

CITY OF FRIDLEY
CHARTER COMMISSION MEETING
MAY 6, 2019

CALL TO ORDER:

Chairperson Rolstad called the Charter Commission meeting to order at 7:00 p.m.

ROLL CALL:

Members Present: Commissioners Kelli Brillhart, Manuel Granroos, Richard Johnston, Ted Kranz, Bruce Nelson, Rick Nelson, David Ostwald, Barb Reiland, Pam Reynolds, Valerie Rolstad, and Cindy Soule

Members Absent: Commissioners Gary Braam, Zach Crandall, Don Findell and Avonna Starck

Others Present: Deb Skogen, City Clerk/Staff Liaison
Dan Tienter, Finance Director

APPROVAL OF AGENDA

Commissioner B. Nelson MOVED and Commissioner Reiland seconded a motion approving the May 6, 2019, meeting agenda.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

APPROVAL OF MINUTES

Commissioner Reynolds pointed out three errors in the minutes for correction:

Page 2 – first paragraph – add the word “to” between “listening and the”;

Page 2 – third paragraph – “at Least” should not be capitalized;

Page 3 – last paragraph – change the word “States” to “Statutes”; and

Page 4 – third paragraph from the bottom – add the word “to” between “have and disclose”.

Commissioner R. Nelson MOVED and Commissioner B. Nelson seconded a motion approving the Charter Commission meeting minutes of April 1, 2019 as amended by Commissioner Reynolds.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

ADMINISTRATIVE MATTERS

There were no administrative matters at this time.

OLD BUSINESS

Chairperson Rolstad said the bylaws were mailed to the Commissioners and asked for a motion to adopt.

Commissioner Reynolds MOVED and Commissioner Nelson seconded a motion approving the bylaws as amended on April 1, 2019.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

NEW BUSINESS**DISCUSSION OF CHAPTER 6**

Daniel Tienter, Finance Director introduced himself and thanked the Commissioners for allowing him to speak with them. He provided a memo and proposed new language to Chapter 6. He has been reviewing and updating city policies on purchasing which led him to Chapter 6 of the Charter. The City is trying to create a consolidated financial management policy addressing all current policies (i.e., fund balances, P-Cards, purchasing, reserve amounts, etc) which have been adopted by the Council overtime. While reviewing the policies to update them, they have been checking statutory references, looking at best practices from the Minnesota Government Finance Officers Association (MGFOA), directions from the City's auditor, and the League of Minnesota Cities (LMC). When looking through the purchasing policy, they found some inconsistencies between certain chapters of the charter and the day-to-day practices of the City. During his discussions with the city manager and the city clerk, it was felt this issue should be presented to the Charter Commission for discussion.

Mr. Tienter said Section 6.05 controls certain powers and responsibilities with respect to purchases and contracts. Essentially all of the bonds and contracts as well as any other instrumentality of the City must be executed by the mayor. If you took a broad interpretation of this section, you would consider any financial instrument the City were to use would have to be executed by the mayor. He said a strict interpretation would be having the mayor sign every PO (purchase order) for an invoice for office paper. The PO is a financial instrument the City would use to make payment for all procurements. He said the City processes hundreds of PO's at a time which is provided to the Council per a claims list for each meeting. He felt it would be unreasonable to have the mayor show up and sign all of the PO's as well as have an understanding of what he was signing. The City has internal policies that describes what the processes and expectations are of the city manager, city department heads and other designees.

He said there were other inconsistencies within the charter. Section 7.06 empowers the city manager to enforce the budget resolution and other financial policies of the City. The budget is

basically a document that states how the City will expend their monies, which could essentially be called a purchasing document. Section 2.01 states the Council shall exercise its control exclusively through the city manager and shall not itself attempt to perform any administrative duties. It is the design of the charter and Council to delegate as reasonably as possible all the administrative responsibilities to the city manager. When looking at this particular section (6.05), the city manager is the chief purchasing agent, the city manager can let all contracts, and then suddenly the section states the mayor signs everything with the city manager. The city manager is supposed to enforce the budget, be responsible for the day-to-day administrative duties, let all of the contracts and do all the review. Then, suddenly, the mayor is supposed to sign these documents with the city manager, perhaps not being involved in any of the discussions except for adopting and approving the budget and providing proper oversight where appropriate.

Mr. Tienter reviewed charter language from twelve surrounding municipalities to arrive at the language included as a proposed amendment to Sections 6.05 and 6.07. The language is designed to allow the city manager to control the purchasing policy throughout the process by adhering to a purchasing policy adopted by the Council by resolution. The proposed amendment is written to be consistent with Chapter 7 using the words "sums appropriated". The Council would set the parameters and requirements the city manager would be expected to adhere to, but would delegate all of the purchasing authority to the city manager. The purchasing policy wouldn't be controlled by other state statutes with the exception of purchases over \$175,000, due the Uniform Contract law which requires the City to acquire competitive bids and have the Council approve the award of the bid and contract. This would be an example of the Council approving the contract and authorizing the mayor and city manager sign the contract or another individual they authorize to sign. The Council exercises its oversight authority by adopting the budget. Any purchases included in the annually adopted budget resolution sets the parameters for the expenditures and compliance points the City is responsible for. The charter says in another section the Council has no authority to increase the budget unless external revenues are identified, and then only by the amount identified. The proposed amount would still provide the Council the ability to exercise its authority over the budget and the maximum purchasing that can be done. It also still requires the mayor and city manager to execute the contracts that are discussed, approved and awarded by the City Council.

Section 6.07 is written to allow for an easier change of the City's policy by requiring it to be adopted by resolution instead of by ordinance. This language allows the City to be more responsive to legislative changes and accounting practices as they become apparent, rather than going through a protracted ordinance process. It still allows for public review and scrutiny and allows the opportunity for the Council to weigh in.

Commissioner Reynolds said this memo talks about Section 7.06, authorizing the city manager to enforce the budget resolution and other financial policies, is all well and good. Commissioner Reynolds said Section 7.01 requires the city manager to put the budget in place and provide it to the Council for their approval. It is then his job to enforce the budget. However, she disagreed with Section 2.01 where it talks about administrative duties. The charter clearly puts the financial control with the city council and to have the mayor signing everything pretty much covers the requirement for the safekeeping and disbursement of public money. The fact that it is cumbersome and the fact that it has been the past practice, appearing to violate the charter,

concerns her. Cumbersome and burdensome is not a reason to change the charter. The city manager has a responsibility to have staff following the city charter. We just changed this section in 2016. She thought Ms. Shelly Peterson had input into the changes into Chapter 6 of the charter.

Ms. Skogen said she did not think that Ms. Peterson, former Finance Director, had input into the changes in Chapter 6 in 2016, as she did with Chapter 7. The Commissioners tried to make the change to allow for other individuals to sign contracts by adding the word designee, but it did not change the requirement of the mayor signing.

Commissioner Reynolds said the charter exists because the residents need to know their tax dollars are being secured and someone is looking at them. To her it makes no sense to change the language in the charter to make a violation of the charter legal. The people want someone from the Council involved. She is tired of the changes made to the charter to make it easier for city staff. The purpose of the charter is for the city to operate how the residents feel they should operate. If it is cumbersome for the mayor to sign all the documentation, then you should have a stamp with the mayor's signature.

Ms. Skogen said Section 2.01 states "the legislative and executive actions shall vest and be exercised by the City Council but shall exercise administrative control exclusively through the city manager." Chapter 6 was changed to provide the city manager the day-to-day administrative control as it is a council-manager city. This new proposed language would continue on with changes made in Chapters 6 and 7.

Commissioner Kranz was concerned about the city contract awarded for a street improvement project he was assessed for. He was concerned it was a bad job, as the street appears to be falling apart. He said if the mayor signed the contract he is the one with the accountability and responsibility and is the one he should have to go to for a complaint rather than having to go to the city engineer to make the complaint.

Ms. Skogen said the engineer would have the project file and the contract which provides language as to a warranty or who would be responsible should the street wear down before it was expected to. In this example the project would have been completed through the special assessment process, M.S. Chapter 429, and the Council would have awarded the bid, contract and special assessment.

Ms. Skogen said when Chapter 7 had been discussed, once the Council adopted the budget, the City could spend money accordingly to what had been approved in the budget. The proposed change to Chapter 6 would be similar in that if it has been approved in the budget and is under the statutory limit, it would allow staff or someone other than the mayor to go ahead and sign those documents.

Commissioner Reiland remembered the discussion that the Council had to approve the budget line items and once approved, staff would have to be more respectful of what the limit was. She asked if it was the city manager or the department heads that ensured the spending was within the budget.

Ms. Skogen stated the city manager was ultimately responsible for overseeing the budget.

Commissioner Brillhart asked if the City had a signature policy. She thought the first edit would eliminate it by striking out establishment of a policy.

Mr. Tienter said the City could still establish a policy because it states “all purchases on behalf of the City shall be made and all contracts let by the city manager, or their designee(s).” He said in Section 6.07 it talks about further regulations for the making of bids and contracts may be made by resolution of the Council. Both sections talk about a policy so the language was changed so there was no conflicting language and the same language is used for contracts and purchasing.

Mr. Tienter said the City has a purchasing policy that addresses when the city manager signs, what happens if included or not included in the budget, and how things find their way through the process. It also addresses the delegation of authority allowing department heads to sign for certain amounts. If it is not addressed in the budget, then it also has to be signed by the city manager. This policy was adopted by the Council in the past.

Commissioner Reynolds said the policy had to conform to the charter, not the other way around. The charter is the constitution, you can't just change the charter every time you want to use a policy instead of following the charter.

Commissioner Brillhart thought after reviewing the proposed change that some of the eliminated language takes away the ability to have that policy.

Mr. Tienter thought the suggested language would leave an opportunity to have a policy related to things like signature, thresholds, required documentation, internal review, audit practices, invoicing, etc. It would be captured in Section 6.07 related to further purchasing regulations. If the Commission felt some of the eliminated language should be restored, they could change the language. He eliminated it because of the other section in that chapter that specifically referenced all policies and procedures.

Commissioner R. Nelson wondered if any of the policies were reviewed and approved by the Council. Ms. Skogen said yes, by resolution.

Mr. Tienter said all of the financial policies of the city not specifically addressed by the charter or state statute have been presented to the Council and it has been their past practice to adopt them by resolution. We have fund balance policies, special revenue policies, purchasing policies, surplus equipment donation policies and other items that are presented to the Council and adopted by resolution.

Commissioner R. Nelson asked if the Council is aware of the signature policy. Mr. Tienter said yes, and that they have amended it a handful of times.

Commissioner R. Nelson said it seemed like the Commission has gone through several of the chapters since he has been on the Commission. There have been some big battles or heated

discussions with Council and now we are in discussions again to see if change can be made. He said that in changing Section 6.07 from ordinance to resolution it takes away from allowing additional time should the public miss a meeting or allow for enough time for the public to voice their opinion and was opposed to that change. He said the City was doing what it wanted to despite charter requirements.

Ms. Skogen said she did not think that was true. She said staff is bringing this matter to the Commission to discuss how the City has been doing business and to allow them to make corrections to put the language into today's perspective instead of past perspectives.

Commissioner Reynolds said that was not the way the charter worked. The charter is designed to meet the needs of the residents, not of City staff.

Ms. Skogen said City staff, the Council or residents could bring matters to the Commission for discussion. The Commission is here to discuss and make decisions. Staff is not here to make that decision for you, we are here to present information to you. The Commission has the opportunity to discuss and decide whether or not you want to make the changes to the Charter and move it forward to the Council for further action.

Commissioner Reynolds said, if the Council feels it is necessary, they can recommend language.

Ms. Skogen said this issue was not coming from the Council, it was coming from the staff, which is our job as a liaison to you. Our job is to bring the things we find do not work to try to make corrections or have you come up with a solution to make it better.

Chairperson Rolstad said staff was bringing the information to the Commission to allow them to make modifications to the charter to update the language to current practices. Systems change and modernization happens, we have to adapt to it. If we have young generations that have better ideas that make it more cost effective and saves money, then why don't we do that? It is a suggestion. It can be put to a vote or it can be discussed further at the next meeting. Modernizing the charter is what the Commission should be doing at this time.

Commissioner Reiland wondered if it was true that the Council can adopt a resolution on one night. Ms. Skogen said yes, that is how resolutions are adopted. If adopted by ordinance it becomes part of the City Code and if you need a change it requires two readings and a publication. If you want to make a change of the city code, it has to be done by ordinance, whereas if you want to make a change to policy, it would be done by resolution.

Commissioner Reiland would like to see it more visible to the public.

Commissioner Brillhart said they have added policy approved by resolution in Section 6.05 as well.

Mr. Tienter said for the purposes of executing the contract that language is designed to allow the Council to authorize through their resolution who would execute the contract on their behalf.

What many cities often do is present a contract via a presentation with a resolution approving the contract and authorizing execution of contract.

Commissioner Brillhart asked what checks and balances were on a project like this and where tax dollars are being spent.

Mr. Tienter said the information would be defined in the resolution. An example would be with a special assessment project whereby the Council orders the improvement by resolution, adopts a pre-assessment by resolution, awards the bid and authorizes execution of contract by resolution. The Council would review the resolutions, debate the resolutions and take a vote on the resolutions.

Ms. Skogen said to remember some purchases have been approved in the budget. Amounts over the statutory limit, currently at \$175,000 would have to go through the competitive bid process and would be brought to the Council for their discussion and approval.

Mr. Tienter said additionally, anything paid would be provided on the claims list which is also approved by the Council at a regularly scheduled meeting. If a resident wanted more information about a specific claim, they had the opportunity to come to the Council meeting to ask questions or voice their opinion. Except for limited circumstances, required by state law or City policy, the city does not mail checks out until after they are approved at a Council meeting.

Ms. Skogen said staff was bringing this issue before the Commission for discussion and review to help make the Chapters 6 and 7 consistent. The Commission does not have to vote on it at this meeting. Staff wants them to think about the discussion, decide if they want more research done, and come back in the fall for further discussion.

Commissioner Johnston said the intent has been to follow what state law is or on new regulations that need to be discussed.

Ms. Skogen said if state law changes, staff brings the issues to the Commission for their review. What staff has found after the review in Chapter 7 with the budget policy, now we are kind of going through the same thing with purchasing with a procurement policy and how that should work and to try to keep things consistent?

Commissioner Soule said one thing to keep in mind is that procurements are based on the budget. Chapter 7 has a lot of controls over the establishment of the budget. The Council doesn't have the power to increase the amount of the budget after it has been approved. She said there are some emergency provisions, like a natural disaster, but once the budget is established, it serves as a guideline for the procurement spending within the City. She thought the controls in Chapter 7 would require the procurement process in Chapter 6 to be in alignment with the budget.

Commissioner Reiland felt it was necessary for all to read Chapters 6 and 7 more thoroughly to see how they work together and come back in September for further discussion.

Commissioner Soule said it was important for there to be transparency and for citizens to be able to comment on the budget. At the same time we do not want it to be cumbersome or tie the hands of the people who are managing the City and letting the contracts to provide services on our behalf.

Commissioner Reynolds said in the proposal the term “all bonds” is used and adopted by resolution. She asked whether some bonds are required to be completed by ordinance. She said the current civic campus building was as an example of the bonding being completed by an ordinance vs a community center which may need to be done by ordinance and a vote of the people because it is not a necessary building.

Ms. Skogen said she did not think an ordinance was required, but it could require an election. The bonds themselves, however, are usually approved by resolution when adopted by the Council. Mr. Tienter was not aware of any bonds requiring an ordinance, but thought there might be some unique circumstances required by state law. They could do some research to answer that question.

Mr. Tienter said there a few things that came up during discussion he would like to address. The first being that the City is acting in contrast to the Charter. No it is not. There is a question about what constitutes “instruments of every kind”, which is a very broad. The practice of the City based on direction from the city attorney some time ago, was that the City should be adopting resolutions delegating who is authorized to sign on behalf of the City to satisfy this language to provide interpretation at the Council level. The proposed language tries to remove that ambiguity so it is more transparent, easier to understand what is happening, and easier to hold the City accountable to its actions with regarding to purchasing. It is consistent with the discussions we have had when it comes to the budget and that generally everything being done is under the philosophy the charter has that the city manager is the party that should be running the day-to-day operations of the City in concert with the wishes of the Council that has established and still reserves all executive authority when acting as a body.

Commissioner Soule said Section 7.11 states the City follows the Generally Accepted Accounting Practices (GAAP) which are outlined in Chapter 7. She felt there were adequate controls in place in other sections of the charter.

Mr. Tienter said the City can budget for items under \$175,000, however once it reaches the state’s threshold of \$175,000, the City council must approve the purchase and the mayor and city manager would then sign off on a contract. Anything lower than that amount is presented on the claims list and approved by the Council.

Commissioner Soule asked if there was an example of a contract over \$175,000 or what types of contracts there might be.

Mr. Tienter said a classic example would be a street project that is over \$175,000. Another example might be the purchase of a large piece of equipment like a fire engine or possible parts to the engine. The cost of such items would be \$500,000 or more and those types of purchases would require Council approval. There are situations where there should be a higher level of

accountability and the Council is making informed decisions on some of the very expensive purchases. State law and City's purchasing policy requires staff to obtain quotes for purchases between \$25,000 and \$175,000 or obtain the items from the state contract or cooperative purchasing venture recognized by the state. Only things below \$25,000 can be purchased in the open market. The City's current purchasing policy does not allow that. The City requires quotes on anything above \$10,000. The City's policy is currently more restrictive than state law.

Commissioner Brillhart wondered if all purchases under \$10,000 were all planned in the budget each year or whether a large purchase might slip through.

Mr. Tienter said the Council adopts the budget and there is no authority to spend unless it's been included in the duly adopted budget. He said other sections go even further and set out that if you purchase something without approval the charter will consider them personal expenditures of the employee that made the purchase.

Mr. Tienter stated the emergency policy requires a separate claims list providing any emergency purchases and a report to the Council about why the emergency purchases were made. The Council must then approve the emergency purchases claims list.

Hearing no further discussion, Chairperson Rolstad thanked Mr. Tienter for coming and providing the information to the Commission.

Commissioner Kranz MOVED and Commissioner Reiland seconded a motion to carry this discussion item to the September 3rd meeting.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED UNANIMOUSLY.

DISCUSSION OF CHAPTER 1

Commissioner Reynolds MOVED and Commissioner Johnston seconded a motion to add the reviewal date of May 6th to the bottom of the last page with no changes to the language.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

DISCUSSION OF CHAPTER 9

Ms. Skogen said she went back to the original Charter and the current language is the language adopted in 1957 with no changes since that time.

Commissioner Brillhart said she went back to her electronic copy and found she had included the definitions on her copy so that she could understand the purpose of eminent domain.

Commissioner Brillhart MOVED and Commissioner R. Nelson seconded a motion to add the reviewal date of May 6th to the bottom of the page with no changes to the language.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

DISCUSSION OF CHAPTER 10

Commissioner Reynolds said she did not see where the charter was regulating all of the things they offer, not cable being one. We should have language covering other services such as internet, telephone, security, etc. Whoever is negotiating the franchise should have this type of language for protection of the public. She also wondered if all franchise agreements would have the same benefits and regulations.

Ms. Skogen said when negotiating with CenturyLink, the language was basically the same, however, because their equipment was different than Comcast, that language was different. Usually state or federal law supercede the charter unless the charter is more restrictive.

Commissioner R. Nelson wondered if it was necessary to have language stating we follow federal law or add language that states whichever is more restrictive.

Ms. Skogen said she will ask the attorney who represents the City during franchise negotiations about their questions.

FUTURE MEETING TOPICS

Discussion of Chapter 6, 10 and 12

ADJOURNMENT:

Commissioner Granroos MOVED and Commissioner Brillhart seconded a motion to adjourn the meeting.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED AND THE MEETING WAS ADJOURNED AT 8:19 P.M.

Respectfully submitted,

Debra A. Skogen, MMC
City Clerk/Staff Liaison

Commissioner Bruce Nelson, Secretary