

MINUTES	Wednesday, December 9, 2015	
Charter Revision	4 PM at Carnegie Town Hall	
Commission Meeting	235 West Tenth Street	

Members Present: Robert Thimjon, Pauline Poletes, Sue Aguilar, Jill Entenman, Justin Smith

Members Absent: None

Staff Present: David Pfeifle, City Attorney, and Cari Hanzel, Paralegal/Clerk

1. Call To Order

Commission Chair Robert Thimjon called the meeting to order at 4 p.m.

2. Approval Of Minutes

A. November 12, 2015

A motion was made by Sue Aguilar and seconded by Justin Smith to approve the minutes dated November 12, 2015. Thimjon called for a voice vote. All members voted yes.

Motion Passed.

3. Old Business

A. Charter Article II - City Council

Section 2.02 (c): Election and terms. Review and discuss written proposal as suggested at the last meeting.

Section 2.02 Composition, eligibility, election, and terms.

(a) Composition. There shall be a city council composed of the mayor and eight (8) members. Three (3) council members shall be nominated and elected by the voters of the city at large, and five (5) shall be nominated and elected by the voters of each of the five (5) council districts, as provided in article VI.

(b) Eligibility. Only the registered voters of the city who have resided in the city for at least six (6) months immediately prior to the date of election shall be eligible to hold the office of council member or mayor.

(c) Election and terms. The terms of council members shall be four (4) years beginning no later than whichever day the City Council meets during the third week of May following the official canvass of any final council or mayoral election, whichever is later, and shall continue until a successor has been elected and takes office. No council member may serve more than two (2) full or partial terms consecutively, unless a partial term was for 50 percent or less of the full term then the council member may serve an additional two full terms; however, a council member may immediately thereafter be eligible to be a candidate for mayor. The two consecutive term limit shall apply regardless of whether a council member has served as a district or an at large council member or both.

(4-11-00, § A; 4-8-14, § A)

City Attorney Dave Pfeifle reviewed the proposed language on this amendment. Discussion was held whether the Commission should vote on each amendment

separately or to wait until the final report is prepared.

A motion was made by Justin Smith, seconded by Sue Aguilar, to place Section 2.02 (c) on the final report for inclusion on the ballot.

Thimjon called for a voice vote. All members voted yes.

Motion Passed.

Section 2.04. Compensation; expenses. Review and discuss written proposal as suggested at the last meeting.

Section 2.04 Compensation; expenses.

The annual salary of the mayor and part-time council members is set in section 9.05, and shall be automatically adjusted annually for inflation or deflation, as determined by a generally accepted federal government index (e.g., CPI-U). The mayor and council members shall receive their actual and necessary expenses incurred in the performance of their duties of office. The mayor, but not the council members, shall participate in the city's employee benefits programs which are available to other management employees, excluding the city pension system. However, upon taking office the mayor may elect to participate in the employees' retirement system, if allowed by ordinance, or may elect not to participate in the employees' retirement system.

(4-8-08, § A)

City Attorney Dave Pfeifle reviewed the proposed language on this amendment.

A motion was made by Justin Smith, seconded by Pauline Poletes, to place Section 2.04 on the final report for possible inclusion on the ballot.

Thimjon called for a voice vote. All members voted yes.

Motion Passed.

Section 2.14. Updating the Code of Ordinances. Review and discuss written proposal as suggested at the last meeting.

Section 2.14 Updating the Code of Ordinances.

The Code of Ordinances must be updated at least every twenty years, pursuant to the provisions of state law., as was done in 1972 and in 1992.

City Attorney Dave Pfeifle reviewed the proposed language on this amendment.

A motion was made by Justin Smith, seconded by Pauline Poletes, to place Section 2.14 on the final report for possible inclusion on the ballot.

Thimjon called for a voice vote. All members voted yes.

Motion Passed.

B. Charter Article III - Mayor

Section 3.02. Election and qualifications of mayor. Review and discuss written proposal as suggested at the last meeting.

Section 3.02 Election and qualifications of mayor.

The mayor shall be elected for a term of four years by a direct vote of the people at the regular city election. No mayor shall serve more than two (2) full or partial terms consecutively, unless a partial term was for 50 percent or less of the full term then the mayor may serve an additional two full terms; however, the mayor may immediately thereafter be eligible to be a candidate for council member. The mayor's terms shall begin no later than whichever day the City Council meets during the third week of May following the official canvass of the mayor's election and shall continue until a successor has been elected and takes office.

(4-11-00, § C; 4-8-14, § B)

City Attorney Dave Pfeifle reviewed the proposed language on this amendment.

This language is the same as Section 2.02 referenced above.

A motion was made by Justin Smith, seconded by Sue Aguilar, to place Section 3.02 on the final report for inclusion on the ballot. Thimjon called for a voice vote. All members voted yes. Motion Passed.

C. Charter Article IV - Departments, Offices, and Agencies

Section 4.01 (b). Direction by mayor. Additional research and discussion. Review and discuss written proposal as suggested at the last meeting. Section 4.01 General provisions.

(a) Creation of departments. The mayor may establish city departments, offices, or agencies in addition to those created by this charter by filing an executive order which may also provide that any funds previously appropriated to perform a function which is being transferred may thereby be transferred to the new major organizational unit performing such function, with such order becoming effective after the expiration of 25 days from the date it is filed, unless action is taken to nullify the executive order by a vote of six (6) or more members of the city council. The mayor may prescribe the functions of all departments, offices, and agencies, except that no function assigned by this charter to a particular department, office, or agency may be discontinued or, unless this charter specifically so provides, assigned to any other.

(b) Direction by mayor. All departments, offices, and agencies under the direction and supervision of the mayor shall be administered by one (1) or more officers appointed by and subject to the direction and supervision of the mayor. The appointment by the mayor of any director or head of any city department shall only be effective with the advice and consent of the council. The appointment by the mayor of any officer or employee having final authority over more than five (5) percent of the city's employees or budget shall only be effective with the advice and consent of the council. The mayor may appoint one (1) person as the head of two (2) or more departments.

(4-11-00, § E)

City Attorney Dave Pfeifle reviewed the proposed language on this amendment.

A motion was made by Sue Aguilar, seconded by Pauline Poletes, to place Section 4.01 on the final report for inclusion on the ballot. Thimjon called for a voice vote. Yeses, Aguilar, Entenman, Poletes, Thimjon, 4. Noes, Smith, 1. Motion Passed.

4. New Business

A. Charter Article VII - General Provisions

Section 7.01 Conflicts of interest; board of ethics.

Section 7.01 Conflicts of interest; board of ethics.

(a) Conflicts of interest. The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance. Regulations to this end shall include but not be limited to: acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; the acceptance of gifts and other things of value; acting in a private capacity on matters dealt with as a public official, the use of confidential information; and appearances by city officials before other city agencies on behalf of private interests. The appearance of impropriety shall be avoided. Municipal officials shall be, at a minimum, restricted from conflict of interest to the same extent that state public officials are bound by state law; provided however, that the city council may adopt an ordinance setting a stricter

standard.

(b) Board of ethics. The city council shall, by ordinance, establish an independent board of ethics to administer and enforce violations of the conflict of interest and financial disclosure ordinances as well as determine violations of Sections 2.05 (a) and (b), 6.01(c), and 7.02 (a) (3), (4), and (5) of this Charter and related ordinances. No member of the board may hold elective or appointed office under the city or any other government or hold any political party office. Insofar as possible under state law, the city council shall authorize the board to issue binding advisory opinions, conduct investigations on its own initiative and on referral or complaint, refer cases for prosecution, impose administrative fines, and to hire independent counsel. The city council shall appropriate sufficient funds to the board of ethics to enable it to perform the duties assigned to it.

(4-13-04, § F; 4-8-08, § J; 4-10-12, § C)

Section 7.02 Prohibitions.

Section 7.02 Prohibitions.

(a) Activities prohibited.

(1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any city position or appointive city administrative office because of race, gender, age, handicap, religion, country of origin, or political affiliation.

(2) No person shall willfully make any false statement, certificate, mark, rating, or report in regard to any test, certification, or appointment under the provisions of this charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules, and regulations.

(3) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render, or pay any money, service, or other valuable thing to any person for or in connection with any test, appointment, proposed appointment, promotion, or proposed promotion.

(4) No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription, or contribution for any political party or political purpose to be used in conjunction with any city election from any city employee.

(5) No city employee shall, directly or indirectly, contribute money or anything of value to or render service in behalf of the candidacy of any candidate for nomination or election to any city office. Elected officials and spouses of city employees acting on their own behalf are exempt from this prohibition. The expression of private or personal views concerning candidates for political office is not prohibited hereby.

(b) Penalties. Any person violating this section shall be ineligible for a period of five (5) years following such violation to hold any City elected or appointed office or board. If the person violating this section is a city officer or employee, said violation shall be sufficient cause for the suspension, demotion or termination of employment of the officer or employee. The city council may establish by ordinance any further penalties as it may deem appropriate.

(4-11-00, § G; 4-13-04, §§ G, H)

Section 7.01 Conflicts of interest; board of ethics.

Bruce Danielson spoke to Section 7.01, Conflicts of interest; board of ethics. He asked for consideration to share the responsibility of the selection of appointments to this board between the Mayor and the City Council.

Section 7.02 Prohibitions.

Pauline Poletes suggested the addition of sexual orientation to 7.02(a)(1) and requested that this change be drafted for consideration at the January meeting.

B. Charter Article VIII - Charter Amendment

Section 8.01 Proposal of amendment.

Amendments to this charter may be framed and proposed:

- (a) In the manner provided by law, or
- (b) By ordinance of the city council containing the full text of the proposed amendment (except that sections 1.04, 1.05, 2.01, 2.02, 2.03, and 2.04 and article III cannot be so amended) and effective upon adoption, or
- (c) By report of a charter commission created by ordinance; or
- (d) By the voters of the city, when any 15 qualified voters initiate proceedings to amend the charter by filing with the city clerk an affidavit stating they will constitute the petitioners committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed charter amendment. Promptly after the affidavit of the petitioners committee is filed the clerk shall issue the appropriate petition blanks to the petitioners committee. The petitions shall contain or have attached thereto throughout their circulation the full text of the proposed charter amendment and must be signed by registered voters of the city in the number of at least 5 percent of the total number of registered voters at the last regular city election.

Section 8.02 Election.

Section 8.02 Election.

Upon delivery to the city election authorities of the report of a charter commission pursuant to section 8.01(c) or delivery by the city clerk of an adopted ordinance proposing an amendment pursuant to section 8.01(b) or a petition finally determined sufficient to propose an amendment pursuant to section 8.01(d), the election authorities shall submit the proposed amendment to the voters of the city at an election. Such election shall be announced by a notice containing the complete text of the proposed amendment and published in one (1) or more newspapers of general circulation in the city at least 30 days prior to the date of the election. If the amendment is proposed by petition, the amendment may be withdrawn at any time prior to the thirtieth day preceding the day scheduled for the election by filing with the city clerk a request for withdrawal signed by at least two-thirds of the members of the petitioners committee. The election shall be held not less than 60 and not more than 120 days after the adoption of the ordinance or report or the final determination of sufficiency of the petition proposing the amendment. If no regular election is to be held within that period, the city council shall provide for a special election on the proposed amendment; otherwise, the holding of a special election shall be as specified in the state election law.

Section 8.03 Adoption of amendment.

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If a majority of the registered voters of the city voting upon a proposed charter amendment vote in favor of it, the amendment shall become effective at the time fixed in the amendment or, if no time is therein fixed, 30 days after the initial canvas certifying its adoption by the voters.

Section 8.01 Proposal of amendment.

Sue Aguilar asked about clarification items and housekeeping measures. She asked if there was another way to take care of these rather than before the voters similar to what is done with the City ordinances. Pfeifle responded that due to the importance of the Charter, no matter how minutiae it is, it could change how a court could rule on an interpretation. The times when clerical corrections are made with ordinances and resolutions, the intent is not changed.

Section 8.02 Election.

No comments or suggestions were made at this time.

Section 8.03 Adoption of amendment.

No comments or suggestions were made at this time.

Public Input: There was none.

C. Charter Article IX - Transition/Separability Provision

Section 9.01 Officers and employees.

(a) Rights and privileges preserved. Nothing in this charter except as otherwise specifically provided shall affect or impair the rights or privileges of persons who are city officers, appointees, or employees at the time of its adoption. State law governing Change of Employee Contributions or Benefits shall apply to the city under this charter.

(b) Continuance of office or employment. Except as specifically provided by this charter, if at the time this charter takes full effect an appointive administrative officer or employee holds any office or position which is or can be abolished by or under this charter, it shall continue until the taking effect of some specific provision under this charter directing that the office or position be eliminated.

(c) Personnel system. An employee holding a city position at the time this charter takes full effect, who was serving in that same or a comparable position at the time of its adoption, shall not be subject to competitive tests as a condition of continuance in the same position but in all other respects shall be subject to the personnel system provided for in section 4.02.

Section 9.02 Departments, offices, and agencies.

Section 9.02 Departments, offices, and agencies.

(a) Transfer of powers. If a city department, office, board, or agency is abolished by this charter, the powers and duties given it by law shall be transferred to the city department, office, board, or agency designated in this charter, or if the charter makes no provision, designated by the city council.

(b) Property and records. All property, records, and equipment of any department, office, board, or agency existing when this charter is adopted shall be transferred to the department, office, board, or agency assuming its powers and duties, but; in the event that the powers or duties are to be discontinued or divided between units or in the event that any conflict arises regarding a transfer, such property, records, or equipment shall be transferred to one (1) or more departments, offices, boards, or agencies designated by the city council in accordance with this charter.

Section 9.03 Pending matters.

Section 9.03 Pending matters.

All rights, claims, actions, orders, contracts, and legal administrative proceedings shall continue except as modified pursuant to the provisions of this charter and in each case shall be maintained, carried on, or dealt with by the city department, office, board, or agency appropriate under this charter.

Section 9.04 State and municipal laws.

Section 9.04 State and municipal laws.

(a) In general. All city ordinances, resolutions, policies, orders, codes, and regulations which are in force when this charter becomes fully effective remain effective, except as stated in subsection (b).

(b) Exceptions. All city ordinances, resolutions, orders, and regulations which are in force when this charter becomes fully effective are repealed to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or resolutions adopted pursuant thereto. To the extent that the constitution and law of the State of South Dakota permit, all laws relating to or affecting this city or its agencies, officers, or employees which are in force when this charter becomes fully effective are superseded to the extent that they are inconsistent or interfere with the effective operation of this charter or of ordinances or

resolutions adopted pursuant thereto.

(c) The term city commission in all city ordinances, resolutions, policies, orders, and regulations which are in force when this charter becomes fully effective is hereby replaced by the term city council.

Section 9.05 Schedule.

Section 9.05 Schedule.

(a) First election. At the time of its adoption, this charter shall be in effect to the extent necessary in order that the first election of mayor and members of the city council may be conducted in accordance with the provisions of this charter. The first election shall be held on November 8, 1994 or the first available Tuesday after that as determined by election officials. The Sioux Falls city officials to be designated shall prepare and adopt temporary regulations applicable only to the first election and designed to insure its proper conduct and to prevent fraud and provide for recount of ballots in cases of doubt or fraud.

The term of the two at large council members receiving the most votes among the at large candidates in the first election shall be four (4) years. The term of the at large council member receiving the third largest vote counts among the at large candidates shall be two (2) years.

The terms of the two council members receiving the most votes among the five (5) elected by the five (5) districts in the first election shall be four years. The term of the other three council members elected by district shall be two (2) years.

The five (5) districts for the first election and until the redistricting required after the 2000 census, shall be as follows:

(1) The southwest district shall be comprised of the following complete precincts: 4-4, 4-5/6, 10-1/7, 10-3/5 and 11-1, 10-4, and 10-6.

(2) The southeast district shall be comprised of the following complete precincts: 3-4, 3-6, 3-7/8, 3-9, 9-5, 9-6, 9-8/9, 10-2 and 12-1.

(3) The northwest district shall be comprised of the following complete precincts: 4-3, 5-2, 5-3, 5-4, 6-1, 6-2, 7-1, 7-3, and 11-2/3.

(4) The northeast district shall be comprised of the following complete precincts: 7-2, 7-4, 8-1, 8-2, 8-3, 9-1, 9-2, 9-4, and 9-7.

(5) The central district shall be comprised of the following complete precincts: 1-1, 2-1, 2-2, 3-1, 3-2, 3-3, 3-5, 4-1, 4-2, 5-1, and 9-3.

(b) Time of taking full effect. The charter shall be in full effect for all purposes on and after January 1, 1995.

(c), (d) Reserved.

(e) Initial expenses. The initial expenses of the mayor and city council shall be paid by the city on vouchers signed by the mayor.

(f) Salary of mayor and council members. The mayor s salary having been established in the amount of \$75,000 by this provision in 1995, each other council member shall receive an annual salary in the amount of fifteen (15) percent of the mayor s salary. The mayor s salary shall automatically be adjusted annually for inflation or deflation with each other council persons salary thereafter adjusted to be equal to fifteen (15) percent of the mayor s new adjusted salary. No meeting fees shall be paid to the mayor nor city council members.

(Ref. of 5-7-96; 4-11-00, § H)

Section 9.06 Separability.

Section 9.06 Separability.

If any provision of this charter is held invalid, the other provisions of the charter shall not be affected thereby. If the application of the charter or any of its provisions to any person or circumstance is held invalid, the application of the charter and its provision to other persons or circumstances shall not be affected thereby.

Section 9.01 Officers and employees.

No comments or suggestions were made at this time.

Section 9.02 Departments, offices, and agencies.

No comments or suggestions were made at this time.

Section 9.03 Pending matters.

No comments or suggestions were made at this time.

Section 9.04 State and municipal laws.

No comments or suggestions were made at this time.

Section 9.05 Schedule.

No comments or suggestions were made at this time.

Section 9.06 Separability.

No comments or suggestions were made at this time.

Public Input: There was none.

5. Public Input

There was none.

Commission Chair Robert Thimjon stated that the next meeting will be held on Wednesday, January 6, 2016, at 4 p.m. There will be three items recommended for the ballot, two items for consideration, and one item to be drafted for consideration.

City Attorney Pfeifle stated that he will prepare a draft report for the commission's consideration. This report will be delivered to the City Clerk which sets forth the ballot process. Part of this will include explanations by the City Attorney as required by State Law.

Justin Smith asked City Attorney Pfeifle to prepare a summary of legal implications in terms of potential litigation, conflict of law issues, preemption, etc. with both federal and state laws regarding the proposed amendment to 7.02(a)(1).

Pfeifle stated the sexual orientation is already covered under an executive order in terms of nondiscrimination, other than about 17 or 18 appointed offices, sexual orientation is already a protected class.

6. Adjournment

Commission Chair Robert Thimjon adjourned the meeting at 4:30 p.m.

Lorie Hogstad
City Clerk