

NOTES

Thursday, October 11, 2012

Charter Revision Commission Meeting 3:35 PM at Carnegie Town Hall

Working Session

235 West Tenth Street

Please note there is no audio or video recording of this meeting.

Members Present: Pauline Poletes, Dennis Aanenson, Dick Gregerson and De Knudson

Members Absent: Robert Thimjon

Staff Present: David Pfeifle, City Attorney; Cari Hanzel, Paralegal/Clerk; David Bixler, Budget Analyst; Jim David, Legislative/Operations Manager; and Tamara Jorgensen, CMC, Assistant City Clerk

1. Call To Order

Commission Chair Pauline Poletes called the meeting to order at 3:35 p.m. Poletes reminded the audience that the information discussed in today's working session will be posted on the city's website as soon as the notes are completed.

2. Review The Charter For The City Of Sioux Falls

A. Article I. Powers of the City

i. Public Input

David Pfeifle, City Attorney, gave a brief history of the Charter for the City of Sioux Falls, which is based on the Seventh Edition of the Model City Charter (no longer in print) from the National Civic League out of Denver, Colorado. He stated that most of our Charter is taken verbatim from that Model Charter. Pfeifle read the following commentary from the Model Charter:

"This Model City Charter "rejected the 'separation of powers' concept which characterized national and state governments, stating: '[t]he dominant note in our new Model City Charter is elimination of the system of checks and balances in the organization of our cities and the substitution therefor of responsible government under a small legislative chamber which in turn selects a single administrative head. The city manager plan not merely represents the type in common use in business corporations but also in parliamentary government."

Pfeifle noted the Model endorsed a unitary structure. Alternative approaches included replacement of the city manager with an elected mayor, which is what Sioux Falls voters adopted.

He noted that the Model Charter presented a general plan for municipal government which is democratic, responsive to the electorate and community, and at the same time, capable of doing the work of the city effectively and translating the voters' intentions into efficient administrative action as promptly and economically as possible. This "double objective" is realized while modeling itself after the U.S. Constitution, using the "fewest words possible".

The Model Charter noted that larger cities tend to prefer a strong elected

mayor, and the model charter could be readily adapted to fit that form-which is what the City voters did in 1994.

The Model Charter rests policy decisions with the single elected legislative body. For the executive structure, all officials are to be appointed by and under the direction of the Chief Executive.

Pfeifle said the Model Charter was written in 1989. There is now an Eighth Edition and copies have been ordered for each of the Charter Commission members. Pfeifle noted there is a commentary after each section to provide an idea of the reasons behind it and a little better interpretation. Due to copyright issues, Pfeifle indicated this edition cannot be made available on the web. A copy will be available at each Charter Revision Commission meeting for the public's reference starting with the working session on November 11.

3:40 p.m. Commission Member Robert Thimjon arrived at this time.

ARTICLE I. POWERS OF THE CITY

Bookmark Section 1.01. Powers of the city.

The city shall have 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.

Pfeifle stated there was a proposed amendment to this section for the April, 2012, election. The proposed amendment came from the Charter for the City of Lincoln, Nebraska. Pfeifle said the amendment was narrowly voted down by the voters in Sioux Falls. He stated this section basically says what the powers and limitations are under Home Rule and is governed by state constitution and state statutes.

Thimjon stated the Charter Commission members thought the change was a good idea, but the citizens did not.

Knudson said it is hard to educate people on amendments to the Charter. Thimjon recommended coming up with a 'priority system' regarding the proposed amendments to the Charter to determine what items will really make a difference. Thimjon thought the language should be reviewed against the Eighth Edition updates. Knudson reminded the Commission that only 14% of the citizens voted in the last election. Poletes thought this one was defeated because it was 'too wordy'. Pfeifle told the Commission that people are more apt to say no to a change they do not understand.

Poletes asked the public for input - no public input received.

Bookmark Section 1.02. Construction.

The powers of the city under this charter shall be construed favorably in support of the charter 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.

Pfeifle indicated this is taken verbatim from the model charter. He said this has not been an issue with any of the prior Charter Revision Commission meetings. Thimjon asked if there were any changes to this in the Eighth Edition. Thimjon would like to know of any changes between this Charter and the Eighth Edition for comparison purposes. Pfeifle stated he would review it and let him know.

Poletes asked the public for input - no public input received.

Bookmark Section 1.03. Intergovernmental relations.

The city may exercise any of its powers or perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by contract or otherwise, with any one (1) or more states or any state civil division or agency, or the United States or any of its agencies.

The city retains and reserves its right to Joint Exercise of Governmental Powers as set forth in SDCL Title 1. Further the city adopts and ratifies each and every contract and agreement entered into by virtue of that power under any prior city organization or form of government.

Pfeifle said the City does have joint power agreements with other local entities and this is allowed under state statutes. There are very specific provisions that have to put in every one of those contracts and those are all ratified by the city council.

Knudson asked if adding an explanation to the section of the SDCL Title would be meaningful or adding it as a footnote at the end of the Charter. Pfeifle indicated that most people can gain access to this information by accessing the State website and viewing the laws. He said that the City Attorney's Office would be happy to explain any of the information if needed.

Poletes asked the public for input - no public input received.

Bookmark Section 1.04. Limitations.

Nothing in this charter shall be construed to permit the city to do any of the following:

- (1) Levy a personal or corporate income tax,
- (2) Issue more liquor licenses,
- (3) Permit increased gaming, or
- (4) Incur additional debt,

unless and except to the extent otherwise authorized to any city established as a SDCL Title 9 authorized form of city government.

Pfeifle explained for subsection (4) that SDCL Title 9 and State Constitution indicate how much debt can be incurred and that the City follows those rules. For subsections (2) and (3) the City cannot do more than what state law allows; and for (1) the City cannot levy a personal or corporate income tax. Knudson asked why the word 'gaming' was used instead of the word 'gambling'. Discussion was held regarding the definition of the word 'gaming'.

Poletes asked the public for input - no public input received.

Bookmark Section 1.05. New taxes.

Any new form or type of taxation which is approved by the city council must be referred to a vote of the people before it can become effective. This does not apply to new or increased fees or increases in existing taxes.

Pfeifle reiterated that you have to have a citizen vote before any new taxes

can be imposed.

Gregerson told the Commission that a two thirds vote is required in the state to increase certain taxes. He asked if this was noted in the Charter. Pfeifle replied that the City follows all of the election laws under state statute - if state statute requires it, then the City of Sioux Falls would require it.

Gregerson asked about automatically referring a measure to a vote and the people's right to refer a measure if they want. Discussion was held regarding the cost for a Special Election. Discussion was held about how the Charter recognizes the people's right to initiate or refer measures as provided in the State Constitution and the ease of getting these items put on a ballot.

Poletes asked the public for input - no public input received.

B. Article II. City Council

ii. Public Input

ARTICLE II. CITY COUNCIL

Bookmark Section 2.01. General powers and duties.

All powers of the city shall be vested in the city council, except as otherwise provided by law or this charter, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the city by law. The council shall act as a part-time, policy making and legislative body, avoiding management and administrative issues.

Pfeifle stated the last sentence was different from the Model Charter. Thimjon asked how this functions today. Pfeifle replied that there are between 1,000-1,500 items on the council meeting agendas every year with the City Attorney's office reviewing 2,000+ documents annually. Pfeifle said only a handful of times there may be a disagreement between the City Council and the Mayor per year on exactly what their duties are and how they are going to be carried out. He stated that state statute defines what is legislative and what is administrative in the Title 9 -Municipal Corporations Chapter.

Poletes asked if it would be advantageous to define "legislative" in this section or use a link to the definitions in state statute. She has the same question for defining administrative" in the section that discusses the Mayor. Thimjon added there was a discussion last year about making proposed changes to Section 3.01 but the changes were not put on the ballot.

Pfeifle said there is a developing body of case law decisions that define what functions are "legislative" or "administrative." Poletes read a portion of SDCL 9-20-19 regarding the definition of a legislative decision: "a legislative decision is one that enacts a permanent law or lays down a rule of conduct or course of policy for the guidance of citizens or their officers. Any matter of a permanent or general character is a legislative decision".

Knudson asked if these should be defined for the lay person but acknowledged that the definitions are available elsewhere for review. Poletes asked if a reference to the definitions could be incorporated in the Charter language. Pfeifle indicated that the verbiage should be kept to as little

as possible as recommended by the Model Charter and these terms are defined in state statute.

Poletes asked the public for input - no public input received.

Bookmark 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.

Knudson stated that last year one of the Council Members made a recommendation about 'tweaking' the language on this portion to remove the terminology referencing the mayor as being 'part of the council'. Timjon asked if changing this terminology would mean that the mayor cannot participate in council discussions.

Timjon asked if there were other areas in the Charter that talked about redistricting. Discussion was held regarding the timeline and frequency of redistricting. Timjon would like to discuss redistricting in more detail when the Commission is ready to review Section 6.02.

Pfeifle read the following terminology from Section 6.02, Council districts: adjustment of districts, subsection (3):

"The city council shall appoint the commission no later than one (1) year and five (5) months before the first general election of the city council after each federal decennial census. The commission's term shall end upon adoption of a districting plan, as set forth in section 6.02(c)."

Pfeifle added he would check with Jeff Schmitt, Chief Planning and Zoning Official, to get additional information on the redistricting process.

(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.

No discussion.

(c) Election and terms.

The terms of council members shall be four (4) years beginning on the third Monday 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.

Pfeifle indicated that a more formal proposal will be coming forward regarding changing the terminology referencing a specific day of the week. He advised the commission members that the Council Meetings have been changed from Mondays to Tuesdays. Pfeifle said the terminology should be drafted to cover any future changes that could relate to any day of the week. Example: the line "â fthe third Monday of Mayâ f" may be changed to read "â fthe third Council Meeting in Mayâ f". Discussion followed with

recommendations from the Commission Members about specific terminology changes. Pfeifle stated this item could be revisited when it is time to recommend specific action on the changes.

Poletes asked the public for input. Sue Aguilar asked whether or not the terminology regarding the Mayor serving on the City Council was part of the Model Charter. Aguilar said that the Mayor is not a voting member and, it was her understanding from the past discussion, that this was different than some of the other strong mayor forms of government. So she wanted to know if it came from the Model Charter or if it was specific for Sioux Falls.

Pfeifle replied that the Mayor is the tie-breaking vote. He said there are three alternatives listed under Section 2.02, with most of them based on the Council/Manager Plan, where the Council appoints a City Manager. Pfeifle added that one of the main topics discussed when the the Charter process was first underway was how many At-Large members versus by District members there would be and how the Mayor would be selected.

Bookmark Section 2.03. Mayor.

The mayor shall serve as a member of the city council. In the absence of the mayor for purposes of city council meetings, the city council shall designate one (1) of its members as acting mayor, with the duties but not the powers of that office. In case of emergencies or for purposes of day-to-day administrative duties and functions if the mayor is temporarily unavailable, the mayor shall propose to designate an interim successor by executive order, listing not less than three (3) nor more than seven (7) interim successors. The selection of interim successors in the executive order shall be at the mayor's discretion from among department heads or city employees; however, the number and order of proposed interim successor designees shall not be effective without the advice and consent of the city council.

Pfeifle said that the terminology in the last sentence "â fshall not be effective without the advice and consent of the city council" was added by a Charter amendment approved in 2004. Knudson asked how the terminology ".or city employees;" was included in a sentence regarding a successor. Poletes responded that it may have been meant for a senior administrative person reporting directly to the Mayor.

Poletes asked the public for input - no public input received.

Bookmark 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.

Knudson shared that City Council Members put in a lot of hours in their positions. She said that it is admirable the amount of time and energy they give to perform public services. Pfeifle and Poletes stated this information comes up again in Section 9. Poletes would like to review it again in Section9.

Poletes asked the public for input - no public input received.

Bookmark Section 2.05. Prohibitions.

(a) Holding other office. No council member shall hold any other elected public office during the term for which the member was elected to the council. No council member shall hold any other city office or city employment during the terms for which the member was elected or appointed to the council. No former council member shall hold any compensated appointive office or employment with the city until two (2) years after the expiration of the term for which the member was elected or appointed to the council. Nothing in this section shall be construed to prohibit the council or mayor from selecting any current or former council member to represent the city on the governing board of any regional, national, or other intergovernmental agency.

Knudson spoke about a former Council Member serving on a board/commission after they became a Council Member. Thimjon recommended that it should be clarified after an election that a Council Member should resign from any applicable boards or commissions. Poletes added that this could also be included in an orientation process.

(b) Appointments and removal. Neither the city council nor any of its members shall in any manner control or demand the appointment or removal of any city administrative officer or employee whom the mayor or any subordinate of the mayor is empowered to appoint, but the council may express its views and fully and freely discuss with the mayor anything pertaining to appointment or removal of such officers and employees.

(c) Interference with administration. Except for the purpose of inquiries and investigations under section 2.09, the council or its members shall deal with city officers and employees who are subject to the direction and supervision of the mayor solely through the mayor and neither the council nor its members shall give orders to any such officer or employee, either publicly or privately.

Pfeifle said there is an executive order that does allow interaction between City Council Members and city employees.

Poletes asked the public for input - no public input received.

Bookmark Section 2.06. Vacancies; forfeiture of office; filling of vacancies.

(a) Vacancies. The office of mayor or of a council member shall become vacant upon the person's death, resignation, removal from office or forfeiture of office in any manner authorized by law.

(b) Recall. The power of recall of the mayor and council members shall be allowed as set forth in SDCL Title 9.

(c) Forfeiture of office. The mayor or a council member shall forfeit that office if the mayor or council member[:]

(1) Lacks at any time during the term of office for which elected any qualification for the office prescribed by this charter or by law,

(2) Violates any expressed prohibition in section 7.02 of

this charter,

(3) Fails to maintain residency within city limits, or in the case of council members elected by district, fails to maintain residency within that district; however, any council member may complete their elected term of office if residency outside their district is caused during their term of office by a district adjustment pursuant to Section 6.02.

(4) Is convicted of a felony, or

(5) Fails to attend 50% of the regular monthly meetings of the council during a fiscal year, or three consecutive regular monthly meetings of the council, without being excused by the council.

Thimjon asked about the differences between the weekly meetings and the monthly meetings. Pfeifle replied the regular monthly meeting was the first meeting of the month. Poletes added that the Charter requires that the City Council meet at least once a month. The City Council meets three times a month for City Council Meetings. Initially, it was the first three Mondays of the month and this has been changed to the first three Tuesdays. Discussion was held regarding missing the "regular" meeting of the month in succession. Thimjon stated this section may need to be reworded to reflect all Council Meetings, not just the first "regular" meeting of the month.

Knudson said that missing meetings has not been an issue in the past. Thimjon and Aanenson thought a change should be made to the terminology to act as a safeguard for the future. Thimjon would like to revisit this item in the future when action needs to be recommended.

Sue Aguilar asked the Commission to look at this section. She reminded the Commission that this City Council is part time but they are scheduled for every Tuesday of the month. She noted that the majority of the City Council have other business that they have to attend to. She shared that one of the Council Members has two weeks to travel for business in the fall and in the spring. She stated that the City Council members do not get vacation so some of these things have to be taken into consideration. She said there has been controversy in the past when some of the members have had to be gone. She said that they have set an informal policy that if you know that you are going to be gone to specify this at the Informational Meeting that you are going to miss the next meeting. The Council Members do not have to note why they will be gone. Aguilar added that most of the absences have been for business or health related reasons.

Pfeifle noted that in Section 2.07 that the Council can set additional attendance policies if they wish. He indicated that public pressure would increase to adopt additional policies if a member were missing a lot of meetings.

Knudson recommended striking the term "monthly". Thimjon would like to review this section again in February and March to consider other ramifications. Discussion was held about the ability of Council Members to view the meetings on television and online and the ability to "call in" and "attend" the meeting when they are absent.

(d) Filling of vacancies. A vacancy in the office of mayor or in the city council shall be filled for the remainder of the unexpired term, if any, at the next regular election following not less than 60 days upon the occurrence of the vacancy, but the council by a majority vote of all its remaining members shall appoint a qualified person to fill the vacancy until the person elected to serve the remainder of the unexpired term takes office.

If the council falls to do so within 30 days following the occurrence of the vacancy, the city election authorities shall call a special election to fill the vacancy, to be held not sooner than 90 days and not later than 120 days following the occurrence of the vacancy, and to be otherwise governed by law. Notwithstanding the requirement in section 2.11, if at any time the membership of the council is reduced to less than six (6), the remaining members may by majority action appoint additional members to raise the membership to six (6).

Bookmark Section 2.07. Judge of qualifications.

The city council shall be the judge of the election and qualifications of its members and of the grounds for forfeiture of their office. The council shall have the power to set additional standards of conduct for its members beyond those specified in the charter and may provide for such penalties as it deems appropriate, including forfeiture of office. In order to exercise these powers, the council shall have power to subpoena witnesses, administer oaths, and require the production of evidence. A member charged with conduct constituting grounds for forfeiture of office shall be entitled to a public hearing on demand, and notice of such hearing shall be published in one (1) or more newspapers of general circulation in the city at least seven (7) days in advance of the hearing. Decisions made by the council under this section shall be subject to judicial review.

Knudson asked if the rules for the Board of Ethics matched this portion. Pfeifle replied that when there is an Ethics complaint against a City Council Member or the Mayor, it would go through a process (including a public hearing) before the City Council. All those specific items in this section are in the Ethics ordinances.

Thimjon wanted to re-review the second sentence after the entire Charter has been reviewed. Pfeifle read the following commentary from the Model Charter regarding this section:

"Making the council judge of the grounds for forfeiture as well as the qualifications of its members is new in this edition. There are procedural safeguards to protect a member charged with conduct constituting grounds for forfeiture. The provision authorizing the council to set additional standards for the conduct of its members is added to empower the council to impose on itself the highest possible ethical standards."

Pfeifle said the Council has adopted its own Code of Ethics as well as the Ethics ordinances.

Aguilar asked if the standards have to be in an ordinance. Discussion was held regarding the ability to enforce standards if passed by the Council.

Poletes asked the public for input - no additional public input received.

Gregerson asked if the Commission is going to return to some of these sections after the working sessions/review. He said he would like to know what are the biggest problems with the current Charter. He shared that when the Charter was adopted, it was modeled after the state and administrative functions. Gregerson noted when functions and duties are separated, it is going to build conflict. He would like to discuss this topic further. Gregerson told the Commission that he thought the main problem with Home Rule was the conflict with the Mayor and the City Council. Pfeifle responded that, in regards to the number of issues and how often they arise, this is pretty rare.

Gregerson stated he would like to hear from Council Members if they have any

ideas on how things could be smoother with the Mayor's Office.

Due to time limitations, the following sections from Article II will be reviewed and discussed at the next scheduled working session: Section 2.08 City clerk; Section 2.09 Investigations; Section 2.10 Independent audit; Section 2.11 Procedure; Section 2.12 Action requiring an ordinance; Section 2.13. Ordinances in general; and Section 2.14 updating the Code of Ordinances.

C. Article III. Mayor

iii. Public Input

Due to time limitations, this Article was not reviewed. This Article will be scheduled for review at the working session scheduled for Thursday, November 8, 2012.

3. Open Discussion

The next scheduled working session is Thursday, November 8, 2012, at 3:30 p.m. at the Carnegie Town Hall, 235 W. 10th Street.

4. Adjournment

A motion was made by Commission Member Robert Thimjon and seconded by Commission Member Dennis Aanenson to adjourn the working session at 4:58 p.m.

Tamara Jorgensen, CMC

Assistant
City Clerk