

CHARTER COMMISSION MINUTES

City Council Chambers

April 8, 2015

I. ROLL CALL:

Present: Commissioners Birchland, Britton, Erdman, Hales, Lamkin, Latto,
Nys, Poole, Seim, Spehar and Strongitharm – 11

Absent: Commissioners Hendrickson, Maki, Sample and Zimmerman – 4

II. ACCEPTANCE OF REQUESTED EXCUSED ABSENCES:

Cox: Commissioner Sample informed me that he had to out of town for work and
Commissioner Maki and a family medical issue and they both requested to be excused.

Lamkin: Motion has been made, seconded and unanimously carried to REFLECT THE
ABSENCE OF COMMISSIONERS SAMPLE AND MAKI AS EXCUSED.

III. APPROVAL OF MINUTES: October 8, 2014

Motion was made, seconded and unanimously carried to approve the minutes of October 8, 2014.

III. COMMUNICATIONS:

A. CITY ATTORNEY SUBMITTING DRAFT ORDINANCE AMENDING CHAPTER I,
SECTION 1, OF THE CITY CHARTER AMENDING THE LEGAL DESCRIPTION FOR
THE CITY OF DULUTH. #15-01 Received.

IV. UNFINISHED BUSINESS:

A. RESOLUTION REQUESTING COUNCIL MEMBERS AND THE CHARTER COMMISSION REVIEW AMENDING THE CITY CHARTER TO ADDRESS CITY COUNCIL VACANCIES.

Gardner: As you may remember, I came before you last year to talk about Council appointments and possible special elections being used to fill in certain circumstances. I do have the resolution (#15-2) with me so we're clear about what it was, and that we wanted to fill the vacancies that occur more than one year before the next municipal election, provide the Council the option of possibly just using the current appointment process, or calling for a special election following an appointment process that has resulted in a tie. I'd like to meet with Commission members who are interested in dealing with this and working with me it and Attorney Johnson, to go over the data that we've gathered and then see if we can't get a recommendation from you before we proceed any further. And I'm thinking we could have a sub-committee meeting sometime in late April or early May and Mr. Cox, perhaps, could set the meeting up. Will that work?"

Lamkin: That would be great. We will just ask for volunteers to serve on the committee and would volunteers willing to serve on the committee contact Mr. Cox.

V. NEW BUSINESS:

A. DRAFT ORDINANCE AMENDING CHAPTER I, SECTION 1, OF THE CITY CHARTER AMENDING THE LEGAL DESCRIPTION OF THE CITY OF DULUTH.

Johnson: As you know, we've done this in the past where the most recent amendments to the Charter have been amending the Charter to comply with the changes in the legal description of the City as we've either annexed or un-annexed certain pieces of property. There was 80 acres that went to Proctor a few years ago for what we call the Proctor Fairgrounds property and we amended the legal description of the City to comply with that. Now, most recently there's been a couple of thousand acres that the City has taken in in Midway Township and that's the purpose of this ordinance to amend the legal description to include that property. There is another annexation that is coming forward, hopefully in the next couple of months and it's 220 acres in Rice Lake Township so we're going to do this again. It's not imperative that you move forward on this particular ordinance because we could wait and do it all at one time. Since we

don't know when the next annexation will be finalized I felt it was appropriate to deal with this one because the time has come to deal with it and we can deal with the next one when that is ready to go too. I think when the next one comes through, the Rice Lake Township annexation, we should do a more comprehensive re-writing of the legal description of the City because what we've kind of done is, little patches as it's changed. We want to come back and do a good job of comprehensively looking at that and getting a good legal description. So, now we're dealing with a band-aid on the Midway Township property. I think it would be a good idea to move forward on that but if the Commission doesn't want to do that, that's fine too.

Britton: If we have a comprehensive solution coming forward within the next foreseeable future, it seems to me, why act now? Might as well do it all at once. I like the idea of having a comprehensive solution and not continually add on. That makes sense."

Lamkin: I believe that Mr. Johnson's suggestion was that we would make the band-aid this time and then do the comprehensive when we incorporated the Rice Lake property into the description so that it would be all at one time and be cleaned up title or cleaned up description of the City. Isn't that correct?"

Johnson: Commission members, I'm somewhat indifferent. It depends on what you want to do. Since we did put this before you, obviously I thought there was some validity in dealing with this now, but if the Charter Commission wanted to wait I don't have an issue with that."

Spehar: In light of the Rice Lake annexation is, if it's a done deal, if it's something that's inevitably going to be happening in the foreseeable future, then I'd say wait. But if it's more than just tentative, to just get the Midway Township language in the Charter right now.

Johnson: Commission Spehar, I do believe that it is forthcoming. I'm hopeful that we'll get a decision in May or early Summer, but what we're doing is a fairly unique arrangement where you have a township becoming a city and it's kind of a part of that proceeding., There is also an annexation that's happening with that. So, it's somewhat complicated. There's a fairly new judge handling it at the Department of Administrative Hearings. So, there are no guarantees and it wouldn't surprise me if it dragged on a little bit longer than I expected.

Spehar: Given that, I don't see a reason to not vote on the Midway Township.

Hales: I'm looking here and it was passed with the Council July 21, 2014, so I guess I would agree that maybe we just move forward and give you a little extra paperwork. Put the band-aid in because the way our Charter meetings go too, our next meeting isn't until July, so if you want to get this on the books, it would seem to me that it would make sense to do it now.

Nys: I think the last time we looked at this, maybe last year, there was at least the idea or the question was asked, do we even need to have the legal description in the Charter. I don't recall if there was an answer to that.

Johnson: That is a different question and I honestly don't have an answer to that off the top of my head. I would have to do some research and look at some other Charters. Obviously, it's something that we have had in the Charter since it was established and if we want to look at taking the legal description out that's something that I should put some work into and hopefully have an answer to you by the next time we meet."

Lamkin: Any other comments? If not, I'll call for a motion to rewrite the description to include the annexed property.

Commissioner Latta, moved that DRAFT ORDINANCE AMENDING CHAPTER I, SECTION 1, OF THE CITY CHARTER AMENDING THE LEGAL DESCRIPTION OF THE CITY OF DULUTH, BE APPROVED AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR THEIR APPROVAL, WHICH MOTION WAS SECONDED AND CARRIED UNANIMOUSLY.

B. SECTION 5 - DISCUSSION WITH COUNCILOR GARDNER REGARDING POSSIBLE MODIFICATION OF COUNCIL PAY.

Johnson: The pay of Councilors is contained in the City Charter. The last time that pay was modified I believe was in 1999. The reason we put this on your agenda is to start a discussion. There are really three things you could do. You could do nothing, which is what has happened since 1999, and that's fine. You could look at changing council pay if need be. You could compare and look at where you want the pay for Councilors to be. You could evaluate that and decide to bring it up or bring it down or deal with it how you want. There's another thing you could look at, which would be thinking about the process for setting Councilor pay. Obviously if it's been 16 years since Councilor pay was last addressed, maybe that's not enough and maybe there should be a different process than having the Charter Commission set Council

pay. That's really a question I think for you to chew on. I think, you certainly don't want to kick it to the Council to set their own pay, or maybe you do. I don't know. There's issues with the Mayors setting the Councilor's pay. I think, it's a difficult question that would require some thoughtful discussion of this Commission to decide if that's something you want to look into and what are the best practices for setting Council pay. And then finally, there's never really good time to talk about Council pay so that's why now is as good as any. We have elections coming up in November and if we wait I don't think things will get any better, so that's why we put it on the agenda for you. I hope you can start a healthy discussion about if and how to deal with this issue."

Gardner: I passed out some information (# 15-03) that I asked the City Attorney to put together with regard to Council salaries in comparable cities: Rochester, St. Cloud, Bloomington, Brooklyn Park, and Plymouth. You'll notice that Duluth is the only city that uses the Charter as authority. I actually don't have any opinion on this. I'm just pointing things out. You can see, and what we tried to do is also have the cities have a comparable city organization as Duluth with the part-time councilors and the administrative mayor so it is a similar city organizations so you could look at the pay. The other handout (#15-04) you have is the Personnel Committee resolution that we passed on the mayoral salary. And we did this back in November of 2013, and you'll notice there is in the "Therefore be it resolved" or "Further resolved" that the City Council hereby establishes a mayoral salary review committee which shall be a group comprised of the city council personnel committee, three community leaders who are selected, appointed and approved by city council resolution. That might be something that the Commission could consider and perhaps have Commission members participate in a similar kind of committee. That was a thought that I had with regard to if the Commission deems that there may be a different way of doing this. Because you know that every time we have to do a Charter ordinance it has to pass by 9 council members. There's always going to be somebody who isn't going to want to, you know because for political reasons, and so then it goes to referendum. And is that what we want? It's a very unwieldy process. I think it's one of the reasons that it doesn't get brought up very much, aside from the political ramifications, because nobody ever seems to think that elected officials deserve to earn anything and we all get paid too much. I guess. But seriously, I think just putting these issues out there I'm seeking feedback from this Commission on this issue.

Halls: I have one question on this list. Duluth is a charter city. I know Rochester is a charter city also and maybe Bloomington. Are these all charter cities on this form?

Gardner: Just for clarification, the way that the salaries are decided for city councilors in these other cities is all by ordinance. We are the only city that uses the charter and requires a charter change for councilor salaries of these cities that we reviewed.

Hales: Ok, even though some of these are charter cities?

Gardner: Even though some of them are charter cities. That's correct.

Strongitharm: When legislators have to do their own pay, it's uncomfortable for them. It becomes political. I don't have a problem with this remaining in the Charter but I would like, instead of the Charter Commission setting the salary, have a system in the Charter, whether it's tied to the raises that are given employees, whether it's tied to the consumer price index, so that you don't have to come back and it takes the politics out of it. The Councilors do a lot of hard work and they should be compensated for it and I think the pay for the Mayor and the Council has been kept down because of the politics. That's not necessarily the way to do it. So, I think the easiest way is to have a Charter language that sets how the raises are going to come, whether it's related to negotiated pay raises for employees, whether it's related to the consumer price index, or how it's related. That way we never really have to discuss this again and it takes the politics out of what the pay should be.

Gardner: Just to clarify, so what you're saying is that you would like to see the Charter amended to develop a process and the process could be to be determined by you, by the Charter Commission. Does it make sense to you to have a council salary review committee? I gave you that resolution with regard to the mayoral salary because I think if the Commission did something like that, it would take some of the politics out of it. Obviously, the Council would not be involved in it, so cross out City Council Personnel Committee, and just stick with the Charter Commission Committee, subcommittee, and three community leaders who are appointed by the mayor or something like that. I think, maybe it would make it a little more objective to get citizens involved in it as well.

Strongitharm: I think there are two things. One, is we have to catch up for the 16 years there's been no change. We can't just put that you're going to get what City employees get or whatever like that because you'll never catch up. You're already 16 years behind. That committee would be really, I think, a valuable asset to say "What should the City Councilors be making today?" The second part is, how we want to set up these future reviews. How we're going to tie it to something so that we don't have to have this discussion again. But there will have to be some kind of catch up. I like what you did in the

resolution with the mayor. It shows what the raises were and there's logic to that. Something similar to that to get caught up and then from that day on we'll just have it tied to either the employee's pay or whatever the Commissioners would like to have it tied to with input from a committee. I don't think we should necessarily get rid of that committee. Use it at least to establish this process and then once it's established and everybody agrees that this is a good thing we won't have to talk about pay ever again.

Seim: So, based on that, I wonder if we shouldn't have a motion to form a Committee from the Charter? Does that make sense?

Britton: I just want to echo what John was saying. I think coming up with an apolitical formula such as Plymouth did, effective every two years, even after year municipal elections, and base it on something such as your CPI. That really makes sense. It really takes it out of the political realm, so I'm all for that."

Lamkin: I agree, as well. Councilors don't do this for the pay, but a way to give back to their community, but we must reimburse them for some of out of pocket costs as well so I think that's a very good motion to act on. Do we have a motion to act on?

Strongitharm: I move that A COMMITTEE OF THE CHARTER COMMISSION MEET TO DISCUSS COUNCILOR GARDNER REGARDING POSSIBLE MODIFICATION OF COUNCIL PAY, WHICH MOTION WAS SECONDED AND CARRIED UNANIMOUSLY.

Lamkin: Would volunteers willing to serve on the committee contact Mr. Cox.

C. SECTIONS 50, 51 & 52 - DISCUSSION WITH COUNCILOR GARDNER REGARDING REMOVAL OF CHARTER LANGUAGE SETTING SPECIFICS WITH RESPECT TO WHEN SPECIAL ELECTIONS ARE TO BE HELD

Gardner: I think the reason that this discussion is because of the language in the Charter with regard to recall elections. I have a certain amount of expertise in that issue now that I wouldn't have had otherwise. You know, every experience one has in politics, you need to learn from it. But what I did see and what I observed as I was reviewing this is that the Charter is silent on the reason for a recall. The way it stands now is that, somebody can look at the Charter and say, 'Well, yeah, you can just do this. You don't even have to have a reason. You don't have to say why. Further review of the State Constitution indicated that, in fact there must be a reason for recall and that reason must be either malfeasance or misfeasance. I'm

thinking the Charter Commission might want to look at this and incorporate the State Constitution trumps the Charter anyway. I think it would be useful. if somebody decides they want to do this to another person in the future, that in fact they're going to have to actually come up with some real reasons. I think it would eliminate frivolous actions and clarify things for citizens as well.

Lamkin: It does make very good sense that there should be a reason that someone can initiate a recall petition rather than just spitefulness or whatever they may have in mind.

Johnson: We wanted to try to identify this as a looming issue. I would look to Charter Commission to say, this is something that we want to put it on our radar and maybe you can direct us; saying maybe have the Administration work on a draft proposal so that we can dig into it deeper at the next meeting of this body.

Lamkin: Looking around the room, I'm seeing lots of nodding, positive remarks, so Mr. Johnson, if you could PREPARE LANGUAGE AMENDING SECTIONS OF THE CHARTER DEALING WITH REMOVAL OF CHARTER LANGUAGE SETTING SPECIFICS WITH RESPECT TO WHEN SPECIAL ELECTIONS ARE TO BE HELD for the next meeting, that would be appreciated.

VI. ADJOURMENT:

MOTION WAS MADE, SECONDED AND UNANIMOUSLY CARRIED TO ADJOURN.