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**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 21, 2011, at 4:00 p.m.

### **Call to Order**

**Oliver Porter** called the meeting to order at 4:09 p.m.

### **Roll call**

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

**Board Members Present:** Carolyn Axt, Josh Belinfante, Doug MacGinnitie, Rusty Paul, Oliver Porter, Robert Shaw, Jim Squire, Larry Young were present. M. Jerome Elmore was 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) June 14, 2011**

**Motion and Vote:** Robert Shaw moved to approve the Charter Commission Meeting Minutes for June 14, 2011, as amended. Carolyn Axt seconded the motion. The motion carried unanimously.

**Jim Squire** stated he would like to discuss the “city council” issue he was asked to research. At the June 14, 2011, meeting Larry Young stated it might be helpful to include “city council” throughout the Charter as opposed to just “council”. In Ordinance No. 2006-09-74 City Council is referred to in the first part of the ordinance, but not in the second part that references the Charter. The other two ordinances use the term City Council in the beginning. If you look at the Charter under “An Act”, there is no mention of “council” or “city council”.

Rusty Paul joined the meeting at this time.

**Chairman Paul** asked if the terms “city council” and “council” could be used interchangeably throughout the Charter in every incidence.

Jim Squire responded yes.

Chairman Paul stated it would not be a problem adopting a blanket amendment so that wherever “council” appears in the Charter it is replaced with the words “city council”.

**Motion and Vote:** Jim Squire moved to recommend a change in the Charter to replace the word “council” with the words “city council”. Josh Belinfante seconded the motion. The motion carried unanimously.

**Completion of Review of Article IV. Municipal Court**

**Chairman Paul** stated the Commission suspended the discussion of Section 4.06 until Mr. Belinfante could attend the meeting. The issue was that the Uniform Rules of the Municipal Court anticipates a judicial position that serves an administrative function. The Commission suggested recommending the Charter be adjusted to reflect the wording that the Judges would choose one of their members to serve in the position anticipated in the Uniform Rules of the Municipal Courts to provide the administrative function. The Commission also suggested this position be rotated among the Judges.

**Larry Young** stated the issue with Section 4.06 was the distinction between administrative and operational rules.

Chairman Paul said changes voted on by the City Council in September 2006 stated all rules will be subject to approval by the Council. Mr. Young raised the issue of whether that infringed on the separation of powers.

**Josh Belinfante** stated he is familiar with the Uniform Rules and the Court of Appeals. The Supreme Court has their own rules and the Civil Practice Act governs them all. He asked for an example of an administrative rule compared to a procedural rule.

Larry Young stated in reading the language, the first sentence states the Judges shall have authority to make reasonable rules and regulations necessary and proper to address any operations of the municipal court. This section then states the Clerk of the Court, as administrator of the court, shall prepare reasonable rules and regulations necessary for proper, efficient, and successful administration of the municipal court. Does the City Council have responsibility to vote upon the operational rules of the court set by the Judges which are constitutionally based? Do we want the City Council to have the authority to reject or counter a rule set by the Judges that is required under the interpretation of the law?

**Robert Shaw** stated in Section 4.03, the position of Clerk of the Court was created. He does not think the City currently has a Clerk of the Court and he wonders why.

**Jim Squire** stated one of the new contractors is interviewing candidates for that position.

Chairman Paul stated the City began with a Clerk of the Court. The functions of the Clerk are currently being performed by different people.

Larry Young stated there is confusion on who currently fills this role.

**Oliver Porter** stated a way to address this concern is to amend the last sentence by inserting the word "administrative". The Judges would address the legal issues and Council would address the administrative aspects.

**Motion and Second:** Oliver Porter made a motion to insert the word "administrative" before the word rules in Section 4.06. Carloyn Axt seconded the motion.

Chairman Paul stated a way to deal with that issue is to place a provision in the Charter that does not prevent the Judges from developing rules and procedures. The Charter needs to define the term administrative.

Jim Squire stated the Commission should not wordsmith the language, just come up with the intent of recommended changes.

Chairman Paul stated we need to be clear with the intent.

Larry Young stated on occasions the City Council may act beyond its constitutional authority and sometimes it is up to the Judge to prevent this.

Chairman Paul asked if that would be within the jurisdiction of the City court or if it would be addressed in the Superior Court.

Larry Young stated the constitutionality of City ordinances can be challenged in the City court. Perhaps this is a question that needs to be clarified before the language is drafted.

**Amendment to the Motion:** Chairman Paul moved to amend the motion to suggest that Larry Young and Josh Belinfante meet and put together the recommended language to bring back to the Commission for a vote.

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

### **Continuation of Review of Article II. Government Structure, Elections and Legislative Branch**

**Chairman Paul** stated the Commission decided not to change the existing districts to at-large districts. He asked if there were any other issues to be brought up from Section 2.02.

**Jim Squire** asked if subparagraph b) refers to whether or not there will be staggered terms.

Chairman Paul stated both subparagraphs b) and c) address the issue of staggered terms. The Commission would need to know what Code Section 21-2-541 of the O.C.G.A states, since it is referenced in subparagraph c).

Jim Squire stated the Commission received a document that compared the voting jurisdictions in North Fulton. All the municipalities except Sandy Springs have staggered terms.

**Oliver Porter** said Code Section 21-2-541 states all municipal offices elected at general municipal elections shall be for terms of four years, unless otherwise provided by local law, in accordance with Code Section 21-2-541.2. Unless otherwise provided for by the municipal charter, municipal office holders shall be sworn in at their first organizational meeting of the New Year and will hold office until their successors are duly elected and qualified and take an oath of office.

Chairman Paul stated the Code Section and the Charter are the two governing documents that refer to how elections are to be held.

**Motion and Second:** Jim Squire made a motion to amend the Charter to provide for staggered terms for the offices of City Council. Carolyn Axt seconded the motion.

Jim Squire stated when Johns Creek, Milton, Mountain Park, and Dunwoody were created something was placed in their Charter to reflect staggered terms.

Oliver Porter stated he did not assist the cities from a Charter to ordinance standpoint. He assisted with the implementation.

Robert Shaw stated there is nothing like having no one returning who understands what has happened with the City in the past.

Jim Squire stated the staggered terms could be based on even and odd Council district numbering. Districts 1, 3, and 5 could be elected in a particular term and Districts 2, 4, and 6 could be elected during the other term. There would be a random determination for the next election as to which set would be elected for a two year term and which set for a four year term. Terms could also be for four and six years.

Chairman Paul stated the maximum length of a term is four years.

**Doug MacGinnitie** stated there are arguments on both sides. The reality is if staggered terms are instituted now, it would double the cost of elections in Sandy Springs.

Jim Squire stated the City is moving the elections from being run by the county to being run by the City. The cost of staggered terms will be minimal.

Doug MacGinnitie stated the cost of the elections will still double. The election that the Mayor runs in has to be run citywide. More interest is generated if everyone is on the ballot at the same time.

Chairman Paul stated the cost of the City running elections compared to Fulton County may be less. Right now there is an intense period of political activity for one year and then there are three years where no one runs for office. It would need to be decided which three Councilmembers are going to run for a two year term. The Councilmembers may take it personally. He is not sure what the Commission is trying to solve. He will have to vote no for staggered terms.

Larry Young asked if the City elections are off cycle with the congressional elections.

Chairman Paul stated that municipal elections in Georgia are always held in odd years. Ten years ago the legislature decided to create a uniform time for municipal elections. The elections are held the first Tuesday after the first Monday in November.

Josh Belinfante stated he agrees with Chairman Paul on the point of staggered terms and election frequency. Having everyone up for election at the same time allows people to focus. Drawing attention to a Councilmember who is not included in a staggered term election with the Mayor can be tough. He supports keeping all of the Council elections in the same year.

Chairman Paul stated voter turnout for special elections is dramatically less.

Oliver Porter stated staggered terms were debated during the creation of the first Charter. He sees both positives and negatives of having staggered terms. He is in favor of the current City Council terms.

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

**Jim Squire** asked about term limits.

**Carolyn Axt** asked about the residency requirements for a Councilmember who has to live six months in a district and twelve months within the City.

Chairman Paul stated there are residency requirements in the law. Most positions elected in the State of Georgia have a residency requirement. Section 2.02 deals with all of the aspects of electing the Councilmembers and Mayor and it would be the appropriate place to make a motion. He reminded everyone that the person who makes a motion is bound to vote for the motion. The person who seconds a motion is not bound to vote for the motion.

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**Motion and Second:** Josh Belinfante moved to make no change for term limits in Section 2.02. Doug MacGinnitie seconded the motion.

Josh Belinfante stated his issue with term limits is that it empowers staff. The institutional knowledge is limited exclusively to staff. That concern is heightened in a City like Sandy Springs. He fully supports the model of using private contractors and it has worked very well. At some level accountability has to be on the elected officials.

Carolyn Axt stated there are advantages with having term limits. Publicity can give the elected officials an extreme advantage in re-elections. It is important that we enable a participatory type of government within the City.

Oliver Porter stated he disagrees with Mr. Belinfante. Staggered terms can be both positive and negative. When someone has been in a position for a long time, it can be good to have a new outlook.

Larry Young stated there is some advantage in having some type of term limit. Some districts may not be engaged, which makes it easier for the incumbent to stay in office. He supports some sort of term limit for the City Council.

Chairman Paul stated the role of the Commission is to look backwards and see what problems exist that the original Charter did not solve. This is the primary function, but it does not prevent the Commission from looking forward. He has not seen a problem with people staying too long. Mr. MacGinnitie was the second of three Councilmembers to represent District 1 in six years. District 3 has had two Councilmembers. District 4 has had two different Councilmembers. Term limits throw the institutional knowledge out the door. Staggered terms diminish the power of the elected officials and increase the power of the professional staff. If a Councilmember is doing a good job, this change would preclude retaining that individual. From his experience, most people get burned out and want to leave, so the current terms are self regulating. He does not see a problem with people staying too long.

Doug MacGinnitie stated he is in favor of term limits. The job of the officials is to set policy, not to run the City. The staff is always going to have more information than the elected officials. This is a philosophical argument and there is no right answer. The reality is incumbency is a powerful tool. Some people will not run for office, because it is hard to take on an incumbent.

Chairman Paul stated the highest turnover in elected officials is at the local level.

Oliver Porter stated it may not matter how the Commission decides on this topic. The local delegation will decide and these will be incumbents deciding.

**Vote on the Motion:** The motion failed. Josh Belinfante, Robert Shaw, and Rusty Paul voted in favor of the motion. Carolyn Axt, Doug MacGinnitie, Oliver Porter, Jim Squire and Larry Young voted in opposition.

**Motion and Second:** Oliver Porter moved that following the election in 2013 term limits consisting of two four-year terms, for a total of eight years, shall go into effect for the incumbent and future Mayor and Councilmembers. Jim Squire seconded the motion.

Doug MacGinnitie asked if the eight year time period starts in 2013.

Oliver Porter responded yes. Someone that has already served eight years could still serve another eight years.

**Friendly Amendment to the Motion:** Larry Young moved to amend the motion to state the terms be limited to two four-year terms, plus any partial term from filling an unexpired term.

Josh Belinfante stated perhaps the terms should be staggered, so the City does not end up with all new City Councilmembers.

Carolyn Axt stated she has a problem with this, because current Councilmembers could serve sixteen years. In another eight years the City will have lost much of its energy if the citizens see they do not have an opportunity to get involved. If the City decides to have term limits, perhaps a compromise would be the current City Council can be re-elected for one more term.

Oliver Porter stated he has no problem with the current Council. He is worried about the future.

**Action on Motion:** Oliver Porter withdrew the motion. Jim Squire agreed to withdraw the motion.

**Motion and Second:** Doug MacGinnitie moved that beginning in 2013 there be term limits of eight years, with prior service years counting, plus any years served due to special elections. Carolyn Axt seconded the motion.

Jim Squire stated the City just had a special election where a Councilmember was elected. That Councilmember would be able to continue through two election cycles for a total of eight years plus the balance of this term.

Chairman Paul stated the Mayor, Councilmember DeJulio, Councilmember Meinzen McEnery, and Councilmember Fries could not run for re-election in 2013.

Jim Squire stated Councilmembers Paulson and Collins could run for re-election for another four years.

**Amendment to the Motion:** Jim Squire moved to amend the motion on term limits for the effective date to begin in 2017. Oliver Porter seconded the motion.

**Vote on Amendment:** The amendment to the motion failed. Oliver Porter, Jim Squire, Larry Young, and Doug MacGinnitie voted in favor of the amendment. Carolyn Axt, Josh Belinfante, Rusty Paul, and Robert Shaw voted in opposition.

**Vote on the Motion:** The motion failed. Doug MacGinnitie and Carolyn Axt voted in favor of the motion. Oliver Porter, Jim Squire, Larry Young, Josh Belinfante, Rusty Paul, and Robert Shaw voted in opposition.

Jim Squire stated he would like to repeat a motion that was made earlier.

Chairman Paul stated that would be out of order. That motion was already voted on and has been put aside by the Commission. He could not recognize anyone for the purpose of voting on a motion that has already been defeated.

**Motion:** Doug MacGinnitie made a motion to reconsider his amended motion, which was set to begin staggered terms in 2017.

Chairman Paul ruled Mr. MacGinnitie's motion to be out of order, because the Commission had already proceeded to another vote.

Oliver Porter asked when a motion for reconsideration can be brought before the Commission.

Chairman Paul stated you cannot reconsider the motion since it has already been defeated. A Commission member has to come up with another motion to accomplish what needs to be done.

**Motion and Second:** Doug MacGinnitie moved to suspend Robert's Rules of Order. Oliver Porter seconded the motion.

Oliver Porter asked how long the rules would be suspended.

Chairman Paul stated the rules would be suspended for as long as the Commission wishes.

**Vote on the Motion (two-thirds vote required):** The motion failed. Oliver Porter, Jim Squire, Larry Young, Carolyn Axt and Doug MacGinnitie voted in favor of the motion. Josh Belinfante, Rusty Paul, and Robert Shaw voted in opposition.

Josh Belinfante stated while he does not support term limits, he does think the view of the Commission should be reported. Would it be the opinion of the Chair that if the Commission found another section to amend in the Charter, then a motion at that time might be appropriate?

Chairman Paul stated that would be appropriate; or any other motion would be in order.

**Motion and Second:** Larry Young made a motion that the Commission recommend that term limits be established for Mayor and Council of not less than eight years. Doug MacGinnitie seconded the motion.

Larry Young stated the term limits should not be less than eight years, but the limit could be left to the legislature to decide.

Carolyn Axt stated she thinks it would be stronger if the wording of the original motion is placed in another Section instead of leaving the wording up to the legislature.

Larry Young stated the Commission is a recommending body. As seen in the past, the legislature may do whatever they please, notwithstanding what the Commission recommends. Terms were initially recommended and the legislature decided not to incorporate them. The intent of his motion is that the Commission prefers term limits and that they not be less than eight years.

**Vote on the Motion:** The motion failed. Larry Young voted in favor of the motion. Carolyn Axt, Josh Belinfante, Doug MacGinnitie, Rusty Paul, Oliver Porter, Robert Shaw, and Jim Squire voted in opposition.

Chairman Paul asked if there were any other recommendations for Section 2.02.

Oliver Porter asked where else it might be appropriate to deal with this issue, besides Section 2.02.

Chairman Paul stated it can be discussed in a new Section. Sections 2.03, 2.04, and 2.05 all deal with elections, so it would be appropriate to discuss the issue in one of these Sections.

Larry Young stated surely Section 2.02 includes terms. The language states the future Councilmembers shall serve until their successors are elected and qualified. Contrary language can be a conflict with what is in Section 2.02 subparagraph c).

**Motion and Second:** Oliver Porter moved to reinstate his original motion and amend it to change 2013 to 2017. Jim Squire seconded the motion.

Chairman Paul stated that motion was defeated.

Oliver Porter stated 2017 was not voted down in his motion. His motion was withdrawn.

Chairman Paul stated the issue is that the date of 2017 has already been defeated. He asked the City Clerk to refer to the previous motions.

**City Clerk Michael Casey** stated Oliver Porter moved that beginning in 2013 terms be limited to eight years maximum. Following discussion Mr. Porter withdrew his motion.

**Motion and Second:** Oliver Porter moved that effective immediately following the City election in 2013, term limits consisting of two four-year terms shall go into effect for the then incumbent and future Mayor and Councilmembers. Jim Squire seconded the motion.

**First Friendly Amendment:** Larry Young moved to amend the motion so that the limit includes any partial term from filling an unexpired term. The amendment was accepted.

Jim Squire stated if the motion becomes effective in 2017, it does not contemplate that prior time in office would apply against that.

Carolyn Axt asked if in 2013, the Councilmembers can run for eight more years.

Oliver Porter responded yes.

Chairman Paul asked Mr. Porter to restate the motion and explain its intent.

Oliver Porter stated effective immediately following the City election in 2013, term limits consisting of two four-year terms shall go into effect for the then incumbent and future Mayor and Councilmembers.

Doug MacGinnitie stated he thinks the motion could be worded another way.

Oliver Porter stated he is open to the motion being amended in a way that is acceptable from a procedural standpoint.

**Second Friendly Amendment:** Doug MacGinnitie moved to amend the motion to state that beginning with the 2017 election, term limits will become effective and include prior years of service. In 2017, no one shall run for election that has already served eight years. The amendment was accepted.

Josh Belinfante stated one of the arguments for term limits is getting people involved with the City. There are other ways to get people involved that would not include term limits, specifically through the creation of Boards and Commissions. If the authority to appoint Boards and Commissions were expanded, more people might get involved. He will vote against the motion for term limits.

Jim Squire stated the City currently has what is considered a weak Mayor. The Mayor is able to make those appointments to Boards. If the authority to make appointments is given to someone else, that would make the Mayor weaker.

Chairman Paul stated the motion on the floor is that starting in 2017 anyone running for office that has served eight or more years shall be term limited and will not be allowed to run for that post in the year 2017. If you vote in favor of the motion, you are voting in favor of term limits.

Larry Young asked if there is a need to address elections after this point.

Chairman Paul responded no. That is included in the motion. The term limits would begin with the election in 2017 and apply to all future elections. Prior service before 2017 would be counted towards the term limit cap.

**Vote on the Motion:** The motion passed 5-3 with Josh Belinfante, Robert Shaw, and Rusty Paul voting in opposition to the motion.

**Motion and Vote:** Jim Squire moved that the next Charter Commission meetings be held on July 12<sup>th</sup> and July 26<sup>th</sup> at 4:00 p.m. in the City Manager's conference room. Larry Young seconded the motion. The motion carried unanimously.

### **Adjournment**

**Motion and Vote:** Larry Young moved to adjourn the meeting. Doug MacGinnitie seconded the motion. The motion carried unanimously. The meeting adjourned at 6:00 p.m.

Date Approved: July 12, 2011

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Rusty Paul, Chairman

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Michael Casey, City Clerk