

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

MINUTES Tuesday, January 31, 2012

Charter Revision 3:00 PM at Carnegie Town Hall

Commission Meeting 235 West Tenth Street

Members Present: Dennis W. Aanenson, De Knudson, Pauline Poletes and Robert Thimjon. Richard O. Gregerson attended the meeting through a telephone conference call.

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: Sue Aguilar, Greg Jamison, Rich Oksol, Dean Karsky, Cheryl Rath, Rex Rolwing, I.L. Wiedermann and David Bixler.

1. Call To Order

Commission Chair Pauline Poletes called the meeting to order at 3:00 p.m.

2. Public Input

There was none.

3. Old Business

Discussion of Jurisdiction of the Sioux Falls Board of Ethics for Hearing
A. Complaints on Possible Election Ordinance Violations by Either All
Candidates for City Office or Any Current Officials' Conduct

Pfeifle stated that he has been reviewing procedures that other states have implemented regarding their Ethic Boards. Based on this research, Pfeifle is recommending that the Board of Ethics should handle allethic violation complaints against all candidates whether they are currently elected or not.

Poletes asked for feedback from the public and the Council Member regarding this item. Council Member Jamison stated that he concurs with the changes and that the City Council does not have any concerns about it.

Knudson requested an update from the City Attorney regarding the proposed changes for the benefit of the listening audience.

Pfeifle stated that the Commission is reviewing whether or not to expand the scope of the Board of Ethics to include reviewing complaints regarding election ordinance violations for either current elected officials or someone running for offices.

I. L. Wiedermann spoke regarding an ethics complaint during the last election. He asked if the Commission was 'fixing this' process so this does not have to go before the Attorney General's office in Pierre. He stated that the City Attorney was familiar with the case he was referencing. Wiedermann stated that the City Attorney said he could not handle the item and the Attorney General's Office in Pierre said they could not

handle the item either.

Pfeifle stated that this amendment would allow an independent citizen board to handle complaints and review violations. It would remove this authority from the City Attorney's office and give it to the Board of Ethics.

Roust asked Pfeifle to explain the other areas where changes to the Board of Ethics authority are being considered. There are ordinances coming before the City Council that will move complaints regarding campaign finance reporting to the Board of Ethics. Pfeifle added that changes to the Fraud Control Policy are being considered as well. He stated that the Board of Ethics unanimously recommended these changes. There is also support from the Public Services Committee of the City Council.

Knudson asked the City Attorney to remind the listening public about the composition of the Board of Ethics. Pfeifle stated that the Board of Ethics is composed of five citizens who are recommended by the Mayor and appointed under advice and consent of the City Council. This board reviews complaints of ordinance violations. They also review violations that may be considered a 'conflict of interest'.

B. Consideration of Official Ballot for the April 10, 2012 Election

Pfeifle reviewed the draft of the official ballot. Charter Amendment A amends Section 1.01 (Powers of the city). The proposed change would delineate all powers the City of Sioux Falls may legally exercise under the state constitution and laws. The language regarding liberally construing the City's powers is taken from the South Dakota Constitution, Art. IX, Section 2.

Knudson asked for clarification on what part of this language was taken from the City Charter for Lincoln, Nebraska and from the state constitution. Pfeifle stated that every paragraph, except for the last paragraph, is taken from the Charter for Lincoln, Nebraska. The final paragraph is taken from the states constitution.

Knudson asked Pfeifle to read Charter Amendment A for the listening public.

Charter Amendment A

Shall Section 1.01 be amended to read:

Section 1.01. Powers of the city. The city shall have the right and power to exercise all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever that it is possible for it to have at the present and in the future under the constitution of the State of South Dakota, except as prohibited by the state constitution or restricted by this charter, and to exercise any powers which may be implied thereby, incidental thereto, or appropriate to the exercise of such powers, all powers possible for a city to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in this charter.

The city shall also have the right and power to exercise all municipal powers, functions, rights, privileges, and immunities of every name and nature whatsoever that now are, or hereafter may be, granted by the laws of the State of South Dakota to all cities or applicable to cities of the first-class, provided that such laws are not inconsistent with this charter.

The city shall have the right and power to make such ordinances, by-laws, rules, and regulations, except as prohibited by the state constitution or restricted by this charter, as may be necessary or expedient for maintaining the peace, good government, and welfare of the city, its trade commerce, and manufacturing, and for preserving order, securing persons or property from violence, danger, and destruction, for protecting public and private property, for promoting the public health, safety, convenience, comfort, morals and general interests and welfare of the inhabitants of the city and to enforce all such ordinances by providing for the fine or imprisonment, or both the fine and imprisonment, of those convicted of violations thereof.

All powers shall be exercised in the manner prescribe in this charter, or if not prescribed herein, in such manner as shall be provided by ordinance. Notwithstanding any other provisions of this charter, all powers may now and in the future be exercised outside the limits of the city to the extent permitted by law.

The powers of the city under this charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the charter shall not be construed as limiting in any way the general power granted in this article.

City Attorney's Explanation of Amendment A:

The proposed change would delineate all powers the City of Sioux Falls may legally exercise under the state constitution and laws. The language regarding liberally construing the City's powers is taken from the South Dakota Constitution, Art. IX, Section/Chapter 2.

ï Yes A vote "Yes" will change city charter.

ï No A vote "No" will leave the city charter as it is.

Poletes asked for a motion on Amendment A.

A motion was made by Aanenson and seconded by Thimjon to adopt Amendment A as read by the City Attorney.

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

Pfeifle read Charter Amendment B for the benefit of the listening audience.

Charter Amendment B

Shall Section 5.06 be deleted and shall sections 5.05 (c) and (d) be amended to read:

(c) Adoption. The city council shall adopt the annual appropriation ordinance for appropriated funds for the ensuing fiscal year budget on or before the 30th day of September of the fiscal year currently

ending. . The annual appropriation ordinance shall make appropriations by fund and department or organizational unit. It is not necessary to appropriate funds to be expended from a proprietary or trust fund if the fund is not supported or subsidized by revenue derived from the annual appropriated tax levy. However, an annual budget for these funds shall be adopted by resolution on or before the 30th day of September of the fiscal year currently ending and published at the same time as publication of the annual appropriation ordinance. If the city council fails to adopt the budget by this date, the budget proposed by the mayor shall go into effect.

(d) The city council shall adopt any other ordinances required to authorize new revenues or to amend the rates or other features of existing taxes or other revenue sources.

City Attorney's Explanation of Amendment B:

The proposed change would combine two somewhat redundant sections of the Charter into one section. It also would change the deadline for approval of the annual appropriation ordinance to September 30 of each year, rather than October. State law requires the City Finance Director to certify the annual tax levy to the County Auditor no later than October 1st. This results in a situation where the Finance Director must certify the annual tax levy to the County Auditor before the tax levy has been established by the City Council. The proposed language change would rectify the situation by requiring the annual appropriation ordinance, including the tax levy, to be approved prior to October 1st thereby allowing the Finance Director to comply with state law. The proposed change would also change the timing of publication of budgets for proprietary and trust funds to be consistent with publication of all other budgets, which would streamline the overall budget process by establishing consistent publication requirements for budgets of all funds rather than waiting until December to publish budgets for the proprietary and trust funds.

i Yes A vote "Yes" will change city charter.

ii No A vote "No" will leave the city charter as it is.

Discussion was held regarding the county's deadline for disclosing the tax amount. Thimjon asked if the change in the timeline will put any undue stress on the City Council regarding the budget or certifying the taxes. Jamison responded that the timeline would be fine and that the change would ensure better information for the budget process

A motion was made by Thimjon and seconded by Aanenson to add Charter Amendment B to the ballot, as presented.

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

Charter Amendment C, Section 7.01, Conflicts of interest, board of ethics was discussed.

Charter Amendment C

Shall Section 7.01(b) be amended to read:

Section 7.01. Conflicts of interest; board of ethics.

(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) for current elected officials, [or 6.01(c) for any candidates for an elected city office,] 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.

City Attorney's Explanation of Amendment C:

The proposed change would grant the Sioux Falls Board of Ethics the jurisdiction

to hear any complaints about current elected official's [or any candidates for an elected city office] conduct related to municipal elections, removing jurisdiction from such complaints that is currently with the City Attorney.

i Yes A vote "Yes" will change city charter.

i No A vote "No" will leave the city charter as it is.

Pfeifle recommended that the following terminology be removed from the amendment and replaced with simply "6.01 (c)": "6.01(c) for current elected officials," and "or 6.01(c) for any candidates for an elected city office." This would allow the City Council to adopt ordinances which would address all conduct related to municipal elections including potential future issues with lobbyists and PAC's.

Thimjon asked how this change would affect the City Attorney's explanation for Amendment C.

Pfeifle reviewed the explanation as shown and recommended replacing the shaded language with the following terminology: "any possible violations of law for".

Pfeifle explained that Charter Section 6.01 references the conduct of Elections and that City Ordinance Chapter 14 references ordinances that the Council has adopted governing the conduct of elections.

Discussion was held regarding the terms 'municipal' and 'city' being used in the Charter.

A motion was made by Thimjon and seconded by Knudson to add Amendment C to the ballot as revised with the City Attorney's explanations.

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

Consideration of Summary Report prior to April 10, 2012, Ballot Proposals

The timeline for the submission of the report was discussed. Roust stated that at the ballot language needs to be submitted to the City Clerk's Office by February 10.

C.

CHARTER REVISION COMMISSION SUMMARY
REPORT
PRIOR TO APRIL 10, 2012, BALLOT PROPOSALS

The fifth Sioux Falls Charter Revision Commission, appointed in October 2011 by the Mayor with the advice and consent of the City Council, has conducted five public meetings since November 2011 in order to assist them in preparing a report of proposed revisions to the City's Charter in 2012. The Commission is prepared to deliver the proposed revisions to City election authorities for placement on the upcoming April 10, 2012 ballot.

During the course of their public meetings, the Charter Revision Commission considered various Charter revision proposals brought forward by city departments, council members, Charter Revision Commission members and/or citizens. After review and discussion about the various proposals, the Commission decided that some of the issues which were raised warranted further review and were therefore either withdrawn or taken under advisement for further research and discussion by the Commission following the upcoming election. After discussion and debate, the Commission affirmatively voted to advance three proposed measures which, following delivery and filing with the City Council and City Clerk, will be presented to the public for further consideration and, ultimately, to be voted on by city voters.

One proposed revision will further delineate the powers of the City under its Charter, consistent with the South Dakota Constitution. Another proposed revision will combine two somewhat redundant sections of the Charter relating to the publication and passage of the city's annual appropriation ordinance. The last proposal will expand the jurisdiction of the Sioux Falls Board of Ethics to hear complaints regarding candidates for elected city office and current elected officials on conduct related to municipal elections as directed by the City Ordinances.

Each of these proposed revisions will be presented in the form of Charter Amendments to city voters for their consideration in the upcoming city election. City voters have previously approved revisions to the City Charter in 1996, 2000, 2004, 2008, and 2010. The City's Charter is the broad governing document for the conduct of local municipal government in Sioux Falls.

A motion was made by Thimjon and seconded by Aanenson to submit the report and the ballot language prior to the February 10, 2012, deadline.

Pfeifle asked if this motion also includes the proposed amendments. Thimjon stated yes.

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

4. New Business

Discussion was held regarding the schedule for future Charter Revision Commission Meetings. The minutes from the January 27 and January 31, 2012, meetings need to be approved prior to the ordering of the ballots for the April 10, 2012 election.

The next meeting is scheduled for Friday, February 17, 2012, at 3:30 p.m. The meeting will be held at the Carnegie Town Hall at 235 W. 10th Street.

Future meeting schedules for the Charter Revision Commission will also be discussed at this meeting.

5. Adjournment

A motion was made by Knudson and seconded by Aanenson to adjourn the meeting at 3:57 p.m.

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

Tamara Jorgensen, CMC

Assistant City Clerk