

CHARTER COMMISSION MINUTES  
City Council Chambers  
October 12, 2016 5 P.M.

I. ROLL CALL:

Present: Commissioners Anderson, Britton, Erdman, Gardner, Johnson, Kimber, Lamkin, Maki, Nys, Seim, Spehar, Strongitharm and Zimmerman - 13

Absent: Commissioners Ness and Poole - 2

II. ACCEPTANCE OF REQUESTED EXCUSED ABSENCES

The City Clerk reported that Commissioner Ness had contacted him with a work commitment and requested that the commission excuse him.

Motion was made, seconded and unanimously carried to reflect commissioner Ness's absence as excused.

III. APPROVAL OF MINUTES: October 14 and November 24, 2015

Motion was made, seconded and unanimously carried to approve the minutes.

IV. COMMUNICATIONS:

A. CITY ATTORNEY SUBMITTING DRAFT ORDINANCE INCORPORATING PREVIOUSLY APPROVED CHANGES INTO THE BOUNDARY DESCRIPTION OF THE CITY IN THE CHARTER, AMENDING SECTION 1, OF THE CITY CHARTER. #16-01 - Received.

B. CITY ATTORNEY SUBMITTING DRAFT ORDINANCE AMENDING CHAPTER III, SECTION 17, OF THE CITY OF DULUTH HOME RULE CHARTER, 1912, AS AMENDED, PERTAINING TO AMENDING OR REPEALING ORDINANCES. #16-02 – Received.

V. UNFINISHED BUSINESS: NONE

VI. NEW BUSINESS:

A. DRAFT ORDINANCE INCORPORATING PREVIOUSLY APPROVED CHANGES INTO THE BOUNDARY DESCRIPTION OF THE CITY IN THE CHARTER, AMENDING SECTION 1, OF THE CITY CHARTER

G. Johnson: This is ordinance before you, doesn't change anything. It is a cleanup at this point. The city of Duluth over the past many years, had the basic legal description of the city, then we tacked on the property at the airport, got rid of the Proctor Fairground Property, then we annexed a large portion in Midway Township and most recently the City of Duluth annexed what was formally known as the Rice Lake soccer fields. And the way we did this in our Charter, is each time we added or deleted a piece of property, instead of changing overall legal description, we tacked it on the end as "plus this property or instead of this property". I think there isn't going to be a lot more property coming in through annexation. Probably a good time to clean it up and do it the real way, with a legal description instead of a legal description that tacks on piece after piece. So that is what is before you. I believe we do have one person here tonight who does have an issue with one piece of the legal description. One more item to add a while back, Mr. Nys inquired why we even need a legal description in the city charter and the answer to that is no, it is not required, but it is something that has been in there since the Charter was created in 1912. I think it is a nice, from my perspective, a nice resource for citizens to have.

Nys: Does anyone wish to address this issue?

Jerry Smith: I'm going through all the hoops and battles that I can, to try to find information about who actually owns the water, from the shore all the way out into Lake Superior. I do have a map that I was supplied by Mr. Johnson. Basically from the MN side of WI Point, just South of McQuade Harbor they say it runs out about 4 to 6 miles, is the City Limits. I can't find any maps from anybody that can actually give me a legal description if that is city property. I want to waterfowl hunt in this area of the water. Since 1938, the state of MN has shut down open water hunting. That means you do not need to be within natural growth or vegetation. You have to stay in the water. They changed that law and allowed it in 5 lakes. One of them is in Lake Superior. In the MN waterfowl handbook, it says open waterfowl hunting from the MN side of WI Point, everything N and W. So that encompasses from off of WI Point on MN side all the way to the Ontario boarder.

What I am trying to find is, how far I have to be off shore. It is not a matter of me discharging a firearm and upsetting anybody. That is something I do not want to do. This is more of a safety issue, because I can't go into 200 feet of water with a boat that is 10 feet long only and sits 6 inches above the water line. I am just after trying to find a map where I can or can't. I have spoken to the DNR. They said that there is a buffer zone that goes anywhere from 50 feet to 150 feet to maybe 200 feet that is around the shore that is owned by the city and the rest is owned by the State of MN. State of MN owns these waters not Duluth, they own the soil rights not Duluth. In order for me to not be able to lay out and boat hunt in open water it must be encompassed 100% in City limits. It is not. That is my question that I would like to address. You won't be out there seeing many people doing this. There is really a small select amount of people. It is something that is on my bucket list. I have been a waterfowl hunter for 30 years. It is something I have the right to do. I don't want to upset anyone. I want the opportunity to do it safely by going 200 feet offshore and discharging a firearm into the open water where it would be legal and it is safe. The only complaint would be a little bit of noise. There is not a safety concern if we are offshore. I am not including the bay. I am only concerned about the waters off Park Point and up the shore. What I was purposing is 200 feet and you can do this in WI waters, off Park Point in between WI and MN entry. I just want an opportunity. I might do it once a year I might do it twice a year. The state of MN says do it and it is not DNR issue. Just a city issue with the discharge of a firearm.

G. Johnson: Mr. Smith has been reaching out to the city since 2013. If I could just summarize the problem for you, is that off of Park Point in the lake you would like to lay out in a boat and hunt waterfowl in the Fall?

Smith: Yes

G. Johnson: And the problem you have come up against is that the description you have been given in the city charter is it would be in city limits and you cannot discharge a firearm in city limits.

Smith: Yes

G. Johnson: So you are asking the Charter Commission if they would consider maybe changing the boundary of the city so you could not be in the city while hunting. The problem would be solved and you would be able to do it.

Smith: It is not so much exactly what I want to do, it is what the hunting public would like to do. It is just not for me, for the whole public. It is very misleading. It says that it is legal to hunt everything North and West of WI Point, open to public hunting, but then the City says that I can't. I can't get a 100% positive map from the city, from anybody.

Anderson: Mr. Smith, this is a question regarding waterfowl hunting, is it allowable now along the St. Louis River and adjacent to neighborhoods?

Smith: Not on the MN side, on the WI side it is.

Anderson: The map we are looking at, the line we are looking at, is it legally defined by the City Charter boundaries?

G. Johnson: It is the line that has been defined for many years and it is the line that in the description you have before you today would remain the line. I do not have an alternate description.

Gardner: I would be interested to know if this is in the Charters preview.

G. Johnson: This is a unique question. If you felt that Mr. Smith brings up an issue that you want to explore, I don't have an answer on where to go tonight.

Gardner: Essentially you're saying you don't know if we can or can't do that and that we can look at it and study it if we want to. I don't know if it is appropriate for us to initiate it or if it is a council issue.

Nys: Would it be appropriate for us to vote on the ordinance that is in front of us and then appointing a committee to look into this further considering the water rights issue.

Smith: Don't get the wrong perception about the shooting. Like it is going to be wild fire and mayhem. It is safe and easy. There are very few birds on that lake.

Britton: It states that the shaded area is the City of Duluth which extends out into Lake Superior. Is that what Mr. Smith is bringing up here?

G. Johnson: I believe that is what Mr. Smith is saying.

Strongtharm: I would be concerned about this without the opinions of those on park point. You're right that it isn't a lot of gun shots, but they are there.

Spehar: Does the current draft ordinance have anything in consideration of this request? Or is it outside of that. So if we pass this as written, it would not have anything to do with what he is suggesting?

G. Johnson: You are correct. What is on the map is the shaded area and the line that has been there for 100 years

Maki: As far as the ordinance that has been provided to us, I am 100% in support of it. We as a Charter Commission could bring this up to the council if we wanted to. We could start the process here and eventually bring it to the council. I wouldn't want to see this derail the ordinance that is before us now.

S. Johnson: The lake is used by a lot of tourists. If there are other boats or vessels out there is that a safety issue?

Smith: No there is not. You have to stay out of the shipping lanes. As far as other recreational boaters, we are not doing this until the end of November, trout fishing is closed and very few people salmon fish. People on the lake should be very minimum. In MN there is a law from how far you have to be able to shoot a gun from an occupied house is 500 ft. From an unoccupied house it is 300ft. There is one exception to the rule is when you are hunting over water. When you hunt over water there is no distance you have to be from a house. I would not want to see anyone shooting in front of Fitgers. A shotgun has about 150ft of power. As far as safety, it is very safe.

Strongitharm: My concern is not the safety as you would be far out in the water. My concern would be the noise. Being downtown Duluth or up the shore, hearing the gun shots going off could be concerning to people.

Smith: People duck hunt 50 yards from the MN shore. You can hunt 50 yards from MN the public access. I am talking about going out 200 feet, in the middle of nowhere. This is not a DNR issue. This is a discharge of gun in city limits. This involves the City of Duluth. The noise, if they got a complaint, 911 would say it is legal to waterfowl hunt.

Maki: Is the firearm discharge a city ordinance.

G. Johnson: Yes, there is one that prohibits the discharge of fire arms in the city of Duluth, a rifle or a shotgun.

Maki: It seems to me that the description of the city has been in place for a while.

Strongitharm: Isn't it true that there is state of MN owned lands inside the city of Duluth and can you hunt on that land inside the City of Duluth?

Smith: Yes, because it is encompassed 100% by the city. That is why.

G. Johnson: Mr. Smith is very persistent about it. I am not sure we are going to resolve this tonight, but he does appreciate talking to the Charter Commission. I think they understand your issue and this is an interesting issue.

Nys: We have had a substantial amount of discussion so I would entertain a motion

Britton: I move approval of the DRAFT ORDINANCE INCORPORATING PREVIOUSLY APPROVED CHANGES INTO THE BOUNDARY DESCRIPTION OF THE CITY IN THE CHARTER, AMENDING SECTION 1, OF THE CITY CHARTER, BE APPROVED AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR THEIR APPROVAL.

THE MOTION WAS SECONDED AND UNANIMOUSLY CARRIED.

B. DRAFT ORDINANCE AMENDING CHAPTER III, SECTION 17, OF THE CITY OF DULUTH HOME  
RULE CHARTER, 1912, AS AMENDED, PERTAINING TO AMENDING OR REPEALING  
ORDINANCES

G Johnson: When the charter was drafted, and then redrafted a number of times, this provision has been in it where the entire portion of the section of the code to be amended is included in the ordinance before the city council. And that was a very smart way to do it back in the 50s and 1900s because the city of Duluth's ordinances were not codified and in a big pile. It was hard for the public to figure out what was being changed if they just had a little section. They had no way to find the rest of that ordinance. In the 1960s, the city attorney led an effort to change the city code, so now before computers came on board, you could go to the city clerk's office and flip to the page you wanted. Another change we seen is that the code is now online. It is a lot more accessible to the public. Another thing we have seen is that our ordinances have gotten longer and longer.

As an example, in the Uniform Development Code section, when you want to change one tiny piece of that, you end up with an ordinance that is 20 pages long and if I'm a member of the public I have to flip through 10 pages to find the

strikeout. The changes get lost in sea of the ordinance. We felt that it would be easier and more transparent to have a smaller section of the code go with the ordinance instead of the section. Basically it is a cleanup matter.

ANDERSON; I would move that the DRAFT ORDINANCE AMENDING CHAPTER III, SECTION 17, OF THE CITY OF DULUTH HOME RULE CHARTER, 1912, AS AMENDED, PERTAINING TO AMENDING OR REPEALING ORDINANCES OF THE CITY CHARTER, BE APPROVED AND THE SAME BE RECOMMENDED TO THE CITY COUNCIL FOR THEIR APPROVAL.

THE MOTION WAS SECONDED AND UNANIMOUSLY CARRIED.

Gardner: I feel that this is perhaps a matter of order. I feel as if there is some unfinished business. There was a suggestion by the chair that this commission form some sort of committee to recommend to the council if we are going to do something about the gentleman with the concern about the boundaries. Commissioner Maki made a statement about what she thought should happen. I am not agreeing or disagreeing with her. But she made the statement, but the body did not really make a decision about it. We should be discussing this I think and make a decision. It wasn't something that was really discussed. Am I the only one that feels like we are at loose ends here?

Anderson: Would it be appropriate to have a smaller group of volunteers from this body? I have worked on bird issues before with Sharla Gardner. I certainly volunteer.

Cox: I believe that Mr. Smith left here with the impression to approach City Council for an ordinance change

Gardner: He may have left here with that impression but this body did not make a decision. But I think the body needs to make a decision

Strongitharm: I would like him to go to the council first. I have no idea why the boundary is that way. There could be a lot of legal issues. There are all kinds of factors.

Gardner: I think it is interesting. I would like to look at it. We have to decide what to do.

G. Johnson: I am not recommending that you even investigate or do this. You have done the city a service already by giving Mr. Smith a venue to express his concerns. That doesn't mean that you will address those concerns. But he has been able to express his concerns to this body. That is an important thing for citizens to be able to do. He has been

working on this issue for at least three years that I am aware of. Another way he wanted to approach it was to go out into the lake and start hunting and to get arrested and to take it through the criminal court system. If you don't do anything today, you have still done a service to the city and to Mr. Smith. Commissioner Gardner can tell you how it would go to hunt off park point. If you want to go down that road we are happy to support you, but certainly not recommending it.

#### C.ELECTION OF PRESIDENT AND VICE PRESIDENT.

Motion was made, seconded and unanimously carried to elect Commissioner Steven Nys as President.

Motion was made, seconded and unanimously carried to elect Commissioner Andrew Poole as Vice President.

#### VII. ADJOURNMENT:

Motion was made, seconded and unanimously carried to adjourn.