



CHARTER COMMISSION MEETING AGENDA
June 21, 2017 - 8:00 AM
City Hall Council Chambers

Call to Order

Roll Call

Approval of Minutes

1. April 12, 2017 Minutes

Reports of the Chair, Officers, Commissions and Committees

Public Comment

Unfinished Business

2. Discuss Election Vacancies/Open Seats
3. Bylaws Change "Membership"

New Business

4. Committee Appointments

Adjourn



**City of Moorhead
Charter Commission
Meeting Minutes
April 12, 2017 at 8:00 AM
City Hall Council Chambers**

Call to Order

Roll call of the members was made as follows:

Board Member:	Julian Dahlquist	Present
Board Member:	Corey Delorme	Present
Board Member:	Douglas Fagerlie	Present
Board Member:	Angelique McDonald	Absent
Board Member:	Athena Gracyk	Present
Board Member:	Russell Hanson	Absent
Board Member:	Thomas Krabbenhoft	Absent until 8:11 am
Board Member:	Darvin Landa	Present
Board Member:	Joel Rehder	Present
Board Member:	James Steen	Present
Board Member:	Kenneth Tangen	Absent
Board Member:	Bradley Vesta	Present
Board Member:	Eldon Wollman	Absent

Guests present:

Sarah Wear	City Attorney
Michelle French	City Clerk
Christina Volkens	City Manager
Mark Altenburg	Moorhead Resident

1. Administer Oath of Office to New Member(s)

Oath was administered to Corey Delorme

Approval of Minutes

2. February 15, 2017 Minutes

Motion to approve minutes of February 15, 2017 by Steen seconded by Gracyk; motion approved by unanimous vote.

Reports of the Chair, Officers, Commissions and Committees

Public Comment

The Moorhead City Charter Commission welcomes and encourages public input on issues listed on the agenda or of general community interest. Citizens wishing to address the Charter Commission regarding a specific agenda item will be afforded an opportunity during the discussion of that item. Speakers are limited to a 2-minute presentation. Citizens wishing to speak on matters not listed on the agenda will be afforded the opportunity to do so under the heading "Public Comment".

Unfinished Business

3. Discuss Election Vacancies/Open Seats

Minutes: Discussion occurred regarding the process that was determined for the 2016 Council vacancy.

The Charter Commission members directed the City Attorney to come up with scenarios, look at other City Charters, and provide a list of compatible offices.

The Charter Commission would like a clear policy on how to fill vacancies and can a Council Member running for office, run for multiple offices.

Motion to direct the City Attorney to clarify incompatible office made by Steen seconded by Delorme; motion approved by unanimous vote.

Motion to direct the City Attorney to determine where in the City Charter the term vacancies exist made by Rehder seconded by Gracyk; motion approved by unanimous vote.

New Business

Minutes: Discussion occurred regarding the Charter Commission membership.

Motion to change the membership of the Moorhead Charter Commission from 13 members to 11 members effective January 31, 2019 made by Landa seconded by Steen; motion approved by unanimous vote.

The membership will consist of two members per ward with the Mayor appointing three members.

Next meeting will be held on June 21, 2017.

Adjourn

Meeting adjourned at 9:08 am

*Respectfully submitted by:
Michelle French, City Clerk*

MEMORANDUM

TO: Mayor Williams and the Moorhead City Council
FROM: John T. Shockley
DATE: December 15, 2016
RE: Appointment to Fill the Vacancy in the Second Ward City Council Seat



This memorandum addresses the process involved in filling the vacancy for a Second Ward City Council member created by Council Member Jim Haney's November 14, 2016 resignation.

I. INTRODUCTION.

At the December 12, 2016, City Council meeting, the City Council determined that it will narrow down the number of applicants for the Second Ward vacancy on December 15, 2016, and then vote to appoint one (1) of the three (3) finalists, selected to fill the Second Ward vacancy on Monday, December 19, 2016. The City Council directed that the Mayor, Council Member Gehrtz, the Interim City Manager, and the City Attorney meet and develop a process to narrow down the number of applicants to three (3) finalists. The Mayor, Council Member Gehrtz, the Interim City Manager, and the City Attorney met and developed a process to select an applicant to fill the vacancy in the Second Ward City Council seat. The process to select a replacement Council member is explained further in this memorandum.

II. DISCUSSION.

As discussed in previous memorandums, under Section 2.06, subd. 1(c) of the Moorhead City Charter, "A vacancy in the office of mayor or council member exists for the following reasons . . . (c) The resignation of the mayor or a council member." Additionally, "When a vacancy occurs in a city council member's office, the council must by resolution declare the vacancy to exist. The council shall give public notice of the vacancy, and anyone who is qualified may apply for the position. The council shall fill the vacancy by council appointment from the qualified applicants until a special election is held as provided in subdivision 4." Moorhead City Charter § 2.06, subd. 2.

On December 12, 2016, the City Council requested the Mayor, Council Member Gehrtz, the Interim City Manager, and the City Attorney to develop a process to narrow the applicant pool from fourteen (14) qualified applicants to three (3) finalists for the Second Ward seat. The City Council has scheduled a special meeting on December 15, 2016, at 7:30 p.m. to utilize the process developed by the Mayor, Council Member Gehrtz, the Interim City Manager, and the City Attorney to narrow down the number of applicants to three (3) finalists who will be asked to appear in front of the City Council on Monday, December 19, 2016, for a final vote.

December 15, 2016 City Council Meeting (7:30 p.m.)

At the December 15, 2016 meeting, the City Clerk will read the names of the fourteen (14) qualified applicants, each Council member will have three (3) votes for their preferred applicant(s). At the completion of round one (1), the City Clerk or City Attorney will read the names of the applicants who received a vote from the Council. If the number of applicants who received a vote exceeds three (3) people, the Council will have another round of voting. Each Council member will again have three (3) votes for their preferred applicant(s). If necessary, additional rounds, similar to the previous rounds, will be provided until the number of applicants is narrowed down to three (3) finalists.¹ The City Council meeting will not be adjourned until three (3) applicants are selected to be finalists.

Unsuccessful applicants will receive a letter from the Mayor stating that they were not selected as one (1) of the three (3) finalists and thanking them for their interest in the position. The top three (3) finalists will be notified and asked to appear at a special meeting on Monday, December 19, 2016 at 5:30 p.m.

December 19, 2016 City Council Meeting (5:30 p.m.)

The three (3) finalists will all be seated in front of the City Council. The three (3) finalists will be asked questions by the Mayor Pro-Tem of the City Council.² The Mayor Pro-Tem will ask a total of six (6) questions. Each finalist will be allocated one (1) minute to respond to the question presented. The Mayor Pro-Tem will alternate the order in which each finalist answers the question. After the Mayor Pro-Tem concludes asking the six (6) questions, each finalist will be allowed two (2) minutes to present closing statements to the Council.

After the closing statements, each Council member will have one (1) vote for their preferred finalist.³ The City Clerk or City Attorney will then read the name of the finalist and City Council members will raise their hands to signify their vote for one (1) of the finalists. The finalist with a simple majority of the votes will be appointed to fill the vacancy in the Second Ward City Council seat by final resolution of the City Council immediately thereafter and at the same meeting. (A copy of the draft resolution is attached).

III. CONCLUSION.

The finalist who receives a simple majority of the votes will be appointed to fill the vacancy in the Second Ward of the Moorhead City Council. On January 1, 2017, the finalist will officially become a Moorhead City Council member.

¹ City Council Members will have three votes in each round. City Council Members are not required to utilize all three votes in each round. If after five rounds the City Council is unable to decide on the three finalists, then the City Council will undertake a final round of voting and the three applicants receiving the highest number of votes will advance to the interviews to be held on December 19, 2016.

² Mayor Del Rae Williams is unavailable to attend the December 19, 2016 special meeting.

³ It is possible that if there are three (3) finalists, the Council could have three (3) votes for two (2) of the finalists and one (1) vote for the other. If that should happen, the Council will hold another round of voting for the top two (2) finalists to determine who will be the replacement Council member in the Second Ward.

Member _____ introduced the following Resolution and moved for its adoption:

**RESOLUTION APPOINTING _____ TO THE
SECOND WARD OF THE MOORHEAD CITY COUNCIL**

WHEREAS, Second Ward Moorhead City Council Member Jim Haney submitted a resignation letter to Mayor Del Rae Williams on Monday, November 14, 2016; and

WHEREAS, City Council Member Jim Haney's resignation takes effect at 11:59 p.m. CST on December 31, 2016; and

WHEREAS, upon receipt of City Council Member Jim Haney's resignation letter, the City Council made a motion and second to accept his resignation and affirmatively voted to accept his resignation; and

WHEREAS, pursuant to Section 2.06 of the Moorhead City Charter, when a vacancy in the office of City Council occurs, the City Council must declare by resolution that the vacancy exists and give public notice of the vacancy; and

WHEREAS, pursuant to Section 2.06, subd. 2 of the Moorhead City Charter, anyone who is qualified for the position may apply and the City Council shall appoint from the applicants a replacement for the City Council position; and

WHEREAS, the City Council received applications from fifteen (15) qualified applicants which was reduced to fourteen (14) applicants when one (1) applicant withdrew from consideration to be appointed to the vacated Second Ward City Council seat; and

WHEREAS, at the December 12, 2016 meeting, the City Council directed that the Mayor, Council Member Gehrtz, the Interim City Manager, and the City Attorney meet and develop a process to narrow down the applicant pool from fourteen (14) qualified applicants to three (3) finalists for the Second Ward seat; and

WHEREAS, the City Council held a meeting on December 15, 2016, at 7:30 p.m. CST to utilize the process developed by the Mayor, Council Member Gehrtz, the Interim City Manager, and the City Attorney and narrowed down the number of applicants to three (3) finalists who were asked to appear in front of the City Council on Monday, December 19, 2016, for a final vote; and

WHEREAS, at the December 19, 2016 meeting, the City Council interviewed three (3) finalists and selected the finalist with a simple majority of votes to be appointed to the Second Ward City Council seat; and

WHEREAS, after said vote, _____, received a simple majority of votes and the City Council appointed _____ to fill the vacancy in the Second Ward City Council seat.

NOW, THEREFORE, be it resolved by the City Council of the City of Moorhead, Minnesota, that the City Council does hereby appoint _____ to replace City Council Member Jim Haney to the City Council seat in the Second Ward effective January 1, 2017.

PASSED: _____, 2016, by the City Council of the City of Moorhead.

APPROVED:

Del Rae Williams, Mayor

ATTEST:

Michelle French, City Clerk

The motion for the adoption of the foregoing Resolution was duly seconded by Member _____. On roll call vote, the following Members voted aye:

The following Members voted nay: _____. The following Members were absent and not voting: _____. The majority having voted aye, the motion carried and the Resolution was duly adopted.

MEMORANDUM

TO: Mayor and Members of the City Council
FROM: John T. Shockley
DATE: December 1, 2016
RE: Narrowing Second Ward Applicants



The City of Moorhead has received an unprecedented number of applications for the vacancy in the office of City Council for the Second Ward. The City Council received a total of fifteen (15) applications for the Second Ward position. In light of the large number of applications, the Mayor and City Council may want to use a slightly different system than originally envisioned in order to address the large number of applicants in a fair and transparent manner. Regardless of the system selected by the City Council, the desire of the City Council has always been that voting, interviews, and selection takes place during public meetings.

Please note that this slightly modified process is only one option and the City Council has discretion in developing or refining the process. This memo is merely for the purpose of facilitating discussion.

I. BACKGROUND

Vacancies in the office of the mayor or of a council member are governed by Section 2.06 of the Moorhead City Charter. Section 2.06, subd. 1, provides, in applicable part: “A vacancy in the office of mayor or council member exists for the following reasons . . . (c) The resignation of the mayor or a council member.” Nothing in the City Charter precludes a mayor or a council member from filing a notice of resignation with the resignation to take effect at a later date. This notice will create a prospective or anticipated vacancy for the council member’s seat. See generally 3 McQuillin Mun. Corp. Elections, Offices and Officers, Employees and Agents and Municipal Dep’ts § 12:155 (3d ed.); 63C Am. Jur. 2d Officers and Employees § 86.

As pertinent to Council Member Haney, he submitted his resignation letter to the Mayor on Monday, November 14, 2016, with his resignation effective 11:59 p.m. CST on December 31, 2016, creating a prospective or anticipated vacancy. Upon receipt of Council Member Haney’s resignation letter, the City Council made a motion and second to accept the resignation and then voted on the resignation. See 3 McQuillian Mun. Corp. Elections, Offices and Officers, Employees and Agents and Municipal Dep’ts § 12:173.7 (3d ed) (“[A] resignation is not complete until accepted by the proper authority.”).

MEMORANDUM

December 1, 2016

Page 2 of 4

Next, according to the City Charter, “[w]hen a vacancy occurs in a city council member’s office, the council must by resolution declare the vacancy to exist. The council shall give public notice of the vacancy, and anyone who is qualified may apply for the position. The council shall fill the vacancy by council appointment from the qualified applicants until a special election is held as provided in subdivision 4.” Moorhead City Charter, § 2.06, subd. 2; see also 63C Am. Jur. 2d Public Officers and Employees § 86 (“Thus, where a public officer resigns his or her office to take effect at a future date, and his or her resignation is accepted, the appointing power being, as then organized, authorized to fill the vacancy when it is to occur, may appoint a successor[.]”). Although selection may occur prior to the effective date of the resignation, the appointment must not take effect until the resignation becomes operative. See 63C Am. Jur. 2d Public Officers and Employees § 86 (“[T]he appointment [is] to take effect when the resignation becomes operative.”).

The City of Moorhead subsequently advertised for the position of Second Ward and received a total of fifteen (15) applications. The City Council must next decide how to proceed with the selection of a member for Council Member Haney’s position, in light of the large number of applicants.

II. PRIOR DISCUSSION REGARDING FILLING VACANCY

As previously noted, the process to fill the vacancy is a political/policy process. At the November 28, 2016, City Council meeting it was discussed that the City Council would like to move forward with a process of narrowing down the number of applicants to a smaller group of applicants who could be interviewed by the City Council at a public meeting (December 12, 2016).¹ The City Council would then select the applicant from those applicants selected to be interviewed to be appointed to fill the vacancy in the Second Ward.

III. MODIFIED PROCEEDURE

In light of the large number of applicants, having a single round to select three (3) finalists for the position may result in a lack of clarity around which three (3) applicants would be selected to be interviewed by the City Council because if each council member chooses three (3) applicants, in theory, there could be a large number of applicants each receiving two (2) or three (3) points. As a result, the City Council may want to consider an alternative procedure whereby two (2) rounds would be utilized.

- Please note that the process of selecting an applicant to fill the vacancy is a political process and the below procedure is simply a slight modification of the process informally discussed at the November 28, 2016, regular city council meeting.

¹ The City Council *has always* contemplated that the process of narrowing down the list of applicants would take place at a public meeting and that is why the December 5, 2016, special city council meeting was scheduled.

MEMORANDUM

December 1, 2016

Page 3 of 4

IV. PROPOSED PROCEDURE

The two-stage proposed procedure entails narrowing the applicants first at the December 5, 2016, meeting and then again at the December 12, 2016, meeting. The proposed procedure is as follows:

December 5, 2016 Meeting

- (a) The City Clerk will read the names of all of the applicants for the position.
 - (b) The City Council may desire to provide input and/or opinions regarding any of the applicants for the Second Ward position. This would assist other City Council Members who may not be aware of a specific applicant's qualifications, talents, education or training.
 - (c) The City Clerk would then identify an applicant, listen and observe if there is any interest from at least two (2) Council Members in hearing a three (3) minute public statement from the applicant regarding why he or she should be selected to be appointed to the Second Ward position.
 - (d) Applicants who receive interest from at least two (2) Council Members would then be asked to attend the December 12, 2016, meeting (starting at 4:00 p.m.) to provide their three (3) minute public presentation regarding why they should be selected to fill the Second Ward vacancy.
- Applicants who are selected to provide a (3) three minute presentation would not be ranked or assigned a score.

December 12, 2016 Meeting

- (a) Each of the applicants selected to provide a three (3) minute public presentation would provide his or her presentation. To promote fairness in the process, applicants may provide their presentations in alphabetical order according to their last names.
- (b) The City Clerk would distribute evaluation forms to each member of the City Council at the start of the meeting. Each member of the City Council would then complete an evaluation form² identifying at least three (3) of the first round applicants whom should advance to the second round of interviews.

² The evaluation form is not a ballot or a formal vote. Rather it is an evaluation by the City Council members of the individual applicants ability, talents, experience or other qualities. While a City Council can vote by ballot, it must do so in a manner that will indicate the vote of each member. Minn. Att'y Gen. Op. 471c (Aug. 20, 1962); Mankato Free Press Co. v. City of N. Mankato, 563 N.W.2d 291, 295-96 (Minn. Ct. App. 1997). Again, the evaluation will not be a vote of the City Council members, but instead, a tool to reflect their impressions of an applicant.

MEMORANDUM

December 1, 2016

Page 4 of 4

- (c) The City Clerk would then tabulate and report which three (3) of the first round applicants received the best evaluations.
- (d) The City Council could then decide to proceed with the three (3) individuals receiving the best evaluation or add additional applicants to the final interview roster. The evaluations from this round would not be used or considered in the final round.
- (e) The City Council would hold interviews of the finalists and then select its preferred candidate through a motion and a second and an affirmative vote of a majority of vote of a quorum of the City Council.

V. CONCLUSION

Due to the heightened amount of interest to fill the Second Ward position, the Mayor and the City Council may want to utilize an alternative procedure than originally proposed to narrow and ultimately select an applicant. This alternative procedure entails two (2) rounds and allows the City Council to consider applicants' applications, select and hear presentations from applicants, and conduct interviews of applicants, all during public meetings.

POSSIBLE AMENDMENT OF BYLAWS

The Moorhead Charter Commission is considering amending its Bylaws to reduce the number of members from 13 to 11. Below is a proposed amendment to Section III(A) of the Bylaws:

III. Membership

- A. Effective January 31, 2019, ~~t~~The Commission shall have ~~13~~11 members, duly appointed and certified by the District Court.

* * *

These proposed amendment to the Moorhead Charter Commission Bylaws does not require approval of the Moorhead City Council. The amendment could be made at any meeting of the Moorhead Charter Commission by a two-thirds (2/3) vote of those Commissioners present at the meeting, provided that the proposed amendments must be submitted in writing to the Commissioners at least two weeks prior to the adoption of the amendment. *See* Bylaws, Section IX.

Commissioner _____ introduced the following resolution and moved for its adoption:

RESOLUTION TO AMEND THE
MOORHEAD CHARTER COMMISSION BYLAWS

WHEREAS, during its April 12, 2017, meeting, the Moorhead Charter Commission Members discussed an amendment to Article III of the Moorhead Charter Commission Bylaws (the “Bylaws”); and

WHEREAS, Article III(A) of the Bylaws currently states that the Charter Commission will be made up of 13 members; and

WHEREAS, the Moorhead Charter Commission has determined that the Bylaws should be amended to reflect that the Charter Commission will be made up of 11 members beginning January 31, 2019; and

WHEREAS, Article IX of the Bylaws provides that the Bylaws can be amended at any meeting of the Moorhead Charter Commission by 2/3 vote of those present, provided that the amendment has been submitted in writing to the members at least two weeks prior to the adoption of the amendment.

NOW THEREFORE, be it resolved as follows:

1. The proposed amendment was submitted in writing to the members at least two weeks prior to the adoption of these amendments.

2. Article III(A) of the Bylaws shall be amended as follows:

“Effective January 31, 2019, ~~t~~The Commission shall have ~~13~~11 members, duly appointed and certified by the District Court.”

3. The language that is ~~stricken~~ in paragraph 2 will be deleted from the Bylaws, and language that is underlined will be new language to be added to the Bylaws.

4. The Secretary of the Moorhead Charter Commission is hereby directed to take the steps necessary to have the above-described amendment reflected in the Bylaws in the records of the Moorhead Charter Commission.

Dated: June 21, 2017.

APPROVED:

Chair

ATTEST:

City Clerk

The motion for the adoption of the foregoing resolution was duly seconded by Commissioner _____. On roll call vote the following commissioners voted aye: _____. The following commissioners voted nay: _____. The following commissioners were absent and not voting: _____. The majority (or Two thirds of those present if approved) having voted _____, the motion _____ and the resolution was duly _____.