

# **CHARTER COMMISSION AGENDA**

Nov. 15, 2022 - 6:30 P.M.

# **CHARTER COMMISSION ANNUAL MEETING**

# Minnehaha Room, Minnetonka Community Center

- 1. Call to order
- 2. Roll call
- 3. Approve minutes of Nov. 9, 2021 meeting
- 4. Report regarding ranked choice voting costs and surveys
- 5. Report of city attorney
- 6. Election of officers
- 7. Annual report
- 8. Other business
- 9. Future meeting schedule
- 10. Adjournment

#### Attachments:

- a. Draft minutes, Nov.9, 2021 meeting
- b. Memo from Assistant City Manager Moranda Dammann re ranked choice voting
- c. City attorney memo
- d. Draft annual report
- e. City calendar for 2023

# **DRAFT - NOT APPROVED**



#### MINUTES OF THE

# MINNETONKA CHARTER COMMISSION

Nov. 9, 2021

#### 1. CALL TO ORDER

Chair Northrup called the meeting to order at 6:30 p.m.

# 2. ROLL CALL:

Members present: Dick Allendorf, David Larson, John Northrup, Terry Schneider, Linnea Sodergren, LuAnn Tolliver, Brad Wiersum. Weissman joined the meeting at 6:32 p.m., immediately after the approval of the minutes. Members absent: Terry Schneider (excused).

# 3. APPROVE MINUTES OF NOV 10, 2020 MEETING

Allendorf moved, Tolliver seconded, to approve the minutes of the Nov. 9, 2020 meeting. By roll call vote, all voted in favor.

# 4. REPORT ON NOV. 2, 2021 ELECTION USING RANKED CHOICE VOTING

Acting Assistant City Manager Moranda Dammann gave the staff report, with assistance from Elections Specialist Kyle Salage. Northrup asked for an explanation of what constitutes absentee voting, and city staff responded that any vote cast prior to Election Day, whether by mail or by in-person early voting, is defined as absentee voting.

Weissman asked about the rate of rejected ballots, and Salage responded that the rate was fairly low, less than 20. Allendorf asked what the cost was for converting to ranked choice voting. Dammann responded that the information will be provided to the city council at a study session in 2022 but was not available at the time of the charter commission meeting.

Wiersum asked for an explanation of undervotes and overvotes. Dammann explained that an overvote is a situation in which someone attempts to cast more votes than is permissible, such as ranking two candidates as first choice. An undervote is casting fewer votes than are permitted, such as not casting any vote in the second or third

choice columns. Weissman asked if one ballot could include both an overvote and an undervote, and Salage responded in the affirmative, because the overvotes and undervotes are reported for each preference column.

Northrup commented on the number of blank ballots for At Large Seat B. Dammann indicated that one explanation might be that voters only voted for the school district race and did not vote on the council race. Salage noted that there can be various reasons why a voter might not vote on a particular race. Wiersum hypothesized that voters might have skipped the Seat B race because the candidates were not well known.

Wiersum asked about the Minneapolis race, where Jacob Frey won with less than 50 percent of the total votes cast. Heine explained that Minneapolis uses a batch elimination system, so that all candidates who cannot statistically reach the threshold are eliminated in a single round. If only one person remains, that person is the winner. Salage confirmed that Minnetonka's ordinance is similar and provides that when all other candidates have been eliminated, the remaining candidate is the winner, even if that candidate did not receive more than 50 percent of the votes.

Sodergren asked for an explanation of how the tabulation process works. Dammann explained that process and indicated that it was performed between 10:30 a.m. and 1:30 p.m. on the day after the election.

Northrup mentioned a newspaper article on the Bloomington ranked choice voting process. He complimented the city staff for the work it did to tabulate votes. Sodergren asked for any staff predictions as to whether voting equipment might be certified in the future for ranked choice voting. Dammann said she did not expect that to happen in the near future but is cautiously optimistic that it might be approved sometime in the future. Salage indicated that the spreadsheet tabulation method that the city uses does not require certification. He noted that the city does use a non-certified software to double-check the results that the city obtains from its spreadsheet process.

Wiersum thanked Dammann and Salage for their work. Dammann complimented the work of the city clerk, the rest of the elections staff, and the city's election judges. She commented on the team effort that is involved, including planning staff for signs, public works for handling the voting equipment, and other staff.

# REPORT OF CITY ATTORNEY

The city attorney gave the city attorney report. Tolliver asked whether commission members could attend meetings remotely, even though no there is no emergency in effect. Heine responded that the law still allows members to participate from a remote location, but there are specific requirements that must be met.

#### EMAIL AND RECORDS MANAGEMENT

The city attorney reviewed two hand-outs on how to identify and report suspicious emails. She also informed commission members that emails that constitute official records should be retained as part of the city's records management system, but that they may delete any email that is not an official record.

#### ELECTION OF OFFICERS

Northrup introduced the topic of electing officers. The current officers are Northrup as chair, Sodergren as vice-chair, and Tolliver as Secretary. <u>Allendorf moved, Larson</u> seconded, that the commission re-elect the same slate as officers. All voted "aye."

#### 8. ANNUAL REPORT

The city attorney reviewed the draft annual report. <u>Tolliver moved, Weissman seconded,</u> a motion to approve the annual report. All voted "aye."

#### OTHER BUSINESS

Northrup asked if there was any other business for the commission. Sodergren asked the city attorney about a news article that had mentioned a dispute regarding campaign literature in the Minnetonka council elections. The city attorney explained that a resident had filed a complaint under the Fair Campaign Practices Act, related to a piece of campaign literature that had used a photo of a city monument sign with the city logo. The complainant alleges that the literature falsely implies that the City of Minnetonka endorsed the candidates. Heine reported that a three-person panel of administrative law judges is scheduled to hear the case on Dec. 9, 2021.

# 10. FUTURE MEETING SCHEDUE

The commission discussed dates for the 2022 annual meeting. By consensus, the commission selected Tuesday, Nov. 15, 2022 at 6:30 p.m. in the Minnehaha Room.

#### 11. ADJOURNMENT

<u>Wiersum moved</u>, <u>Allendorf seconded</u>, <u>to adjourn the meeting</u>. All voted "aye." The meeting was adjourned at 7:55 p.m.

Respectfully submitted,

LuAnn Tolliver Secretary



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**TO:** Charter Commission

**FROM:** Moranda Dammann, Assistant City Manager

**DATE:** Oct. 18, 2022

**SUBJECT:** Agenda Item 3 – Ranked Choice Voting Recap

# Summary Statement

The City of Minnetonka adopted ranked-choice voting following the 2020 election when a majority of Minnetonka residents voted to adopt the use of ranked-choice voting for city elections (mayor and city council). On Aug. 15, 2022, city staff provided an update to the city council that recapped the city's experience in conducting the 2021 municipal election, including the results of post-election surveys that were conducted of election judges and residents. This report contains the same information presented to the city council.

#### **Background**

On Nov. 3, 2020, the city held a special municipal election in order to submit to the voters a ballot question on whether to amend the city charter to provide for ranked choice voting. The election was the culmination of a study and review process that began in September 2019. The voters approved the amendment by a total of 54.71 percent (18,475 votes) in favor and 45.29 percent (15,293 votes) opposed.

With the approval of the charter amendment, city staff began planning for the implementation of using ranked-choice voting. The implementation consisted of three components: (1) adoption of the ordinance, which was introduced on Feb. 22, 2021, and adopted on March 8, 2021. (2) development of voter education plan, reviewed by the council on Jan. 25, 2021. (3) staffing and duty assignment change as approved and reflected in the 2021 budget.

The purpose of this agenda item is to provide a recap of the Nov. 2021 election using ranked-choice voting including preparation, costs, Election Day, post-election work and lessons learned all of which are addressed in this report. The next election using ranked choice voting will be held in Nov. of 2023.

#### **Preparation and costs**

The city's elections and communications team collaborated to develop a robust voter education campaign focused on reaching all corners of the community. The campaign details can be found attached to this document, however, any item within the campaign specifically in relation to RCV with associated costs are listed below.

2021 Communications/Education Campaign Timeline with costs

Month	Task completed	Cost
April		
	Swag for information booths	\$416.57
May		
	Held internal Mock election with Hennepin County on May 20, 2022	Ballot cost of \$39
June	Created two educational videos	\$7,200
	Mock election ballots	\$97.50
	Signage for booths	\$233.12
	Beverages for mock elections	\$123.55
	Ice and freeze pops for booths	\$43.92
Sept.		
	Brochure mailed directly to each resident in Minnetonka	\$12,301.51
Oct.		
	"How to vote" mailer mailed directly to each resident in Minnetonka	\$3,554.77
	Total RCV supply-specific expenses	\$24,009.94

Additionally, staff required all election judges to attend a ranked choice voting training. This was a paid training.

An all-encompassing total of 2021 election costs are listed below. A comparison to two previous odd-year municipal elections is listed for reference. A cost difference from 2019 to 2021 was a total of \$18,996.27. As a reminder, staff anticipated and was approved a first-year additional cost of \$25,000 for RCV-specific expenses.

Additional Costs:	2017	2019	2021
Training costs	\$3,340	\$5,700	\$13,740
Election Day judge pay	\$24,404.25	\$31,369.13	\$32,640
Election supply costs	\$10,537.05	\$33,950.29	\$43,633.69
Total	\$ 40,298.30	\$ 73,038.42	\$ 92,034.69

In preparation for 2023, staff is asking for \$40,000 in election supplies and \$48,000 in election judge salaries. Staff anticipates a reduced need in election supplies due reusing the educational videos created in 2021 and plans to only send one brochure. However, ballot costs have increased to \$0.25 a ballot, therefore increasing the overall cost.

Additionally, a full-time employee was approved and hired in 2021.

# **Election Day and tabulation**

A municipal general election was held on Tuesday, Nov. 2, 2021, for the offices of Mayor,

Council Member At Large Seat A and Council Member At Large Seat B. The election had a voter turnout of 28.5% with 11,350 total persons voting. Below is a statics comparison that was shared during the Nov. 8, 2021, regular city council meeting.

	2021	2019	2017
Voter turnout	28.5%	15.12%	20.5%
Absentee Ballots Accepted	2,795	712	1,004
Election Day	8,555	4,986	6,537
Total number of persons voting	11,350	5,698	7,541
Number of Registered voters at 7 a.m.	39,613	37,552	36,599
Total number of Election Day registrations	262	114	186

In non-RCV elections, results are available on the Office of Secretary of State's website on the night of the election. Although results are posted the night of the election, the OSS Election night results do not include the total ballots cast as it excludes overvotes and undervotes. To obtain the maximum possible threshold, the formula requires ((Total ballots cast that include votes, undervotes, skipped rankings, and overvotes for the office)/(Seats to be elected + 1)) + 1. Election night and canvassed results were different as those ballots were added into the equation.

Staff received the data needed from Hennepin County the day after the election mid-morning and began round-by-round tabulation. Although only one candidate race required this, staff was able to have results by 2 p.m. that day. It was posted on the website, throughout social media and through email delivery.

The Minnetonka City Council canvassed these results on Nov. 8, 2021. At this same meeting, council scheduled the post-election review to be held on Nov. 10, 2021, at 9 a.m. in the Minnetonka Council Chambers with the selected office and precincts. The post-election review consisted of using the actual ballots cast in the two precincts selected, the judges of the election shall conducted a hand count of ballots cast for the office selected to be reviewed. Judges will counted and recorded the ballots cast. The review showed the ballot counts were 100% accurate on Election Day.

#### Post-Election

Following the election and canvassing, a variety of surveys were conducted to hear from our residents and voters, as well as our election judges.

A survey was sent directly to all lead judges, assistant lead judges and ward captains. These results can be found attached to this document.

In partnership with the communications division, a survey was conducted on Minnetonka matters. This survey was open from Jan. 24, 2022 to Feb. 4, 2022 and received 688 responses. Attached are the survey results. Staff has and will continue to review these results as preparation begins for 2023.

Lastly, a question was asked during the 2022 community survey. The question and results were:

Question 186.

What is your opinion of the ranked-choice voting system?

- A) I prefer ranked choice voting to traditional voting in a primary or general election;
- B) I prefer the traditional voting system;
- C) It doesn't matter to me which system is used

#### Results:

Statement A: 22% Statement B: 48% Statement C: 28% Don't Know: 0% Refused: 2%

#### Lessons learned

As 2021 was the first time the city of Minnetonka used ranked-choice voting, staff documented along the way opportunities for improvement for the 2023 election. A few notable items include providing a better understanding of the results threshold (50+1) vs. majority, a script for ballot judges and the estimated time for tabulating results to set a more accurate day and time in which results will be produced.

Staff also learned that residents prefer to see the election results in a variety of ways. Graphs, step-by-step written explanations and interactive round-by-round charts. Staff was not prepared for this wide variety of displays, however were quickly able to provide the data in the requested platforms. This is something staff will have ready to deploy following tabulation moving forward.

Additionally, it was requested by candidates in 2021 to provide more ranked choice voting training for candidates so they feel equipped to answer questions and explain the process while campaigning and additionally provide candidates with a fact sheet to share with voters.

Ranked-choice voting is a shift in the voting process and the way staff administrators the election. Staff learned quickly that this was high-level work and the two senior members would be taking the lead. However, in order for them to take on this additional workload the third and added employee would handle the non-RCV election work and provide the support for the outreach opportunities.

The city of Minnetonka conducts its elections with the highest integrity and is committed to running smooth and honest elections.

#### **CITY ATTORNEY'S OFFICE**



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To: Minnetonka Charter Commission

From: Corrine Heine, City Attorney

**Date:** Oct. 26, 2022

**Subject:** Meeting of Nov. 15, 2022; Agenda Item 5

# 5. Report of city attorney

During the year, I monitor legislation and court decisions that address the authority of charter cities.

## Legislation

There were no laws enacted during the 2022 legislative session that affect the operations of the charter commission.

#### Court decisions (arranged chronologically)

Samuels v. City of Minneapolis, decided by the Minnesota Supreme Court on Sept. 16, 2021, but opinion issued on Nov. 10, 2021. (This case was in last year's summary, as to the decision, but I indicated that I would recap the court's analysis this year, based on the written opinion.) In this case, the Minnesota Supreme Court rejected an attempt to keep a charter amendment off the 2021 ballot. This was the ballot amendment regarding elimination of the police department and creation of a department of public safety.

Whenever a charter amendment is submitted to voters, the city council must approve the ballot language. The Minneapolis City Council did that in July 2021. Residents challenged the ballot language, claiming it was incomplete and failed to identify the essential purpose and effects of the proposed amendment. The district court agreed and enjoined the city from using that language. On Sept. 7, the council approved revised language; the residents again challenged the language, and the district court enjoined the city from counting votes on ballots that used that language. The case was appealed by accelerated review to the Minnesota Supreme Court, and the court ruled in the city's favor.

On Nov. 10, after the election (in which the ballot measure failed), the court issued its written opinion. The court began by noting that judicial review of the language of ballot questions is highly deferential. The court cannot substitute its judgment on the legislative body's word and form choices. The court will not intercede if the "clear and essential purpose" of the amendment is "fairly expressed" in the ballot question. The court also noted that the ballot language is not required to state the effects of the proposed amendment. The court concluded with: "The essential purpose of the proposed amendment to the Minneapolis City Charter is fairly communicated in the current ballot

language, and the objections to that question simply do not meet the high standard for us to conclude that the language is misleading, unreasonable, or a palpable evasion of the constitutional requirement to submit the question to a vote."

• Minnesota Voters Alliance v. City of Minneapolis, (nonprecedential), decided by the Minnesota Court of Appeals on Jan. 18, 2022. The Minnesota Voters Alliance (MVA) filed a petition, challenging the city's appointment of city employees to the ballot board, as deputy city clerks. State election laws require city councils to establish a ballot board to review absentee ballots. The law allows the boards to consist of "deputy city clerks," in addition to election judges. Although the law sets out minimum requirements for election judges --including that when election judges review an absentee ballot, they must be of different political parties – those requirements do not apply to deputy city clerks. Minneapolis appointed city employees to serve as deputy city clerks on its ballot board, and no election judges were appointed to the board. The district court ruled in the city's favor, and MVA appealed.

In its argument, MVA focused on state law. But the court of appeals determined that "the correct focus is whether the city charter authorizes the appointment of deputy city clerks, and, if so, whether state law precludes the exercise of that charter authority." The court concluded that appointment of deputy city clerks fell within the city's authority under its charter to "provide for any scheme of municipal government not inconsistent with the constitution" and to "provide for the establishment and administration" of all city departments. The court then concluded that the plain language of the election law did not limit the authority of the city to appoint employees as deputy city clerks. The court ruled in the city's favor. The MVA's underlying concern was that deputy city clerks did not need to disclose whether they were members of political parties – the implication being that clerks might be influenced by their political beliefs in performing their duties. One judge concurred for the purpose of noting that the only question before the court was the city's authority to appoint deputy city clerks, not whether doing so was a good idea "in this day of heightened skepticism of governmental action."

Patti Amanda's Inc. v. City of Biwabik, (nonprecedential), decided by the Minnesota Court of Appeals on Feb. 7, 2022. The plaintiff owns rental property in Biwabik and challenged changes that the city and Biwabik Public Utilities Commission made in utility billing practices. Historically, the plaintiff had received one utility bill each month (covering water, sewer and electric) for all six units in the building. The city and PUC changed that practice and started billing separately for each unit. The city and PUC implemented a new practice for all residential properties in the city – not just rental properties – under which properties are charged a flat-fee base rate for each residential unit, plus the metered usage from the building meters. The flat-base-fee is used to cover fixed costs such as building maintenance and debt service. The metered rates cover the marginal costs for each service, such as cost of treatment chemicals for water or cost of electricity for electric.

Among other claims, the plaintiff alleged that the new rates violated the city charter. (Only the claims that relate the city charter are discussed here.) Specifically, the plaintiff claimed that the PUC had exclusive authority to set all utility rates and that the city had encroached on that authority by establishing new water and sewer rates. The district court ruled in

favor of the city, and the plaintiff appealed. The court of appeals affirmed, concluding that the language in the charter gave the PUC and city council shared authority over the city's utilities, including utility rates. The charter gave the council authority to own and operate municipal utilities and gave the PUC authority to operate and manage the utilities. Although the charter provided that the PUC "may" fix rates, it also required the PUC to report to the city council. The charter also contains a provision that requires the charter to be construed liberally in favor of the city. The court held that the PUC's authority to fix rates was not exclusive, and ruled in favor of the city.

• Spann v. Minneapolis City Council, decided by the Minnesota Supreme Court on Aug. 24, 2022. Residents sued, seeking a court order that would require the mayor and city council to fund and employ at least 0.0017 sworn police officers per Minneapolis resident. The residents argued that provisions in the city charter imposed a mandatory duty to fund and employ that number of officers. The trial court issued a writ that required the mayor and city council to either fund and comply the specified number of officers or to show cause why they had not done so. On appeal, the court of appeals reversed, holding that, although the charter imposed a duty on the council to fund the specified number of positions, the charter did not impose a duty on the mayor to employ that number of officers. The court held that the mayor's duty to maintain the police department was discretionary, and because the mayor was exercising his discretion to address the shortage of sworn officers, there was no need for the court to issue an order. The Minnesota Supreme Court accepted review and affirmed in part, reversed in part, and remanded to the district court for further proceedings.

The court's decision in this case turns upon some unique provisions of Minneapolis's charter, including an amendment made to the charter in 2013. In 2013, the city rewrote the charter to modernize and simplify the language, and the amendment was submitted to the voters to approve. The revised charter had a provision to the effect that the rewritten version was not intended to make substantive changes to the powers of the mayor or any department. So, in this case, the court interpreted the language about the mayor's powers by looking back to the pre-2013 charter language, and, in light of that language, the court determined that the mayor had a clear duty to employ 1.7 officers per 1,000 Minneapolis residents. The court reversed the court of appeals on that issue and remanded the case to the district court, to determine whether the mayor had shown good cause as to why he had not hired the number of officers required. The court affirmed the decision not to compel the city council to provide funding, because the record showed that the council had provided the funding, making a writ unnecessary.

• Voyageurs Retreat Community Association v. City of Biwabik, (nonprecedential), decided by the Minnesota Court of Appeals on Sept. 19, 2022. Taxpayers sued the city and a neighboring township, challenging a 2002 revenue sharing agreement (RSA) as void, in violation of the city charter and state constitution. In the end, this case was decided by the district court and court of appeals based on laws related to finality of judgments, and neither court reached the city charter issue. The basis of the charter claim is not detailed in the court decision, but the court of appeals has remanded the case to the district court to decide the statutory and charter claims. If that decision is appealed, next year's report will include the final outcome of this case.

#### Pending court cases

Residents of Bloomington circulated a petition to amend the city charter and submitted the petition to the city. The petition proposed to amend the city charter by removing the use of ranked choice voting (which had been approved by the voters in 2020). In addition, the petition proposed that the charter be amended by including a provision that would have prohibited the use of ranked choice voting in the future, unless approved by two-thirds of the voters in a regular municipal election. (The state law provides that charter amendments are effective if approved by 51 percent of those voting on the question, at either a general or special election.) The city council refused to put the measure on the ballot, because the two-thirds-vote provision conflicted with state law, and the council determined that the defect was not severable. That is, the council could not simply remove that requirement and submit the rest of the amendment to the voters, because the council could not determine whether people would have signed the petition without that provision.

The residents petitioned the court, seeking an order to require ballots to include the charter amendment question. The district court denied the petition, holding that the two-thirds provision conflicted with state law and that the defective provision was not severable from the remainder of the proposed amendment. The court quoted from a prior Minnesota Supreme Court decision: "We cannot search the minds of those who signed the petition to ascertain their intent. In the absence of such prescience, we feel compelled to hold that the proposal which would be submitted to the voters [if the offending provision were severed] is not the one which the petitioners sought to have adopted."

The residents appealed and requested accelerated review by the Minnesota Supreme Court. The court granted that motion. Briefing is in process, and oral argument will be held on Nov. 28, 2022. Although that is after the November general election, if the court were to rule in favor of the residents, the amendment could be submitted to voters at a special election. Therefore, the case is not moot simply because it will be heard after the November election. I will notify the charter commission when the decision is issued – most likely in the first guarter of 2023.

# Update regarding commission reappointment procedures

The chief judge of Hennepin County makes all appointments to charter commissions in the county. Each chief judge has his or her own preferred procedure for making appointments. Chief Judge Todd Barnette prefers to receive a letter or email directly from the commissioner who is seeking reappointment. Although the correspondence can be brief, he wants to know a little about the commissioner and why the commissioner wants to be reappointed. Once the judge receives the request, his office will set up a phone call or Zoom meeting with the commissioner. I will send a reminder to a commissioner when a term is coming to its end, and I will include contact information for the judge's assistant. It will be up to the commissioner to submit the request and coordinate with the judge's assistant on the phone call or Zoom meeting.

# **DRAFT - NOT APPROVED**

# 2022 Annual Report Charter Commission

#### Mission

The mission of the Minnetonka Charter Commission is to oversee the city's charter which defines the parameters within which city government can operate. As an independent body, the charter commission will represent citizen viewpoints and consider and recommend appropriate revisions to the charter which balances the best interests of city government and the citizens.

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There were no changes in mem	bership during 2022.	Officers during the year	r have been John
Northrup, Chair; Linnea Sodergr	en, Vice-Chair; and	LuAnn Tolliver, Secreta	ry. At its Nov.15, 2022
meeting, the commission elected	d	as Chair,	as Vice-
Chair and	as Secretary.		
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Attendance at the 2022 commission meeting is shown below.

#### 2021 Attendance Schedule

Member	Nov. 15, 2022	Meetings Attended
Allendorf		%
Larson		%
Northrup		%
Panner		%
Schneider		%
Sodergren		%
Tolliver		%
Weissman		%
Wiersum		%

Y = Present; E = Excused; U = Unexcused; T = Term Expired; R = Resigned

#### **Highlights of the Past Year**

The commission met for its annual meeting on Nov. 15, 2022. At the meeting, the commission received a report concerning the 2021 municipal election, which was the city's first use of ranked choice voting. The report included information on election costs and the results of post-election surveys conducted with election judges and residents. The commission also received a case law update from the city attorney.

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