

Minneapolis Charter Commission Minutes

Regular Meeting

Wednesday, May 2, 2007 - 4:00 p.m.

Room 319 City Hall, Minneapolis, Minnesota

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

Excused: Commissioners Bujold, Klassen, Lichty, Remme

Also Present: Lisa Needham, Assistant City Attorney

1. Roll Call

Chair Bernstein called the meeting to order at 4:15 p.m., a quorum being present. Roll call was taken.

2. Adopt Agenda

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

3. Approve Minutes of April 4, 2007

Commissioner Lazarus moved approval of the minutes of April 4, 2007. Seconded. Adopted upon a voice vote.

Introduction of New Charter Commissioner

Thomas Jancik

Chair Bernstein welcomed Commissioner Jancik to the Charter Commission and thanked him for his willingness to serve. Commissioner Jancik briefly introduced himself.

Unfinished Business

4. Report by Former Commissioner Melendez.

Former Commissioner Brian Melendez stated that he had met with a delegation of Charter Commissioners who had asked him to give a brief history of the current Charter revision for the benefit of the newer Commissioners. Article 12 of the Minnesota Constitution authorizes the creation of Home Rule cities that basically control their own affairs, even to the exclusion of rules passed by the legislature in some instances. The City government in Minneapolis up to that point was controlled by Statute. The first City Charter was adopted in 1920 and was a compilation of every Statute that related specifically to Minneapolis. Since that time, the Charter has undergone approximately 100 amendments. It is very confusingly organized. There is no table of contents or index. It is full of redundant and conflicting provisions and provisions that have long since been overwritten by Statute. It is written in a legalistic style that is more than a century out of date.

The revision project began in September of 2002 with a predicted completion date of the summer of 2004. The purpose of the revision was not to restructure the city government or otherwise affect any substantive change. The purpose of the revision project was to modernize, simplify, unclutter, and redraft the Charter for clarity, brevity, and consistency. In 2004, some City Council members made the argument that while they understood the Commission was not trying to make any substantive changes, they felt if something was taken out of the Charter and put into ordinance, it would inherently be a substantive change because it could then be amended more easily than something that is protected in the Charter. After the Commission understood that argument, they no longer stated that they were not making any substantive changes. However, the revision is not restructuring the city government nor making any change that will result in the city functioning differently the day after the revision is adopted than the day before it is adopted. However, some provisions will be moved to ordinance and will now be amendable by the City Council rather than requiring a Charter amendment. The reason the revision was not completed by 2004 as planned is because two years were spent negotiating with the Park Board, Library Board, Civil Rights Commission, Board of Business Agents, Board of Estimate and Taxation, and other interested parties. Every time someone told the Commission they felt something was important enough to stay in the Charter, it was left in the Charter. As far as he was aware, the independent boards were all comfortable with the 9th draft.

The revision will add two features that the current document lacks: a table of contents and an index. More importantly, it is written in plain English, in a style of drafting called "Plain English Drafting" which makes a document easier to read and also allows a consistent style.

The City Attorney's Office reviewed the 6th draft, and many of those comments were incorporated into the 7th, 8th, and 9th drafts. The City Attorney hired Barret Lane as outside counsel to review the 9th draft. In the review, Mr. Lane did have a few good points. The 10th draft, which Mr. Melendez will bring to the June Charter Commission meeting, will have some changes based on Mr. Lane's review and will also include the Instant Run-Off Voting (IRV) amendment language.

Commissioner Ferrara stated that the Charter Commission did, at times, vote contrary to some of the things requested by the independent boards. Mr. Melendez stated that there were times compromises were made regarding things that the independent boards had requested. They were arguing more about the shape of the document rather than the content.

Commissioner Connell inquired if the 10th draft would include a side-by-side. Mr. Melendez stated that he would not be able to have both the 10th draft and a side-by-side ready in 30 days. The only changes he is contemplating are changes as a result of the IRV amendment and changes where he felt Mr. Lane had a point.

Chair Bernstein thanked Mr. Melendez for his presentation, and also thanked Faegre and Benson for the many hours Mr. Melendez was able to devote to this project. Mr. Melendez will appear at the June 6 meeting to present the Commission with Draft 10 of the Charter revision and a response to the City Attorney's analysis of Draft 9.

Commissioner Lazarus stated that the Charter Commission and the City owed Mr. Melendez a tremendous vote of thanks.

5. Library Board Update.

Chair Bernstein stated that regarding the proposed merger of the Minneapolis and Hennepin County library systems, negotiations are underway regarding the wage situation. The bill will not go anywhere until that issue is resolved.

Commissioner Stade stated that the bill is stuck in the Taxes Committee right now. AFSCME and the library administration began impact bargaining today. If they can get through that impasse, then they can get the bill through the Taxes Committee.

Chair Bernstein stated that if the merger does take place, the 10th draft of the revision will have to be revised to take into account the fact that the Library Board will no longer exist.

6. Set Public Hearing Dates on the future of the Board of Estimate and Taxation.

Chair Bernstein stated that there would not be any legislative action in 2007 on the bill that would eliminate the Board of Estimate and Taxation.

Commissioner Ferrara stated that he and Commissioners Dolan and Connell had tentatively scheduled two public hearings. He reported that he had attended the last meeting of the Board of Estimate and Taxation and spoke with Board member Carol Becker. He also spoke with Patrick Born, Chief Finance Officer, and invited him to attend the public hearings to explain the audit function of the Board of Estimate and Taxation.

Commissioner Clegg inquired if the bill had been withdrawn because it was felt the timing was inappropriate and would be back before the legislature next year, or if it had been withdrawn because of reaction and was now off the table.

Chair Bernstein stated that it was withdrawn because if the Library Board no longer existed, there would be a vacant seat on the Board of Estimate and Taxation. The Park Board would like to have a second member appointed to that vacant seat. The Park Board is also concerned that the elimination of the Board of Estimate and Taxation would decrease their ability to raise funds.

Mr. Wagenius stated that the bill had not been permanently withdrawn. The door was open to revisit it in 2008. He also disagreed with the assumption that the Park Board would be out of money if the Board of Estimate and Taxation were eliminated.

Commissioner Connell felt that the driving force behind the public hearings had been to stay ahead of the curve and offer the public the opportunity to discuss these issues, and by the fact that the merger would create a vacant seat on the Board of Estimate and Taxation, prompting discussion of the elimination of the Board of Estimate and Taxation. After today's discussion, he questioned whether there was actually a need for a public hearing on the issue at this time.

Commissioner Stade felt a public hearing should be held before the bill was put through. However, if the bill is put through in 2008, would the Charter Commission be informed of that fact?

Commissioner Rubenstein stated that the Charter Commission could also act, as part of the Charter revision, to eliminate the Board of Estimate and Taxation, so it wouldn't depend on what the legislature does. In that case, it would be wise to hold public hearings.

Mr. Wagenius stated that he could see a scenario where the legislature passed the bill, and sometime shortly thereafter the City Council requested that the Charter Commission amend the Charter to eliminate the Board of Estimate and Taxation in order to resolve the question prior to reaching the point of having a 6 member board. If the Library merger passes, the Board of Estimate and Taxation will become a 6 member board.

Commissioner Metge understood that the City Council had already voted to eliminate the Board of Estimate and Taxation, which was why the Commission chose to hold the public hearings in the first place.

Mr. Wagenius stated that there are three ways to change the Charter: (1) State law change; (2) A 13-0 vote of the City Council; and (3) A vote of the people. It would be disingenuous for the Council to enter the conversation as if it didn't have an opinion. It has an opinion. It comes to the conversation with the presumption that Minneapolis should be like any other City.

Commissioner Clegg suggested that if the public hearings are held, that they not be held until the legislative session is complete. He would prefer the Commission have a chance to learn and discuss what the state legislature does before inviting the public to join the discussion.

Commissioner Connell stated that at the last meeting, he had moved to hold the public hearings with the idea that there was momentum that demanded the Commission's attention to the issue. He was now sensing that the momentum had waned somewhat because of the situation at the legislature. At this point, he would be in favor of reconsidering the idea of the public hearings because everyone may be better served if the public hearings were held when the momentum was a little higher. He also felt that the vacant seat issue was not what had driven the decision to hold public hearings. It was the elimination of the Board of Estimate and Taxation.

Commissioner Lazarus moved to reconsider whether or not to hold the public hearings regarding the future of the Board of Estimate and Taxation. Seconded.

Commissioner Street agreed that the currently scheduled hearings should be withdrawn because they would occur after the legislature meets but before the Commission knew the outcome. It should be discussed again at the Commission's June meeting, and if a hearing would then be appropriate, the Commission could vote to hold the public hearings at the end of June or the beginning of July.

Commissioner Rubenstein questioned whether the motion was to reconsider the idea of the hearings, the timing, or both.

Commissioner Lazarus stated that, in his mind, it was the idea of the hearings.

Commissioner Metge felt the Commission should reconsider the timing of the public hearings, but should still hold the hearings at a later date. By first finding out what the legislature does, the Commission could better advertise and get a better turnout.

Chair Bernstein inquired if the motion could be clarified to state that the Commission would delay consideration of the public hearings until the June meeting, and then make a decision whether to proceed with them or not, based upon the outcome of the library merger in the legislature.

Commissioner Lazarus accepted that as a friendly amendment. Without getting a resolution on whether or not the elimination of the Board of Estimate and Taxation would in fact inhibit the ability of the Park Board to raise funds, the Commission will get nowhere. Therefore, he felt a public hearing would be folly in the present circumstances.

Commissioner Metge stated that she would like to hear from individuals interested in keeping the Board of Estimate and Taxation alive, and why; and from the Board members themselves, as driven by the mission of the Charter Commission.

Chair Bernstein called for a vote on the motion to delay the public hearings and reconsider their need at the June meeting of the Charter Commission, pending the outcome of any legislative action. Adopted upon a voice vote.

New Business

7. Juris Curiskis Correspondence

Chair Bernstein stated that Mr. Curiskis had appeared before the Charter Commission approximately two years ago because he felt that the procedure the City used to calculate special assessments was unfair.

Lisa Needham, Assistant City Attorney, summarized the court opinion. Mr. Curiskis had filed an appeal posing objections to a special assessment. The City declared that under the timeline structure that was in place, Mr. Curiskis had not interposed his objections in a timely fashion, nor did he file his court case in a timely fashion. The City is allowed to use either statutory or Charter provisions for the appeal process. The City clearly stated that it used Charter language. The appellate court found that, given that the Charter rules were followed in this instance, Mr. Curiskis had 40 days, rather than 30, to file his appeal and therefore it was timely. The ultimate question for the Charter Commission is, does this decision signal that the court is suggesting that the Charter be amended or is in any way unclear? The City Attorney's opinion is that the appellate court is not demanding that the Charter be amended. That being said, if the Charter Commission, from a policy standpoint, would like to amend the Charter to conform more clearly to the Statute and clear up any ambiguity, the City Attorney's Office would provide drafting assistance.

Commissioner Rubenstein stated that she had found two provisions in the Charter regarding assessments which were inconsistent. She felt this ought to be addressed in the Charter revision. However, the 9th draft didn't seem to address it at all, other than saying that the City Council is authorized to establish assessment procedures.

Commissioner Clegg stated that it was his view that the Court of Appeals was not signaling anything. They were just interpreting the Charter as currently drafted. He did not feel it required, or even suggested, a Charter change.

Ms. Needham stated that the City could use the statutory procedure rather than the Charter procedure. They are not tied to a Charter procedure that is ambiguous or troubling to the court. Mr. Curiskis was arguing the timing issue — that he should have had the right to argue his issues regarding the assessment. The City argued that he did not timely file. What he had won was the right to argue.

Commissioner Rubenstein was concerned about the fact that Mr. Curiskis had previously received no response from the Charter Commission. Chair Bernstein stated that Mr. Curiskis appeared before the Commission twice, and the Commission had declined to initiate a Charter change. Mr. Curiskis was explicitly informed of this. However, he and Commissioner Lazarus would draft a response to Mr. Curiskis.

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

The meeting adjourned at 5:35 p.m.

Peggy Menshek
Charter Commission Coordinator