

Commissioner Lichty inquired if the side-by-side that former Commissioner Melendez will be completing and later transmitting to Barret Lane would be considered a part of the report that the Commission was accepting today.

Former Commissioner Melendez stated that it should not require any additional Commission action. The City Council will receive books that will contain the revised Charter and the current Charter, both side-by-side versions, the transmittal reports, a copy of the Minnesota League of Cities Model Charter, and an index for the Charter.

Lazarus called the question. Seconded.
Adopted upon a voice vote.

Commissioner Bujold's motion to accept former Commissioner Melendez's report of the 9th Revision of the City Charter for transmittal to the City Council was adopted upon a voice vote.

The Commissioners thanked former Commissioner Melendez for his contribution to the revision and his hard work over the years the revision was in process.

5. Formal Submission of Charter Amendment to the City Council:

- a) Send an official letter to the City Council indicating that the Commission has completed the work of modernizing the Charter;**
- b) Include in the letter the number of public hearings held;**
- c) Include in the letter specific data on the number of hours devoted to the project, principally by Commissioner Melendez, but also by other Commissioners;**
- d) Include with the letter statements from the Park Board, Library Board, AFSCME, and any other organizations that appeared before the Charter Commission, indicating their support, in principle, of the revision;**
- e) Indicate to the City Council that the Commission is prepared to go to the voters in November, but only as a last resort. The Commission would prefer the Council's 13-0 vote;**
- f) Indicate that the Commission would be happy to conduct a Study Session for Council Members and City staff at any time;**
- g) Include the timeline so the Council understands that the Commission is open to any changes the Council wishes to make, as long as the changes are not substantial and do not change the intent of the Charter; and**
- h) Brief the StarTribune Editorial Board on the Charter Commission's work on the revision.**

No action was necessary on this item.

New Business

Referred by the City Council Intergovernmental Relations Committee:

6. Instant Runoff Voting:

Proposed ordinance amending Chapter 2 of the Minneapolis City Charter, placing on the 2006 ballot a proposal to eliminate primary elections for City offices, amending filing dates, and allowing for Single Transferable Vote, Ranked Choice Voting or Instant Runoff Voting.

Chair Bernstein requested that Assistant City Attorney Balber outline the procedures and options available to the Commission.

Assistant City Attorney Balber stated that under Minnesota Statute 410.12, Subd. 5, when a Charter amendment is proposed by Council and referred to the Charter Commission, the role of the Charter Commission is to consider the amendment and either accept, reject, or substitute an amendment. The Commission is allowed 60 days to consider the amendment. Before the 60 day time period has expired, the Commission can make a request to the City Clerk for an additional 90 days to consider the proposal. Once the Commission makes a decision, it must promptly notify the City Council of that decision. Minnesota Statute 410.12, Subd. 5, states, "On notification of the charter commission's action, the Council may submit to the people, in the same manner as provided in subdivision 4, the amendment originally proposed by it or the substitute amendment proposed by the charter commission."

Chair Bernstein recognized Cindy Reichert, Director of Elections, to speak before the Commission.

Ms. Reichert requested an amendment to Section 5 of the proposed Ordinance which would allow the Elections Department to follow general election law regarding filing dates. Currently, every December prior to a Council election, the Election's Department requests the Council's permission to set filing dates according to State Statute. The Statutory deadline is 56 days before an election. Ms. Reichert suggested that wherever filing dates are mentioned in the ordinance, that it refer to the general election law.

Ms. Reichert stated that an amendment was also needed in Section 16 of the proposed ordinance regarding a vacancy in the offices of Mayor and Council Members, which currently reads as follows:

"For the purpose of selecting the candidates to be voted on at such special election, the Council shall ~~fix the date of a primary election to be held not less than thirty-five (35) days prior to such special election, and shall also~~ fix the dates for filing of candidates for such office which shall be for a period of not less than eight (8) days, and the closing date for such filing shall not be less than ~~twenty (20)~~ forty (40) days prior to the date fixed for the ~~primary~~ general city election."

Ms. Reichert requested that this section of the proposed ordinance be amended by deleting the word "general" and inserting the word, "special".

Commissioner Lazarus inquired when voting machines would be available that would allow voters to vote with a machine rather than a pen.

Ms. Reichert stated that there is currently nothing on the market that is certifiable in the State of Minnesota that can be purchased to do this. It would require a custom application that would be designed based upon the rules of election procedure that are yet to be determined. Section 5 of the amendment states that "the City Council shall, by ordinance, establish the ballot format and rules for counting the votes." Section 15 states that general election laws apply to our elections, so there are a number of areas in election law where the laws currently followed would not necessarily apply in an Instant Runoff Voting election. Staff is currently working on determining where those areas of

conflict lie. Anywhere that there is an area of conflict, rules and procedures would need to be drafted and included in a secondary ordinance that the proposed ordinance calls upon Council to pass. That could be a time consuming operation. The Instant Runoff Voting Model used by Cambridge, Massachusetts, for example, allows for choices up to the number of candidates that file, with a limit of 26 on the machines that they use. In San Francisco, they are currently only able to vote for three candidates due to the limitation of their equipment. Burlington, Vermont, is using the same equipment that Cambridge is using. The specifications for the equipment would need to be written based upon the laws and rules that are developed in the secondary ordinance. San Francisco issued an RFP in March of 2005 requesting proposals for voting equipment and it has not yet been filled. San Francisco is working with a company right now, ES&S, to perhaps modify the equipment currently used. The city of Minneapolis does not currently own election equipment. The City operates on a lease with Hennepin County. Every city in Hennepin County is a partner. It is certified as one system by the federal government and by the Secretary of State. Any changes to that system, such as the city of Minneapolis pulling out or modifying their system, would require the entire system to be recertified on both federal and state levels. That also could be a time consuming process. There are some very technical questions regarding the algorithm of candidate rotation and how that would work in an Instant Runoff Voting election where voters have three choices. It would be some time before the City was ready to actually implement Instant Runoff Voting, and equipment is one of the larger issues that will have to be faced.

Chair Bernstein suggested delaying a decision until the amendment language was ready.

Commissioner Rubenstein stated that, as she understood it, one of the concerns mentioned in the IRV Task Force Report was the expense of moving away from leasing the machines with Hennepin County. She asked if there was a possibility that ES&S could create a machine where the IRV function could be turned on or off, so that the next time Hennepin County buys new machines, they would be ready for IRV use and the problem of Minneapolis buying its own machines would be eliminated.

Ms. Reichert stated that that was a possibility. However, the research and development has not been done by ES&S at this time. There are also market issues to consider. The life expectancy of the machines used now is 15-20 years. The current machines were purchased in 2000. That's not to say that the County may not decide to change out machines for some reason in the near future. However, they have no planned equipment replacement date in mind. It's possible that that function could be included on new equipment that the County would purchase, which would require County Board action. Currently, there are very few cities in Hennepin County that would be able to implement Instant Runoff Voting because only charter cities can adopt IRV at this point. If the Statute should change to allow statutory cities to adopt IRV, then more cities in the county may adopt it as well. But Minneapolis may be the custom application for the system. It is very difficult to really nail down exactly what the cost will be, or exactly what the time line will be. Cost estimates in the IRV Task Force Report were presented as if IRV were implemented today. Things could change within a few years.

Commissioner Lazarus wondered why IRV was being proposed now, given all the technical problems it will face.

Ms. Reichert stated that the Elections Department was acting on a request of the City Council.

Commissioner Ponsford questioned if the discussion was germane to what was before the Commission.

Chair Bernstein stated that the discussion was germane in deciding whether to accept the ordinance from the City Council or reject it. There had been discussion to modify the ordinance, but no vote had yet been taken.

Commissioner Stade didn't think the Commission should be concerned with the costs. Also, he had heard that other cities were talking about implementing IRV, so Minneapolis may have some partners in the future.

Ms. Reichert stated that there are a number of cities THAT have looked at IRV and have had presentations. The city of Hopkins had gotten fairly far along in developing an ordinance, but it was postponed earlier this year. The city of St. Louis Park has also asked their Charter Commission to perform an IRV study. But Minneapolis is on the cutting edge.

Chair Bernstein asked if Ms. Reichert would summarize the IRV Task Force Report.

Ms. Reichert stated that the IRV Task Force consisted of herself, as Minneapolis Director of Elections, Council Member Cam Gordon, Charter Commissioner Tyrone Bujold, a Library Board member, a Park Board member, a representative of the Mayor's Office, Chief Judge Wieland, and the Hennepin County Elections Manager. There had been discussion regarding the legality or constitutionality of IRV. Equipment was discussed, as well as communications. An education program would be required for the public, the voters, and the election judges in order to help them understand the fundamental change in the voting system. The Task Force also looked at the experience of other cities. There are currently nine cities in the United States that have adopted a Charter amendment allowing IRV. At this point, it has been implemented in four cities: Cambridge, Massachusetts, where it has been in place since 1937; Burlington, Vermont, which is using the same equipment that Cambridge is using, began using IRV in 2005; San Francisco, California, implemented IRV in 2004; and Ferndale, Michigan, where they are using a hand count to count their ballots.

Chair Bernstein reminded the Commission that they had the choice of accepting, rejecting or modifying the proposal. The City Elections Office had requested at least one specific modification. There is another requested modification for which the language is not yet ready. The decision could be delayed until July.

Commissioner Lichty asked what the Commission's responsibility was in terms of sending alternate language for the revised Charter (9th draft) to the City Council that would allow for IRV.

City Attorney Balber stated that the Commission could substitute language, but, technically, the revised Charter didn't exist yet.

Former Commissioner Melendez stated that would only become an issue when both documents come fully into play. The report that was just approved for transmitting the document contains in it a proposed ordinance. He could come back to the Commission with a report about how to handle reconciling the revision and IRV if they happen to be on a ballot at the same time. There could be an alternate version of Article III in the Charter which would only take effect on the condition that the IRV amendment passed. However, this is not something the Commission can address today. Until the City Council reaches reconciliation on what the IRV amendment is, he wouldn't know what to put in the draft.

Ms. Reichert stated that the next local election is not until 2009. The filing date amendment could be done at a later date when things are clearer.

Chair Bernstein inquired if the language that would be placed on the ballot would be condensed from the proposed ordinance amendment in front of the Commission.

City Attorney Balber stated that the City Council will determine the ballot language.

Chair Bernstein moved that consideration of the proposed amendment be postponed until the July meeting. Seconded.

Stade inquired if he could make a motion to accept the proposed ordinance as is, since the amendment could wait until 2009. Seconded.

Chair Bernstein ruled the motion out of order since there was already a motion on the floor.

Commissioner Lazarus felt the Commission should try to respond sooner rather than later. He asked if anyone had proposed bringing the issue to declaratory judgment, to determine whether or not there is a constitutionality issue involved, before it is put on the ballot and voting software will need to be created.

City Attorney Balber stated that that issue was discussed at the IRV Task Force meetings. There is no advisory court system to bring this issue before, and there has been no instance of harm to bring an action before a court. It has to go through the process.

Commissioner Connell inquired if a legal opinion had been requested.

City Attorney Balber stated that the city of Duluth had obtained the Attorney General's opinion regarding a Charter amendment to allow IRV use in their primaries. What the city of Duluth received was actually more of an advisory opinion. Primaries are a narrow process and don't necessarily have to meet all the requirements of the constitution. However, the Attorney General had concerns under Brown vs. Smallwood whether it would be constitutional. There was some concern in the Brown vs. Smallwood case where the court had looked at a voting system that the city of Duluth used for a municipal judge election. However, that system was not IRV; it was called the Bucklin System. With that system, they ended up with more votes counted than there were people that voted.

Chair Bernstein gave a brief description of the Bucklin system. Bucklin tries to find a majority for one candidate by counting only the first place votes. If no candidate has a majority of votes, all second place votes are included in the count, and then third place votes, etc., until a candidate has a majority of votes.

Commissioner Rubenstein disagreed with the concerns raised about establishing the issue of constitutionality first. It seemed to her that the Bucklin system that was challenged is the polar opposite of the one that's being proposed now. This particular IRV system has not been challenged; perhaps because there's no reason to challenge it on a constitutional basis. Another reason she was against testing the constitutionality issue first was that it would further delay getting it on the ballot. The more delay there is in getting it on the ballot, the less time there will be to educate voters about IRV. It seemed to be important to the IRV Task Force that there be an opportunity for people to get used to the idea and understand it.

Commissioner Street stated that it was his understanding that the motion on the floor did not regard the legality of IRV; it was to postpone discussion for a month in order to be able to discuss amending Section 5, which has nothing to do with IRV. Amending Section 5 could be done as late as 2009. He was opposed to postponing discussion until July.

Commissioner Bujold agreed with Commissioner Lazarus as far as the expenditure of money. Ranked Choice Voting will cause money to be spent by the government in anticipation of the use of the system. The money will be spent when the City contracts with a vendor. At that point, if a taxpayer didn't want his tax dollars spent in this way, then it could be handled by a declaratory judgment action. There is some duty on the part of the Commission, before supporting this system, to have some assurance that it is constitutional. The City Attorney has opined that the Ranked Choice Voting system has been addressed and is unconstitutional on the precedent of Brown vs. Smallwood. The Attorney General has issued at least one opinion to the Assistant City Attorney of the city of Duluth. Also, the Chair of the Task Force has written to the State Attorney General asking for another opinion. The Commission should determine if IRV is a flawed system prior to the amendment being put on the ballot to assure the Commission and society that they are not promoting an expenditure of a significant amount of money on a flawed system.

City Attorney Balber stated that part of the role of the Charter Commission is to make sure that the Charter is in harmony with the laws of the State of Minnesota. Bucklin was a different system. IRV has not been tested. There is language in the Brown vs. Smallwood case is problematic because the framers of the constitution iterated that each person gets one vote, and in that court case they questioned why one person should get three votes against one candidate. From a legal standpoint, you have to look at what the court looks at in regard to Bucklin or any preferential voting system. It is problematic; there will be a risk.

Chair Bernstein listed and summarized the following Ranked Ballot Voting Methods identified by political scientists: Borda; Nanson, Baldwin and Rouse; Hare, Carey and Coombs; Bucklin; Black; Copeland; Small; Dodgson; Simpson; Raynaud; Schulze; Tideman; and Smith; Schwartz, and Landau.

Former Commissioner Melendez stated that the methods listed were not forms of IRV. They were Ranked Choice Systems. The Commission seemed to be getting hung up on funding and policy implementation. The amendment that the City Council had sent to the Charter Commission specified Single Transferable Voting. Bucklin was not a form of Single Transferable Voting or IRV. Also, the issue of implementation and costs is not the Charter Commissions' problem. The Elections Department will implement this as quickly and efficiently as can be done. If the Commission feels that this is a good policy goal, the fact that it will take a while to implement should not be a consideration. He urged the Commission to accept the proposal.

Commissioner Ponsford called the question. The motion to call the question was adopted, Yeas, 11; Nays, 2, as follows:

Yeas – Bujold, Connell, Dolan, Klassen, Lichty, Metge, Ponsford, Remme, Rubenstein, Stade, Street.

Nays – Lazarus, Bernstein.

Absent - Clegg, Ferrara.

The motion to postpone discussion of the proposed amendment was on the floor and lost upon a voice vote.

Absent - Clegg, Ferrara.

Commissioner Lichty moved to amend Section 16 of the proposed ordinance as previously recommended by Ms. Reichert by deleting the word "general" and inserting with the word, "special".

Seconded.

Adopted upon a voice vote.

Lazarus recorded as voting no.

Absent - Clegg, Ferrara.

Commissioner Lichty moved to accept the proposed ordinance, as amended. Seconded.

Commissioner Lazarus opposed the motion and disagreed with former Commissioner Melendez's interpretation of the duty of the Charter Commission.

(The record indicates that Commissioner Bujold left at this time.)

Commissioner Stade reiterated the need for time for educational opportunities before this is put on the ballot.

Chair Bernstein spoke in opposition to the motion. The City Council failed to consider what they want to change. The proposed ordinance is not specific enough about the new voting process. It was useless to discuss which counting method would be used in the absence of any software and hardware that can do it.

Commissioner Metge spoke in opposition to the motion. Currently, there is not enough money for public safety or fire protection in the city. She questioned the timing of the decision and did not think it was a good public policy move at this time in the city of Minneapolis.

Commissioner Stade felt that despite budgetary issues, the Commission should not be discussing costs. The issue was expanding democracy. IRV might get more people out to vote in the city. A lot of people don't vote in the primary election now, and IRV would eliminate the primary. He didn't think a price tag should be put on Ranked Choice Voting.

Commissioner Rubenstein stated that in all of the discussions about the costs, no one had factored in the long-term savings from not holding primaries. It was her understanding that in other cities there had been significant savings over the long-term. There are initial costs, but there are also long-term savings. The ordinance is not saying that the money will be spent tomorrow. It says it will be spent when we're ready to spend it.

(The record indicates that Commissioner Clegg arrived at this time.)

Ms. Reichert stated that they have looked at cost projections and did not foresee much, if any, savings down the road because there will be continued public education, judge training, additional costs for warehousing, and ballot printing expenses. There are a number of costs that most people don't understand are factors in an election. In talks with the staff of the city of San Francisco, they were told that Minneapolis would not save much money, if any. The projection is that the costs would probably be close to the same or higher.

Commissioner Klassen asked former Commissioner Melendez if IRV had been challenged in Cambridge or San Francisco.

Former Commissioner Melendez was not aware that it had ever been challenged.

City Attorney Balber stated that no analysis had been done to determine if the constitutions were similar. Those states do not have the Brown vs. Smallwood case hanging over their heads. During discussions with San Francisco, it was said there had been talk of a challenge after the election, but that didn't happen.

Merry Keefe, Minneapolis City Clerk, was present and stated that city staff has met with FairVote Minnesota and has discussed the issues of cost and equipment. The reality is that there is no hard data regarding what will happen in 2009 or 2013, because technology will change and some of the legal issues are unknown at this time. When costs are discussed, they are discussed as they are

known today. That could shift very dramatically depending on technology. They have heard about the savings, and also the expenses. It can't be said categorically what costs will be in 2009. No one has absolute, concrete, verifiable answers.

Commissioner Connell inquired if there were any amendments to the proposed ordinance, as it was written, that would make Chair Bernstein more comfortable with respect to its passage today.

Chair Bernstein stated that his concerns centered on the election of at-large candidates for the Park and Library Boards. He had heard different things from different people at FairVote regarding how IRV would work with Library Board elections. The tallying methods are complex and the algorithms are going to have to be purchased or written. Another concern is if the situation arose where no candidate received 50% of the vote. Some systems consider it a spoiled ballot if voters do not rank all choices. Other systems allow voters to rank 1, 2, 3, or only rank 1, and 2. There are many different systems and he felt that the voters had a right to know exactly how the system would work before they voted on it. All of that is left to the City Council.

Commissioner Ponsford called the question. Seconded.

Adopted upon a voice vote.

Absent - Bujold, Ferrara.

The motion to accept the proposed ordinance (as amended by the Charter Commission) amending Chapter 2 of the Minneapolis City Charter, placing on the 2006 ballot a proposal to eliminate primary elections for City offices, amending filing dates, and allowing for Single Transferable Vote, Ranked Choice Voting or Instant Runoff Voting was rejected, Yeas, 6; Nays, 7, as follows:

Yeas - Klassen, Lichty, Ponsford, Rubenstein, Stade, Street.

Nays - Clegg, Connell, Dolan, Lazarus, Metge, Remme, Bernstein.

Absent - Bujold, Ferrara.

Chair Bernstein inquired if it was his obligation or the City Clerk's obligation to notify the City Council.

City Attorney Balber stated that the statute only stated that the Commission "shall promptly notify the Council of the action taken."

Ms. Keefe stated that it is an action taken by the Charter Commission; however, the notification takes place through the City Clerk's Office.

Commissioner Lazarus moved to adjourn. Seconded.

Adopted upon a voice vote.

Absent - Bujold, Ferrara.

The meeting adjourned at 5:40 p.m.

Peggy Menshek
Charter Commission Coordinator