



## CHARTER COMMISSION

Public Safety Building—Training Room, 825 41st Ave NE

Thursday, July 15, 2021

7:00 PM

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## AGENDA

### ***ATTENDANCE INFORMATION FOR THE PUBLIC***

*Members of the public who wish to attend may do so in-person, by calling 1-312-626-6799 and entering meeting ID meeting ID 898 9268 1338, or by Zoom at <https://us02web.zoom.us/j/89892681338>. For questions please call the Administration Department at 763-706-3610.*

### **CALL TO ORDER**

### **ROLL CALL/STATUS OF MEMBERSHIP**

### **APPROVAL OF AGENDA**

### **APPROVAL OF MINUTES**

- 1. April 15, 2021 Meeting Minutes**

### **CORRESPONDENCE**

### **OLD BUSINESS**

- 2. City Council Vacancies (Chapter 2 Section 9)**

### **NEW BUSINESS**

### **ADJOURNMENT**

*Auxiliary aids or other accommodations for individuals with disabilities are available upon request when the request is made at least 72 hours in advance. Please contact Administration at 763-706-3610 to make arrangements.*



## CHARTER COMMISSION

Virtual via Zoom

Thursday, April 15, 2021

7:00 PM

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## MINUTES

Due to the COVID-19 pandemic, this meeting was held virtually.

### CALL TO ORDER

President Smith called the meeting to order at 7:00 pm.

### ROLL CALL/STATUS OF MEMBERSHIP

Members present: Steve Smith, Matt Abel, Kathy Ahlers, Ramona Anderson, Tyler Eubank, Ben Harris Bill Hugo, Cliff Johnson, Tom Kaiser, Carolyn Laine, Frost Simula, Gregory K. Sloat, Susan Wiseman, Nick Zeimet

Members absent: Joe Schluender

Also in attendance: City Attorney Jim Hoeft, Council Liaison Kt Jacobs, and City Clerk/Recording Secretary Nicole Tingley

City Clerk/Recording Secretary Tingley stated that Commissioners Harris and Johnson were recently appointed. She also noted this is the first meeting for Commissioner Zeimet as he was appointed last May. Commissioners Harris, Johnson, and Zeimet introduced themselves.

### APPROVAL OF AGENDA

Commissioner Laine requested to add item 8 to provide an overview of recent Charter Commission legislation passed.

*Motion by Commissioner Abel, seconded by Commissioner Laine, to approve the agenda as amended. Motion passed unanimously.*

### ELECTION OF OFFICERS

**1. President**

*Motion by Commissioner Kaiser, seconded by Commissioner Abel, to nominate Smith for President. Motion passed unanimously.*

**2. Vice President**

Kaiser nominated Abel. Ahlers nominated Wiseman. Wiseman stated that she would not be interested in serving as Vice President.

*Motion by Commissioner Kaiser to nominate Abel for Vice President. Motion passed unanimously.*

**3. Secretary**

Motion by Commissioner Laine to nominate Hugo for Secretary. *Motion passed unanimously.*

**APPROVAL OF MINUTES**

**4. January 16, 2020 Meeting Minutes**

*Motion by Commissioner Abel, seconded by Commissioner Eubank, to approve the January 16, 2020 meeting minutes. Motion passed unanimously.*

**CORRESPONDENCE**

City Clerk/Recording Secretary Tingley shared that Rob Fiorendino decided not to re-seek reappointment. Furthermore, Kt Jacobs resigned when she was elected to the City Council and is now serving as the Council Liaison.

**OLD BUSINESS**

**5. City Council Vacancies (Chapter 2 Section 9)**

Commissioner Simula provided an overview of his proposal that provided two options for changes to Chapter 2 Section 9 of the City Charter in regards to the process for filling City Council vacancies.

Option one was to continue with an appointment process to fill City Council vacancies. This proposal moved up the process timeline by declaring a vacancy, posting and publishing a vacancy notice, and accepting applications before the new City Council starts. Interviews would continue to be after the new City Council term. Furthermore, appointments would be determined by a rank choice. Rank choice was proposed to eliminate the issue of a tie.

The second option is to fill City Council vacancies by special election. Simula drafted the language based on the City of Minnetonka's City Charter.

Commissioner Laine thanked Simula for putting together the proposals. She liked that in option one that the process was sped up and rank choice voting included, but ultimately appointment is a political choice made by three people. She is in favor of the special election option.

Commissioner Ahlers asked in regards the second proposal if 67 days was enough time for an appointment to be made or an election scheduled or if that time could be shortened. She commented that she liked that subdivision 1b that stated that if a special election is in the same year as a regular municipal election than in can be held in conjunction with the regular municipal election instead of the earliest date. Laine commented that subdivision 1b would apply to if someone resigned, moved, died, and that a special election would be needed before the next regular municipal election if a current member of the City Council became Mayor creating the vacancy.

Smith commented that it seems to him that the Charter Commission has focused on the maximum number of days for each step in the process and that the process does not have to take up the maximum number of days.

Simula commented that while the second option changes the City Charter more substantially, it is democratic.

Smith stated that Minnesota State Statute already includes that a special election must be conducted if more than two years remain in the unexpired term. In regards to the proposals, Smith stated that he does not intend for there to be any action moving one forward this evening as it is the first hearing of them. He asked the Charter Commission how they would proceed.

The Charter Commission discussed what would prompt a special election in the second proposal. Simula explained issues from the last time the appointment process was used in 2017 and stated that in his opinion a special election made more sense.

Commissioner Harris asked how often a current councilmember is elected to Mayor in Columbia Heights. Ahlers stated that in the 30 years she has lived in Columbia Heights it has happened multiple times. Johnson stated that it has the potential to happen often with the Mayor's term only being two years.

Harris also asked in regards to the first proposal how does compressing the timeline for the process affect equitability and opportunity. He added that there needs to be consideration on what is making the process prolonged if it is because of tied votes, than a solution for that is what needs to be addressed. Simula stated that it is important to have someone appointed as soon as possible because it may delay city business.

Commissioner Anderson stated that she does not like rank voting. Laine explained how rank voting would eliminate the issue of tied votes.

Commissioner Kaiser stated that the second option makes the most sense because it does not politicize the process and eliminates the issues with the current process.

Ahlers inquired about offering the vacancy to the person with the next highest vote totals from the last general election. Commissioners commented that from the last vacancy the individual that was appointed was the individual with the next highest vote totals from the last general election.

Ahlers suggested considering no longer having "conviction of a felony of any such person whether before or after qualification" be a reason for removal from office. Laine stated it could be changed to "conviction of a felony of any such person after qualification."

*Motion by Commissioner Laine, seconded by Commissioner Kaiser, to continue to discussing option 2 at the next meeting. Motion passed 10-2-2. Ayes: Abel, Ahlers, Eubank, Hugo,*

*Kaiser, Laine, Smith, Simula, Wiseman, Zeimet. Nays: Anderson, Sloat. Abstain: Harris, Johnson.*

## NEW BUSINESS

### 6. **Approve the 2020 Charter Commission Annual Report**

*Motion by Commissioner Laine, seconded by Commissioner Ahlers, to approve the 2020 Charter Commission Annual Report. Motion passed unanimously.*

### 7. **Mayor's Term Length (Chapter 2 Section 7)**

Commissioner Simula presented changing the Mayor's term length from 2 years to 4 years. He stated that in 2018, the Charter Commission supported it, it was not approved by the City Council, and ultimately sent to referendum where it did not pass, but there is a new City Council. He asked if there would be interest in resubmitting it to the new City Council.

It was noted that the 2018 referendum regarding the Mayor's term did not pass by 14%. Furthermore, multiple commissioners stated that there has not been a significant change in the City Council. Commissioner Laine commented that she thought it should be continued to be considered, but not acted on at this time.

The Charter Commission decided to not move forward with this proposal at this time.

### 8. **Recent Charter Commission Legislation**

Commissioner Laine stated that during the 2020 session there were changes made to Minnesota State Statute regarding Charter Cities. These include clarification that the Chief Judge can reappoint Charter Commission members, changing the time frame for making an appointment or reappointment to 60 days, and changing the amount of money a Charter Commission is authorized to in order to educate on a charter amendment to 0.07% of the property tax levy. She estimated this would be approximately \$8,000 using a Columbia Heights property tax levy in the amount of \$11.63 million.

## ADJOURNMENT

*Motion by Commissioner Eubank, seconded by Commissioner Anderson, to adjourn the meeting. Motion passed unanimously.*

Meeting adjourned at 7:54 pm.

Respectfully Submitted,

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Nicole Tingley, City Clerk/Recording Secretary



**CHARTER COMMISSION**

Item 2.

<b>AGENDA SECTION</b>	<b>OLD BUSINESS</b>
<b>MEETING DATE</b>	<b>JULY 15, 2021</b>

<b>ITEM:</b>	<b>City Council Vacancies (Chapter 2 Section 9)</b>
<b>DEPARTMENT:</b> Administration	<b>BY/DATE:</b> Nicole Tingley, 7/8/2021

**BACKGROUND:**

At the last Charter Commission meeting in April, the Charter Commission discussed the Appointment Process for Vacancies on the City Council as outlined in Chapter 2 Section 9 of the City Charter. The discussion centered on a proposal by Commissioner Frost Simula with two options. At this meeting, the Charter Commission decided to move forward with only discussing/further refining option 2. This option calls for a special election to fill City Council vacancies.

One question that came up during the discussion was how often vacancies/appointments have occurred on the Columbia Heights City Council. Historically, we can look back, but unfortunately this does not reliably predict future occurrences as it is all dependent on who is running. To try and gain a better picture, I looked at both the times appointments did occur and the times that appointments were possible in the case that a current councilmember not up for reelection ran for Mayor. For simplicity, I did not consider if a current councilmember ran for mayor, but lost in the primary election. I went back to the 2000 election.

- 2000: No appointment possible
- 2002: No appointment possible
- 2004: No appointment possible
- 2006: No appointment possible
- 2008: No appointment possible
- 2010: No appointment possible
- 2012: No appointment possible
- 2014: No appointment possible
- 2016: Appointment (current councilmember not up for reelection ran for Mayor and won)
- 2018: Appointment Possible (current councilmember not up for reelection ran for Mayor and did not win)
- 2020: Appointment Possible (current councilmember not up for reelection ran for Mayor and did not win)

For reference, I have included both proposals from Commissioner Simula from the last meeting and other background information. The section of the City Charter as it currently reads is on the next page.

**ATTACHMENT(S):**

- April 15, 2021 Proposal from Commissioner Frost Simula with two options
- Schedule of 2017 City Council Vacancy Schedule
- Current City Council Vacancy Appointment Process by Day

#### Chapter 2 Section 9. VACANCIES IN THE COUNCIL.

A vacancy in the council shall be deemed to exist in case of the failure of any person elected thereto to qualify on or before the date of the second regular meeting of the new council, or by reason of the death, resignation, removal from office, cessation as a resident of the city, continuous absence from the city for more than three months, conviction of a felony of any such person whether before or after qualification, the failure of any council member without good cause to perform any of the duties of membership in the council for a period of three months or for any other cause as may be provided for in Minnesota Statutes, as amended. In each such case, at the next regular meeting following receipt of notice by the council of one of the foregoing conditions, the council shall by resolution declare such vacancy to exist unless further investigation is required. Notice of said vacancy shall be posted at city hall for a period of two (2) weeks from the date of the adoption of the resolution declaring said vacancy. Notice shall also be published in a designated city newspaper for a period of two (2) weeks as soon as possible after the date of the adoption of said resolution, with the publication being completed no later than thirty (30) days from said date.

Applications shall be sought and accepted from individuals interested in filling the vacancy, which applications shall be submitted to city hall, to the attention of the City Clerk, within 45 days from the date of said resolution. The council shall interview each of the applicants within 30 days from the close of the application period, and shall conduct said interviews in an agreed upon uniform manner as a council. After said 30 day period, the council shall make its appointment from the pool of applicants within 15 days, whether done so at a regular council meeting or a special meeting. The individuals so appointed shall fill said vacancy until the next regular municipal election, when the office shall be filled for the unexpired term by an eligible person elected at large in the manner hereinafter set forth; provided, however, that if a vacancy is declared by resolution after March 31st in the year of a regular municipal election, then the appointment process as set forth herein shall not take effect and any such vacancy shall continue to exist until said election, at which time the vacancy shall be filled for the unexpired term by an eligible person elected at large in the manner hereinafter provided. Notwithstanding anything to the contrary herein, any vacancy resulting from a recall election or from a resignation following the filing of a recall petition shall be filled in the manner provided in such case. (Ordinance No. 1331, passed September 23, 1996)  
(Ordinance No. 1086, passed June 11, 1984)

## Brief

- The existing appointment process for filling vacancies in the council is excessively and unnecessarily long.
- Some city business is delayed for over 3 months while the council seat remains unfilled.
- The existing charter does not specify how a deadlocked Council should break a tie.

## Record

- Following the 2016 election, a vacancy resulted in a deadlocked Council, drawing out the process even longer than expected.
- Columbia Heights received negative attention thanks to heated deliberation, and a verbal assault from one of the applicants.
- Under pressure, the Mayor reluctantly changed their vote to appoint the threatening applicant.
- The lengthy appointment process was originally discussed at a Charter Commission meeting on January 19, 2017. Both President Smith and City Attorney Hoeft noted that the process is prolonged.
- The lengthy appointment process was discussed again at a Charter Commission meeting on April 20, 2017. Councilmember Buesgens and Commissioner Laine suggested shortening the process to make an appointment by the end of February. Commissioner Penniston drew attention to the lack of direction in the Charter addressing consistent tie votes in the appointment process. Commissioner Anderson suggested that the Mayor has the power to break a tie. Commissioner Laine asked the commission to consider ranked choice voting as well. President Smith directed commissioners to submit amendment proposals to the city clerk prior to the next meeting for review.
- An amendment was originally proposed at a Charter Commission meeting in July 2017. President Smith suggested that the issue be tabled and postponed until the October 2017 Charter Commission meeting.
- At a Charter Commission meeting on October 26, 2017, this issue was postponed again until the January 2018 Charter Commission meeting.
- At a Charter Commission meeting on January 19, 2018, this issue was postponed again until the April 2018 Charter Commission meeting.
- At a Charter Commission meeting on April 19, 2018, this issue did not appear on the agenda. Commissioner Simula asked that it be added to the July 2018 agenda.
- At a Charter Commission meeting on July 19, 2018, Commissioner Laine noted that the city of Richfield holds special elections to fill vacancies. Councilmember Buesgens reiterated that the process following the 2016 election was drawn out. President Smith suggested a study of how the special election operates in the city of Richfield, how it has been utilized in the past, and what sections of our Charter would be affected by a similar change. President Smith suggested that commissioners prepare these facts for a discussion at the October 2018 meeting.
  - Cities of Richfield and Bloomington are considering amendments modeled after [City of Minnetonka Home Rule Charter Section 2.06 - Vacancies in the Council](#)
- At a Charter Commission meeting on October 18, 2018, President Smith tabled this issue indefinitely.

# Proposal (Option 1 - Appointment)

(underlined)

## CHAPTER 2

### FORM OF GOVERNMENT

#### Section 9, VACANCIES IN THE COUNCIL

A vacancy in the council shall be deemed to exist in case of the failure of any person elected thereto to qualify for the new council term on or before the date of the first regular meeting of the unexpired council following the election, or by reason of the death, resignation, removal from office, cessation as a resident of the city, continuous absence from the city for more than three months, conviction of a felony of any such person whether before or after qualification, the failure of any council member without good cause to perform any of the duties of membership in the council for a period of three months or for any other cause as may be provided for in Minnesota Statutes, as amended. In each such case, at the next regular meeting following receipt of notice by the council of one of the foregoing conditions, the council shall by resolution declare such vacancy to exist unless further investigation is required. Notice of said vacancy shall be posted at city hall for a period of two (2) weeks from the date of the adoption of the resolution declaring said vacancy. Notice shall also be published in a designated city publication for a period of two (2) weeks as soon as possible after the date of the adoption of said resolution, with the publication being completed no later than thirty (30) days from said date. Applications shall be sought and accepted from individuals interested in filling the vacancy, which applications shall be submitted to city hall, to the attention of the City Clerk, within six (6) weeks from the date of said resolution. The new council shall interview each of the applicants within three (3) weeks from the close of the application period, and shall conduct said interviews in an agreed upon uniform manner as a council. After said three (3) weeks day period, the council shall make its appointment from the pool of applicants within two (2) weeks, whether done so at a regular council meeting or a special meeting. Such appointment shall be determined by ranked vote, with each seated council member casting no more than 3 votes each. Should the ranked vote result in a tie, the mayor shall make an appointment from the final two applicants. The individuals so appointed shall fill said vacancy until the next regular municipal election...

#### Schedule for filling City Council vacancies

	<b>Current</b>	<b>Proposed</b>
Council resolution read, city hall & newspaper postings begin	January 9, 2017	November 28, 2016
City hall posting ends	January 23, 2017	December 12, 2016
Newspaper posting ends (latest possible date)	February 8, 2017	December 28, 2016
Last application received, interviews begin	February 23, 2017	January 9, 2017
Interview period ends, council deliberations begin	March 25, 2017	January 30, 2017
Final appointment	April 9, 2017	February 13, 2017

# Proposal (Option 2 - Special Election)

(underlined, modeled after [City of Minnetonka Home Rule Charter Section 2.06 - Vacancies in the Council](#))

## CHAPTER 2

### FORM OF GOVERNMENT

#### Section 9, VACANCIES IN THE COUNCIL

A vacancy in the council shall be deemed to exist in case of the failure of any person elected thereto to qualify on or before the date of the second regular meeting of the new council, or by reason of the death, resignation, removal from office, cessation as a resident of the city, continuous absence from the city for more than three months, conviction of a felony of any such person whether before or after qualification, the failure of any council member without good cause to perform any of the duties of membership in the council for a period of three months or for any other cause as may be provided for in Minnesota Statutes, as amended. In each such case, at the next regular meeting following receipt of notice by the council of one of the foregoing conditions, the council shall by resolution declare such vacancy to exist unless further investigation is required.

A special election is required to fill a vacancy when:

- (a) The vacancy has been declared, or has automatically occurred, before the first day to file affidavits of candidacy for the next regular municipal election; and
- (b) more than two years remain in the unexpired term.

When (a) applies, the city council must adopt a resolution to set the date for the special election at the first regular or special meeting of the city council occurring after the vacancy automatically occurs or at the same meeting at which the vacancy is declared. The special election must be held in accordance with subdivision 1 of section. The person elected will serve the unexpired term for that office. The city council, at its option and at the same or a subsequent meeting, may make an interim appointment of a person to fill the vacancy until a successor is elected at the special election and qualifies for the office.

If a special election is not required (b), the council may either appoint an eligible person to serve until expiration of the position's term or fill the vacancy by special election. Upon notice of an impending resignation, the council may begin the process of determining how to fill the vacancy. No later than 60 days after a vacancy automatically occurs or is declared to exist, the council must appoint an eligible person to fill the vacancy or schedule a special election to be held in accordance with subdivision 1 of this section.

If the council does neither, the mayor, or acting mayor if the vacancy is in the mayor's position, has seven days to appoint an eligible person to fill the vacancy.

If after 67 days no appointment is made nor an election scheduled, the clerk must schedule a special election to be held in accordance with subdivision 5 of this section.

#### Subdivision 1. Special Election Requirements

- (a) Except as provided in subdivision 1.b. below, special elections must be held at the earliest date possible under state law. Candidates must file for office no later than four weeks before the election.

(b) If a special election occurs in the same year as a regular municipal election, the council may at its option schedule the special election to occur in conjunction with the regular municipal election rather than at the earliest possible date under state law.

Item 2.

The term of a council member elected at a special election begins as soon as the person has qualified for office and the city clerk has issued a certificate of election to the successful candidate in accordance with state law. The council member serves until the expiration of the position's term.

## Vacant Council Seat Appointment Schedule

### Day 1

Vacancy resolution declared

### Day 1-14

Vacancy posted in City Hall for from date of the resolution for two weeks

Notice published in city newspaper for two weeks as soon as possible after resolution

Publication must be completed within 30 days of the resolution

### Day 45

Individual applications must be submitted to City Clerk within 45 days from the date of the resolution.

### Day 75

Council to interview candidates within 30 days from the close of the application period

### Day 90

After the 30 day interview period the City Council shall make its appointment within 15 days.

### Day 105

Applicant takes a seat

This list assumes all points in the process are carried to their limits as stated in the charter

Steve Smith

## Schedule for filling City Council vacancies

Council resolution read	January 9, 2017
Two week city hall posting	January 23, 2017
Newspaper posting for 2 weeks Completed within 30 days	February 8, 2017
Last application within 45 days	February 23, 2017
30 day interview period	March 25, 2017
Final appointment	April 9, 2017