

LEGISLATIVE COMMITTEE MINUTES

July 19 2021

In Attendance: Vermilion City Council:
Steve Herron, President of Council; Monica Stark, Council at Large; Emily Skahen, Ward One; F. Loucka, Ward Two; Steve Hologacs, Ward Three; Brian Holmes, Ward Five. Absent; Barb Brady, Ward Four

Administration:
Jim Forthofer, Mayor; Chris Howard, City Engineer; Amy Hendricks, Finance Director; Chief Hartung; Tony Valerius, Service Director; Ken Stumphauzer, Law Director

Call to Order: Monica Stark, Chairwoman, RESOLVED THAT this Legislative Committee comprised of the committee of the whole does now come to order.

TOPIC ONE: **Review of Ordinance 2021-46 (Charter Amendment Section XI-9 Charter Review)**

S. Hologacs said council discussed putting their own ordinances on for the Charter Review and under Section XI-9 it is amended to read:

SECTION XI-9. Charter Review

In **January 2026**, and each five years thereafter, the Mayor shall, by January 31 of that year, appoint **three** electors **and the Council shall appoint two electors** of the Municipality holding no other office, appointment, or employment in the government of the Municipality as members of a Charter Review Commission. Upon confirmation by Council, such Commission shall review the municipal Charter, and within five calendar months after such appointment, recommend to Council such alterations, revisions, and amendments, if any, to this Charter, as in its judgment are desirable. **An ordinance submitting any such proposed Charter alterations, revisions, or amendments must be approved by a two-thirds majority vote of Council and shall be submitted to the electors not later than the next succeeding general election.** The members appointed to said Commission shall serve without compensation. Meetings of the Charter Review Commission shall be open to the public.

S. Herron agreed with this and thought it is the way Council should go and there is room for disagreement because it is a big issue.

TOPIC TWO: **Review of Ordinance 2021-49 (Charter Amendment III-7 Council Meetings)**

M. Stark explained this is an ordinance that Council has put together to be voted on by the citizens. This allows Council to determine by majority vote any person who will be permitted to remain with Council while they are in a closed executive

session, except that the mayor shall always be permitted in a closed executive session held by the mayor's request. Therefore, if the mayor requests the executive session, he can always attend. There may be a time in a situation in the future where council may want to go into an executive session without the mayor, and they want to keep this right. Therefore, this ordinance will allow them to continue to do this.

S. Herron said if council is going to pass this ordinance, then they will need to pass it tonight. He said this would never be something they would make a regular habit. The mayor should be involved in the vast majority of executive sessions, but there are times when it may not be appropriate, and he thinks that Council needs to protect this power. It is not an intimidation thing or an effort to weaken another branch of government, but he did think it was critical that Council retains this power. He said anytime Council wants to exclude the mayor, they should do so very speciously as he would not recommend it in a vast majority of circumstances.

Mayor Forthofer said as he reads the Charter, it says specifically the mayor as one of his duties shall be part of all Council discussions. It does not say, all council except those they do not want him in – it says all Council discussions. How does this reconcile with that statement that is currently in the Charter? G. Fisher thought it was defined separately by executive session and executive session is defined in the Sunshine Laws.

S. Herron said a few years ago he responded to the mayor's powers when referring to "meetings" and not "executive sessions." Thus, had the people wished to specify the additional kinds of meetings the Mayor was permitted to attend (as they did with Council meetings), they would have put specific language to that effect in the Vermilion Charter. He said he does look at the term meetings and executive sessions as being defined in a body of their Charter differently as they are used differently, and he believes this applies differently. It is a matter of interpretation in his opinion.

Mayor Forthofer said he does not feel council excludes him from executive sessions – this is a matter of principal, and he is not equipped with a legal background as some of the council members are. He is not sure how it can be interpreted differently, and they see things differently. M. Stark said the interpretation is whether it is a meeting or an executive session of council. S. Herron said these terms are used and defined in specific areas of the Charter.

H. Taft of 3972 Edgewater Drive said as he understands from what he just heard, it would be specific which governs the general, so if the Charter were to be amended to say Council could only exclude the mayor by a majority vote, this would govern any other provision in the Charter. As to what Mr. Holovacs spoke to – he made the

observation as the current Charter actually says the Charter Review Commission shall recommend to Council. If you make changes, it would be his suggestion that council consider – Council can at any time by two-thirds simply place something on the ballot for the Charter. The Charter Review Commission is a little different. He thought Council should consider requiring a majority of Council perhaps rather than the two-thirds if it comes from the Charter Commission. It still seems to him that if a majority of Council does not support it, it might be a question as to whether they put it on the ballot, but maybe the two-thirds is one bridge too far.

TOPIC THREE: Review of Ordinance 2021-50 (Charter Ament Section IV-6 Clerk to Adm. Boards/Commissions)

M. Stark said during the previous administration the Boards and Commissions Clerk retired and Gwen Fisher offered to step up and take the position. G. Fisher clarified that she did not offer but was asked by the former mayor to take this position over. M. Stark said G. Fisher graciously agreed to take the position over. She said this position was a full-time position and the former clerk made around \$62,000 in salary and benefits per year. She said that G. Fisher accepted the position for \$8,919.56. (Clerk's note: The position started at \$8,000 and has followed the union increases from the time she took over the position). M. Stark said this has saved the city a tremendous amount and she has done a really great job. She explained Council has an amendment to the Charter to keep the position as is because she has done a great job with it, and she feels when she retires, she will be able to train the next person to continue this as is. She said this has work very well and has saved the city through the years quite a bit of money.

S. Herron said he feels this clears up to what he thinks is an internal conflict in the Charter regarding the power “combined department or divisions”, so he thinks this is in the step of the right direction above and beyond Mrs. Fisher's services to the city. It is a question of permanency, so it moves them in the right direction and clears up what he considers an internal conflict.

Mayor Forthofer said the Charter Review Commission made up of residents appointed by him and approved by Council made a recommendation to put this to the voters. This recommendation was intended to clarify the language that separates the two bodies of government (legislative and executive). This was the intention of what council passed last week. He asked what the intention was of this ordinance. M. Stark said it is to keep it as is, and as what the previous administration placed it. Mayor Forthofer asked how it benefits the separation and how does it reinforce the Charter Commission's recommendation. S. Herron said it is in conflict with what they passed. Many that voted on this last week saw the mandatory language in the Charter and there is disagreement of the Charter, but they are free to pass something that conflicts with that. He thinks both of them

have the same goal. There is an internal conflict, and nobody will disagree with that – it is a grey area. It happens in municipalities, but he thinks there is two different ways to resolve conflict within their Charter. He is not sure they are compatible. Mayor Forthofer said he was trying to get a clear understanding because the separation of the two bodies was at the root of the Charter Commission's recommendation as he saw it, partially by maintaining that the Boards and Commissions is an administrative function unless both bodies agree to merge them as Council is recommending now. Why is legislating it better than having it agreed upon as a needed basis? M. Stark said she voted yes last week, and she was very much not for it, but felt forced to vote yes for this amendment to pass. She asked what made Charter Review look at this – they had to been pointed to this because Council passed the ordinance to charge the clerk with these duties and the mayor vetoed it and Council overrode the veto. She asked the mayor why he was so adamant that he wants this changed back when it has worked so well for these years. Mayor Forthofer said the difference is the fact that there is a process that is convenient or economical, but there is a statement of the organization of the city, and that is they can be separate. He sees this secondary to the integrity of the Charter which recommends two separate bodies with an opportunity for agreement. He said Council is voting on a process that the Charter Commission recommended for the preservation of separation of bodies. M. Stark said the Charter Commission was conveniently pointed and focused on this and felt they should keep this as it is because it has worked. The previous administration agreed that they worked. Mayor Forthofer said the previous administration did not agree they worked because the previous administration was on the Charter Review Commission that recommended the change. G. Fisher interjected by stating the recommendation to the Charter Review Commission came from Mayor Forthofer. She said she has been quiet through this entire thing, but now that they are putting this on the table, she wanted to say that she is not an elected official, and she is just doing the work. She said Boards and Commissions and City Council works hand-in-hand. A lot of recommendations come from Boards and Commissions to City Council. The flow is working very nicely. The previous Council Clerk, Eileen Bulan used to do Boards and Commissions and most communities combine the Clerk of Council and the Boards and Commissions. She said Council voted to charge her with these duties per ordinance in the Administrative Code and the Mayor vetoed it and Council did the override on the veto.

Skip Griffith of Timberview Drive said this is an issue that the mayor should not be involved in. There is a separation of powers, and the jobs can be combined by ordinance and by ordinance you can eliminate it – repeal the ordinance and get done with it. The mayor is talking about all this big money he is spending around here – go back to a secretary of Boards and Commissions. He said G. Fisher has more work to do than 10 people. She works for Council and is hired by Council, and she is fired by Council and the mayor has nothing to do with her position.

Homer Taft of 3972 Edgewater Drive said Council has powers first, so if the Council does not fund the separate position, then he guesses there will not be one. He has heard it by the Charter Commission that these Boards and Commissions are basically administrative, and they are appointed by the Mayor. This is somewhat true; however, they are also required to be voted on and approved by Council. It would seem to him normally that it would be wise – he is sure they would all love if Mrs. Fisher would be here for the next 30 or 50 years, but she may not be. It would be wise for them to have some flexibility and to train people. He would hope that the ordinance would provide this flexibility. There are communities where the secretary at the Building Department is the clerk to the Boards and Commissions (BZA or Planning Commission for example), and perhaps this flexibility at some point may be what Council wants, but he would think this is something they would need to do to collectively work together and agree upon. Everyone of these Boards and Commissions has a representative from this Council, and most of those Boards and Commissions make requests to Council and some of them are required to bring their actions and recommendations to Council for approval before they can take effect. In particular for example, Planning Commission. This should be a cooperative effort, but it seems to him that it makes the most sense if the Clerk of Council could have an assistant who did some Boards and Commissions and also filled in during the case of illness, vacations, or whatever. It would be a more flexible system they could all work on, so this is what he would suggest they put to the voters.

S. Herron said what he considers to be the problem or conflict as the Charter does grant Council the specific power to hire a Clerk of Council and combine departments and divisions. The reality is that one can believe the Clerk of Council to be a “division” of government. There exists no express or implied prohibition against this concept in the Charter. “Division” or “Department” are not defined in the Charter, and it is possible for one employee to be a “Division” or a “Department”. He believes this takes away the issues regarding what he sees is a conflict.

Mayor Forthofer said to some degree what is being focused on is individuals and people. He said he went on record in the press and in the minutes of the Charter Commission to say the current Clerk of Council and Clerk of Boards and Commissions does an excellent job. This is not the issue. They are looking down the road at future mayors and council. Do they intend to keep the two bodies separate with their own respective capabilities to have their own clerks, and then through collaboration have the opportunity to combine them, but not to codify it but to leave that flexibility for future governing bodies? He felt this was the way to go as he is not taking exception to what S. Herron is saying that they can be combined, but the opportunity should be left up to each future council and mayor to decide this.

Drew Werley of 5016 Timberview Drive said he is not going to speak to the Charter. He said every time he hears money being spent on this, that, and the other and about raises being bumped up – he thinks they should give Gwen Fisher a raise.

M. Stark reconvened the regular meeting and adjourned the meeting upon no further discussion.

Next meeting: August 9, 2021 – 7pm @ Vermilion Municipal Complex, 687 Decatur Street

Transcribed by Gwen Fisher, Certified Municipal Clerk (CMC)