



CHARTER COMMISSION

January 11, 2021

7:00 PM

Fridley Civic Campus, 7071 University Avenue
N.E.

AGENDA

Pursuant to Minnesota Emergency Executive Orders 20-99 and 20-103, the January 11, 2021 meeting of the Fridley Charter Commission will be a hybrid meeting. If you wish to attend the meeting in person, it will be held at Fridley City Hall (7071 University Avenue N.E.). If you wish to attend the meeting virtually, please use the Zoom meeting links.

In Person: Fridley Civic Campus – Emergency Operations Center, 7071 University Avenue N.E.

Virtual: <https://zoom.us/j/94002326896>. Or call 646-558-8656, webinar ID: 940 0232 6896.

Call to Order

Roll Call

Approval of Agenda

Approval of Meeting Minutes

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

Administrative Matters

2. 2021 Calendar
3. 2021 Nominating Committee
4. 2021 Reappointments

Old Business

5. Chapter 12 Revisions

New Business

Future Meeting Topics/Communications

Adjournment



AGENDA REPORT

Meeting Date: January 11, 2021

Meeting Type: Charter Commission

Submitted By: Melissa Moore, Staff Liaison

Title

Approval of November 16, 2020 Charter Commission Meeting Minutes

Background

The attached draft of the November 16, 2020 Charter Commission Meeting Minutes was completed by Denise Johnson, Recording Secretary and Melissa Moore, Staff Liaison.

Recommendation

Staff recommend the approval of the November 16, 2020 Charter Commission Meeting Minutes.

Attachments and Other Resources

- November 16, 2020 Charter Commission Meeting Minutes

Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

**CITY OF FRIDLEY
CHARTER COMMISSION MEETING
NOVEMBER 16, 2020**

CALL TO ORDER:

Chairperson Nelson called the Charter Commission meeting to order at 7:00 p.m.

ROLL CALL:

Members Present: Commissioners Gary Braam, Nikki Karnopp, Ted Kranz, Bruce Nelson, Rick Nelson, Courtney Rathke, Barb Reiland, Pam Reynolds, Val Rolstad, and Avonna Starck

Members Absent: Commissioners Kelli Brillhart, Donald Findell, Manuel Granroos, Richard Johnston, Cynthia Soule

Others Present: Melissa Moore, Admin. Services Coord./Deputy City Clerk/Staff Liaison
Dan Tienter, Finance Director/City Treasurer/City Clerk

APPROVAL OF AGENDA

MOTION by Commissioner Rolstad approving the meeting agenda. Seconded by Commissioner Braam.

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

APPROVAL OF MINUTES

Commissioner Reynolds suggested the Minutes be amended to add Barb Reiland as Secretary of the Charter Commission at the end of the Minutes.

MOTION by Commissioner Braam approving the meeting minutes of October 5, 2020 as amended. Seconded by Commissioner Reiland.

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

ADMINISTRATIVE MATTERS:

1. 2021 Proposed Calendar

Dan Tienter, Finance Director/City Treasurer/City Clerk, stated as outlined in the Memorandum they had an opportunity to have a conversation with Chairperson Nelson about the prospective dates for next year. A draft of those proposed meetings is included in the agenda packet. Last year, they did have some challenges where they doubled up on certain City Council meetings so they doublechecked just to make sure they did not conflict with Council meetings. One outlier in the calendar is the January meeting, which was for the 11th so as to not conflict with a City Council meeting.

Commissioner Volstad stated September does not have anything and it is not listed in the "No Meetings".

Chairperson Nelson stated it is his understanding that since the 6th is Labor Day, the 13th is when the Council meets to discuss the budget or the levies.

Mr. Tienter stated since the 6th is a holiday, the 13th is the normal Council meeting and the Council normally holds a budget workshop on the 20th. The meeting on the 27th is also a Council meeting. That is where they typically set the proposed budget levy for the year. Generally on those dates it is a little more challenging because of staff availability.

Chairperson Nelson stated in some years they had been on the Tuesday after Labor Day. Does the Commission want to do that this year, too?

Mr. Tienter replied, staff would prefer to have no meeting in September as it is a very busy month for them. They are in the throws of budget development at that point in time. Also, there are not many things outstanding on the Commission or scheduled for next year. It is possible they can even end up cancelling some of these meetings even though Chapter 10 is outstanding because the Commission has chosen not to take any action on that because of the FCC order and Supreme Court challenges. The next thing on the agenda for the Commission could be some type of an omnibus amendment where parallel references and other grammatical changes could be worked through the entire Charter.

Mr. Tienter stated probably the next step is some kind of clean-up amendment where but just to bring the Charter into alignment. With that being the main task, he does not know if they need an additional meeting.

Chairperson Nelson asked if the Commission is fine with the seven dates as recommended.

MOTION by Commissioner Reynolds to approve the Calendar for 2021 with the addition of adding September to the "No Meeting" list. Seconded by Commissioner Braam.

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

2. 2020 Annual Report

Melissa Moore, stated the Chief Judge has changed. This is a draft and has not been sent. It is open for comments, suggestions, or changes.

Chairperson Nelson stated this is for information purposes basically.

Ms. Moore replied, that is correct. Just to satisfy the Statute requirement that is referenced in the letter.

MOTION by Commissioner Rolstad approving the 2020 Annual Report. Seconded by Commissioner Reynolds.

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

OLD BUSINESS:

3. Chapter 12 (Miscellaneous Provisions) Review

Mr. Tienter stated as a reminder, several meetings were cancelled because of the COVID-19 pandemic. The Commission had been going through Chapter 12 methodically and they ended on section 12.08, deciding to strike the entire section. Minnesota Statute § 466 preempts any type of liability considered by the Charter. With that in mind, the Commission recommended to eliminate that section.

Mr. Tienter stated the next is 12.09 for the recovery of judgments. As mentioned, staff does feel that the submission could remove this language. Staff could not find any other city charters that have anything similar to it. They also reached out to the City Attorney just to ask if there really was anything with the recovery for damages the City needed in order to protect itself. The response they got was essentially it was an odd section.

Mr. Tienter stated he will read verbatim the City Attorney's email: "The City cannot automatically declare the person or entity is liable to the City simply because the City was found liable in the lawsuit because of the actions of that person when that person or entity was not a party to the lawsuit. It seems that general indemnity principles will apply in this situation and that the City does not have the authority to change those principles by a Charter provision..." then it goes on to say they cannot find another city charter that has a similar provision.

Mr. Tienter added just because an item may be unusual is not in and of itself a reason to put something in or take something out of the charter, but more importantly, because this language is most likely not enforceable. There are enjoiner rules that essentially the City could add or

pursue someone with other legal action. Ultimately, the City would have that power anyway regardless of what this charter section said or did not say, as it does have the opportunity as outlined in Section 1.02 to sue and be sued. Staff is recommending this language be eliminated as it is superfluous.

Chairperson Nelson asked what does the Commission wish to do.

Commissioner Reynolds stated she is not sure she understands the purpose of getting rid of it. It talks about if someone sues for "injury or damage caused by obstruction, excavation, opening or defect in any street, alley, or public ground caused or occasioned by the act of or admission or key person or corporation that the City has hired" basically. What happens if Joe Blow does the street and in the process of doing the street, he weakens something and creates a sink hole, her cars falls in, and she sues the City. The City does not have the right to sue the contractor or is that covered by an indemnity clause in the contract?

Mr. Tienter replied, the section itself is not applicable just to whom the City may hire to accomplish certain public improvements of public right-of-ways or areas, it just applies to any person or corporation. He imagined there must have been some scenario at some point in time where somebody must have done something to a roadway that caused damage that the City added this type of language to protect the City. But to Commissioner Reynolds' point, what will end up happening, is if it were someone who was hired by the City, the agreements and the contracts the City reaches would contain language for indemnity, damages, and liquidated damages, so there would always be an opportunity for the City to pursue a contractor that essentially was in breach or did not make a good faith effort on the part of their contract. That way the City would always have that right. They could always sue anyone who was working through a contract.

Mr. Tienter stated in this situation, the section actually establishes the right to recover the amount for damages, and the Charter cannot create that right for the City. There are rules of judicial order and other State laws that dictate when someone is liable, and the City would have to proceed in normal order with a lawsuit through the court which is a right it already employs. The City has a broader stake in essentially Chapter 1, which is the enabling chapter where the City can sue or be sued.

Commissioner Reynolds asked why was it in there

Chairperson Nelson replied, because probably when it was drafted several years ago, they had some local guy do some work where if they did not have a contract, this was their protection.

Mr. Tienter replied, in discussion with the City Attorney, that was essentially the explanation that was offered. From time to time, the City Attorney has encountered ordinances that cities have promulgated because of some kind of unique issue that occurred in a community. Pertaining to Fridley's Charter, the suggestion from the Attorney is either, one, covered by broader powers

elsewhere in the Charter; or two, the City Charter does not actually create this type of right that is construed with the Charter currently.

Commissioner Reynolds stated yes, but can the Charter say the City has to recoup a judgment?

Mr. Tienter replied, ultimately the Charter could tell the Council to do certain things in certain ways, but in all likelihood, it would not be advisable to compel the Council to enjoin a legal proceeding. That would not be advisable because each of these situations have their own facts and circumstances, and perhaps, they even have a resolution before the City would file suit such as proceeding to mediation or sending a demand letter for compensation.

Mr. Tienter stated oftentimes the City's agreements have sections for liquidated damages where a per date penalty would attach for a contractor to say if it were breached. It depends, but in some situations, it ends up being a few hundred dollars a day for each individual occurrence. Let's say a contractor was working on the road and had five different holes that were problematic for the City and they refused to essentially do anything about it. The City would say, okay, each individual hole is its own violation and they are going to attach damages to it per day.

Mr. Tienter stated it is very rare to get to that point in the process where they are actually proceeding to that type of punitive action. Most of the time they want to correct it. They want to maintain a good working relationship with the City. Ultimately, this section does not provide the City with any greater protection or authorities. In fact in most situations, it likely cannot attach liability to pursue someone because damage has occurred on a City street or there has been some sort of failure. Everything has its own finding of fact and its own proceedings.

Commissioner Reiland asked does this section protect the person whose car fell in the hole? Does the City pays them and the City works with its contractor?

Mr. Tienter replied ultimately it would be for any action against the City, not necessarily an action against the contractor or an individual. In most situations if an individual were to sue the City, there are two things that would happen, first discretionary immunity would attach. The City has the right to take on legal liability if it decides to repair a road because the law recognizes the City is required to perform certain things. While there is no liability for the City even if a car fell in a hole, the City has a reasonable amount of time to repair the hole and make determinations about what order the holes need to be repaired. Secondly, typically it is not a determination of the Council or City staff if someone sues the City. Most of time these items are covered by the City's insurance so it was paid by the League of Minnesota Cities Insurance Trust and like any other claim against any corporation or individual, the claim would go through a claims adjustment process whereby the City may eventually file a claim dependent on the individual circumstances and finding of fact. There is not any greater or less protection for someone if this section were in the Charter, or not.

Commissioner Reiland stated it is like they really do not have a choice--just get rid of it or ignore it.

Commissioner Reynolds stated they are going to ignore it if they do not get rid of it. It gets ignored because it cannot be enforced.

Chairperson Nelson stated this would not be the first section where that has happened. How does the Commission feel about deleting it?

MOTION by Commissioner Rathke to delete Section 12.09. Seconded by Commissioner Starck.

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

Mr. Tienter stated staff have no comments regarding Section 12.10. It is fairly standard language and should remain in the Charter because it maintains the City's rights and obligations that existed prior to the City being incorporated as a Home Rule municipality.

Chairperson Nelson stated they will leave it then unless Commissioner Reiland, the grammatical guru, wishes to change it.

Commissioner Reynolds stated there are a lot of comments there.

Commissioner Reiland replied, there are a lot of comments. The only thing she would do is put it in two sentences rather than try and roll it up – if, and, and but. Leave a period after Village of Fridley and the City shall be subject then and continue with the rest.

Chairperson Nelson asked whether people were okay with that?

Commissioner Reynolds replied, yes.

Commissioner Starck replied, yes.

MOTION by Commissioner Reiland to approve the Section 12.10 with the changes suggested by Commissioner Reiland. Seconded by Commissioner Nelson.

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

Chairperson Nelson stated as to Section 12.11, they had the one section they moved which is in the pink. Do they wish to change the body or just leave "as is"?

Mr. Tienter stated in the example language, there are two cities referenced, Anoka and Ramsey. He did check today and actually the City of Anoka's language is exactly the same as the City of Ramsey. These are two examples that mirror the first section of 12.11. In the second half of 12.11 there are a few things to change. The first would be the middle of the section, fourth line down, "The City shall have all powers and authority granted by law of the State to municipality to acquire property, . . ." This language is actually already included in Section 1.02, which essentially provides all of the broad powers of authorities to the City. It lists a number of things, including powers beyond the City's corporate limits. In this way that particular language is redundant. It is in a more appropriate section of the Charter, the first chapter. This was addressed when the Charter Commission and Council approved the changes to Chapter 7 in 2018.

Mr. Tienter read Section 7.02: "Nothing in this provision shall be construed to impair any general obligation the City may have in support of otherwise lawful indebtedness or similar obligation supported by the full faith and credit of the City, provided, however, that long-term, general obligation indebtedness shall not be used for the purpose of funding the routine and daily business operations of the City." In this way, the first part of Section 12.11 is handled by Section 1.02 and the latter part it is handled by Section 7.02. Staff would recommend that both of those would stay since they are addressed by more specific sections of the Charter and also chapters that are specific to the topics that are being addressed in 12.11. Ultimately, those revisions would be consistent with what they have seen at Ramsey and other communities.

Commissioner Reynolds stated she does not see that language in Chapter 1.

Mr. Tienter read from Section 1.02: "...may exercise such powers beyond its corporate limits as may be necessary for the effective exercise of any powers granted herein as now authorized by law."

Commissioner Reynolds asked, where is that at.

Mr. Tienter replied, it is in Section 1.02, second page, near the bottom.

Commissioner Reynolds read a portion of Section 1.02, "in addition thereto the City of Fridley may exercise all powers once it is ready, privileges exercised by..."

Mr. Tienter stated there is more expansive and more specific grants of power in Section 1.02. In many cases you can see the language varies.

Commissioner Reynolds stated in that sentence she can see that it mimics Chapter 1 and then in the next sentence, "all powers by this section conferred shall be exercised conformingly to this Charter so far... And powers shall not authorize the City, to incur any bond or debt beyond its limitations."

Commissioner Reiland asked, is that in Chapter 1 also.

Commissioner Reynolds replied, no, she believed he is saying something is in Chapter 7 but this language is specifically saying they cannot incur any bond or debt beyond the limitations of this Charter.

Mr. Tienter stated right, and now Chapter 7 predates the last time this was addressed and more specific language about bond and indebtedness and essentially says the City can bond or create a debt for lawful purposes. The Charter does provide more specific language in Chapter 7 about making sure that bond or debt is supporting operating obligations.

Mr. Tienter stated in that way, the Charter is more specific in the section as it relates to municipal financing and discusses the general nature of the way the City can issue debt and bond indebtedness.

Mr. Tienter stated the limitations are imposed by State law which does have things like debt limits and caps that are used in State law that are a function of the cities and tax capacity. Essentially, the amount of tax based by the City.

Commissioner Reynolds asked if Mr. Tienter is saying the language in 12.11 is superseded by the language in Chapter 7.

Mr. Tienter stated he is not necessarily saying that it is superseded. Generally, the governing documents are more specific. Chapter 11 is a miscellaneous provision, and there are specific sections of the Charter, particularly in Section 7.02.1 which address the question of the City's powers and authority regarding bond indebtedness and replace it with debt generally. It mirrors the language. It is similar in that it basically says that all powers that are conferred, but the City cannot do anything beyond bonded debt or other limitations imposed by the Charter. The Charter already has specific limitations so the addition of the language in 12.11 does not create any additional obligation, or protection because the City cannot do anything that is not in the Charter, and the Charter already has language about certain activities vis-à-vis bond indebtedness. Both in Chapter 12 but also in Chapter 7. Chapter 7 has more specific language that has been contemplated more recently than Chapter 12 with regard to bond indebtedness. In this way, the goal is to bring the two chapters into alignment and understand the amendments that have happened since this section was last amended.

Commissioner Reiland asked if the only thing they would keep is the pink.

Chairperson Nelson replied, the top part.

Mr. Tienter stated, they would keep the first section; and would eliminate the line beginning, the City Charter shall have all powers, authority and rights authorized by law. That is covered by Section 1.02. They would eliminate the line after that because that is covered by Section 7.02.1.

Commissioner Reynolds stated they would be keeping up to where it says, "provisions of this Charter." Then "the City shall have the powers" that needs to go and "all powers" needs to go and then keep nothing herein.

Chairperson Nelson replied, correct.

Commissioner Reiland apologized and said she did not follow that.

Commissioner Reynolds stated the last two sentences of the first paragraph of that paragraph would go.

Commissioner Reiland asked, the "all powers"?

Commissioner Reynolds replied, that one and the one above it. "The City shall". But they would keep what is in the pink. They already decided to keep that.

Commissioner Reiland stated so the first sentence and the pink.

Chairperson Nelson replied, correct.

MOTION by Commissioner Reiland that they keep the first sentence of 12.11 and move the sentence from 12.1 to 12.11 and the rest gets deleted. Seconded by Commissioner Karnopp.

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

Mr. Tienter stated at this time, staff have no recommendations about 12.12 or 12.13. They are both standard powers and comparable with other cities.

Chairperson Nelson asked if there is anything people wish to revisit.

Mr. Tienter stated staff has created a document showing the Commission's step-by-step revisions of the chapter. Staff would then propose to mark up the chapter in draft form with redlines describing the additions and deletions and present it at their next meeting for final consideration. Assuming the Commission is comfortable with the revisions, the draft would follow the typical amended by ordinance process. There is no expectation the Commissioner has it at their next meeting or the one after, but staff would be presenting essentially the rolled-up version of everything they have been talking about over the last few meetings so they have the opportunity to visualize the revision.

Chairperson Nelson directed staff to do such.

Mr. Tienter asked whether the Commission would be comfortable with staff forwarding the marked-up version to the City Attorney for any comments or feedback. If there are recommendations on any language or comments or anything like that they would make the City Attorney's changes a different color so they can understand the differences.

Chairperson Nelson replied, that is why they usually have seven meetings but yes, staff can run it by the City Attorney.

Chairperson Nelson stated Chapter 12 would be in rewritten format with potential input from the City Attorney.

NEW BUSINESS:

FUTURE MEETING TOPICS/COMMUNICATIONS:

Mr. Tienter stated the City is in the process of migrating to a new agenda management system where it essentially allows them to prepare all of the communications to the advisory commissions and City Council in one standard format. Before they had been compiling in PDF and emailing documents. This is an online solution so Melissa Moore, Roberta Collins, and myself will all be coordinating the City Council and advisory commission agendas. This is the first time they have attempted to use it and are excited to use the Charter Commission as an example. It does look a little different. Commissioners will get an agenda with hyperlinks to individual items and the numbers at the top. Ultimately, they will keep the same agenda as far as the dialogue is concerned. The system is very robust so if they see things they want changed, let staff know.

Mr. Tienter stated they do have a couple of new members. The League of Minnesota Cities offers a training for charter commissions. They can tele-conference into their meeting and provide just a general overview as to what is a charter, what makes a charter city different than a statutory city, what are the ways to amend a charter, etc. It could be a nice way to bring new members up to speed on how charter cities work and also a good refresher for the group. The League does not take a position on how the Charter should function, etc. It seemed like something appropriate for kind of the first meeting of the year. They will be transitioning and give them kind of a general update for any new members, if there are particular questions or thoughts from the Commission that they will need to address, staff can forward those. They are willing to tailor the meeting to whatever the Commission would like. It is a good opportunity for them to touch base.

Chairperson Nelson stated it sounds good to him. Can old members attend if need be?

Commissioner Reiland asked if they can open the update to anybody and not just to new member.

Mr. Tienter replied they could hold a regular standard meeting if they like. The Commission could tell the League the amount of time they'd have to present. He would envision that would be a topic at a future meeting as opposed to an additional thing people would have to attend.

Commissioner Reynolds stated she would like to look over Chapter 5.

Chairperson Nelson replied, the last time they did was in 2013.

Commissioner Reynolds stated she did not have any specific questions, but she did have it written down and is assuming there is something in there she was questioning.

Chairperson Nelson asked the rest of the Commission if they are okay with reviewing Chapter 5?

Commissioner Reiland replied yes.

Mr. Tienter suggested that perhaps after they wrap up Chapter 12, the Commission could do some work planning to get a sense of what the Commission is interested in looking at.

Commissioner Reynolds replied that is fine. She said a while back there was a list when they were filling the vacancy on the Council, and there were errors in the Charter in some sections. She asked whether they ever finished the discussion of it.

Mr. Tienter replied there were some if he recalled parallel references that were incorrect in some sections. Commissioner Reynolds brought them to the attention of the City Manager and the Commission. In turn, staff forwarded it to the City Attorney. Mr. Biggerstaff stated generally his opinion when it comes to types of so-called, clerical errors, is to proceed through the amendment through ordinance because it is the cleanest process and in that way it is tied with the Chair. As he mentioned earlier, they can save this for a work session. One of the things they can look at is cleaning up and addressing those things where there are clerical errors. It is not uncommon when they proceed chapter to chapter for things to get missed in other chapters.

Commissioner Reynolds replied, she thinks it just did not get changed.

Mr. Tienter stated they can go back and look at it.

Chairperson Nelson stated he knows they had discussion in the past, at least he believed they did, about when they go through like just looking at Chapter 1. It says, it was revised last on 10-5-89 but he knows they have looked at it numerous times. Perhaps they just need to put something in the box, something like "Reviewed on January 2021", so they do not just look at the date and think they have not looked at some of these chapters when they have and know there were no changes.

Commissioner Reiland stated at the bottom they could put "reviewed" and the date.

Commissioner Reynolds replied it was in the Bylaws where a reference to a "reviewed on" date was added.

Mr. Tienter stated staff can doublecheck review dates. Earlier this year Melissa Moore did lead an exercise like that where they provided chapter sections with review dates. Ms. Moore will send the commission a list of chapters with the most recent review date. If any commissioners need updated chapters, they should communicate with Ms. Moore who will provide them hard copies.

Chairperson Nelson stated here are meeting topics: Chapter 12 and the rewritten format, training for new members, review of Chapter 5, go through the whole Charter for grammatical errors, and review individual chapters to make sure they have the latest and the best chapters. He asked if any other commissioners had anything to add.

Mr. Tienter stated Ms. Moore will send out the latest sections of the Charter so the Commission can take a look at their individual books and respond to her.

ADJOURN:

MOTION by Commissioner Reynolds to adjourn the meeting. Seconded by Commissioner Kranz.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON NELSON DECLARED THE MOTION CARRIED AND THE MEETING ADJOURNED AT 7:57 P.M.

Respectfully submitted,

Commissioner Reiland, Charter Commission Secretary

Denise M. Johnson, Recording Secretary



AGENDA REPORT

Meeting Date: January 11, 2021

Meeting Type: Charter Commission

Submitted By: Melissa Moore, Staff Liaison

Title

2021 Calendar

Background

At its November 16, 2020 meeting the Commission directed staff to revise the 2021 calendar to state there is to be no meeting in September. The revised calendar is attached.

Recommendation

Attachments and Other Resources

- 2021 Charter Commission Calendar

Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

Charter Commission Meetings

Meetings held at 7:00 pm
Fridley Civic Campus
7071 University Avenue NE
in the Fireside Room

Daniel Tienter, City Clerk
763-572-3520
daniel.tienter@fridleymn.gov

Melissa Moore, Administrative Services
Coordinator
763-572-3526
melissa.moore@fridleymn.gov

To ensure a quorum, please notify
Daniel or Melissa by 10 am on the
meeting date.

No meetings will be held in June,
July, August, September or December
unless called by the Chair.

JANUARY

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FEBRUARY

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NOVEMBER

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DECEMBER

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AGENDA REPORT

Meeting Date: January 11, 2021

Meeting Type: Charter Commission

Submitted By: Melissa Moore, Staff Liaison

Title

2021 Nominating Committee

Background

Section VII of the Charter Commission's Bylaws call for the Chair to appoint a Nominating Committee of three or more members who will report the nomination of one or more candidates for each office. The committee's written report will be transmitted to the Commission with the February 1, 2021 agenda. An Election of Officers will take place at the Commission's March 1, 2021 Annual Meeting.

Commissioner Reiland has held the position of Secretary for two years, so is no longer eligible to be nominated to that position.

Recommendation

Staff recommend Chair Nelson appoint three or more Commissioners to the 2021 Nominating Committee. Staff recommend the Nominating Committee submit a written report to staff to include in the February 1, 2021 agenda.

Attachments and Other Resources

Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.



AGENDA REPORT

Meeting Date: January 11, 2021

Meeting Type: Charter Commission

Submitted By: Melissa Moore, Staff Liaison

Title

2021 Reappointments

Background

For 2021 the following Commissioners would require reappointment:

<u>Commissioner</u>	<u>Term Ends</u>
Barb Reiland	February 21, 2021
Bruce Nelson	April 18, 2021
Don Findell	May 1, 2021
Valerie Rolstad	May 1, 2021
Cynthia Soule	May 1, 2021
Kelli Brillhart	September 19, 2021
Richard Johnston	September 19, 2021

Recommendation

Staff request the listed Commissioners consider their reappointment. Staff request the immediate motion to reappoint Commissioner Reiland, if she wishes, so staff may notify Chief Judge Hiljus.

Attachments and Other Resources

Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.



AGENDA REPORT

Meeting Date: January 11, 2021

Meeting Type: Charter Commission

Submitted By: Melissa Moore, Staff Liaison and Daniel Tienter, Staff Liaison

Title

Chapter 12 Revisions

Background

In 2020 the Charter Commission began to revise Chapter 12 and have worked methodically through each section of the Chapter. At the Commission's last meeting staff were directed to ask the City Attorney to provide a legal review of the revisions and provide comments. Mr. Biggerstaff's review is attached as Exhibit B.

Recommendation

Staff recommend the Charter Commission review and discuss Exhibits A and B.

Attachments and Other Resources

- Exhibit A: Chapter 12 draft of revisions
- Exhibit B: Chapter 12 legal review from Andrew Biggerstaff, City Attorney

Vision Statement

We believe Fridley will be a safe, vibrant, friendly and stable home for families and businesses.

FRIDLEY CITY CHARTER
CHAPTER 12. MISCELLANEOUS PROVISIONS

Section 12.01. OFFICIAL PUBLICATIONS

The Council shall regulate by ordinance, subject to the requirements of this Charter, the manner in which official publicity shall be given to the holding of elections, ordinances, resolutions, requests for bids upon contemplated purchases and contracts, and all other matters whatsoever which require publication either by the provisions of this Charter or by the laws of Minnesota. It shall annually designate a legal newspaper of general circulation in the City as the official newspaper in which shall be published such measures and matters as are by the laws of this State and this Charter required to be so published, and such other matters as the Council may deem it advisable and in the public interest to have published in this manner.

At its discretion, the City Council may also provide for the publication of important city information including but not limited to the annual budget, ordinances, and resolutions. Such publication may be done by mailing or posting of printed copies thereof upon bulletin boards located in public places of the City in such number and for such period of time as the Council may direct in each case. In addition to the legal newspaper, such notices shall also be posted on the City website. ~~In addition, the City Council may use electronic means for publication. Nothing herein contained shall be construed as authorizing or attempting to authorize any violation of the Constitution or the Statutes of the State in any matter which is of State concern or which is exclusively under State control.~~ (Ref Ord 1310)

Section 12.02. PUBLICITY OF RECORDS

All records and accounts of every office, department or agency of the City shall be open to inspection in accordance with the Minnesota Government Data Practices Act.

Section 12.03. OATH OF OFFICE

Every officer of the City shall, before entering upon the duties of the office, take and subscribe an oath of office in substantially the following form: "I, [Name], do solemnly swear to support the Constitution of the United States, the Constitution of the State of Minnesota, the Fridley City Charter and City Code; and to discharge faithfully the duties entrusted upon me as [Official Title] of the City of Fridley to the best of my judgement and ability." ~~"I do solemnly swear (or affirm) to support the Constitution of the United States and of the State of Minnesota and to discharge faithfully the duties devolving upon me as~~

~~(Mayor, or Councilmember, or City Manager, etc.) of this City to the best of my judgement and ability." (Ref. Ord. 857)~~

Section 12.04. CITY OFFICERS NOT TO ACCEPT FAVORS OR CONTRACTS

No member of the City Council or employee of the City shall:

1. ~~_____~~ Solicit or receive any:

- pay
- commission
- money
- thing of value included but not limited to:
 - any pass
 - frank
 - free ticket
 - free service
 - or any other favor upon terms more favorable than those granted the general public.

2. ~~_____~~ Derive any profit, directly or indirectly, from or by reason of:

- any improvement
- alteration or repair required by authority of the City
- or any contract to which the City shall be a party.

With the exception of:

- lawful compensation, including authorized expenditures
- or salary as such member of the City Council or as such employee.

~~No member of the City Council or employee of the City, except as otherwise provided in this Charter, or by law, shall solicit, accept or receive, directly or indirectly, from any public utility corporation or the owner of any public utility or franchise:~~

~~A violation of any of the provisions of this Section shall disqualify subject the offender to appropriate disciplinary action in compliance with all applicable laws and regulations. if found guilty, from continuing in office or in the employment of the City, and the offender shall be removed therefrom. Any contract with the City in which any member of the City Council or employee of the City is, or becomes, directly or indirectly interested personally shall be voidable at the option of the Council; and any money which shall have been paid on such contract by the City may be recovered from any or all of the persons interested therein by joint or several action. (Ref. Ord. 857)~~

Section 12.05. OFFICIAL BONDS

The offices of City Manager, the City Clerk and City Treasurer and such other officers or employees of the City, as may be provided for by ordinance, shall each, before entering upon the duties of their respective offices or employment, give a corporate surety bond to the City in such form and in such amount as may be fixed by the Council as security for the faithful performance of their respective official duties and the safekeeping of the public funds. ~~Such bonds shall be approved by the City Council and approved as to form by the City Attorney. They shall be filed with the Secretary of the Council. In the event the Secretary of the Council holds more than one (1) office by appointment, the Secretary's bond or bonds shall be filed with the Mayor.~~ The provisions of the laws of the State relating to official bonds, not inconsistent with this Charter, shall be complied with. The premiums on the corporate surety bonds hereinbefore provided for shall be paid by the City.

A copy of the list and amount of the bonds for each office as outlined above, shall be provided to the Council on an annual basis for reference purposes. (Ref. Ord. 857)

Section 12.06. SALES OF REAL PROPERTY

No real property of the City shall be sold or disposed of except by ordinance. The proceeds of any such sale shall be used as far as possible to retire any outstanding indebtedness incurred by the City in the purchase, construction, or improvement of this or other property used for the same public purpose; but if there be no such outstanding indebtedness, then the Council may by a resolution adopted by an affirmative vote of at least four (4) members of the Council designate some other public use for such proceeds.

Section 12.07. VACATION OF STREETS

The Council shall have the exclusive power, by resolution passed by a vote of at least four (4) members of the Council, to vacate or discontinue highways, streets, easements, and alleys within the City. Such vacations may be made only after notice and hearing of affected property owners, in accordance with State Statute, and upon such further terms and by such procedure as the Council may by ordinance prescribe. A record of each such vacation shall be filed in the office of the Anoka County Recorder. (Ref. Ord. 592, Ord. 1090)

~~Section 12.08. DAMAGE SUITS~~

~~1. No action shall be maintained against the City on account of any injuries or damages to persons or property, unless such action shall be commenced within one (1) year~~

~~from the occurrence of such injury or damage, nor unless notice shall have been given in writing as required by Minnesota Statutes. (Ref. Ord. 873)~~

- ~~2. No action shall be maintained against the City on account of injuries or damages to persons or property resulting from or caused by any accumulation or deposit of ice or snow on any public street, sidewalk, building, or place.~~

~~Section 12.09. RECOVERY OF JUDGEMENT FOR DAMAGES~~

~~If any judgement shall be recovered in any action against the City for any injury or damage caused by any obstruction, excavation, opening or defect in any street or alley or public ground caused or occasioned by the act or omission of any person or corporation, the City shall have the right to recover the amount of any such judgement from the person or corporation so responsible for such obstruction, excavation, opening or defect; and such person or corporation is hereby declared to be liable to the City in the amount of such damages, provided, however, the City shall give such person or corporation notice of any claim for such injury or damage and of any action to recover for the same and shall give such person or corporation the right and reasonable opportunity to defend such action.~~

~~Section 12.1008. CITY TO SUCCEED TO RIGHTS AND OBLIGATIONS OF FORMER MUNICIPALITY~~

~~The City of Fridley shall remain vested with and continue to have, hold and enjoy all property, property rights, rights of action, and rights of every kind, privileges and immunities now belonging to or pertaining to the Village of Fridley, and The City shall be subject to all liabilities which exist against said Village on the effective date of this Charter.~~

~~Section 12.1109. APPLICATION OF GENERAL LAWS~~

~~All general laws and statutes of the State applicable to all cities operating under home rule Charters, or applicable to cities of the same class as the City of Fridley operating under home rule Charters, and not inconsistent with the provisions of this Charter, shall apply to the City of Fridley and shall be construed as supplementary to the provisions of this Charter. The City shall have all powers and authority granted by the laws of the State to municipalities to acquire property or exercise authority or powers beyond the corporate limits. All powers by this Section conferred shall be exercised conformably to this Charter so far as may be possible, and such authority and power shall not authorize the City to incur any bonded debt beyond the limitations, or in any other manner than authorized by this Charter.~~

~~Nothing herein contained shall be construed as authorizing or attempting to authorize any~~

violation of the Constitution or the Statutes of the State in any matter which is of State concern or which is exclusively under State control.

Section 12.4210. EXISTING ORDINANCES, REGULATIONS, BOARDS AND COMMISSIONS CONTINUED

All ordinances, regulations, boards and commissions of the municipality in force and existing when this Charter takes effect, and not inconsistent with the provisions hereof, are hereby continued in full force and effect until amended, repealed, vacated or abolished.

Section 12.4311. PENDING CONDEMNATIONS AND ASSESSMENTS

Any proceeding for condemnation for public improvement or assessment in progress when this Charter takes effect shall be continued and completed under the laws under which such proceedings were begun. All assessments made by the Village prior to the time when this Charter takes effect shall be collected and the lien thereof enforced in the same manner as if this Charter had not been adopted.

FRIDLEY CITY CHARTER
CHAPTER 12. MISCELLANEOUS PROVISIONS

Section 12.01. OFFICIAL PUBLICATIONS.

The Council shall regulate by ordinance, subject to the requirements of this Charter, the manner in which official publicity shall be given to the holding of elections, ordinances, resolutions, requests for bids upon contemplated purchases and contracts, and all other matters whatsoever which require publication either by the provisions of this Charter or by the laws of Minnesota. ~~The Council shall annually designate a legal newspaper of general circulation in the City as the official newspaper in which shall be published such measures and matters as are by the laws of this State and this Charter required to be so published, and such other matters as the Council may deem it advisable and in the public interest to have published in this manner.~~

Commented [BAM1]: Many of these processes are set out in state law. Is there any particular harm in following state law for those things? Alternatively, is there something to be gained by the City in having its own form of these regulations? In my mind, it has the potential to create more question with regard to issues of preemption and I don't see a whole lot to be gained by having our own set of rules regarding publishing.

At its discretion, the City Council may also provide for the publication of important city information including but not limited to the annual budget, ordinances, and resolutions. Such publication may be done by mailing or posting of printed copies thereof upon bulletin boards located in public places of the City in such number and for such period of time as the Council may direct in each case. In addition to the legal newspaper, such notices shall also be posted on the City website. ~~In addition, the City Council may use electronic means for publication. Nothing herein contained shall be construed as authorizing or attempting to authorize any violation of the Constitution or the Statutes of the State in any matter which is of State concern or which is exclusively under State control.~~ (Ref Ord 1310)

Commented [BAM2]: In the first paragraph just "Council" is used. For the sake of consistency, it may be worth picking one or the other and updating as necessary. I won't point out other instances where this may have occurred but just wanted to raise it generally.

Commented [BAM3]: I assume this just means information related to these things, as opposed to publishing the things themselves? The item that caught my eye was ordinances. I assume this isn't intended to replace the publication of ordinances upon adoption, but instead to provide a means to provide notice of consideration of an ordinance?

Commented [BAM4]: This doesn't explicitly refer to things like email, social media, etc. Is it worth further broadening this to allow for those types of communications?

Commented [BAM5]: Is this intended to refer only to the publication required in the first part of this paragraph, or also things that are permitted to be published by mailing or posting as authorized in the second part? Maybe one way to match them up is to change it from "in addition to the legal newspaper" to "in addition to publication by mailing or posting required above, such notices.."

Section 12.02. PUBLICITY OF RECORDS.

All records and accounts of every office, department or agency of the City shall be open to inspection in accordance with the Minnesota Government Data Practices Act.

Section 12.03. OATH OF OFFICE.

Every officer of the City shall, before entering upon the duties of the office, take and subscribe an oath of office in substantially the following form: "I, [Name], do solemnly swear to support the Constitution of the United States, the Constitution of the State of Minnesota, the Fridley City Charter and City Code; and to discharge faithfully the duties entrusted upon me as a [Official Title] of the City of Fridley to the best of my judgement and ability. "I do solemnly swear (or affirm) to support the Constitution of the United States and of the State of Minnesota and to discharge faithfully the duties devolving upon me as (Mayor, or Councilmember, or City Manager, etc.) of this City to the best of my judgement and ability." (Ref. Ord. 857)

Commented [BAM6]: This is true regardless of whether the Charter says it, so it could be deleted without effect. I know the Commission may not favor deleting things, so it's fine to keep it, but if there is any interest to remove unnecessary things this is something that could probably go.

Commented [BAM7]: Is there a definition of this somewhere? Certainly the Councilmembers need to take an oath, but is this intended to apply to appointed commission members? Staff (all or just some)?

Section 12.04. CITY OFFICERS NOT TO ACCEPT FAVORS OR CONTRACTS.

No member of the City Council or employee of the City shall:

1. Solicit or receive any:

- ~~any~~ pay;
- commission;
- money; or
- thing of value included but not limited to any:
 - ~~any~~ pass;
 - frank;
 - free ticket;
 - free service; or
 - ~~or~~ any other favor upon terms more favorable than those granted the general public.

Commented [BAM8]: This seems to commingle conflicts of interest with the gift law ban. Maybe that's okay, but I just wanted to point it out, since those rules are a little bit different in nature and focus.

Commented [BAM9]: Does this rule also apply to appointees, such as commission members?

Commented [BAM10]: Just comparing this to the statutory gift ban, there is no restriction on who may give gifts. Under the state law, gifts are prohibited from an "interested person" which is a defined term. Under a technical (albeit unrealistic) reading of this provision, members of the Council and employees would not be able to accept gifts from family members on holidays. While that issue surely won't come up, failing to limit the universe of acceptable scenarios does give some opportunity for this language to be used as a sword in the future. It may be worth considering whether the ban on gifts should loosely follow the statutory rules and limit it to gifts from interested persons.

2. Derive any profit, directly or indirectly, from or by reason of:

- any improvement;
- alteration or repair required by authority of the City; or
- ~~or~~ any contract to which the City shall be a party.

With the exception of:

- lawful compensation, including authorized expenditures; or
- ~~or~~ salary as such member of the City Council or as such employee.

~~No member of the City Council or employee of the City, except as otherwise provided in this Charter, or by law, shall solicit, accept or receive, directly or indirectly, from any public utility corporation or the owner of any public utility or franchise:~~

Commented [BAM11]: This section is a little bit confusing. I think this is intended to reflect general conflict of interest principles? It seems to also contemplate a quid pro quo for things like street projects?

I know in at least a few instances charter language like this has led to some interesting disputes. It's likely okay to leave this here, but there is some statutory language for conflicts regarding contracts that I just wanted to flag (M.S. 471.87). It may be worth considering whether the city wants to rely on that statute and its exceptions, rather than creating different rules, simply as a matter of having a more uniform rule with some precedent. As a general matter, the exceptions provided in statute apply to all cities (including charter cities), so it may be administratively easier to deal with the established statutory conflict rules than trying to come up with a new rule here.

Commented [BAM12]: Which rule is this an exception to?

Commented [BAM13]: Wouldn't this be considered "lawful compensation"? If so, you could probably simplify this to just say that these restrictions do not apply to lawful compensation paid to the individual, including authorized expenditures.

A violation of any of the provisions of this Section shall ~~disqualify subject the offender to appropriate disciplinary action in compliance with all applicable laws and regulations, if found guilty, from continuing in office or in the employment of the City, and the offender shall be removed therefrom.~~ Any contract with the City in which any member of the City Council or employee of the City is, or becomes, directly or indirectly interested personally shall be voidable at the option of the Council, and any money which shall have been paid on such contract by the City may be recovered from any or all of the persons interested therein by joint or several action. (Ref. Ord. 857)

Section 12.05. OFFICIAL BONDS.

The offices of City Manager, the City Clerk and City Treasurer and such other officers or employees of the City, as may be provided for by ordinance, shall each, before entering upon the duties of their respective offices or employment, give a corporate surety bond to the City in such form and in such amount as may be fixed by the Council as security for the faithful performance of their respective official duties and the safekeeping of the public funds. ~~Such bonds shall be approved by the City Council and approved as to form by the City Attorney. They shall be filed with the Secretary of the Council. In the event the Secretary of the Council holds more than one (1) office by appointment, the Secretary's bond or bonds shall be filed with the Mayor.~~ The provisions of the laws of the State relating to official bonds, not inconsistent with this Charter, shall be complied with. The premiums on the corporate surety bonds hereinbefore provided for shall be paid by the City.

A copy of the list and amount of the bonds for each office as outlined above, shall be provided to the Council on an annual basis for reference purposes. (Ref. Ord. 857)

Commented [BAM14]: I'm not sure how this would play out in practice. In the statute I noted above, a violation of the statutory conflict rules is a crime. What disciplinary action would be contemplated here? If this language is different than the statute (which it is), I'm not sure we could rely on the statutory penalties.

Commented [BAM15]: It's not clear how or when one becomes "indirectly" benefitted from a contract. There are several Attorney General opinions which explore those issues as they relate to the statutory provisions in Minn. Stat. 412.311 and 471.87. That said, this language seems to generally mirror the language in 412.311.

I suspect that if or when this issue arose, it would have to be analyzed on a case-by-case basis with reference to that guidance.

Commented [BAM16]: I'm also not sure that this complies with statute. For at least one type of exception to the conflict rules, a contract is void (as opposed to voidable) if the proper procedure is not followed. In that instance, I think the statute likely trumps this language.

As you can probably appreciate, the conflict rules are fairly complicated and are based on both statutory and common law principles. I think a broader question worth asking is, is there a benefit to the City by having its own particular conflict rules? If yes, we should modify these to conform to the statutes where necessary. However, if it's not important for the city to have special rules, then we could rely on the more established conflict rules and avoid some of the administrative difficulties associated with trying to interpret and apply these types of charter provisions.

Section 12.06. SALES OF REAL PROPERTY.

No real property of the City shall be sold or disposed of except by ordinance. The proceeds of any such sale shall be used as far as reasonably possible to retire any outstanding indebtedness incurred by the City in the purchase, construction, or improvement of this or other property used for the same public purpose; but if there be no such outstanding indebtedness, then the Council may by a resolution adopted by an affirmative vote of at least four (4) members of the Council designate some other public use for such proceeds.

Commented [BAM17]: I would generally argue that this doesn't make much sense. Ordinances, in my opinion, are intended to provide a clear, accessible, and perpetual record of what the law is. I don't see a lot of value in documenting the sales of land in such a formal way when a simple resolution is adequate.

Section 12.07. VACATION OF STREETS.

The Council shall have the exclusive power, by resolution passed by a vote of at least four (4) members of the Council, to vacate or discontinue highways, streets, easements, and alleys within the City. Such vacations may be made only after notice and hearing of affected property owners, in accordance with State Statute, and upon such further terms and by such procedure as the Council may by ordinance prescribe. A record of each such vacation shall be filed in the office of the Anoka County Recorder. (Ref. Ord. 592, Ord. 1090)

If transparency is the goal, I think it would potentially be more useful to require a public hearing before the sale, or if that's too much, simply require the matter to be discussed at two separate meetings.

Commented [BAM18]: This language imposes a higher voting threshold than state law (with regard to vacations initiated by petition at least), and the inclusion of the "in accordance with state law" seems to imply some deference to the statutory process. That process seems to work pretty well for most cities, so I just wonder what having this in the Charter adds, and whether there is some particular benefit to requiring a super majority vote for a vacation?

Section 12.08. DAMAGE SUITS.

- 1. ~~No action shall be maintained against the City on account of any injuries or damages to persons or property, unless such action shall be commenced within one (1) year from the occurrence of such injury or damage, nor unless notice shall have been given in writing as required by Minnesota Statutes. (Ref. Ord. 873)~~
- 2. ~~No action shall be maintained against the City on account of injuries or damages to persons or property resulting from or caused by any accumulation or deposit of ice or snow on any public street, sidewalk, building, or place.~~

This language also does not seem to require a finding that the vacation is in the public interest, which is a statutory requirement, again adding some potential question about what rules apply.

Section 12.09. RECOVERY OF JUDGEMENT FOR DAMAGES.

~~If any judgement shall be recovered in any action against the City for any injury or damage caused by any obstruction, excavation, opening or defect in any street or alley or public ground caused or occasioned by the act or omission of any person or corporation, the City shall have the right to recover the amount of any such judgement from the person or corporation so responsible for such obstruction, excavation, opening or defect; and such person or corporation is hereby declared to be liable to the City in the amount of such damages, provided, however, the City shall give such person or corporation notice of any claim for such injury or damage and of any action to recover for the same and shall give such person or corporation the right and reasonable opportunity to defend such action.~~

Section 12.10. CITY TO SUCCEED TO RIGHTS AND OBLIGATIONS OF FORMER MUNICIPALITY

The City of Fridley shall remain vested with and continue to have, hold and enjoy all property,

property rights, rights of action, and rights of every kind, privileges and immunities now belonging to or pertaining to the Village of Fridley,~~5~~ ~~and The City~~ shall be subject to all liabilities which exist against said Village on the effective date of this Charter.

Section 12.4409. APPLICATION OF GENERAL LAWS.

All general laws and statutes of the State applicable to all cities operating under home rule Charters, or applicable to cities of the same class as the City of Fridley operating under home rule Charters, and not inconsistent with the provisions of this Charter, shall apply to the City of Fridley and shall be construed as supplementary to the provisions of this Charter. ~~The City shall have all powers and authority granted by the laws of the State to municipalities to acquire property or exercise authority or powers beyond the corporate limits. All powers by this Section conferred shall be exercised conformably to this Charter so far as may be possible, and such authority and power shall not authorize the City to incur any bonded debt beyond the limitations, or in any other manner than authorized by this Charter.~~

Nothing herein contained shall be construed as authorizing or attempting to authorize any violation of the Constitution or the Statutes of the State in any matter which is of State concern or which is exclusively under State control.

Section 12.4210. EXISTING ORDINANCES, REGULATIONS, BOARDS AND COMMISSIONS CONTINUED

All ordinances, regulations, boards and commissions of the municipality in force and existing when this Charter takes effect, and not inconsistent with the provisions hereof, are hereby continued in full force and effect until amended, repealed, vacated or abolished.

Section 12.4311. PENDING CONDEMNATIONS AND ASSESSMENTS.

Any proceeding for condemnation for public improvement or assessment in progress when this Charter takes effect shall be continued and completed under the laws under which such proceedings were begun. All assessments made by the Village prior to the time when this Charter takes effect shall be collected and the lien thereof enforced in the same manner as if this Charter had not been adopted.