

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

Call to Order: Mr. Smiley called the meeting to order at 7:30 p.m.

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

The Open Public Meeting Act Compliance Statement: Ms. Criscione announced that the Notice Requirement provided for in the Open Public Meeting Law had been satisfied. Notice was properly given, notice having been transmitted to the Courier-News and the Star-Ledger on 12/23/13, as well as posting on the City website and on the City Clerk's bulletin board.

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

Minutes: Ms. Burgwinkle made a motion to approve the minutes of the CSC 12-19-13 meeting. Mrs. Davis seconded, and the minutes were approved in a voice vote with no abstentions or dissensions.

Correspondence to Commission: Mr. Smiley noted that there was no correspondence.

Treasurer Report: Mr. Smiley noted that there is no Treasurer's Report.

New Business:

-Commissioner deliberation to continue on changes to Dual Office Holding provision
Ms. Burgwinkle explained to the Commissioners that at the 12-19-13 meeting there was spirited conversation about changes to the Dual Office Holding provision, section 7.3. Several citizens, Mr. Alan Goldstein and Mr. Dan Damon were in attendance and asked many good questions about the redraft. Ms. Burgwinkle revisited the drafting the day after the meeting and reread the NJ state statutes on Dual Office Holding, as well as the Administrative and Municipal Code concerning situations where the Mayor can appoint persons in positions to hold acting or interim positions under certain circumstances. She felt that the drafting had missed that important power of the Mayor and that redrafting was necessary. She asked the City Clerk to schedule a follow-up meeting and also redrafted subsection a to adopt the actual language on Dual Office Holding that the legislature had used. She handed a document to the other commissioners containing the statutes and Code Provisions and Charter provisions that she had looked at. Regarding subsection b, she redrafted that to provide that elected officials can not hold any additional positions except for seats on boards and commissions described in the Administrative Code and except as appointed by the Mayor under circumstances described in the Administrative Code and the

Charter. Subsection c was redrafted to apply to persons who are appointed by the Mayor with advice and consent of the council or by the council; they shall not hold any other positions except as appointed by the Mayor as set forth in the Municipal Code or the Charter (note to reader: see exact language and rationale for changes in motion below).

Ms. Burgwinkle then made the following motion: I move that the Charter Study Commission amend the motion that was amended and approved at the 12-19-13 meeting concerning section 7.3, Dual Office Holding to replace the changes to section 7.3 at that meeting with the following:

7.3 Dual office holding.

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

a. No person shall simultaneously hold more than one elective public office as provided in the General Law (See N.J.S.A. 19:3-5.2, Holding simultaneously more than one elective office prohibited; exceptions).

b. A person who holds a city of Plainfield elected office either by election of the general electorate or by appointment to fill a vacancy shall not simultaneously hold any other paid or unpaid position with the city of Plainfield or any of its agencies or instrumentalities, except for positions on agencies, boards, commissions and committees specifically set aside for elected officials in the Municipal Code, provided, however, that the Mayor or a City Council member may accept an acting position under circumstances described in the Charter or Administrative Code for which no salary or other compensation is paid.

c. A person who holds any position with the city of Plainfield as the result of appointment by the Mayor with the advice and consent of the City Council or by the City Council for which a salary or other compensation is paid shall not simultaneously hold any other position with the city of Plainfield or any of its agencies or instrumentalities; provided, however, that the Mayor may, from time to time and in writing, authorize any person holding such a position to accept another specified position (for which no salary or other compensation is paid) under circumstances described in the Charter or Administrative Code.

Dual office holding provisions are not common in municipal charters (none of the Faulkner Act model charters contain such provisions), however, Plainfield Charter (1968) has prohibited dual office holding since it was enacted. In 2007, certain state statutes noted above were passed by the legislature, also prohibiting dual office holding. The Commission recommends retaining the dual office holding provision to acknowledge the General Law on the topic as set forth in subsection a. above. In addition, we received comments that the existing provision is ambiguous with many undefined terms, and we agree that the provision should be redrafted for that reason. We are aware that the common law of New Jersey contains the doctrine of incompatible offices in a long line of case law, based on the public policy that an office holder's performance should not be influenced by divided loyalties. We believe that holding a city of Plainfield elective office is incompatible with holding any other paid or unpaid position with the city of Plainfield or any of its agencies and instrumentalities, except for seats on agencies, boards, commissions and committees set aside for elected officials in Municipal Code and under other limited circumstances provided in the Charter and in the Administrative Code, see subsection b. above. We also

believe that no person appointed by the Mayor to a position for which a salary or other compensation is paid should hold multiple city positions, except under limited circumstances described in the Charter or Administrative Code where they are not compensated for both. See subsection c. above.

Mr. Smiley seconded the motion and asked for discussion, if any. Hearing no discussion, he called for a voice vote on the motion which passed with no abstentions or dissents.

Ms. Burgwinkle then handed out the cover letter and the letter to City Clerk for the Amended Final Report dated 12/31/2013 for signatures of the Commissioners so that she can file the Amended Final Report on 12/31/13.

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

Public Participation: Mr. Robert Edwards asked what comes next. Ms. Burgwinkle told him that she would file a signed original and 7 copies for the council in the morning. It is then up to council if they want us to come back, it is not laid out in the statute. She believes that in order to petition the legislature, the matter will need to be noticed up to six times and a public hearing may be required, but she does not know any details or schedule for that.

Adjournment: Mr. Smiley moved to adjourn and Ms. Criscione seconded. The motion passed and the meeting was adjourned at 7:42 p.m.

A Full Length Recorded Copy of this Meeting (with the exception of the call to order and the waiving of the salute to the flag) is available by contacting the Commission at plainfieldcsc.blogspot.com.