Charter Review Commission

Meeting Minutes

March 31, 2011

7 p.m.

Attendees

Members in Attendance:
Charles Woodard (Chair)
Pauline Dillard
Brigidanne Flynn
Tom Murphy
Jack Penney
Barbara J. Smith
Decora Sandiford
Susan Smith

Members Absent:
Isaac Diggs
Barbara Simon
Mary Ann Prokosch

Consultants:
Jonathan Drapkin, Director, Pattern for Progress
Prof. Gerald Benjamin, SUNY New Paltz
Lester Steinman, Esq.

Staff:
Acting City Manager Richard F. Herbek
Corporation Counsel Bernis Nelson
Assistant Corporation Counsel Michelle Kelson
Administrative Assistant Ann Kuzmik

Other Guests:
Karen Mejia
Mark Gerlach, The Sentinel

Summary:

Chair Charles Woodard opened the meeting and led the group in the Pledge of Allegiance. The minutes of the 3/17/2011 meeting were approved as written.

AGENDA ITEMS:

Presentation by Prof. Gerald Benjamin "Appointment and Removal of the City Manager" *(filed with minutes)*

Notes:

1. Based on a review of charters of all Cities in New York State with Council Manager systems, except Elmira
2. Also considered the National Civic League Model City Charter, 8th edition, 2003
3. Older city charters are written using male pronoun- Newburgh Charter Commission may consider using gender-neutral language

Highlights of the presentation include:

APPOINTMENT:

- Appointing authority and conditions- The City Council in all charters under review- mostly by majority vote
- Tenure or term- most charters specify "indefinite" or "at the pleasure of Council"- Endorsed by NCL- some charters address making the tenure or term non-binding on future councils
- Salary- About half of City Charters in cities with Manager systems authorize the Council to set the level of compensation; remaining are silent. However, some follow the model City Charter
- Qualifications- most charters, like Auburn, provide for Manager selection "solely on the basis of executive and administrative qualifications." A number are silent, and some are specific. ICMA provides guidelines for minimum manager qualifications
- Residency requirements- where the City Charter is silent, and no specific exception has been made, State law requires residency by public officers
- Eligibility of elected officials to serve as City Manager- most Charters are silent on this. Some, like Geneva, Peekskill, and New Rochelle provide specific time constraints

REMOVAL:

- Required vote to remove or suspend- Removal is the Council prerogative, usually done by majority vote of the elected.
    - Auburn apparently requires unanimity (Prof. Benjamin will confirm)
    - Canandaigua and Rye require 2/3 majority
    - A preliminary resolution with specific reasons and suspension may be required
    - Some municipalities terminate at will
- Notification and right to respond

        - Prompt or immediate notification is often required, with time period during which Manager may request public hearing
- Final action to remove varies- sometimes a hearing can be held on the same night as the vote on removal
- Compensation during removal process or suspension period
        - Generally compensation continues during removal process or suspension until removal is final
        - Some authorize severance pay
- Bar to review in a court of law
        - Most charters do not address this, however Ogdensburg and Peekskill have similar provisions that the Council suspension or removal of the Manager shall not be subject to review by any court or agency

The Model City Charter (*filed with minutes)* outlines the removal process.

During the presentation, Prof. Benjamin noted that employment agreements are provided in some cities, and that they were one way to make a job more stable. They do not grant tenure, nor do they impede the ability of the Council to remove the Manager. He referenced the model employment agreement suggested by ICMA. *(filed with the minutes.)*
Susan Smith asked if there were any cases where a City Manager was removed for misconduct or whatever, it wound up in court. Prof. Benjamin said he had not researched this, but he thought that often people don't go quietly.

Prior to general discussion as per the agenda, Barbara Smith asked if the guests in the room could be asked to participate. Prof. Benjamin answered that this is not a usual part of the process as Commissions deliberated. Mr. Steinman noted that perhaps further along in the process, or at the end of the meeting. They noted it was up to the Chair to decide.

Prof. Benjamin continued by saying there were two slides that were crucial in the presentation and could provide the basis for further discussion- those dealing with appointment and removal.

Regarding Slide 19, dealing with residency of public officers, Brigidanne Flynn asked if the requirement applied to officers other than the City Manager. Prof. Benjamin said that a municipality can have exemptions. For example, if some other City adopts an exemption that their treasurer does not have to be a City resident, then Newburgh could adopt a similar exemption (if residency requirement were in the Charter) by local law.

Agenda Item #4:

General discussion about other municipalities with City Manager Government.

Focusing on the City Manager position, Tom Murphy said the Commission should identify what they wanted to change- do they want to make it more difficult to fire the City Manager. The two issues are that a process is needed that makes it more difficult to fie a City Manager, but the process also needs to be done quickly without exposing the City to litigation.

Jack Penney suggested that everyone turn to P. 22 (Article 5) in the City Charter to see what they want to correct. Currently, all it states is that the Manager serves at the pleasure of the Council.

Mr. Murphy said the issue is how to get continuity. Brigidanne said she did not see anything about hiring and firing in this section, and asked if it was in some other section. Mr. Steinman said that once the Commission comes to some agreement on what they want to amend, the consultants can come up with the actual words.

Mr. Penney pointed out that when changing the Charter, the Commission has to account for what they were changing, giving the reasons for the change. Barbara Smith suggested that the Commission look at the Peekskill Charter as a blueprint. Mr. Woodard asked if she was suggesting that they take language from Peekskill and add it to the current charter. Ms. Smith said not really, just that after looking at all the alternatives from other cities, that they incorporate what will be best for the City.

Bernis Nelson suggested that it might be best to work through the components to see what the Commission wants to see- for example, Peekskill has no provision for a contract, which has been controversial- once the Commission decides what they would like to see, then the consultants can write it.

Susan Smith asked if the current Acting City Manager has a contract. Ms. Nelson replied that he does, but it does not provide for severance or any other elements that are often found in contracts. She also clarified for Ms. Smith that the current Acting City Manager could be fired at will. Ms. Smith said that if they found a really good City Manager then they need some kind of a provision for the contract to be re-assigned. Ms. Nelson said that some of the difficulties in the past were related to the Council entering into contracts in ways not provided for in the Charter- if the Commission wanted to change it, they would have to change the Charter.

Mr. Murphy reiterated the issues that there was a conflict with having a quick process, but also wanting the Council to think about removing a Manager before they do it.

After further discussion, Mr. Steinman said the first thing the Commission should consider is whether they wanted to keep the "at will" provision. He said they should also consider the possibility of a rogue City Manager, so they did not want to tie the Council's hands. The question is how much process they want to provide and the possibilities that it may be dragged out and result in litigation. He said they should consider the 'bad' that might happen when drafting Charter revisions.

Mr. Woodard offered the suggestion they should consider the ICMA model employment agreement, and from that come to a vision of the employment agreement for the City Manager. Mr. Murphy said he felt this was a separate topic.

Decora Sandiford suggested the Commission go over the Charter line by line and if there is something they want to change, and they get to a wall, then ask the professionals.

Mr. Woodard said that they have spent the last one and a half months considering the structure of City government. The bones of it are that the Commission members are the ones who must live with what they produce. The consultants are giving the benefits of their knowledge, but it doesn't say what the Commission would like to do. This is why he would like them to consider the employment agreement. Mr. Penney said that City Managers come with a contract- that the provisions of the model employment agreement are not dealt with by the Charter.

Ms. Nelson suggested again that the Commission go through the hiring and firing portions of Prof. Benjamin's model to help decide on any changes, then the contract will flow out of the Charter. It will have to comply with the Charter.

Prof. Benjamin asked how many votes the Commission thought should be required to appoint a City Manager. Barbara Smith said she thought they were jumping the gun, as they had not yet decided on the structure of the Council. Discussion followed about whether a majority or a supermajority should be required. Mr. Steinman pointed out that if there is a five member board, and you require four members to appoint, there may be a political split and you may not get the votes. However, the Commission may want to require a supermajority on dismissal.

ACTION ITEM: Tom Murphy made a motion that the Commission to amend Article C5.00 to make changes to the procedure for hiring and firing the City Manager. Jack Penney seconded and the motion was passed unanimously.

Discussion continued. Jack Penney said with hiring with three votes and firing with four, it is political, and if there is an election in two years, you will have lost the City Manager (if the party makeup of the Council changes) .

ACTION ITEM: Jack Penney made a motion that the hiring procedure should require a majority plus one vote of the Council. Tom Murphy seconded, and the motion was approved unanimously.

Discussion followed about the term of the City Manager and the procedure to remove them, and whether the Charter should continue to specify that they serve at the pleasure of the Council. Jack Penney said he thought it should always be at the pleasure of the Council. Tom Murphy asked if it would not put them right back where they were. Jack said yes and no, that most City Managers wrote their own contract, and that most were two year contracts. Mr. Steinman said that he was not sure it was mutually exclusive, could still have a contract with specific provisions, but not specify a term. Ms. Nelson said the issue of term could be dealt with in a different part of the Charter that deals with contracts.

ACTION ITEM:
Tom Murphy made a motion that that the consultants draft an amendment for the Commission to consider that the City Manager may be appointed for a definite term not to exceed 2 years, and that they may be reappointed that at the expiration of this term, at the discretion of the Council. Discussion followed and the motion was modified to say that the amendment should be drafted along the lines of the hiring provisions in the City of New Rochelle's charter. Jack Penney seconded the motion, and it passed by unanimous vote.

ACTION ITEM: Discussion followed about the ICMA model employment agreement and whether the terms of a contract should be addressed in the Charter. Tom Murphy made a motion that the terms of the contract should not be addressed in the Charter. The motion was seconded and passed with all in favor except for Pauline Dillard.

The last part of the discussion centered around the qualifications and experience of the City Manager and whether this should be addressed in the Charter. Brigidanne Flynn noted that perhaps they could ask for an equivalent amount of education and real world experience. Mr. Murphy asked Mr. Herbek if he had any thoughts on the subject. Decora asked if asking the current Acting City Manager wasn't a conflict of interest. Mr. Herbek replied that he was not talking about himself. He went on to suggest that the position

might require a Masters in Public Administration and a minimum of 8 years of experience. Ms. Nelson pointed out that the current Charter states that the Manager shall be selected by the Council based on their administrative and executive qualifications, which is much broader.

Mr. Penney commented that he disagreed with putting educational requirements- that they had many good businesspeople as City Managers, for example, Bill McIntyre was one of the best City Managers. Barbara Smith noted that Bill McIntyre was City Manager in 1950 and was dismissed. Jack .pointed out that Newburgh was an all-America City, and that Mr. McIntyre's dismissal was political.. She continued that times had changed, and maybe there is now a need to look at educational requirements. Jack said you can't overlook people who might be good managers because they don't meet certain educational requirements.

Decora asked what requirements other cities had. Professor Benjamin said he would have to look into it. Jonathan Drapkin, a former County Manager, said he had a law degree, and an MA, and 12 years of managerial experience. but not an MPA and he could not have been County Manager if such were required. He suggested the Commission keep the requirements broad, and offer the alternative of having education and experience.

Tom Murphy made a motion that the Commission authorize the drafters to prepare a qualifications provision leaving out the years of experience, but requiring at least a Masters Degree - and that discussion of this should be the first item on the agenda next meeting. Mr. Steinman suggested that the best way to work is not to go piecemeal, but before drafting something, the Commission review Professor Benjamin's presentation so they can focus on the level of education and experience they might want to see in the Charter. Mr. Murphy withdrew his motion.

The meeting adjourned at 9 p.m. The next meeting will be on April 14 at 7 p.m. in City Council Chambers, 83 Broadway. The public is invited to attend.