

**CITY OF HOPKINS**  
**CHARTER COMMISSION**

**AGENDA**

**May 16, 2011**  
**6:30 p.m.**

**Raspberry Room - Hopkins City Hall**

1. Call to Order
2. Roll Call
3. Approval of the Minutes of the Previous Meeting
4. Reports
5. Old Business
  - Charter Amendments
6. New Business
7. Adjournment

**ATTACHMENTS:**

- Minutes of the May 2, 2011 Charter Commission meeting
- Resolution 2011-01
- Ordinance 2011-1027
- Attorney's opinion regarding 2011 filing periods

UNAPPROVED

## **Minutes of the Hopkins Charter Commission**

May 2, 2011

The Hopkins Charter Commission met on May 2. Present were Commission members David Day, Roger Gross, Fran Hesch, Karen Jensen, Roger Johnson, Steve Lewis, and Emily Wallace-Jackson.

The meeting was brought to order at 6:30 p.m. by the Chair of the Commission, Emily Wallace-Jackson.

### Approval of the Minutes of the Previous Meeting

Commissioner Gross moved and Commissioner Lewis seconded a motion to approve the minutes of the April 27, 2010 meeting. The motion was approved unanimously.

### Reports

Mr. Genellie reported that the terms have expired of several commissioners. The following commissioners have agreed to be reappointed: David Day, Roger Gross, and Steve Lewis.

### Old Business

#### **Instant Runoff Elections**

Mr. Genellie said that St. Paul will be conducting its next election using instant runoff voting. He also said that there is a possibility that Hennepin County will be seeking to replace the current voting machines in the County. New voting machines may well have the ability to process instant runoff voting.

### Old Business

Mr. Genellie brought forward two amendments to the Charter.

Section 3.03 of the City Charter requires that an ordinance be passed to amend an existing ordinance. Hopkins, like most cities, combines its ordinances into a City Code. Staff proposed that language referencing the City Code be added to Section 3.03.

## UNAPPROVED

In addition, Section 3.03 currently requires that the ordinance or section being amended shall be referred to by "title, date of passage, and section number or numbers." Since the City Code is a compilation of all the ordinances, a given section may have been amended a number of times by a variety of ordinances. It is difficult to pick out a single "date of passage." Simply using the title and section numbers will make it clear as to what part of the code is being amended or repealed.

Section 4.02 of the Charter spells out how someone becomes a candidate for city office. It also establishes the filing period by stating how many days prior to the election an affidavit will be accepted. The state of Minnesota changed the filing dates in 2010 to accommodate the federal requirements to mail absentee ballots 45 days prior to the election.

Rather than amend the Charter to adopt the new timelines, staff proposed deleting this language. Section 4.03 of the Charter applies general election laws to Hopkins unless there is different language in the Charter. By deleting the filing period in the Charter, the City's filing period will automatically match that required by the State of Minnesota.

The Commission agreed that Mr. Genellie should prepare a draft ordinance making these changes. Since a Charter amendment is being proposed, another Commission meeting will be needed to approve a resolution and draft ordinance amending the Charter. The Commission chose Monday, May 16 at 6:30 p.m. for its next meeting.

Commissioner Hesch moved and Commissioner Jensen seconded a motion to adjourn. The meeting adjourned by unanimous consent at 6:50 p.m.

# **CITY OF HOPKINS**

**Hennepin County, Minnesota**

## **CHARTER COMMISSION RESOLUTION NO. 2011-01**

### **RESOLUTION RECOMMENDING AMENDMENT OF THE HOPKINS CHARTER BY ORDINANCE**

Whereas, the Hopkins Charter Commission has the authority under Minnesota Statute, Section 410.12, subdivision 7 to recommend amendments to the City Charter; and

Whereas, the Commission has determined that the Hopkins City Charter should be amended;

Now Therefore be it resolved by the Hopkins Charter Commission that the Hopkins Municipal Charter be amended by Ordinance 2011-1027 enacted by the City Council of the City of Hopkins pursuant to Minnesota Statute 410.12.

Passed and adopted at a regularly scheduled meeting of the Hopkins Charter Commission on May 16, 2011.

By \_\_\_\_\_  
Emily Wallace-Jackson, Chair

ATTEST:

\_\_\_\_\_  
James A. Genellie, Secretary  
Hopkins Charter Commission

**CITY OF HOPKINS  
HENNEPIN COUNTY, MINNESOTA  
ORDINANCE 2011-1027**

AN ORDINANCE AMENDING THE CHARTER OF THE CITY OF HOPKINS  
UPON RECOMMENDATION OF THE HOPKINS CHARTER COMMISSION  
PURSUANT TO M.S.A. CHAPTER 410.12, SUBD. 7

The City Council of the City of Hopkins, upon recommendation of and from the Hopkins City Charter Commission does hereby ordain and thus amend and adopt the following changes, deletions, and amendments of or from the following chapters and sections of the Hopkins City Charter:

**Section 1.** Section 3.03, Subdivision 6 is amended as follows:

No section of the City Code or city ordinance ~~or section thereof~~ shall be amended or repealed except by ordinance, and every amendment or repeal shall refer to the section or ordinance so amended or repealed by title, ~~date of passage~~ and section number or numbers. All previous amendments must be consolidated in a rewording of the section amended each time that the section is changed.

**Section 2.** Section 4.02, Subdivision 1 is amended as follows:

A candidate for a city office shall file an affidavit ~~not more than 70 days and not less than 56 days before the municipal general election~~ with the City Clerk, or application on behalf of any qualified voter of the City whom they desire to be a candidate may be made as per Chapter 205, MUNICIPAL ELECTIONS, of the Minnesota State Statutes. In either case, the filing fee shall be \$5.00. Such affidavit or application shall state that the candidate is a qualified voter of the City of Hopkins, and name the office for which she or he is a candidate.

**Section 3.** The effective date of this ordinance shall be ninety days after publication.

First reading:	July 5, 2011
Second reading:	July 19, 2011
Date of Publication:	July 28, 2011
Date Ordinance Takes Effect:	October 26, 2011

By

\_\_\_\_\_  
Gene Maxwell, Mayor

ATTEST:

\_\_\_\_\_  
Terry Obermaier, City Clerk

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
City Attorney Signature

\_\_\_\_\_  
Date

Jim:

I have reviewed M.S. 205.02 and M.S. 410.21 and recognize that the provisions appear to be in conflict as to whether the statutory provision or the Hopkins charter provision applies to the question of the 2011 filing period applicable to election to a Hopkins city office. I would note that M.S.410.21 refers only to election to "municipal offices" and does not refer to ballot questions or other issues subject to a public vote. Therefore, in my opinion, the two statutes do not conflict with regard to votes other than for public office and M.S.205.02 would control those votes/elections.

As to elections for city officers, however, my opinion is that M.S.205.02 controls for the following reasons:

- 1) The statute was adopted later than M.S.410.21;
- 2) The statute's provisions more specifically address elections than the general references to elections found in M.S.410.21, and;
- 3) Section 4.03 of the Charter appears to intend to adopt, by reference, the applicable state statutes dealing specifically with elections.

Because the changes to M.S.205.13 were made with the Legislature's presumptive knowledge of M.S. 205.02 and M.S.410.21, it makes sense that the later in time and more specific provisions do and were intended to control. I could not, however, find any case law or attorney general opinion that supports that position. I did, however, also consult the League of Cities' Handbook regarding elections. In discussing the application of the Leagues' Handbook provisions to charter cities, it states as follows:

"City election law generally applies to all statutory and home rule charter cities. However, home rule charter cities may have additional authority in their charters dealing with the number and types of offices that are elected or specific types of special election questions on which the voters may decide."

I have not yet talked with anyone at the League office regarding this language or talked with anyone at the Secretary of State's office about it. This statement, however, supports my conclusion that M.S.205.02 applies rather than the charter provisions, with the specific exceptions referred to in which case the charter would apply.

Also, Sections 4.02 and 4.03 probably were adopted when Section 4.02 was consistent with the state statute. Section 4.03 likely was not intended to retain provisions made inconsistent by change to the state statute. I believe a fair reading of Section 4.03 was that it was intended to follow state statute unless a Charter provision was specifically adopted that conflicted with that statute, as is provided for in 205.02.

As to the 2011 filing period, therefore, it would be my opinion that the M.S.205.02 controls and M.S.205.13 applies despite the fact that the Charter, as currently written, conflicts. The fact that the Charter provision cannot be modified until October does not change my opinion that the 2010 version of M.S.205.13 applies and the filing time frames set forth in the statute control

rather than those in the Charter: for an election to be held in November, 84 and 70 days if there is to be a primary and 91 and 77 days if there is no primary.

If you would like me to consult further with the League and/or the Secretary of State, please let me know and I will do so promptly. If you have any questions or wish to discuss the matter further, let me know.

Wynn Curtiss  
Steiner & Curtiss, P.A.

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Wynn:

Staff is proposing the following changes for Section 4.02:

Section 4.02. CANDIDATES. Subdivision 1. A candidate for a city office shall file an affidavit not more than 70 days and not less than 56 days before the municipal general election with the City Clerk, or application on behalf of any qualified voter of the City whom they desire to be a candidate may be made as per Chapter 205, MUNICIPAL ELECTIONS, of the Minnesota State Statutes. In either case, the filing fee shall be \$5.00. Such affidavit or application shall state that the candidate is a qualified voter of the City of Hopkins, and name the office for which she or he is a candidate.

Section 4.03. GENERAL ELECTION LAWS TO APPLY. Except as herein provided, the general laws of the State of Minnesota pertaining to registration of voters and the conduct of primary and general elections shall apply for all municipal elections of such officials as are specified in this Charter. The Council may, through ordinances duly adopted in compliance with such state laws and this Charter, adopt suitable and necessary regulations for the conduct of such elections.

Section 4.02 spells out how someone becomes a candidate for city office. It also establishes the filing period by stating how many days prior to the election an affidavit will be accepted. The state of Minnesota changed the filing dates in 2010 to accommodate the federal requirements to mail absentee ballots 45 days prior to the election.

Rather than amend the Charter to adopt the new timelines, staff proposes deleting this language. Section 4.03 of the Charter applies general election laws to Hopkins unless there is different language in the Charter. By deleting the filing period in the Charter, the City's filing period will automatically match that required by the State of Minnesota.

I do not see anything especially difficult about amending Section 4.02. The problem occurs because the Charter amendment process, which includes publication prior to a public hearing, first and second readings, and a 90 day period after publication before the Charter amendment becomes effective; results in the amendment becoming effective sometime in October. So the question for you is when is the 2011 filing period?

Minnesota Statute 205.13 establishes the new filing period.

205.02 would seem to indicate that home rule charter cities should follow 205.13.

But Section 410.21 would seem to contradict 205.02.

#### 205.13 CANDIDATES, FILING.

##### Subdivision 1. Affidavit of candidacy.

An individual who is eligible and desires to become a candidate for an office to be voted for at the municipal general election shall file an affidavit of candidacy with the municipal clerk. Candidates for a special election to fill a vacancy held as provided in section 412.02, subdivision 2a, must file an affidavit of candidacy for the specific office to fill the unexpired portion of the term. Subject to the approval of the county auditor, the town clerk may authorize candidates for township offices to file affidavits of candidacy with the county auditor. The affidavit shall be in substantially the same form as that in section 204B.06, subdivision 1. The municipal clerk shall also accept an application signed by not less than five voters and filed on behalf of an eligible voter in the municipality whom they desire to be a candidate, if service of a copy of the application has been made on the candidate and proof of service is endorsed on the application being filed. Upon receipt of the proper filing fee, the clerk shall place the name of the candidate on the official ballot without partisan designation.

##### Subd. 1a. Filing period.

In a city nominating candidates at a primary, an affidavit of candidacy for a city office voted on in November must be filed no more than 84 days nor less than 70 days before the city primary. In municipalities that do not hold a primary, an affidavit of candidacy must be filed no more than 70 days and not less than 56 days before the municipal general election held in March in any year, or a special election not held in conjunction with another election, and no more than 91 days nor less than 77 days before the municipal general election held in November of any year.

##### Subd. 1b. Absent candidates.

A candidate for municipal office who will be absent from the state during the filing period may submit a properly executed affidavit of candidacy, the appropriate filing fee, and any necessary petitions in person to the filing officer. The candidate shall state in writing the reason for being unable to submit the affidavit during the filing period. The affidavit, filing fee, and petitions must be submitted to the filing officer during the seven days immediately preceding the candidate's absence from the state. In cities of the first class, and in any city where the use of nominating petitions is permitted under the city's charter, a nominating petition for a candidate who will be absent from the state during the filing period may be signed during the 14 days immediately preceding the date when the affidavit of candidacy is filed.

##### Subd. 2. Notice of filing dates.

At least two weeks before the first day to file affidavits of candidacy, the municipal clerk shall publish a notice stating the first and last dates on which affidavits of candidacy may be filed in the clerk's office and the closing time for filing on the last day for filing. The clerk shall post a similar notice at least ten days before the first day to file affidavits of candidacy. The notice must separately list any office for which affidavits of candidacy may be filed to fill the unexpired portion of a term when a special election is being held to fill a vacancy as provided in section 412.02, subdivision 2a.

#### 205.02 STATUTES APPLICABLE.

Subdivision 1. Minnesota Election Law.

Except as provided in this chapter the provisions of the Minnesota Election Law apply to municipal elections, so far as practicable.

Subd. 2. City elections.

In all statutory and home rule charter cities, the primary, general and special elections held for choosing city officials and deciding public questions relating to the city shall be held as provided in this chapter, except that sections 205.065, subdivisions 4 to 7; 205.07, subdivision 3; 205.10; 205.121; and 205.17, subdivisions 2 and 3, do not apply to a city whose charter provides the manner of holding its primary, general or special elections.

#### 410.21 APPLICATION OF GENERAL ELECTION LAWS.

The provisions of any charter of any such city adopted pursuant to this chapter shall be valid and shall control as to nominations, primary elections, and elections for municipal offices, notwithstanding that such charter provisions may be inconsistent with any general law relating thereto, and such general laws shall apply only in so far as consistent with such charter.