City of Sandy Springs Charter Commission Meeting was held at Sandy Springs City Hall, 7840 Roswell Road, Building 500, Sandy Springs, Georgia, 30350, on May 31, 2011, at 5:00 p.m.

Call to Order

Chairman Rusty Paul called the meeting to order at 5:01 p.m.

Roll call

Assistant City Clerk Kelly Bogner called the roll.

Board Members Present: Carolyn Axt, M. Jerome Elmore, Rusty Paul, Oliver Porter, Robert Shaw, Larry Young. Josh Belinfante and Doug MacGinnitie were absent. Jim Squire joined the meeting later.

Staff and Representatives Present: Assistant City Clerk Kelly Bogner.

Ruling on Quorum

Assistant City Clerk Kelly Bogner stated a quorum was in place for the meeting.

Approval of Meeting Minutes

1) **May 17, 2011**

Motion and Vote: Oliver Porter moved to approve the Charter Commission Meeting Minutes for May 17, 2011. Larry Young seconded the motion. The motion carried unanimously.

Systematic Review of Charter from Beginning

Chairman Paul stated since the Commission decided to operate as a committee of the whole, they will go through the Charter systematically, section by section, starting with Article I. If there are proposed changes, Commission members should make a motion for the change and then there will be discussion on the proposal. At the conclusion of the discussion, there will be a vote. A majority of the members present and voting for an item will constitute a recommendation. The recommendations will go to the City Council and the General Assembly.

Jim Squire joined the meeting at this time.

Chairman Paul stated the Commission will start with reviewing Article I, Creation, Incorporation, Powers, Section 1.01, Incorporation. He asked if the Commission had any proposed changes to Section 1.01, Incorporation. Hearing none, he then asked if there were any suggested changes to Section 1.02, Corporate Boundaries. Hearing none, he moved on to Section 1.03, Powers and Construction, which contains forty-one subparagraphs. He asked the Commission to reference the subparagraphs when referring to suggested changes.

M. Jerome Elmore stated there may be items that should be discussed before change recommendations are made. The Commission has not gone through the Charter in the context of having discussions; so therefore, it is premature to make suggested changes to the Charter.

Chairman Paul stated the Commission members can make a motion that there be a review and discussion of any section in the Charter.

Motion and Vote: M. Jerome Elmore moved to discuss Article I, Section 1.03, subparagraphs (18) and (32) prior to making recommended changes. Chairman Paul stated he would like to also discuss subparagraph (34) for a text change. Oliver Porter seconded the motion. The motion carried unanimously.

M. Jerome Elmore stated a few local cities have found themselves in trouble with retirement funds, which relates to subparagraph (32). The City's present system is to fund the retirement plan now. Do we want to include that requirement in the Charter? Retirement plans should be funded as opposed to leaving it to future taxpayers to be responsible.

Chairman Paul stated the City of Atlanta is having issues with unfunded liabilities. M. Jerome Elmore is referring to adding a provision in the Charter to provide and maintain retirement plans for officers and employees of the City. The Commission should consider some provision that basically states that all retirement obligations shall be funded in the budget based on an actuarial.

Larry Young stated the provision 1.03 (b) is a numeration of expressed authority that the City has, if they wish to exercise it. It is not a requirement for the City to exercise this authority.

M. Jerome Elmore stated if the City chooses to have a retirement plan, it should be funded presently, not become an unfunded liability for future taxpayers.

Larry Young stated then any obligations should be funded currently.

M. Jerome Elmore responded yes, as opposed to the situation the City of Atlanta is in with huge unfunded liabilities.

Carolyn Axt asked why this section only refers to officers. Does it include the Fire Department?

Chairman Paul stated he does not know what the word officer refers to in this section. He does not think officers means elected officials.

Carolyn Axt stated she assumes officers refers to the Police Department.

Oliver Porter stated the Charter should have read elected officials, but officers refers to elected officials. What is being suggested goes beyond the scope of this section, which authorizes the City to have a retirement plan. There could be additional restrictions for the retirement plan that state it has to be funded on a current basis. He is not opposed to changing the Charter to state this. This section in the Charter authorizes the City Council to have a retirement plan, if they choose, and does not bind them in any way as to how to do it. The Commission is proposing binding the City in a more conservative approach to the retirement plan.

Larry Young asked if any part of the Charter refers to compensation as to the employees or officers.

Chairman Paul stated the Charter gives the powers to the Council to decide.

Jim Squire asked if the intentions for this meeting are to wordsmith items that may need to be changed in the Charter or address the items and word the recommendations at future meetings.

Chairman Paul stated it would be best for the Commission to go through the Charter and identify points that are agreed upon where changes might need to be made. If language is needed, the Commission can note they recommend the General Assembly add a provision and allow the legislature to draft the actual language. An example would be to make a recommendation that if the City chooses to operate a retirement program, that a provision be added by the General Assembly that will require all obligations to be funded on a current basis. Another option is the Commission can try to wordsmith the language. If the Commission tries to wordsmith the language, the language will still be reworked at the General Assembly. He suggests that the Commission make recommendations for the changes and not try to wordsmith them.

Oliver Porter stated when the General Assembly wordsmiths the language, we are not sure how the language will work out in the end.

Chairman Paul stated whatever language is chosen will be done through local legislation. The General Assembly may hold a hearing, so if the Commission's intent is not captured by the language, we can make further recommendations.

Carolyn Axt asked if the Commission can be informed of a hearing.

Chairman Paul stated the Commission can request a hearing with the legislature to review the language. He asked if there was anymore discussion on Mr. Elmore's point. He called for a vote on Mr. Elmore's motion and recommendation that the General Assembly accept an addition to subparagraph (32) that if the City does opt to exercise its powers under subparagraph (32), that all obligations are included in the current obligations of the City.

Larry Young stated he thought the issue is the retirement plan be funded currently. He is not sure if that is different from the way Chairman Paul stated the changes. An obligation is one thing, but funding it is something else.

Chairman Paul stated he believes what M. Jerome Elmore is saying is most cities have the retirement obligations, but they are not putting money aside to fund the obligations, which is a concern. If the City incurs the liability, the money should be set aside to fund those liabilities in the current fiscal year. The City incurs liability on an annualized basis with a retirement plan. Therefore, those liabilities should have to be funded on an annual basis.

Robert Shaw asked if there is a pension plan in effect now and how is it being funded.

Oliver Porter stated for the Police and Fire Department the plan is a 401(k) defined contribution plan, as opposed to a defined benefit plan. The employees are contributing to the plan and the City is not incurring the long term liability.

Chairman Paul asked if the plan includes City matching or is funded entirely by the employees.

M. Jerome Elmore stated the City's retirement plans are designed so that they are being funded now. This Charter provision would maintain the existing retirement plan.

Chairman Paul stated all of the Commission agrees on the concept that M. Jerome Elmore stated. He suggested voting on the concept and discussing the language at a later time.

Carolyn Axt stated if there is a change to a younger workforce, the actuarial things change.

Chairman Paul responded no, that is what is trying to be avoided. If a liability is incurred in the FY2011, the City has to fund the liability in that current fiscal year.

Carolyn Axt stated the liability can change from year to year based on the actuarial and workforce changes.

Oliver Porter stated the City has an annual review. Staff may come up with a number that is different from last year's number and the amount will have to be funded in the current fiscal year.

Chairman Paul stated whatever the actuarial analysis of the liabilities for the retirement program shows for that year, the City will have to be fund in that fiscal year's budget.

Larry Young stated these types of issues only arise in a defined benefit plan and almost no cities use those anymore. With the defined contribution plan, the City and the employees contribute whatever amounts and the money earns what it earns. This plan has no actuarial determination as to what may be long term, unlike the City of Atlanta, which has defined benefits plans.

Oliver Porter stated there may come a time when Council decides they want to do defined benefit plans.

Chairman Paul stated a concern would be if the City does have a match plan, they could choose to forgo the match.

Vote on Motion: M. Jerome Elmore moved to recommend changing the Charter, so that any of the City's retirement plans must be funded in the current fiscal year. The motion carried 6-0-1, with Carolyn Axt abstaining.

Motion and Vote: Chairman Paul made a motion to recommend changing paragraph (34) where it states "sewer fees" to add "water and sewer fees", in anticipation of the day the City may own its own water system. Carolyn Axt seconded the motion. The motion carried unanimously.

M. Jerome Elmore stated paragraph number (18) is more of a question than a recommendation. Is there anything regarding the municipal debt that requires the City to have a balanced budget?

Chairman Paul responded, yes. The State law requires a balanced budget.

M. Jerome Elmore stated that State law describes the issue of immunity and exceptions to the immunity situation. Is there anything the Commission can do to get immunity for the contractors?

Chairman Paul stated he has looked into immunity for the contract employees and it would require a statute change. The immunity would give a certain class of private sector entities protections that are offered only to incorporated units or units created by State law under the constitution. This cannot be accomplished in the Charter or local legislation. It would have to be done under a general bill that would cover the entire state.

Larry Young stated as the public private model becomes more common in the State of Georgia, that is something the legislature should give serious consideration to. He does not see why contract employees should not have sovereign immunity, as long as they are working within their duties as appropriated.

Chairman Paul stated the City pays a significant amount every year to the contractor to compensate them for liability insurance. It was assumed that the reason the City did not privatize public safety because it was assumed that no one would be able to take on the liability. He has found there are companies that do provide that service.

M. Jerome Elmore asked if there have been any issues regarding sovereign immunity with cases against the City.

Chairman Paul stated sovereign immunity is governed by general State law and the immunity being granted is not absolute.

Councilmember Dianne Fries stated she is not aware of any issues.

M. Jerome Elmore stated it is one thing to make sure the City has immunity, but something else to waive immunity when the City wants to waive it.

Larry Young stated there was one case where a police officer was acting improperly and was terminated.

Chairman Paul stated that was a civil action case and was handled under the City's liability insurance. The City has liability insurance through the Georgia Municipal Association with GIRMA.

Oliver Porter stated he was the one that originally raised this as a potential item for the Commission to look at. It is in a sense, a discrimination against contract cities that have to pay for the insurance when other cities do not. It is not something that can be changed in the Charter.

Chairman Paul stated the Commission will go through the Charter and if there are any issues like this involving general State law will be catalogued and included as an addendum to the report. The General Assembly may want to look at general law that would help these items.

Jim Squire stated at one point the Commission asked the City Clerk's office to make note of points raised by the citizens, Council, and staff. As each section is addressed, he would like the record state there were no public comments in those particular sections.

Chairman Paul stated the public comments are in the record. Trying to connect the public comments here would not necessarily help the Commission.

Assistant City Clerk Kelly Bogner stated she created a list of the suggestions from public comments, Council, and staff. She handed out the spreadsheet to the Commission.

Motion and Second: Jim Squire made a motion to discuss section Article I, Section 1.03, subparagraph (9). Oliver Porter seconded the motion.

Oliver Porter stated he sees what Charles Maddrey is saying, but does not see how subparagraph (9) could be interpreted like that. He does not believe the Ethics Board has oversight of the City employees.

Chairman Paul stated the City's Code of Ethics states the Ethics Board should provide for ethics ordinances and regulations, which the City Council has to enact. Establishing procedures for ethics complaints and setting forth penalties and violations of those rules, after they have been enacted by City Council. The Ethics Board would have jurisdiction over the City employees only if the Ethics ordinances passed by City Council covered the employees.

Oliver Porter stated establishing procedures and setting forth penalties is not an oversight of the employees conduct, but is establishing standards for the employees.

Chairman Paul stated employees of the City are a relatively small group of people. Is Charles Maddrey implying that the employees of the contract board are employees of the City? The answer to that is no. Therefore, if they are not elected officials, appointed officials, or employees of the City, they are not covered by the City's Code of Ethics.

Oliver Porter stated he is referring to the City employees. The Ethics Board can make recommendations on procedures, but they are not conducting oversight of the employees on a day-to-day basis. The City Council conducts the oversight, not the Ethics Board.

Chairman Paul stated the Council can delegate their authority to the Ethics Board.

Oliver Porter stated he sees no reason to change the Charter in regards to the Ethics Board having oversight of employees.

Carolyn Axt asked if given the number of contractors the City deals with, is there a need to require that the contractors abide by the same ethics standards that are required of our employees.

Chairman Paul stated that would be a matter to be included in the contract.

Carolyn Axt asked if moving forward the Charter should require ethics to be included in the contracts.

Chairman Paul stated he is not sure it could be included in the Charter. A recommendation can be made that the contract employees be covered by the Ethics Ordinance. If the contract employees are acting in the capacity of the City and they violate the Ethics Ordinance, they violate the ordinance.

Councilmember Fries stated it was felt by the Council there would be double jeopardy involved. The contractors have rules their employees have to follow and the City has their set of rules. The Ethics Board is more for the elected officials who do not have oversight.

Larry Young stated this issue regarding Ethics would be best addressed by the City Council and the ordinances adopted as to the authority of the Ethics Board. He cannot imagine the City would not include in their contracts an obligation that all employees that work in the City comply with the ethical requirements, since that is such a big aspect of the City.

Chairman Paul stated most of the contracts require the contract employees to comply with all ordinances of the City.

Larry Young stated any clarification would be best to come from the Ethics Board authority as set by the City Council, rather than the Charter.

Motion and Vote: Oliver Porter made a motion to leave Article I, Section 1.03, subparagraph (9) unchanged. Robert Shaw seconded the motion. The motion passed unanimously.

Larry Young stated he drafted a list of items that should be considered in Charter Section 1.04 and handed this list out to the Commission members.

Motion and Second: Larry Young made a motion that Section 1.04 be expanded to include that some of the functions can be delegated by express agreement with a private contractor at the discretion of the majority of the elected City Council. The expansion would expressly include contracted personnel performing functions in lieu of City employees. Carolyn Axt seconded the motion.

Larry Young stated the suggested insert would include that the delegation of appropriate powers and functions to private contractors be expressly permitted.

Oliver Porter stated this runs into the immunity issue previously discussed.

Chairman Paul stated in line with the previous decision of the Commission, rather than wordsmithing the specific language, the Commission can consider making a recommendation that Section 1.04 be redrafted by legislature to give whatever rights, privileges, and immunities that may be available under law to private contractors at the discretion of Council.

M. Jerome Elmore asked if there is any negative implication if the legislature does not allow the Section to revised.

Oliver Porter stated the entire contract system is covered under Section six of the Charter.

Restatement of Motion as Amended and Vote: Chairman Paul stated the motion is that Section 1.04 be redrafted by legislature to give whatever rights, privileges, and immunities that may be available under State law to private contractors as authorized by the City Council. The motion passed unanimously.

Chairman Paul recommended the Commission continue discussion until 6:00 p.m. The remainder of discussions will be continued at the next meeting.

Chairman Paul stated the next area to be discussed is Article II, Government Structure, Elections and Legislative Branch, Section 2.01, City Council creation; number; election. There were a number of public suggestions for this area.

Motion and Second: Robert Shaw moved to adopt Section 2.01, subparagraph (a), (b), and (c) as written. Chairman Paul seconded the motion.

Carolyn Axt stated she would like to hear about the at-large positions. While there was feedback from a small group, there has been significant discussion in the community regarding the need for at-large positions. She would like four district and two at-large positions or even having six Councilmembers and adding two at-large positions.

Oliver Porter stated the public comments have been for and against at-large Council positions. He prefers having three district and three at-large positions. The reason for at-large positions is a Councilmember may be concerned for his or her district only. However, the current system works well. He does like the at-large Council positions, but is not sure it is warranted, given the history of the City. The at-large positions may protect the City in the future.

Chairman Paul stated if at-large positions were created, he would suggest making the Mayor's position at-large as well with the power to vote. The reason for this is if three at-large districts are created, a situation would occur where three Councilmembers have more power than the Mayor. The three Councilmembers would have voting powers and capabilities that the Mayor would lack.

Larry Young stated when Sandy Springs became a City it created the ability for each district to be represented by a person. The City went from 185,000 electors per representation to 15,000. What the City has now is straightforward and simple. Each district has the ability to vote their Councilmember in or out. This is supposed to be a system with a strong City Council and weak Mayor, but it has worked out to be balanced. Someone suggested if there were at-large positions, voting records would suggest the third district would probably elect the at-large members, because they have the biggest turnout. What the City has works really well and the at-large positions would create other problems. Adding at-large positions could confuse the Mayor's role and authority.

Jim Squire stated he does not disagree that the current system has worked well. He does not want to say that at-large positions do not work well, because there are municipalities that have all at-large positions such as Alpharetta, Milton, Johns Creek, and Roswell. He appreciates that citizens have come forward and suggested the at-large model. The Commission will adopt what is appropriate for the City.

Chairman Paul stated he does not think the at-large system is flawed. Does the Commission want to recommend making such a radical change at this point?

Larry Young asked if at-large means citywide, two, or three districts. He assumed at-large refers to the Mayor and at-large positions being citywide.

Oliver Porter stated at-large can mean something different if there is a residency requirement. The City of Dunwoody has three districts and two people are elected from each of the three districts. One person represents only the district and the other representative is voted on citywide, but they have to reside in that district.

Chairman Paul stated with residency requirements citizens are gerrymandered in and out. Redistricting can occur not just every ten years, but the legislature does redistrict annually in certain situations.

Jim Squire stated the advantage of having three districts and three at-large positions is the voter gets to vote for a majority of the City Council. The voter can vote for the three at-large members and the Mayor Currently, the voters are voting for the Mayor and their City Councilmember, which is less than one third of the structure that will run the City. The citizens have mentioned to him they would like the opportunity to have a say in electing more of the City Councilmembers.

Chairman Paul stated if the City were to have three district and three at-large positions, there would be three citywide Councilmembers and the current districts would expand dramatically. With the current arrangement, if a citizen has a problem with the City, that citizen knows who the representative is and can find the representative fairly easily. Due to the small number of people the Councilmember represents, it is more personal. It allows the neighborhoods more power in this structure, because if the citizens are not receiving response in a particular area, they can change the Councilmember fairly quickly. In a larger Council district, large subdivisions may be getting service, but some of the smaller ones may not be getting the same service. In the end, regardless of the structure, it depends on the quality and integrity of the Councilmembers.

Jim Squire stated the ability to telephone people he voted for and talk to them about his issues is available. If he voted for four people, he feels he could call any of those four people to talk about his issues, rather than just calling the one person in his district.

Carolyn Axt stated she does feel even if the district doubles in size, the group is still manageable. Many times the Councilmembers will have meetings together for two of the districts. She heard from three or four different districts if a citizen lives in a district with a Councilmember that tends to lean in one direction on issues, those citizens question why they should vote, because they feel disenfranchised.

Robert Shaw stated he likes the current system. He likes the idea of the smaller districts. He has not found the fact that he did not vote for a particular Councilmember to be a problem for him. If he has needed something, he has called other Councilmembers as if they were representing his district. The Councilmembers were very approachable. It would be wise to continue the same process for another five years.

Larry Young said the majority of the City Councilmembers who voiced their suggestions were not in favor of at-large positions and the strongest argument was the cost. The cost of running for an at-large position is so much greater that we would be less likely to have a broader field of qualified people.

Chairman Paul stated it would cost roughly $100,000 to run citywide for an at-large position. To run for a district position costs roughly $20,000 to $25,000. From a candidate's perspective, the cost will be higher, which will limit the pool of candidates the City is likely to get.

Vote on the Motion: The motion carried 6-0-1, with Oliver Porter abstaining.

Larry Young stated since there have been a couple of abstentions today, it may be a question for the chair to contemplate and perhaps discuss with the City Attorney. As a point of order, under the current Charter, all abstentions are deemed to be votes in favor of, unless there is a conflict preventing one from voting.

Chairman Paul stated if a person is a delegate through a commission of this type, they are required to vote. Therefore, abstentions will not be recognized by the chair. If anyone abstains, he will rule in favor of the point of order. Oliver Porter then voted on the motion. The motion carried 6-1, with Oliver Porter voting in opposition.

Other Business

Motion and Second: Jim Squire moved to suspend the Charter discussion for today and continue discussion at the next Charter Commission meeting at 4:00 p.m. on Tuesday, June 14, 2011, in Boardroom 2. M. Jerome Elmore seconded the motion. The motion carried unanimously.

Chairman Paul stated Section 2.02, Mayor and City Councilmembers; election, terms, and qualifications for office, is where the Commission will begin the Charter review at the next meeting.

Adjournment

Motion and Vote: Larry Young moved to adjourn the meeting. M. Jerome Elmore seconded the motion. The motion carried unanimously. The meeting adjourned at 6:10 p.m.

Date Approved: June 14, 2011

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Rusty Paul, Chairman | Michael Casey, City Clerk