

Ramsey County Charter Commission
Monday, May 14, 2012

The Ramsey County Charter Commission meeting, held at the Ramsey County Court House, 15 W Kellogg Blvd, St. Paul, MN was called to order at 7:05 p.m. by Chair Bob Benke, with the following members present:

	<u>Members Present:</u>	<u>Members Absent:</u>
District 1:	Robert Weisenburger Richard Sonterre	
District 2:	Richard Moses Bob Benke (Chair)	
District 3:	Bryan K. Olson Randy Gustafson	
District 4:		Christopher Leifeld
District 5:	Peter Hendricks	
District 6:	Rod Halvorson Michael Fratto	
District 7:	Bud Berry	Russell Miller
At Large:	A.L. Brown Beverly Aplikowski Fred Perez	Marvin Koppen

Also present: Kyle Thomas, Director, Civil Division, County Attorney's Office
Jeff Stephenson, Assistant County Attorney
Bonnie Jackelen, County Manager's Office
Megan Haugen, Elections Office

Approval of the May 14, 2012 agenda

Benke recommended that 6A on the agenda be rescheduled prior to old business. Sonterre moved approval of the May 14, 2012 agenda with the amendment of 6A to be placed prior to old business, seconded by Fratto. Amendment approved unanimously.

Brown moved, seconded by Halvorson, to approve the May 14, 2012 Agenda as amended.

Discussion to the motion - Halvorson asked why the County Attorney was not on the agenda.

Benke stated that the County Attorney will present under the second bullet point under new business- Ramsey County Administrative Code.

Halvorson asked if there was any correspondence from the County Attorney's office prior to the meeting.

Benke stated that there was not.

Sonterre asked if Joe Mansky's presentation should be removed from the agenda. Consensus was that it did not have to be removed.

(Continued)

Agenda approved unanimously.

Minutes of February 6, 2012

The minutes of February 6, 2012 were moved by Brown moved and seconded by Fratto.

Olson would like page 6, third line of non-agenda items to state that “*Gustafson stated that a work session is not usually televised*” instead of “*Gustafson stated that the work session is not usually televised.*”

Gustafson, the maker of the statement, is satisfied with how it is written in the minutes.

Brown called the question to the amendment.

Amendment failed on a voice vote.

Minutes approved, as written, on a voice vote.

Citizen Comments/ Input

Bob Zick, Ramsey County resident, asked if work sessions are televised.

Benke stated that they are not televised, but they are open to the public.

Zick stated his disapproval of the Vikings stadium outcome and the treatment of the Minneapolis City Charter in the process. He would like discussion on the petition that was circulated in Ramsey County and how it would stop the legislature from doing something similar in Ramsey County. He asked what the Charter Commission will do to defend the Charter in the future.

Benke stated that the state law can trump county and city laws.

Zick expressed disapproval in the legislature, and believes that the Ramsey County Charter Commission should express its disapproval.

New Business

- a) Presentation by Stacie Christensen, MN Department of Administration, Information Policy Analysis Division - Informational presentation on the Open Meeting Law.

Ms. Christensen discussed the Open Meeting Law. She stated that the public has the right to attend all public meetings. Special meetings are not on the regular schedule. They must be posted three days before the meeting. Emergency meetings are special meetings that do not allow for a 3-day notice. The quorum rule states that a quorum must be present in order to be subject to the open meeting law. The quorum discusses or decides official business. Meetings that are not covered by the open meeting law include social parties, as long as official business is not discussed, and trainings, as long as official business is not discussed.

Ms. Christensen discussed the use of email under open meeting law. In 2009, there was an issue with a public body when discussing a press release. The media requested an opinion from the Commissioner of Administration. The Commissioner said that it could be a violation. Advice is to not have a discussion via email.

(Continued)

Ms. Christensen stated that email meetings could be in violation of the open meeting law. Closed meetings have to deal with non-public data, allegations and charges, performance evaluations, security matters, and attorney-client privilege. Attorney-client privilege is not just to talk about legal strategy. Before a closed meeting, there has to be a statement regarding what will be discussed and the legal authority that allows the meeting to be closed.

Fratto asked about the press release advisory opinion, and was shocked by the opinion given on the press release.

Ms. Christensen stated that everything is a risk assessment, and that nothing is crystal clear until the courts weigh in.

Halvorson stated that the body was trying to inform the public, and is shocked that the department decided to weigh in on it. He stated that elements that call into question the public meeting are discussion, and asked what constitutes a quorum, what constitutes discussion, and what if a decision is not asked for?

Ms. Christensen stated that discussions are problematic because they are not in an open meeting.

Halvorson asked what prohibits the commission from having email communication be public.

Ms. Christensen stated that emails are public under data practices. In 1980, they considered a quorum a group, and it is hard to fit that case law into current practices such as email.

Halvorson asked what is wrong with having a Facebook discussion group that anyone can join.

Ms. Christensen thinks that forums are an excellent idea, but many citizens do not use social media.

Perez asked if it would have to be the same thread to violate open meetings law.

Ms. Christensen stated that it gets into the serial issue - which isn't crystal clear in the case law.

Gustafson stated that "open meeting" means it is open to the public but questioned if televised broadcasts are required.

Ms. Christensen stated that it means that it has to be in a building that is open to the public, but that televised meetings are not required.

Sonterre asked Ms. Christensen to comment on the role of her office and what types of information are available.

Ms. Christensen stated that she is in the Information Policy Analysis Division of the Minnesota Department of Administration. The Division provides advice, answers questions, and provides materials to anyone who requests them. They explain information on data practices and open meeting law to government entities. Advisory opinions cost \$200 based on statutory language.

Benke stated that this works through the letter of the law and the spirit of the law.

(Continued)

Ms. Christensen stated that there are penalties, but that no one has the power to enforce the law without someone suing the governing body.

Aplikowski stated that emails are only delivered to those that have agreed to receive emails, and that commission documents must be mailed.

Old Business

County Commissioners' salary issue

Benke stated that the public hearing was held earlier tonight; he reported that there has been no further communication from the public.

Moses presented opening comments on the issue. He stated that the purpose is to proactively prevent future problems and stirring up the public ire. He believes that this is an opportunity to make a positive change to the Charter, and would help citizens who get frustrated with government. He said that a "no" vote would leave the problems for future commission members. He stated that the amendment will solve the problems that have been outlined. He believes it is something to be proud of. He hopes that the issue can get resolved this evening.

Benke asked if Moses would like to adopt the County Attorney's language.

Moses moved, seconded by Olson, to adopt the County Attorney's language: *"Should the Ramsey County Home Rule Charter be amended to provide that any Commissioner salary increase of more than two percent (2%) per calendar year be automatically submitted for referendum approval at the next general election?"*

Brown asked what the rationale was behind the change in the language from "per annum" to "per calendar year."

Benke stated that it was language from the County Attorney and that it was easier to read.

Fratto asked if this was the question that Mansky said would be placed on the ballot.

Benke stated that it was.

Fratto asked if this would require the commission to draft language for the Charter, or if the County Attorney would draft the language.

Benke said he believes that is the job of the County Attorney.

Perez asked if the County Attorney could explain how the automatic referendum would actually work.

Benke would like to adopt the County Attorney's language before discussing the question itself.

Motion to amend approved on a voice vote.

Benke called for discussion to the amendment.

Aplikowski asked where this amendment would be located in the Charter.

(Continued)

Benke stated that was part of the drafting process.

Aplikowski believed it would go into Chapter 2.

Fratto asked if when the original language was approved at the February meeting, would the commission have to now move to place it on the ballot.

Benke stated that was correct; the commission wanted a public hearing as is the standard process. Now the issue is whether it should be placed on the ballot.

Brown supports putting the amendment on the ballot. He believes that members should air any opposition to it and the commission should hash out the details. This is a process point and should be done out of respect for other commission members and the work they put in.

Benke stated that discussion is open.

Sonterre said that one of his concerns is that he understands the intent of being proactive, but that he has a suspicion that there would be a preventative action by the County Board as well. He thinks this will lead to an automatic 2% per year increase. He is concerned about giving the County Board a mechanism that gives the County Board a raise every year. He believes that 2% per year will add up over time.

Hendricks stated that Ramsey County is the only Minnesota county that requires that the Commissioners pass a salary increase by the ordinance process, which requires a public hearing. He stated that if a salary increase is approved, then the public can gather enough signatures to submit that ordinance to a referendum process, where the public can vote for or against the ordinance that was passed by the County Board. He believes that there are sufficient protections in the Charter as it currently stands.

Moses stated that Sonterre was absent at one of the earlier meetings, and that it would have been good to have had those objections raised earlier. He believes that in practicality, the petition process is agonizing and labor intensive for the public. He believes that a large salary increase by the Commissioners is a slap in the face to the private sector worker. He stated that citizens like Zick are frustrated with the system, and this is to prevent more citizens from feeling this way. He believes that this is a better solution than a petition, and that they shouldn't have to wait to fix something, they can be proactive.

Benke spoke to the concern of the petition process. He stated that only one citizen showed up for the public hearing. He believes that this is a big solution for a small problem.

Moses believes that this is a sword in the stone moment.

Aplikowski is concerned with who the commission is protecting. She asked if anyone has talked to the Commissioners directly. She has not heard from any of the Commissioners on their stance. She stated that the Board Members have not raised their salary the past couple of years, and is not sure that this is necessary; she is confused as to why it is being pursued.

Perez supports this, except for the automatic referendum piece. He believes that it takes away the rights of people to choose.

(Continued)

Fratto asked if there is anything to prevent language that simply states that Commissioner salary increases shall not exceed the annual increase of Ramsey County employees' bargaining units. He believes that this would limit the increase to the average salary increase that bargained employees receive. He doesn't believe that County employees get anything near 2% per year increases.

Benke believes that discussion happened many months ago.

Brown stated that there is still a practical concern of how a question actually gets on the ballot through the automatic referendum process. He would like to hear from Counsel on this issue. He believes that this is more reactive than proactive; the Commission gave itself a 25% raise. He believes they are protecting the public trust of government. He has always had a problem when Commissioners say that there will be an election. He stated that the most powerful thing that the Charter Commission can do is put a question on the ballot. He would like to do things that help people trust their government, and that there should be a limiting principle to raises, and that it is good public policy. Even though there are not crowds and this issue is not popular, the commission members are there to do the boring work. He asked if the County Attorney has considered how an automatic referendum would work.

Benke asked for comment from the County Attorney's office, but that he believes it would be processed through the paper mill and then put on the ballot.

Jeff Stephenson, Assistant County Attorney, asked if Brown was asking how mechanically, the ballot question would get on the ballot.

Brown clarified his question to ask who has the right to enforce this, and does that need to be a part of the amendment.

Stephenson stated that it would be enforced like any other provision of law, and that the elections office would put it on the ballot.

Brown asked if the elections office would then enforce the ordinance and determine if the ordinance was violated.

Stephenson stated that no, only something resulting in an election would be handled by the elections office. Mechanically, how the question gets placed on the ballot, he is not sure. If the Charter Commission approves a ballot question regarding ballot activity, the language would be formatted based on the decision of the Charter Commission.

Moses asked if this is passed as it is worded now, when the Board votes an amount higher than 2% then in effect, do the voters get to approve or disapprove the question. He believes that clarifies the concerns.

Hendricks would like to direct everyone to 8.06 of the Charter which states that any ordinance upon which a petition is filed, the ordinance should be suspended in its operation as soon as the petition is found sufficient. It would be suspended until it is voted on.

(Continued)

Halvorson agrees that it is simple and automatic, and the elections officials and County Attorney's office would get the question placed on the ballot. He stated that there is a specific court action (writ of mandamus) that the public can take if this is not placed on the ballot, and force them to do their duty.

Brown stated that he is uncomfortable with the automatic referendum, and that you have to have standing to bring forth a writ of mandamus. He would like to make a motion to get rid of the automatic referendum aspect.

Brown moved, seconded by Aplikowski, to place the question on the ballot.

Brown moved, seconded by Perez, to amend the question to say *"Should the Ramsey County Home Rule Charter be amended to prohibit the Commissioners from increasing their salary by ordinance or any other fashion in excess of two percent (2%) per calendar year?"*

Brown believes the referendum aspect is overly complicated, and that 2% per year is okay. This is mandating that they are responsible.

Aplikowski supports the amendment.

Halvorson supports the outcome. He would like to keep in mind the intent of the public when this was adopted. He stated that whether the amendment passes or not, there is a prohibition, but there is a question on who the enforcer is. He respects what Moses has done. He believes his motion follows the intent of the initiative/referendum principle.

Hendricks would like to remove "any other fashion" and that there is no need for it because in the Charter, a salary increase has to be done by ordinance.

Brown agrees to remove "any other fashion" and also "by ordinance" as this is already in the Charter. The question now reads: *"Should the Ramsey County Home Rule Charter be amended to prohibit the Commissioners from increasing their salary in excess of two percent (2%) per calendar year?"*

Gustafson does not want to be too confining. He believes that the amendment is far too restrictive, and that it was adequate for the last five years, but that the amendment does not allow flexibility for the County Board to take an action that may be necessary later. He stated that the voters reelected the Commissioners after the last salary increase, and that if the people should be involved, the original language allows the opportunity.

Brown believes that even if there is high inflation, the Commissioners should not be giving themselves high raises. He is not sure what the correct percentage should be, but a decision has to be made. He favors three percent, but that is the experience of the average worker.

Perez stated that a 2% raise with a salary of \$85,000 is not a bad raise.

Halvorson stated that he was on the fence, but that Gustafson convinced him to vote against the amendment. He agrees that the original question allows for flexibility.

Moses asked for Brown to withdraw the amendment. He hears his concerns but he agrees with Gustafson and Halvorson. He apologized to Benke and Sonterre for previous negative comments.

(Continued)

Brown asked whether it is better to do something or nothing. He doesn't believe that the original question has the votes to pass, and that taking off the automatic referendum piece will help the original question pass.

Moses understands that it is a risk.

Benke called for further discussion to the amendment.

Votes on the amendment to the amendment as presented:

Ayes – Brown, Fratto, Perez, Sonterre, Aplikowski, Benke (6)

Nays – Berry, Gustafson, Halvorson, Hendricks, Moses, Olson, Underwood, Weisenburger (8)

Amendment fails.

Benke called for discussion to the original motion.

Hendricks stated that in 2009, the Board did not increase their salary, and that the general wage increase for County employees was 3%. The current ordinance is based on the 2009 ordinance. If you take a two percent increase it is a total of \$11,536, and any salary increase above that would trigger an automatic referendum, and it would be more expensive for the elections department to hold an election.

Brown moved to amend the question to say *“Should the Ramsey County Home Rule Charter be amended to prohibit the Commissioners from increasing their salary in excess of seven percent (7%) per calendar year?”* This addresses the flexibility issue. No second to the motion.

Benke suggested that a number other than two percent might be more palatable.

Brown moved, seconded by Perez, to amend the question to say *“Should the Ramsey County Home Rule Charter be amended to prohibit the Commissioners from increasing their salary in excess of three percent (3%) per calendar year?”*

Underwood asked if this would delete the referendum language.

Brown stated that it would delete the referendum language. He would like to find a number if this is based on flexibility.

Votes on the amendment to the amendment as presented:

Ayes – Brown, Fratto, Perez, Sonterre, Aplikowski, Benke (6)

Nays – Berry, Gustafson, Halvorson, Hendricks, Moses, Olson, Underwood, Weisenburger (8)

Amendment fails.

Benke called for further discussion on the original motion.

Fratto asked who the bargaining units are within Ramsey County, and if they could use the bargaining units as the basis for salary increases. He believes that this could be the solution.

(Continued)

Benke stated that he was advised that the County operates on three year contracts. In the previous discussions, fairness has been brought up, and that everyone from the different backgrounds has different experiences. It is difficult to compare Ramsey to Hennepin and that this is not the solution, and neither is comparing the County Board to County staff.

Fratto suggested this because the negotiated salaries will take into account future inflation. If someone is raising the salary for the County Board, the negotiation for the employees would have to be broader.

Halvorson moved the previous question, seconded by Brown.

Hendricks would like to consider “at the next general election” and this would put the County Board into a holding pattern.

Halvorson called a point of order on the call to question. Roll call taken on the call to question.

Votes on the motion to reconsider the previous question as presented: Amendment fails Yes (6) No (8).

Fratto suggested 4%, since the question states 2% per calendar year.

Weisenburger believes that the Commission has to set their salaries by July 1st. There is an issue when they could set their salaries.

Benke stated that the discussion is back to the draft provided by the County Attorney’s office.

Votes on the amendment to the amendment as presented:

Ayes – Fratto, Moses, Olson (3)

Nays – Berry, Brown, Gustafson, Hendricks, Perez, Sonterre, Underwood, Weisenburger, Aplikowski, Benke, Halvorson (11). Motion failed.

Halvorson stated that he is on the prevailing side of the previous motion. He moved to reconsider the previous motion in order to reconsider the previous amendment to remove the automatic referendum.

Halvorson moved, seconded by Perez, to reconsider.

Vote on the motion:

Yes - 8

No - 6

Motion passed.

Halvorson moved, seconded by Brown, to reconsider the previous amendment by Brown that removes that automatic referendum language: *“Should the Ramsey County Home Rule Charter be amended to prohibit the Commissioners from increasing their salary in excess of two percent (2%) per calendar year?”*

Vote on the motion:

Yes – 9

No – 5

Motion passed.

(Continued)

Underwood questioned how the current motion is different than what Brown proposed earlier.

Benke stated that it is the same.

Moses stated that he is in favor of the new language.

Benke moved, seconded by Perez, to amend the motion from “2%” to “3%”. Adopted on a voice vote. Question now reads *“Should the Ramsey County Home Rule Charter be amended to prohibit the Commissioners from increasing their salary in excess of three percent (3%) per calendar year?”*

Underwood stated that she did her homework and is familiar with the issue from the news. She stated that she had concerns about the role of the body and this kind of amendment. She voted against the amendments previously because they were against the will of the author. She will vote no because of the removal of the public process. She believes that the public should have an opportunity to weigh in. She believes that there are a number of checks of balances already in the Charter.

Votes on the motion to the question as presented:

Ayes – Brown, Fratto, Halvorson, Moses, Olson, Perez, Aplikowski, (7)

Nays – Berry, Gustafson, Hendricks, Sonterre, Underwood, Weisenburger, Benke (7)

Motion failed.

Aplikowski thanked the commission for the research and discussion that has gone on the issue.

Halvorson asked for unanimous consent to change his vote from yes to no. The purpose would be for potential reconsideration to allow the absent members the opportunity to weigh in. Hendricks objected.

Brown stated that a member has a right to change his vote without any input from the other members.

Weisenburger stated that the public testimony was on 2%, not on the other versions, and the vote speaks for itself.

Brown stated that that is a different issue. A member can change a vote if the members agree.

Benke stated that Halvorson wanted to change his vote in order to move reconsideration later.

Brown stated that it did not matter his intentions on changing his vote.

Halvorson’s vote is changed from yes to no.

Gustafson changed his vote from no to yes.

Aplikowski stated that any member on the prevailing side can bring back the question for reconsideration.

Underwood questioned whether members can change their votes when the commission had moved on to the next agenda item.

(Continued)

Aplikowski stated that Halvorson qualified his vote change by asking if any other member objects he would withdraw his motion.

Brown stated that only a member of the prevailing side can bring the motion back for reconsideration.

Votes on the motion to the question as presented:

Ayes – Brown, Fratto, ~~Halvorson~~, Gustafson, Moses, Olson, Perez, Aplikowski, (7)

Nays – Berry, ~~Gustafson~~, Halvorson, Hendricks, Sonterre, Underwood, Weisenburger, Benke (7).

Benke stated that the vote still stands 7-7, motion failed.

Recess – 9:05-9:17

New Business

Discussion on the Ramsey County Administrative Code and its relation to the Charter.

Presentation by Kyle Thomas, Civil Division Director, Ramsey County Attorney's Office.

Benke stated that at the last meeting, Brown moved and Perez seconded a motion to ask for a clarifying opinion from the Ramsey County Attorney's Office regarding possible conflicts between the Ramsey County Administrative Code and the Ramsey County Charter, particular to if there are any sections of the Code that are more limiting than the Charter, and the petition and pre-petition process. There is a submitted memorandum from Goldstein.

Thomas presented a document that was put together by the Ramsey County Attorney's Office. He stated that there are areas in the Code that were not contained in the Charter. In the opinion of his office, there is no conflict between the Administrative Code and the Charter. This is because the Charter sets forth the framework, while the Administrative Code acts as instructions on how to implement the Charter. If a Charter Commission member believes that there is a conflict, there are two remedies: 1) Ask the Ramsey County Board to change the Administrative Code; or 2) Make a motion to amend the Charter and have the county residents vote on the motion.

Benke called for discussion.

Hendricks asked if there was a third remedy, if the public could gather enough signatures on a petition to propose the Charter amendment that would be voted on in the next election.

Thomas responded that would be another remedy.

Brown asked if it is the County Attorney's position that there is not a single conflict between the Ramsey County Charter and the Ramsey County Administrative code.

Thomas stated, given that the initiative and referendum section was the focus, there were no conflicts.

Brown asked if there were any near-conflicts.

Thomas said that there were none that they could determine.

(Continued)

Benke stated that the Administrative Code requirement for a pre-petition seems to make a lot of sense so that the public can find out if the language works before they gather all of the signatures.

Brown disagrees with that, there is no federal approval to proposed amendments to the constitution. He doesn't believe that there is anything in the Code that gives the County Attorney the right to pre-approve the question.

Thomas agrees that the language is not in the Charter, but that administrative codes are there for a reason.

Brown stated that the statute prevails, and doesn't know how those two are reconciled.

Halvorson agrees with Brown. He is not surprised by the opinion. He believes that there is a conflict of interest between the Ramsey County Charter Commission and the Ramsey County Board, and that it is wrong to assume that the Attorney's office can represent both of them. He believes that the Attorney's Office represents the Board of Commissioners.

Benke believes that the term "conflict" is inappropriate. The Code helps facilitate the process, and is not an obstacle.

Fratto believes that is a bit convoluted. He believes that the pre-petition inhibits the petition.

Benke asked how else it should be done.

Fratto believes that the process should collect signatures, and while preliminary signatures are reviewed, more signatures could be collected until the number is met.

Benke asked why they should require a prepetition at all if that is the case.

Fratto agreed and said the reason why this is being discussed is because they decided to not have a ballot question to begin with.

Brown believes that the commission should ensure that initiative and referendum should work. He would like to know where in the Charter it gives the County Attorney to veto initiative and referendums.

Hendricks clarified that a referendum is an ordinance passed by the County Board, whereas an initiative process is a citizen-led ordinance.

Brown stated that was correct.

Thomas stated the reason for the language in the Administrative Code is to help implement the provisions on the Charter. He believes it helps implement the process, not inhibit the process.

Brown believes that as long as there are no substantive barriers, he is ok with the process.

Thomas stated that the pre-petition is a free bite at the apple, and it is an opportunity to make sure that everything is set before collecting all of the signatures.

(Continued)

Hendricks stated that the pre-petition process is related to an initiative. An initiative is an ordinance that directs the County Board how to govern. He believes it is important for the County Attorney to have some review, in order to determine if it is appropriate for the initiative process or not.

Halvorson disagrees with Hendricks' conclusion and believes there is nothing in the Charter that states that the County Attorney's Office has to approve initiative language. He believes there are inherent conflicts of interest between the County Attorney's Office and this decision-making process.

Thomas stated that the County Attorney's Office does not set the Administrative Code.

Halvorson stated that when the Administrative Code was written there was discussion on the record to create barriers to the initiative and referendum process.

Hendricks cautioned the use of irrelevant examples. He is frustrated that many members are not using the correct language.

Benke would like to continue discussion at the August meeting.

Aplikowski moved, seconded by Perez, to postpone discussion of the issue until the August meeting.

Approved on a voice vote.

Discussion of 2012 meeting dates

Halvorson asked for clarification as to the proper procedure to add an agenda item. He believes that as a commission member he can request something be added to the agenda.

Benke stated that was correct, and the only issue is to make sure that it is early enough in the process, at least two weeks prior to the meeting date.

Halvorson would like two items on the August agenda: 1) To make a motion and vote on an administrative item that would establish an online discussion group between commission members and members of the public; and 2) The ability to place an item up for a vote and consideration for a proposed Charter amendment to require public input at every public meeting held by the Ramsey County Board. He also questioned whether the information supplied by the County Attorney was made public.

Bonnie Jackelen stated that there are not normally handouts posted online after the meeting.

Sonterre asked that if within the two-week timeframe additional documentation could be submitted as well.

Brown asked if the defeated salary ordinance motion could be placed back on the agenda for discussion. He would like to preserve the right of a member to make a motion to reconsider.

Brown moved to adjourn, seconded by Halvorson.

Passed on a voice vote.

Meeting adjourned at 9:47 p.m.