

MINUTES OF THE MEETING OF THE COMMITTEE-OF-THE-WHOLE OF THE CITY OF
GROSSE POINTE WOODS HELD REMOTELY (ZOOM) ON MONDAY, JANUARY 11, 2021.

PRESENT*: Mayor Novitke
Council Members Bryant, Gafa, Granger, Koester, McConaghy
(Southfield, MI)

ABSENT: None
(*Unless specifically identified otherwise, Council Members attended remotely from Grosse Pointe Woods,
MI.)

ALSO PRESENT: City Administrator Smith
City Attorney Anderson
City Clerk Hathaway
Retired City Attorney Berschback
Labor Attorney Fleury
Director of Public Services Schulte
Director of Public Safety Kosanke
Deputy City Clerk/Facilitator Antolin

The Facilitator's Statement was read.

Mayor Novitke called the meeting to order at 7:04 p.m.

Motion by Bryant, seconded by Koester, that all items on tonight's agenda be received,
placed on file, and taken in order of appearance.

Motion carried by the following vote:

Yes: Bryant, Gafa, Granger, Koester, McConaghy, Novitke
No: None
Absent: None

Discussion ensued regarding **Charter Section 4.5 – Administrative Service, email dated December 20, 2020, from Council Member Todd McConaghy, with attachments.** Labor Attorney Fleury provided an overview of his letter dated August 7, 2020. He stated he will be giving legal opinions and by not going into closed session the Council waives confidentiality. When asked for her opinion, Ms. Anderson stated that for general discussion on policy she did not see any reason it cannot be discussed in open session tonight. The Mayor stated contained in the information provided, the Labor Attorney's recommendation is that appointed officials be responsible to, and report to, the City Manager. There were concerns that the August 7, 2020, correspondence was considered a legal opinion with regard to legalities, the handbook, and labor employment matters. Ms. Anderson stated this is a general policy discussion and there is nothing particularly sensitive in the letter that cannot be discussed.

Council Member McConaghy stated based on the letter and email attached to the letter, there could be potential individual liability and questioned whether it would be part of the

record. The Mayor stated he did not know how to put this discussion into closed session in compliance with the Open Meetings Act.

The City Attorney stated that if there are topics to be discussed as permitted under the Open Meetings Act, that the agenda should be re-noticed as a closed session and have a written legal opinion that it could be discussed at the meeting. Council Member McConaghy stated because Mr. Fleury's letter has been presented to the public, that the meeting might as well proceed. The Labor Attorney cautioned all to discuss general policy and names should not be discussed. The City Attorney also stated this is a general discussion and specific employees should not be discussed.

The Labor Attorney continued with his overview. He stated in August the Mayor requested him to review the handbook to bring it up to date. He went through the handbook and he read section 2.02 stating it is confusing and raised concerns. How is the City being governed and managed. He analogized it against Townships, which are elected officials and results in divisions. That is what has been done with Appointed Officials. The handbook and charter has a vacuum here with nobody managing the departments. When Council makes decisions regarding employment matters and making decisions, you place yourself at risk. The charter says Council has oversight and scrutiny with regard to Appointed Officials, you hire and terminate. Who does the day to day operations with regard to the Appointed Officials' employees. It was the Labor Attorney's opinion that it could be delegated to the City Administrator. The City Administrator would have to go to Council to hire and fire.

The Mayor asked regarding operational responsibilities, is that not what we are doing with the City Administrator. The Labor Attorney stated you have one rather than four different departments. The Mayor stated Council is still liable for the acts of the City Administrator. Mr. Fleury stated the City Administrator would be sued or deposed instead of the Council. The Mayor inquired whether liability would be reduced and the only one the Council would be responsible for is the City Administrator; and, not the Clerk or Treasurer. Mr. Fleury responded yes. The Mayor stated Council currently does not do anything operational. The Labor Attorney stated with Council not watching and City Administrator not watching, who is watching – it is a vacuum. The Mayor stated we do not micromanage or tell the Treasurer what to do, we do not tell the Clerk what to do, they have assignments the same as the City Administrator, and they assign what employees are to do. He does not feel Council should be instructing any of the employees under the City Administrator, Clerk, or Treasurer.

The Mayor stated he does not know how you get around the charter. It says who the administrative officers are, who they are responsible to, and serve at the pleasure of the Council. They do their own hiring and firing. He did not understand the suggestion of treating the Appointed Officials just like the other employees. The Appointed Officials have contracts. Council does have the choice to terminate it if necessary. We do treat Appointed Officials differently. He provided an example that the City Administrator is not in the Pension System, and the City Administrator agreed. Others have been given added vacation time. There are provisions for employees in the handbook regarding overtime and he did not think Council expects Appointed Officials to get overtime or compensatory time automatically. We do encourage Appointed Officials if they put in extra time such, as around an election or meetings during the week, for them to take some time off for that.

Their job is to get the job done. If it takes them 50 hours, that is what it takes. The Mayor asked for the interpretations of the former City Attorney and the new City Attorney.

Council Member Bryant stated since he got on the Council, he felt that there should be a City Manager type system rather than a City Administrator. A City Manager systems is where everybody reports to the City Manager and the Council and Manager oversee it. Council is not there every day seeing what is going on and the City Administrator is. Change the name or treat the position more like a City Manager as is done in the other Grosse Pointes and other communities. We need somebody on the ground who is in charge, not just discuss whether we have it or do not have it, and need a method of how to get us to it. If we need a charter amendment, let us do it.

The Mayor stated he did not believe the other Grosse Pointes are managed that way. Grosse Pointe Farms does have a provision where Council by ordinance can turn that over to the City Administrator or manager. I think all the other Grosse Pointes are set up the same as Grosse Pointe Woods, and our charter is the same as many other charters are written. This has been here over 50 years.

Council Member McConaghy stated the first time this came up was twelve years ago and revisited every year. He stated the Council takes questions and concerns but does nothing. He discussed a couple of other points including not wanting to be personally sued, and the City does not have an insurance policy that indemnifies him. Council Member McConaghy stated legal opinions and information had not been shared with him. He stated the Legal Opinion stated Council Members may be sued. He said if the City has to change the charter, then change the charter.

The Mayor stated if Council is going to change the charter that it would have to be done by a charter revision. He indicated that he was unfamiliar with it coming up each and every year about wanting to do a charter revision. Lastly, the Mayor was concerned about the reference that he was not sharing these documents. The plan, as approved by Council, was that Mr. Berschback and Mr. Fleury meet to discuss the handbook, that he did not see their comments, and to suggest he was not sharing information was not the case; and, he reminded all that he was the one who suggested Mr. Fleury review the handbook.

The Mayor then asked for Mr. Berschback's overview. The former City Attorney stated Council asked him to assist with the transition of City Attorney responsibilities during January, and this is one of those cases. He did provide materials in an email to Council Member McConaghy when Council directed him to do that as far as the charter and whether a revision is necessary. He stated his review and email is based on the wording in Section 4.5, and it was clear that Appointed Officials report to the Council. It is a policy decision as to whether the Council wants to make any changes. Based on direction given to him and his review, if Council wants to make clear that the City Administrator is going to be directly overseeing and telling other Appointed Officials what to do, a charter revision is necessary. He is not comfortable doing it through an Employee Handbook. Regarding liability, it is always a risk on both standpoints.

The Mayor then asked City Attorney Anderson for her comments. She said there is nothing unique about Grosse Pointe Woods' charter that she does not see in other charters around

the state. Her firm works with other communities with similar or identical charter provisions as far as how they are structured. She said she would not suggest the charter be amended based on this alone, although it does not mean the City cannot amend it. To have City Administrator oversee the other Appointed Officials, it would require a charter amendment. There are five Appointed Officials that report to the City Council. Section 4.10 goes into Clerk, 4.11 Treasurer, in addition to the City Attorney, City Administrator, and Assessor. The Charter states Appointed Officials shall at all times cooperate with the City Administrator. City Administrator does not supervise these positions, they have responsibilities to perform duties, and cooperate as requested. If you want to discipline, that requires Council action. A lawsuit could be filed naming the City, Council, and individuals in individual capacities. It would be no different than the City Administrator being named and dragged into court. The liability is the City's liability and it would require a charter amendment to change it.

Council Member McConaghy stated he has never seen errors and omissions for officers' coverage that would cover the Council, and this is what he does for a living. He has discussed this issue with other Attorneys, and as Council Members we delegate every day. If a charter amendment is being discussed, and what Mr. Fleury has discussed, other attorneys feel there is no problem delegating authority. Whatever the mechanism is, he expressed he wanted to do it. He also stated in the future, if there is something that jeopardizes him personally, he stated he wants to know about it.

The Mayor stated under Section 2.2 it states furthermore excluding the employees. Ms. Anderson had pointed out Sections 4.10 and 4.11 seem to resolve the problems we have. There are requirements to provide reports, etc. The Mayor stated it seems a charter revision would be necessary to make a change but he did not know if Council wanted to do that.

Council Member Granger stated she has served on Council for 24 years and several Commissions prior. She was personally named in a lawsuit by a former employee and was deposed. There was a resident who demanded a variance and filed a lawsuit. The City has been sued in the past as a Council and as individuals. She stated the ability to attract quality candidates is hampered by the system we currently have where people report to Council and not the City Manager. She believes this needs to be addressed.

The Mayor declared a recess at 7:45 p.m., and reconvened at 7:51 p.m.

The Labor Attorney stated nothing would change with regard to scrutiny to hire and fire. Charter also says for the duties of the City Administrator, as prescribed by this charter or as required by ordinance or direction of the Council. That is the authority – your charter says that. It's not only the Appointed Officials that concerns me, it's their staffs. They can do anything they want. Not having one unified front you have inconsistencies and that is what leads to lawsuits.

The City Attorney stated delegating certain authority to the City Administrator cannot be done under current charter and questioned what would be accomplished. She stated you would not be accomplishing what you think you would be accomplishing.

Mr. Berschback stated he appreciates Mr. Fleury's concerns, and this is one of those questions that you could come up with different arguments. Look at the last paragraph of Section 4.5 as to whether there is a vacuum, anybody not an Appointed Official or head of a department are deemed to be employees. Heads of each department have authority to hire and fire employees without confirmation of Council. If a sole employee is running amuck it is up to the Department Head to manage that employee. I am pretty sure Council Members are covered, and there is an email into Mr. Bucko. The Mayor stated Council was covered before and we know that from a prior lawsuit.

Council Member McConaghy stated he was disturbed. The Committee ought to seriously look at this. With all due respect to Mr. Berschback, and information provided in the past, if the City requests opinions from Attorneys, I want to know about it. He said the Mayor is on one side, and Council is on the other, and that the Mayor opposes the idea over the City Administrator having authority over the other departments.

The Mayor stated that Council Member McConaghy kept coming back to this as a legal opinion. It was not cited as a legal opinion. Mr. Fleury, after having received permission from the Council, was sent to review this with the City Attorney. The fact he did not agree does not mean that he would withhold something, and it seems it is what is being suggested. It is not the case and never would be the case. The Mayor understood what Council Member McConaghy wanted to accomplish, and he did not agree that it be done without a charter amendment. The City Attorney and former City Attorney are saying the same thing. The Mayor did not see where it exposes the Council by following the charter, but rather a greater exposure by not following the charter. The Mayor disagreed with Mr. Fleury and stated Council can do whatever it needs to do. He stated this went to the City Attorney for purposes of reconciling it, setting up a meeting, and he did not know where it ended up; now it is being discussed at the Committee-of-the-Whole.

Council Member Bryant stated contained in paragraph 3 of Section 4.5 there is a statement, and maybe legally it cannot be made legally binding, but the Council may not diminish the duties of City Administrator, but you cannot increase them. He suggested making a team to write the charter amendment to get onto a ballot.

City Attorney Anderson stated the Clerk, Treasurer, and Assessor have statutory obligations that the City Administrator cannot oversee; such as the Clerk following election responsibilities or records retention, Assessor has the Tax Act. Council Member Bryant stated he believes the proper verbiage can be written.

Council Member McConaghy discussed the need to ensure employees are coming to work, behaving, doing what you are supposed to be doing, and do not use vacation days for which they are not entitled. He stated the City Administrator is not talking about filing a report with the state.

The Mayor stated this is not quite what he is hearing from the City Attorney. He stated the Committee has heard from Attorneys Fleury, Berschback, and Anderson, and that the charter has been reviewed. He stated the Committee does not need to get into the handbook at this point. He asked the Committee for a decision what to do and whether it will be a charter amendment.

Council Member McConaghy said yes, and that in the meantime he is going to continue to explore this with other attorneys.

Motion by Bryant, seconded by McConaghy, that the Committee-of-the-Whole recommend City Council put together the proper committee to write the amendment to the charter that would put the City Administrator in more of a position of a City Manager with the responsibility of administering all the departments in the City Government.

Discussion ensued.

The Mayor stated he has a problem with the duties.

Council Member Koester stated he understands the aspect of finance being under preview of the City Administrator. There does need to be carved out for the Clerk's department with elections, retentions and items of that nature. There needs to be a wall, and pertinent electoral attention to affairs of the City. If everything gets written up under the one instead of going from a three silo to a two silo, and rolling everything up into one, he was not in favor.

Council Member Granger stated Grosse Pointe Farms' Assistant City Manager is also the City Clerk.

Council Member Gafa clarified his understanding of the motion that it is to look into amending the charter. The Mayor responded no. It is to have a committee write an amendment for the Clerk and Treasurer to report to a City Manager. Council Member Gafa asked if it would go to City Council for final action. The Mayor stated yes. It goes to Council and if it passes the Council would go through necessary procedures for a charter amendment, probably getting a charter amendment together.

The City Attorney stated a 3/5 vote would be necessary to move this to the next process. The Mayor concurred, a majority.

The Mayor voiced concerns that the Council previously had with the Treasurer's position resulting in a combined role for Treasurer/Comptroller. The purpose was to have control over the financial section due to Council's concerns with how things were structured, with the Comptroller being hired by and reporting to the City Administrator. The Comptroller was hired by the City Administrator and required a concurrence of the Council. That gave the City Administrator full control over the Finance Department. The Treasurer was a position reportable to the Council, and the Council had the control. I think there was a very good reason for that change and I think consideration needs to be given to keeping it that way.

Motion carried by the following vote:

Yes:	Bryant, Gafa, Granger, McConaghy
No:	Koester, Novitke
Absent:	None

Council Member McConaghy requested a written opinion from the City Attorney, and the Mayor concurred. The Mayor asked City Attorney Anderson to provide a legal opinion to

be prepared by prepared by January 25, 2021, regarding Mr. Fleury's opinion about not having to have a charter revision.

The **Grosse Pointe Woods Employee Handbook Revised April 1, 2019**, was not addressed.

Hearing no objections, the following item was discussed under New Business:

- Council Member Koester discussed timing regarding the letter to Grosse Pointe Farms for Provencal Property obligations. The City Attorney will provide information to Council.

The following individual was heard under Public Comment:

- Lori Grosso stated her concerns placing the power of so many departments in the hands of one person.

Motion by Bryant, seconded by Koester, that the meeting of the Committee-of-the-Whole be adjourned at 8:21 p.m. PASSED UNANIMOUSLY.

Respectfully submitted,

Lisa Kay Hathaway
City Clerk

Robert E. Novitke
Mayor