

City of Plainfield, New Jersey
Charter Study Commission
Minutes of Meeting of Thursday, December 19, 2013, 7:30 p.m.
Plainfield City Hall Planning Conference Room

Call to Order: Mr. Smiley called the meeting to order at 7:35 p.m.

Salute to the Flag: The Commissioners waived Pledge of Allegiance due to lack of flag in the meeting room.

The Open Public Meeting Act Compliance Statement: Ms. Burgwinkle announced that the Notice Requirement provided for in the Open Public Meeting Law had been satisfied. Notice was properly given, notice having been transmitted to the Courier-News and the Star-Ledger on 12/12/13, as well as posting on the City website and on the City Clerk's bulletin board.

Roll Call: Mr. Smiley took roll call. Secretary Mary Burgwinkle, Chair Rick Smiley, Vice Chair John Stewart, Treasurer Jeanette Criscione and Assistant Secretary Marie Davis were present.

Minutes: There were no minutes to review, as CSC's prior meeting was a presentation at the October 7, 2013 City Council Meeting.

Correspondence to Commission: Ms. Burgwinkle reported that Dr. Reock had emailed asking about the status of the Final Report and she updated him on our presentation to City Council, our scheduled meeting with Assemblyman Green to discuss sponsorship and that we were considering an Amended Report due to questions raised at that presentation on the Dual Office Holding provision. Ms. Burgwinkle copied Corporation Counsel Minchello and City Clerk Jalloh on the 12/14/13 memo that she sent to the Commissioners with a redraft of Section 7.3, Dual Office Holding. Mr. Minchello responded that the redraft seemed clearer than the existing provision. Also, CSC got an email from the City Clerk regarding an OPRA request from Mr. Robert Edwards. Mr. Edwards wanted a copy of any video or audio recording that CSC had made of the presentation at the 10-07-13 City Council meeting and a copy of the presentation. Ms. Burgwinkle advised that CSC had not made any recordings and sent to the City Clerk a copy of the bullet points that she used to make the presentation, with the caveat that the presentation was not verbatim to the bullet points.

Treasurer Report: No report, Mr. Smiley remarked that we have not spent any money since the last meeting, and that we have only spent money on copying the Final Report.

New Business:

-Commissioner discussion and deliberation on potential amendment of Section 7.3 Dual Office Holding:

Ms. Burgwinkle passed out hard copies of a memo dated 12-14-13 that she had sent to the Commissioners in advance of the meeting so that they could read it in advance. In the

memo, she pointed out that City Council requested reconsideration of Section 7.3, Dual Office Holding at the meeting that CSC attended on October 7, 2013, due to undefined terms and ambiguity. After re-reading the section, the Commissioners agree that it is ambiguous, with many terms (including office, officer, county government, by appointment) undefined. The memo pointed out that under the Faulkner Act model charter forms and under the other special charters in New Jersey, Dual Office Holding is not included as a Charter provision. Plainfield's charter has contained such a provision since enactment, and citizens are accustomed to such a provision, so, the Commissioners set out to simplify the provision so that it is less ambiguous and conforms to the state general law and to case law that exists in New Jersey. Regarding holding dual elective offices, state law enacted in 2007 prohibited holding two elected offices simultaneously with limited exceptions. Regarding elected officials holding other offices or jobs in their municipalities, there is a line of case law in New Jersey disapproving of that practice for conflict of interest purposes. Plainfield's existing charter section appears to prohibit holding multiple city jobs or offices simultaneously, under some circumstances.

Ms. Burgwinkle moved that the Charter Study Commission amend the Final Report dated August 6, 2013 to replace the changes to section 7.3, Dual Office Holding, as contained in that report, with the following changes:

7.3 Dual office holding.

~~No officer under the city government shall hold or retain any office under the county government, nor shall any officer under the county government be eligible to hold or retain office under the city government, except in each case when any such office is held ex officio by virtue of an act by the Legislature. Any person holding city office, whether by election or appointment who shall, during his term of office, accept, hold or retain any other civil office of honor, trust or emolument under the government of the United States, except commission for the taking of bail, or under the government of the State, except the office of notary public or commissioner of deeds or officer of the National Guard, or who shall hold or accept any other office connected with the government of the city, or who shall accept a seat in the Legislature, shall be deemed thereby to have vacated any office previously held by him under the city government; except that the mayor may accept, or may in writing authorize any other person holding office to accept, a specified civil office, in respect to which no salary or other compensation is provided.~~

7.3 Dual office holding:

(a) A person elected to public office by the vote of the general electorate in the city of Plainfield shall not hold any other elective public office, except as may be provided under the General Law of the State of New Jersey (See N.J.S.A. 19:3-5 and N.J.S.A. 19:3-5.2).

(b) A person who is employed by the city of Plainfield or any of its agencies or instrumentalities in any capacity shall not hold any public office where the person is elected by the vote of the general electorate in the city of Plainfield, unless the elected public office is a volunteer position where no salary or other compensation is provided.

(c) A person who is employed by the city of Plainfield or any of its agencies or instrumentalities in any capacity shall not simultaneously hold any other appointed

position or employment with the city of Plainfield unless the position is a volunteer position where no salary or compensation is provided.

Dual office holding provisions are not common in municipal charters (none of the Faulkner Act model charters contain such provisions), however, Plainfield Charter (1968) has prohibited dual office holding since it was enacted. In 2007, certain state statutes noted above were passed by the legislature, also prohibiting dual office holding. The Commission recommends retaining the Dual office holding provision to acknowledge the General Law on the topic. In addition, we received comments that the existing provision is ambiguous with many undefined terms, and we agree that the provision should be redrafted for that reason. Also, there is a line of case law in New Jersey dating to 1960 providing that municipal employees shall not simultaneously hold employment and elected public office in their municipalities, for conflict of interest purposes. We agree. We also believe that no person should hold multiple city positions where they are compensated for both. We suggest the above redrafted Section 7.3.

The motion was approved by all Commissioners in a voice vote with no objections or abstentions.

Ms. Burgwinkle moved that the Charter Study Commissioners approve amending the Final Report dated August 6, 2013 by issuing an Amended Plainfield Charter Study Commission Report dated December 31, 2013 with a cover statement that the Amended Final Report supersedes the August 6, 2013 Final Report.

Discussion ensued about the statute that allows amendments to charter study commission reports, N.J.S.A. 40:69A:11(b).

The motion was approved by all Commissioners in a voice vote with no objections or abstentions.

Ms. Burgwinkle moved that the Charter Study Commission approve delegating making the amendments and corrections of typographical errors to Ms. Burgwinkle and Mr. Stewart for completion prior to December 31, 2013.

The motion was approved by all Commissioners in a voice vote with no objections or abstentions.

Ms. Burgwinkle also mentioned that she and Mrs. Davis met with Assemblyman Green on October 31, 2013 to discuss his potential sponsorship of the Charter changes in the legislature. He agreed to consider doing it in the next session that begins in 2014, subject to review and approval by City Corporation Counsel and the Legislative Legal Staff.

At this juncture, the Mr. Smiley announced that there are no additional meetings scheduled and moved on to public participation. Mr. Alan Goldstein, Mr. Dan Damon and Mr. Robert Edwards were in attendance as members of the public.

Mr. Goldstein was recognized for public comment and noted that he had tried to get our attention before we voted on motions. Mr. Goldstein was concerned that the amendment did not seem to deal with dual appointments (for instance to Housing Authority and PMUA) and pay for acting appointees. Dan Damon commented that it does not seem that our amendment clarified the confusion over appointed and elective office, for example, could a City Council member also be elected to school board, and could a City Council Member also be appointed to PMUA. Thereafter, a long discussion ensued between the members of the public and the Commissioners concerning the amendment and its clarity. In very brief summary, the Commissioners articulated that they were attempting to make the Dual Office Holding provision less ambiguous, reflect the state law on dual office holding, reflect case law on elected officials holding positions in their municipalities, and state the premise that elected, appointed or employed persons should not simultaneously hold more than one position with the City and its agencies or instrumentalities, especially paid positions. Group redrafting of subsection (c) of the proposed revision took place to make it more reflective of the overall goals.

At the end of the discussion, the Commissioners agreed to revisit the motion to amend the changes to Section 7.3, Dual Office Holding. Ms. Burgwinkle made a motion to amend the proposed revision to Section 7.3 and to replace it with the following:

7.3 Dual office holding:

(a) A person elected to public office by the vote of the general electorate in the city of Plainfield shall not hold any other elective public office, except as may be provided under the General Law of the State of New Jersey (See N.J.S.A. 19:3-5 and N.J.S.A. 19:3-5.2).

(b) A person who is employed by the city of Plainfield or any of its agencies or instrumentalities in any capacity shall not hold any public office where the person is elected by the vote of the general electorate in the city of Plainfield, unless the elected public office is a volunteer position where no salary or other compensation is provided.

(c) A person elected to public office by the vote of the general electorate of the city of Plainfield or a person who is employed by the city of Plainfield or any of its agencies or instrumentalities in any capacity shall not simultaneously hold any other appointed position or employment with the city of Plainfield or of any of its agencies or instrumentalities unless the position is a volunteer position where no salary or other compensation is provided.

The motion was approved by all Commissioners in a voice vote with no objections or abstentions.

Announce date and time of next meeting: There are no additional meetings scheduled at this time.

Public Participation: Mr. Dan Damon, Mr. Alan Goldstein and Mr. Robert Edwards were in attendance at the meeting and participated as indicated above.

Adjournment: The meeting was adjourned at 8:35 p.m.

A Full Length Recorded Copy of this Meeting is available by contacting the Commission at plainfieldcsc.blogspot.com