



Barry Clegg, Brian Melendez and Lyall Schwarzkopf of the Minneapolis Charter Commission

City charter revision is long overdue

A Civic Caucus Focus on Competitiveness Interview

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Present

John Adams, Dave Broden (vice chair), Barry Clegg, Pat Davies, Randy Johnson, Sallie Kemper, Dan Loritz (chair), Brian Melendez, Dana Schroeder, Lyall Schwarzkopf, Clarence Shallbetter.

Summary

Revisions to the Minneapolis City Charter are long overdue, say Barry Clegg, Brian Melendez and Lyall Schwarzkopf, all involved in an 11-year project to revise the charter by modernizing it into plain language, shortening it and reorganizing it. In the Nov. 5, 2013, election, Minneapolis voters will decide whether to approve the proposed revised charter.

Minneapolis adopted its charter in 1920 and it contains archaic provisions and archaic language, the three say. The current charter has been amended 100 times over the years, with many of the amendments tacked onto the end of the document, rather than placed with the provisions they affect. The situation is made more complex by the involvement of the state in Minneapolis governance. The legislature can override provisions of the city's charter by passing special laws affecting only Minneapolis. The proposed revisions include adding the provisions of those special laws in the charter, reorganizing the amendments and making the document much shorter and easier to understand, Clegg, Melendez and Schwarzkopf contend. They say the revisions are at least 40 years overdue.

They maintain that the charter revisions might make Minneapolis more economically competitive by clarifying the city's government structure for developers and others looking to invest in the city. They say that the proposed revisions should make it easier to implement charter revisions and charter reform in the future.

Discussion

There are two questions on the Nov. 5, 2013, election ballot, both seeking approval of revisions to the Minneapolis City Charter. Both concern nonsubstantive revisions to the charter that modernize, shorten and reorganize the document. One question refers to the overall revisions to the charter and the other refers specifically to the revisions relating to liquor-licensing provisions.

The wording of the questions is as follows:

"Proposal to Amend the Minneapolis City Charter"

"Shall the Minneapolis City Charter be amended in the form of a complete revision which (1) modernizes the Charter; (2) redrafts its provisions for brevity and in plain language; (3) reorganizes the Charter into nine articles, and groups related provisions together, (4) removes from the Charter certain provisions for possible enactment into ordinance; and (5) retains the current role and relationships of City boards and commissions?" "Yes No"

"Proposal to Amend the Minneapolis City Charter Liquor-Licensing Provisions"

"Shall the Minneapolis City Charter provisions relating to the sale of liquor and wine be amended by reorganizing and rewriting in plain modern language?" "Yes No"

Lyall Schwarzkopf, secretary of the Minneapolis Charter Commission, said, in order to be approved, the first question must garner **51 percent** "Yes" votes from those who vote on the question. The second question, concerning liquor-licensing provisions, must garner **55 percent** "Yes" votes from those voting on the question to be approved. Unlike with state constitutional amendments, not voting on a city charter amendment question does not translate into a "No" vote. Only the actual votes on each question determine whether the question passes.

Barry Clegg, current chair of the Minneapolis Charter Commission, said if the charter provisions are approved, they would take effect in January 2015. Clegg said it could happen that the main charter question will pass, but not the question on the liquor provisions. "So we could have 95 percent of the charter in plain language and five percent in archaic language," he said. "If that happens, we'll go to the city council and say, 'Let's clean this up.'"

It's taken 11 years to complete the drafting and redrafting of the plain-language revisions and bring them before voters to approve or disapprove. Brian Melendez, who served on the Charter Commission from 2002 to 2006, became the volunteer reporter of the 11-year-long plain-language revision project. The revised charter on the ballot is the 14th major draft of the document during that time. He said he spent about 500 hours, all as a volunteer, working on the revisions over the last 11 years.

City charter commissions are created by the Minnesota state constitution. According to Clegg, state legislation determines how charter commissions are appointed and what they do. The Minneapolis Charter Commission is not a commission of the City of Minneapolis; it is a commission under state law, appointed by the chief judges of Hennepin County. Its purpose is to propose a charter and to propose amendments to an existing charter.

Charter questions can be put on the ballot (1) independently by the Commission; (2) by the city council after it sends them to the Charter Commission for review; and (3) by a citizen petition signed by at least 8,000 voters. The charter can be amended without a citizen vote, if all 13 city council members, the Charter Commission and the mayor all agree. "That usually only happens with a minor technical amendment or a change to conform to state law," Clegg said. "It happens with some regularity for those kinds of minor things."

Clegg explained that the charter is the constitution of Minneapolis. "It explains and lays out how we're governed," he said. "The charter is the reason the council has 13 wards and that council members represent wards, rather than serve at large. It explains how the mayor and the city council relate to each other and why Minneapolis has several independent boards."

Minneapolis originally adopted its charter in 1920, after several failed attempts. "It was disorganized then and has gotten worse," Clegg said. It's been amended 100 times. And the state can pass a special law related to Minneapolis that overrides the city charter. "Our charter is really a mess and that's what got us started on this project," he said.

The Charter Commission wanted to get broad buy-in to the revision process. "We wanted to have a very inclusive process," Melendez said. "We thought it would take four years, when we started in 2002. It's taken 11 years, because we wanted to be sure we heard from everybody who wanted to be heard from."

The process started with the Charter Commission doing a first draft, which was then reviewed by 15 independent readers. The readers, Melendez said, included major players from all political parties and people who had been very deeply involved in city government, such as former mayors. After the Commission developed a draft the readers were comfortable with, the draft was brought before the city attorney, all the independent boards (including, at that time the Board of Estimate and Taxation, the Park Board and the Library Board), city departments, and neighborhood organizations. Over the 11-year process, there have been four top-to-bottom reviews by the city attorney's office and five public hearings.

The current Minneapolis charter is 192 pages long; the document going to the voters for approval is 62 pages. The Commission's first draft of the revised charter was 40 pages long and removed some provisions that the Commission thought should not be in the charter, but would be better addressed in city ordinances. The Commission responded to concerns from city departments and others who disagreed with the Commission's judgment and wanted the provisions back in charter. "Whenever someone said that, we put it back in," said Melendez. So the final draft grew to 62 pages, which is still only one-third the length of the current charter.

Melendez said the previous amendments to the charter were "a patchwork," sometimes just attached at the end of the charter, rather than added to the relevant section. "Now this document is in better order," he said. "It's a modern document in plain English and has a table of contents."

In response to an interviewer's humorous comment that the revised charter would be "less fun," Melendez said, "If you make your living by people not being able to penetrate the charter, it does take away some of your fun."

The proposed changes are not "charter reform;" they're "charter revision." "It's making the charter transparent, readable and modern," Melendez said. "We're not trying to restructure anything. If this passes, the city ought to operate in the same way as it did the day before. It's removing obsolete language and provisions."

Another interviewer asked whether the city council and mayor could just approve the revisions, since they are nonsubstantive. Clegg responded that some city council members wanted the question to go to the voters, since the whole charter is being revised. "They felt it's a significant enough change, even if it's not a substantive change," he said.

He said the one substantive change is that the Charter Commission is removing some things from the charter and referring them to ordinance instead. In that case, the ordinances, or any subsequent changes to them, would only need support from a majority of the city council, instead of approval by Minneapolis voters.

Clegg said the Commission has prepared a side-by-side version of the proposed charter that shows all provisions to be referred to ordinance. It also has prepared a side-by-side version showing where provisions in the current charter are located in the proposed revised charter.

Special state laws pertaining only to Minneapolis can override provisions of the charter and voters can override special state laws. Melendez explained that when it comes to regulation of a municipality, the city charter, or any amendment to it, is of equal rank to passage of a special state law that applies to a particular city. The more recent of the two governs. The state legislature can overrule things in a city charter, but the voters can overrule special state laws applying to that specific city. "The relationship between the legislature and the city charter is retained in the revised charter," he said.

An interviewer commented that the legislature overrode a previously passed amendment to the charter providing that if the city is proposing to spend more than \$10 million on a professional sports venue, the proposal must go to the voters for approval. The legislature nullified that charter provision for the Vikings stadium, he said.

Clegg responded that the \$10 million provision is retained in the charter, but the state legislature can and did overrule it. A state special law can be passed with a majority vote of the governing body, which in this case was the city council. "Lots of times, it's easier to deal with a special law than with a charter provision," he said.

He gave the example of the former Minneapolis Library Board, which is still in the current charter, even though it is no longer in existence because of the merger of the Minneapolis and Hennepin County library systems. The merger was done by special statute, not by charter revision. The now nonexistent city library board has been taken out of the revised version.

Schwarzkopf said that many special state laws pertaining only to Minneapolis that have actually amended the charter have been incorporated into the revised charter. "We have cleaned it up by doing so," he said. "It won't change the role of the state in city government."

The mayor and city council members would probably oppose an effort to change the structure of Minneapolis city government to a strong administrator system. An interviewer commented that people in power are never interested in changing the structure of power and asked whether the Charter Commission would consider putting a charter amendment on the ballot that doesn't have the support of the mayor or city council.

"I have no problem with that," Schwarzkopf said. "I think that's what we should be doing. The Citizens League's attempts in the early '50s to get a city manager form of government went down to flaming defeat. The unions want a system like we have. They're used to it and can work with it. That would change with a city manager. We have to be practical."

"It's a dilemma to me," the interviewer continued. "People have not had a chance to weigh in on their form of government for 100 years. They might not choose that structure if they looked at it today. Is there a role for the Charter Commission to lead a discussion about the structure of government in the city?"

Clegg responded that the Commission has had those kinds of discussions before. He said if the Charter Commission put changing Minneapolis to a city manager system on the ballot, the mayor and 13 council members would probably be campaigning against it.

The interviewer commented that in 2009, when the idea for a strong administrator form of government came forward, business leaders originally supported it, but then backed off for political reasons.

Organized opposition can make charter change difficult. Clegg said it's hard for charter change to be approved if there's any organized opposition, because there's usually no organized support for change. He gave the example of the city's Board of Estimate and Taxation. A few years ago, the Charter Commission asked voters if the Board should be abolished. The Board opposed the provision, as did the Park Board, which can appoint members to the Board of Estimate and Taxation. With that opposition, he said, the charter amendment was defeated.

An interviewer pointed out that the League of Women Voters is very active in supporting the current ballot questions and that every mayoral candidate supports the revised charter.

There is no official relationship between the Minneapolis school district and the city. Clegg explained that education cannot be in the city charter, because it's a state responsibility that is delegated to local school boards. "The word 'school' is not in the charter at all," he said. "It's interesting that the mayoral candidates are all talking about education now."

The revised city charter would make charter change easier. Responding to a question about potential reforms, Melendez said the Commission didn't find anything substantive as it went through the charter. "But part of what we did was to make it easier to accomplish reforms," he said. "We did change so change could be easier."

For example, Clegg said that to adopt a city manager form of government by amending the current charter would require looking in 50 to 100 different places and making changes word by word. "With the plain-language charter, you could do it in a page," he said.

An interviewer asked if the Charter Commission will be presenting more substantive changes to the charter in the next few years. Clegg responded, "If it's germane to the charter, if it's been thought out and fully baked, and if there's at least some level of support for it, I think it deserves to be on ballot." Schwarzkopf added, "I hope we'd come back with some changes."

Minneapolis is late in modernizing its charter. Compared with other cities, Clegg said, "we're 40 years late in doing this. St. Paul amended and restated its charter in 1972. In 1974 the entire state constitution was redone." Melendez pointed out that in 2010, Congress passed a law requiring all federal regulations to be written in plain English. "We are the caboose of this train," he said.

Clegg said volunteers have done the charter revisions and it's taken a long time. "We're way behind the curve," he said. "But we think we've got a very good product here that simplifies and modernizes our charter."

A modern, plain-language city charter could make Minneapolis more economically competitive. An interviewer asked how important the charter is to the economic competitiveness of the city. Schwarzkopf responded that a revised charter could make it easier for developers to understand that they must work with the Community Development and Planning Departments, that those departments are basically run by city council members who are chairs of those committees, and that the mayor now has a hand in appointing heads of city departments. "If you know those things, you can come in and work with that government to do whatever a developer wants to do," he said.

Clegg added that if a business moves to Minneapolis, it will have to interact with the city. "If in making that decision, you get to the current charter, you realize you will have to hire a lawyer who knows the charter," he said. "The charter is probably not going to be the deciding factor, but it certainly adds to the burden that somebody who's coming in has to deal with to do business in the City of Minneapolis." Schwarzkopf added, "That does put us at a competitive disadvantage."

Melendez said people are less likely to invest in the city because "the charter is a dense, impenetrable document. If people could read the charter, we'd have a more transparent government."

An interviewer commented that one could argue that it's a foundational thing to have a good charter. Schwarzkopf agreed. "A charter is part of the infrastructure of a city, so anybody coming in can find out how it works. It's like streets or parks."