



# Barry Clegg

In times of crisis or conflict of personalities, the city doesn't work

An interview on Minneapolis City Charter reform

*February 12, 2021*

On February 12, 2021, the Civic Caucus interviewed Barry Clegg, chair and longtime member of the Minneapolis Charter Commission, about several potentially controversial City Charter amendments being proposed for the November 2, 2021, city election.

Clegg discusses an amendment being proposed by the Charter Commission that would give more executive power to the mayor, while making the City Council's role a legislative one--an executive mayor/legislative council system. He says the Charter Commission's intent is to solve the "14-boss problem." Department heads report to the mayor and 13 Council members. The mayor has the executive title, but no responsibility; the Council has the authority, but no accountability.

Clegg also discusses two amendments proposed by the City Council, one giving the Council more power over city public-safety departments and policies and one allowing rent control in Minneapolis. He brings up another potential amendment that would disband the city's Police Department.

### **Notes of the Discussion**

(Responses are edited.)

## **Background**

**00:00 - The Civic Caucus** (Janis Clay)

**00:47 - Introduction of Barry Clegg** (Lee Munnich)

**Munnich:** Barry Clegg is one of those great citizen leaders who's flown below the radar. He's been a member of the Minneapolis Charter Commission since 2003 and chair since 2010. From 2010 to 2021, he's been honored as one of the best lawyers in America. [Other information about Clegg's employment as an attorney and his community involvement is detailed in his complete biography at the end of the Discussion section.]

**Opening Remarks.** (Barry Clegg)

**02:36 - What is the Charter Commission? How does a Charter amendment get on the ballot?**

**Clegg: City charters are provided for in the Minnesota Constitution.** Every charter city-as opposed to statutory cities-has a charter commission. Charter commissions are how cities adopt city charters and amend them.

**The Minneapolis Charter Commission has 15 members, all appointed by the Hennepin County District Court through its chief judge.** All commissioners must be qualified voters in the city and are appointed to four-year terms.

**There are several ways a proposed charter amendment can be put on the ballot for city voters to approve or turn down :**

- The **Minneapolis Charter Commission** can put a proposed charter amendment on the ballot, without the approval of the City Council.
- The **City Council** can send an amendment proposal to the Charter Commission, which has at least 150 days to review it. Even if the Charter Commission disagrees with the City Council, the proposed amendment can go on the ballot if the Commission has had at least 150 days to review it.
- A **citizen or group of citizens** can put an amendment on the ballot by getting signatures of registered Minneapolis voters equal to at least five percent of the voters in the latest election. For the November 2021 election, 11,992 valid signatures would be required. The City Clerk reviews the signatures in detail to be sure they are valid. To be sure there are enough valid signatures, the petitioners should get 18,000 or 20,000 signatures.
- If a proposed amendment is approved by the mayor, the Charter Commission and all 13 City Council members, it's called an **amendment by ordinance** and doesn't need approval by the voters. Those tend to be on noncontroversial issues. But the amendment by ordinance can be called back to be put on the ballot by a petition signed, again, by a number equal to at least five percent of the voters in the last election.

The **Charter Commission looks at six different criteria in deciding whether to put a proposed amendment on the ballot:**

1. Is the amendment **germane** to the City Charter?
2. Is the amendment **well-considered, not half-baked?** Has it had a chance to get **public input?**
3. Is the amendment **clear and specific?**
4. Does the amendment **interfere with or take away any rights of the voters?**
5. Is the amendment **in keeping with state law?**
6. Is the amendment **necessary to accommodate its intended objective?**

**08:03 - What are the possible charter amendments in the works for the 2021 Minneapolis election?**

**Clegg:** There are several amendments being considered this year:

- The City Council is proposing two amendments : **a rent-control amendment and a public-safety amendment.** There's a state law giving cities of the first class the

power to enact rent control, but only if it's allowed in the cities' charters. The public-safety amendment would give the City Council more control over public-safety departments and policy.

- A petition is being circulated that proposes an amendment that **would eliminate the Police Department in its entirety.**
- The Charter Commission is proposing an amendment which would **change the city's governance structure to an executive mayor/legislative council system.**

**09:27** - What is our current governing system in Minneapolis and how did it become so inefficient?

**Clegg: We don't really have a weak mayor system now.** In a true weak mayor system, the mayor wouldn't have a veto and wouldn't be primarily responsible for the budget. In Minneapolis, the mayor does have veto power and is responsible for the budget.

**We have sort of a hybrid system and it's unique in the country.** Our City Charter was created in 1920 after the voters had rejected several proposed charters. Within even a few years, the Charter was criticized because the city lacks a central authority. The City Council has always had a role in administration and is able to appoint and reappoint department heads.

**That was changed in the late 1980s under Mayor Don Fraser with the formation of the Executive Committee**, which comprises the mayor, the City Council president and three other Council members. Still, the City Council is primarily in charge of the appointment of city department heads, confirming them and deciding whether to reappoint them.

**11:26** - What is the Charter Commission's proposed charter amendment for 2021?

**Clegg: The Charter Commission's proposed amendment is to change the city's governance structure to an executive mayor/legislative council system.** Under the proposed system, the mayor would be responsible for the appointment of department heads, subject to confirmation by the City Council. **The department heads would serve at the pleasure of the mayor.** They would serve four-year terms, concurrent with the mayor's, although the mayor could remove them at any time.

There is a subcommittee of the Charter Commission currently working on the proposed amendment and massaging the language. **The Commission will make the proposed amendment public in March and then hold virtual public hearings on it.** The Commission hopes to get it on the ballot by April or May for the November election.

The City Council is responsible for determining the language of the amendment as it goes on the ballot, but the City Attorney's office actually drafts the language. The City Attorney represents both the Charter Commission and the City Council.

Also, we have a very active Council. **During the unrest in 2020, there was a Council member on the street trying to give orders to the police that were contrary to the orders through the chain of command.** Right now, we have the city Office of Emergency Management, 911, the Office of Violence Prevention and the Fire Department, all of which are under the authority of the City Council, not the mayor.

**The Police Department would benefit greatly from this amendment in terms of direct accountability and structure.**

(See the entire Charter Commission draft amendment proposal by clicking [here](#).)

**15:35 - What are the problems that would lead you to propose this kind of change? (Clarence Shallbetter)**

**Clegg: In shorthand, it's the 14-boss problem. Department heads report to the mayor and 13 Council members.** The mayor has the executive title, but no responsibility; the Council has the authority, but no accountability.

The Charter Commission talked to 18 out of the 22 city department heads, with the promise of anonymity. **There was unanimous agreement that our current system doesn't work.** One department head said, "Our system is inefficient in the best of times; in crisis, it just doesn't work at all." There are situations where Council members show up in department heads' offices and give them lists of things to do, even if those things are not in compliance with city ordinances or policies.

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***the Council has the authority, but no accountability.***

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**We're trying to give executive authority to the mayor and the legislative role to the Council.**

**17:45 - What do you make of the separation between executive and legislative authority in terms of setting policy direction? A significant number of Council members might agree with one policy, but the mayor might disagree. (Clarence Shallbetter)**

**Clegg:** **The mayor has the power of the veto which gives the position major input on policy.** If a policy or ordinance is vetoed by the mayor, the Council needs nine votes, instead of seven, to override the veto.

**The Charter Commission's proposed amendment would give the mayor the power to appoint department heads.** The mayor could say, "You all work for me. If City Council members show up in your office, tell them to talk to me."

**20:49** - Does the Minnesota Legislature have any role in what the Minneapolis Charter Commission does? (Pat Davies)

**Clegg:** For the four cities of the first class, which include Minneapolis, the Legislature can pass a special law to amend a city's charter. If that happens, the city council or the voters have to agree to the amendment.

**22:04** - How will the lack of budget and staffing of the Charter Commission affect the upcoming high-profile election? (Janis Clay)

**Clegg:** The 15 citizens of Minneapolis on the Charter Commission-all appointed by the chief judge of Hennepin County District Court-work for free. The Commission has no budget. It's supported by the City Clerk's office and the City Attorney's office. Casey Carl is the City Clerk.

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*This amendment will have a tough row to hoe.*

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**The Commission has no resources to advance a proposed amendment to the public** once it's on the ballot. Usually, there is no big "vote yes" effort for an amendment, only "vote no" efforts. This amendment will have a tough row to hoe. It's supported by the mayor, but opposed by some Council members.

**25:06** - When would the amendment from the Charter Commission go into effect-right away or after the following election? (Paul Gilje)

**Clegg:** **This amendment would take effect 30 days after approval by the voters.** The Commission asked the city department heads how long it would take to implement this amendment and the heads of the police, public works and other big departments said, "This can't wait."

**26:25** - What methods have been used in the past to gain support for change against highly organized opposition? What methods are available that have worked in the past and might work in the future? (John Adams)

**Clegg: Support from civic organizations is great.** The League of Women Voters supported the plain-language City Charter amendment a few years ago. During a League-sponsored, mayoral-candidate debate at the time, all eight candidates in the debate said they favored the amendment. After that, there was no opposition to it going forward.

**John Adams** commented that the newspaper used to cover Charter amendments.

**Clegg** replied that there will be lots of publicity about this, including statements from former elected officials, because the proposed amendment so significantly affects the governance of the city.

**28:52 - How do you respond to those who might be concerned that the executive branch might ignore the legislative policies passed by the City Council?** (Paul Ostrow)

**Clegg:** The Council can remove the mayor for cause. That would include the mayor ignoring a legitimate ordinance passed by the Council.

**The Charter Commission felt going to an appointed official, such as a city manager, as the executive of the city was a bridge too far for Minneapolis voters.** The voters will want the chief executive to be elected.

The City Coordinator is responsible for running departments, such as 911, not mentioned in the Charter. The City Council can create and abolish noncharter departments, but only the voters can create or abolish a Charter department.

The Police and Fire Departments are Charter departments, as are about half of the 22 departments in the city.

**32:10 - Could the Charter Commission create a referendum committee to promote amendments, the way the school boards often do to gain support for referenda?** (Lyndon Carlson)

**Clegg:** The Charter Commission can do that. Informally, that happens now.

**34:00 - It's alarming to have half a million dollars from a Washington, D.C., nonprofit coming in to support the City Council's public-safety amendment. Could the Charter Commission look at how a locally financed effort could take place?** (Paul Ostrow)

**Clegg:** That's why it's so hard to pass a Charter amendment.

**35:10 - Why was the Charter Commission originally created as an entity with volunteer members and no funding?** (Helen Baer)

**Clegg:** The Charter Commission is in the state Constitution and was created by the Legislature. State law provides that cities should pay legal expenses for the Commission up to \$25,000 per year, but in Minneapolis, the City Attorney's office represents the Commission at no cost, so that isn't necessary.

**36:20** - *Seeking a stronger, more efficient city hall* . (Star Tribune editorial, February 11, 2021)

**Clegg:** This *Star Tribune* editorial supports the Charter Commission's proposed amendment.

**36:46** - How would you compare the changes proposed by the Charter Commission's amendment to what St. Paul has today? (Paul Ostrow)

**Clegg:** Under the proposed Minneapolis amendment, department heads would go before the City Council every four years, concurrent with the mayor's term.

In Saint Paul, department heads are appointed by the mayor, confirmed by the City Council, serve as the pleasure of the mayor and never have to go back before the Council again.

**37:46** - Are you getting support for the amendment from the labor movement in Minneapolis? Should they be involved? (Pat Davies)

**Clegg:** The labor movement really hasn't been involved. I think it would make sense for them to be involved. Minneapolis would run much more efficiently, with less turnover, particularly at the highest levels.

**38:22** - Who currently is involved in negotiating contracts with city employees? Who sets the parameters on the city's side? Who would do that under the Charter Commission's proposal? (Clarence Shallbetter)

**Clegg:** Currently, that's usually the Executive Committee. Staff members actually go into the room with the labor negotiators and then report back to the Executive Committee. Under our proposal, the Executive Committee would go away. The negotiations would, in all likelihood, be done by the mayor's office, with input from the City Council committee with jurisdiction over the area being negotiated.

**Paul Ostrow** commented that all meetings of the Executive Committee dealing with bargaining are private.

**41:18** - Could you expand on the 14-boss problem? (Lee Munnich)

**Clegg:** The 14-bosses argument is an easy way to summarize the problem. If City Council members independently direct department heads to do certain things, it's not by policy or ordinance or staff direction.

**43:19 - How would the 14-boss approach being recommended currently by the City Council aggravate, rather than solve, the problems in the Minneapolis Police Department? (Lee Munnich)**

**Clegg:** Currently, the City Charter provides that the mayor has "complete power" over the Police Department . Theoretically, the police chief has one boss. **But the Council acts through its Public Safety Committee and by giving directions to the police to exert power** over the department. Under the 14-boss approach, the Police Department would be the same as all other city departments, which would be even worse than it is now.

**45:31 - How important has the staff leadership of Minneapolis City Clerk Casey Carl been on the Charter amendments? (Paul Ostrow)**

**Clegg:** The job of the city clerk is to support the City Council and to support the Charter Commission. The office has done a very good job in giving resources to the Charter Commission's amendment work. I suspect the office will also take a role in the Council's amendment proposal.

**47:14 - Does your proposal envision a city administrator to be under the mayor? Who under your proposal would be handling city employee contracts? (Pat Davies)**

**Clegg:** No, under the Charter Commission's proposal, there would still be a city coordinator, who would be nominated by the mayor, approved by the City Council and would serve at the pleasure of the mayor. **Under this proposal, the Executive Committee would be eliminated and the Council and the mayor would have to agree on how to conduct future labor negotiations. Likely, they would be handled by a combination of the mayor's office and the appropriate Council committee.**

**49:03 - How can we publicize the connection between the Police Department failure and this Charter amendment as a way to make the Police Department work better? Could this be a functional marketing strategy? (Walt McClure)**

**Clegg:** The city attorney has opined that the City Council has the same authority over the police now as over other departments: the power of the purse.

**Lee Munnich** commented that polls show that the City Council is not very popular at all right now; the mayor is slightly more popular; but the police chief is popular. **It'll be a mess if the Council tries to run the Police Department.** We need to look at other things,

like state laws over arbitration and changing the culture of the department. You can't run a department with 14 bosses.

**Clegg:** That's not reform.

**54:01 - How do the lines of authority at the state and municipal level interact with police contracts, arbitration and police disciplinary issues? (John Adams)**

**Clegg:** Most Republicans at the Legislature are opposed to anything that the law enforcement community is against. Most Democrats support labor-related causes. The Police Department is subject to the state Public Employment Labor Relations Act (PELRA), as are all police departments in the state. Carving up PELRA would probably be opposed by both sides of the aisle.

**55:25 - The city's disciplinary process has been horribly broken for years. How do you tie this issue to the Charter? (Paul Ostrow)**

**Clarence Shallbetter** asked if the mayor can take action on the Police Department or try to make these changes through state law.

**Clegg:** It depends on what the bargaining agreement says. **There are a lot of police officer protections built into the bargaining agreement.** Some were bad ideas. And a lot is built into state law. After George Floyd's murder, the Legislature passed a bill making a few changes and saying cities of the first class, which include Minneapolis, can look at having a residency requirement for police. Before, that was prohibited by state law.

**59:29 - How, specifically, would things change in the administration of the Police Department under your new Charter amendment? (Dana Schroeder)**

**Clegg:** **Under the proposed Charter Commission amendment, all public-safety staff would come under the authority of the mayor** : the Police Department, the Fire Department, the Emergency Management Office and the Office of Violence Prevention. All department heads, who would serve four-year terms, would have to be confirmed by the City Council, after being nominated by the mayor.

The public-safety department heads would serve at the pleasure of the mayor. Currently, only the Executive Committee can terminate the police chief. But this amendment would abolish the Executive Committee.

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*or a conflict of personalities, it doesn't work.*

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Any civil settlements against the police are currently approved by the Council. That wouldn't change. The mayor can, however, veto those settlements.

**1:03:33** - Do you feel that support is growing for your amendment? (Pat Davies)

**Clegg:** I think there is support this year, which is a reason to do it this year. During good times, in the absence of a crisis and if personalities mesh, the city works. It's not efficient, but it works. When it comes to a crisis or a conflict of personalities, it doesn't work. I think people are seeing that this year more than ever and are more likely to support structural change.

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*without a crisis. We're in crises because of the way*

*the system works now."*

- Former Minneapolis City Council President Paul Ostrow

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**1:04:42** - Has the Charter Commission done anything to estimate potential cost savings from this proposal? (Clarence Shallbetter)

**Clegg:** No. There would be some savings in cost, time and efforts, but we can't quantify that.

**Paul Ostrow** commented that it's really about productivity. The magnitude of day-to day staff time spent in meetings with Council members over administrative matters is hard to get your hands around.

**1:06:52** - How many votes does it take to pass a Charter amendment in Minneapolis? (Pat Davies)

**Clegg:** We're likely to have lower turnout in the 2021 election than in 2020, because it will only be a municipal election. **By state law, a Charter amendment must be approved by 51 percent of those voting on the amendment.** If it involves alcohol, it must pass by 55 percent of those voting.

**Paul Ostrow** commented that it's not so much that the system works without a crisis. **We don't want people to think the city works without a crisis. We're in crises because**

**of the way the system works now.** The message should be that things are becoming crises that wouldn't have if we had the right kind of government.

**Clegg:** Sometimes there are conflicts over an issue that don't get resolved under the current system.

**1:09:35 - Could you say something about the rent control amendment being proposed by the City Council? (Lee Munnich)**

**Clegg:** In the 1980s, the Legislature passed a law stating that cities of the first class could have rent control only if it were authorized in their city charters. **If the amendment were approved this fall, the City Council would still have to pass a rent-control ordinance to implement it.**

The proposed amendment will come before the Charter Commission for review and the Commission would probably not get in the way of it. **Paul Ostrow** commented that by letting the proposal go on the ballot, it wouldn't mean the Commission supports it.

**Clegg:** No. If the City Council brings a proposed amendment to the Charter Commission for review, the Commission can either accept the Council proposal, reject it or suggest a substitute.

**1:14:20 - Could you talk about the language of a proposed amendment that goes on the ballot and how that's determined? (Lee Munnich)**

**Clegg:** The Charter Commission attaches language for any amendment it proposes and usually that goes on the ballot. The City Council could change the language, although the members usually act in good faith. The City Attorney's office comes up with the final language.

**1:17:39 - Is there a chance that conflicting or contradictory amendments could end up on the ballot before the voters and they could pass contradictory amendments? (Janis Clay)**

**Clegg:** **Yes, there is.** The amendment proposed by the City Council moves more responsibility for police to the Council, as opposed to the mayor in the Commission's proposed amendment. If those both pass, then what happens?

**1:19:18 - There was some discussion in a committee of the Charter Commission about including disciplinary action towards the City Council if members got involved with direction of the department heads. Is this still under consideration? (Clarence Shallbetter)**

**Clegg:** We took that out at the Commission's last meeting, because we thought it would make us vulnerable leading up to the election. We're still looking at similar language, but without removal from office or other disciplinary measures.

**1:20:56 - Could that be in the ethics code? Could the ethics code appropriately be put before the voters as a Charter change? (Paul Ostrow)**

**Clegg:** The ethics code has never been in the City Charter before, but there's no reason why it couldn't be.

**Walt McClure** commented that attempting to put the ethics code into the Charter would be a big mistake, because it would dilute things.

**1:22:12 - How would this proposal change the role of the president of the City Council as the policy spokesperson for the city? (Clarence Shallbetter)**

**Clegg: It would affect that role.** The City Council president is arguably one of the most powerful politicians in the city right now, because the Council is involved in administration. That would change under the Charter Commission's proposed amendment. But the president should have a policy role.

**1:24:17 - Could the analogy to the legislative and executive branches of the federal government be a way to market this Charter amendment and make it resonate with Minneapolis voters? (Helen Baer)**

**Clegg:** It could be. **Most people are familiar with how the state and federal governments work.** The Charter Commission's amendment changes the system to be the way it is in virtually every other mayor/council system in the country: the mayor does the administration and the council does the legislating.

**1:25:26 - Would the mayor be the chair of the City Council in this proposed Charter amendment? (Pat Davies)**

**Clegg:** That's usually not the case in a mayor/council system.

**1:29:01 - Can you see any role for the mayor or the City Council in education? (Paul Gilje)**

**Clegg:** No. **The city has no role in education at all.** The schools are not mentioned in the City Charter. The state is in charge of education and gives local responsibility to the school boards. The mayor and the Council could go to the Legislature about education issues. A proposed structuralchange would have to come to the Legislature.

Former Mayor R.T. Rybak proposed that the mayor appoint several members of the school board. The proposal went to the Legislature, but never made any progress there.

**Clarence Shallbetter** brought up the issue of education disparities in Minneapolis.

**Clegg:** You can't lay those at the foot of the mayor and the Council.

**1:33:57 - Would the Charter Commission's amendment affect the Park Board?**  
(Pat Davies)

**Clegg:** No. Minneapolis has a unique system. The Park Board is independent and is in charge of the parks. It has its own budget and its own seat on the Board of Estimate and Taxation. The mayor can veto a Park Board ordinance, but the board usually votes to override any veto.

**1:35:18 - Did you consider the 1969 Citizens League recommendation that the offices of the mayor and the City Council president be merged?** (Dana Schroeder)

**Clegg:** There are mayor/council systems where that's done. But the Charter Commission decided that the Charter amendment most likely to succeed is one with incremental change. Let's make this easy for the voters to understand.

**1:37:58 - What kind of outreach are you and the other charter commission members doing to increase public awareness?** (Lee Munnich)

**Clegg:** I'm committed to doing presentations like this through the fall election. I'm the spokesperson for the Charter Commission, but we will authorize any other member of the Commission to speak about the amendment and to participate in "Vote Yes" political efforts.

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## Biography

Barry Clegg is chair of the Minneapolis Charter Commission. He has served as a commissioner since 2003 and as chair since 2010.

Clegg is an attorney with Lathrop GPM and practices in the areas of mergers and acquisitions, tax law, cooperative law, agricultural law and closely held businesses. He has worked extensively with corporate, partnership, joint venture, cooperative and individual clients. He is also a frequent lecturer at seminars on corporate and tax issues. He has been honored by *The Best Lawyers in America* from 2010 through 2021.

In addition to his work on the Charter Commission, Clegg's other community involvement includes serving on the board of Neighborhood Housing Services from 1985 to 2015, serving as a commissioner on the Minneapolis Commission on Civil Rights from 1986 to 1998, and serving on the board of the Mississippi Park Connection, starting in 2017.

Clegg received a B.A. from the University of Minnesota, an MBA from the University of Southern California and a J.D. from the University of Minnesota Law School.

## Present on Zoom interview

John Adams, Helen Baer, John Cairns (vice chair), Lyndon Carlson, Janis Clay (chair), Barry Clegg, Pat Davies, Paul Gilje, Walt McClure, Lee Munnich, Paul Ostrow, Dana Schroeder (associate director), Clarence Shallbetter.