



A Place To Call Home

Charter Committee

Report to the Henderson City Council August 2, 2016

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Summary

The Henderson Charter Committee was created by statute in 2013 and is required to meet every two years to *“review the Henderson City Charter and make recommendations to the City Council regarding necessary amendments to the Charter.”* (Henderson Municipal Code 2.50.330) The Committee met five times in 2016 and included the following topics in their discussions: voting by ward, combining municipal elections with statewide general elections, operations of the Municipal Court, and voting by mail. The Committee also updated its bylaws in accordance with Henderson Municipal Code and Nevada Revised Statutes.

Throughout the discussions regarding elections there was a general consensus to discuss efforts to increase voter turnout during municipal elections. As a result of their discussions, the Committee recommended that the City Council seek a change to the City Charter to reflect the proposed language presented by the City Clerk to provide the option to use an all-mail ballot election system. (See Appendix A.)

BACKGROUND

In 2013, the City of Henderson sought to amend the City’s Charter to better reflect current City practices. The Charter had not been amended in more than ten years. The Charter amendments proposed in Senate Bill 440 (2013) were the result of comprehensive review and collaboration from every department in the City of Henderson.

During the legislative committee process Senate Bill 440 underwent minor amendments, most of which served to clarify the City’s intent regarding the bill’s provisions. The only substantive amendment involved the creation of a *Charter Review Committee*, which legislators urged would give the public more input into the charter amendment process. The changes made in Senate Bill 440 were codified in the Henderson City Charter as Sections 1.120 – 1.140. Pursuant to this change, the City Council also adopted Henderson Municipal Code 2.50.330, which created the City’s Charter Committee.

As stated in the committee bylaws, “... *the purpose of the Charter Committee shall be to review the Henderson City Charter and advise the City Council with regard to its recommendations to the City Council regarding necessary amendments to the City Charter.*” The Charter Committee is comprised of thirteen members of whom seven are appointed by the Mayor and Council and the remaining six appointed by state legislators. The committee is required, at a minimum, to meet in March of every even year and must present its recommended Charter changes to the City Council for their consideration and approval.

The members of the 2016 Charter Committee are as follows:

Mayor & Council Appointees

Jennifer Carleton
Lou Cila
Erin McMullen
Tina Past
Dr. Walt Rulffes
Nicholas Vaskov
Joseph Zerga

Legislator Appointees

Virginia Bear-Finnegan
Charlene Frost
Edward Gonzalez
Terry Mannion
Robert McNinch
John Simmons

PUBLIC MEETINGS

To encourage public involvement, Charter Committee meetings are publicly noticed in accordance with Nevada's Open Meeting Law. Agendas, backup and minutes of each meeting are posted on the City's website.

First Meeting – March 29, 2016

The Charter Committee received welcome remarks from City Manager Bob Murnane, as well as background information on the Committee's creation and its purpose.

Following committee member introductions, the Committee elected Jennifer Carleton as Chair and Nicholas Vaskov as Vice-Chair.

Assistant City Attorney Brent Gunson presented recommended amendments to the Charter Committee bylaws. These amendments would reduce the requirement for approval of recommendations to the City Council from a two-thirds majority of members present at the meeting to a simple majority. In response to questions regarding the proposed change, Mr. Gunson stated that it was in order to be consistent with both the Henderson Municipal Code (HMC) and Nevada Revised Statutes (NRS). Committee members recommended some word changes for clarity, which staff accepted for an updated draft. Approval of the bylaws would be agendaized for the following meeting.

Director of Public Affairs Javier Trujillo presented an overview of the 2014 Charter Committee and their Final Report. Additionally, City Attorney Josh Reid presented an overview of the City Charter and updates to "Home Rule" authority granted by the 2015 Legislature through Assembly Bill 493.

Finally, during Chairman / Member Comments, Committee members requested future presentations on voting by ward and the operations of the Municipal Court.

Second Meeting – April 26, 2016

The Committee approved the recommended changes to the bylaws unanimously.

Per the March 29th request by Committee members, Assistant City Clerk Stacey Brownfield presented the following background information regarding voting at large:

- Prior to 1963, Henderson council members were elected by ward.
- From 1963 – present, voting has been done at large.
- In 1973, a question was posed to voters to change the system to voting by ward. This question did not pass.
- In 2011, Senate Bill 304 was introduced to change Henderson and other cities in Nevada to voting by ward. It was passed by the legislature, but vetoed by the Governor.
- In 2013, Senate Bill 457 was introduced to change Henderson and other cities in

Nevada to voting by ward. It was passed by the legislature, but vetoed by the Governor.

- In 2015, Senate Bill 368 and Assembly Bill 458 were introduced to change Henderson and other cities in Nevada to voting by ward, but both failed to meet first house deadlines.

While the Charter Committee had explored the issue of voting by ward in 2014, Committee members requested it be on the agenda for further discussion. Additionally, Committee members had questions regarding combining the municipal election with the statewide general election in even years.

In response to a question from the Committee, Director of Public Affairs Javier Trujillo stated that it has been the City's position that any change to the voting process go to the voters for a decision. Mr. Trujillo reviewed what occurred at the last session of the Charter Committee and noted that a motion to recommend voting by ward to Council was defeated and a motion for an advisory question on this issue had been defeated as well under the previous bylaws.

Responding to a question by Mr. Gonzalez regarding the idea of moving the date of the municipal election to the general election, Mr. Trujillo said the combined elections discussion was held during the 2014 Charter Committee. The City Council currently has the option of combining elections within its authority under the Charter. Mr. Gonzalez requested historical information regarding the combining of municipal elections. Chair Carleton requested that members be provided with the minutes from the 2014 Charter Committee regarding the discussions of voting by ward and combining elections.

Per the March 29th request by Committee members, Senior Assistant City Attorney Rory Robinson gave a PowerPoint presentation on the Henderson Municipal Court, organized under Article IV of the Henderson City Charter, and the impact of the City of Sparks v. Sparks Municipal Court case. That case stated that the Municipal Court was a separate branch of government and entitled to control its own budget once set by a city council. In response to that case, the City of Henderson entered into a memorandum of understanding (MOU) with the Municipal Court to clarify budgeting and employment practices.

In response to a question, Vice-Chair Vaskov commented that he requested this agenda item and said the MOU is completely appropriate. However, he requested additional information on the financial snapshot of the Municipal Court and whether bench warrants and other fees that are attached to municipal cases lead to a disproportionate number of individuals from disadvantaged communities being incarcerated for an inability to pay.

City Manager Bob Murnane responded that he is confident that everyone is comfortable with the current system. The City has no problem providing the financial information regarding the Court to the Committee members. Mr. Murnane also noted that the Court

has mitigated impacts to the disadvantaged with programs and other methods. Municipal Court Administrator Bill Zihlmann did provide the Committee with a presentation at the next meeting.

Third Meeting – May 24, 2016

Per the April 26th request by Committee members, Director of Public Affairs Javier Trujillo confirmed that members were e-mailed the minutes of the 2014 Charter Committee regarding voting by ward and combined municipal elections. There was no further discussion on voting by ward.

In response to a question from the Committee, City Attorney Josh Reid stated that Council could shorten their term of office under Section 5.020.4 in order to combine municipal elections with the statewide general election.

The Committee debated the effect of combining municipal elections with the statewide general election on voter turnout. City Clerk Sabrina Mercadante reported that combining municipal elections might reduce voter turnout because the municipal elections would be at the end of the ballot. It is common for voters to experience fatigue on long ballots. There was a consensus on the importance of increasing voter turnout.

Mr. Trujillo stated that discussions regarding the mandating of combined elections have taken place in Carson City for many legislative sessions; however, no progress has been made. He explained that a chief concern of combining elections is the lack of resources to run campaigns and voter fatigue. Mr. Trujillo again noted that the City Council already has the authority to move in that direction if desired.

Responding to a question as to limitations on an all-mail ballot, City Clerk Sabrina Mercadante said per state law, Henderson can only do an all-mail ballot for a ballot that has one question or one race on it. Staff is pursuing the possibility of an all-mail ballot for full municipal primary and general elections. Ms. Mercadante also stated the Nevada Municipal Clerk's Association is pursuing the issue at the legislature.

Chair Carleton suggested staff provide a presentation on mail-in ballots for informational purposes. City Attorney Josh Reid commented that it might be helpful to have an action item on the next meeting agenda with specific language to discuss the information provided by the City Clerk.

Per the April 26th request by Committee members, Municipal Court Administrator Bill Zihlmann presented information on the Municipal Court budget and the apportionment of fines to various accounts as prescribed by state law. The Court receives \$10.00 for the court construction fund and \$7.00 for the technology fund. He noted these funds have very specific limitations on how they can be used. In response to a question, Chief Financial Officer Richard Derrick replied that during the previous year, the cost of operations in the

Municipal Court was \$6.6 million and revenue was \$4.3 million. He stated the Municipal Court is not a profit center. Mr. Derrick said the cost for the criminal prosecutors housed in the Municipal Court is an additional \$3.4 million. He noted there are ongoing costs to taxpayers from the General Fund to operate the Municipal Court.

In response to questions regarding how missed payments are addressed, Mr. Zihlmann said people who do not appear for a court date are sent a courtesy notice through regular mail. A warrant is then issued for their arrest if the person does not respond. He also stated that they use mail addresses because that is the information received from the police department. He noted that they are looking at adding email notifications or text messages if police officers capture the information when citations are written. Mr. Zihlmann also noted that payment options are afforded to individuals upon request and people can pay fees online or in person with a clerk. Another option is the work program (community service) through the Alternative Sentencing division. Finally, a warrant walk-in program allows people to pay their warrants without being arrested.

Fourth Meeting – June 21, 2016

As per the May 24th request by Committee members, City Clerk Sabrina Mercadante gave a presentation on all-mail ballot voting, including: the process for receiving and returning ballots, accommodations for disabled voters, election day drop off sites for optional return of ballots in person, signature inspection, and an inspection board for disputes. She noted that this would be permissive and that municipal governments would have the option to use an all-mail ballot at their discretion. She also discussed potential advantages and disadvantages, provided statistics from other states that use all-mail voting, and estimated the cost to be about \$364,000. She noted that the City and the County are in discussions about the cost of municipal elections and this was comparable to the County's most recent estimate of approximately \$315,000.

Members of the Committee asked questions for her to consider as she gathers information with the Nevada Municipal Clerk's Association including: the mechanics of voting by mail in other states, outreach to disadvantaged and homeless populations, the cost per vote for an all-mail ballot versus the current system, and what those states do to mitigate fraud.

In response to a question from the Committee, Director of Council Support Bud Cranor indicated a survey of Henderson residents is going out shortly that would include a question regarding all-mail ballots.

Ms. Mercadante presented language drafted by the City Attorney's Office that would change the City's Charter to give the City Council the option for using an all-mail ballot. The draft language is included in Appendix A.

Ms. Bear-Finnegan introduced a motion recommending that the City Council seek a change to

the City Charter to reflect the proposed language presented by the City Clerk to provide the option to use an all-mail ballot election system. (See Appendix A.) Ms. Past seconded the motion.

The roll call vote favoring approval was: Those voting aye: Vaskov, Cila, Bear-Finnegan, Mannion, McNinch, Past, Rulffes, and Simmons. Those voting nay: Gonzalez. Those absent: Carleton, Frost, McMullen, and Zerga. Those abstaining: None.

Vice-Chair Vaskov declared the motion carried.

Fifth Meeting – July 19, 2016

Discussion and approval of the Committee's final report to the City Council.

CONCLUSION

The Committee voted to recommend that revisions be made to the Henderson City Charter, Article V, Elections, to provide the option to use an all-mail ballot election system. This concludes the committee report of the Charter Committee. On behalf of the members of the Committee, I present this report for your consideration.

Jennifer Carleton
Committee Chair

Appendix A

DISCUSSION AND POSSIBLE RECOMMENDATION REGARDING REVISIONS TO THE HENDERSON CITY CHARTER, ARTICLE V, ELECTIONS, TO PROVIDE THE OPTION TO USE AN ALL-MAIL BALLOT ELECTION SYSTEM

POTENTIAL CHARTER LANGUAGE

Section 5.030 - Applicability of state election laws; elections under City Council control; mail ballot election.

1. All elections held under this Charter are governed by the provisions of the election laws of this State, so far as those laws can be made applicable and are not inconsistent herewith.
2. The conduct of all municipal elections is under the control of the City Council. The City Council shall by ordinance provide for the holding of the election, appoint the necessary officers thereof and do all the things required to carry the election into effect as it considers desirable and consistent with law and this Charter.
3. The City Council may adopt an ordinance to conduct a primary municipal election, general municipal election or special election in which all ballots must be cast by mail. The provisions of NRS 293C.265 to 293C.302, inclusive, 293C.305 to 293C.340, inclusive, and 293C.355 to 293C.361, inclusive, do not apply to an election conducted pursuant to this subsection. For the purposes of an election conducted pursuant to this subsection, each precinct in the City shall be deemed to have been designated a mailing precinct pursuant to NRS 293C.342.