

Charter Review Special Committee
Meeting Minutes – Communications Media Technology
May 21, 2020

Councilmember R. McKnight called the meeting to order at 10:09 a.m. using Communications Media Technology Via Zoom. City Manager M. Smigielski called the roll and Councilmember R. McKnight, Councilmember T. Bierbaum, and citizen Doyle Redwine were present for the Zoom session.

Those present in Chamber: City Manager Mell Smigielski, City Clerk Maryanne Schrader and IT Administrator J. Deckard. Also, in attendance remotely: City Attorney Clay Adkinson and Deputy City Manager C. Lejeune.

Chair R. McKnight asked for a motion to approve the minutes of May 14, 2020.

Motion by Councilmember T. Bierbaum and seconded by Citizen D. Redwine to approve the minutes of May 14, 2020.

Roll Call Vote: Councilmember R. McKnight, aye; Councilmember T. Bierbaum, aye; and citizen Doyle Redwine, aye. All ayes. Motion carried.

Next, Chair R. McKnight asked for Citizens Comments. He mentioned there was a short article in the newspaper yesterday discussing today's meeting. No comments were noted.

Chair McKnight stated the committee has reviewed the sections through the City Marshal and will start today with the City Manager section 12.01 – Appointment and Qualifications.

Chair McKnight questioned whether 12.01a required a unanimous vote or a vote of 4 out of the five councilmembers. His reason was in his search of the Charter, the vote required currently to hire the city manager is 4 out of the 5 councilmembers. The vote was changed a few years ago with much controversy because of the difficulty of getting a unanimous vote at that time.

City Manager M. Smigielski said a simple majority vote is normal practice. However, it gives the candidate a level of comfort that is being hired that the full Council supports him.

City Attorney Clay Adkinson said the fact that the Ordinance changed from a 5 – 0 to a 4 -1 vote was not well received. He added placing the vote needed in the Charter is key and said the requirement of a 5 – 0 vote gives the City Manager the greatest level of support. The requirement was supported by the Florida League of Cities when the City of Freeport was reviewing their requirement for votes. He mentioned that there could be a situation that the position could be stalled in perpetuity, if the absolute is 5 – 0 vote was not achievable. Chair R. McKnight said the argument that it be unanimous is noted.

The other committee members debated on whether to leave the requirement unanimous, as it would be better to have the Council work through the process to ensure the Council gives the full support to the City Manager and gives the Council an opportunity to work through a compromise.

It was noted that Deputy C. Manager C. LeJeune asked about a vacant seat if there is a 5 – 0 vote requirement.

City Attorney Clay Adkinson replied that with a vacant seat or if someone were absent, a 4 -0 would control, if the verbiage “unanimous” is used.

After further discussion on the pros and cons of using the term “unanimous”, the committee agreed that the wording should be passage of five affirmative votes.

- a) The City Council shall appoint the City Manager with five affirmative votes. ~~by unanimous vote.~~ The City Manager shall be appointed on the basis of executive and administrative qualifications without regard for the political affiliations of the individual. It shall not be required for the City Manager to be a resident of the City at the time of appointment; however, the City Manager shall be required to establish residency in the City within one (1) year from the appointment date and must maintain residency in the City while in the position, except as provided in Subsection (b).

Next, Chair R. McKnight went over the last sentence in subsection (b), if the City Manager is unable or unwilling to re-establish City residency by the deadline, the office of City Manager will be declared vacant. He mentioned there is concern that the sentence in the Charter does not anticipate things we cannot anticipate now, such as no housing availability or some other situation. He added the language is too stern to be included in the Charter.

Councilmember T. Bierbaum said his interpretation in those instances, such as tent cities being established during the past hurricanes, the elected officials were not displaced. He suggested adding “except in times of extreme emergency”.

Chair R. McKnight said the proposed words are “At no time may the City Manager relocate outside of Walton County without the office being declared vacant”. He stated “at no time” means there are no exceptions to it.

City Attorney Clay Adkinson suggested using “in the event the City Manager vacates to an area outside of Walton County without prior approval of the City Council, the office is declared vacant.

Discussion ensued on removing the word “prior” before approval of the City Council and about whether in the event of a hardship situation or is temporarily displaced, it may not be feasible to obtain permission.

Final determination from the committee was the last sentence will read, “In the event the City Manager vacates to an area outside of Walton County without approval of the City Council, the office is declared vacant”.

- b) If the City Manager relocates outside the City but within Walton County due to a City-declared emergency and loss of residence due to emergency circumstances, the City

Manager will be given six (6) months to re-establish City residency. If the City Manager is unable to re-establish City residency within the initial six (6) month period due to good cause, the City Manager may be granted a one-time extension of an additional six (6) months by a majority vote of the City Council. If the City Manager is unable or unwilling to re-establish City residency by the deadline, the office of City Manager will be declared vacant. ~~At no time may the City Manager relocate outside of Walton County without the office being declared vacant.~~ In the event the City Manager vacates to an area outside of Walton County without approval of the City Council, the office is declared vacant.

SECTION 12.02 – EMPLOYMENT CONTRACT

The committee concurred with Chair R. McKnight that section 12.02 stands as written.

The City shall enter into a contract for employment with the City Manager. The contract shall include the City Manager's compensation as determined by the City Council.

SECTION 12.03 – REMOVAL

Chair R. McKnight asked what the legal definition "for good cause" and the numerical vote required.

Councilmember T. Bierbaum suggested it should read by "at least four affirmative votes".

City Attorney Clay Adkinson said "good cause" would be determined by the City Council. However, the term good cause is subjective, as it is more of a situation where the Council has lost confidence and is prepared to remove the person. He went on to explain that is why an employment contract and severance pay is used.

Committee concurred that striking "good cause" is needed as the term is irrelevant and agreed it should read "by four affirmative votes".

The City Manager shall be removed from office ~~for good cause~~ by four affirmative votes super majority vote of the City Council or by mutual consent of both parties.

SECTION 12.04 – VACANCY

Chair R. McKnight went over item 12.04a and asked about "any manner authorized by law".

City Attorney Clay Adkinson provided several explanations, "any manner authorized by law" refers to the City Council removes the city manager, if the City Manager did not resign or fails to meet the residency requirement, he could be removed. Another scenario is if the City Manager is indicted for state or federal crimes, an Executive Order could be issued to remove him from office. There are also areas where an employment contract is stricken by a Florida Court, the City Manager could be removed as authorized by law.

The committee decided to leave the wording as written.

- a) A vacancy shall be created upon the effective date of resignation, when the City Manager fails to meet the residency requirement, dies, or is removed from office in any manner authorized by law.

Next, Chair R. McKnight went over part b. He raised the question of including the wording of the Deputy City Manager serving as the interim City Manager, when the Deputy City Manager position is not referenced anywhere else in the Charter.

Discussion ensued on the position not being elevated to a Charter level position, as it is not intended to be.

City Attorney Clay Adkinson explained the assistant city manager title is now titled the Deputy City Manager. He mentioned whether the committee wanted to create an automatic succession or reference it by Ordinance.

City Manager M. Smigielski mentioned removing part b and making it part of the policies and procedures.

Chair R. McKnight mentioned it should be a policy issue and the committee agreed.

Councilmember T. Bierbaum said if there is an expectation of an order of succession, qualifications need to be considered.

City Attorney Clay Adkinson said the section should be flexible and address qualifications. He will provide clear language on succession and qualifications to complete the paragraph below:

- b) In the event of a vacancy of the office of City Manager for any reason whatsoever, ~~the Deputy City Manager shall serve as the City Council shall, by super majority vote, designate and appoint a properly qualified person as Interim City Manager to execute the functions of the office until such time as a new City Manager is appointed by unanimous vote of the City Council.~~

SECTION 12.05 – POWERS AND DUTIES

Chair R. McKnight stated the first sentence should state what the City Manager is, such as “The City Manager is the head of the administrative component of the city’s Executive branch”, as well as stating in the second sentence that the City Manager “should serve as the Chief Executive Officer of the city”.

The City Manager, as Chief Administrative Officer of the City, shall be responsible to the City Council for the proper administration and management of *all* affairs of the City including, but not limited to, those placed under the City Manager’s authority under this Charter.

Chair R. McKnight thought using the word “all” was too inclusive, since the Mayor signs documents, as well.

Discussion ensued on removing “all” from the sentence, and the Committee agreed that “all” should be stricken to eliminate confusion.

Councilmember T. Bierbaum suggested the change, “The City Manager shall serve as Chief Administrative Officer of the City and shall be responsible to the City Council for the proper administration and management of affairs placed under the City Manager’s authority under this Charter and ordinance”.

Chair R. McKnight mentioned he sees two parts of the executive component, such as the mayor has the executive duty, and the City Manager has the administrative duty of the executive branch and referencing the two positions, one being elected, and one being appointed.

The committee approved striking out “City Council” and striking through “all”. The change approved: The City Manager, as Chief Administrative Officer of the City, shall be responsible to ~~the City Council~~ for the proper administration and management of ~~all~~ affairs of the City including, but not limited to, those placed under the City Manager’s authority under this Charter.

For part a, the committee agreed to adding overseeing and managing all government and proprietary functions, in place of supervision and striking through City Clerk.

- a) ~~Supervise~~ Overseeing and managing all governmental and proprietary functions of the City and all departments, except the City Attorney’s ~~and City Clerk’s~~ departments.

Next, Chair R. McKnight went over part b stating it is clearer to take out “any” and add “employees”. He suggested adding a verb in front of “all ordinances” and “all personnel policies”.

Councilmember T. Bierbaum said he will clean up the following language and return to the committee to make it clearer:

- b) Employ or remove any employee of the City, subject to the provisions of this Charter, all ordinances and resolutions of the City, all personnel policies and applicable collective bargaining agreements of the City, and all personnel rules of the State and Federal government. Charter officers appointed by the City Council, employees of the City Attorney’s department, ~~and employees of the City Clerk’s department~~ shall not be subject to employment or removal by the City Manager.

Regarding part c, Chair R. McKnight suggested adding policies and non-elected employees of the city, which was confirmed by the committee.

- c) Promulgate such rules, regulations, policies and amendments thereto for appointment, promotion, discipline and removal of non-elected employees of the City subject to State,

Federal, and local laws governing employment, except as otherwise provided for in this Section.

- d) Enforce all ordinances, franchises and contracts of the City.
- e) Attend all City Council meetings, either in person or by a duly qualified and designated representative, with a voice but not a vote in the proceedings.

Chair R. McKnight moved on to part f and questioned the use of “first” and City Attorney Clay Adkinson agreed.

Chair R. McKnight stated it should read “summary *financial* report”, and City Manager M. Smigielski agreed. Suggestions were confirmed by the committee.

- f) At ~~the~~ a ~~first~~-regularly scheduled meeting each month of the City Council, submit a summary financial report of receipts and disbursements.
- g) Prepare and submit the annual budget and five-year capital improvement program to the City Council; implement the final budget approved by the City Council to achieve the goals of the City; submit to the City Council and make available to the public a complete report of the finances and administrative activities of the City as of the end of each fiscal year; make such other reports as the City Council may require concerning budget and operations; and keep the City Council fully advised as to financial conditions and future needs of the City.

Chair R. McKnight suggested using “serve as” instead of “be”.

- h) Serve as the purchasing agent for the City.
- i) Sign warrants for payment of moneys for the City.

Chair R. McKnight suggested using “serve as” instead of “be”.

- j) Serve as custodian of all real property and tangible personal property of the City.
- k) Determine whether any officer, clerk, or employee shall require bonding and the amount thereof. When bonding is required, the costs of the bonding shall be paid by the City.

Chair R. McKnight went over part l, stating that previously we said the mayor will sign all contracts, so there is a conflict. City Manager M. Smigielski suggested striking “all” and suggested placing a period after City Council in reply to Chair R. McKnight’s comment.

- l) Sign ~~all~~-contracts, agreements, and applications for the City after such has been approved by the City Council ~~at a regular or special City Council meeting~~.
- m) Perform such duties as may be prescribed by general law, by this Charter, by ordinance or resolution of the City, or by direction of the City Council as a whole.

Chair R. McKnight said we need to add something about communication and coordination issues between the Mayor and City Manager, as well as with the elected City Marshal. Without getting

into the details, he asked if the committee should add a sentence in the Charter about how the positions communicate and collaborate. He reminded the committee that the City Manager and City Marshal were going to work on some language to bring back for review. He added communication should be added to the responsibilities of the City Manager.

Discussion ensued on whether the relationship should be included in the Charter, Ordinance, or policy.

Chair R. McKnight stated the role of working with the mayor should be an important expectation of the City Manager. He added communication and coordination with the City Marshal should also be addressed to state who is in control of what.

City Attorney Clay Adkinson stated a general statement on communication and collaboration in the Charter is sufficient. He added the City Marshal is not at the same level as the Mayor, as he does not sit at the table at the meetings. He realizes that the personality of positions is more of the issue.

Chair R. McKnight said he wants it more of an expectation of the City Manager position. He emphasized the importance is the relationship between an appointed position and elected position.

Discussion ensued on whether the City Manager or the City Marshal has the authority to hire or fire in the police department.

City Manager M. Smigielski said the City Marshal is not the sheriff's department. The City Marshal should be required to work with the City Manager and HR department for hiring and firing.

Councilmember T. Bierbaum said as an elected official over a department, the City Marshal should have full control over his department. He added it should be cut and dry.

Chair R. McKnight asked if the City Marshal office should have its own separate finance, HR, etc., and Councilmember T. Bierbaum stressed there is nothing prohibiting the City Marshal from using the city's departments.

City Manager M. Smigielski said whoever the City Marshall hires and fires, he should do so with the consent of the City Manager.

Councilmember T. Bierbaum said the right answer is to provide a clean chain of command. The City Marshal must stand on his own.

Chair R. McKnight said the discussion is whether the City Marshal is part of the organizational chart that we worked on earlier.

Councilmember T. Bierbaum said law enforcement has a Bill of Rights that they must follow and adhere to, so there are different processes than the current city HR department.

Chair R. McKnight suggested the City Marshal be present at the next meeting. He will add two sentences as placeholders to discuss at the next meeting.

Chair R. McKnight conferred with the Committee and tentatively scheduled the next meeting for 10 a.m. On Friday, May 29th.

Chair R. McKnight closed citizen comments after hearing none.

Councilmember T. Bierbaum stated there was a Chat question: Deputy City Manager C. Lejeune asked, "Is the Marshall currently held to the procedures within the personnel policy manual and the employment standards of the City?"

City Attorney Clay Adkinson replied the City Marshal is elected and there is a Bill of Rights in the collective bargaining that would govern the police employees.

Chair R. McKnight adjourned the meeting at 11:53 a.m.

Approved:



Robert McKnight, Chair



Minutes submitted by,
Maryanne Schrader, City Clerk

