



TO: Charter Commission Members  
FROM: Deb Skogen, City Clerk and Staff Liaison  
Date: August 27, 2019  
Re: Charter Commission Meeting of **TUESDAY**  
September 3, 2019

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This is a reminder that the next Charter Commission meeting will be held on **TUESDAY**, September 3rd at 7:00 p.m. at the Civic Campus located at 7071 University Avenue NE in the Fireside Room on the main level of the facility.

In order to ensure a quorum, please remember, the Charter Commission policy requires each member to call or e-mail the staff before 10:00 a.m. **TUESDAY**, September 3rd. Please contact me at (763) 572-3523 or at [deb.skogen@fridleymn.gov](mailto:deb.skogen@fridleymn.gov) about your attendance.

If we do not have a quorum by 10:00 a.m., I will send out an e-mail to see if additional members will attend. If by Noon there will not be a quorum, I will send out a follow-up e-mail to all members of cancellation of the meeting and post a cancellation notice on the door for those Commissioners who did not contact me, but came to the meeting.

I have included a copy of the May 6, 2019 adopted Bylaws for your reference.

On the discussion of Chapter six – contracts how let, while we did make a change to allow the city manager to assign a designee, the charter requires the mayor to sign all contracts. Finance Director Dan Tienter presented information at the May 6<sup>th</sup> meeting. I have included that information for your reference for discussion purposes.

I have spoken with our attorney representing us in the Comcast Franchise Agreement Renewal. Because the FCC recently adopted Order 621, really limiting the City's ability to regulate, he has suggested no changes at this time. The City cannot be more restrictive in the regulation of mandatory federal law.

Yes, this will be my last meeting. My last day with the City will be September 26<sup>th</sup>. If you have any other questions or concerns pertaining to this meeting, please contact me.



# CITY OF FRIDLEY CHARTER COMMISSION

## AGENDA

**TUESDAY, SEPTEMBER 3, 2019**  
**7:00 P.M.**

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**LOCATION:** FRIDLEY CIVIC CAMPUS  
7071 UNIVERSITY AVE NE, FRIDLEY, MINNESOTA  
FIRESIDE ROOM

- 1. CALL TO ORDER:**
- 2. ROLL CALL:**
- 3. APPROVAL OF AGENDA:**  
Motion approving the September 3, 2019 meeting agenda
- 4. APPROVAL OF MINUTES**  
Motion approving the May 6, 2019 meeting minutes
- 5. ADMINISTRATIVE MATTERS**
- 6. OLD BUSINESS**
  - A. Review and Discussion of Chapter 6
  - B. Review and Discussion of Chapter 10
- 7. NEW BUSINESS**
  - A. Review and Discussion of Chapter 12
- 8. FUTURE MEETING TOPICS/COMMUNICATIONS**
  - A.
- 9. ADJOURNMENT**  
Motion to adjourn the meeting

**Next Regular Commission Meeting**  
**Date: MONDAY, October 7, 2019**

CITY OF FRIDLEY  
CHARTER COMMISSION MEETING  
MAY 6, 2019

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**CALL TO ORDER:**

Chairperson Rolstad called the Charter Commission meeting to order at 7:00 p.m.

**ROLL CALL:**

Members Present: Commissioners Kelli Brillhart, Manuel Granroos, Richard Johnston, Ted Kranz, Bruce Nelson, Rick Nelson, David Ostwald, Barb Reiland, Pam Reynolds, Valerie Rolstad, and Cindy Soule

Members Absent: Commissioners Gary Braam, Zach Crandall, Don Findell and Avonna Starck

Others Present: Deb Skogen, City Clerk/Staff Liaison  
Dan Tienter, Finance Director

**APPROVAL OF AGENDA**

Commissioner B. Nelson MOVED and Commissioner Reiland seconded a motion approving the May 6, 2019, meeting agenda.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

**APPROVAL OF MINUTES**

Commissioner Reynolds pointed out three errors in the minutes for correction:

Page 2 – first paragraph – add the word “to” between “listening and the”;

Page 2 – third paragraph – “at Least” should not be capitalized;

Page 3 – last paragraph – change the word “States” to “Statutes”; and

Page 4 – third paragraph from the bottom – add the word “to” between “have and disclose”.

Commissioner R. Nelson MOVED and Commissioner B. Nelson seconded a motion approving the Charter Commission meeting minutes of April 1, 2019 as amended by Commissioner Reynolds.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

**ADMINISTRATIVE MATTERS**

There were no administrative matters at this time.

### **OLD BUSINESS**

Chairperson Rolstad said the bylaws were mailed to the Commissioners and asked for a motion to adopt.

Commissioner Reynolds MOVED and Commissioner Nelson seconded a motion approving the bylaws as amended on April 1, 2019.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

### **NEW BUSINESS**

#### **DISCUSSION OF CHAPTER 6**

Daniel Tienter, Finance Director introduced himself and thanked the Commissioners for allowing him to speak with them. He provided a memo and proposed new language to Chapter 6. He has been reviewing and updating city policies on purchasing which led him to Chapter 6 of the Charter. The City is trying to create a consolidated financial management policy addressing all current policies (i.e., fund balances, P-Cards, purchasing, reserve amounts, etc) which have been adopted by the Council overtime. While reviewing the policies to update them, they have been checking statutory references, looking at best practices from the Minnesota Government Finance Officers Association (MGFOA), directions from the City's auditor, and the League of Minnesota Cities (LMC). When looking through the purchasing policy, they found some inconsistencies between certain chapters of the charter and the day-to-day practices of the City. During his discussions with the city manager and the city clerk, it was felt this issue should be presented to the Charter Commission for discussion.

Mr. Tienter said Section 6.05 controls certain powers and responsibilities with respect to purchases and contracts. Essentially all of the bonds and contracts as well as any other instrumentality of the City must be executed by the mayor. If you took a broad interpretation of this section, you would consider any financial instrument the City were to use would have to be executed by the mayor. He said a strict interpretation would be having the mayor sign every PO (purchase order) for an invoice for office paper. The PO is a financial instrument the City would to make payment for all procurements. He said the City processes hundreds of PO's at a time which is provided to the Council per a claims list for each meeting. He felt it would be unreasonable to have the mayor show up and sign all of the PO's as well as have an understanding of what he was signing. The City has internal policies that describes what the processes and expectations are of the city manager, city department heads and other designees.

He said there were other inconsistencies within the charter. Section 7.06 empowers the city manager to enforce the budget resolution and other financial policies of the City. The budget is basically a document that states how the City will expend their monies, which could essentially

be called a purchasing document. Section 2.01 states the Council shall exercise its control exclusively through the city manager and shall not itself attempt to perform any administrative duties. It is the design of the charter and Council to delegate as reasonably as possible all the administrative responsibilities to the city manager. When looking at this particular section (6.05), the city manager is the chief purchasing agent, the city manager can let all contracts, and then suddenly the section states the mayor signs everything with the city manager. The city manager is supposed to enforce the budget, be responsible for the day-to-day administrative duties, let all of the contracts and do all the review. Then, suddenly, the mayor is supposed to sign these documents with the city manager, perhaps not being involved in any of the discussions except for adopting and approving the budget and providing proper oversight where appropriate.

Mr. Tienter reviewed charter language from twelve surrounding municipalities to arrive at the language included as a proposed amendment to Sections 6.05 and 6.07. The language is designed to allow the city manager to control the purchasing policy throughout the process by adhering to a purchasing policy adopted by the Council by resolution. The proposed amendment is written to be consistent with Chapter 7 using the words "sums appropriated". The Council would set the parameters and requirements the city manager would be expected to adhere to, but would delegate all of the purchasing authority to the city manager. The purchasing policy wouldn't be controlled by other state statutes with the exception of purchases over \$175,000, due the Uniform Contract law which requires the City to acquire competitive bids and have the Council approve the award of the bid and contract. This would be an example of the Council approving the contract and authorizing the mayor and city manager sign the contract or another individual they authorize to sign. The Council exercises its oversight authority by adopting the budget. Any purchases included in the annually adopted budget resolution sets the parameters for the expenditures and compliance points the City is responsible for. The charter says in another section the Council has no authority to increase the budget unless external revenues are identified, and then only by the amount identified. The proposed amount would still provide the Council the ability to exercise its authority over the budget and the maximum purchasing that can be done. It also still requires the mayor and city manager to execute the contracts that are discussed, approved and awarded by the City Council.

Section 6.07 is written to allow for an easier change of the City's policy by requiring it to be adopted by resolution instead of by ordinance. This language allows the City to be more responsive to legislative changes and accounting practices as they become apparent, rather than going through a protracted ordinance process. It still allows for public review and scrutiny and allows the opportunity for the Council to weigh in.

Commissioner Reynolds said this memo talks about Section 7.06, authorizing the city manager to enforce the budget resolution and other financial policies, is all well and good. Commissioner Reynolds said Section 7.01 requires the city manager to put the budget in place and provide it to the Council for their approval. It is then his job to enforce the budget. However, she disagreed with Section 2.01 where it talks about administrative duties. The charter clearly puts the financial control with the city council and to have the mayor signing everything pretty much covers the requirement for the safekeeping and disbursement of public money. The fact that it is cumbersome and the fact that it has been the past practice, appearing to violate the charter, concerns her. Cumbersome and burdensome is not a reason to change the charter. The city

manager has a responsibility to have staff following the city charter. We just changed this section in 2016. She thought Ms. Shelly Peterson had input into the changes into Chapter 6 of the charter.

Ms. Skogen said she did not think that Ms. Peterson, former Finance Director, had input into the changes in Chapter 6 in 2016, as she did with Chapter 7. The Commissioners tried to make the change to allow for other individuals to sign contracts by adding the word designee, but it did not change the requirement of the mayor signing.

Commissioner Reynolds said the charter exists because the residents need to know their tax dollars are being secured and someone is looking at them. To her it makes no sense to change the language in the charter to make a violation of the charter legal. The people want someone from the Council involved. She is tired of the changes made to the charter to make it easier for city staff. The purpose of the charter is for the city to operate how the residents feel they should operate. If it is cumbersome for the mayor to sign all the documentation, then you should have a stamp with the mayor's signature.

Ms. Skogen said Section 2.01 states "the legislative and executive actions shall vest and be exercised by the City Council but shall exercise administrative control exclusively through the city manager." Chapter 6 was changed to provide the city manager the day-to-day administrative control as it is a council-manager city. This new proposed language would continue on with changes made in Chapters 6 and 7.

Commissioner Kranz was concerned about the city contract awarded for a street improvement project he was assessed for. He was concerned it was a bad job, as the street appears to be falling apart. He said if the mayor signed the contract he is the one with the accountability and responsibility and is the one he should have to go to for a complaint rather than having to go to the city engineer to make the complaint.

Ms. Skogen said the engineer would have the project file and the contract which provides language as to a warranty or who would be responsible should the street wear down before it was expected to. In this example the project would have been completed through the special assessment process, M.S. Chapter 429, and the Council would have awarded the bid, contract and special assessment.

Ms. Skogen said when Chapter 7 had been discussed, once the Council adopted the budget, the City could spend money accordingly to what had been approved in the budget. The proposed change to Chapter 6 would be similar in that if it has been approved in the budget and is under the statutory limit, it would allow staff or someone other than the mayor to go ahead and sign those documents.

Commissioner Reiland remembered the discussion that the Council had to approve the budget line items and once approved, staff would have to be more respectful of what the limit was. She asked if it was the city manager or the department heads that ensured the spending was within the budget.

Ms. Skogen stated the city manager was ultimately responsible for overseeing the budget.

Commissioner Brillhart asked if the City had a signature policy. She thought the first edit would eliminate it by striking out establishment of a policy.

Mr. Tienter said the City could still establish a policy because it states “all purchases on behalf of the City shall be made and all contracts let by the city manager, or their designee(s).” He said in Section 6.07 it talks about further regulations for the making of bids and contracts may be made by resolution of the Council. Both sections talk about a policy so the language was changed so there was no conflicting language and the same language is used for contracts and purchasing.

Mr. Tienter said the City has a purchasing policy that addresses when the city manager signs, what happens if included or not included in the budget, and how things find their way through the process. It also addresses the delegation of authority allowing department heads to sign for certain amounts. If it is not addressed in the budget, then it also has to be signed by the city manager. This policy was adopted by the Council in the past.

Commissioner Reynolds said the policy had to conform to the charter, not the other way around. The charter is the constitution, you can't just change the charter every time you want to use a policy instead of following the charter.

Commissioner Brillhart thought after reviewing the proposed change that some of the eliminated language takes away the ability to have that policy.

Mr. Tienter thought the suggested language would leave an opportunity to have a policy related to things like signature, thresholds, required documentation, internal review, audit practices, invoicing, etc. It would be captured in Section 6.07 related to further purchasing regulations. If the Commission felt some of the eliminated language should be restored, they could change the language. He eliminated it because of the other section in that chapter that specifically referenced all policies and procedures.

Commissioner R. Nelson wondered if any of the policies were reviewed and approved by the Council. Ms. Skogen said yes, by resolution.

Mr. Tienter said all of the financial policies of the city not specifically addressed by the charter or state statute have been presented to the Council and it has been their past practice to adopt them by resolution. We have fund balance policies, special revenue policies, purchasing policies, surplus equipment donation policies and other items that are presented to the Council and adopted by resolution.

Commissioner R. Nelson asked if the Council is aware of the signature policy. Mr. Tienter said yes, and that they have amended it a handful of times.

Commissioner R. Nelson said it seemed like the Commission has gone through several of the chapters since he has been on the Commission. There have been some big battles or heated discussions with Council and now we are in discussions again to see if change can be made. He

said that in changing Section 6.07 from ordinance to resolution it takes away from allowing additional time should the public miss a meeting or allow for enough time for the public to voice their opinion and was opposed to that change. He said the City was doing what it wanted to despite charter requirements.

Ms. Skogen said she did not think that was true. She said staff is bringing this matter to the Commission to discuss how the City has been doing business and to allow them to make corrections to put the language into today's perspective instead of past perspectives.

Commissioner Reynolds said that was not the way the charter worked. The charter is designed to meet the needs of the residents, not of City staff.

Ms. Skogen said City staff, the Council or residents could bring matters to the Commission for discussion. The Commission is here to discuss and make decisions. Staff is not here to make that decision for you, we are here to present information to you. The Commission has the opportunity to discuss and decide whether or not you want to make the changes to the Charter and move it forward to the Council for further action.

Commissioner Reynolds said, if the Council feels it is necessary, they can recommend language.

Ms. Skogen said this issue was not coming from the Council, it was coming from the staff, which is our job as a liaison to you. Our job is to bring the things we find do not work to try to make corrections or have you come up with a solution to make it better.

Chairperson Rolstad said staff was bringing the information to the Commission to allow them to make modifications to the charter to update the language to current practices. Systems change and modernization happens, we have to adapt to it. If we have young generations that have better ideas that make it more cost effective and saves money, then why don't we do that? It is a suggestion. It can be put to a vote or it can be discussed further at the next meeting. Modernizing the charter is what the Commission should be doing at this time.

Commissioner Reiland wondered if it was true that the Council can adopt a resolution on one night. Ms. Skogen said yes, that is how resolutions are adopted. If adopted by ordinance it becomes part of the City Code and if you need a change it requires two readings and a publication. If you want to make a change of the city code, it has to be done by ordinance, whereas if you want to make a change to policy, it would be done by resolution.

Commissioner Reiland would like to see it more visible to the public.

Commissioner Brillhart said they have added policy approved by resolution in Section 6.05 as well.

Mr. Tienter said for the purposes of executing the contract that language is designed to allow the Council to authorize through their resolution who would execute the contract on their behalf. What many cities often do is present a contract via a presentation with a resolution approving the contract and authorizing execution of contract.

Commissioner Brillhart asked what checks and balances were on a project like this and where tax dollars are being spent.

Mr. Tienter said the information would be defined in the resolution. An example would be with a special assessment project whereby the Council orders the improvement by resolution, adopts a pre-assessment by resolution, awards the bid and authorizes execution of contract by resolution. The Council would review the resolutions, debate the resolutions and take a vote on the resolutions.

Ms. Skogen said to remember some purchases have been approved in the budget. Amounts over the statutory limit, currently at \$175,000 would have to go through the competitive bid process and would be brought to the Council for their discussion and approval.

Mr. Tienter said additionally, anything paid would be provided on the claims list which is also approved by the Council at a regularly scheduled meeting. If a resident wanted more information about a specific claim, they had the opportunity to come to the Council meeting to ask questions or voice their opinion. Except for limited circumstances, required by state law or City policy, the city does not mail checks out until after they are approved at a Council meeting.

Ms. Skogen said staff was bringing this issue before the Commission for discussion and review to help make the Chapters 6 and 7 consistent. The Commission does not have to vote on it at this meeting. Staff wants them to think about the discussion, decide if they want more research done, and come back in the fall for further discussion.

Commissioner Johnston said the intent has been to follow what state law is or on new regulations that need to be discussed.

Ms. Skogen said if state law changes, staff brings the issues to the Commission for their review. What staff has found after the review in Chapter 7 with the budget policy, now we are kind of going through the same thing with purchasing with a procurement policy and how that should work and to try to keep things consistent?

Commissioner Soule said one thing to keep in mind is that procurements are based on the budget. Chapter 7 has a lot of controls over the establishment of the budget. The Council doesn't have the power to increase the amount of the budget after it has been approved. She said there are some emergency provisions, like a natural disaster, but once the budget is established, it serves as a guideline for the procurement spending within the City. She thought the controls in Chapter 7 would require the procurement process in Chapter 6 to be in alignment with the budget.

Commissioner Reiland felt it was necessary for all to read Chapters 6 and 7 more thoroughly to see how they work together and come back in September for further discussion.

Commissioner Soule said it was important for there to be transparency and for citizens to be able to comment on the budget. At the same time we do not want it to be cumbersome or tie the

hands of the people who are managing the City and letting the contracts to provide services on our behalf.

Commissioner Reynolds said in the proposal the term “all bonds” is used and adopted by resolution. She asked whether some bonds are required to be completed by ordinance. She said the current civic campus building was as an example of the bonding being completed by an ordinance vs a community center which may need to be done by ordinance and a vote of the people because it is not a necessary building.

Ms. Skogen said she did not think an ordinance was required, but it could require an election. The bonds themselves, however, are usually approved by resolution when adopted by the Council. Mr. Tienter was not aware of any bonds requiring an ordinance, but thought there might be some unique circumstances required by state law. They could do some research to answer that question.

Mr. Tienter said there a few things that came up during discussion he would like to address. The first being that the City is acting in contrast to the Charter. No it is not. There is a question about what constitutes “instruments of every kind”, which is a very broad. The practice of the City based on direction from the city attorney some time ago, was that the City should be adopting resolutions delegating who is authorized to sign on behalf of the City to satisfy this language to provide interpretation at the Council level. The proposed language tries to remove that ambiguity so it is more transparent, easier to understand what is happening, and easier to hold the City accountable to its actions with regarding to purchasing. It is consistent with the discussions we have had when it comes to the budget and that generally everything being done is under the philosophy the charter has that the city manager is the party that should be running the day-to-day operations of the City in concert with the wishes of the Council that has established and still reserves all executive authority when acting as a body.

Commissioner Soule said Section 7.11 states the City follows the Generally Accepted Accounting Practices (GAAP) which are outlined in Chapter 7. She felt there were adequate controls in place in other sections of the charter.

Mr. Tienter said the City can budget for items under \$175,000, however once it reaches the state’s threshold of \$175,000, the City council must approve the purchase and the mayor and city manager would then sign off on a contract. Anything lower than that amount is presented on the claims list and approved by the Council.

Commissioner Soule asked if there was an example of a contract over \$175,000 or what types of contracts there might be.

Mr. Tienter said a classic example would be a street project that is over \$175,000. Another example might be the purchase of a large piece of equipment like a fire engine or possible parts to the engine. The cost of such items would be \$500,000 or more and those types of purchases would require Council approval. There are situations where there should be a higher level of accountability and the Council is making informed decisions on some of the very expensive purchases. State law and City’s purchasing policy requires staff to obtain quotes for purchases

between \$25,000 and \$175,000 or obtain the items from the state contract or cooperative purchasing venture recognized by the state. Only things below \$25,000 can be purchased in the open market. The City's current purchasing policy does not allow that. The City requires quotes on anything above \$10,000. The City's policy is currently more restrictive than state law.

Commissioner Brillhart wondered if all purchases under \$10,000 were all planned in the budget each year or whether a large purchase might slip through.

Mr. Tienter said the Council adopts the budget and there is no authority to spend unless it's been included in the duly adopted budget. He said other sections go even further and set out that if you purchase something without approval the charter will consider them personal expenditures of the employee that made the purchase.

Mr. Tienter stated the emergency policy requires a separate claims list providing any emergency purchases and a report to the Council about why the emergency purchases were made. The Council must then approve the emergency purchases claims list.

Hearing no further discussion, Chairperson Rolstad thanked Mr. Tienter for coming and providing the information to the Commission.

Commissioner Kranz MOVED and Commissioner Reiland seconded a motion to carry this discussion item to the September 3<sup>rd</sup> meeting.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED UNANIMOUSLY.

#### DISCUSSION OF CHAPTER 1

Commissioner Reynolds MOVED and Commissioner Johnston seconded a motion to add the reviewal date of May 6<sup>th</sup> to the bottom of the last page with no changes to the language.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

#### DISCUSSION OF CHAPTER 9

Ms. Skogen said she went back to the original Charter and the current language is the language adopted in 1957 with no changes since that time.

Commissioner Brillhart said she went back to her electronic copy and found she had included the definitions on her copy so that she could understand the purpose of eminent domain.

Commissioner Brillhart MOVED and Commissioner R. Nelson seconded a motion to add the reviewal date of May 6<sup>th</sup> to the bottom of the page with no changes to the language.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED.

### DISCUSSION OF CHAPTER 10

Commissioner Reynolds said she did not see where the charter was regulating all of the things they offer, not cable being one. We should have language covering other services such as internet, telephone, security, etc. Whoever is negotiating the franchise should have this type of language for protection of the public. She also wondered if all franchise agreements would have the same benefits and regulations.

Ms. Skogen said when negotiating with CenturyLink, the language was basically the same, however, because their equipment was different than Comcast, that language was different. Usually state or federal law supercede the charter unless the charter is more restrictive.

Commissioner R. Nelson wondered if it was necessary to have language stating we follow federal law or add language that states whichever is more restrictive.

Ms. Skogen said she will ask the attorney who represents the City during franchise negotiations about their questions.

### FUTURE MEETING TOPICS

Discussion of Chapter 6, 10 and 12

### ADJOURNMENT:

Commissioner Granroos MOVED and Commissioner Brillhart seconded a motion to adjourn the meeting.

UPON A VOICE VOTE, ALL VOTING AYE, CHAIRPERSON ROLSTAD DECLARED THE MOTION CARRIED AND THE MEETING WAS ADJOURNED AT 8:19 P.M.

Respectfully submitted,

Debra A. Skogen, MMC  
City Clerk/Staff Liaison

Commissioner Bruce Johnston, Secretary



To: Fridley Charter Commission  
From: Deb Skogen, City Clerk  
Dan Tienter, Finance Director  
Date: April 24, 2019  
Re: Reviewal of Charter Chapter 6, Section 6.05 Purchase and Contracts

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At the end of the last meeting I asked the Charter Commissioner if they would be interested in having Dan Tienter, Finance Director, address the group to discuss the purchasing policy he has been working and how it relates to Section 6.05.

If you read the last sentence of Section 6.05:

*“All City contracts, bonds, and instruments of every kind to which the City shall be a party shall be signed by the Mayor on behalf of the City, as well as the City Manager or documented designee, and shall be executed in the name of the City.”*

If you are reading this section, it would have you believe every instrument of every kind requires the mayor’s signature. That language is overly broad and administratively burdensome. While this section was amended in 2016 during the review of Chapters 6 and 7, it should be reviewed again for clarification and consistency with the idea in mind of funneling administrative tasks to the city manager or their designee, similar to the budget process.

Staff believes any contract or agreement approved by the City Council, (i.e., bonds, joint powers agreements, cost sharing agreements, award of bids set by statutory limitations or requirements, or not approved during the budget process) should be signed by the mayor. The mayor would have knowledge and understanding of the contract and would sign on behalf of the City. All other documents would be executed by the city manager or their designee.

Past practice in the City is to have the mayor sign contracts and agreements that have been approved by the City Council or anything consistent with statutory requirements. Because of how the budget is approved, as we discussed during Chapter 7, the city manager, or designee, has been able to procure and sign contracts.

Dan Tienter will be at the Commission meeting on May 6<sup>th</sup> to provide additional information and answer any questions you may have.



# MEMORANDUM

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**Date:** 5/6/2019

**To:** Charter Commission Members

**From:** Daniel Tienter, Director of Finance/City Treasurer

**DEPT:** Finance

**CC:** Deb Skogen, City Clerk/Staff Liaison

**RE:** Charter Section 6.05, Purchases and Contracts

During a recent review of the purchasing policy for the City of Fridley (City), staff realized inconsistencies both among various sections of the City Charter (Charter), and between the Charter and current City practices with respect to the procurement process. Based on this review, staff prepared recommended changes to the Charter to address these issues.

Specifically, Section 6.05 controls certain powers and responsibilities with respect to purchases and contracts, including a plain text interpretation that the Mayor must execute or sign all contracts or similar agreements on behalf of the City. As discussed in the April 24, 2019 memorandum from the City Clerk, the City does not maintain such a practice, and doing so would constitute an impractical burden on City operations.

Additionally, staff interpret this Charter provision to be inconsistent with other Charter sections, specifically Section 7.06, which empowers the City Manager to enforce the "budget resolution and other financial policies of the City," and Section 2.01, which provides that the City Council "shall exercise [its] control exclusively through the City Manager and shall not itself attempt to perform any administrative duties." As such, the purchase of the goods and services with budgeted funds, and the execution of the same should be the responsibility of the City Manager.

Based on these and other Charter sections, as well as the administrative challenges of the current, broad language of the Section 6.05, staff recommend the Charter Commission modify the existing provision as outlined in proposed amendment (Attachment A). Generally, the recommended change would allow the City Manager, or their designee, to:

- Control the purchasing process through a policy or policies established by resolution of the City Council;
- Permit the City Manager, or their designee, to make all purchases and contracts, assuming such purchases do not require competitive bids as outlined in State law, and are included in the annually adopted budget; and
- Require the Mayor and City Manager to execute any agreement that would otherwise be outside of these requirements or appearing before the City Council.

In preparing the recommended amendment, staff reviewed city charter language from more than 12 municipalities.

FRIDLEY CITY CHARTER  
CHAPTER 6. ADMINISTRATION OF CITY AFFAIRS

Section 6.01. THE CITY MANAGER.

The City Manager shall be the Chief Administrative Officer of the city, and shall be chosen by the Council solely on the basis of training, experience and administrative qualifications. The choice shall not be limited to inhabitants of the city or State but shall be limited to a citizen of the United States. The City Manager shall be appointed for an indefinite period and shall be removable by the Council at any regularly scheduled meeting provided at least three (3) members of the Council vote for the removal. (Ref. Ord. 790, Ord. 857)

Section 6.02. POWERS AND DUTIES OF THE CITY MANAGER.

The City Manager shall control and direct the administration of the City's affairs subject to the provisions of this Charter and other regulations adopted by the City Council. The City Manager's powers and duties shall be:

- (a) To ensure the City Charter, laws, ordinances and resolutions of the City are enforced;
- (b) To appoint all city employees on the basis of qualification and experience and provide written notice of such actions to the City Council;
- (c) To remove any City employee subject to law and provide written notice of such actions to the City Council;
- (d) To exercise control over all departments and divisions of the City administration created by this Charter or which may hereafter be created by the Council;
- (e) To attend all meetings of the Council, with the right to take part in the discussions as an ex-officio member of the City Council without voting rights. The Council may at its discretion exclude the City Manager from meetings at which the City Manager's removal is considered;
- (f) To recommend to the Council for adoption such measures as may be deemed necessary for the welfare of the people and the efficient administration of the City's affairs;
- (g) To keep the Council fully advised as to the financial condition and needs of the City and to prepare and submit the annual budget to the City Council;
- (h) To perform such other duties as may be prescribed by this Charter or required by ordinances or resolutions adopted by the Council; and
- (i) To appoint a designee to serve in their absence when presence is required. The name of the designee shall be forwarded by written notice to the City Council.

## Section 6.03. DEPARTMENTS OF ADMINISTRATION.

The Council may create offices, departments, divisions and bureaus for the administration of the City's affairs. It may alter the powers and organization of the same. It may enact, in the form of an ordinance, an administrative code for the City and may amend the same.

## Section. 6.04. SUBORDINATE OFFICERS.

There shall be a City Clerk, City Treasurer, City Attorney and other officers subordinate to the City Manager as the Council may provide for by ordinance, resolution or established by law. These officers shall be subject to the direction of the City Manager and shall have such duties in connection with keeping of the public records, the custody and disbursement of the public funds, and general administration of the City's affairs as shall be ordained by the Council. The City Clerk may be designated to act as Secretary of the Council. The Council may combine the duties of various offices as it may see fit.

## Section 6.05. PURCHASES AND CONTRACTS.

~~The City Manager shall be the Chief Purchasing Agent of the City. The City Manager may designate an individual(s) through the establishment of a policy that may be revised as needed. All purchases on behalf of the city shall be made and all contracts shall be let by the City Manager. All City contracts, bonds, and instruments of every kind to which the City shall be a party shall be signed by the Mayor on behalf of the City, as well as the City Manager or documented designee, and shall be executed in the name of the City.~~

The City Manager shall be the Chief Purchasing Agent of the City. All purchases on behalf of the City shall be made and all contracts shall be let by the City Manager, or their designee(s), provided the City Council appropriated sums necessary for the contract or purchase, and the amount of the purchase or contract does not exceed that required for competitive bids as established by State Statutes. Except for those purchases or contracts subject to the authority of the City Manager as set forth herein, all bonds, contracts and similar instruments shall be approved by the City Council, and signed by the Mayor and City Manager, and executed in the name of the City, unless otherwise authorized by the City Council by resolution.

## Section. 6.06. CONTRACTS, HOW LET.

In all cases of contracts for the purchase, rental, or lease of merchandise, materials or equipment or for any kind of construction work undertaken by the City, which require an expenditure of more than that which is set by the State Statutes, the City Manager shall advertise for bids by at least ten (10) days published notice in the official newspaper or other means authorized by state statute. In accordance with Section 3.06 of the eCity Ceharter, the Ceity Ceouncil has the authority to forgo this requirement to advertise for bids. When a bid is required, the City Council has the option of lowest responsible bid or best value bid as described in the Minnesota State Statutes. The Council may, however, reject any and all bids. Nothing contained in this Section shall prevent the council from contracting for the doing of work with patented processes, or from the purchasing of patented appliances.

Section. 6.07. FURTHER PURCHASE REGULATIONS.

Further regulations for the making of bids and the letting of contracts may be made by ~~ordinance~~resolution of the City Council, subject to the provisions of this Charter.

FRIDLEY CITY CHARTER  
CHAPTER 6. ADMINISTRATION OF CITY AFFAIRS

Section 6.01. THE CITY MANAGER.

The City Manager shall be the Chief Administrative Officer of the city, and shall be chosen by the Council solely on the basis of training, experience and administrative qualifications. The choice shall not be limited to inhabitants of the city or State but shall be limited to a citizen of the United States. The City Manager shall be appointed for an indefinite period and shall be removable by the council at any regularly scheduled meeting provided at least three (3) members of the Council vote for the removal. (Ref. Ord. 790, Ord. 857)

Section 6.02. POWERS AND DUTIES OF THE CITY MANAGER.

The City Manager shall control and direct the administration of the City's affairs subject to the provisions of this Charter and other regulations adopted by the City Council. The City Manager's powers and duties shall be:

- (a) To ensure the City Charter, laws, ordinances and resolutions of the City are enforced;
- (b) To appoint all city employees on the basis of qualification and experience and provide written notice of such actions to the City Council;
- (c) To remove any City employee subject to law and provide written notice of such actions to the City Council;
- (d) To exercise control over all departments and divisions of the City administration created by this Charter or which may hereafter be created by the Council;
- (e) To attend all meetings of the Council, with the right to take part in the discussions as an ex-officio member of the City Council without voting rights. The Council may at its discretion exclude the City Manager from meetings at which the City Manager's removal is considered;
- (f) To recommend to the Council for adoption such measures as may be deemed necessary for the welfare of the people and the efficient administration of the City's affairs;
- (g) To keep the Council fully advised as to the financial condition and needs of the City and to prepare and submit the annual budget to the City Council;
- (h) To perform such other duties as may be prescribed by this Charter or required by ordinances or resolutions adopted by the Council; and
- (i) To appoint a designee to serve in their absence when presence is required. The name of the designee shall be forwarded by written notice to the City Council.

### Section 6.03. DEPARTMENTS OF ADMINISTRATION.

The Council may create offices, departments, divisions and bureaus for the administration of the City's affairs. It may alter the powers and organization of the same. It may enact, in the form of an ordinance, an administrative code for the City and may amend the same.

### Section. 6.04. SUBORDINATE OFFICERS.

There shall be a City Clerk, City Treasurer, City Attorney and other officers subordinate to the City Manager as the Council may provide for by ordinance, resolution or established by law. These officers shall be subject to the direction of the City Manager and shall have such duties in connection with keeping of the public records, the custody and disbursement of the public funds, and general administration of the City's affairs as shall be ordained by the Council. The City Clerk may be designated to act as Secretary of the Council. The Council may combine the duties of various offices as it may see fit.

### Section 6.05. PURCHASES AND CONTRACTS.

The City Manager shall be the Chief Purchasing Agent of the City. The City Manager may designate an individual(s) through the establishment of a policy that may be revised as needed. All purchases on behalf of the city shall be made and all contracts shall be let by the City Manager. All City contracts, bonds, and instruments of every kind to which the City shall be a party shall be signed by the Mayor on behalf of the City, as well as the City Manager or documented designee, and shall be executed in the name of the City.

### Section. 6.06. CONTRACTS, HOW LET.

In all cases of contracts for the purchase, rental, or lease of merchandise, materials or equipment or for any kind of construction work undertaken by the City, which require an expenditure of more than that which is set by the State Statutes, the City Manager shall advertise for bids by at least ten (10) days published notice in the official newspaper or other means authorized by state statute. In accordance with Section 3.06 of the city charter the city council has the authority to forgo this requirement to advertise for bids. When a bid is required, the City Council has the option of lowest responsible bid or best value bid as described in the Minnesota State Statutes. The Council may, however, reject any and all bids. Nothing contained in this Section shall prevent the council from contracting for the doing of work with patented processes, or from the purchasing of patented appliances.

### Section. 6.07. FURTHER PURCHASE REGULATIONS.

Further regulations for the making of bids and the letting of contracts may be made by ordinance, subject to the provisions of this Charter.

FRIDLEY CITY CHARTER  
CHAPTER 10. FRANCHISES AND PUBLIC UTILITIES

Section 10.01. DEFINITION OF FRANCHISES.

The word "franchise" as used in this Charter shall be construed to include all privileges granted to any person, firm, association or corporation in, over, upon or under any of the highways or public places of the City, whether such privileges have been or shall hereafter be granted either by the City or by the State of Minnesota.

Section 10.02. FRANCHISE ORDINANCES.

The Council may grant franchises by ordinance adopted by an affirmative vote of at least four (4) members of the Council, but in no case shall a franchise be granted by an emergency ordinance, nor within twenty (20) days after a public hearing thereon as provided for in Section 10.09, or later than sixty (60) days after such public hearing. Franchise rights shall always be subject to the superior right of the public to the use of streets and public places. All corporations, co-partnerships, persons or other entity desiring to make an especially burdensome use of the streets or public places inconsistent with the public's right in such places, or desiring the privilege of placing in, over, upon or under any street or public place any permanent or semi-permanent fixtures for the purpose of constructing or operating street or other railways, or for telephoning or telegraphing or transmitting electricity, or transporting by pneumatic tubes, or for furnishing to the City or its inhabitants or any portion thereof transportation facilities, water, light, heat, power, or any other public utility, or for any other purpose, may be required to obtain a franchise before proceeding to make such use of the streets or public places or before proceeding to place such fixtures in such places. Every ordinance granting or extending any franchise shall contain all the terms and conditions of the franchise. A franchise shall be without any validity whatever until it has been unconditionally accepted in all its terms, and such acceptance, properly executed by the grantee, has been filed with the City Clerk.

Section 10.03. COST OF PUBLICATION OF FRANCHISE.

The grantee shall bear the cost of publication of the franchise ordinances and shall deposit sufficient cash to guarantee the publication before the ordinance is passed.

Section 10.04. POWER OF REGULATION RESERVED.

The City shall have the right and power to regulate and control the exercise by a corporation, co-partnership, person or other entity, of any franchise, however acquired, and whether such franchise has been heretofore granted by the City of Fridley or by the State of Minnesota, or shall hereafter be granted by the City or by the State of Minnesota. (Ref. Ord. 592)

## Section 10.05. RATES AND CHARGES.

Every public utility or franchisee making use of the streets or public places within the City shall give courteous, efficient and adequate service at reasonable rates. A reasonable rate shall be construed to be one which will, with efficient management, normally yield a fair return on all property used and useful in furnishing service to the City and its inhabitants. This shall not be construed as a guaranty of a return and in no case shall there be any return upon franchise value. Within these limits the determination of maximum rates, fares, or charges to be charged by any public utility or franchisee for service rendered to the City or any person, persons, firm or corporation within the City, shall be made, if possible, by direct negotiations between the public utility or franchisee and the Council. In case of failure to reach an agreement by this method within a reasonable time the Council may, in its discretion, agree to submit to arbitration on such terms as it may deem feasible or upon such terms as the franchise provides for, the fixing of rates, fares, or charges by the public utility or franchisee; provided, however, that the rates, fares, or charges so fixed by arbitration shall not be binding on the City for more than five (5) years. (Ref. Ord. 625)

## Section 10.06. PROVISIONS OF FRANCHISES.

Every Franchise shall contain among other things, provisions, relating to the following:

1. The term of the franchise granted, which shall not exceed twenty-five (25) years.
2. Rates, fares and charges to be charged by the public utility or franchisee in compliance with the terms and provisions of Section 10.05.
3. The rights reserved to the City in connection with the erection of poles, masts or other fixtures in the streets or public places and the attachment of wires thereto, the laying of tracks in or of pipes or conduits under the streets or public places, and the placing in the streets or other public places of any permanent or semi-permanent fixtures or equipment by the public utility or franchisee.
4. The prompt repair by the public utility or franchisee of all damages to the public streets, alleys and public property occasioned by the acts or omissions of the public utility or franchisee.
5. The rights of the City to have access to all books, records, and papers of the public utility or franchisee which in any way deal with, affect or record its operations within and pertaining to the City and pertaining to property and equipment used and useful in furnishing service to the City and its inhabitants.
6. The power and the right of the City to submit to arbitration the fixing of any rates, fares or charges to be made by the public utility or franchisee.

7. The right of the public utility or franchisee to receive upon condemnation proceedings brought by the City to acquire the public utility or franchisee compensation for its franchise or the value thereof, if any. (Ref. Ord. 625)

Section 10.07. FURTHER PROVISIONS OF FRANCHISES.

The enumeration and specification of particular matters which must be provided for in every franchise or renewal or extension thereof shall not be construed as impairing the right of the City to insert in any such franchise or renewal or extension thereof such other and further conditions and restrictions as the Council may deem proper to protect the City's interests, nor shall anything contained in this Charter limit any right or power possessed by the City over existing franchises.

Section 10.08. RENEWALS OR EXTENSION OF FRANCHISES.

Every extension, renewal or modification of any existing franchise or of any franchise granted hereunder shall be subject to the same limitations and granted in the same manner as a new franchise.

Section 10.09. PUBLIC HEARINGS.

Before any franchise ordinance is adopted or any rates, fares or charges to be charged by the public utility or franchisee are fixed, there shall be a public hearing by the Council in regard thereto. Notice of such public hearing shall be given by published notice at least once in the official newspaper not less than twenty (20) days prior to the date of such public hearing. Additional notice of such public hearing may be given in such manner as the Council shall determine. (Ref. Ord. 625)

FRIDLEY CITY CHARTER  
CHAPTER 12. MISCELLANEOUS PROVISIONS

Section 12.01. OFFICIAL PUBLICATIONS.

The Council shall regulate by ordinance, subject to the requirements of this Charter, the manner in which official publicity shall be given to the holding of elections, ordinances, resolutions, requests for bids upon contemplated purchases and contracts, and all other matters whatsoever which require publication either by the provisions of this Charter or by the laws of Minnesota. It shall annually designate a legal newspaper of general circulation in the City as the official newspaper in which shall be published such measures and matters as are by the laws of this State and this Charter required to be so published, and such other matters as the Council may deem it advisable and in the public interest to have published in this manner.

At its discretion, the City Council may also provide for the publication of important city information including but not limited to the annual budget, ordinances, and resolutions. Such publication may be done by mailing or posting of printed copies thereof upon bulletin boards located in public places of the City in such number and for such period of time as the Council may direct in each case. In addition, the City Council may use electronic means for publication. Nothing herein contained shall be construed as authorizing or attempting to authorize any violation of the Constitution or the Statutes of the State in any matter which is of State concern or which is exclusively under State control. (Ref Ord 1310)

Section 12.02. PUBLICITY OF RECORDS.

All records and accounts of every office, department or agency of the City shall be open to inspection in accordance with the Minnesota Government Data Practices Act.

Section 12.03. OATH OF OFFICE.

Every officer of the City shall, before entering upon the duties of the office, take and subscribe an oath of office in substantially the following form: "I do solemnly swear (or affirm) to support the Constitution of the United States and of the State of Minnesota and to discharge faithfully the duties devolving upon me as (Mayor, or Councilmember, or City Manager, etc.) of this City to the best of my judgement and ability." (Ref. Ord. 857)

Section 12.04. CITY OFFICERS NOT TO ACCEPT FAVORS OR CONTRACTS.

No member of the City Council or employee of the City shall solicit or receive any pay, commission, money, thing of value, or derive any profit, directly or indirectly, from or by reason of, any improvement, alteration or repair required by authority of the City, or any contract to which the City shall be a party, except lawful compensation, including authorized expenditures, or salary as such member of the City Council or as such employee. No member of the City Council or

employee of the City, except as otherwise provided in this Charter, or by law, shall solicit, accept or receive, directly or indirectly, from any public utility corporation or the owner of any public utility or franchise, any pass, frank, free ticket, free service, or any other favor, upon terms more favorable than those granted the public generally. A violation of any of the provisions of this Section shall disqualify the offender, if found guilty, from continuing in office or in the employment of the City, and the offender shall be removed therefrom. Any contract with the City in which any member of the City Council or employee of the City is, or becomes, directly or indirectly interested personally shall be voidable at the option of the Council; and any money which shall have been paid on such contract by the City may be recovered from any or all of the persons interested therein by joint or several action. (Ref. Ord. 857)

#### Section 12.05. OFFICIAL BONDS.

The offices of City Manager, the City Clerk and City Treasurer and such other officers or employees of the City, as may be provided for by ordinance, shall each, before entering upon the duties of their respective offices or employment, give a corporate surety bond to the City in such form and in such amount as may be fixed by the Council as security for the faithful performance of their respective official duties and the safekeeping of the public funds. Such bonds shall be approved by the City Council and approved as to form by the City Attorney. They shall be filed with the Secretary of the Council. In the event the Secretary of the Council holds more than one (1) office by appointment, the Secretary's bond or bonds shall be filed with the Mayor. The provisions of the laws of the State relating to official bonds, not inconsistent with this Charter, shall be complied with. The premiums on the corporate surety bonds hereinbefore provided for shall be paid by the City. (Ref. Ord. 857)

#### Section 12.06. SALES OF REAL PROPERTY.

No real property of the City shall be sold or disposed of except by ordinance. The proceeds of any such sale shall be used as far as possible to retire any outstanding indebtedness incurred by the City in the purchase, construction, or improvement of this or other property used for the same public purpose; but if there be no such outstanding indebtedness, then the Council may by a resolution adopted by an affirmative vote of at least four (4) members of the Council designate some other public use for such proceeds.

#### Section 12.07. VACATION OF STREETS.

The Council shall have the exclusive power, by resolution passed by a vote of at least four (4) members of the Council, to vacate or discontinue highways, streets, easements, and alleys within the City. Such vacations may be made only after notice and hearing of affected property owners, and upon such further terms and by such procedure as the Council may by ordinance prescribe. A record of each such vacation shall be filed in the office of the Anoka County Recorder. (Ref. Ord. 592, Ord. 1090)

## Section 12.08. DAMAGE SUITS.

1. No action shall be maintained against the City on account of any injuries or damages to persons or property, unless such action shall be commenced within one (1) year from the occurrence of such injury or damage, nor unless notice shall have been given in writing as required by Minnesota Statutes. (Ref. Ord. 873)
2. No action shall be maintained against the City on account of injuries or damages to persons or property resulting from or caused by any accumulation or deposit of ice or snow on any public street, sidewalk, building, or place.

## Section 12.09. RECOVERY OF JUDGEMENT FOR DAMAGES.

If any judgement shall be recovered in any action against the City for any injury or damage caused by any obstruction, excavation, opening or defect in any street or alley or public ground caused or occasioned by the act or omission of any person or corporation, the City shall have the right to recover the amount of any such judgement from the person or corporation so responsible for such obstruction, excavation, opening or defect; and such person or corporation is hereby declared to be liable to the City in the amount of such damages, provided, however, the City shall give such person or corporation notice of any claim for such injury or damage and of any action to recover for the same and shall give such person or corporation the right and reasonable opportunity to defend such action.

## Section 12.10. CITY TO SUCCEED TO RIGHTS AND OBLIGATIONS OF FORMER MUNICIPALITY

The City of Fridley shall remain vested with and continue to have, hold and enjoy all property, property rights, rights of action, and rights of every kind, privileges and immunities now belonging to or pertaining to the Village of Fridley, and shall be subject to all liabilities which exist against said Village on the effective date of this Charter.

## Section 12.11. APPLICATION OF GENERAL LAWS.

All general laws and statutes of the State applicable to all cities operating under home rule Charters, or applicable to cities of the same class as the City of Fridley operating under home rule Charters, and not inconsistent with the provisions of this Charter, shall apply to the City of Fridley and shall be construed as supplementary to the provisions of this Charter. The City shall have all powers and authority granted by the laws of the State to municipalities to acquire property or exercise authority or powers beyond the corporate limits. All powers by this Section conferred shall be exercised conformably to this Charter so far as may be possible, and such authority and power shall not authorize the City to incur any bonded debt beyond the limitations, or in any other manner than authorized by this Charter.

Section 12.12. EXISTING ORDINANCES, REGULATIONS, BOARDS AND COMMISSIONS CONTINUED

All ordinances, regulations, boards and commissions of the municipality in force and existing when this Charter takes effect, and not inconsistent with the provisions hereof, are hereby continued in full force and effect until amended, repealed, vacated or abolished.

Section 12.13. PENDING CONDEMNATIONS AND ASSESSMENTS.

Any proceeding for condemnation for public improvement or assessment in progress when this Charter takes effect shall be continued and completed under the laws under which such proceedings were begun. All assessments made by the Village prior to the time when this Charter takes effect shall be collected and the lien thereof enforced in the same manner as if this Charter had not been adopted.