

**CITY OF FRIDLEY
CHARTER COMMISSION MEETING
JANUARY 6, 2020**

CALL TO ORDER:

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

ROLL CALL:

Members Present: Commissioners Gary Braam, Manuel Granroos, Richard Johnston, Bruce Nelson, Rick Nelson, Barb Reiland, Pam Reynolds, Valerie Rolstad, Cynthia Soule, Avonna Starck, Kelli Brillhart (arrived late)

Members Absent: Commissioners Donald Findell, Ted Kranz

Others Present: Daniel Tienter, Finance Director/City Treasurer/City Clerk/Staff Liaison
Melissa Moore, Admin. Services Coord./Deputy City Clerk/Staff Liaison
David Ostwald, Councilmember-at-Large
Nikki Karnopp, Charter Commission Member Applicant
Courtney Rathke, Charter Commission Member Applicant

APPROVAL OF AGENDA

Commissioner Barb Reiland MOVED and Commissioner Johnston seconded a motion approving the meeting agenda.

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

APPROVAL OF MINUTES

Commissioner Braam MOVED and Commissioner Rick Nelson seconded a motion approving the meeting minutes of November 6, 2019.

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

ADMINISTRATIVE MATTERS

A. New member interviews – Nikki Karnopp and Courtney Rathke

Chair Rolstad acknowledged Ms. Karnopp and Ms. Rathke who have applied to be members of the Commission. She asked each applicant to give a brief statement about themselves and informed the Commission members they may ask questions of each applicant.

Ms. Karnopp stated she has been a resident of Fridley for 14 years and outlined her other connections to the community. Commissioner Reynolds asked how Ms. Karnopp knew of the opening. Ms. Karnopp explained she talked with Mayor Lund about the opening, along with Commissioner Starck. Commissioner Reynolds asked if Ms. Karnopp understood the purpose and intent of the Commission. Ms. Karnopp acknowledged she understood the purpose of the Commission was to provide guidance to Council and staff and enforce the City Charter. Commissioner Reynolds asked if Ms. Karnopp felt she had enough time for another commitment. Ms. Karnopp said yes.

Ms. Rathke stated she has been a resident of Fridley since 1970 and outlined her other connections to the community. Chair Rolstad asked Ms. Rathke if she would have time to dedicate to the Commission's work. Ms. Rathke answered that yes, she would be able to juggle all her obligations. Commissioner Reynolds asked how Ms. Rathke knew of the vacancy. Ms. Rathke informed the Commission she heard of the opening from Councilmember-at-Large Ostwald.

Commissioner Braam MOVED to recommend the appointment of Nikki Karnopp and Courtney Rathke to the Fridley Charter Commission, seconded by Commissioner Granroos.

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

Mr. Tienter informed the Commissioners that staff would notify the Chief Judge of the recommendation of Ms. Karnopp and Ms. Rathke to the Commission and their Oath of Office would be ready to administer at the February meeting.

B. 2020 Nominating Committee

Commissioner Reynolds noted that at the January meeting the Chair was obligated to appoint a Nominating Committee for officers for the upcoming year.

Chair Rolstad MOVED to amend the agenda to add section 5B to Administrative Matters on this evening's agenda to appoint members to a Nominating Committee for officers for the upcoming year. Commissioner Rick Nelson seconded.

Chair Rolstad asked for volunteers to serve on the Nominating Committee. Commissioners Starck, Reynolds and Chairperson Rolstad volunteered. Commissioner Starck asked if the meeting needed to be in person. Commissioner Reynolds and Mr. Tienter said yes, and the group typically meets immediately after this meeting to discuss nominations. Commissioner Reynolds added that at the February meeting the Nominating Committee puts forth their recommendations, then the topic goes before the Commission for discussion.

Commissioner Starck asked who would be interested to serve in officer positions for 2020. Commissioner Reynolds and Chairperson Rolstad noted they are interested in the Chair position. Commissioner Reiland volunteered to be Secretary.

Commissioner Starck noted that the Nominating Committee should meet before the February meeting to allow any members not present at this evening's meeting time to decide if they would like to be considered for an officer position. The Committee agreed to meet at 6:30 p.m. on February 3.

OLD BUSINESS

A. Discussion of Chapter 6 – Section 6.05

Commissioner Reynolds asked Commissioner Rick Nelson if the draft of Section 6.05 reflected what he brought forth at the last meeting. He said it did. His concern was that while the City Manager could have a designee, he still wanted the Mayor to sign any contracts. Mr. Tienter confirmed that staff listened to the recording of the meeting several times to confirm they worded the draft exactly how Commissioner Nelson directed.

Commissioner Reynolds MOVED and Commissioner Reiland seconded a motion to accept the draft language of Section 6.05. Mr. Tienter asked to clarify if the motion to accept the language constituted a recommendation to put forth the amendment to the City Council. Commissioner Reynolds agreed.

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

Regarding Section 6.07, Commissioner Reynolds wished to refer to the November 4, 2019 meeting minutes where the discussion occurred regarding penalties associated with the breaking of an ordinance. Commissioner Reynolds believed that sentiment was incorrect. Commissioner Reynolds shared that the City has two types of ordinances. Administrative ordinances which do not have a penalty, for instance, transferring property. She noted that Section 3.05 of the Charter states, "Any legislation prescribing a penalty for its violation shall be enacted in the form of an ordinance." She pointed out that if you are going to have a penalty for violation, it must be passed through an ordinance, not that every ordinance carries a penalty for violation. Therefore, changing this section to say "contracts by resolution" is not what the Commission wants to do because under an administrative action there is no penalty. The

concern the Commission has in changing it from ordinance to resolution is the issue of transparency. She acknowledged it costs the City more to do things by ordinance, but the benefit of an ordinance is that it gives the citizens and the Council more opportunity to look at the ordinance. There are many benefits to the process of an ordinance. Commissioner Reynolds wanted the Commission to know that the concept of an ordinance does not require a penalty be enforced. She further noted that Section 3.04 says, "all administrative business may be transacted by ordinary motion."

Commissioner Reiland asked if the City has two different types of ordinances which state if there is a penalty.

Commissioner Reynolds answered yes, and that administrative actions and ordinances do not carry a penalty. Commissioner Reiland confirmed that the only reason to change the draft language of Section 6.07 from resolution to ordinance, was for transparency. Commissioner Reynolds agreed.

Chair Rolstad asked for a clarification. Mr. Tienter agreed that there are so-called administrative ordinances and regular ordinances. Administrative ordinances are promulgated by the City Charter. For example, the Charter requires that any land be sold by ordinance. In Section 3.05 of the Charter it notes that if a penalty for violation is included, then an ordinance would be required. As an extension of state law, which states if anyone violates an ordinance they may be punished, even if that ordinance does not establish a specific penalty. For example, if the City were to fail to honor the ordinance by recording the land sale to the HRA, someone could be found to be criminally liable in that situation. However, that would be quite extraordinary. Mr. Tienter added it is important to note that if you want to attach a penalty it must be an ordinance. The Council may not attach a penalty to a resolution. If a staff member violated the direction of a resolution the City Manager could terminate the employment of staff.

Mr. Tienter added that the point of changing this language to a resolution is that it is within the confines of Section 6.05. Section 6.07 provides the exception that the Commission was looking for. That's why the language, "Subject to the express provisions of this Charter..." was added. In Section 6.05, there are points that correlate to specific state statute as it relates to the letting of bids and not having purchasing regulations that exceed those amounts. For transparency the resolution still needs to go before Council, and Council procedures allow anyone to pull any resolution off the Consent Agenda. Additionally, the League of Minnesota Cities recommends that for administrative policies of this nature, they are typically adopted by resolution rather than ordinance. There are administrative ordinances and regular ordinances, but no matter what, state law dictates that a penalty could be attached to either.

Commissioner Rick Nelson clarified that a resolution could not undo anything written in Section 6.05.

Mr. Tienter answered that was correct. The Council may not take any action that is in direct violation of the Charter or any state law that the Charter references or supersede the Charter.

The Council may only operate within the provisions of Section 6.05. The City Attorney added the language "subject to the express provisions of this Charter" because there was concern if the Council could adopt a resolution that is in contrast with the Charter.

Commissioner Rick Nelson wanted to make sure that the Mayor would still need to sign contracts and wanted to make sure that a resolution would not change that requirement.

Mr. Tienter confirmed that Section 6.05 explicitly excludes the language "unless otherwise adopted by resolution" and Section 6.07 makes any other further purchase regulations inferior to Section 6.05. The Council could not do anything outside of Section 6.05.

Commissioner Richard Johnston MOVED to approve Section 6.07, seconded by Commissioner Kelli Brillhart.

Mr. Tienter noted that the City Attorney changed the last sentence of the opening paragraph to read "The City of Fridley does ordain" to follow what the Charter requires for an ordinance.

Commissioner Reiland qualified that this discussion and motion were applicable to Section 6.07 only. The Commission agreed that Section 6.05 and Section 6.07 will go before Council as separate ordinances. Commissioner Rick Nelson felt comfortable putting forth the draft language in tonight's agenda packet and allowing staff to put the language into ordinance form.

Commissioner Richard Johnston MOVED to accept the language of Section 6.07, seconded by Commissioner Brillhart.

Mr. Tienter clarified that staff would split Sections 6.05 and Section 6.07 into two separate ordinances. Commissioner Rick Nelson agreed.

UPON A VOICE VOTE, COMMISSIONERS BRAAM, BRILLHART, GRANROOS, JOHNSTON, BRUCE NELSON, RICK NELSON, REILAND, ROLSTAD, SOULE AND STARCK VOTING AYE, COMMISSIONER REYNOLDS VOTING NAY. CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

Mr. Tienter asked for a motion to formally recommend the approved amendment of Section 6.07 to the Council for their consideration.

Commissioner Rick Nelson MOVED to formally recommend the approved amendment of Section 6.07 to the Council for their consideration, seconded by Commissioner Starck.

Mr. Tienter asked for a friendly amendment to express the will of the Commission that the amendments be brought to the Council for their consideration as two separate amendments.

Commissioner Brillhart MOVED to add a friendly amendment to the previous motion that the Commission directs staff to bring forth both amendments to the Council as two separate items, seconded by Commissioner Starck.

UPON A VOICE VOTE, COMMISSIONERS BRAAM, BRILLHART, GRANROOS, JOHNSTON, BRUCE NELSON, RICK NELSON, REILAND, ROLSTAD, SOULE AND STARCK VOTING AYE, COMMISSIONER REYNOLDS VOTING NAY. CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

B. Discussion of Chapter 12

Mr. Tienter notified the Commission that staff had not prepared any review of Chapter 12. Staff will do so upon the direction of the Commission.

Commissioner Rick Nelson MOVED to have staff review Chapter 12 and bring back any recommendations at the February meeting for review, seconded by Commissioner Reiland.

Commissioner Reynolds noted that Chapter 12 was one that she asked to be reviewed. She wished to review her questions and suggestions on the chapter. In Section 12.03 Commissioner Reynolds noticed that the Oath of Office is not what the City uses. It does not call out the need to uphold the Charter. When Councilmember-at-Large Ostwald was sworn in, a different oath was used that she liked. She would like to change the Charter to reflect the same oath that was used for Councilmember-at-Large Ostwald.

Commissioner Reynolds said in Section 12.05 regarding bonding, she has questions on the processes that staff follow regarding the office held by the Secretary of Council. She would like further clarification.

Commissioner Reynolds said she would like clarification on Section 12.06 and asked for input from the Commission. She would like to know if any proceeds from selling the land of the old City Hall went toward paying the debt for the new City Hall.

Commissioner Reynolds inquired about Section 12.08, point two, if mailboxes should be included in that language. Commissioner Reiland added that she thought a mailbox would be included in that section.

Commissioner Reynolds noted that Section 12.11 says "...shall apply to the City of Fridley and shall be construed as supplementary to the provisions of this Charter." She questioned if the word construed should be replaced with comply. Commissioner Rick Nelson noted that our Charter must comply with state law. Commissioner Reynolds agreed, but only if the state law is silent on an issue. Commissioner Rick Nelson agreed, if the law is silent then the Charter takes hold. Commissioner Brillhart noted that is why the supplementing language is used so that the Charter complies. Commissioner Rick Nelson pointed out that the Charter can be more restrictive than state law.

Mr. Tienter clarified the motion was to have staff review Chapter 12. Commissioner Rick Nelson agreed, adding the motion would ask staff to come back with any recommendations, if any, and clarify the sections that Commissioner Reynolds asked for clarification. Mr. Tienter clarified that would be Sections 12.03, 12.05, 12.06, 12.08 and 12.11. Commissioner Rick Nelson agreed that the Commission wishes to examine those sections, along with an overall review of the entire Chapter.

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

NEW BUSINESS

Commissioner Brillhart brought forth a question regarding the 2020 Charter Commission meeting dates, noting that some Commission meetings were scheduled on the same nights as Council meetings, which would make attending impossible for the Staff Liaison. Mr. Tienter agreed that the attendance of the Staff Liaison was one consideration for staff asking to move the January and March meeting dates. However, the primary reason was to not have two competing public meetings at the same time, so a member of the public would not need to choose which meeting to attend. He added that after communicating with the City Manager, staff are comfortable dividing staff to attend both meetings. He mentioned that staff will be more mindful of potential conflicts with other commissions or Council dates, or other community events.

Commissioner Braam asked why the March meeting was on March 9. Commissioner Rick Nelson noted that March 3 is the Presidential Primary, so staff would be unable to attend.

Mr. Tienter informed the Commission that staff would circulate the 2020 calendar again for the Commission.

FUTURE MEETING TOPICS/COMMUNICATIONS

Discussion of Chapter 10 – Franchises and Public Utilities

Mr. Tienter reminded the Commission that this discussion has been tabled indefinitely due to impending litigation related to FCC orders that would supersede the Charter. Staff recommended that the discussion remain tabled. Mr. Tienter shared that the FCC announced new rules related to telecommunication and cable technologies, along with changes to city powers related to conformance and control of rights-of-way, how cities are allowed to calculate fees that are charged and what reasonable expenses or costs providers may withhold from the city as a part of their installation process. At this time, many local governments have joined a class action lawsuit and there are other pending individual lawsuits against the order. Given how wide-ranging this issue is, it is likely this topic will reach the Supreme Court. This is also related

to the delay of Public Hearings as related to the franchise agreement that the Council has been dealing with.

Chair Rolstad informed Commissioner Brillhart that a Nominating Committee was formed at the beginning of this meeting to choose officers for 2020. Commissioner Brillhart would like to be considered for all three officer positions.

Mr. Tienter informed the Commission that staff looked back to 2015 and it does appear that the Commission ever submitted an annual report to the Chief Judge. This is a requirement per state statute. If the Commission is comfortable, staff will prepare a draft report for review in February.

Commissioner Reynolds asked if staff received a letter for Commissioner Crandall's and Commissioner Ostwald's seat. Ms. Moore confirmed that staff did finalize the process of having the Chief Judge declare two vacancies for Commissioners Crandall and Ostwald's seat. Mr. Tienter confirmed that staff also submitted a reappointment request for Commissioner Rick Nelson.

Commissioner Reynolds wished to remind the Commission that March is the annual meeting when the by-laws are reviewed. Commissioner Brillhart asked that the by-laws be sent to everyone. Mr. Tienter agreed to send the by-laws along with the 2020 calendar.

Commissioner Rick Nelson asked the Commission to bring their versions of the Charter to make sure everyone has the most up to date chapters, along with the by-laws. Mr. Tienter agreed that staff will create two new Charter books for the new members, as well as send out the most up to date by-laws, the updated calendar, along with the list of chapters with the most recent date of revision.

Commissioner Reynolds also asked staff where the investigation was into the need to renumber Chapter 2. Mr. Tienter informed the Commission that the new City Attorney is looking into whether an ordinance is needed to fix the number sequence inaccuracies in Chapter 2, or if it may be done administratively.

Commissioner Brillhart asked if all of the updated chapters of the Charter are online. Ms. Moore indicated they are all online. Commissioner Reynolds noted her recollection says that Chapter 2 is the wrong version. Ms. Moore agreed to look at the chapters online and fix any discrepancies.

Commissioner Rick Nelson asked that an updated list of members be sent out. Mr. Tienter agreed that staff will send that out.

ADJOURNMENT:

Commissioner Reynolds MOVED and Commissioner Reiland 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 8:10 P.M.

Respectfully submitted,

Melissa Moore
Administrative Services Coordinator/Deputy City Clerk/Staff Liaison

Commissioner Bruce Nelson, Secretary