
METROPOLITAN CHARTER REVISION COMMISSION
MINUTES OF MEETING

April 12, 2019

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The Metropolitan Charter Revision Commission met on April 12, 2019 in Committee Room 2, Suite 205, Metropolitan Courthouse, 1 Public Square, Nashville, Tennessee, 37201. The following members of the Commission were present: Dewey Branstetter, Chairman; Hal Hardin, Vice-Chairman; Susan Short Jones, Lorinda McLaughlin, and Jim Murphy.

The meeting was called to order at 2:02 p.m. and the first order of business was the approval of minutes of the March 8, 2019 meeting. Upon motion by Murphy seconded by McLaughlin the minutes were approved as presented.

The Clerk announced the appeal rights for parties before the Commission as required by Metropolitan Code of Laws Section 2.68.030.

The next order of business was the consideration of Resolution number RS2019-1617. The Chairman opened the public hearing on the Resolution and the proposed Charter Amendments incorporated therein. The Chairman asked the sponsor of the Amendment to address the Commission first. Amendments Nos. A and B introduced by Councilmember Dave Rosenberg. Councilmember Rosenberg gave a brief explanation of the concept of ranked choice (also known as instant runoff) voting procedures. The reasons he gave in support of the

amendment were that it enfranchises voters; relieves burden of runoffs; provides greater candidate equity due to cost savings; reduces cost of elections to the city; encourage more civil discourse in campaigns; reduces the burden on polling locations; facilitates earlier seating of elected officials; provides a strategic method for placing one's vote; and increases diversity in voting results. Councilman Rosenberg indicated that the language regarding the provision being "repugnant to state law" has been changed in the new version of the amendment, and which also addresses what would happen in the event of a legal challenge, and clarifies the ballot language to be more linguistically accessible to voters. Commissioner Murphy asked Councilman Rosenberg to expound on pending administrative and legislative processes at the state level. Rosenberg stated that State administrative action is still working through the Election Coordinator's Office, and that a bill which would allow ranked choice voting in the State's four (4) largest cities is pending before the Local Government Committee in both houses, and would be difficult to project whether it will be adopted this session (see HB599).

Deputy Director of Ranked Choice Voting Resource Center Karen Brinson-Bell presented information about other jurisdictions that have implemented instant runoff, including the first statewide use of ranked choice voting since the 1930's (North Carolina, 2010). This was used historically until the early twentieth century, when use of machines no longer facilitated its use. Key reasons for its implementation are: (i) elimination of runoff voting, such as in San Francisco and Minneapolis; (ii) splitting of votes which diminishes civility of the process, and reduces likelihood of a "weak plurality" winner being declared; (iii) eliminates delay (and in other jurisdictions with shorter runoff times, a resulting effective

disenfranchisement) of military and overseas absentee ballots; and (iv) fair representation which permits significant minority groups to enhance representations. Other cities utilizing the procedure were enumerated. Maine has implemented this voting method in their state and federal primaries, beginning in 2018. Both North Carolina and Maine's implementations were done without additional funding for public education in advance of the elections. There is a publically available verification module developed by this agency to allow transparent confirmation that the vendor's calculations are accurate. In the jurisdictions that have implemented it, only one third of one percent of votes have had to be eliminated due to questions; another jurisdiction experienced just one fifth of one percent error rate, which is within the standard deviation of traditional election modules. In response to questions from the Commissioners, Ms. Bell confirmed there would be no delay in tabulation compared with the current process, that their agency has reviewed the specific proposal before this Commission, and confirmed the language is within the standard practices with no concerns, and that implementation of instant runoff voting with Davidson County's new voting machines procured from vendor Elections Systems & Software (ES&S), which have instant runoff capability, poses no issues. Ms. Bell provided example paper ballots to the Commissioners.

Davidson County Election Commission Chairman DeLanis, speaking in his individual capacity, conveyed that the members of the Election Commission have expressed reservations in general, although none of the specific comments may be representative of the other Commissioners specifically. Mr. DeLanis stated that there is anecdotal but not conclusory evidence regarding the enhancement of civil discourse in elections. Mr. DeLanis conveyed

concern about unintended consequences, particularly in light of the reservations expressed by the State Elections Coordinator, insofar a state law restricts Tennessee poll workers to the extent that Davidson County Election Commission volunteers are not permitted to provide any explanation or instructions. Under Tennessee state law, the Election Commission is under an obligation to post the election results on the door of the voting booth, which is the specific process that the Election Commission projects would take more time than the current system. There was a comparative delay when Maine utilized this process, and the reason for that delay has not been explained. There are no clear regulations on what to do when the person does not fill in a rank for each available numerical option, which could be very lengthy for some of our local elections compared to the example ballot that was provided. The letter from the Davidson County Administrator of Elections dated August 17, 2018 was referenced, and is incorporated hereto as Exhibit A. Mr. DeLanis expressed the opinion that none of the proposed iterations are easy to comprehend linguistically. Cited from “Ballot and Voter Exhaustion under Instant Runoff Voting,” four (4) elections in California utilized this process, and a large number of ballot had to be discarded, which resulted in several officials being elected without a clear majority. Under the authors’ estimation, approximately 27.1% of votes did not get count because algorithms did not have a function to account for ballots without consecutive ranked selections.

The Chairman asked Ms. Bell to respond regarding concerns raised over voter fatigue and voter turnout. Ms. Bell responded that no correlation has been established regarding voter participation. She also confirmed that ballots with as many as thirty-five (35) candidates have

been utilized for this process, as in the mayoral election in Minneapolis, without any negative consequences. In response to a Commissioner's question, she indicated that 96% of voters had voted for one of the candidates for whom a ranking was indicated had been counted throughout the entire length of the ranking process. She also confirmed that results at precincts were still posted in the North Carolina election as was described for the Tennessee process, and responded that Maine's process is uniquely decentralized, such that the timing of their results being posted should be considered anomalous.

Juan Napolis in Council District 6 indicated that the majority of academic research on the field is positive, notwithstanding the one article cited previously during this public hearing. He presented a counter argument to the theory of voter exhaustion, insofar as this can happen under the current system. Fundamentally, he argued, a representative democracy is a compromise governmental system, but ranked choice voting enhances integrity of that system by permitting voters to put forward their true preferences. Mr. Napolis indicated that this is a feasible manner for voting reform that is needed, as is the two-party system which is often criticized in the U.S., and that this process also enhances public discourse.

Scott Field in Council District 6 recounted specific advocacy actions that have taken place in order to put forth legislative measures in the Tennessee General Assembly and indicated a substantial grassroots effort support this process has emerged. He further indicated that ranked choice voting is not complicated from a practical application.

Commissioner Hardin asked Legal Director Jon Cooper to address the legality of the current language. Mr. Cooper confirmed some comfort with the precautions that have been

included in the currently proposed Amendment, and confirmed that this process would not be implemented by Metro even the amendment were to be ratified in the event the State Elections Coordinator continues to opine that this voting method is not legally permissible under Tennessee state law.

The Chairman declared the public hearing closed as to Amendments A and B. Commissioner Murphy moved to approve Amendment A, which motion was seconded by Commissioner Branstetter and disapproved by the Commission by the following roll call vote: “Ayes” (2): Branstetter and Murphy; “Noes” (3): Hardin, Jones, and McLaughlin. Commissioner McLaughlin moved to disapprove Amendment A, which was seconded by Commissioner Harding and approved by the following roll call vote: “Ayes” (3): Hardin, Jones, and McLaughlin; “Noes” (2): Branstetter and Murphy. At this time, Commissioner McLaughlin moved to disapprove Amendment B, which motion was seconded by Commissioner Harding and approved by the following roll call vote: “Ayes” (3): Hardin, Jones, McLaughlin; “Noes” (2): Branstetter and Murphy.

The Chairman opened the public hearing on Amendment C. Councilmember John Cooper presented the Amendment. The new Amendment to Amendment C revised the debt reporting, which makes it easy for citizens to know where to publicly find the information. The other aspect of the Amendment relates to performance metrics by Metro Government departments, giving the director of the finance the discretion to work directly with other Metro departments in order to arrive at two or three agreed upon metrics which can be used to report on the department’s progress to the public. The obligated debt (authorized, but not yet issued) is

one particular number that is presently difficult to find. Councilman Cooper submitted that the city is now measured financially in more of a capital spending plan analysis than the historical capital improvements budget plan, and that the Amendment would officially recognize that shift in spending. In addition, Councilman Cooper submitted that the amount of commercial paper obligations has seen a notable and increased shift over time.

Legal Director Jon Cooper indicated that initial general obligation bond resolution is another way to categorize the capital spending plan. Because the capital spending plan is indeed a plan, he submitted, some debt is ultimately later authorized, and consequently some debt set forth therein may later be deauthorized. After discussion, Commission Murphy and Councilmember John Cooper mutually agreed to orally amend the Amendment to incorporate a third reporting metric for short term debt, that is debt for which obligation has not yet been issued, as a category separate and unique from either short-term or long-term debt. Councilmember Cooper indicated that direct general obligation debt and agreed-upon debt could be clearly distinguished, and reiterated that future debt is formally authorized and is important to distinguish that affirmative action by the legislative body would be required to *not* issue that debt.

The Chairman declared the public hearing closed. Commissioner Murphy moved to approve Amendment C with two revisions with added language that carves out unissued general obligation bonds for which short term debt has not been issued, and add an item (f) that requires a listing of the items of debt described in subsection (ii) of the definition of debt, as in the general obligation pledge debt that is guaranteed but not creating a present drawdown

obligation, and to disapprove without the changes; the motion was seconded by Commissioner Jones. Commissioner Jones moved to amend the motion that the total calculation of debt per capita that includes the principal amount of debt to exclude the items of debt under subsection (ii) of the definition of debt, which motion to amend was seconded by Commissioner Murphy, and adopted by a voice vote of the Commission, and the Amendment as amended was subsequently approved by a unanimous vote of the Commission.

The Chairman opened the public hearing on Amendment D. Councilmember Rhoten represented that the intent of the Amendment is to have representation on the Planning Commission more fairly distributed from across Davidson County. A revised version of the Amendment would delineate between the Urban and General Services Districts, and select at least three (3) persons from the GSD to be on the Planning Commission in order to ensure that the urban and rural areas of the county have a voice on said Commission. Letters from the Planning Director and the AICP were entered into the record, and are appended hereto as Exhibits B and C. The Legal Director Jon Cooper confirmed that the Charter can be more restrictive than the state statute in regards to commissioner qualifications. Council Director Mike Jameson confirmed that under our current regulations, for instance, the chair of the Planning, Zoning, and Historical Committee serves as the representative from the county legislative body in order to meet the legislative body's obligation to have a representative on said Commission.

Attendee Steve Reiter expressed support for this Amendment, and indicated that this arguably creates more diversity and more accessibility of the public to be appointed to the Planning Commission.

The Chairman declared the public hearing closed. Commissioner Murphy moved to disapprove the currently incorporated Amendment D in RS2019-1617, which motion was seconded by Mr. Hardin and approved by a unanimous vote of the Commission. Commissioner McLaughlin moved to disapprove the proposed amendment to Amendment D, which motion was seconded by Commissioner Jones and approved by a unanimous vote of the Commission.

The Chairman opened the public hearing on Amendment E. Metro Legal Director Jon Cooper confirmed that Metropolitan officials approve of this proposal. Commissioner Hardin moved to approve Amendment E, which motion was seconded by Commissioner Jones and adopted by a unanimous vote of the Commission.

There being no further business before the Charter Revision Commission, the meeting was adjourned at 5:21 p.m.

**METROPOLITAN
GOVERNMENT OF NASHVILLE
AND DAVIDSON COUNTY**



DAVIDSON COUNTY ELECTION COMMISSION
PERMANENT REGISTRATION OFFICE
POST OFFICE BOX 650
NASHVILLE, TN 37202
(615) 862-8800 – Office
TTY—1-800-848-0298 or Relay 711 ♿
WWW.NASHVILLE.GOV/VOTE

August 17, 2018

Acting Vice Mayor Weiner
Councilman Rosenberg
Metro Courthouse
Nashville, TN 37201

Re: Instant Runoff Voting

Acting Vice Mayor Weiner and Councilman Rosenberg:

At the request of the members of the Davidson County Election Commission, I submit the following information for your consideration in the deliberation of Instant Runoff Voting. This information is not intended to represent an opinion for or against the policy decision. The goal is to inform the decision makers of impact on the Election Commission in the delivery of elections.

- Educating the voter will be the biggest challenge and will require additional funding for that purpose.
- Because Instant Runoff Voting will only be available for Vice Mayor and Councilmember-at-Large, voters may be confused when they do not get to pick more than one person for Mayor, Governor, or President.
- Unless the State changes the current process, Poll Officials will not be able to assist voters with questions about Instant Runoff Voting.
- Absentee and Nursing Home ballots will be more complex, resulting in the potential for more hand-counting of these ballots.
- Savings will be realized by not holding runoff elections for Vice Mayor or Councilmember-at-Large. (These savings will not be realized if the same election results in a runoff for Mayor)
- It is unclear how we will satisfy the State law to post election night returns at each polling location following the closing of polls.
- Election night returns will not be provided as quickly, due to the complexity of tabulation required.
- Our current voting machines have the capability to offer Instant Runoff Voting and any future machines utilized are likely to have the same capability
- The State has not approved a voting machine vendor to offer Instant Runoff Voting in any county in TN
- The programming for the ballot will be more complicated.
- Voter confusion/frustration has the potential to create longer lines at the polling locations.
- Additional voting machines and Poll Officials could be required to satisfy voters' desire for limited lines at polling locations.

I hope this information is useful in your deliberation. Please let me know if you have any questions.

Sincerely,


Jeff Roberts, Administrator of Elections



**METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY**

Planning Department
Metro Office Building
800 Second Avenue South
Nashville, Tennessee 37201

April 12, 2019

Mr. Dewey Branstetter, Jr.
Chairman
Charter Revision Commission

Re: Planning Department Comments on Resolution RS2019-1617, Amendment D

Dear Chairman Branstetter:

Thank you for reaching out to the Metropolitan Planning Department to seek its views regarding Resolution RS2019-1617, Amendment D, which would change the appointment requirements for the Metropolitan Planning Commission (Planning Commission). There are two versions of Amendment D, and, as I understand it, the Charter Revision Commission may consider one or both of them. Therefore, below I provide general information about the Planning Commission to support your decision-making, with a few comments about each proposal. We are grateful for you and your colleagues' service to the city and thank you for your consideration.

Background on the Planning Commission

Today, we face a vitally important moment in our city life. Our community is growing, and we see significant investment in our built environment and economy. City-building at this scale brings opportunities and challenges, as well as enormous responsibility for those in public service to help guide growth in a thoughtful manner.

The Planning Commission's mission is to guide growth and development in Nashville and Davidson County, with a commitment to the protection of important assets, efficient use of public infrastructure, protection and promotion of distinctive and diverse neighborhood character, free and open civic life, and choice in housing and mobility. The Planning Commission strives to consider public and private interests within a context of laws and policies that govern land use, private property, transportation, infrastructure, and other realities of living in a rapidly-growing city. As a result, the Planning Commission is often required to make difficult recommendations that weigh a variety of competing interests.

Carrying out the nuts-and-bolt work of the Planning Commission requires a significant, year-round commitment. The Planning Commission generally meets twice monthly and,

on average, reviews 35 development proposals at each meeting. Several important functions include:

1. Development and adoption of the General Plan, NashvilleNext, which sets forth a comprehensive policy framework that strategically coordinates important relationships in land use, mobility, housing, and the like. The Plan reflects extensive public input, and continues to evolve today, based on new public feedback and emerging issues within communities.
2. Recommendations for capital projects, based on citywide policy.
3. Professional advice to Metro Council regarding zone changes and other land use issues. The Commission applies NashvilleNext as a basis for its recommendations on zone changes. The Commission also makes recommendations on citywide text amendments to the Zoning Code.
4. Review and approval of the subdivision of land. This quasi-judicial function includes application of the Subdivision Regulations.
5. Preparation and recommendations on redistricting, following the U.S. Census.

The Planning Commission's work is supported by a Planning Department comprised of professional planners, architects, and policy analysts who have a strong, working knowledge of the communities within Davidson County. The staff relies on Councilmembers and community members for their detailed knowledge of specific issues within each Council District.

The Planning Commission itself is comprised of ten Commissioners – eight appointed by the Mayor, one representing the Mayor, and one representing Metro Council. In appointing Planning Commissioners, a key priority has traditionally been selecting individuals with expertise and experience in the most pressing matters affecting all residents (e.g., growth and change, neighborhood engagement, infrastructure, affordable housing, and mobility). Therefore, the Planning Commission's membership includes Davidson County residents with professional and personal expertise in the design and building industries, public policy, law, and others, and we strive to ensure that it reflects the diversity of our community.

The Commission today generally has newer membership, with six members serving in their first term, currently. At the present time, they come from eight different Council Districts. And, while current Planning Commissioners live in different parts of the county, their roles are not expressly described as such. In other words, while geographic diversity is an important factor in appointing Planning Commissioners, it is not suggested that a Commissioner only represents his or her part of town; each Commissioner is charged with representing the whole of the county.

Comments on Amendment D

As an initial matter, it is difficult to anticipate all of the potential outcomes – both positive and negative – related to any change to the Planning Commission’s appointment requirements. That said, as I understand it, the amendments to the Charter are intended to diversify the geographic representation of the Planning Commission. Deepening the Planning Commission’s perspectives and making it more widely representative are worthy goals and should be fully explored in a variety of areas, including but not exclusive to geographic diversity. Like any other public body, the Planning Commission should seek to improve its decision-making and endeavor to achieve positive and sustainable outcomes for the community.

As we face continued growth and economic expansion in the coming years, a key goal is to ensure that the Planning Commission continues to provide professional expertise related to the critical issues facing our community today. Well-qualified candidates reside throughout our County. The question is not whether we could find qualified candidates (we can and should); rather, it is the perspective that each Planning Commissioner would bring to their decision-making if they understood their role to be an expression of a specific, geographically-based representational requirement. This shift in perspective may affect the Planning Commission’s decisions and the delicate balance between its role and that of Metro Council with respect to land use decisions.

The first Charter Amendment proposal, **Proposal 1**, would restrict the appointment of seven of the eight Commission appointees to specific geographic areas (hereinafter “Planning Areas”). The Planning Areas, newly defined in the Charter Amendment, are based on existing Council Districts, with each Planning Area consisting of five Council Districts. A principal policy question is whether, over time, the “Planning Area Commissioners” would view their role as something of a gatekeeper or facilitator of land use decisions in the five Council Districts assigned to their area. This has the potential to diminish the broader policy perspective that underpins the Planning Commission’s mission. Proposal 1 may even make it more difficult for Council Members to deviate from the opinions of the Planning Commission, or rather the individual Planning Area Commissioner, who may view his or her individual role as overseer of zoning matters in those five Council districts. Further, the Planning Area Commissioners may find themselves in the unenviable position of managing land use policy for his or her neighbors as a volunteer, unelected official, and doing so largely independently. (It would not be a far reach to consider that the other Planning Area Commissioners, over time, would extend the courtesy of decision-making to the member “representing” the Planning Area where a proposed project is located).

Proposal 1 includes a provision for redistricting. Redistricting is not simply a matter of moving a boundary line here or there. In 2001, for example, District 4 was moved to an entirely different part of the city due to population changes, thus, changing the

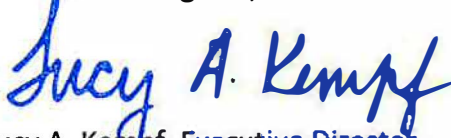
geography of the district. Under Proposal 1, it may be problematic to keep the geographic boundaries of the Planning Districts intact should this type of situation with redistricting arise in the future.

None of the outcomes described above are the intent of Proposal 1, which again as I understand it, is merely designed to diversify the geographic representation of the Commission. However, given that Metro Council is so finely divided into geographic areas, it is difficult to understand the need to also divide the Planning Commission by specific geographic area as well. The intentional balance of duties between the Planning Commission and the Metro Council has generally worked well: the non-geographically based Planning Commission makes recommendations based on county-wide policies, while the Metro Council represents specific geographies in an elected, political role and makes the final decision on zoning matters.

Proposal 2 (the amendment to the Amendment) requires that at least three of the eight appointees from the Commission be appointed from outside of the urban services district boundaries as such boundaries existed when the Metropolitan Charter became effective. This approach appears to be intended to address the concerns, described above, about the potential for politicization of the Planning Commission under Proposal 1, as it is not based on Council District, but still accomplishes some geographic diversity. After consulting with the Chairman of the Planning Commission and staff, we would **defer to the guidance of the Charter Revision Commission**, and ultimately that of Metro Council, on **Proposal 2** to help us better understand the benefits and downsides of this approach. We are available to offer technical input, as needed.

Thank you again for inviting the Department to share its views with you, and thank you for your service.

With kindest regards,



Lucy A. Kempf, Executive Director

Cc: Jim Shulman, Vice Mayor
Greg Adkins, Chairman, Metropolitan Planning Commission
Emily Passini, Chief of Staff, Office of Mayor David Briley
Jon Cooper, Director of Law
Mike Jameson, Executive Director, Metro Council
Councilmember Kevin Rhoten
Elizabeth Waites, Metro Clerk

Memo

Date: April 11, 2019
Subject: Proposed Charter Amendments
To: Charter Revision Commission
From: Sam Edwards, AICP/JD
Re: Planning Commission Appointments

Recently, there has been a proposal to amend the Metropolitan Charter to require that eight members of the commission, appointed by the Mayor, must be selected from particular councilmanic districts and/or, a specified number from the General Services District as established in 1963. Both of these proposals are ill advised.

First, the idea behind the establishment of the Planning Commission in the first instance, was to shield it as much as possible from political considerations. Decisions by the Planning Commissions in Tennessee as elsewhere should be based on an unbiased application of the General Plan and whatever zoning or subdivision regulations might be applicable to the particular question before the commission. Section 3 of the Standard City Planning Enabling Act specifically noted that restrictions on the power of appointment were not desirable because of a tendency to politicize the judgment of the commission. In this instance, appointing members of the Planning Commission from specific areas of the county will likely lead to a political outlook on the part of subsequently appointed members.

Second, there is a significant legal question as to whether the Charter may be amended without also amending the provisions of the enabling legislation at the state level. Restricting the power of the Mayor to appoint members to the Commission may be viewed as a violation of the enabling legislation adopted by the state of Tennessee governing the appointment of such members. Certainly, from a common sense standpoint, it would be better to amend the enabling legislation to permit Metropolitan governments more leeway if that is the desired outcome.

Finally, although the city continues to grow significantly, it is nevertheless often difficult to find people who are willing to serve as members of the various boards and

commissions here in Metro Nashville. Adding additional restrictions on who may serve will make the process of finding capable citizens who are willing to give the time and effort necessary to become proficient members of the Planning Commission even more difficult. In short, these proposals seem to be a solution in search of a problem. They should not be recommended for adoption, or adopted.