



CHARTER COMMISSION

January 11, 2021

7:00 PM

Fridley Civic Campus, 7071 University Avenue N.E.

MINUTES

Call to Order

Chair Rick Nelson called the meeting to order at 7:04 p.m.

Roll Call

Present: Commissioners Gary Braam, Kelli Billhart, Manuel Granroos, Nikki Karnopp, Bruce Nelson, Rick Nelson, Barb Reiland, Valerie Rolstad, Avonna Starck

Absent: Commissioners Don Findell, Richard Johnston, Ted Kranz, Courtney Rathke, Pam Reynolds, Cynthia Soule

Others Present: Daniel Tienter, Director of Finance/City Treasurer/City Clerk/Staff Liaison and Melissa Moore, Administrative Services Coordinator/Deputy City Clerk/Staff Liaison

Approval of Agenda

Motion made by Commissioner Granroos approving the meeting agenda. Seconded by Commissioner Braam.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON NELSON DECLARED THE MOTION CARRIED.

Approval of Meeting Minutes

1. Approval of November 16, 2020 Charter Commission Meeting Minutes

The Commission made several revisions due to misspellings in the November 16, 2020 minutes and directed staff to revise them accordingly.

CHAIR NELSON ASKED FOR A VOICE VOTE TO APPROVE THE MEETING MINUTES AS AMENDED. ALL VOTING AYE. CHAIR NELSON DECLARED THE MOTION CARRIED.

Administrative Matters

2. 2021 Calendar

There were no further revisions to the 2021 Charter Commission Calendar.

3. 2021 Nominating Committee

Chair Nelson asked for volunteers for the 2021 Nominating Committee. Commissioner Granroos, Commissioner Reiland, Commissioner Rolstad and Commissioner Starck volunteered. The group agreed to meet after this evening's meeting to make nominations.

4. 2021 Reappointments

Chair Nelson asked Commissioners Reiland and Bruce Nelson if they wished to be reappointed. They both said yes.

MOTION by Commissioner Rolstad to reappoint Commissioner Barb Reiland and Commissioner Bruce Nelson. Seconded by Commissioner Brillhart.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIR NELSON DECLARED THE MOTION CARRIED.

Old Business

5. Chapter 12 Revisions

Chair Nelson suggested the Commission ask the City Attorney for a legal review of any chapter the Commission wishes to work on, before the group begins, instead of working on a chapter for months only to have the City Attorney make more suggestions. Commissioner Reiland agreed that allowing the City Attorney to do the preliminary work would save the group time and frustration.

Commissioner Brillhart reminded the Commission they had talked about work planning to strategize what chapters the group would like to work on so there is greater efficiency in the Commission's work. Mr. Tienter informed the Commission that staff is supportive of the City Attorney beginning work on any new chapter revision as a manner of standard process for any chapter the Commission wishes to work on. Chair Nelson asked if the group agreed. Commissioner Granroos agreed it would be a good idea to let the City Attorney have a first look and the group would revise from there.

MOTION by Commissioner Reiland to direct the City Attorney to review and provide suggestions on any new chapters the Commission wishes to work on before the Commission consider revisions. Seconded by Commissioner Brillhart.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIR NELSON DECLARED THE MOTION CARRIED.

Chair Nelson began the discussion of Section 12.01. Mr. Tienter reviewed the City Attorney's comments on Section 12.01 noting that state law controls what the official publication must be. In previous documents staff had provided sample language from other municipalities that was very short as opposed to Fridley's language. There is shorter language ready if the Commission wishes to avoid any language that is already covered by state law, similar to what Section 12.02 does when referring to the Minnesota Government Data Practices Act (MGDPA). There are other sections where state law addresses the subject

expressly and whether or not the Charter speaks to the intent of the section does not impact the force of State law. In those situations, the Commission could go through to see if there was a way to meet the Commission's desire for transparency, while deferring to State law, which would supersede the Charter. As the City Attorney points out, there are several sections of Chapter 12 that may cause confusion with what State law directs. Mr. Tienter asked how the Commission feels about one approach versus the other.

Chair Nelson recalls the Commission's reluctance to refer generally to "state statute" so people can refer to the Charter and not have to go do separate research to find the law. He asked if the Commission still agreed with that sentiment. Commissioner Reiland agreed, if the Charter does not go against State law that was okay. If people want to look for something, it is easier for them to find it in the Charter versus having to go look somewhere else. Mr. Tienter pointed out that Section 12.02 points to the MGDPA, someone would need to go to the statute to read the MGDPA.

Commissioner Brillhart pointed out the City Attorney asked the Commission to make a consistent change when referring to "the Council" or "the City Council." Commissioner Reiland noted "the City Council" makes the Charter sound more formal and there is no confusion as to what body is being referred to. Chair Nelson agreed "the City Council" will be used going forward. Mr. Tienter informed the Commission that Ms. Moore will send the Commission the Agenda Style Guide, which was created for staff when creating written items for City Council agendas. The guide will inform the Commission on agreed-upon conventions when revising the Charter further. Mr. Tienter acknowledged that staff would add "City" when referring to the City Council throughout Chapter 12, and going forward, the style standard adopted by the City would be applied to future work revising the Charter.

Mr. Tienter noted the language struck in the draft is language the Commission already struck from the Charter. The City Attorney only provided comments, which are in the right margin of Appendix A.

Mr. Tienter pointed out comment number five which points out the need to clarify "such notices" to expressly state the type of notice the City is to provide. Commissioner Brillhart expressed her support for that change and others agreed.

Chair Nelson opened the discussion of Section 12.02 and recalled it is a section the Commission wishes to keep.

Chair Nelson opened the discussion of Section 12.03. Mr. Tienter pointed out it is not clear who a city officer is. Chapter six references the City Clerk, City Treasurer and City Attorney and any other officer determined by the City Council. He is not sure the Commission could solve the issue right now mainly because there is a more specific chapter which talks about subordinate officers. The Commission could consider saying the City Council could designate these positions by resolution. Based on past discussions of the Commission though, he thinks they would be better served to wait until Chapter six is revised to clarify who the "officers" would be. Mr. Tienter added that this language could be construed to mean every officer would take the oath. The City Attorney informed Mr. Tienter that state law does not provide

clear direction on how to define these positions, but typically it is understood to be the City Manager and City Council. The Commission could expressly define which positions need to take the oath, or they could wait until they revise Chapter six and clearly define "officers" then.

Historically in Fridley, only the City Council has taken the oath. Commissioner Granroos expressed his opinion that the City Treasurer should take the oath based on the nature of the position. The Commission discussed ideas of who should be directed to take the oath and certain staff positions that should be included. Commissioner Reiland commented that if specific job titles are named, the Charter could need updates if a position title changes. Commissioner Granroos noted staff's fiduciary responsibilities should require an oath.

Commissioner Karnopp suggested changing "officer" to "elected officials of the City, any appointee of a City commission or committee, and designated City positions." City positions would include Treasurer, City Attorney, etc. and the statement is vague enough to cover if a position title changes.

Chair Nelson asked how staff would know if the Charter language would apply to specific job titles. Commissioner Brillhart asked if there would be a burden on the City if we define who the oath would apply to. Mr. Tienter said no, and the City Attorney is not suggesting the Commission needs to define who an officer is. The term has been frequently applied to elected officials, as is how Fridley has interpreted it. He said the term "designated City position" does not provide any more clear direction than "officer" currently does.

He noted that if the Commission wanted any member of staff with a fiduciary responsibility to take the oath, there would be dozens of staff positions that would apply. With regard to the City Attorney, they are a contracted vendor of the City, not a member of staff. Mr. Tienter recommends the definition is not something they need to figure out now as Chapter six addresses officers, where a discussion to define would be appropriate. There is one additional wrinkle in this matter because the Charter calls for the City Manager to organize the structure of the City and the City Council ratifies that structure by ordinance. Therefore, the City Manager can rearrange how City departments are organized while changing job titles of staff.

Commissioner Reiland asked if the City Attorney must take the oath. Mr. Tienter answered that no, the City Attorney has not taken the oath. At this time, the City does not have an on-staff City Attorney. Commissioner Granroos confirmed the City Attorney is a contracted vendor and noted he must follow the code of conduct for the Minnesota Bar Association. Mr. Tienter agreed and noted there is also an agreement with the City Attorney's firm, which was approved by the City Council.

Commissioner Karnopp asked who decides if commission members or elected officials take an oath. Mr. Tienter answered that in the past, the City Council made that determination as a function of the ceremonial nature of an oath. He noted that any employee who had an issue that rose the level of violating their oath, it would also be a violation of the City employment handbook or other applicable

state law, and would be subject to discipline by the City Manager. There are internal structures in place to ensure staff are acting in good faith.

Chair Nelson suggested the Charter could call out the City Manager and elected officials and could call out other positions by ordinance or resolution. Mr. Tienter answered that is possible. He gave an example that the City Council may wish to require the Housing and Redevelopment Authority, that is responsible for millions of dollars of development, be required to take the oath. Chair Nelson responded that makes sense when thinking of Section 12.04.

Commissioner Karnopp asked if the other advisory commissions take an oath? Mr. Tienter answered no, they do not. The Charter Commission takes an oath because they are incorporated under a separate section of State law. The advisory commissions are created by ordinance so the City Council can create or dissolve advisory commissions, except for the Planning Commission, which is also statutory obligation.

Commissioner Karnopp asked for confirmation that HRA Commission members do not take an oath. Mr. Tienter agreed to confirm, but he did not believe they did. Commissioner Granroos thought that in relation to Section 12.04, he thought the HRA should sign an oath. Mr. Tienter answered that the HRA is a separate political subdivision of the City with a separate body of law that directs its activity with its own conflict of interest restrictions. They are subject to considerable restrictions on their activities in the same way the City Council is. Commissioner Karnopp asked if the HRA was appointed by the City Council. Mr. Tienter answered yes. Commissioner Karnopp asked what documents bar them from receiving gifts. Mr. Tienter answered that state law includes conflict of interest, gifts and competitive bidding policies that govern their behaviors.

Commissioner Granroos believes how the text is written now is adequate since other positions and commissions have their own rules that govern their behavior.

Mr. Tienter informed the Commission that Chapter five of the City Code requires top-level employees to submit a Public Disclosure Form. The form requires staff at the Director level and higher, members of the City Council and members of the City's advisory commissions declare if they own any property that is not their primary residence in the City, or own a percentage of common stock of a business in the City. Additionally, he noted that departments have manuals which dictate policies and procedures staff must follow. These manuals are forwarded to the City Council for adoption.

Commissioner Brillhart feels that Section 12.03 covers the City adequately.

MOTION by Chair Nelson to keep Section 12.03 as it is written in Exhibit A. Seconded by Commissioner Rolstad.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIR NELSON DECLARED THE MOTION CARRIED.

Chair Nelson opened discussion on Section 12.04. Mr. Tienter asked the Commission if given the comments provided by the City Attorney, especially the nuances he pointed out between statutory law, common law and what's in the Charter, he would like the opportunity for the City Attorney to draft some options to be discussed at a future meeting rather than go through each comment. It would be more advantageous for the Commission to have something to respond to. Chair Nelson agreed.

CHAIR NELSON ASKED FOR A VOICE VOTE TO DIRECT THE CITY ATTORNEY TO DRAFT OPTIONS FOR REVISION OF SECTION 12.04. ALL VOTING AYE. CHAIR NELSON DECLARED THE MOTION CARRIED.

Chair Nelson opened discussion on Section 12.05. Mr. Tienter noted there were no comments on the section from the City Attorney. Chair Nelson asked if there were any other revisions. There were no other revisions from the Commission.

Chair Nelson opened discussion on Section 12.06. Mr. Tienter noted the City Attorney recommended an ordinance is not an appropriate legislative tool to dispose of property. The Commission could add language requiring a public hearing, or two readings of a resolution. Many cities accomplish the sale or acquisition of property through resolution, rather than ordinance. He recollected the Commission's concern with transparency, which the Commission could still accomplish, but not have this type of action be accomplished through an ordinance.

Chair Nelson responded that its important for the public to be informed of property being sold. He asked the group for their feedback. Commissioner Reiland responded she thought a public hearing would be too complicated for certain items. She prefers having it discussed at two meetings. Commissioner Rolstad reminded the group the suggestion is that the matter be a resolution and its read at two separate meetings. Mr. Tienter added there are a few ways to keep transparency. They could require a resolution be read at two separate meetings. They could require a public hearing, which the City would provide notice. They could also require that any consideration of the sale of land is a principal item of business at a City Council item, which means it can not be put on the consent agenda.

Chair Nelson asked if resolutions must be read.

Mr. Tienter answered that resolutions can be on the consent agenda. But the Commission could include language preventing that from happening by calling it a principal item of business. Mr. Tienter offered that the item would appear at two separate meetings and upon adoption it must be a principal item of business. Commissioner Brillhart agreed. Mr. Tienter informed the Commission that occasionally an ordinance that is before the City Council for a second reading will be placed on the consent agenda. But that only happens with items that do not have any controversy or public input. If the Commission directs similar language pertaining to this discussion, they could also choose to add that nuance in the language. He recommends the Charter note the item must be on the agenda at least one time as a principal item of business. The Council's rules do dictate that if a member of the public attends the meeting and wishes to remove an item from the consent agenda, they can. Commissioner Brillhart recollected the Commission wants the public to know what is going on, similar to Section 3.05.

Commissioner Reiland added protections that funds were used for the directed purposes. Commissioner Brillhart suggested the text to read "No real property of the City shall be sold or disposed of except by

resolution presented at two separate meetings at least seven days apart with at least one reading being a principal item of business." Mr. Tienter informed the Commission that staff will draft the language. Chair Nelson approved.

Chair Nelson opened the discussion of Section 12.07. Mr. Tienter pointed out that the City Attorney's suggestions mirror the previous suggestions from staff to try to sync up what is in the Charter with what is in statute. The section goes in that direction with the addition of "in accordance with State Statute." The overall message from the City Attorney was if the Commission wanted, this section could be removed and the City could rely on State law, which provides the additional notification requirements that staff had asked for. Commission Rolstad asked if State law is stronger than what is in the Charter. Mr. Tienter said yes and no. When it comes to the number of votes to vacate a street, in State law you can do it with a supermajority. State law is more specific and requires a notice to be done within two weeks, so it is stronger than what is in the Charter. The section in State law that governs this action is more specific and is what most cities rely on for vacation of streets. The Commission could add language similar to Section 12.02 and reference a specific statute. Chair Nelson asked if would be possible to keep language regarding the supermajority, but information about the procedure of the vacation would be pursuant to State law. Mr. Tienter said yes, the Commission would need to work through that language. Chair Nelson asked if the Commission would like to direct staff to do that. Chair Nelson said he does not think a regular majority is adequate and a requirement for a supermajority should be left in. Mr. Tienter said staff will work with the City Attorney on this language.

Chair Nelson opened the discussion of the deleted Sections 12.08 and 12.09. Mr. Tienter said Sections 12.08 and 12.09 were removed from the Charter because State statute is stronger than the language in the Charter.

Chair Nelson opened the discussion of Section 12.08 (formerly Section 12.10) and 12.09 (formerly Section 12.11). Mr. Tienter recollected the Commission took no formal action to amend the last two sections.

Chair Nelson asked if anyone wished to discuss anything else in Chapter 12. There were no more discussions.

New Business

None.

Future Meeting Topics/Communications

Commissioner Reiland noted the Nominating Committee will make their report.

Chair Nelson said the Commission will revisit Chapter 12.

Chair Nelson will inquire with Commissioners Findell, Rolstad and Soule if they would like to be reappointed.

Commissioner Brillhart said she would like to discuss work planning.

Mr. Tienter reminded the Commission that a representative from the League of Minnesota Cities was to come to do a training session. Chair Nelson asked staff to see if April 5 or May 3, 2021 would work for a training session.

Mr. Tienter reminded anyone on the 2021 Nominating Committee to please stay after adjournment to discuss who would be nominated for offices.

Adjournment

MOTION by Commissioner Brillhart to adjourn the meeting. Seconded by Commissioner Rolstad.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON NELSON DECLARED THE MOTION CARRIED AND THE MEETING ADJOURNED AT 8:27 P.M.

Respectfully submitted,

Commissioner Reiland, Charter Commission Secretary

Melissa Moore, Administrative Services Coordinator/Deputy City Clerk/Staff Liaison