

DEKALB COUNTY CHARTER REVIEW COMMISSION

December 1, 2022

ZOOM MEETING

SUMMARY

I. CALL TO ORDER – 5:32 p.m.

II. ROLL CALL

Steve Henson, Chairman
Virginia Harris, Vice Chairwoman
Karen Bennett
Claudette Leak
Mary Hinkel
Vickie Turner
Lance Hammonds
Robert Wittenstein
Susan Neugent
Dr. Gerald Austin, Sr.
Jim Grubiak
Clara DeLay
Dwight Thomas
John Turner

ABSENT:

Bobbie Sanford
Representative Karla Drenner
Ex-Officio Senator Emanuel Jones

STAFF:

Zachary Williams, Chief Operating Officer
Barbara Sanders-Norwood, County Clerk
Lori Brill, JD, Carl Vinson Institute

III. MINUTES – Motion to approve the Minutes of November 3, 2022 with no changes was made and passed unanimously.

IV. INTRODUCTION OF INVITED GUEST: DeKalb County Attorney Viviane Ernstes continued and finished the review of the County's Organizational Act.

V. UNFINISHED BUSINESS: None

VI. NEW BUSINESS:

- a. As the County returns to normal business operations and at the recommendation of the County Attorney, the Commission will begin holding its meetings in person.
- b. A subcommittee has been appointed to study the composition of the Board of Commissioners. Virginia Harris will chair the subcommittee and Jim Grubiak will serve as Vice Chair. The Chair would like three other members to volunteer to serve on the subcommittee and asked for volunteers to contact him directly.
- c. The Chair called on commission members to call or email him with their thoughts about other issues to be reviewed by the Charter Review Commission.

VII. REMARKS OF INTERESTED CITIZENS/PUBLIC COMMENT

Lynn Ganim
Steve Binney
Joe Arrington

VIII. NEXT MEETING DISCUSSION & ADJOURNMENT:

The next meeting will be on Thursday, January 12, in person at the Maloof Auditorium beginning at 6:00 p.m.

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ZOOM MEETING

DECEMBER 1, 2022

I. CALL TO ORDER: 5:32 p.m.

II. ROLL CALL

Steve Henson, Chairman
Virginia Harris, Vice-Chairperson
Mary Hinkel, Secretary
Karen Bennett
Claudette Leak
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Susan Neugent
Jim Grubiak
Dwight Thomas
Clara DeLay
Vickie Turner
John Turner
Dr. Gerald Austin

ABSENT:

Bobbie Sanford

COMMISSIONER:

Honorable Ted Terry, Commissioner District 6

STAFF:

Viviane Ernstes, County Attorney
Zachary Williams, Chief Operating Officer
Barbara Sanders-Norwood, County Clerk
Lori Brill, Carl Vinson Institute

III. MINUTES FROM THE NOV. 3 PUBLIC HEARING & MEETING MINUTES

Chairman Henson asked if there were any changes to the minutes. Hearing none, he then asked for a MOTION. MOTION was made by Commissioner Wittenstein, seconded by Commissioner Harris and passed unanimously to approve.

IV. GUEST SPEAKER: County Attorney Viviane Ernstes

Chairman Henson advised the members that Viviane Ernstes, County Attorney will be the guest speaker tonight.

Chairman Henson stated that the CEO wanted him to convey his thanks to you for the amount of time and interest that you are providing the County free of charge. He also stated that he would have the permitting Director come to one of our meetings.

Chairman Henson then called Attorney Ernstes to begin her presentation.

The County Attorney stated that she had eight sections to go and she was hopeful to complete them tonight. She sent everyone an email that has the current text for Section 22A.

SECTION 15 Veto Power of CEO

We will begin with the process of the veto power for the Chief Executive Officer. The process has defined days and if he does not act within certain defined days and does not provide a written reason for his veto, then the ordinance or resolution becomes effective. In the original organizational act, he only had two business days. He now has three business days. The CEO essentially in appropriations has a line-item veto. So, in terms of a budget, if the BOC passes a budget, he can veto line items of that budget. He has no power to veto a zoning decision or anything that is included in the BOC's standing procedure rules.

There is a provision for the BOC to override the veto of the CEO so that you have a balance of power. In order for that override to occur, it takes a two-third vote of the total membership, which is five votes. So, it takes four vote to take action. In order to override the veto, it takes five.

SECTION 16 Comprehensive Development Plan

This section has not been amended. It is a provision that requires the CEO to develop a comprehensive development plan and to present it to the BOC for review and action. The Comprehensive Plan includes parks, recreations, facilities, sites for public buildings, utilities, transportation, systems and facilities, housing, community facilities, manufacturing, industrial sites, future land use and such other elements, features, and policies that will promote the improvement of the county. It also requires the CEO, in developing the comprehensive development plan, to seek input from the citizens of the County.

SECTION 17 Budgeting; control of expenditures

It is important for you to know that there is an entire body of state law codified at O.C.G.A. 35-81-1 that applies to all counties and cities and defines the way budgets have to be adopted, the way they are presented, how often they have to be presented, and defines certain public hearings and certain public notices. This section is in addition to that state law. The CEO is required to present his or her budget to the BOC by December 15 unless the CEO is not going to be the incumbent in office the next year. So, if

at the end of the eight years you have a new CEO coming in, that new CEO has until January 15th to present his or her budget to the BOC. There is a requirement for a public hearing and a requirement for advertisement in the legal organ, which is at this time "The Champion" newspaper. You can either have a newspaper of general circulation which is often the "Atlanta Journal/Constitution" and sometime the "Fulton County Daily Report." This is defined by State statue and chosen periodically by various elected officials. The other requirement in this Section is that the budget be adopted by March 1st of each year. It can be amended throughout the year and is amended throughout the year as needs arise, but there is no increase in appropriations without provision being made for financing these increases.

County Attorney Ernstes stated that between January 1st and such time as the budget for the County is adopted, it authorizes the Director of Finance to make such expenditures of county funds as are deemed necessary. It does limit these expenditures so they do not include disbursements for new personnel, new services, new equipment or other items which could be interpreted as providing additional levels of service not previously authorized.

Commissioner Wittenstein:

Does the fiscal year start on January 1?

County Attorney Ernstes – I believe that is correct.

Commissioner Wittenstein:

So, does it create a problem that we aren't passing the budget until March when the fiscal year starts in January? Does it create a problem for the department heads?

County Attorney Ernstes – Department heads operate under the previous year's level of service.

Commissioner Wittenstein:

Okay.

County Attorney – I will check on the January 1st date.

SECTION 18 Purchases and Contracts

This is the section that governs how purchases are made by the County. I also need to let you know that in addition to this section there is also an entire body of law that is very specific and detailed covering this matter that is called the Georgia Local Government Public Works Construction Law.

Section 18 provides that the Chief Executive, subject to the approval of the commission, shall establish rules to regulate purchasing for all county departments with the exception of the tax commissioner, the Clerk of superior Court, the DA and the Sheriff. Section 18 tells you that the CEO has the authority to execute contracts up to a hundred thousand dollars. Contracts in excess of a hundred thousand dollars require board approval.

Commissioner Lance Hammonds:

Is there anything that precludes someone from spending \$99,000 and kind of getting around that?

County Attorney Ernstes – Yes, it is in Section D. Subdividing in order to avoid the limit is prohibited.

Also, in 1981, the CEO was given sole authority to establish the rules to regulate purchases. In 2015, the General Assembly amended it to say “subject to the approval of the Commission” but this was not voted on in a referendum. As you all have learned, according to the 1978 constitutional amendment, if you change the powers of the CEO or the Board of Commissioners, that requires referendum approval. What is in force at this point in time is the same purchasing policies and regulations that were in effect in 2014 with a couple of minor changes.

Commissioner Grubiak:

I guess they are referred to as rules here rather than an ordinance. In most jurisdictions that I’m familiar with, it’s the legislative body, especially if there is a CEO-type government, that actually legislates and creates the ordinance that establishes the procedures and so on for operating the purchasing system for the County. So, this is unusual.

County Attorney Ernstes – I don’t know. I have not done a survey on what other jurisdictions with a strong executive do, but I do know that in other counties there are ordinances.

Commissioner Grubiak:

It seems like it is misplaced in DeKalb.

Commissioner Wittenstein:

This is something we might want to fix.

Commissioner Grubiak:

It seems like it’s the legislative body that should be exercising this legislative authority and create rules through an ordinance so that there’s something for the CEO to follow rather than the CEO creating rules, which means the CEO could pretty much do whatever he wants.

County Attorney Ernstes – Well he can’t. He’s got to comply with state law and the Board of Commissioners approves all contracts in excess of \$100,000.

SECTION 19 The Department of Finance

Neither the CEO nor the Board of Commissioners has the authority to abolish the department of finance or the office of the Director of Finance. Your Finance Director is a merit protected employee. The folks who control your money should have the freedom to do what they need to do and not be subject to political will or political whim.

Commissioner Wittenstein:

So, who selects the director of the office of finance and does the Board of Commissioners have to approve that selection?

County Attorney Ernstes – Yes. The CEO appoints the Planning Director, Finance Director and Merit System Director subject to BOC confirmation. No members of the Commission are authorized to nominate possible candidates for these positions. All three of said officers are merit protected and cannot be fired without cause.

SECTION 20 Records;Minutes

Ms. Sanders has been appointed the esteemed clerk and she is in charge of the minutes. The Commission appoints a clerk who shall be the clerk to the CEO and the Commission. She is required to keep the minutes. She handles the agendas for the meetings and creating the summaries, and keeps a minute book also of the acts of the CEO. She manages the agenda and provides such other duties as the commission may direct. While she serves as the Clerk to both, her duties are directed by the Commission. Prior to 2008, the Director of Finance served as the Clerk. The law was changed in 2008 and Ms. Sanders-Norwood has been our clerk since that time. She is a standalone clerk and does not serve as the director of Finance.

SECTION 22 Officials not to be interested in contracts

This is a very typical section. It prohibits CEOs and Boards of Commissioners being involved in contracts with their private firms or family. I emailed you the most recent version of Section 22A, which is the code of ethics. Due to some computer glitch, the section 22A you were provided in your notebooks is not the current version.

SECTION 22A Code of Ethics

The Code of Ethics first came into the Organizational Act in 1990. Prior to that time, it was simply a section of the code which means that it could be amended by the Board of Commissioners through adoption of an ordinance, which is quite frankly the way almost every other code of ethics exist. It was amended in 2015 and went to referendum. An ethics officer was created and an appointment process for the ethics board was created.

Commissioner Thomas, on behalf of Former Commissioner Sharon Barnes Sutton, mounted a challenge that was heard in the DeKalb County Superior Court. Ultimately, the decision was appealed to the Georgia Supreme Court. The appointment process in the 2015 law was held to be unconstitutional. He raised a number of other issues of concern with respect to the operation of the Board of Ethics. In a previous iteration, the Board of Ethics had some power to remove elected officials from office. That does not exist any longer. As a result, the Board of Ethics was reconstituted. The appointment process for the ethics board is by the legislative delegation and the tax commissioner.

Commissioner Leak:

You just mentioned that a previous version of the ethics code had the authority to remove elected officials. Is there anything in the Org Act that addresses how an elected office can be removed?

County Attorney Ernstes – No, ma'am.

Commissioner Leak:

I know that it was deleted. So there – it's not referenced anywhere else as a different part?

County Attorney Ernstes – no.

Commissioner Ernstes – Okay

County Attorney Ernstes – No. There was some concern about an unelected body removing an individual who has been elected by the citizens of the county. That was removed in a previous iteration.

The Code of Ethics covers any person who is elected, appointed, employed or retained by DeKalb County or any agency and whether paid or unpaid and whether part time or full time. The definition includes retired employees or former county employees during the period of time in which they are later employed or retained by the county or an agency. During the period of time in which they have come back to work, and they've handled a project or are hired to do some specific thing, then they are during that period of time, covered by the ethics code.

Commissioner Hammonds:

So, nobody can be removed from a position until they are convicted of something?

County Attorney Ernstes – No, that's not accurate across the board. There is a body of state law and you have to look at the particular position. There is a body of state law that allows, upon indictment for particular offenses, for an elected official to be suspended and there is a whole process for that. It depends on the position.

Chairman Henson: It's called State General Law.

County Attorney Ernstes – that is correct. There are a group of employees that are not covered by the ethics code, and they are the District Attorney, Solicitor, Superior Court and State Court judges the Clerk of Superior and State Courts, magistrate judges of the magistrate, judge of the probate court and their respective staffs. Lawyers are governed by the State Bar of Georgia.

If you look at Section 1(c)(1) and (c)(2) essentially, they're saying I shouldn't take a gift and do anything as the County Attorney that leads somebody to believe that I am creating some favorable situation. The third situation talks about disclosure of confidential information that you should otherwise keep confidential. Section 4 talks about appearances in front of commissions and committees and on your own personal behalf where you are. Section 5 is relatively self-explanatory. You can't have a private business that conflicts with, in my case, practicing law. Section 6 – you can't have an interest in a contract, right, that is going before the CEO or the Board of Commissioners and Section 7 is sort of a catch all phrase which is you just can't do anything that would be prohibited by law.

C-1 – prohibits the purchasing and contracting department from receiving any gift of any value from anybody who reasonably might be doing business or bringing contracts or having contracts and competitive awards considered by that purchasing department.

D – allows you to go to the Board of Ethics and seek an advisory opinion.

E - talks about determination of having interests in businesses or entities who have contracts with the County

The duties of the ethics officer are explained. It is an educational duty of providing awareness and education to employees and officials as to the term of the ethics code, meeting with the board of ethics, advising officials and employees regarding disclosure statements, urging compliance with the code of ethics and providing the board with information if that needs to be investigated, whether it is sort of global or individual.

The Board of Ethics can issue subpoenas very similarly to the way a Clerk of Court can them. Everything must be under oath.

Section C – requires that the Board of Ethics deliberate and determine a decision by majority vote.

9(a) and (b) are provisions that the Board of Ethics refrain from making any final decision on somebody who is running for office during the 45 days preceding his or her election to office and (b) provides for a report of the activities of the ethics administrator on an annual basis.

Section K provides for a couple of things. If you give them false or misleading information or you fail to follow an opinion or you fail to comply with a subpoena, a couple of things can happen to you. There can be an administrative sanction of not more than a thousand dollars assessed by the Board of Ethics, there can be what is known as a public reprimand by the Board of Ethics and then you can be prosecuted by the solicitor in magistrate court with a fine not to exceed a thousand dollars per violation and up to six months in prison.

This next item is a pretty standard provision that says their decision is final and your right of appeal is through what is called a writ of certiorari through DeKalb County superior court. The final section of this just allows for the record sent to the superior court to be prepared by someone designated by the Board of Ethics.

Commissioner Wittenstein: I'm not going to ask for a long discussion here, but I know this ethics ordinance. The labor and delivery was prolonged and painful. Do we have any sense yet as to whether it is achieving its goals?

County Attorney Ernstes – I don't know if I am the right person to ask but I will tell you what it has been in the paper and is a matter of public record. There has been a good bit of turnover in the staff. There is a new Ethics Board lawyer and Ethics Officer.

Commissioner Hinkel: Maybe we could have someone from the Board of Ethics address our Board. They can give us their analysis. They have worked to clear their backlog of complaints. We have had a good active board that has been meeting.

Section 23 How sections amended, limitation on powers

This comes right out of the Constitution. There are four areas that require a referendum to be changed:

- 1) to change the number of members, terms of office, or the manner of electing members of the governing authority
- 2) to change the term or method of electing the CEO
- 3) establishing the powers and duties of the executive or legislative branch
- 4) changing the powers and duties of the executive or legislative branch when such powers and duties have been established by the General Assembly

The County Attorney referenced a chart that used to be helpful in clarifying this section, but stated that in 2012 the chart was removed because the state legislative counsel did not think it was completely accurate.

V. UNFINISHED BUSINESS: None

VI. NEW BUSINESS:

Meeting Date: Chairman Henson stated that the under New Business he would like to discuss changing the date of the Charter Review Commission meetings. We've been operating under an emergency power by zoom meetings, the dates of which were limited by the IT department's capabilities to support us. This has been both a blessing and a curse, but we are now going to have to start meeting in person. One benefit of this is we can change our meeting date. He would like to move the meeting to the second Thursday in January at the County Maloof auditorium. We have parking, we all know where it is and, while they're not quite up and ready to do an interactive hybrid zoom/in-person approach, it can be televised.

Chairman Henson: Do we have anyone which sees a problem with our moving to the second Thursday from now on. We will start the in-person meetings in January. I have been communicating with the County Attorney and she has informed me that it would be a good move for us to do that because of the expiration of the conditions that caused us to meet under emergency conditions.

County Attorney Ernstes – Obviously, we can't predict what will happen with COVID, and if there were some reasons that you all need to either meet always via zoom or always in-person, that could be accommodated, but it's flipping back and forth we need to avoid. If you can meet in person under the Open Meetings Act in person, that would be good. That is the advice that I have sort of given to everyone. The Commissioners are back to in-person meetings as well.

Commissioner Austin: Whatever the majority decides, but I have a standing commitment every twenty-one days. I'm traveling out of town. I've got to do that every twenty-one days and I have no control over that. The virtual has been wonderful. I was able to keep up with it.

Chairman Henson: So, if there's no objection, the first meeting will be January 12th and that's kind of preliminary. Mr. Williams is going to check to make sure the Maloof Auditorium is available for us at that time. The meeting will begin at 6:00 p.m.

Subcommittee Formation: Board of Commissioners' Composition

Chairman Henson: One issue that has come up in the legislature in the past and actually came up in the last year of my term of office was Senator Jones' bill about maybe doing away with the at-large commission districts. There has been discussion from time to time whether we should have seven regular districts.

The Chair appointed Commissioner Harris as chair and Commissioner Grubiak as vice chair and asked for three more members to volunteer by contacting him, either by email, call or text.

In the future, we also may talk to current county managers from other neighboring counties and former county managers, such as Charlotte Nash or John Eaves.

VII: PUBLIC COMMENT

Lynn Ganim, from unincorporated DeKalb. I just have an administrative question. My understanding is that this group was authorized to stay in existence until the end of this month, and that the CEO was supposed to publicly commit to extending the legality of his existence. Since you're now making plans for meetings into 2023, I'm assuming that means you've gotten some official authorization to stay in operation. Just curious about what you stand with that and what the CEO is doing to honor his commitment to continue your existence. Thank you.

Chairman Henson: Thank you very much. Good question. Talking with the CEO, he guaranteed us as much time as we felt was absolutely necessary to do the work and he recommended the additional funding and the Commission approved the funding. They all understood that this work would go beyond the end of the year because of Covid and other factors. We didn't get started until late also. We haven't got a formal change in the executive order, but we could request it informally. He has said that we are welcome to go into next year and he supports us going into next year. And, when the funding was approved, the Commissioners and CEO discussed it and recognized that we would be continuing our work into next year with the goal of trying to get something prior to the legislative session in 2024. Once we have dissolved, they may need to address some of the issues that we've raised or call for further study of other specific issues.

Stephen Binney: 1083 Seville, Clarkston, GA. Good Evening Charter Review Members, you have been going over the Organizational Act section by section during these meetings and I would like to make some observations and suggestions on these sections.

In Section 13 (i) the CEO is allowed 120 days, at the end of the fiscal year, to produce a final financial report for the preceding year. This has not always happened in the past and there is no listed penalty if it is late in being produced. This report is also to be published in the official organ of DeKalb County, which is currently "The Champion", which is not easily available in all parts of Dekalb County. Perhaps including the AJC and or other local Dekalb County information outlets will increase the visibility of this and other official announcements made by the county, allowing an opportunity for more public input into county decisions.

Paragraph (k) says the CEO shall devote full-time to the duties of the office and have no other source of employment. Perhaps we should consider applying these same standards to our county commissioners. An urban growing county needs full-time commissioners and they should be paid as such.

Section 13A regarding appointments to public office needs to be tightened up, especially paragraphs (B) through (E) and (2A) because as currently written they are open to abuse and when followed result in a slow moving process which needs to be updated to fill the needs of today's Dekalb County.

The process often is not even followed or forgotten about as evidenced recently by reappointment of Affordable Housing council members who served 4 or 5 years without being legally reappointed.

With the county's current problems with producing a midyear budget 4 months late I believe that Section 17 needs drastic updating. The CEO's submit date of December 15th is too late a date for county commissioners to give a close and careful evaluation to a 1.3-billion-dollar proposal and have to vote on it in February, given the holiday season. I would like to suggest that the future fiscal year budgets be provided to commissioners at the start or middle of October so that it can be properly evaluated and voted on by the commissioners by the end of the year or early in January. Any adjustments needed or if the CEO is not reelected and the new one wants to make changes they can be made during the mid-year budget renewal process. Under the current system the CEO is authorized to make expenditures as they see fit from January 1st until the budget is voted on and approved. The current budgeting process is a

definition of how to use bullying to get what a CEO wants and needs to be revised. More Public Hearings should be required throughout the county outside of the commission meetings. Perhaps during evening hours when more citizens will be able to participate.

All Charter Review members are working hard to help create a better Dekalb County for the future and I appreciate your efforts. Thank you for your time and consideration.

Joe Arrington: I want to thank all for doing what you have done. You had to go through a long spell before you got your feet on the ground and started working. I think you've done a good job of processing the Org Act. My number one concern is public participation in what you're doing. Now you have had public hearings, exactly two. The attendance has been embarrassingly low. There's a lot of reasons for that. There is Covid and the list goes on and on. I think you are going to have to take a serious look at reaching more people to be involved. The biggest problem I have experienced with these meetings has been the audio. I am hard of hearing, and I can hardly hear anything that is being spoken. There are a great deal of people who are hearing impaired. I would appreciate serious consideration from those of you that will be working on this, and I will be looking forward to some improvements.

Chairman Henson: I think we will have more public input at the end of the process. As we make recommendations, we'll have people show up to say we're not covering enough, or that we're doing something wrong, or that we need to change something we're doing. We will take that input and may or may not make changes. I think right now, when the first couple of meetings were just a broad, open look at the Org Act, it makes it tough to get the public engaged. If we talk about change of commission sizes or changing how the Ethics Board operates, I think you would find a little more intensity and interest.

VIII. ADJOURNMENT

Steve Henson, Chairman

Barbara Sanders-Norwood, County Clerk