



CITY COUNCIL Agenda Item #18-277

Date: September 26, 2018

Consent Discussion

SUBJECT: Meeting with Parks Commission

SUBMITTING DEPARTMENT: City Manager

RECOMMENDED ACTION: Meet with Parks Commission and discuss areas of common interest.

RELATED COUNCIL GOAL/PRIOR ACTION: Good Governance, Thoughtfully Planned Built Environment

EXPENDITURE REQUIRED: None

SOURCE OF FUNDS: N/A

LEGAL REQUIREMENTS: None for the discussion. The topic includes the legal roles of the Commission, Council & Manager.

BACKGROUND INFORMATION: Specific topics to be discussed may include:

- Areas of responsibility for the Commission and Council
- Who makes decisions about new parks and takes the lead in creating them?
- What is the Parks Staff role with regard to communicating information between Council, Manager and Commission? What the expectations for regular communication among all parties?
- How does the Commission set goals and priorities? Do those fit with City strategic plan and priorities? How can these be best coordinated?

SUPPORTING DOCUMENTS: E-mail between Attorney Giuliani and City Manager Fraser

INTERESTED PARTIES: Parks Commission, Parks Staff

CITY MANAGER'S APPROVAL:

A handwritten signature in black ink, appearing to read "W. Fraser", is written over the City Manager's Approval line.

From: Paul Giuliani [mailto:pgiuliani@primmer.com]
Sent: Tuesday, August 21, 2018 2:50 PM
To: William Fraser <WFraser@montpelier-vt.org>
Subject: RE: Governance question

Here's my take.

The Charter provides that "the administration of all fiscal, prudential, and municipal affairs of the city and the government thereof shall be vested in the mayor and council members, subject to the provisions herein contained respecting a city manager." Section 301. The general law analog provides that "the Selectboard shall have the general supervision of the affairs of the town and shall cause to be performed all duties required of towns and town school districts not committed by law to the care of any particular officer". 24 VSA 872(a).

The common denominator between these two enactments is the notion that governance authority is vested in the legislative body of a municipality unless a particular power, function or responsibility is explicitly granted to another municipal official or entity.

So, in the City's case, the Council is the ultimate legislative authority, except for those functions and responsibilities vested by law in designated municipal officials. As in the case of the City Clerk, City Treasurer, City Health Officer, and Chief of Police (among others), the authority and responsibilities of the City Manager devolve from the general statute, except as may be modified by the Charter. In general, the authority of the City Manager is spelled out in 24 VSA 1236. The respective authority of City officials is granted, not by the City Council, but by the General Assembly.

As with other City officials, a detailed litany of the City Manager's powers and duties is set out in Section 1006 of the Charter and in the general law. The Charter provides that the City Manager "shall be the administrative head of the city government and shall be responsible to the city council for the administration of the affairs of the city." So, absent the existence of a Board of Park Commissioners, the City Manger's responsibilities would include administration and oversight of City parks.

The Charter provides for the election of Park Commissioners, who "shall have charge of the construction, maintenance, and control of all public parks within the city." Section 802. In construing this legislative grant of authority to the Board of Park Commissioners we have to keep in mind that the Board's "construction, maintenance, and control" functions derive from the General Assembly, not from the City Council. That is, in discharging its "construction, maintenance, and control" authority it is fulfilling a legislative mandate independent of the City Council.

While the scope of "construction, maintenance, and control" might be a bit murky around the edges, it's important to remember that the legislative grant is narrowly construed because it is in derogation of the plenary authority of the City Council and the comprehensive administrative authority of the City Manager. That is, we can't read too much into "construction, maintenance, and control", especially if it brings us into an area reserved to the Council (e.g., adoption of ordinance, incurring debt, etc.) or the City Manager (e.g., administration of personnel policies, etc.).

For an analogy, think of the role of the Board of School Commissioners under the old Charter. The Board was granted control and concomitant responsibility over school property, but ownership was vested in the City. School property could not be sold, nor could improvements be made thereon, without at least the concurrence of the City Council and, by extension, the City.

In the dog situation, the adoption of rules and regulations regarding dog control within City parks is the province of the Park Commissioners. However, the Park Commissioners do not have the authority to adopt and enforce a dog control ordinance, and to establish penalties for its violation. That is strictly a City Council prerogative. In assessing the limits of the “construction, maintenance, and control” universe, the narrowest construction of the grant of authority is the preferred one because that grant is in derogation of Charter Section 301 and 24 VSA 872(a). Any doubt or ambiguity should be resolved in favor of City Council or, where appropriate, City Manager authority.

p

J. Paul Giuliani | Attorney at Law

PRIMMER PIPER EGGLESTON & CRAMER PC
100 East State Street, P.O. Box 1309, Montpelier, VT 05601
Tel: 802 223 2102 | Fax: 802 223 2628
pgiuliani@primmer.com | www.primmer.com



From: William Fraser [<mailto:WFraser@montpelier-vt.org>]
Sent: Wednesday, August 15, 2018 4:32 PM
To: Paul Giuliani
Subject: Governance question

Hi Paul

This may be a better conversation than an e-mail. From time to time questions arise about the relationship between the elected parks commission, the elected city council and the city manager. The charter says that the Parks Commission “shall have charge of the construction, maintenance and control of public parks within the city”. That said, it’s clear that only the Council can pass ordinances pertaining to parks, purchase land and set the budget etc. The charter says that the City Manager appoints the Parks Director and has “administrative control over all departments”.

If the parks commission has “control of public parks” but the Manager has “administrative control” over departments and only the council can take legally binding actions – what exactly is the scope of the Parks Commission authority and duty?

It’s not a huge problem in practice. I generally let the Parks Director and Commission handle most parks stuff but occasionally there is conflict – like recently when at least some council members wanted to push for stronger dog restrictions in the parks and the parks commission wanted to leave things as they are. Ultimately the council chose to defer to the parks commission but it raised the question again about roles.

Anyway – that’s what’s on my mind. Happy to talk or email as you see fit.

Bill

William J. Fraser, ICMA-CM
City Manager
39 Main Street
Montpelier, Vermont 05602
Phone: (802) 223-9502
www.montpelier-vt.org