

MINUTES Thursday, November 12, 2015

Charter Revision 4 PM at Carnegie Town Hall

Commission Meeting 235 West Tenth Street

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

Members Absent: Justin Smith

Staff Present: David Pfeifle, City Attorney; Cari Hanzel, Paralegal/Clerk; and Tamara Jorgensen, MMC, Assistant City Clerk

1. Call To Order

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

2. Approval Of Minutes

A. October 14, 2015

A motion was made by Pauline Poletes and seconded by Sue Aguilar to approve the minutes dated October 14, 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. Composition, eligibility, election, and terms: (c)  
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; 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, Section/Chapter A; 4-8-14, Section/Chapter A)

4:06 - Justin Smith arrived at this time.

Sue Aguilar provided an update regarding a Council Member who has served a total of five years in a two-term scenario.

Thimjon asked for clarification regarding how other municipalities handle partial terms. David Pfeifle, City Attorney, provided an update stating the City Boards were reviewed regarding terms. He cited the 22nd Amendment which clarifies that if you have served less than 50% of a term, this does not count towards your existing term. Pfeifle said an individual could go on to serve two additional terms if their first partial term was less than 50% of a full term.

Pfeifle suggested that if the Charter Revision Commission were to modify this section, that they use the 22nd Amendment as a guide. Aguilar agreed with this recommendation. Pfeifle will draft an example for review at the next Charter Revision Commission Meeting on December 9, 2015.

Public Input: Bruce Danielson stated he agreed this should be modeled after the 22nd Amendment. He recommended that this same practice should be done for the Mayoral position.

Charter Article III - Mayor (Section 3-B-1) was heard at this time. See item for action taken.

#### 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, Section/Chapter A)

Pfeifle explained this terminology no longer applies as the pension system has been modified. Employees hired or elected after July 1, 2013, will be part of the South Dakota Retirement System. Pfeifle will draft an example which deletes the terminology "excluding the city pension system" from this section.

Public Input: There was none.

Section 2.11. Procedure

(a) Meetings. The council shall meet regularly at least once in every month at such times and places as the council may prescribe by rule. If the council meets more than once a month, it may designate which meeting is the regular monthly meeting. If they don't so designate one, the first meeting of the month is the regular monthly meeting.

Special meetings may be held on the call of the mayor or of six (6) or more members and, whenever practicable, upon no less than twelve hours' notice to each member. All meetings shall be public, except as allowed by state law.

(b) Rules and journal. The City Council shall determine its own rules and order of business and shall provide for keeping of an accurate journal of its proceedings. This journal shall be a public record.

(c) Voting. Voting, except on procedural motions, shall be by roll call and the ayes and nays shall be recorded in the journal. Five (5) members of the council shall constitute a quorum, but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the council. Each council member shall have an equal vote; the mayor shall only vote as necessary to break a tie. All actions of the council shall be by a majority of those present, except no ordinances or any action calling for the expenditure of money in excess of the state bids limits for municipalities or filling of vacancies as set forth in section 2.06 shall be valid or binding unless adopted by the affirmative vote of five (5) or more members of the council.

Discussion was held regarding attendance at City Council Meetings. Timjon clarified that the first meeting of the month is considered the Regular City Council Meeting.

Public Input: There was none.

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.

Discussion was held regarding deleting the last sentence to read: "...as was done in 1972, and 1992". This updates the section to include the recodification completed in 2012. The Charter Revision Commission will consider adding this item to the ballot for the next election.

Public Input: Bruce Danielson recommended removing the listing of the years in the Charter. This would eliminate the need for modifying the Charter when another update is made.

#### B. Charter Article III - Mayor

##### 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; 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, Section/Chapter C; 4-8-14, Section/Chapter B)

After discussion, the Charter Revision Commission agreed that this item should also be modeled after the 22nd Amendment, as discussed in Section 2.02. The City Attorney's office will draft terminology for review at the Charter Revision Commission Meeting on Wednesday, December 9, 2015.

Public Input: Bruce Danielson stated this should not apply to current elected officers.

#### 4. New Business

##### A. Charter Article IV - Departments, Offices, and Agencies

##### 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 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, Section/Chapter E)

Aguilar asked for clarification on (a) regarding executive orders. She wanted to know how often executive orders come before the council. Pfeifle explained that executive orders are updated by the Human Resources Department. They are distributed upon update and are effective 25 days from the date they are filed, unless action is taken to nullify the executive order by a vote of six (6) or more members of the City Council.

Aguilar asked the Commission to review (b) and make the following changes:

"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". She is requesting that this sentence is modified to state that all appointments of department directors made by the Mayor should be reviewed and approved by the City Council.

Pfeifle stated there are 12 Department Directors. Two of the departments fall under the 5% threshold of the budget listed. He stated the intent would be for all 12 of the departments to be under the advice and consent of the City Council. The other appointments made by the Mayor are dentist positions and assistant chief positions. Discussion followed.

Jill Entenman would like this subject researched and investigated further for additional discussion at the Charter Revision Commission meeting on Wednesday, December 9, 2015.

Section 4.02. Personnel system.

No comments or suggestions were made at this time.

4.03. Legal officer.

No comments or suggestions were made at this time.

4.04. Planning.

No comments or suggestions were made at this time.

Public Input: Bruce Danielson stated the Council is the policy making body. He stated Directors have large salaries and influence in the city. He would like to see the Council have a part in determining who has this power in the Director positions.

B. Charter Article V - Financial Procedures

Section 5.01. Fiscal year.

No comments or suggestions were made at this time.

Section 5.02. Submission of the budget and budget message.

No comments or suggestions were made at this time.

Section 5.03. Budget message.

No comments or suggestions were made at this time.

Section 5.04. Budget.

No comments or suggestions were made at this time.

Section 5.05. City Council action on budget.

No comments or suggestions were made at this time.

Section 5.06. Reserved.

No action taken. The removal of this section was approved by the voters of Sioux Falls at a municipal election held on April 10, 2012.

Section 5.07. Amendments after adoption.

No comments or suggestions were made at this time.

Section 5.08. Lapse of appropriations.

No comments or suggestions were made at this time.

Section 5.09. Administration of the budget.

No comments or suggestions were made at this time.

Section 5.10. Overspending of appropriations prohibited.

No comments or suggestions were made at this time.

Section 5.11. Capital program.

No comments or suggestions were made at this time.

Section 5.12. City Council action on capital program.

No comments or suggestions were made at this time.

Section 5.13. Public records.

No comments or suggestions were made at this time.

Public Input: there was none.

C. Charter Article VI - Elections

Section 6.01. City elections.

(a)Regular elections. The regular city election shall be held in even numbered years. Conduct of the election shall be in accordance with provisions of state law. The date of the city election shall be set by ordinance as the second Tuesday in April. The city may combine its election with that of the Sioux Falls School Board.

(b)Registered voter defined. All citizens legally registered under the constitution and laws of the State of South Dakota to vote in the city shall be registered voters of the city within the meaning of this charter.

(c)Conduct of elections. All elections provided for by the charter shall be conducted by the election authorities established by law. Candidates shall run for office without party designation and shall declare whether seeking an at-large or district seat. Candidates for district seats must reside within the district. No person shall be eligible for elective municipal office unless a nominating petition is first filed. Nominating petitions shall conform in all respects to the provisions of South Dakota state law, except that the deadline for filing shall be no later than 5:00 p.m. on the last Friday in February. The mayoral and at-large council candidate nominating petitions shall be signed by not less than 200 registered voters of the city. The council district nominating petitions shall be signed by not less than 50 registered voters of the city. Council district nominating petitions shall be signed by registered voters who shall reside in the council district thereof, and who shall be eligible to vote for the nominee. For the conduct of city elections, for the prevention of fraud in such elections, and for the recount of ballots in cases of doubt or fraud, the City Council shall adopt ordinances consistent with law and this charter, and the election authorities may adopt further regulations consistent with law and this charter and the ordinances of the council. Such ordinances and regulations pertaining to elections shall be publicized in the manner of city ordinances generally.

(Ref. of 5-7-96; 4-8-08, Section/Chapter I; 4-13-10, Section/Chapter C)

Section 6.02. Council districts: adjustment of districts.

No comments or suggestions were made at this time.

Section 6.03. Initiative and referendum.

The powers of initiative and referendum are hereby reserved to the electors of the city. The provisions of the election law of the State of South Dakota, as they currently exist or may hereafter be amended or superseded, shall govern the exercise of the powers of initiative and referendum under this charter.

Thimjon noted that the state law would prevail.

Public Input: Bruce Danielson spoke regarding the distribution of information in the 2014 election.He spoke about ballot language used in the2014 election and taking the City to Circuit Court regarding ballot language. He requested that language be added to the Charter specifying how language can bepresented on future ballots.

Justin Smith asked City Attorney Pfeifle what ordinances were in place as . . . . . referenced in Section 6.01 (c) regarding municipal involvement in City elections. . . . . He asked if more research

was needed for the City Council to set down . . . . .  
. . . . .  
ordinances and if there is a need to not "micromanage" those issues in the . . . . .  
. . . . . Charter. Smith  
requested additional information on Section 6.01 (c). He wanted to . . . . .  
. . . . . know the specific ordinances that are in place to  
guard against the . . . . .  
. . . . . information discussed in public input.

Pfeifle responded that the City Council just revised the election ordinances. In 2007 the City Council adopted the state's statutes verbatim on campaign finance regulations. Pfeifle cited SDCL 12-27-20 regarding a government entity's ability to inform and educate the electorate without going into advocacy. Those groups did complain to the South Dakota Secretary of State's Office, to the Minnehaha County State's Attorney's Office, and the Attorney General's Office. None of those election officials on the state or local level felt the need to do anything regarding the educational and informational sessions that were held. Government can inform the electorate and the voters are smart enough to know how they want to vote ultimately on an issue.

In reference to the circuit court action mentioned by the speaker at public input, Circuit Court Judge Susan Sabers found there was nothing inappropriately done by the city. This was regarding the outdoor pool initiative and the explanation was simply explaining "do you want an outdoor pool at Spellerberg or not." There could be no possible allegation of advocacy from that explanation.

In terms of how the City was doing its ballots, it used to place not only the title of the measure, but it would also place, as a courtesy to the petitioners, exactly what their text was. The issue in the court action was that they were saying they wanted an outdoor pool at a certain budget and by a certain time, by the end of December, 2015. There was a typographical error that said December 15, 2015, instead of December 31, 2015. The court felt this wasn't material and the voters could express their intent and the main issue was "do you want an outdoor pool and what the cost was." In terms of those election issues, the city is continuing to follow State law, as is required by the Charter. In terms of the ballot explanations done, there is an SDCL section in Title 9 that specifically requires that the City Attorney, or someone hired as a legal officer on behalf of the city, to place a statement on the ballot explaining what it is.

Pfeifle provided background on the court's determination of attorney explanations. He stated we are following State law. Pfeifle stated that three of his last four election explanations were unsuccessfully challenged in court.



Thimjon asked Smith if he would like this item added to the December Agenda for further review. Smith stated that he thinks it is written pretty well and is clear, in conjunction with State law, regarding campaign finances and elections.

#### 5. Public Input

Bruce Danielson spoke regarding the recent election changes regarding financing the election. He stated things were things being done in city ordinances that are not reflected in the Charter. He stated that, because the City of Sioux Falls is under Home Rule Charter, other agencies could not get involved in helping him with making changes.

Danielson stated the Home Rule Charter prevents him from going to the States Attorney's Office or the Attorney General's Office regarding open meeting or open record law violation. He would like to see verbiage added to the Charter to allow appeals for these types of situations.

#### 6. Adjournment

Commission Chair Robert Thimjon adjourned the meeting at 4:46 p.m.

Tamara Jorgensen, MMC

Assistant City Clerk