

CHARTER COMMISSION MINUTES

City Council Chambers

July 8, 2015

I. ROLL CALL:

Present: Commissioners Birchland, Britton, Erdman, Hales, Hendrickson, Lamkin, Latto, Maki, Nys, Poole, Sample, Seim, Strongitharm and Zimmerman – 14

Absent: Commissioner Spehar – 1

II. ACCEPTANCE OF REQUESTED EXCUSED ABSENCES:

Cox: Commissioner Spehar informed me that she had to out of town for work and requested to be excused.

Lamkin: Motion has been made, seconded and unanimously carried to REFLECT THE ABSENCE OF COMMISSIONER SPEHAR AS EXCUSED.

III. APPROVAL OF MINUTES: None

IV. COMMUNICATIONS:

- A. CITY ATTORNEY SUBMITTING DRAFT ORDINANCE AMENDING CHAPTER II, SECTION 4, OF THE CITY CHARTER TO ALLOW AN ELIGIBLE PERSON TO FILL A VACANCY UNTIL THE FIRST MONDAY IN JANUARY AFTER THE NEXT MUNICIPAL ELECTION. #15-05 - Received
- B. CITY ATTORNEY SUBMITTING DRAFT ORDINANCE AMENDING CHAPTER II, SECTION 4, OF THE CITY CHARTER TO ALLOW THE CITY COUNCIL TO CHOOSE AN ELIGIBLE PERSON BY COIN TOSS TO FILL A VACANCY IN THE COUNCIL IS DEADLOCKED. #15-06 - Received
- C. CITY ATTORNEY SUBMITTING DRAFT ORDINANCE AMENDING CHAPTER II, SECTION 5, OF THE CITY CHARTER TO ESTABLISH A PROCEDURE TO SET THE

FEE PAID TO CITY COUNCILOR MEMBERS FOR SERVICE AS A MEMBER OF THE CITY COUNCIL. #15-07 - Received

D. DULUTH BETTER BALLOT CAMPAIGN COMMITTEE SUBMITTING WORDING OF A PROPOSED CHARTER CHANGE TO ALLOW FOR RANKED CHOICE VOTING IN MUNICIPAL ELECTIONS. #15-08 - Received

E. COMMISSIONER ERDMANN SUBMITTING COMMUNICATION REGARDING HIS CONCERNS ABOUT THE PROPOSED RANKED CHOICE VOTING CHARTER CHANGE AMENDMENT. #15-09 - Received

F. FAIR VOTE MINNESOTA SUBMITTING COMMUNICATION RESPONDING TO COMMISSIONER ERDMANN'S COMMUNICATION REGARDING RANKED CHOICE VOTING. #15-10 - Received

V. UNFINISHED BUSINESS: NONE

VI. NEW BUSINESS:

A. DRAFT ORDINANCE AMENDING CHAPTER II, SECTION 4, OF THE CITY CHARTER TO ALLOW AN ELIGIBLE PERSON TO FILL A VACANCY UNTIL THE FIRST MONDAY IN JANUARY AFTER THE NEXT MUNICIPAL ELECTION.

Johnson: This is an issue that's been kind of percolating, especially at the City Council level for well over a year and I know Councilor Gardner has worked hard on it as have other Councilors. We met with a sub-committee of this group on May 5 and worked through this issue and some other issues that we'll talk about later. I think that that sub-committee made some really good progress, had some really good ideas and good discussions and came up with this particular draft ordinance which clarifies an issue that we had a while back: whether a new Councilor starts right after the election or do they wait until that first Monday in January? This makes it clear, and so we submit this for your review and hopefully your approval.

Commissioner Britton moved that the DRAFT ORDINANCE AMENDING CHAPTER II, SECTION 4, OF THE CITY CHARTER TO ALLOW AN ELIGIBLE PERSON TO FILL A VACANCY UNTIL THE FIRST MONDAY IN JANUARY AFTER THE NEXT MUNICIPAL ELECTION, BE APPROVED THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR THEIR APPROVAL, which motion was seconded and carried unanimously.

B. DRAFT ORDINANCE AMENDING CHAPTER II, SECTION 4, OF THE CITY CHARTER TO ALLOW THE CITY COUNCIL TO CHOOSE AN ELIGIBLE PERSON BY COIN TOSS TO FILL A VACANCY IN THE COUNCIL IS DEADLOCKED.

Johnson: When somebody resigns or leaves the Council, there's always an issue about how to pick the new Councilor. Our Council has nine members. When you have one that leaves you have eight members which inevitably leads to a four-four tie. We have worked with various methods to break that tie. The last time we used a different method and that lead to some controversy, and so the sub-committee of this group along with Councilor Gardner, we sat down and kind of built on a lot of the work that a previous Council committee had worked on and came to a consensus on this particular draft ordinance, which would allow the Council to flip a coin in the case where there's a deadlock, and so again, I would recommend this for approval.

Hales: I was involved in a coin toss many years ago and it worked out okay. So, I think it's a logical way to end things.

Hendrickson: I have no problem with the coin toss idea. It sounds like a good idea. My question is, when does that coin toss happen. Should it be on the first vote if there's a tie, if the coin is tossed then, nobody has a chance to change their vote and to break the tie. So, the question then becomes this: If the tie vote is the first vote, I think logic tells me that there should be at least one more vote for somebody to change their vote if they wish.

Gardner: I just wanted to clarify that the Council will determine the process by which the appointee is chosen, and there usually is at least four ballots and there has been talk of even going up to seven ballots. But that part will be done in resolution, and then the Council President will decide at some point between the fourth and the seventh ballot whether there is a deadlock, and then the coin toss would then come into play. And it should also be pointed out that this is the method that Minnesota statute uses to break ties, so I think that we are on pretty firm legal ground.

Commissioner Britton moved that the DRAFT ORDINANCE AMENDING CHAPTER II, SECTION 4, OF THE CITY CHARTER TO ALLOW THE CITY COUNCIL TO CHOOSE AN ELIGIBLE PERSON BY COIN TOSS TO FILL A VACANCY IN THE COUNCIL IS DEADLOCKED BE APPROVED

AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR THEIR APPROVAL , which motion was seconded and carried upon unanimous vote.

C. DRAFT ORDINANCE AMENDING CHAPTER II, SECTION 5, OF THE CITY CHARTER TO ESTABLISH A PROCEDURE TO SET THE FEE PAID TO CITY COUNCILOR MEMBERS FOR SERVICE AS A MEMBER OF THE CITY COUNCIL.

Johnson: The question of how to set council pay is a difficult question. It's one that has been hard for many, many different cities and Duluth is not unique in that way. I think that the process that has been set forth here is a compromise. It's a real common sense, workable, straight forward solution to a difficult problem.

Strongitharm: Unfortunately, I couldn't be at the committee meeting because I was out of state when it took place, but the way this is set up, the Councilors would still have to vote for their own raise, correct?

Johnson: That is correct.

Strongitharm: And in the past, that's been part of the problem, because Councilors are hesitant to give themselves a raise, on the appearance, and that's why it goes a decade or two decades without a raise. Was there an understanding that to try to get some of that stigma away from it, so if we make a recommendation of a pay increase, it would get some reasonable consideration? Because if they're all going to get voted down because no one wants to give themselves a raise it seems like we're just kind of spinning our wheels.

Johnson: Commissioner Strongitharm, I think you make good points and these are obviously points that were considered by the subcommittee. I'll point out three things. One, the timing of the change is now more driven by the Charter Commission than it was by the Council, so the Charter Commission can start that process on a more regular basis. I think that's one significant change. The second thing is the vote requirement has been modified from a unanimous 9-0 vote, which it was in the past, to now a 2/3 vote, which is obviously a super-majority, but one person doesn't have a veto anymore. And finally, I think it's been clarified that no new compensation or fee will come into play until January, after the next municipal elections, so it clarifies that point too. I think those are three significant points that have been made in this ordinance.

Gardner: Your concerns were taken into consideration when it was discussed and what this is doing, I think is really helpful. It's changing the process. It is keeping the decision about how much and the amounts with the Charter Commission which I think is very sensible. But then, by ordinance we will be voting it up or down, the recommendation of the Charter Commission, but the Council will take the Charter Commission's recommendation very seriously. I think the timing, like if we're looking at something this year, would be practically ideal because most of the Council actually is going to be changing. I think it would be a very clean process, and it takes a lot of the political piece out of it, which is important. I'm really hoping that the Commission is planning on taking action on this because the language about the fee of \$833 per month, which is what we are receiving now, has been crossed out, so I'm hoping that that isn't going to be an issue.

Johnson: It would be my opinion at this time that the \$833 would continue until changed because that has been approved by the Council through the process, and so that was the fee that was set and the fee does not change until this process is followed.

Zimmerman : In the document here there's no limit on the percentage jump at any one session and I'm wondering if you've thought about that. I mean, it doesn't say that it only jumps up. It also could jump down, so it could conceivably, the Charter Commission could say zero and your only choice is to agree with it.

Gardner: I'd like to defer to a member of the committee to speak to that. I know that this was discussed and maybe Dehlia or Susan, you might have some recollection about that?

Seim And some of the issue with the current Charter was having a fixed number and not being able to control it, but making sure that by going through the Charter Commission, as a recommendation we could kind of reflect what's happening in the current economy. Right now the Councilors have not had a change for how many years. We've talked about trying to get them up to speed for the last 15 years and then kind of making it reflect what's changing with the city employees. I think the key to remember is that the Charter Commission is made of the citizens who are going to be making this recommendation to the Councilors and the Councilors will have to decide one way or another. But hopefully we'll be a reasonable body coming to the table and making our recommendation together that matches. Another thing I'd add that we talked about at our committee was the challenges that the City has had attracting candidates for Council. We're thinking about how we can make it not cost Councilors so much to be on

the Council. It is a public service but it's certainly been taxing some of the younger families that have wanted to serve on the Council.

Gardner: I totally agree. I think it's been taxing particularly to people with young families, and the child care costs and especially if both parents are working. And we don't want the Council to just be full of retired people and/or wealthy people. We want our Councilors to represent our community.

Britton: My question is, was there any consideration of a simple majority rather than 2/3? I understand you went from a 9-0 to a 2/3. Was there any discussion at all over a simple majority?

Gardner: We did discuss that and I think Attorney Johnson covered it earlier or maybe touched on it briefly, but the whole point is that right now, for any Charter recommendation it has to be a unanimous vote by the Council. This is actually opening it up and so the 2/3 seemed reasonable because we didn't want just one person to have veto power. We wanted to have a solid majority and a minimum of 6 votes is certainly a solid majority.

Latto: You know, it's an important decision and having that super majority we felt, as a committee was important. Regarding salary going up or staying the same or whatever again, part of the reflection of the current economy, what other city employees are receiving is all part of it. That's all part of the reflection of the times that we can't know. We did talk about quite a few of those issues.

Strongitharm: This is more of a procedural thing. I'd like to see the pay, like a standard item on the July meeting agenda item so it doesn't get lost somewhere in the system. And that way we'll all know it's coming because it'll be on the agenda. We'll have time to think and review it and be more timely, just like the elections and stuff like that.

Maki: I support the proposal as drafted. Because there will only be one meeting of the Charter Commission before the next election, I would like to see some sort of report or communication from staff regarding what other cities and municipalities of similar size and governmental structure pay their Councilors that we can take action at the next meeting so it's in place, or hopefully in place, prior to the next election.

Commissioner Maki moved the DRAFT ORDINANCE AMENDING CHAPTER II, SECTION 5, OF THE CITY CHARTER TO ESTABLISH A PROCEDURE TO SET THE FEE PAID TO CITY

COUNCILOR MEMBERS FOR SERVICE AS A MEMBER OF THE CITY COUNCIL BE APPROVED AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR THEIR APPROVAL, which motion was seconded and unanimously carried.

D. FAIR VOTE MINNESOTA WORDING OF A PROPOSED CHARGER CHANGE TO ALLOW FOR RANKED CHOICE VOTING IN MUNICIPAL ELECTIONS

Johnson: The Charter Commission does have a role in this process. The role is not at this point to determine whether or not ranked choice voting is good for Duluth or not. It's in the process of, there's been a petition, the Clerk's Office will be looking at that petition to verify that the names and the numbers are sufficient. What you are to do here is as part of that process to look at this and make sure there are not questions or issues of legality which I am happy to advise you on. You are to review this and then pass it on to the City Council. I think there should be a vote and I would strongly recommend that you pass this on unless there's something that I don't know about the legality that would justify not passing that on.

Strongtharm: We are voting just to sending it to the City Council?

Johnson: Correct. I mean, this is part of a process and what this process. If the signatures are sufficient and they meet the requirements it will mean that it is put to the members of our community to vote on whether or not this is something that they want or not do.

Erdman: My only concern from the legality standpoint is that terminology can refer to any ranked choice voting method and that's in there along with the single transferable vote which is a specific one. So having both in the wording of this makes it, I think, kind of ambiguous, just because it's one specific method and then a variety of different methods. So I don't know if that's a concern that we need to take up or not.

Johnson: I think that's a fair point and that is something that we have discussed and worked through and actually I just met with Councilor Gardner before this and we were talking about that very same issue. If you look at the proposed ordinance before you, Section 37 talks about municipal elections and then it talks about notwithstanding. And the last sentence of that paragraph says that the City Council shall by ordinance establish the ballot format and the rules for casting and counting the votes for Districts and at-large seats. So now you're dealing with the more generalized ordinance. Obviously there are going to be a lot of details if it does pass at the referendum stage, then it's going to come back to the City Council

and they're going to have some work to do. And so there's a process for ironing out those details, but yes, there are some ambiguities in those questions.

Commissioner Britton moved that the FAIR VOTE MINNESOTA WORDING OF A PROPOSED CHARGER CHANGE TO ALLOW FOR RANKED CHOICE VOTING IN MUNICIPAL ELECTIONS BE FORWARDED TO THE CITY COUNCIL, which motion was seconded and carried upon the following vote:

Yeas: Commissioners Birchland, Britton, Erdman, Lamkin, Latto, Maki, Nys, Poole, Seim, Strongitharm and Zimmerman - 11

Nays: Commissioners Hales, Hendrickson and Sample – 3

VII. ADJOURMENT:

MOTION WAS MADE, SECONDED AND CARRIED UNANIMOUSLY TO ADJOURN.