

**City of Sandy Springs Charter Commission Meeting** was held at Sandy Springs City Hall, 7840 Roswell Road, Building 500, Sandy Springs, Georgia, 30350, on June 14, 2011, at 4:00 p.m.

### **Call to Order**

**Chairman Rusty Paul** called the meeting to order at 4:03 p.m.

### **Roll call**

**City Clerk Michael Casey** called the roll.

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

**Staff and Representatives Present:** City Clerk Michael Casey

### **Ruling on Quorum**

**City Clerk Michael Casey** stated a quorum was in place for the meeting.

### **Approval of Meeting Minutes**

#### **1) May 17, 2011**

**Motion and Vote:** Robert Shaw moved to approve the Charter Commission Meeting Minutes for May 17, 2011, as amended. Oliver Porter seconded the motion. The motion carried unanimously.

### **Continuation of Review of Charter Beginning with Article IV. Municipal Court**

**Chairman Paul** stated he would prefer Josh Belinfante be at the meeting when discussing Articles II and III. These Articles will be deferred for the next meeting.

**Carolyn Axt** stated before reviewing each Section, the Commission should review the comments from the public hearings. She added that the Mayor had some concerns with Article IV.

Chairman Paul stated he believes the Mayor's primary concern with this Article was that all the Judges should be equal and there be no Chief Judge. He asked if there were any recommended changes to Article IV, Municipal Court, Section 4.01, Creation. Hearing no suggested changes, he moved to Section 4.02, Judge. This Section sets forth the qualifications of a Judge.

**Larry Young** stated after the adoption of the City Charter, the Supreme Court of the State of Georgia adopted Uniform Rules of the Municipal Courts of the State of Georgia in March 2010, effective April 1, 2010, which contemplate some provisions that are not covered by the Charter. The primary difference is the issue of a Chief Judge. Based on the Mayor's comment, all the Judges are equal. The purpose of the Chief Judge is an administrative role, largely for recusals when there is a multi Judge court. In a single Judge court, he or she is the Chief Judge. The Chief Judge is the person that is supposed to sign the probation contracts and various other administrative functions. There are statutory requirements for a Chief Judge that are now contemplated by State law. He suggested addressing this by amending the Charter to comply with the Uniform Rules as adopted by the Supreme Court of Georgia. The Chief Judge generally sets the hours for the court. He does not assign the Judges or the docket calendar. This is a void we currently have in the court that makes us dysfunctional from the standpoint of complying with

the law. Under the Rules, the Chief Judge is selected by the other Judges. The Charter can stipulate how often the Chief Judge is elected.

Carolyn Axt asked if there is a Clerk of the Court.

**Oliver Porter** stated the City originally had a Clerk of the Court.

Larry Young stated there is no one specifically designated for that role. The Assistant City Manager handles some of those responsibilities at this time. The legislature during the last session adopted that municipal judges must now be lawyers.

Oliver Porter suggested adding an additional paragraph to the Charter that states where there is the absence of a Chief Judge, someone may be designated to carry out those functions.

Larry Young stated the Rules say that the Chief Judge is designated by a vote of the other Judges. The Rules state all local rules in this court shall expire effective April 1, 2010.

Oliver Porter suggested the Charter could state in some way that the State Rules govern and there is a requirement for a Chief Judge under those Rules.

Carolyn Axt asked about a rotating Chief Judge.

Larry Young stated the City can address that in the rules or in the Charter. He agrees with Mr. Porter that if the Charter states the City should comply with the Uniform Rules adopted by the Supreme Court of Georgia, then that is all the Charter needs to state. Section 2.2 of the Uniform Rules states the definition of the word Judge and includes the definition of Chief Judge which states "shall be that Judge designated as such by the municipality according to its Charter and ordinances, or failing that, the sole Judge designated or elected as the municipal court Judge by the municipality, and in the case of municipal courts with more than one municipal court judge, by majority vote of the municipal court judges, for such term as may be provided by charter, ordinance, or internal operating procedures adopted in accordance with these uniform rules."

Chairman Paul asked if the purpose of the Chief Judge is to handle the administrative responsibilities of the court.

Larry Young stated the Judges do not handle all of the administrative responsibilities. Some of the obligations are left to the Clerk. There are requirements where the Chief Judge has specific authority and they are all administrative in nature. One of these authorities is the recusal issue when a defendant challenges the sitting Judge. The Chief Judge could have a rotating term, multiple terms, or four year terms. The terms can be set by the Charter, ordinances, or operational procedures.

**Motion and Second:** Chairman Paul made a motion to recommend a provision in Charter Section 4.02 that states the Judges of the City should designate one of their members to perform the administrative and other duties outlined in the Uniform Rules for Municipal Court Judges. Robert Shaw seconded the motion.

**Friendly Amendment to the Motion:** Carolyn Axt moved to amend the motion to add that if there is a Judge in that position, the position be rotating and/or have a term limit. Chairman Paul and Robert Shaw accepted the friendly amendment to the motion.

**M. Jerome Elmore** stated some courts have a Chief Judge position that rotates.

Jim Squire stated there are two issues. One is the term length and the other is the rotation. An individual can be elected at the end of each term versus a rotating position that has a specific term length.

Larry Young stated the rotating basis could be determined by the court.

Chairman Paul stated not everyone will want to be the Chief Judge. He does not want to use the wording "as determined by the Supreme Court in April 2010", because there might be new laws written and this would become an archaic provision of the Charter.

Oliver Porter stated each Judge should take their share of the responsibility of the rotation.

Chairman Paul stated he agrees with the concept. He is trying to figure out how to include the intent in the wording without unnecessarily binding the actions of the court. The Commission's report will be making recommendations for revisions. In the end, the legislative Council will take the Commission's report, as amended by the legislative delegation, and transfer it into legislative language. It would be helpful to whoever writes the actual language of the Charter to know our intent. If the Commission puts in the report that the intent is that the administrative position be rotated regularly among the Judges, the legislature can put that into the proper terminology.

**Robert Shaw** stated he does not agree with forcing the Judges to become Chief Judges, if they do not want to. If forced, the Judge may perform a second rate job.

Chairman Paul stated the purpose of the Charter is to designate power and who is responsible for administering that power. The goal is to set the power and allow as much flexibility as possible for the people to administer those powers based on the circumstances they are facing. The Commission is making recommendations and the General Assembly will make the final determination.

M. Jerome Elmore asked if the General Assembly will provide the language to the Commission, so they can review it to ensure the Commission's intent.

Chairman Paul stated the Commission will have an opportunity to look at the revised Charter. The Commission is making recommendations to the legislature and the General Assembly has the final say so on what of the recommendations are adopted.

M. Jerome Elmore asked if the Commission's report will leave a lot of options open for wordsmithing.

Chairman Paul stated we can give the General Assembly the intent of what we are trying to accomplish in the Commission's report. The drafting of the legislation will be done under the direction of one or more members of the General Assembly. The General Assembly will go over the report and let the legislative Council review the report. Once the report is turned over, it is the legislature's process. There will be plenty of opportunity for the Commission to read the legislation before it is enacted and make whatever comments they would like to make. Under the local rule of the General Assembly, this would be handled under local legislation. It would be approved by the House and Senate and then it would be on the legislative consent calendar and unless there is an objection, it will be passed with whatever is on the consent calendar for that day.

**Vote on the Motion:** The motion carried unanimously.

Chairman Paul stated the next is Section 4.03, which deals with the position of the Clerk of Court.

Robert Shaw stated we do not have a Clerk of the Court.

Larry Young stated there was a Clerk of the Court when the City began. That person was a contract employee. In 2007 or 2008, the Clerk of Court left the City. The Deputy Clerk, Minnette Pass, assumed the functional role for that position. Assistant City Manager Noah Reiter deals a lot with the court calendar scheduling. Ms. Pass reports to a supervisor at CH2M HILL. A large amount of the court functions are being performed by outside contractors. It would be sensible for the court to have a City employee designated as the Clerk of the Court.

Chairman Paul summarized the Section stating the position is appointed by the City Manager, serves at the pleasure of the City Manager, and is responsible for all record keeping, bill keeping, and collection of fines. The Clerk shall serve as the administrator of the court, supervising personnel of the court, setting times and dates for convening of the court, preparing court dockets, scheduling the judges for court sessions, and other such services as may be assigned by resolution or ordinance of the Council. He asked if there is anything that needs to be done in the Charter regarding the position of the Clerk of the Court.

Larry Young stated the language in conjunction with the Uniform Rules clearly designates a function to be performed. The existing Charter language seems to suggest that the City is obligated to fill that role, whether they have done so or not. Functionally, it is difficult for multiple people to do one job, but it has worked so far.

Oliver Porter stated the individual designated for this role does not have to be a City employee. The City Manager has the responsibility to ensure the functions are done. The Charter is fine left the way it is.

Carolyn Axt asked if the job has been performed sufficiently and if it should be a City employee.

Larry Young stated the job can always be done better. It would be best if there was one person dedicated to that position for the court to function more efficiently.

**Councilmember Dianne Fries** stated there is a new contractor and the Clerk of the Court is part of that contract. The contractor has an employee that will assist with the transition process. We fully anticipate the court running better.

M. Jerome Elmore asked if there is anything about hiring a contract employee for the Clerk of the Court position that would bother Mr. Young.

Larry Young responded not in and of itself, as long as the responsibility is clear. Councilmember Fries indicates that we will have that role filled, but we have done no transitional planning.

Chairman Paul stated these are operational issues and not necessarily Charter issues.

**Motion and Vote:** Oliver Porter made a motion that no changes be recommended for Article IV, Section 4.03. Jim Squire seconded the motion. The motion carried unanimously.

Larry Young stated there are no issues with Section 4.04. The Judges know what their authority is and this Section complies with State law. It might be helpful to state "city council" as opposed to just "council".

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**Motion and Vote:** Larry Young made a motion that Section 4.04 Jurisdiction; powers, paragraph (b) be amended by inserting the word “city” between the words “The” and “council” at the beginning of paragraph (b). Carolyn Axt seconded the motion. The motion carried unanimously.

Chairman Paul read Section 4.05: “The right of certiorari from the decision and judgment of the municipal court shall exist in all criminal cases and ordinance violation cases, and such certiorari shall be obtained under the sanction of a judge of the superior court of Fulton County under the laws of the State of Georgia regulating the granting and issuance of writs of certiorari.” He asked if there were any recommendations for this Section.

Larry Young stated this Section is consistent with law. The distinction here is for the right of an appeal. If an appeal is made, one has thirty days to seek a writ of certiorari from the Superior Court. City cases that are transferred are bound over. The cases that are not decided go to the State court, because these are misdemeanor cases.

**Motion and Vote:** Jim Squire made a motion to not recommend any changes to Section 4.05. Oliver Porter seconded the motion. The motion carried unanimously.

Chairman Paul stated the next issue before the Commission is Section 4.06, Rules of the Court. He stated he would entertain a motion to insert the word city between “the” and “council” at the end of the section.

**Motion and Second:** M. Jerome Elmore made a motion to recommend inserting the word “city” between “the” and “council” at the end of the Section 4.06. Robert Shaw seconded the motion.

Larry Young stated the attempt of this language is to distinguish between the rules of operation and the rules of administration. Otherwise, it sounds like two different people have the authority to make the rules.

Chairman Paul stated it is unclear to him as well.

**Vote on the Motion:** The motion carried unanimously.

Larry Young stated the Judges have authority to make reasonable rules and regulations necessary for the proper operation of municipal court. The Clerk of the Court, as administrator of the court, shall prepare reasonable rules and regulations necessary for proper and successful operation and administration. That is the administrative versus the due process that is required for the court. Does the City Council have the right to approve the administrative rules or the operational rules? The approval of these rules could become Constitutional issues.

Chairman Paul stated he assumes that the words “all rules shall be subject to the approval of the City Council” means both the operational and the administrative rules.

Larry Young said his question is whether or not that is what it should say. He asked Mr. Elmore if the Commission should clarify that.

Chairman Paul stated we could defer this issue until Mr. Belinfante is present.

Larry Young stated we could suggest the last statement say that it addresses all administrative rules.

Chairman Paul asked if Mr. Young’s concern is separation of powers.

Larry Young responded yes.

Oliver Porter asked if the separation of powers has created an issue to date.

Larry Young responded not really. The court has been able to operate independently. The few times we have had pushback from the community, Council has supported the Judges. For instance, in order to convict persons on accusations and levy fines, the court must provide a court appointed attorney. Now the Judge must be a lawyer. He is not sure from reading the language where operations stop and administration starts. Perhaps it could read all rules not specified under the Constitution and the laws of the State of Georgia.

Chairman Paul stated he can ask that Mr. Belinfante review the language and this be discussed at the next Commission meeting. Mr. Belinfante should be able to say what the general practice is around the State. The Commission could then make a better decision about the language.

**Motion and Vote:** Robert Shaw moved to table Section 4.06 to a time certain at the next scheduled Commission meeting. Oliver Porter seconded the motion. The motion carried unanimously.

### **Other Business**

**Jim Squire** stated Chairman Paul was specific in the Charter Sections that stated “council” to add “city” before “council”. He looked through the entire Charter and “council” is the wording. He asked if there should be an effort to go through the Charter to pair the words “city” and “council” together.

Chairman Paul stated we should make sure there is no reference to another Council, so that if we make a blanket motion, we are not injecting something that should not be there. He asked if Mr. Squire could go through the Charter and make sure such a change would not have unintended consequences.

Jim Squire stated he would be happy to review the Charter. He asked for a Word document of the Charter that would allow him to search for the word “Council”.

Chairman Paul stated Doug MacGinnitie could not attend a Commission meeting if held on July 5<sup>th</sup>.

Jim Squire asked about the next regularly scheduled meeting on June 28<sup>th</sup>.

Chairman Paul stated Larry Young and Doug MacGinnitie would be absent on June 28<sup>th</sup>.

**Carolyn Axt** asked about having the meeting on June 21<sup>st</sup> at 4:00 p.m.

Chairman Paul stated he is available June 21<sup>st</sup>, June 28<sup>th</sup>, or July 5<sup>th</sup>.

Carolyn Axt asked about Mr. Belinfante attending the next meeting.

Chairman Paul stated Mr. Belinfante may not have checked his calendar for June 21<sup>st</sup>.

Jim Squire asked if Chairman Paul can email those other individuals and check their availability instead of setting the date today.

Chairman Paul stated if the Commission will allow it, he will poll the members with the dates of June 21, June 28, and July 5 for the next meeting. He will then choose the date when the most members are able to attend.

**Motion and Vote:** Oliver Porter moved to allow Chairman Paul to poll the members with the dates of June 21, June 28, and July 5, 2011, as options for the next meeting. The Chair may then choose the date when the most members are able to attend. Jim Squire seconded the motion. The motion carried unanimously.

Chairman Paul stated it would be helpful if everyone looked at their calendars for those three dates and sent him an email to confirm which date(s) they can attend.

### **Adjournment**

**Motion and Vote:** Robert Shaw moved to adjourn the meeting. M. Jerome Elmore seconded the motion. The motion carried unanimously. The meeting adjourned at 6:05 p.m.

Date Approved: June 21, 2011

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Rusty Paul, Chairman

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Michael Casey, City Clerk