

**City of West St. Paul
Open Council Work Session Minutes
February 22, 2021**

1. Call to Order

Mayor Napier called the meeting to order at 5:30 p.m.

2. Roll Call

Present: Mayor Dave Napier
Councilmembers Wendy Berry, Julie Eastman, Lisa Eng-Sarne,
Robyn Gulley, John Justen, and Dick Vitelli

Absent: None

Also Present: City Manager Ryan Schroeder
City Attorney Kori Land
Police Chief Brian Sturgeon
Finance Director Char Stark
City Clerk Shirley Buecksler

3. Review and Approve the OCWS Agenda

Council approved the OCWS agenda, as presented.

4. Review the Regular Meeting Consent Agenda

Council reviewed and approved the Consent Agenda, as presented. Council also approved adding Item 11A, Declaring City Manager Finalists, to the Regular Council agenda.

5. Agenda Item(s)

A. Bidwell Avenue Sidewalk Project – Safe Routes to School Grant

In 2016, City Engineer Beckwith said the City was awarded a Safe Routes to School (SRTS) Federal grant in the amount of \$288,400 for the installation of a sidewalk along Bidwell Avenue from Thompson Avenue to Butler Avenue. After working through preliminary engineering, it was discovered that the project cost was going to be much higher than previously thought. As a result, City Council rescinded the Federal grant in October of 2016. In 2020, Staff again applied for a SRTS grant for Bidwell Avenue and was successful in securing funding for program year 2023.

This corridor has many challenges with steep side slopes and close proximity to existing residences. Staff previously met with the two main property owners south of Logan Avenue who both liked the idea of moving the east curb in towards centerline. This design narrows the roadway, minimizes impacts on trees, minimizes the need for

retaining walls and property acquisition, and prohibits parking on the east side of the roadway.

Staff also met with Heritage Middle School (who wrote a letter of support for the initial SRTS Grant). They own the property on the east side of Bidwell Street between Logan Avenue and Butler Avenue. The school prefers that the existing width of Bidwell Street remain as is along this section to allow for on-street parking during sporting events. They understand and accept that the boulevard trees would need to be removed to fit the sidewalk within the current right of way along their property.

City Council supported the aforementioned design in 2016 and preliminary plans were completed by Kimley-Horn. The chosen design has the lowest cost and least amount of property and tree impacts. Narrowing the roadway allows construction of a 5-foot boulevard and 5-foot sidewalk within City right-of-way.

Minnesota Department of Transportation (MnDOT) Federal Aid staff administer the SRTS contract. They have recommended we get an engineering consultant on board before we have a kick-off meeting. Staff has prepared a Request for Proposals (RFP) to obtain an engineering firm.

The SRTS grant pays for up to 80% of construction costs. It does not pay for engineering, construction inspection/testing/administration or right-of-way. We are eligible to receive \$640,000 from SRTS which is 80% of the estimated \$800,000 construction cost. The City has \$300,000 budgeted in the Sidewalk Fund for 2023 to finance the remainder of this project.

Mayor Napier congratulated Beckwith on receiving another grant.

Councilmember Eastman asked if street lights are looked at as part of the design?

Beckwith said we can look at lights and anything else.

Councilmember Eastman added that street lights should be looked at during any sidewalk construction. It's important to figure out costs.

B. Consideration of Proposed Charter Amendments

At the Charter Commission meeting of January 26, 2021, the Commission recommended the following for consideration by Council:

1. On a 7-2 vote, the Commission recommended to amend Charter Section 1.06 increasing Commission membership from the current 11 to 13. In the past, membership had been reduced due to struggles with quorums and with lack of applicants for Commission seats. With increased interest in the Charter Commission membership, supporting members opined that they did not

perceive that these past challenges would again exist in the foreseeable future, and the City should take advantage of the community interest.

Councilmember Berry recommended the increase of membership in order to obtain ward balance.

Councilmember Gulley said we should look at ways to increase involvement and supports this to get more representation from Ward 1.

Councilmember Eng-Sarne said Charter Chair Van Moorlehem is here tonight. She said there was robust conversation at the Charter Commission meetings. There is not enough diversity and we have some inequities. She supports expanding the membership.

Councilmember Vitelli said he served on the Charter Commission twice and is not in support of expanding membership. At times, it was hard to get a quorum of the Commission. Expanding would make it more difficult.

Mayor Napier said he doesn't like that there wasn't an unanimous vote by the Charter Commission. He agrees that 13 may be harder to get a quorum and is not sure if there is an impact on ward representation.

Councilmember Vitelli said, in the past, Councilmembers would find replacements, that were then forwarded to the Court for appointment. He was never contacted that there was a vacancy on the Charter Commission.

Attorney Land said there were 15 members on the Charter Commission when she started with West St. Paul.

Councilmember Justen asked if they could get reasoning behind why two Commissioners voted it down, preferably before the first reading. He would like a better understanding of the objections. Councilmember Gulley agreed and said where you live in the city influences how you see the city. It is important to consider that ward balance may have an effect.

Chair Van Moorlehem said the two Commissioners who voted no felt that, in the past, going from 15 to 13 to 11 members was because we could not get a quorum. The seven who voted in favor of expanding membership said we should not be tied to past problems but meet the times and not worry about the past.

Councilmember Vitelli said if you cannot get a quorum, the Charter Commission cannot do anything. Bigger is not better, he said.

Councilmember Gulley commented on the number of people interested in getting involved in our community. There are opportunities to create other

commissions for our city that would engage people in other ways. She would like to see this as an opportunity and not a challenge.

Council agreed to move the draft ordinance to the Regular Council agenda as Item 11B for a first reading of an amendment to Charter, Section 1.06, increasing Charter membership to 13.

2. On a 9-0 vote, the Commission recommended to amend Charter Section 2.06 providing that among the opportunities for the Mayor to vote should be included circumstances wherein, due to temporary Council vacancy, a unanimous vote of available Council members could not pass a motion with under four (4) votes. The example of the past vote regarding the Wakota Life development approval is the situation contemplated by the Commission (in which three [3] temporary vacancies on Council were declared due to a legally recognized conflict of interest).

Mayor Napier asked if the main purpose is to create a majority? City Attorney Land said yes.

Councilmember Eastman said she supports this and said we need to be flexible.

Councilmember Eastman has some confusion on both this and the next ordinance amendment and how this can play out. On one hand, if having less participation is because of recusal and we would have a future situation, has Attorney Land had other situations besides Wakota here or in her other cities? Assuming that conflict of interest could happen in smaller cities. Attorney Land said there are different examples in smaller cities where they would need to excuse themselves, but they don't come often as you might think. She has never had this come up in another community that she represents. It is a situation that has come up more than once, so it is worthy of consideration.

Councilmember Eastman asked if we have a situation to pass something and half of your Councilmembers are recusing, is it because it isn't very well thought out or is it not the right path to go if you have half of your Council recusing themselves or not participating in some way? Attorney Land said it has to be a true conflict of interest to recuse yourself. That's when it is considered an official vacancy, which is how it ties into the third amendment, but it can also be for absences.

Councilmember Eastman asked how you can progress in an emergency situation? Attorney Land said another option is to give the Mayor full voting power, but then he doesn't get to veto anything. This could be considered as an alternative.

Councilmember Justen said this is fairly uncontroversial and his understanding is you must have three affirmative votes at the table. If two Councilmembers

are absent, it's a 2-2 split and doesn't move to the Mayor. Absences would be counted as a no vote. What the Mayor is doing is affirming what would otherwise not pass. The sidewalk project by Target was a 3-2 vote with one absence and the Mayor didn't have the right to vote, so the motion failed. It seems as though the motion would pass but because of technicality, it did not. For that reason, specifically, he would be in favor. It's not increasing the Mayor's power, it's a clerical item, in the fact that you need four affirmative votes, or the equivalent of a quorum. It is specifically absences that create this situation, so he doesn't have any issues with this and would be in favor.

Councilmembers Berry, Eng-Sarne, Gulley, and Vitelli said they would support this amendment.

Councilmember Vitelli asked for clarification. If three Councilmembers are absent, there would be no quorum? Attorney Land said if the Mayor is present, there would be a quorum (four). But you cannot do business unless all four can vote. You need four affirmative votes to have anything pass, unless you reduced your number because of a vacancy.

Mayor Napier said he has no problem with this one and that the situation probably won't come up often. Also, he would prefer not to vote unless everyone is present. Everyone should be involved in every vote, unless there is a conflict of interest.

Councilmember Vitelli was concerned that an item could get passed with three absent and it could be an item that those who were absent would not have supported.

Councilmember Justen clarified this for everyone. This is not regarding conflict of interest, it's regarding physical absences. Even if three were absent, there would still only be three votes. In regards to absences, not recusals, not being here is the same as a no vote. If an absence counts as a non-affirmative vote, the Mayor could vote to break a tie. If there are three yes votes and three no votes due to absences, the vote would go to the Mayor to be the fourth vote. If the three yes votes and the three no votes were all present, it would be a tie and would go to the Mayor to vote. The only thing you can do is not show up and lose your ability to vote for something. There is really no way that he can see to trick the system. Councilmember Vitelli said this explanation makes it much clearer to understand.

Council agreed to move the draft ordinance to the Regular Council agenda as Item 11C for a first reading of an amendment to the Charter Section 2.06 expanding the situations within which the Mayor is entitled to vote.

3. On a 9-0 vote, the Commission recommended to amend Charter Section 3.04 which also deals with the same scenario as noted in item 2 above. This

ordinance clarifies that Council membership relative to determination of what is a majority vote (typically 4 votes of 6 or 7) is reduced should there be declared that members of Council are not eligible to vote. Hence, in the case of 5 eligible members, a majority voting requirement would be reduced from 4 to 3. A quorum of the Council would continue to be required so that, in any case, four members of the Council would be required to hold a meeting.

Attorney Land said this is just memorializing the opinion on vacancies. If someone has a conflict of interest and is stated as a true conflict of interest, they are no longer considered to be a member of the Council, but it removes themselves from the count, thereby reducing your Council by those number of people.

Councilmember Gulley said she came to the same conclusion on this amendment as the last one and that it won't change anything except clarifying how you get to a majority. She is in favor.

Councilmember Eng-Sarne said she appreciates that this will make our Attorney's job easier in future scenarios and, therefore, she supports this amendment.

Councilmember Vitelli is in favor.

Councilmember Eastman asked what if five Councilmembers recuse themselves for conflict of interest and you only have one Councilmember and the Mayor? Attorney Land said you would have a Council of two. A majority would take both of them to pass anything and it still works.

Councilmember Justen asked if there would be no minimum number of people required for attendance? Attorney Land said there is conflict in saying that we require four votes to pass anything and only have two people in attendance. So you would have to take the most logical approach that you cannot get four votes out of two people.

Councilmember Justen said the reality is that the likelihood of having a ton of conflicts of interest are extremely rare. The conflict of interest just takes your ability to influence the situation at hand, which is how it's supposed to work. He would support this because he has had a couple of items where he had a conflict of interest and would certainly not want to have any influence on the vote. This makes it clear in that sense, as well. If you have a conflict of interest, you should not be at the table making a decision, and this codifies that you're absolutely not involved in that decision.

Councilmember Berry appreciated the clarity and is in support with this amendment. Mayor Napier agreed.

Council agreed to move the draft ordinance to the Regular Council agenda as Item 11D for a first reading of an amendment to the Charter Section 3.04 clarifying the definition of Council majority upon declaration of Council vacancy pursuant to section 2.05.

C. Amendments to Committee Membership and Appointment Process

Amendments to Committee Membership

At the last OCWS, City Manager Schroeder said Council, by consensus, provide that the Park & Recreation Committee and the Environmental Committee could both be expanded.

Provided for Council review are:

- Draft ordinance denoting that Parks and Recreation membership be established in Bylaws, removing it from the ordinance and making changes in the future easier.
- Draft Parks and Recreation Committee Bylaws amendment increasing membership from seven to nine.
- Draft Environmental Committee Bylaws amendment increasing membership from seven to eight.
- Resolution amending Park and Recreation and Environmental Committee Bylaws.

If Council is in agreement with these changes, Schroeder said the resolution and ordinance could be brought forward to the Regular Council meeting for adoption of the resolution, as well as hold a first reading of this ordinance.

Councilmember Eastman asked why we wouldn't have the same addition to the Environmental Committee as the Parks & Recreation Committee? By making it eight members, is there concern about a tie vote? Attorney Land said she was following Council's directions to add one member.

Councilmember Vitelli asked for clarification. We are taking this out of the ordinance and putting it in the bylaws? Schroeder said, as it relates to the Parks & Recreation Committee, the ordinance says it is set by ordinance and we are just changing it to state that it's set by the bylaws. When you go to the bylaws, we are recommending to adopt a resolution adopting the bylaws for both the Environmental and Parks & Recreation Committees to make the numerical change.

Councilmember Gulley supports this change. By pulling it into the bylaws, it will be easier to make the changes we need and live in the moment. She also proposed putting the same number of seats on both of these committees, although that wasn't the recommendation made by Council. We have more applicants that we can place in both committees.

Councilmember Justen asked for clarification. By moving it to the bylaws, we have more flexibility in making changes to the number of members, both upwards and downwards. If there is a problem where we lose our great pool of applicants that we are lucky enough to have right now, we wouldn't have to go through an extended procedure through ordinance, but would be able to quickly respond to that and get back to having a quorum. In general, this seems like a good idea. He supports the changes to the Bylaws in both cases and moving the Parks & Recreation membership to the Bylaws. It will give this Council and future Councils much more flexibility.

Mayor Napier said he likes the idea of increasing membership. If we have community members who want to be involved, the more the better.

Council agreed to move the draft ordinance to the Regular Council agenda as Item 11E for a first reading of an amendment to the ordinance denoting that Parks and Recreation membership be established in Bylaws.

Council also agreed to move the resolution amending Parks & Recreation and Environmental Committee Bylaws to the Regular Council agenda as Item 11F.

Committee Appointment Process

Schroeder said there was also significant discussion regarding the desire to amend the committee appointment process.

Committee and Commission seats typically terminate end of February each year. The City solicits and receives applications for these volunteer opportunities throughout the year. Starting in November, prior to committee term expirations, the City pushes out increased volunteer recruitment narrative primarily through social media in order to refresh interest in committee opportunities and to provide the compendium of applications for Council review.

From the recent Council discussion, Schroeder said it seems that the process could be improved by first addressing reappointments (which was a suggestion by more than one member of Council). Proposed policy language could be drafted as follows:

- Council is informed of current committee/commission members requesting reappointment to existing seats
 - A. Committee/Commission Council liaison works with the committee chair to ascertain which sitting committee members desire reappointment and to provide a recommendation regarding those requests for reappointment.
 - B. At an OCWS, Council reviews reappointment requests, determines to reappoint or not to make reappointments at the same day regular meeting, thus determining how many seats are vacant for new applicants at a subsequent meeting.

With the above, Council would be aware of the number of seats available for new applicants. Following much of the OCWS discussion, these could be handled as follows:

- Council is provided application materials for all applicants for committee vacancies
 - A. Prior to the OCWS meeting at which applications will be considered, each member of Council provides their ranking of applicants and submits this ranking to the City Clerk.
 - B. The City Clerk creates a compendium of these rankings and invites the top applicants to the OCWS meeting to be interviewed by Council. Note, if top candidate(s) are currently seated on an existing standing committee/commission, they are to be informed of the restriction from service on two such committees (see below). It is intended that two applicants be invited for each number of open seats (i.e., one vacancy = two applicants, two vacancies = four applicants). If the number of applicants is below this threshold, the City Clerk will confer with the Mayor on whether to forward a lesser number of applications or to re-open the application pool.
 - C. Council interviews applicants at the OCWS, after which Council ballots for their top applicant for the open position(s) (i.e., if one open seat, ballot contains one name, if two open seats, ballot contains two names). City Clerk compiles the ballots and informs Council of the ballot result.
 - D. At the regular Council meeting, the Mayor requests a motion and second to appoint applicant(s) to the open seat(s).
 - E. In order to accept the appointment to the committee/commission seat, the candidate receiving the Council approval for the seat must be determined to not be currently seated on another standing committee or commission. If the appointed candidate is currently seated on another standing committee or commission, that person must be removed from that seat in order to take the newly appointed seat.
 - F. Ward Balance: An attempt at ward balance to the extent practicable should be made but is not a requirement of committee/commission membership.

Schroeder said there was a lot of consternation about the appointment process. He recommends dealing with reappointments first at an OCWS, with a subsequent meeting to discuss vacancies. The big question is who brings candidates forward and who votes? Do you interview every applicant, such as the Charter Commission did recently, or do you try to reduce the number of applicants interviewed in some way to become a more manageable list? For the Charter Commission, each candidate had about five minutes to interview, but if you wanted to reduce the list, that would be one question. The second is whether the Council manages that process or not? There was some discussion about the Council liaison. The liaison could bring those vacancies forward. There are other parts of this agenda item that Council didn't necessarily come to a conclusion on, such as term limits, for instance.

Mayor Napier said he likes the process brought forward here. Equal ward representation is really important, which carries more weight for the Parks & Recreation Committee. We want to make sure residents who live in that ward and supporting those parts are there representing their ward. It would be ideal to have equal ward representation in the Environmental Committee, as well, but it's not always possible. We should do our best to have equal representation. For both committees, their role is citywide, but it's critical to have ward representation for Parks & Rec. For term limits, he does not care for them because if someone is contributing to the community in this way and is doing a great job, they should have the ability to stay on and continue. At the end of their term, they would go through the process for reappointment. If they are not doing a good job, there are vehicles to remove people if needed. It's about making this a good opportunity for community members to get involved in their city. Where we stumbled was in the process of reappointment. By separating those from the vacancies is what we should do. Redacting their names is something we shouldn't do. We should trust our process and trust our community and have the names included. He agrees that we should be separating reappointments and vacancies between meetings.

Councilmember Berry asked if Mayor Napier is pro automatic appointment or not pro automatic appointment? Mayor Napier said he is pro separating reappointments so we clearly understand that these people have an interest. A dialogue should be had between the Council liaison and the committee Chair regarding requests for reappointment and that person's contributions. An important item to note is that if someone misses three consecutive meetings, that is considered an absence. If someone is not contributing and not showing up at meetings, they won't hold a seat.

Councilmember Eng-Sarne asked whose job it is to count and enforce absentees? Mayor Napier said an excused absence is communicated either with Staff or with the Committee Chair. Schroeder added that Staff keeps track of absences.

Councilmember Justen recommended not allowing people to serve on more than one committee. We have that situation right now. Mayor Napier said he has no problem with that if they are able to balance both and are able to contribute in multiple ways.

Councilmember Vitelli disagreed, stating that there are so many people waiting to serve. Unless there are no applicants, they should have to decide which committee they want to serve on. Councilmember Justen agreed, otherwise it discourages people's level of volunteerism if we allow some to serve on multiple committees.

Commissioner Gulley agreed and echoed Councilmember Vitelli's comments. There is plenty of work to do. She encouraged that they only be able to serve on one committee.

Mayor Napier said we have a situation where we could make this retroactive or we can make it a change moving forward from this moment on. Schroeder said he would

prefer this not move forward to the regular agenda, but the comments tonight will allow him to tweak the policy. He recommended not making the change retroactive.

Councilmember Eng-Sarne said this could be used as an additional argument to expand the Charter Commission, since we have someone representing two committees that hold quite a bit of power in the city.

Councilmember Justen said the problem with not doing it retroactively is that we are also dealing with this in the future. A person would be on those commissions for four years on the Charter Commission. Not trying to put anyone in an awkward position, but he said he is hoping they see this the way we do. To say we won't change it retroactively, we wouldn't actually be doing it retroactively until three years from now, where someone would potentially be serving on two commissions. Schroeder said there isn't necessarily harm in that.

Schroeder said he will make some edits to the appointment process before it goes to Council.

6. Adjourn

Motion was made by Councilmember Eng-Sarne and seconded by Councilmember Berry to adjourn the meeting at 6:29 p.m.

All members present voted aye. Motion carried.



David J. Napier
Mayor
City of West St. Paul