

Minneapolis Charter Commission Minutes

Regular Meeting

Wednesday, January 4, 2006 - 4:00 p.m.

Room 319 City Hall, Minneapolis, Minnesota

Commissioners Present: Bernstein, Thaden, Lazarus, Bujold, Clegg, Ferrara, Klassen, Lichty, Melendez, Ponsford, Theurer
Commissioners Absent: Collier (excused), Dolan (excused), Dziejczak (excused), Metge (excused)

1. Roll Call

Chair Bernstein called the meeting to order at 4:08 p.m. Roll call was taken.

2. Adopt Agenda

*Commissioner Ponsford moved to adopt the agenda. Seconded.
Adopted upon a voice vote.*

3. Approve Minutes of December 7, 2005

*Commissioner Lichty moved approval of the minutes of the meeting of December 7, 2005.
Seconded.
Adopted upon a voice vote.*

New Business

4. Election of Officers: Approve new officers (Chair, Vice Chair, and Secretary).

*Commissioner Clegg moved that Jim Bernstein be re-elected to the position of Chair. Seconded.
Chair Bernstein accepted the nomination.
Motion adopted upon a voice vote.*

Commissioner Bernstein announced that Commissioner Thaden had declined to be nominated to the position of Vice Chair.

*Commissioner Lichty moved that Barry Lazarus be elected to the position of Vice Chair. Seconded.
Commissioner Lazarus accepted the nomination.
Motion adopted upon a voice vote.*

*Commissioner Bujold moved that Barry Clegg be elected to the position of Secretary. Seconded.
Commissioner Clegg accepted the nomination.
Motion adopted upon a voice vote.*

*Commissioner Thaden moved that the nominations be adopted. Seconded.
Adopted upon a voice vote.*

**5. Charter Commission 2005 Annual Report:
Receive and File 2005 Annual Report of the Minneapolis Charter Commission, and
direct the Commission Coordinator to submit to the Chief Judge of District Court.**

Thaden moved to adopt the 2005 Annual Report. Seconded.

Thaden moved that the report be amended on Page 2, Item Number 7, in the second bullet point, by creating a new bullet point with the last sentence in order to avoid confusion. In addition, to insert the words "non-substantive" between the words, "proposed revisions." Seconded.

Adopted upon a voice vote.

The new (third) bullet point will read as follows: "The 8th draft of the proposed non-substantive revisions was available at the end of 2005."

Thaden also noted that his term on the Commission Roster was incorrect.

Bujold noted that he was appointed by Judge Burke, not Judge Wieland.

Ponsford thought she may have been appointed by Judge Burke, also.

The Clerk will make corrections and check on appointing Judges.

The 2005 Annual Report, as amended, was adopted by a voice vote, with direction to the Clerk to submit the corrected report to the Chief Judge.

Commissioner Theurer stated that a number of Commissioners' terms would be expiring this year and asked that the Chair begin proceedings to find replacements for those not returning.

Bernstein stated that there were eight applications on file with Judge Wieland for the Charter Commission. In addition, the Legislature changed the law so that there is no longer a two-term limit for Charter Commissioners. The open positions will be posted on the City Web site.

Commissioners who wish to reapply do not need to fill out an application again; however, they do need to send a letter to Judge Wieland requesting reappointment.

**6. Instant Run-Off Voting Update:
Action taken at December meeting: Scheduled for discussion at January 4
meeting. Attorney to provide information on voting law in Minnesota.**

Chair Bernstein introduced Tony Solgard, President of FairVote Minnesota, and Jeanne Massey, Better Ballot Campaign, who were present to speak on the issue of Instant Run-Off Voting (IRV).

Tony Solgard stated that the proposed Charter amendment and the proposed language to summarize the amendment had been submitted to the Commission. The request was to gain feedback and approval of the summary language which will accompany the petition for distribution and circulation.

Bujold felt there was a potential roadblock to this process on a constitutional basis. He asked if anyone had addressed the issue arising out of the Brown vs. Smallwood case where a method similar to IRV was found unconstitutional by the Minnesota Supreme Court.

Solgard stated that he had co-authored (with an attorney) an article entitled, "Municipal Voting Systems Reform: Overcoming the Legal Obstacles," which had been published in *Bench and Bar of*

Minnesota in October 2002. He was very familiar with the *Brown vs. Smallwood* decision and found it to be very supportive of the method proposed. *Brown vs. Smallwood* declared unconstitutional a preferential voting system that was used in Duluth. The issues the court had with that system had to do with the fact that some voters had more votes than others did, and that ranking a second or third choice had the effect of hurting your first choice. Those two flaws do not exist with IRV. Every voter has one vote, and the ranking of a second or third choice does not hurt first the choice. Therefore, Instant Run-Off Voting passes constitutional muster, as far as *Brown vs. Smallwood* is concerned.

Bujold asked if the system could be used on a statewide basis.

Solgard stated that it is within a Home Rule city's authority to adopt an alternative voting method in their Charter, and there is nothing that would prohibit the State Legislature from enacting a similar law for State and Federal elections. The State did use IRV for primary elections for a period of time approximately 90 years ago.

Bujold asked if there were efforts afoot in any other municipalities to promote the concept of Instant Run-Off Voting.

Solgard stated that there is currently a proposal before the Hopkins City Council, recommended by the Hopkins Charter Commission, to return to that voting method, which Hopkins had used in the 1950s.

Theurer stated that the Commission is in the middle of proposing non-substantive revisions to the Charter. Although he supports IRV, he felt it wasn't appropriate to insert that change now because the Commission had agreed to consider only non-substantive changes. He asked if FairVote Minnesota would be perusing a petition drive or some other effort to gain approval.

Solgard stated that he was present to request that the Commission approve the summary of the language that will accompany the petition. They will be circulating the summary language and seeking signatures, as required by law. Along with that will be an energetic campaign to educate the public about IRV. They will then bring the proposal to the City Council so the Council can weigh in with their thoughts, as well.

Burt Osborne, City Attorney, stated that, procedurally, the Commission only needed to determine that the summary was in the proper format and approve the summary. He felt the summary was well prepared. It will ultimately be the City Council's role, as in the medicinal marijuana case, to determine whether or not this passes constitutional muster to put it on the ballot.

Solgard stated that State Statute requires that either the full language of the proposed amendment, or the summary, accompany the petition. It would be cumbersome to attach the entire amendment, so they are proposing attaching just the summary.

Bernstein had a question regarding the proposed language in Section 5B that would read, "The elected officers shall be elected by the method of Single Transferable Vote, sometimes known as Instant Runoff Voting. The City Council shall, by ordinance, establish the ballot format and rules for counting the votes." He asked why they were not proposing to have a precise method spelled out in the Charter.

Solgard stated that the approach taken by various model Charters, such as those produced by the National Civic League and the League of Minnesota Cities, was to keep the language general, keep it to principals, and they chose to abide by that standard approach.

Bernstein felt that such a radical change in how voting is conducted in the City should be spelled out so that the people will know exactly what this will entail.

Solgard stated that Single Transferable Vote is a very well documented voting method that has been in use for almost one hundred years in Australia and Ireland. It is quite thoroughly discussed in political science literature. It will not be a problem for someone to find out what it is. Australia and Ireland both have different ways of counting votes. There is a variety and diversity of methods. The system has been refined over the years from when it was initially introduced, and so the City Council may want to consider variations and options.

Theurer had the same concern. While endorsing the philosophy of keeping the Charter to a minimum, this is a radical departure from what people were used to. He didn't think the average person would know what Instant Run-Off or Transferable Voting meant. If people don't know what it is, then they really can't make a decision. He agreed with the Chair that the process should be spelled out so a person who isn't a political scientist could understand it.

Clegg felt that the only thing before the Commission was to determine the adequacy of the form; not to consider whether or not the Commission would support the proposal or whether or not it belongs in the Charter or in an ordinance.

Bernstein stated that the discussion had to do with the proposed amendment. His concern was how the Charter amendment would be worded. The Commission has the authority and the responsibility to determine whether or not the language is proper and should, in fact, go to the City Council.

Osborne stated that procedurally the Charter Commission needs to determine if the substance that is being proposed is it ready to go out for signatures by petition. He felt it was appropriate to have a discussion about how the proposal looks, but it would ultimately be up to the petitioners to look at the petition and sign it or not. The State Statute states that the summary shall first be submitted to the Commission for its approval as to form and substance.

Melendez stated that Single Transferable Voting (STV) and Instant Run-Off Voting (IRV), as far as he understood, were not interchangeable terms. IRV is always STV. STV is not always IRV. He asked how this proposal would work in the case of multi-member boards being elected on a single ballot. How would six members of the Library Board or the three at-large members of the Park Board be elected using IRV which, as he understood it, only related to the election of a single officer at a time.

Solgard stated that the proposal is to adopt Single Transferable Voting, sometimes known as Instant Run-Off Voting, when electing one person. Most of Minneapolis's elections are electing one person. In the case of multi-winner seats, they would use the Single Transferable Vote method.

Ferrara was in support of the concept. The summary meets the requirements, and there is a public information effort underway to inform the public of the specifics. *Ferrara moved approval of the summary language of the proposed Charter amendment. Seconded.*

Thaden stated that Number 2, "adjust the candidate filing dates in relationship to the general election" would be a dramatic change from the way the City currently operates.

Bernstein had questions that Commissioner Dziejcz had phoned in. Would IRV require additional software?

Solgard stated that all voting involves software. With regard to costs and voting equipment requirements, there would be initial costs for the voting equipment. It is estimated that the voting

equipment lasts 10 - 13 years on average. It could be that the turnover would occur at the time of the first election using IRV so there may be no change in cost whatsoever. However, he would expect there may be some initial up-front costs of implementation and training, and it was hoped that the City Council would choose to support an education campaign. Up-front costs would bring long-term savings.

Commissioner Dziejdzic had also asked what would happen if an election included ballot questions? Would two different types of equipment be needed?

Solgard stated that two different types of equipment would not be needed. The City of San Francisco has now conducted two elections using rank ballots for state and federal offices, so it would not appear that there would be a need for two types of voting equipment.

Bernstein did not think the summary was adequate, and it would be a mistake for the Commission to approve it as written. Section 5B does not spell out specifically what the voters are being asked to approve.

Bujold stated that, in general terms, he respected the Chair's concern. However, he had a hard time imagining what else could be done, short of writing a treatise. The risk is being taken by the proponents. He supported the motion and intended to vote in favor of it.

When asked why Hopkins had abandoned rank voting, Solgard replied that in the post-war years, Hopkins was growing, and every year there were a wave of new citizens voting in the city elections. The voter education effort did not keep up with the needs. Many people found that method of voting unusual, since it was something they hadn't encountered before. Also, there were some people who were opponents of it because they were also opponents of other reforms that had occurred at the same time — the City Manager form of government was also in the reform package that was adopted with the original Hopkins City Charter in 1947. Those who were opposed from the beginning persisted and eventually prevailed.

Bernstein stated that reviewing the coverage at the time, the people of Hopkins felt that this form of voting was cumbersome and unfair, and they decided at that point, rightly or wrongly, that it simply wasn't working.

Melendez moved the previous question on Commissioner Ferrara's motion.

Bernstein summarized the motion which was to adopt the summary language and the proposed amendment, allowing the petitioners to begin the petition process.

The motion was adopted - Yeas 7, Nays 4, as follows:

Yeas – Bujold, Clegg, Ferrara, Lichty, Melendez, Ponsford, Thaden.

Nays – Klassen, Lazarus, Theurer, Bernstein.

Absent – Collier, Dolan, Dziejdzic, Metge.

Unfinished Business

7. 8th Draft to City Charter Revisions (submitted Aug 31, 2005):**Consider approval of final revision proposal.*****Action taken at December meeting:* Public Hearings set for January 18 and February 1, 2006 at 7 pm at Martin Luther King Park. Rescheduled February Charter Commission Meeting to February 8, 2006. Accepted 8th draft of City Charter revisions, allowing the Park Board and Business Agents to submit changes in a "redline" format (as already submitted for the Library Board) for review by the reporter and for the Charter Commission to consider at the January 4 meeting.**

Bernstein stated that the postponement of this item from the December meeting was to allow parties the opportunity to present language that they would like included in the 8th draft prior to the public hearings.

Melendez suggested that the public hearings go forward on the 8th draft, as well as on the three sets of comments received, and a decision could be made at the February meeting in light of whatever comments are received at the public hearings. By that time, perhaps he and Commissioner Bujold would have had time to come up with a recommendation. To go through the comments piecemeal at this meeting would be an exercise in futility.

Clegg agreed with the suggestion and stated he would also like to get the reporter's viewpoint with respect to some of those changes.

Melendez stated that it was his preliminary viewpoint that some of the suggestions were excellent and some were not. Many of the suggested changes were worth taking, but not as drafted. The section on the Planning Commission seems to have taken the old language intact and put it back. The idea is fine, but those 500 or 600 words could be reduced to 200. There are also some things that the Commission had previously rejected that are back for another try. He felt that the public hearings should go forward on the draft and the comments, rather than submitting a single document to the public.

Clegg moved Commissioner Melendez's suggestion that the public hearings go forward on the 8th draft, as well as on the comments of the Library Board, the Park Board and the Business Agents; the Commission will act at the February meeting in light of the comments received. Seconded.

Brian Rice, the attorney for the Park Board, was present and stated that he appreciated all the work the Commission and Mr. Melendez had done. It was his view that the Park Board suggestions highly merit serious consideration – all of them. He was frustrated in the sense that he didn't think the Commission had really substantively talked about some, or any, of the Park Board's proposals. He would be available to the entire Commission at any time to go through the changes. As the revision stands now, there are substantive changes. There are omissions. There are judgment calls that are being made that, he believes, lead to substantive changes in the Charter. The Park Board is committed to working with the Charter Commission to come up with a document to present to the Council. The 8th draft needs serious work. He felt that sending an imperfect document out for public comment was going to make it a more difficult public hearing process.

Thaden thanked Mr. Rice for putting all of the Park Board's desired changes into one document. However, he felt that there were a number of things that were repetitive and phrases that weren't needed. He was also disappointed that the Commission wasn't going to go over it paragraph by paragraph.

Ferrara stated that he did agree with Mr. Rice in principle, and had for many months. He felt that many of the Park Board's proposed changes were just overkill. He did feel that the Park Board should remain an autonomous organization, as it has been. Nevertheless, some of the issues are not worth arguing over. We need to get a better, simpler, straighter-forward Charter so the Commission can get to the substantive changes that are really needed. If some of these changes are going to be interpreted as substantive, that is not the Commission's intention. The intention is to make them as non-substantive as possible.

Lichty inquired if the section under Article 2.3, the Standards Section, was a new change.

Rice stated that he had raised that issue in a letter to Mr. Melendez on February 19 and again on June 25. The language is new to the Charter itself, but it's not a new law. The standards were taken from a 1992 law.

Lichty asked if the language with respect to Violations of Park Ordinances, Section 8.2 subsection (j) was new language as well.

Rice stated that subsection (j) was in the existing Charter language (Chapter 16, Section 14).

Lichty stated that he felt the Commission owed the various Boards a thorough analysis of the documents, and he felt it could probably be done in relatively short order. However, there were a couple of new changes in the latest version, and he was a little frustrated with that only because the rest of it had already been submitted. He agreed with Commissioner Thaden that the Commission ought to go through the changes, and he was willing to do that.

James Michels, the attorney representing the Minneapolis Board of Business Agents (MBBA), was present and stated that he would like to be able to tell his clients how the Commission felt about the MBBA's suggestions. It would determine whether they felt it necessary to attend the public hearings to explain why these things were important to them. He appreciated the fact that the Commission didn't feel comfortable voting on something they hadn't had time to digest, and he would make himself available to the Commission for questions before, during, or after the public hearings.

Thaden felt that most of the MBBA's proposals should be in an ordinance.

Michels stated that he felt it was a significant substantive change to delete the language from the Charter which states that appointments in the Fire Department be made from within the Department, other than the Fire Chief.

Thaden stated if the MBBA wanted to preserve that language, it should be in ordinance.

Michels stated that his concern was that there are dozens of special laws that haven't been analyzed to determine if they're still valid. Right now, research must be done to determine when a special law was enacted to see if it's still enforceable with regard to the Charter.

Deb Banish, representative for the Library Board, was present and thanked Commissioner Thaden for summarizing the comments submitted by the Library Board. The Library Board understands that this will probably not be the final language. She will be attending the public hearings and reporting back to the Board. They will be withholding further comment until they see another document. Cheryl Luger, 4936 37th Av S, was present and stated that she thought the Commission would be discussing and voting on the Library Board recommendations at this meeting. Also, many people will have trouble getting to the public hearings.

Bernstein stated that a decision would be made very shortly. The motion before the Commission is to delay any further discussion, recommend the current 8th draft, include as part of the draft the proposed changes by the Library Board, the Business Agents, and Park and Recreation Board, go to public hearing, then at the February meeting, the Commission will vote on the changes and the 8th draft.

Clegg wanted to make it clear that the proposed changes would be considered on equal terms with the draft. He also wished to get the views of the reporter with respect to the proposed changes.

Melendez stated that previously he had relatively unlimited time to review submitted changes. That is not the case anymore. There is no way he will be able to go to a lot of individual meetings. The Commission will have to let him know what role they want him to play. He had thought this process would be completed a year ago and has taken on other commitments. He now has other responsibilities that will affect his turn-around time.

Clegg stated that he did not mean to suggest that Commissioner Melendez take on any new tasks, but since he's already considered many of the proposed changes which are before the Commission for the second or third time, he wanted the benefit of his opinion.

Lichty reiterated that the Commission ought to take the time to go through the proposed changes. He felt it was time for the rest the Commission to start carrying their own weight. He stated that he would be voting against the motion.

Clegg stated that the Commission had been talking about this now for an hour, and had only discussed three or four sections. He felt to go through everything would require a 24-hour meeting.

Bernstein asked for a roll call vote on the motion.

The motion was adopted - Yeas 7, Nays 3, as follows:

Yeas – Bujold, Clegg, Ferrara, Klassen, Lazarus, Ponsford, Bernstein.

Nays – Lichty, Thaden, Theurer.

Declining to vote – Melendez.

Absent – Collier, Dolan, Dziedzic, Metge.

The meeting adjourned at 6:10 p.m.

Peggy Menshek
Charter Commission Coordinator