

CITY OF ST. FRANCIS
ST. FRANCIS MN
ANOKA COUNTY

CHARTER COMMISSION AGENDA
ST. FRANCIS CITY HALL
23340 CREE STREET NW

APRIL 27, 2017

5:30 PM

1. Call to Order
2. Roll Call
3. Approve Minutes of January 26, 2017
4. Old Business: City Attorney's Memorandum – Potential City Charter Amendment to Allow St. Francis Paid Per Call Fire fighters to service on the City Council
5. Other Items of Discussion
6. Adjournment

CITY OF ST. FRANCIS
ST. FRANCIS MN
ANOKA COUNTY

CHARTER COMMISSION MINUTES

JANUARY 26, 2017

Call to Order: The Charter Commission meeting was called to order at 5:30 pm by Randy Dressen.

Roll Call: Present were Randy Dressen, Malcolm Beck, Steve Kane, Rich Skordahl and Tim Brown. Gary Zimmerman absent. Also present were City Administrator Joe Kohlmann, Assistant City Attorney David Schaps, Mayor Steve Feldman (pending appointment) and City Clerk Barb Held.

Approve Minutes of February 1, 2016: Motion by Kane second Beck to approve the February 1, 2016 Charter Commission Minutes. Motion carried unanimously.

Appointment of Chair and Vice Chair: Beck nominated Randy Dressen as Chair. **Motion by Kane second Beck to appoint Randy Dressen as the Chair for the Charter Commission.** Dressen ask three times if there were any other nominations. **Beck moved to close nominations.** Motions carried unanimously.

Kane nominated Malcolm Beck as Vice Chair. **Motion by Kane second Brown to appoint Malcolm Beck as the Vice Chair for the Charter Commission.** Dressen asked three times if there any other nominations. **Kane moved to close nominations.** Motion carried unanimously.

City Attorney's Memorandum – Potential City Charter Amendment to allow St. Francis Paid Per Call fire fighters to Serve on the City Council: City Attorney Scott Lepak's memorandum addressed the potential City Charter Amendment to allow St. Francis Paid Per Call Firefighters to serve on the City Council. Assistant City Attorney David Schaps went over the memorandum with the Charter Commission. The city attorney's office received a request from current City Councilmember Robert Bauer to consider an amendment to the City's Charter. Bauer was elected to the City Council in the November 2016 election and took office in January 2017. Bauer was a member of the Fire Department. Schaps said due to a provision in the City Charter, it is our office's opinion that Mr. Bauer could not serve as both a city councilmember and a paid per call fire department in the municipal fire department and that the two positions were incompatible. The applicable City Charter section states:

Section 2.04 Incompatible Offices. No member of the Council shall hold any paid appointive office or paid employment for the City other than that to which the member was elected, although the member may be appointed to the office of Mayor in case of a vacancy.

As a member of the fire department, Mr. Bauer and all other members of the fire department receive paid employment in per call wages and contributions to the fire relief fund. This language has been utilized in the past to prevent sitting council members from serving on the fire department.

Schaps stated their office contacted the Attorney General's Office on this matter to seek an advisory opinion. City Attorney's office was informed in a telephone conversation that they would not interpret a City Charter provision. This means seeking a formal advisory opinion on this issue would not be a means to resolve this issue. This is consistent with their longstanding practice. Further, the conversation with the Assistant Attorney General who typically reviews these matters noted that a Fire Chief could not also serve on a City Council under a prior Advisory Opinion (April 5, 1971).

In light of this information, Councilmember Bauer requested a leave of absence from the St. Francis Department pending a potential resolution to this issue. He also requested the Charter Commission consider an amendment to the City Charter to allow firefighters to be specifically exempted from this provision.

Dressen stated Mr. Bauer is present so I would like to allow him to speak.

Bauer gave a brief presentation on why he believes he should be allowed to serve both on the City Council and be a paid on call firefighter.

Dressen said he appreciated the State to allow the City to make the decision. Back some years ago Brown was not allowed to serve as a firefighter either when he was elected to the city council.

Feldman stated I think allowing firefighters to be on the council it is a good thing, we are missing a pool of people by not allowing them to be on the council.

Skordahl said we know around the State places are finding it hard to get firefighters. But now you would have a person who is a boss of your peers. Don't think it would be fair to allow him to vote on certain issues. I am a little concerned about the day to day operations of the fire department that may come up.

Brown said the only thing I can go on is past experience. I did render my resignation from the fire department when I was elected to the city council. It was difficult but felt there was a conflict of interest. My concern was how could I approve a budget when I have a vested interest in the fire department.

Kane stated I do see a lot of potential conflict. I concur with everything said.

Feldman asked what verbiage can be done so they have to restrain on certain questions. Dressen said by doing that you are truly handicapping the councilmember by putting constraints on them.

Brown asked if we don't change the Charter could the City pay for his expense to keep up his training? Discussion was then held on PERA and how a leave of absence would affect his pension. Discussion also was held on requiring to abstain on certain issues.

Beck stated you were elected by the people of St. Francis to be a council member. I don't like the idea of you not being able to vote.

Brown asked about abstaining on a vote, how would it count. There are ordinance amendments, zoning issues and possibly Charter amendments that may need a 5-0 vote.

General discussion was how do other cities handle this issue. Commission members all agreed there may need to be more research done on this before we make a decision.

Motion by Brown second Kane to table the decision on whether to amend the Charter until more research can be done and reconvene at a later date.
Motion carried 5-0.

Dressen asked who is going to do the research? It was decided to have the attorney's office research other charter cities. When should we meet again? It was decided to give legal ample time to do the research. It was agree upon to set the next Charter Commission meeting for April 27, 2017 at 5:30 pm.

Adjournment: Motion by Beck second Brown to adjourn the Charter Commission meeting at 6:06 pm. Motion carried 5-0.

Barbara I. Held, City Clerk

JEFFREY S. JOHNSON
RUSSELL H. CROWDER
MICHAEL F. HURLEY
DOUGLAS G. SAUTER
HERMAN L. TALLE
CHARLES M. SEYKORA
DANIEL D. GANTER, JR.
BEVERLY K. DODGE
JAMES D. HOEFT
*JOAN M. QUADE
*JOHN T. BUCHMAN
SCOTT M. LEPAK
ELIZABETH A. SCHADING
CAROLE CLARK ISAKSON

*Also Licensed in Wisconsin

BGS

Barna, Guzy & Steffen, Ltd.

ATTORNEYS AT LAW

200 Coon Rapids Boulevard NW, Suite 400
Minneapolis, MN 55433-5894

www.bgs.com

(763) 780-8500 FAX (763) 780-1777

WILLIAM F. HUEFNER
BRADLEY A. KLETSCHER
TIMOTHY D. ERB
KAREN K. KURTH
ADRIEL B. VILLARREAL
TAMMY J. SCHEMMELE
JENNIFER C. MOREAU
DAVID R. SCHAPS
THOMAS R. WENTZELL
NICOLE R. WIEBOLD
LINDSAY K. FISCHBACH

OF COUNSEL
JON P. ERICKSON
STEVEN G. THORSON
W. JAMES VOGL, JR.
*JAMES H. WILLS

MEMORANDUM

TO: St. Francis City Charter Commission Members

FROM: Scott Lepak, St. Francis City Attorney

RE: Follow Up Research on Potential City Charter Amendment

DATED: April 20, 2017

Please allow our office to follow up to the previous January 26, 2017 St. Francis City Charter meeting, where our office had received a request from a current City Councilmember to consider an amendment to the City's Charter. Robert Bauer was elected to the City Council in November of 2016 and recently took the oath of office. Prior to assuming office, Mr. Bauer was a member of the City's Fire Department.

Due to a provision in the City Charter, it was our office's opinion that Mr. Bauer could not serve as both a city councilmember and a paid per call fire department in the municipal Fire Department and that the two positions were incompatible. The applicable City Charter section states:

Section 2.04 Incompatible Offices. No member of the Council shall hold any paid appointive office or paid employment for the City other than that to which the member was elected, although the member may be appointed to the office of Mayor in case of a vacancy. (Emphasis added).

As a member of the Fire Department, Mr. Bauer and all other members of the Fire Department receive paid employment in per call wages and contributions to the fire relief fund. This language has been utilized in the past to prevent sitting council members from serving on the fire department.

In addressing this issue, our office contacted the Attorney General's Office on this matter to seek an advisory opinion. Our office was informed in a telephone conversation that they would not interpret a City Charter provision. This means seeking a formal advisory opinion on the issue would not be a means to resolve this issue. This is consistent with their longstanding practice. Further, the conversation with the Assistant Attorney General who typically reviews these

matters noted that a Fire Chief could not also serve on a City Council under a prior Advisory Opinion (April 5, 1971).

The takeaway from this conversation with the Attorney General's Office is that they will not assist in making a determination one way or the other on the Charter provision. They pretty clearly would indicate an individual could not serve as a Fire Chief and be on the Council.

In light of this information, Councilmember Bauer requested a leave of absence from the St. Francis Department pending a potential resolution to this issue. He also requested the Charter Commission consider an amendment to the City Charter to allow firefighters to be specifically exempted from this provision.

Follow Up Information from the Last Charter Commission Meeting

At its last meeting, the City Charter Commission directed our office to research whether other home rule charter cities in the state have a similar provision in the City Charter either allowing or prohibiting a member of the City's volunteer fire department to serve on the City Council and remain as a member of the department. As noted by the League of Minnesota Cities, there are currently 107 home rule charter cities in Minnesota, including St. Francis. Our office examined the charter provisions of approximately 60 random city charters to obtain a representative survey.

In looking at the research collected by our office, the clear "majority rule" for Minnesota home rule charter cities is to include language that would work to prohibit a member of the Fire Department from serving on the City Council. These cities primarily mirror the current language of the St. Francis City Charter including the provision citing "not any" other appointed office or employment with the City. I note that the City of Minnetonka takes this prohibition to an even greater degree, and does not allow a paid city employee to take a leave of absence if they are elected to the City Council, but must rather affirmatively resign their position.

However, there are a number of cities (approximately one-third of cities that were researched) that have no language to address this type of issue. In this case, it would be up to the individual city to determine if a state law exemption existed based on the type of fire department (either municipal volunteer or non-profit firefighting corporation) to allow the individual to serve in an elected role and as a member of the department.

Finally, two cities have affirmatively amended their city charters to specifically allow firefighters to serve in an employment capacity as such in addition to serving on the City Council as an elected official. This has occurred in the City of Ham Lake ("except the Fire Department"), and the City of Hastings ("except volunteer firemen").

Process and Proposed Language if an Amendment is Desired

Based upon the discussion of the Charter Commission, if an amendment to the City Charter is desired, the proposed amendment to address this situation would be as listed below:

PROPOSED AMENDEMENT TO CITY CHARTER

CHAPTER 2 FORM AND ORGANIZATION OF GOVERNMENT

Section 2.04 Incompatible Offices. No member of the Council shall hold any paid appointive office or paid employment for the City other than that to which the member was elected, although the member may be appointed to the office of Mayor in case of a vacancy. This prohibition shall not apply to paid per call firefighters in the St. Francis Fire Department.

I am seeking charter commission input and direction on this issue. If the Charter Commission is not interested in this amendment, please let me know. If the Charter Commission wishes to make this or any other amendment, please let me know as well.

The process on amendment would be as follows:

The Charter Commission, citizens and the City Council may all propose charter amendments. The Charter Commission may recommend the City Council amend the Charter by ordinance.

The steps to have the Charter Commission proposed change brought before the City Council are as follows:

Step 1. The Charter Commission makes a recommended change to the Charter by ordinance and includes the text of the proposed amendment.

Step 2. This recommendation is submitted to the City.

Step 3. Within one month of receiving the recommendation from the Charter Commission, the City must publish notice of public hearing of the proposal (which must contain the text of the proposed amendment). Minn. Stat. Sec. 410.12, subd. 7.

Step 4. The City must hold a public hearing on the proposed charter amendment at least two (2) weeks but not more than one (1) month after the notice is published.

Step 5. The City Council must vote on it within one (1) month of the public hearing. The vote must be unanimous.

Step 6. The changes are published like all other ordinances.

Step 7. Within 60 days after passage and publication, citizens may petition to submit the matter to referendum.

Step 8. The Charter Commission may submit any of these issues to the voters if they are not unanimously adopted by the City Council. This must be submitted at least 17 weeks before the general election. Minn. Stat. Sec. 410.12 Subd (1-3).

The applicable law in this area is Minn. Stat. 410.12 Subd. 7. **Amendment by ordinance.**

Upon recommendation of the charter commission the city council may enact a charter amendment by ordinance. Within one month of receiving a recommendation to amend the charter by ordinance, the city must publish notice of a public hearing on the proposal and the notice must contain the text of the proposed amendment. The city council must hold the public hearing on the proposed charter amendment at least two weeks but not more than one month after the notice is published. Within one month of the public hearing, the city council must vote on the proposed charter amendment ordinance. The ordinance is enacted if it receives an affirmative vote of all members of the city council and is approved by the mayor and published as in the case of other ordinances. An ordinance amending a city charter shall not become effective until 90 days after passage and publication or at such later date as is fixed in the ordinance. Within 60 days after passage and publication of such an ordinance, a petition requesting a referendum on the ordinance may be filed with the city clerk. The petition must be signed by registered voters equal in number to at least five percent of the registered voters in the city or 2,000, whichever is less. If the requisite petition is filed within the prescribed period, the ordinance shall not become effective until it is approved by the voters as in the case of charter amendments submitted by the charter commission, the council, or by petition of the voters, except that the council may submit the ordinance at any general or special election held at least 60 days after submission of the petition, or it may reconsider its action in adopting the ordinance. As far as practicable the requirements of subdivisions 1 to 3 apply to petitions submitted under this section, to an ordinance amending a charter, and to the filing of such ordinance when approved by the voters.

(Emphasis Added).

City	Language Compatible?	Notes
1 Albert Lea	No	"An elected officer of the city may not (i) be appointed city manager; (ii) hold another city office or be employed by the city in any capacity for pay; "
2 Anoka	No	"During the term for which he/she was elected, no elected officer of the City shall be appointed City Manager, nor be compensated for any municipal office or employment other than that for which he/she was elected"
3 Alexandria	No	"No member of the Council shall hold any other municipal office or become a an employee of said City while serving as such council member."
4 Arlington	No	"No member of the City Council shall hold any municipal office or employment under the City, except as authorized by State Statute"
5 Austin	Silent	
6 Brainerd	Silent	
7 Bemidji	No	"nor shall any member hold any paid municipal office or employment under the City"
8 Benson	No	"nor shall any member hold any paid municipal office or employment under the city,"
9 Blaine	No	"nor shall any member hold any paid municipal office or employment under the city;"
10 Bloomington	Silent	
11 Brooklyn Center	No	"nor shall any member hold any other paid municipal office or employment for the City"
12 Brooklyn Park	No	"nor shall any member hold any non-elective paid municipal office or employment under the city except as otherwise permitted by state law"
13 Columbia Heights	No	"No member of the council shall hold any paid municipal office or employment under the City of Columbia Heights"
14 Coon Rapids	No	"no member of the Council shall hold any paid municipal office or employment under the City"
15 Crookston	No	"nor may the Mayor or a Council Member hold any paid municipal office or employment under the City"
16 Crystal	No	"A member of the council may not be a city officer or be employed by the city for pay. "
17 Detroit Lakes	No	"No member of the Council shall be appointed to or hold any paid municipal office or be employed by the City".
18 East Grand Forks	Silent	
19 Excelsior	Silent	
20 Faribault	No	"nor shall any member hold any paid municipal office or employment under the City"
21 Fergus Falls	No	"No member of the Council may hold any paid City office or employment other than that to which elected, and may not be employed by the City until two years after the expiration of the term to which elected as Mayor or Council Member."
22 Fridely	No	nor shall any member hold any other paid municipal office or employment under the City
23 Ham Lake	Yes	"No member of the Council shall hold any paid municipal office or employment under the City, except on the Fire Department "
24 Hastings	Yes	"no elected officer of the City shall be appointed City Administrator nor be compensated for any municipal office or employment (except volunteer firemen) other than for which he or she was elected"
25 Hopkins	No	"Neither the Mayor nor any member of the City Council shall be appointed City Manager, or hold any paid municipal office or employment under the City other than the office to which elected."
26 Hutchinson	No	"No elective officer shall hold any other paid municipal office or employment for the City,"
27 International Falls	Silent	
28 Lake City	No	"No member of the Council shall hold any other paid municipal office or permanent full time or part time employment under the City until one year after the expiration of the member's term as Mayor or Council person"
29 Lino Lakes	No	"may not "hold any paid municipal office or employment through the City other than that to which elected."
30 Litchfield	No	"Nor shall any member hold any paid municipal office or employment"
31 Little Falls	Silent	
32 Madison	No	"nor shall any member hold any paid municipal office or employment under the city"
33 Minnetonka	No	Cannot even take leave of absence from paid position - additional restriction
34 Minnetonka Beach	Silent	
35 Moorhead	No	"The mayor or a member of the council may not be appointed to a paid municipal office in the city nor be employed by the city."
36 Mounds View	No	"No member of the Council shall hold any municipal office or employment through the City other than that to which elected."
37 New Ulm	No	"Neither the Mayor nor any member of the City Council, nor any immediate family member of such official, shall hold any paid municipal office or employment under the City"
38 Northfield	No	may not "hold any other city office nor be employed by the city in any other capacity for pay"
39 Owatonna	Silent	
40 Pipestone	No	"No member of the City Council or the Mayor may hold any paid appointive municipal office for the City or paid employment with the City other than to which they were elected unless allowed by State law."
41 Plymouth	No	"An elected officer of the city may not (i) be appointed city manager; (ii) hold any other city office or be employed by the city in any other capacity for pay;"
42 Ramsey	No	"No member of the council shall hold any paid municipal office or employment through the city other than that to which elected."
43 Red Wing	Silent	
44 Redwood Falls	Silent	
45 Richfield	No	"nor shall any member hold any paid municipal office of employment under the City"
46 Robbinsdale	No	" nor shall any member hold any paid municipal office or employment under the city"
47 St. Cloud	Silent	
48 St. Louis Park	Silent	
49 Stillwater	Silent	
50 South Saint Paul	No	"Neither the mayor nor any member of the city council shall be appointed or hold any other paid office or employment with the city"
51 Tracy	No	"No member of the City Council shall hold any municipal office of employment under the City, except as authorized by State Statute."
52 Two Harbors	Silent	
53 Waseca	No	"nor shall any member hold any paid municipal office or employment under the City; "
54 Wayzata	Silent	
55 West Saint Paul	No	"nor shall any member hold any other paid municipal office or employment under the City during the term of office for which he or she was elected"
56 Willmar	No	"shall not hold any other City office or City employment"
57 Windom	No	"No member of the Council shall hold any other municipal office or become a an employee of said City while serving as such council member."
58 Winona	No	"nor shall any member of the council hold any paid municipal office or employment under the city other than that of a membe of the Council."
59 Worthington	Silent	
60 Virginia	No	"No member of the Council may hold any paid City office or employment other than that to which elected,"