

Ramsey County Charter Commission
Monday, August 6, 2012

The Ramsey County Charter Commission meeting, held at the Ramsey County Public Works Facility, 1425 Paul Kirkwold Drive, Arden Hills, MN was called to order at 7:02 p.m. by Chair Bob Benke, with the following members present:

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

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

Meeting was called to order at 7:02

Approval of the August 6 2012 agenda

Fratto moved, seconded by Aplikowski, to approve the August 6, 2012 agenda. Approved unanimously.

Minutes of May 14, 2012

Leifeld moved, seconded by Aplikowski, to approve the minutes of May 14, 2012. Approved unanimously.

Citizen Comments/ Input

Tom Goldstein, 1399 Sherburne Ave, spoke of his concerns about a lack of response from the County Attorney's Office regarding the Charter and the Administrative Code. He stated that his comments are not about the Vikings Stadium, just about good Charter policy. When the Charter was approved, there was a high bar to clear for citizen input. He believes the Administrative Code is unduly restrictive of the Charter with the pre-petition, signatures, and the veto power by the County Attorney's Office. He believes the County Attorney's Office has a conflict of interest, and has to provide legal opinion, not just a personal opinion.

Benke asked that all comments be limited to the topic, and said that this topic will be discussed in further detail later in the meeting, and that further citizen input would be taken at that point.

Mr. Goldstein stated that no enabling language that the Administrative Code can go above and beyond the Charter and be more restrictive and that this makes no sense. He stated that there was no response from County Attorney's Office. He stated that the County Attorney's Office had stated that the Administrative Code was developed to help implement the provisions of the Charter, but that people have a limited voice.

Benke asked if all members have read the comments. Those present responded that they had.

Old Business

Continued discussion on the Ramsey County Administrative Code.

Benke stated that he had read and reread Goldstein's memo, cannot parse all the language not being a lawyer, but there may be a valid argument there. Having a pre-petition makes sense, but it is not in the Charter. One solution is to go through the process of validating the pre-petition. Maybe elements that are in the Administrative Code should be in the Charter. He welcomes staff input.

Fratto has concerns with trying to ensure that what is in the Charter is not somehow mitigated by the fact that the Administrative Code is developed. He stated that he knows the purpose of administrative rules and code. He stated that generally criteria have to be enacted and that it appears that these were enacted without the input of the Charter Commission.

Benke believes that the Charter Commission discussed it but no formal action was taken on the Code.

Fratto believes that is where part of the problem came in. He understood that there was not a whole lot of interest in doing something beyond coming to meetings. The Commission had not done anything significant up to that point. Not sure if they thought the Code was going to be an impediment or they just did not want to take action. He would like some clarification in writing from the County Attorney's Office that states that the Code does not impair the Charter. He questioned whether the Attorney's Office should be reviewing the question.

Benke recalls that the legislature enacts legislation, but that rules have to go through a formal hearing process on the state level.

Fratto says that they can attempt to forego a hearing if it is non-controversial on the state level, but everything is considered controversial now.

Mr. Goldstein stated that the Charter authorizes that the Code can be created and amended, and that is not the issue. He believes the issue is whether the Board can adopt language that is more restrictive than the Charter. He stated that the Charter is vague, but it makes clear what you need to do to bring forward various things. He argues that the Code creates language that is more restrictive than the Charter. He argues that those restrictions are not more reasonable, and that the County Attorney can refuse, and they have a conflict of interest. He would like to see a legitimate legal response why it is not more restrictive. He stated that the Charter is the constitution, and the rules cannot be more restrictive. He stated that if this is an issue that you really care about, you have a lot

of hoops that have to be gone through. He stated that even if Commission members do not think it matters, they should still ask if it is legal.

Benke can see that the initiative and referendum process has to have some timeline so that questions can get on the ballot etc. He stated that the question is what is considered reasonable.

Mr. Goldstein thinks it's impossible to say it's not restrictive, and he would like to hear what is appropriate, and why the County's Attorney's Office believes that it is not unduly restrictive.

Benke asked who is the ultimate arbitrator on what is overly restrictive.

Mr. Goldstein believes that a court would ultimately make the decision.

Benke asked for further discussion from members on whether they believe the Charter is unduly restrictive.

Halvorson agrees with Mr. Goldstein that the Code is much more restrictive than the Charter. He stated that the Commission should look at this through the eyes of the citizens, without bias, and ask if it is right to ask for a certain number of signatures, timeframe, etc. is fair, and believes it is not the intent of the Charter as written.

Benke asked if the time changed from 30 to 45 days, which it did. The number of signatures did not pass.

Gustafson asked in the section on Charter provisions, number of signatures (10%), the county manager delivers the copy back and the reason why, and then they have to change the language and get another 27,000 signatures, if that was correct.

Gustafson went through the process, step one get signatures, step two, bring to the Board, if it is insufficient, you bring it back, and then bring it back.

Mr. Goldstein says yes but that the voters can go to court to dispute the actions of the Board.

Gustafson stated that the County Board makes the determination, then they can challenge in court, then they still might have to do it over again. Under the code, you only need 1/2 of 1% to make sure that it looks right before you get the 27,000 signatures. He thinks that it makes it easier to get a petition for initiative into the system with the current rules.

Benke stated that the 500 signatures on the pre-petition count toward the total 27,000 signatures.

Fratto stated that there is nothing in the Charter that relates to the petition's validity, only to the amount of signatures. He stated that the Code is what talks about the validity of the petition.

Gustafson asked if the argument then is that there is no need to have any type of overview, and we don't need to know if the question is germane.

Fratto stated that the verification of the signatures is in the Charter.

Benke asked what if someone was to put a petition together and it violates the constitution; would it not be of value to the taxpayers to have some review?

Fratto believes that it should have review, but that it should be in the Charter.

Benke stated that's why the Commission needs to look at gaps in the Charter.

Fratto does not believe that Chapter 8 deals in any form related to the legality of the petition.

Underwood asked for the current question before the Commission.

Fratto stated that the issue is that the Administrative Code puts more requirements to this process than what is in the Charter. He stated that groups collecting signatures have to start and stop and those groups trying to do an initiative cannot collect signatures during the review. He stated that the question is: is the Administrative Code more restrictive than the Charter?

Aplikowski stated there are three avenues to change and asked what they are trying to change. She asked to know what part of the Code they are looking to change.

Benke stated that the proposal is to eliminate the pre-petition requirement and the 30 day review that is not mentioned in the Charter.

Aplikowski stated that there is a difference between if the County Commissioners or the public bring it forward.

Mr. Goldstein stated that the Code adds an additional step, and can the Commission be sure that the County Attorney's Office does not have a conflict of interest. He believes that office has not issued a legal opinion that states why the Administrative Code has provisions that do not go through the amendment process. He stated that the County can challenge the legality, but that is just one opinion, and can also be challenged.

Benke stated that the County Attorneys can speak for themselves.

Mr. Goldstein stated that the loyalty of the County Attorney should be to the Commission, and that the Commission should ask them why they haven't provided a memorandum.

Underwood stated that she would like to hear from the County Attorney's Office, and that a memorandum was received from the County Attorney's Office with remedies that have not been discussed.

Benke stated that he would like the County Attorney's Office to speak, but that he was hoping to figure out the issue at hand first.

Aplikowski stated that the Code discusses the County Attorney's Office and the elections office, while the Charter only talks about the Board.

Benke stated that another issue is if the additional requirement should be in the Charter.

Miller stated an example that it is unconstitutional to have term limits. He asked what if someone gets 27,000 signatures to have term limits? They need to be told that they cannot go forward by someone before they go out and get 27,000 signatures. They need an opinion to prove that it is constitutional to go forth.

Halvorson stated that is a perfect example for a split decision for the Supreme Court to have term limits, based on Minneapolis' Charter and their attempt to have term limits. What Miller is saying, the residents should be able to see if the court has had a change of mind on an issue, and see if the minority decision prevails, but the County Attorney's Office would not let that happen, because they say what is constitutional. Another remedy would be an official that runs for office past their term limit can sue to get back on the ballot to see if it is unconstitutional. He believes that system is better than the County Attorney's Office being able to determine what is constitutional and stop petitions.

Sonterre asked if there is a legal examination of the question, and it's believed that the County Attorney is not an unbiased, trustworthy opinion, who provides a legal examination of the question?

Benke asked at what point do you not trust the staff to give opinions.

Fratto stated that based on the term limits example, that if they went ahead, signatures should still be able to be collected. When the commission comes up with an amendment, they work with the County Attorney's Office to draft the question. He is not sure if that eliminates the request to put something on the ballot.

Benke asked if the Commission could draw parallels to who resolves the language on the ballot and who decides if it sufficiently explains what is on the ballot? If a group wants to make a change, the Administrative Code implements the changes.

Fratto asked if the intent of the 500 signatures is to make sure that there is sufficient interest of the public, then they bring it in for review by the County Attorney, but then the same group is collecting signatures, and that this would solve the problem, and that there is not a quick fix.

Moses believes that there are some legitimate issues being raised, with several complexities and wonders if some recommendations should be made by a committee.

Weisenburger stated that the City Attorney of Minneapolis is appointed, and that the County Attorney is elected, and that its role is to make sure that the law is upheld, and that they are not accountable to the County Board. He stated that the County Attorney is elected by the people.

Fratto stated that he takes offense at that characterization. He believes that the Attorney's Office serves the Board and the Commission, and that there is a conflict, because the County Attorney has to serve them both. He stated that the Commission requested a legal interpretation last November, and that the interpretation has not been received. He questioned why they have not seen a legal opinion.

Sonterre asked if anyone has called to ask.

Fratto stated he had asked at the last two meetings.

Benke asked Mr. Thomas if different attorneys work on issues where the Commission disagrees with the County Board.

Mr. Thomas stated that no attorneys in the room have worked for the Board on issues relating to the Charter Commission, and that if there were, different attorneys would work for different issues.

Koppen stated that the question was raised about inviting someone from the County Attorney's Office to speak.

Benke stated that they would offer the County Attorney the chance to comment as they wish in a few moments.

Aplikowski stated she was still confused, because the Commission operates as an advisory committee, and that they get legal counsel through the Board, and she doesn't understand why they would want to get rid of the County Attorney for legal opinions.

Benke does not question the wisdom of the County Attorney's Office, but that the question is whether they can give a more precise conclusion than the memo received at the last meeting.

Gustafson showed in the minutes (page 11) from the last meeting where the County Attorney's Office discussed this issue and gave an answer, and then in February the County Attorney explained how the Administrative Code worked. He apologized to the County Attorney's Office for the suggestion that they did not do what they said they did, as he believes that they have done what the Commission asked.

Benke asked for further advice from the County Attorney's Office.

Mr. McPeak stated that they have responded and provided an answer, and that there is not a conflict between the Administrative Code and the Charter, and that some Commission members just haven't accepted the answer. He thinks that it is important to remember that the County Attorney and the other attorneys do not serve at the pleasure of the County Board, and that the County Attorney is a county-wide elected official. He stated that theoretically there is not a conflict, and that in reality there is no conflict, and that the County Board has not asked the County Attorney's Office about this issue. He stated that this was a solution in search of a problem.

Benke agrees with Mr. McPeak and it comes back to whether the Code is onerous and should it be in the Charter. He is open to putting together a subgroup to provide recommendations, or he would to take a vote and not pursue the matter.

Fratto asked what the feeling of the Commission was, and asked if the pre-petition and signatures is the only part that is onerous, or if there are other parts.

Sonterre wanted to make a clarification that "30 days" is actually within 30 days. He stated that it could be two days, it can be up to 30 days.

Halvorson moved, seconded by Sonterre, to table further discussion until a formal amendment is brought forth by a Commission member or a member of the public, as it is difficult to have discussion without a formal change to discuss.

Underwood clarified that there is a process question with the 30 days issue, a structural issue between the Charter and the Code, and then a philosophical question of the role of the County Attorney between the Board and the Charter Commission. She believes they can discuss the first two issues, but not the third.

Fratto believes that they should figure out if they should even touch the 30 day requirement.

Benke believes they can move forward toward a Charter amendment, and there are other options, and that defining the options more clearly is a task, and asked if 4 or 5 would like to meet independently to discuss options.

Motion is adopted on a voice vote.

Benke called for volunteers to serve on a working group.

Aplikowski would like the chair to appoint a committee, and is worried about balance.

Benke stated he will appoint a committee, and Commission members should let him know if they are interested; he will look for five members.

Fratto stated that the issues have to be defined.

Benke stated that was step one of the working group.

Mr. Goldstein wished to respond to what Mr. McPeak stated. He met with Mr. Stephenson and Mr. McPeak last fall when he was working with the coalition, and asked them why there were provisions in the Administrative Code, and that he never got a response from the County Attorney's Office because they stated that 'their client' did not want them to discuss it. He wanted to state that this was not personal, but that they stated that there was a client, and that the Commission was a client, and that was why it was brought forward.

Halvorson asked if old business would be the appropriate place to make a motion to reconsider the Commissioner's salary issue, which was defeated by a 7-7 vote. He would like to make a motion to reconsider the salary raise cap for the Commissioners. The proposed resolution read "Should the Ramsey County Home Rule Charter be amended to prohibit the Ramsey County Board from raising their salary in excess of 2% per year?"

Benke stated he believes that motion is out of order. A move to change one's vote needs to be made before the vote is announced. The vote was announced before Halvorson decided to change his vote. He stated that secondly, the motion to reconsider has to be made at that same session, not at a subsequent session.

Halvorson stated that based on that, then he is assuming that the issue can be brought up again at a new meeting.

Benke stated that it would have to be a new order of business, and that the issue has been dealt with twice.

Sonterre apologized for his tardiness, and that the agenda was approved when he was not present, but he believes that it would have to have been added at that point.

Benke stated that was a third reason.

Halvorson, seconded by Moses, moved to overrule the decision of the chair. He has never heard that the move to reconsider has not been accepted, according to Robert's Rules and Mason's.

Benke stated that Mason's has no role to play. Staff checked and that the request to change the vote was done after the vote was announced, so there is no issue.

Aplikowski stated that there has to be notice that a question will be reconsidered.

Benke stated that there was no formal notice of reconsideration, just a notice that it might be.

Votes on the amendment to the motion as presented:

Ayes –, Halvorson, Moses, Olson, Perez, (4)

Nays – Fratto, Gustafson, Koppen, Leifeld, Miller, Sonterre, Underwood, Weisenburger, Aplikowski, Berry, Benke (11)

Motion failed.

New Business

Motion will be considered to propose a Charter Amendment requiring “public input” at every public meeting held by the Ramsey County Board of Commissioners

Halvorson introduced the issue. He stated that he will not push for mandatory public input at every meeting of the County Board of Commissioners. Instead of an amendment, he would like to make a recommendation that the Ramsey County Board of Commissioners institute a regular public input period during regular Board Meetings. Halvorson moved the following, seconded by Fratto: *Be it resolved that the Ramsey County Charter Commission recommends to the Ramsey County Board of Commissioners that they institute a regular public time period for each of their regular meetings.*

Underwood asked for clarification on what constituted a “regular meeting.”

Halvorson believes they have regularly scheduled Tuesday morning meetings.

Weisenburger asked if there was not already a period for public meeting.

Halvorson asked if they just have to ask to be heard.

Olson asked if he could ask Halvorson a question. He asked how he envisions the County Board to act, should they pass a resolution.

Halvorson stated that his motion does not make any recommendations, and that he is fine with the motion being vague.

Olson asked if Halvorson's motion was requesting a specific action.

Halvorson stated that his motion was intentionally vague.

Sonterre asked if the motion should be more specific in order to be more effective.

Halvorson would like the Board to establish a timeframe for public input, and that they can decide if it is for agenda items both on and off the agenda.

Underwood stated that the Board has public hearings during the budget process, and would like to know if there are other times when a public hearing is already part of the process, and would like clarification from the County Attorney's Office.

Mr. McPeak stated that there are some legal requirements, and that there are some situations when public comment is solicited, and stated that Ms. Jackelen could perhaps describe the situation better.

Underwood stated that there is a process in place already.

Fratto stated that this is getting to the point that many bodies raise issues that haven't been considered, and that he doesn't think that there is a section for public input.

Benke stated that when they have it on the agenda is also an option, and that there is a lot of flexibility.

Gustafson asked if they should let the Board know what they are expecting and be proactive instead of reactive after the Board makes up their own rules, so that they know the intent.

Fratto stated that he did not know where Gustafson is coming from, and that the Commission does not need to tell the Board how to run their meetings, it is just to indicate the Charter Commission thinks it is important to have citizen input.

Wiesenberger stated that this is just to add a time for public input to the agenda.

Fratto stated that this is just a recommendation that they add it to the agenda.

Koppen asked if there was a point where the public had not been heard, and if that is why this was being considered.

Halvorson stated he had heard from individuals that they did not go and speak with the Board because there was not time for public input at the meetings.

Sonterre stated that Halvorson wanted it vague, and that he trusts that they will respect what the Board decides, and that the time for public input can be some of the most entertaining and favorite moments.

Motion accepted on a voice vote.

A motion to consider to propose an administrative action to establish an online discussion group open to the public, to facilitate communication between members of the Commission and the citizens of Ramsey County.

Halvorson introduced the second order of new business - a motion to propose an administrative action to establish an online discussion group open to the public, in order to facilitate communication between members of the Commission and the citizens of Ramsey County, and also among the commission members. He stated that he is concerned with open meetings law violations and believes that this would help address those concerns. This is in response to the open meetings presentation that was held at the last meeting. He proposed the following resolution: *"Be it resolved that the staff be instructed to implement a system of online public discussion for the purpose of*

communication between Commissioners and for the purpose of communications with the public on any public policy issues that may come before the Ramsey County Charter Commission.” Motion made by Halvorson, and seconded by Olson to adopt the resolution.

Benke stated that they first have to determine what mode of discussion is best, who sets it up, etc.

Fratto stated that he is already a member of many discussion groups, and that citizens first have to join the discussion groups. He would like to know what kind of listserv is available to send out email invitations to join. He thinks that if the motion were to pass, the first thing to do would be to find out from staff what is out there. He believes the downside would be that citizens have to sign up for it.

Sonterre is stuck on the language that the Commission is instructing staff to implement a system. He would like to ask staff first to bring back the available options, and to determine if there is something easy and effective.

Fratto asked how various discussion Boards meet open meetings laws.

Halvorson amended his original motion to say *“Be it resolved that the staff be instructed to ~~implement~~ research options for a system of online public discussion for the purpose of communication between Commissioners and for the purpose of communications with the public on any public policy issues that may come before the Ramsey County Charter Commission and report to the Commission a plan for implementation.”*

Underwood asked to change “staff” to “County Manager”. The motion now reads *“Be it resolved that the ~~staff~~ County Manager be instructed to ~~implement~~ research options for a system of online public discussion for the purpose of communication between Commissioners and for the purpose of communications with the public on any public policy issues that may come before the Ramsey County Charter Commission and report to the Commission a plan for implementation.”* Accepted by Halvorson as a friendly amendment.

Benke asked instead of “instructed” could it the motion say “requested,” the motion now reads: *“Be it resolved that the ~~staff~~ County Manager be ~~instructed~~ requested to ~~implement~~ research options for a system of online public discussion for the purpose of communication between Commissioners and for the purpose of communications with the public on any public policy issues that may come before the Ramsey County Charter Commission and report to the Commission a plan for implementation.”* Accepted by Halvorson as a friendly amendment.

Fratto believes there may be a problem with implementation, and that there should be two steps so that they could determine if they could be implementation.

Berry would like to drop the word "online" and just have it read “a system for public discussion.”

Benke believes that this should be online.

Halvorson would like this to be specific to online discussion. Not everyone has the internet, but those that do can join in the discussion, and that discussion Boards are allowed under open meeting laws.

Gustafson had a different reaction to open meeting laws and the use of online discussion Boards. He thought that you could get an advisory opinion, and that this was a huge gray area that could lead to a large amount of problems.

Halvorson stated that this is for a discussion back and forth and for discussion purposes, not for votes or decision making processes, and he believes the presenter thought it was okay.

Weisenburger stated that the purpose of the motion is to decide what they should do.

Fratto stated that if nothing is done, the way that it is continued, someone has to file a complaint, and at least this is due diligence for letting the public be aware of what is happening and to overcome the concerns raised by the open meeting presentation.

Benke asked if the third line should say "Charter commission members" instead of "commissioners."

Halvorson accepted the suggestion as a friendly amendment. The motion now reads: *"Be it resolved that the ~~staff~~ County Manager be ~~instructed~~ requested to ~~implement~~ research options for a system of online public discussion for the purpose of communication between Commissioners Charter Commission Members and for the purpose of communications with the public on any public policy issues that may come before the Ramsey County Charter Commission and report to the Commission a plan for implementation."*

Halvorson repeated the ending of the motion "and report to the Commission a recommendation for implementation".

Aplikowski asked why they are doing this now, that the budget is tight, and that this takes time to set up, and that there will be a minimal cost, and that it must be monitored, and how do they know that it will be a contained discussion. She asked what the Commission members believe that the public wants to say, and that no one really comes to the meetings.

Fratto stated that they are doing this so that they are meeting the expectation of the open meeting law. He stated that regardless of where the correspondence comes from. He shares the concern about cost, but that is why there is no deadline on the project.

Benke is concerned with asking for implementation plans before knowing what the plan or options are. He believes it would be wise to get considerations for implementations.

Halvorson stated that he is trying to be staff sensitive, and that is why no date was included. He would suggest that a report to the commission has no time frame. He thinks that one of the recommendations could be that there is no plan that is implementable. If the County Manager came back and said that there is no implementable plan, for him it would suffice as the report. It gives an expectation, and no is an acceptable answer.

Gustafson asked if the Charter Commission has a budget that it operates under.

Ms. Jackelen stated that the budget is about \$1,000 per year, and that is used for supplemental staff.

Gustafson has asked IT has billable time, and that the budget would be more than outspent for IT time. He stated that at the time he last checked, there is no architecture to handle a discussion forum, and that the commission could make the recommendation to the technical governance committee, and eventually the dollars could come from that recommendation.

Miller stated that the public does not know what the County Commissioners do. It would be better to tell the public what the County does.

Fratto stated that this is about the commission not the County Board, and that he agrees with Miller.

Benke stated that given comments, that the County Manager's Office should make a recommendation on budget.

Underwood would like the commission to look at this from a 5000 foot level, and that this is a modern digital age question. She would be surprised if there is not already something out there to facilitate this. She believes that the kind of research that this would take would be an ideal graduate student interns, and that they should look at what other local governments are saying about discussion space. She would appreciate having the issues in one public place, as opposed to emails, where you don't know what violates open meeting laws.

Benke asked for further discussion.

Halvorson would like to resist asking for a budget. He stated that there is no penalty for not doing anything, and would like to leave it the way it is.

Ms. Jackelen read back the question. "Be it resolved that the ~~staff~~ County Manager be instructed requested to ~~implement~~ research options for a system of online public discussion for the purpose of communication between Commissioners Charter Commission Members and for the purpose of communications with the public on any public policy issues that may come before the Ramsey County Charter Commission and report to the Commission a plan for implementation."

Motion is adopted on a voice vote.

2012 Meeting Dates

The October 29th meeting was moved up because of Election Day.

Mr. Fratto said he will be absent from the next meeting; this is his last meeting, and he thanked the Commission for the opportunity to serve.

Upon duly made and seconded motion, the meeting was declared adjourned.
Motion approved on a voice vote.

Meeting adjourned at 9:09 p.m.

Bonnie C. Jackelen, Chief Clerk-County Board