

Charter Commission

April 20, 2022 – 6:00 p.m.

Call Meeting to Order

Chair Dodds noted a quorum and called the meeting to order at 6:05 p.m.

- Dodds requested that a member present take this meeting's minutes. Marhula objected stating that he thought that he had been appointed the permanent Secretary at the last meeting. Discussion held that it was only for that meeting due to Dodds being absent and that we are still trying to assess the situation with City Staff. We were notified that they would no longer be involved with taking the minutes. It was discussed that we may need to create and elect a Secretary at the Annual Meeting in June. Blashill agreed to take minutes for this meeting.

Attendance

Members Present: Dodds, Blashill, Heinonen, Jorstad, Marhula

Members Absent: Meuers, Ravnikar, Tanem; All were excused absences as they contacted Chair Dodds prior to the meeting.

Staff Present: None

Guests Present: Citizens Emelie Rivera, Dan Jourdain (7:34); Media Larissa Donovan

Approval of the Agenda

Motion by Heinonen, seconded by Jorstad, to approve the agenda as written. Motion carried by unanimous voice vote.

Approval of Minutes

- a. Motion by Marhula to approve the February 16, 2022, minutes, submitted by City Clerk Michelle Miller, that were amended and submitted by Marhula to Chair Dodds by email. Motion died for lack of second. Motion by Heinonen, seconded by Blashill, to approve the February 16, 2022, minutes, submitted by City Clerk Michelle Miller. Discussion held. Heinonen friendly amended his motion, friendly seconded by Blashill, to approve the minutes with the following changes:
 1. Line 4 from the top: STRIKE "Vice" from Chair Dodds.
 2. Paragraph 2 under "Business Items, Proposed Ordinance Amendment to Clarify Presidential Election Cycle that Four Year Mayoral Term Takes Effect": STRIKE "and all future agendas". Discussion: Dodds stated that this was not said by him. Public Comments was not on the agenda prior to the meeting. He had received requests that it be added. Public Comments was then added under Approval of the Agenda for that meeting only. Since that time, Public Comments have now been added to the agenda.
 3. Line 1 under "Business Items, Public Comments": ADD "Mayor" to Jorge Prince.
 4. Under "Business Items, Charter Commission Members Discussed the Following": ADD "Motion by Marhula to table the issue. Assistant City Attorney Nolting indicated they could not table the topic. Marhula disagreed with her interpretation of Robert's Rules. Motion died for lack of second."
 5. Under "Business Items, Conflict of Interest": ADD "Assistant City Attorney Nolting informed the Commission that Minnesota State Attorney General Ellison had opined there was no conflict of interest. Marhula disagreed, stating that it was clear they chose not to issue a formal or informal opinion."

Motion carried by unanimous voice vote.

- b. Motion by Marhula, seconded by Heinonen, to approve the March 16, 2022, minutes, submitted by Acting Secretary Marhula, subject to discussion. Discussion held. Marhula friendly amended his motion, friendly seconded by Heinonen, to approve the minutes with the following changes:

1. Under "Members Present": STRIKE "Dodds". He was not present.
2. Under "Approval of the Agenda": Correction to spelling of Meuers. STRIKE "to" at the end of the sentence.
3. Under "Approval of Minutes": Line 2: ADD "emailed and amended by Marhula." to the end of the sentence. Line 2: Correction to spelling of Miller. Line 5: ADD "as it was minutes that she prepared." to the end of the sentence. Line 8: Correction of spelling of Meuers.
4. Under "Business Items, Acquiring Independent Council": Line 1: CHANGE to "At this time, Council Member Emelie Rivera asked permission to address the commission. Acting Chair Heinonen declined her request as "Public Comments" were not added to the agenda at the beginning of the meeting. Meuers reviewed some of the history of various issues confronted by the Commission over the past years. Motion by Marhula, seconded by Blashill, that Dodds and Meuers proceed to bring recommendations for an independent council to the next meeting. Motion carried by unanimous voice vote."
5. Under "Business Items, Charter Commission Bylaws": ADD "Committee still needs to meet."
6. Under "Business Items, Vacancies/Special Elections": Remove blue color block over the word Vacancies.
Motion carried by unanimous voice vote.

Public Comments

Emelie Rivera, 725 17th Street NW, commented that she was appearing before this commission as a public citizen not as a Bemidji City Council member. She was there to address the Four-Year Mayoral Term issue. She commented that she believes that the commission needs to be consistent on including all voices or statements made by everyone. She then referred to an email written by her, that had been forwarded and distributed to all commission members on March 17, 2022, by Chair Dodds. A copy of that email will be attached to this meeting's minutes. She further commented that the ballot amendment was unclear and since not all commission members from that time are members of the commission now, that this present commission should revisit the issue and provide a clear statement on the intent of the amendment to the City Charter.

Commissioner Reports

- Marhula stated that he likes the idea of this new agenda item.
- Chair Dodds stated that he believes that, as a whole, we are doing well. He has been in touch with Bemidji City Council members on various topics.
- No other comments from the other commission members.

Business

- a. Report of Bylaws Committee
 - Bylaws Committee members are Jorstad, Marhula, and Ravnika. Jorstad was unable to attend the first meeting, so Chair Dodds took her place. Marhula presented the proposed changes and additions to the Bylaws. Discussion held. Some items need to go back to the committee and will be presented again at the May meeting. The intention is to have the Bylaws ready to be voted on at the Annual Meeting in June.
- b. Seeking Independent Council
 - Chair Dodds reported that he made notification to 5 different law firms. He has been tasked with finding an independent council if/when they are needed to advise the commission. 4 of them were not interested. One said they were a maybe. Dodds will continue to look into this. He contacted attorneys in St. Cloud, Hawley, Detroit Lakes, Deer River, and Fargo.
- c. Discussion of Conflict of Interest and Code of Conduct
 - Marhula raised the question of this issue back when he first joined the commission. He believes that the City needs to make a formal determination.
 - Chair Dodds spoke about a resource from the League of Minnesota Cities that addresses this issue. He will forward the link to the policy by email to the commission members for their review.

- Chair Dodds will make a request to the City Manager Matthews to obtain minutes pertaining to this issue from past City Council meetings, if any. The commission has still not received the City of Bemidji's Employee Handbook regarding an earlier request that was made for that.
- d. Discussion of Council Vacancies and Special Elections
- Heinonen reported that he has done some research on rank choice voting. Only one state does this across the board, Maine. Minnesota has 5 cities, 3 which were added in the last 3 years. The expense is high due to needing 5 machines to run this type of voting system. He stated that he thinks that the costs associated are just too much and that the appointment process needs to be revisited. The last couple of council vacancies have just taken too long to be filled and constituents are without representation for months on end.
 - Marhula stated that rank choice voting is easy once you understand it. In special elections, it would have gotten them seated much faster. We can only have special elections 5 months out of the year.
 - Jorstad stated that the commission has worked hard to match the charter to the state.
 - Heinonen raised questions on what an appointment process would look like, such as time frames, guidelines to follow, filing periods, interviews, a solid vetting process, etc.
 - Marhula stated an appointment could be a placeholder until the next election or special election.
 - Research will continue.
- e. Discussion of the Number of City Council Members
- Marhula stated that he would like to see 8 council members, 4 wards with 2 council members in each. They would run every two years. The mayor would be the tie breaker vote.
 - Chair Dodds stated that the national trend is to go to all at-large positions but to have a reduced number of them. Discussion continued whether to have a lot or not. Agreement was made that we should not go to all at-large members, as representation could be weighted heavily in one ward other the others. Several compositions could be looked at. It would need to go to a public vote which would result in an increase cost to the city taxpayers. It was suggested that perhaps a public information hearing should be held to get feedback. All the Charter Cities are made up differently. Marhula will draw up some proposals for the next meeting.

Announcements

- a. Annual Meeting – June 22, 2022, 6:00 p.m. at City Hall
- b. Vacancies
 - Chair Dodds has requested city staff to post the two vacancies for the commission. The terms of members Blashill and Marhula are expiring, effective June 1, 2022.

Next Meeting

The next meeting was scheduled for Wednesday, May 18, 2022, at 6:00 p.m. at City Hall.

Adjourn

With no further business, a motion by Blashill, seconded by Jorstad, to adjourn. Motion carried by unanimous voice vote. The meeting adjourned at 7:51 p.m.

Respectfully submitted,

Char Blashill
Acting Secretary

FW: Charter Commission Public Comment

James Dodds <jdodds@paulbunyan.net> Thu, Mar 17, 7:05 PM

to

Greetings Charter Members,

Blashill, Dodds, Heinonen, Jorstad, Marhula, Meuers, Ravnikar, Tanem

Please see the attached email from City Councilor Rivera, as she requested this to be sent to all Charter Commission Members. Rivera sent this to Michelle, whom asked me to send to all members.

James

James Dodds

2331 Wee Gwaus Dr SW

Bemidji, MN 56601

(218) 556-4667 cell

jdodds@paulbunyan.net

From: [Michelle Miller](#)

Sent: Thursday, March 17, 2022 8:43 AM

To: 'James Dodds'

Subject: FW: Charter Commission Public Comment

James: Please forward to all members.

Michelle

From: Emelie Rivera <emelierivera@gmail.com>

Sent: Wednesday, March 16, 2022 9:47 PM

To: Michelle Miller <michelle.miller@ci.bemidji.mn.us>

Subject: Charter Commission Public Comment

[EXTERNAL]

Hello,

I am asking that the following be provided to the Charter Commission members as I was not allowed to provide public comment. Despite the unanimous approval of public comment for the March meeting and future meetings, public comment was not allowed. I understand that while public comment was not on the agenda, I would contend that it was not on the agenda at the last meeting and it was permitted for three individuals who knew in advance of the possible ability to provide such comment.

I fulfill a role as an elected person, but I am also as much of a community member as Jorge Prince. My prepared comment seems timely for consideration since it could be interpreted that there is a bias in the commission related to individuals allowed to provide public comment.

"I have spent time reviewing excellent resources and information that is helpful to guide cities when it comes to many of the issues brought forth at the March Commission meeting. The League of Minnesota Cities has a 35 page document on conflict of interest, <https://www.lmc.org/wp-content/uploads/documents/Official->

[Conflict-of-Interest.pdf](#) and the City of Edina has adopted their own code of conduct as a Council, where they have committed to holding each other to this code.

The Edina code is not that different from the Social Work Code of Ethics which guides the work that I do. I would encourage you to seek out the information that exists in these and many other places that guide city electeds in their roles.

I have been advocating for a Council code of conduct since elected and it has not gained traction, so I appreciate your attention to this. There is a personnel policy manual for staff that includes ethics, but it does not apply to elected officials. I am hopeful that this is a direction that the Council is willing to pursue and is willing to adopt a Code of Conduct while it is being considered for addition to the Charter. Some of the most important regulations impacting local governments address the ethical responsibilities of public office, in that they ensure integrity in government, protect the city's and/or the city residents' interests, and limit the opportunity for officials to benefit (personally or financially) from public office.

In reading the bylaws, as written, the Commission has a role of providing for an honest and accountable council-manager government. You are there to secure the benefits of home rule and affirm the values of representative democracy, professional management, strong political leadership, citizen participation, and regional cooperation.

The current City Council consists of 6 of 7 members who are in their first term- akin to infancy. The Council, not individual members, oversee the direction of the City. The Council does not have the authority to interpret the Charter or infer or opine on the intent of the voters. The fact that the question was unclear is even more reason why the City should have no authority in interpreting the intent of the voters.

A vote of 3,543 for and 2,955 against with 649 under votes is not a clear picture of what the residents want. It is exceedingly clear that there was more than one interpretation of the ballot question, based on comments and feedback. So of the 3,543 yes votes, how many voted intending for the start of the four year term in 2020, how many intended 2024, and how many didn't know when it was supposed to start? The ballot question was not well explained in media or other format ahead of the vote, so how many voted, not even concerned when it might start? I would look to the law of averages and say that less than 1200 people fully intended the mayor's four year term to begin in 2020, which is fewer than voted against the idea of a four year term.

The fact that the Council interpreted the charter is only a small portion of the problem.

Currently there is no code of conduct, nothing to direct ethics and conflicts of interest. No person should serve as the judge of his or her own case-there are a number of court and Attorney General opinions on this topic. Generally it is held that an elected official may not participate in proceedings where he or she is the subject. This includes issues of redistricting. It is not enough to simply abstain from a vote. When you are present, conducting the meeting, directing who may speak, you are influencing members; whether overtly or covertly.

Reviewing the roles elected and appointed officials play helps council and staff sort out responsibilities and avoid the appearance of impropriety, which damages the City's reputation.

The City Manager is responsible for the administration of affairs, not Council members. The ongoing violations of the Charter must be acknowledged and addressed. Who holds the Council responsible to follow the Charter? The Council should be the first one holding each other accountable. Who is paying attention to the violations?

The Mayor has a clear role in the Charter, in this weak mayoral system. If there is the desire to continue to go in the direction we are headed, perhaps there should be a vote to become a statutory city to allow the Mayoral power we seem to be gravitating toward.

The City Council has received legal advice on a number of matters recently, that they did not follow. As an example, the Mayor and Council received legal advice in the meeting on 2/22/22 to close the meeting to allow a discussion that would not be influenced by the potential litigant (he had an attorney, so regardless of what people say, this is considered threatened or pending legal action). We were informed of a potential conflict

for the Mayor, yet he chose to remain. Not only did he remain, he directed the discussion, argued with staff, and held influence over the voting members. Financial interest is without question a disqualifying interest factor. When an act of the Council represents a quasi-judicial decision or personal financial interest, no person who has an interest shall take part, especially when it comes to matters that concern character, conduct, or right to hold office (See LMC).

Public officials must disclose if a member will be involved in decisions or take actions that substantially affect their financial interests or those of a business with which they are associated.

When conflicts arise, the interested official must:

- Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict of interest.
- Deliver a copy of the notice to his or her superiors.
- If the official is an employee, notice should be provided to his or her immediate supervisor.
- If the official reports directly to the city council, notice should be given to the council.
- If the official is appointed, notice should go to the chair of that board, commission, or committee. If the chair has the conflict, notice should go to the appointing authority—the city council.
- If the official is elected, the written statement should go to the presiding officer (typically the mayor).
- If the potential conflict involves the mayor, notice should be provided to the acting presiding officer. Minn. Stat. § 10A.07, subd. 1. provides that if a potential conflict arises and there is not time to provide written notice, the official must orally inform his or her supervisor or the city council. See Minn. Stat. § 10A.07.

The Mayor, in his official capacity was pressuring staff to provide an answer that none of them are not qualified to provide. These requests were not made to the City Manager. How is this not a violation of 2.09 of the Charter? If no one cares, please change us to a statutory city.

Emails provided to the Commission are clear about the approach that the Mayor took to use his official position to get the answer he wanted. Staff don't know what to do because they are being directed by individual members in a way that caused prior Councils to police and admonish their fellow members about. This new normal is not normal.

The media blitz that happened before and after the vote on the amendment was voiced only by the Mayor, in his official capacity, in his own interests. It was repeatedly claimed that all that was wanted was an answer. He was asking the wrong people for an answer, and when it was not provided the tone became adversarial. When told that there would be an election held, he continued to assert that he was just seeking clarification. No he was seeking the outcome he desired, abusing his role. The Mayor as an individual was pushing for his own answer, which was not at the direction of the Council.

The Mayor flagrantly ignored prevailing recommendations regarding ethical conduct in the decision he was presiding over. He chose to remain chairing the discussion until the vote was called, despite protests. Anyone moving this forward is just as culpable because they knowingly voted in favor of his financial interest. The vote was not unanimous, so does it really count for anything?

In not following the Manager, and accordingly the staff direction, we are making decisions with potential consequences we have chosen to ignore. Sort of like a baby, this Council is not listening and looking out for our own best interests, which is why I believe the Commission should take steps to ensure that these abuses of power end. Thank you for your consideration."

Emelie Rivera