

NOTE: The minutes are considered DRAFT until approved or amended at the next scheduled meeting.

MINUTES Friday, January 27, 2012

Charter Revision 3:00 PM at Carnegie Town Hall

Commission Meeting 235 West Tenth Street

Members Present: Dennis W. Aanenson, Richard O. Gregerson, De Knudson, Pauline Poletes and Robert Thimjon.

Members Absent: None

Staff Present: David Pfeifle, City Attorney; Cari Hanzel, Paralegal/Clerk; Sue Roust, Interim City Clerk and Tamara Jorgensen, CMC, Assistant City Clerk

Guests: Angela Bailey, Rex Rolwing, Cheryl Rath, Rich Oksol, Sue Aguilar, Andy Traub, Tam Baker, Dave Knudson, Dean Karsky, Greg Jamison and Tracy Turbak

1. Call To Order

Commission Chair Poletes called the meeting to order at 3:00 p.m. Poletes made opening remarks which gave a brief history and explanation of the responsibilities of the Charter Revision Commission. Poletes introduced the Commission Members and city staff.

2. Approval Of Minutes

A motion was made by De Knudson and seconded by Dick Gregerson to approve the minutes. Commission Chair Poletes called for a voice vote and all members present voted yes. Motion passed.

A. January 4, 2012

3. Public Input

Council Chair Sue Aguilar thanked the commission for their membership on this commission and their service to the citizens of Sioux Falls. She requested that the Commission take more time for research and input from the public before adding items requiring substantive changes to the election ballot. Aguilar offered the assistance of the City Council, if needed.

Council Member Rex Rolwing also thanked the commission for their participation and in serving the City of Sioux Falls. Rolwing made comments on the following three areas: 1) the changes that have occurred in the past; 2) the need for checks and balances; 3) the current form of government. He urged the Commission to slow down and to take more time to review the recommendations.

Andy Traub spoke regarding being asked to serve on city commissions. Traub stated that the needs and goals should include additional transparency in government. He stated that the Mayor should acknowledge that members of the Commission had donated to his campaign. Traub spoke regarding the use of Robert's Rules of Orders during the meeting held on Wednesday, January 4, 2012.

Tam Baker spoke regarding the commission's responsibilities. She stated that she watched the last Commission meeting and felt uncomfortable with the treatment given to a Council Member and stated they have a right to be

heard. She discussed the importance of scheduling enough time to hear and review information presented to the Commission. Baker asked about the timeline when the Commission was appointed and reminded the Commission to be careful about how many items they place on the ballot.

I.L. Wiedermann spoke regarding Mr. Joe Kirby, his donations to Mayor Huether, and the Mayor sending personal thank you cards to those who made donations to his campaign. Wiedermann recommended that the Charter Revision Commission be disbanded because Mayor Huether appointed them and he felt like the Commission has given the Mayor anything he wanted.

Poletes stated that she has asked the City Attorney to check Robert's Rules of Order to determine if she could, as the Chair, make any motions. Pfeifle stated that the Chair does have the authority to make motions and participate in debates when it is in a smaller committee such as this one.

Theresa Stehly stated that the newly elected City Council Members have been working to redefine their roles. She stated that these people are the representatives for the citizens and she is encouraged to see the Council paying more attention to spending. She stated there needs to be a system of checks and balances. She stated the Council roles should not be restricted to 10-20 hours per week. The citizens want quality and want their Council Members to be responsive to them. She stated that the items that are being considered may lead to a 'disconnection' with the citizens.

Poletes stated that discussion at the last meeting included limiting the number of items on the ballots. She stated that many of the proposals have been approved; but the Commission would be reviewing each of them today. The deadline for getting items on the ballot for the April 10, 2012 election is February 10th. Discussion will be held today to determine which items will go on the ballot and which will require further review.

Commission Member Aanenson spoke regarding the timeline for previous meetings.

Aanenson addressed the media regarding campaign finance contributions he has made to political candidates. He stated that he has made contributions to several candidates and asked the media to take the time to report complete information instead of focusing on one elected official.

4. Old Business

A. Sections 2.02, 2.03, 2.08, 3.03 and 4.03 Amendments

Council Member Jamison spoke regarding his proposed revisions. Since the Commission has a lot of information to consider, Jamison stated he would be willing to remove some of his recommendations with the intent that two items be given further consideration. The two proposals that he would like to see reviewed further are Section 3.01 (Executive power) and Section 4.03 (Legal officer). He stated there are other City Council Members present that may wish to speak regarding Section 3.01 (Executive power) to provide additional information.

Jamison asked if the Commission would like him to review his proposals and Poletes said yes.

Jamison gave a review of Section 2.02 (Composition, eligibility, election,

and terms). In the interest of time, Jamison stated he would be willing to set this item aside for review at another time.

Poletes reviewed the proposed changes to Sections 2.02, 2.03, 2.08 and 3.03.

Knudson thanked Jamison for returning to this meeting. She stated that the Commission is appointed for three years and they are not in any hurry to put anything on the ballot. She apologized for any mistakes they made. Knudson stated she would like to continue to work with Jamison regarding his first two proposals stating that the wording on the Charter can always be improved.

Gregerson stated that he does not want the additional items forced off future agendas because he does feel that they are important. Gregerson stated it was too bad that the Commission got off to a bad start by not having enough time. This was not meant to be discourteous or impolite to Mr. Jamison. There are a number of proposed amendments that are very important. Gregerson suggested that controversial items be removed and given additional review. He would like to see more time given for hearing everyone's point of view on the proposals. He recommended that items that are 'housekeeping' items move forward. Jamison expressed his appreciation for the comments and stated that he was willing to work together with the Commission on all the items and he thanked the Commission for the extra time.

Jamison discussed Section 4.03 (Legal officer). He stated he would also like to review Mr. Kirby's amendments for Section 3.01 (Executive power) with the Commission. Poletes recommended that agenda items 4A and 4B be reviewed at the same time.

Poletes suggested that Agenda item 4A (Sections 2.02, 2.03, 2.08, 3.03 and 4.03 amendments) not receive any motions at this time and that the Commission review Agenda item 4B (Section 3.01 Amendment).

Poletes asked Pfeifle to explain the process for rescinding items that have already been approved. Pfeifle stated that the following motions can be made for items previously adopted: Move to rescind in their entirety (the approval of those items) or move to amend something previously adopted. An amendment may be used to remove a few sections or portions of the proposed revisions. He reminded the commission that discussion was held at the previous meeting regarding the need to limit the number of items on the ballot. Pfeifle stated that a super majority vote would be required to add items to the ballot but only a majority vote is needed to remove an item from the ballot.

Knudson stated that she would like to hear the additional comments that Mr. Jamison had regarding Section 4.03 (Legal officer). She would like to hear additional information before anything is removed.

Jamison provided additional input on Section 4.03 (Legal officer). He stated that there was a brief discussion held at the last meeting suggesting that electing the City Attorney may be a possible solution. Another suggestion was made that the Council and the Mayor have separate Attorneys. Jamison stated that the election of a City Attorney is a process that is followed in much larger cities and would not be in the best interest of our city at this point. The two branches having their own separate Attorney for advice on ordinances and legal advice might not be productive either.

Jamison stated that a good compromise would be to have the Council involved in the potential removal of the City Attorney position. The Council would like to receive the same time and attention as the Mayor does.

Jamison stated that the City Council at times also needs advice on rules, regulations and what the law states. The City Council does not want a situation where the City Attorney is "carrying the water" for one body or the other. Having a mandate in the Charter which gives the Council the right to terminate the job will assist the City Attorney's position as well by giving him/her the needed independence. Jamison stated that other council members can attest to the need for independence. Jamison would like to see the Charter Revision Commission add this item to the ballot.

Council Chair Sue Aguilar agrees with Jamison. However, she stated she would like to see it handled in a different way. Aguilar explained that the Council has the authority to give advice and consent to appoint a person to the position. She would like to see the Council also have the authority to provide advice and consent before the position can be terminated. She stated that this would give the City Attorney the independence that they would need.

I.L. Wiedermann stated that he supports both of these suggestions. He stated that he is against the City Attorney being appointed by the Mayor and he is against the Mayor being in complete control of the City Attorney.

Council Member Dean Karsky stated that both suggestions are good ideas which would provide protection for the City Attorney. He supports the recommendation that the Council be given the authority to determine a termination and said that it should require a super majority vote of the council to do so. He stated that a combination of the two suggestions would work well.

Knudson stated she and Council Member Aguilar had briefly discussed the advice and consent possibility.

Knudson stated that when she was a part time City Counselor that she had daily conversations with the City Attorney. She thought that the Mayor, who had more daily contact with the City Attorney, would need to have more confidence in the person appointed to that position. She stated that if there was a situation where the Mayor felt the City Attorney needed to be dismissed, that the Mayor would be in a better place to make that determination.

Aguilar responded that Council leadership has weekly meetings with the City Attorney. She stated that the City Attorney could, in many situations, be put into a difficult position as he/she is being pulled in two different directions. Aguilar stated that she feels this position deserves the independence to work for the city as a whole.

Poletes asked the Commission if they wanted to consider adding this item to the ballot. Gregerson stated that he thought the decision on whether or not items were going to be added to the ballot was going to be handled later in the meeting.

A motion was made by Gregerson and seconded by Knudson to delay any official action on controversial measures until more testimony could be taken.

Pfeifle asked for clarification regarding what items should be 'tabled' for

now. He recommended delaying consideration of Section 4.03 (Legal officer) until the Commission is ready to consider the other amendments on the agenda.

B. Section 3.01 Amendment

Aanenson asked if there would need to be a motion to rescind Section 3.01 (Executive power). Poletes and Pfeifle agreed. Discussion followed.

A motion was made by Aanenson to rescind the previous motion(s) on Section 3.01 (Executive power).

Pfeifle stated the motion was to temporarily table the consideration of items under 4A, move forward with discussion of items 4B-D with any possible motions to rescind or amend something previously enacted, and then talk about item 4A again. Gregerson agreed that this is what he meant.

Vote to temporarily table the consideration of items under 4A, move forward with discussion of items 4B-D and then talk about item 4A again: Poletes called for a voice vote and all members present voted yes. Motion passed.

A motion was made by Aanenson and seconded by Thimjon to rescind action taken on Section 3.01 (Executive power) until later notice.

Thimjon stated that action taken at the previous meeting on Section 3.01 (Executive power) occurred quickly. He stated that he was surprised at the number of people who had assumed that the ballot was already written.

Thimjon stated that he has also made contributions to City Council campaigns.

Vote to rescind: Roll Call: Yeses, Robert Thimjon, Dennis Aanenson, Richard O. Gregerson, De Knudson, Pauline Poletes, 5. Noes, 0. Motion passed.

C. Sections 1.01, 2.11, 2.14 and 7.01(b) Amendments

Pfeifle discussed Sections 1.01, 2.11, 2.14, 7.01 as submitted from the Legal Department. He stated that some of the recommendations were for technical and/or housekeeping changes. Pfeifle recommended that the approval of all four of his submissions be rescinded so that only two remaining sections for consideration would be Section 1.01 (Powers of the city) and Section 7.01 (Conflicts of interest; board of ethics).

He stated that the amendments in Section 1.01 (Powers of the city) clarify the powers the city has under the Charter and includes a sentence taken from the state constitution regarding the powers of the city under home rule. Pfeifle stated that these changes have widespread support from the City Council.

Pfeifle stated that the amendments in Section 7.01 (conflicts of interest; board of ethics) would expand the powers of the Board of Ethics to include oversight regarding possible election ordinance violations for current city officials. This item has been reviewed by the Public Services Committee and also has the unanimous support of the Board of Ethics. He stated this would provide for an independent city board to review the

violations instead of the City Attorney's Office.

Pfeifle recommended an amendment to delete the prior two sections that are housekeeping in nature (Sections 2.11 and 2.14) and keep the other two recommendations (Sections 1.01 and 7.01).

Pfeifle read Sections 1.01 and 7.01(b) from his memorandum dated December 13, 2011.

Knudson stated she would like to vote to add the four proposals from the Legal Department to the ballot but she would like to get input from the City Council Members present at this meeting. She wants to know whether or not they feel these are improvements or if they are needed changes to the Charter.

Jamison asked about the term 'current' listed in Section 7.01(b) (conflicts of interest; board of ethics). He asked if there is a stipulation for a candidate that is not a current elected official or a candidate for another office while serving. He is not sure of the reason for the word 'current'.

His other statement regards the intent of moving this responsibility from the City Attorney to the Board of Ethics. He stated that this is one of the problems/issues that the City Attorney deals with. He is placed in the awkward position of trying to enforce or investigate an ethics complaint against one of his bosses, and right now, one of the bosses has a little more power than the other. Jamison stated that his proposed amendment would remove the City Attorney from the 'hot seat'. The City Attorney could then do this job and it would not be necessary to transfer it to the Board of Ethics.

Knudson asked Pfeifle for his input regarding the current terminology in the proposed amendment. Pfeifle gave an update regarding client/constituent relationships. He stated that someone running for office would not be a 'client' of his and that someone running for office would not be held under the same scrutiny as someone already elected. The goal is to remove the City Attorney's Office from being involved in the investigation or prosecution of an election related issue. Pfeifle stated that the members of the Commission may wish to discuss at their next meeting whether they would like to change the language to 'anyone' regarding an elections ordinance issue or leave it as 'current elected officials'.

Thimjon asked when action would be taken to add items to the ballot. Poletes asked if the Commission wanted to delay action on this item until after hearing the proposed amendments from the Finance Department. Knudson asked if Section 7.01(b) (conflicts of interest; board of ethics) could be delayed. She agrees with the Board of Ethics handling election violations but she asked if that should also apply to all candidates running for office, not just the elected officials.

A motion was made by Gregerson and seconded by Knudson to table Section 7.01(b) (conflicts of interest; board of ethics) until the Finance information is reviewed. Poletes called for a voice vote and all members present voted yes. Motion passed.

A motion was made by Knudson and seconded by Aanenson to add Sections 1.01, 2.11, and 2.14 to the ballot for April 10, 2012.

Pfeifle stated that these items have already been approved. He asked for a motion to amend the prior approval so that Sections 2.11 and 2.14 could be

removed. Pfeifle recommended that the proposed amendments from the Finance Department be reviewed before final decisions are made on what items should be added to the ballot.

Poletes called for a voice vote and all members present voted yes. Motion passed.

Thimjon asked for clarification on the vote and whether or not, since the items were being added to the ballot, if it should have been a roll call vote instead. Pfeifle made the recommendation that Commissioner Knudson withdraw her earlier motion to add the items to the ballot.

A motion was made by Knudson and seconded by Aanenson to withdraw the motion to add Sections 1.01, 2.11, and 2.14 to the ballot.

A motion was made by Thimjon and seconded by Knudson to delay action on the four proposals from the Legal Department until after the proposals are heard from the Finance Department.

Poletes called for a voice vote and all members present voted yes. Motion passed.

D. Sections 5.05, 5.06, 5.09 and 5.11 Amendments

Turbak reviewed his three proposed amendments. His first recommendation was to combine Sections 5.05 and 5.06 (City Council action on the budget and Appropriation and revenue ordinances). The second recommendation was to eliminate Section 5.09 (Administration of the budget); and the third recommendation was to amend the timeline in Section 5.11 (capital program) to be changed to August 1st. Discussion followed.

Poletes asked Turbak if there were any of these amendments that he felt strongly about adding to the ballot at this time. Tracy stated he would like them all on the ballot, but his strongest preferences would be the suggested amendments to Sections 5.05 and 5.06. He does not have a strong preference on Section 5.09 (Administration of the budget). He also stated he is not here to try to reverse the Commission's earlier decision regarding changing the deadlines as indicated in Section 5.11 (Capital Program).

Roust stated there was more information regarding Section 5.09 (Administration of the budget) that needs to be reviewed. She gave an update on governmental reporting standards (Government Accounting, Auditing and Financial Reporting (GAAFR) and Governmental Accounting Standards Board (GASB)) and recommended that the proposed changes to Section 5.09 (Administration of the budget) be denied.

Poletes reminded the Commission that Sections 5.05, 5.06 and 5.09 were approved at the January 4, 2012, meeting and that Section 5.11 was not approved.

A motion was made by Knudson to only combine and add Sections 5.05 and 5.06 to the ballot.

Discussion was held regarding rescinding action taken on Section 5.09 (Administration of the budget).

A motion was made by Knudson and seconded by Gregerson to combine and add Sections 5.05 and 5.06 on the April 10, 2012, ballot.

Thimjon asked about the action taken at the January 4th meeting. Pfeifle reviewed the minutes from the January 4, 2012 meeting and stated that there was a motion to add 5.05 and 5.06 to the ballot. Pfeifle also stated that Section 5.09 (Administration of the budget) had been approved, but no vote was taken to add it to the ballot.

Pfeifle recommended that the Commission amend the motion to direct the City Attorney to draft ballot language, including the City Attorney's explanation, for the Commission to consider regarding the proposals for Sections 5.05 and 5.06. This information could be reviewed at the next meeting.

A motion, to amend the main motion, was made by Knudson and seconded by Thimjon to request that the City Attorney prepare specific ballot language regarding combining Sections 5.05 and 5.06 for review at the next meeting.

Vote to approve: Roll Call: Yeses, Robert Thimjon, Dennis Aanenson, Richard O. Gregerson, De Knudson, Pauline Poletes, 5. Noes, 0.
Motion passed.

Poletes asked the Commission if they would like to use the next meeting to determine which items will be added to the ballot.

Knudson stated that she would like to review the information as soon as the City Attorney has the language to be reviewed. Pfeifle stated he could draft the City Attorney's explanations rather quickly. Pfeifle recommended scheduling a meeting for next week. He would have the ballot language available for review regarding the combinations of Sections 5.05 and 5.06.

Poletes asked the commission if they wanted to take action on any of the other items.

Thimjon recommended taking action under New Business for items to go on the ballot.

Knudson stated she would like more time to review the legal recommendations. Discussion followed regarding the Board of Ethics. Pfeifle stated the four items from the legal department were approved to move forward, but not for placement on the ballot. He discussed the terminology regarding current elected officials or have it encompass all candidates as well.

A motion was made by Thimjon and seconded by Aanenson to request that the City Attorney draft two language scenarios for Section 7.01(b) (conflicts of interest; board of ethics).

Thimjon stated this would allow some time for additional review.

Vote to approve: Roll Call: Yeses, Robert Thimjon, Dennis Aanenson, Richard O. Gregerson, De Knudson and Pauline Poletes, 5. Noes, 0.
Motion passed.

A motion was made by Thimjon and seconded by Aanenson to request that the City Attorney draft language for the ballot for Section 1.01 (Powers of the city) .

Vote to approve: Roll Call: Yeses, Robert Thimjon, Dennis Aanenson, Richard O. Gregerson, De Knudson, Pauline Poletes, 5. Noes, 0.

Motion passed.

Discussion was held regarding Section 4.03 (Legal officer). Gregerson stated that he would like to have more time to review and receive more input on this item before action is taken. Thimjon stated that he would also like more time to review this item.

After discussion, the next Charter Revision Commission scheduled their next meeting for Tuesday, January 31, 2012, at 3:00 p.m. The agenda will include reviewing proposed ballot language along with the City Attorney's explanation.

Poletes asked if the Commission wanted to review any of the proposals from the Legal Department or from Council Member Jamison.

Thimjon asked if items could be discussed under New Business for items that go on the ballot.

5. New Business

Gregerson wanted to clarify that he may not always agree with the items that are being added to the ballot. He wanted to clarify that items are being recommended for the ballot because they feel the issues are so important that the citizens need to review and vote on them.

6. Adjournment

A motion was made by Knudson and seconded by Gregerson to adjourn the meeting at 4:55 p.m. Poletes called for a voice vote and all members present voted yes. Motion passed.

Tamara Jorgensen, CMC

Assistant City Clerk