

Minutes of a Meeting of
2012 CHARTER REVIEW COMMISSION
Held April 16, 2012

The fourth meeting of the 2012 Charter Review Commission was called to order at 6:00 p.m. by Co-Chairman Brian Cruse. The following members of the Commission were present: Matt Clever, Dr. Gina Crawford, Brian Cruse, Sally Fell, Clete Miller, Barbara Quinn. Absent: Mr. Barbour, Mr. Caputo, Mr. Zwilling. Also present: Mayor Sutherland, Fire Chief Chris Lyons, Police Chief Wright, Civil Service Commission Chairman Jim Potter, and resident Dick Majewski.

The first order of business this evening was the review of the minutes of the meeting of the Charter Review Commission held April 2, 2012. **MOTION** by Clever, second by Quinn, to approve the minutes as prepared and distributed. **Motion carried 6-0.**

PUBLIC COMMENTS

Mr. Jim Potter, Chairman of the City of Bay Village Civil Service Commission, addressed the Charter Review Commission.

Mr. Potter stated that he has been a member of the Civil Service Commission for the past twenty-five years, and the Chairman for the last eighteen years. He understands that one of the subjects that is under consideration by the Charter Review Commission is the possible transfer of the Charter provision of the Civil Service rules and regulations from the Charter to an ordinance based relationship.

Mr. Potter stated that the Civil Service regulations were installed into the Charter approximately sixty years ago. They have seemed to work well for the city. Mr. Potter has worked with them for twenty-five years. The Civil Service Commission operates under a set of rules and regulations which have been adjusted through the years. He noted that it is a dynamic situation with the rules and regulations of the Civil Service Commission. The Civil Service Commission is the repository of Article VI of the Charter of the City of Bay Village. Mr. Potter stated that he has had a personal interview with two members of the Charter Review Commission. The problem is perhaps that if it became an ordinance based provision, it is more subject to change to political whims. Whereas, the fact that it is in the Charter means that only the electorate can make changes. For sixty-two years it has served the city well, and we have probably one of the best group of employees in the State of Ohio. Everytime there is a fire entry level or police entry level candidate employed as a result of testing, the graduates always come out from the training academies in the top five percent. The Civil Service Commission gleans out the best potential officers available. Bay Village competes with all the other cities on the west side and those who take our entry examinations also take them in Rocky River, Westlake, Avon and Avon Lake. The City of Bay Village always seems to get the cream of the crop when there are openings. For that reason, Mr. Potter related, he believes that the Civil Service Commission has done well within the rules, regulations, and provisions that are set.

Mr. Potter continued, noting that he served on the Charter Review Commission twenty years ago. The Charter Review Commission saw no reason to make a change then, and he sees no reason to make a change today. In talking with the two representatives of the 2012 Charter Review Commission, he made a case for leaving the Civil Service Commission in the Charter where it is today. He noted that his sum and substance is, "It's not broken; there is no reason to change it."

Ms. Quinn asked for clarification as to the range of employees covered under Civil Service. Mr. Potter explained that Civil Service has to do with the safety services, the police and fire departments. There are also clerks and secretaries covered by Civil Service. Mr. Potter is in favor of leaving the provision of Civil Service in the City Charter, and only subject to change by the electorate.

Mr. Cruse asked if the city only uses Civil Service for hiring safety forces. Mayor Sutherland stated that the history of Civil Service began in the Progressive Era in the 1920's in response to appointments to jobs being political. Civil Service came in as a protection for the administration and started with Woodrow Wilson prior to his becoming President, who wrote a very important piece about separating the administration from politics. For the most part, the people that are in Civil Service are protected from any type of disciplinary action or termination that is not progressive in nature or defined by some type of policy. There have been two occasions when the city has had to come to the Civil Service Commission on disciplinary issues. It is normally dealt within the department according to the progressive discipline that is in the labor contract. If an employee has a problem with that, they can file to go to the Civil Service Commission.

Mrs. Quinn asked for an explanation of the classified and unclassified service. Mayor Sutherland stated that employees in Civil Service are considered classified employees. Unclassified employees include directors and executive level employees that are not included in Civil Service.

Mr. Potter noted that President James Garfield was assassinated by a disappointed job seeker at a federal level. This is what brought forth the Civil Service rules and regulations on a federal level which have migrated down to the state, county and city. Mr. Potter noted that he served three separate terms as the President of the Cuyahoga County Civil Service Commissioners Association. Every one of the twenty-six Charter cities in Cuyahoga County has a Civil Service Commission. The non-chartered cities go by the state rules, and the State of Ohio has Civil Service rules.

Mr. Potter reiterated his request to the Charter Review Commission to please not change the provision of the Civil Service Commission in the Bay Village City Charter. He stated that there is no reason to change it; it has worked for 62 years and there is no pending problem that needs to be adjusted.

Sally Fell asked if the Civil Service Commissions are included in the Charters of the other cities mentioned by Mr. Potter. Mr. Cruse asked Mayor Sutherland if a representative sampling of how other cities have positioned their Civil Service Commissions could be obtained. Mayor

Sutherland stated that she can provide that information, but the Charter Review Commission must also refer to the model city charter and how it is handled there.

Ms. Quinn suggested that Article VI be included for further discussion.

Mr. Cruse stated that at the last meeting of the Charter Review Commissions, the following assignments were made for study by sub-committees.

Article II- Barbara Quinn, Chairman, Don Zwilling and Brian Cruse

Article III- Mark Barbour, Chairman, Sally Fell, Gina Crawford

Articles IV and VI- Matt Clever, Chairman, Mike Caputo, Clete Miller

The sub-committee that is handling Article III had trouble getting their schedules together and requested additional time, which has been granted by Chairman Zwilling. Matt Clever's group is handling Articles IV and VI and they have completed a portion of their work. Rather than give a partial report tonight, the report of their sub-committee will be held until the next meeting of the Charter Review Commission.

Mr. Cruse stated that the sub-committee he is working with is handling Article II. Mr. Zwilling and Mr. Cruse met and had conference updates with Barbara Quinn as they proceeded. Mr. Cruse reported the following information, noting that he does not believe any of these reports should be the final word. The information is now coming back from the sub-committee for individual thought and response by members of the Charter Review Commission.

As a measuring stick for looking at each of the sections, the sub-committee for Article II adopted the question "Is there a compelling reason to put a proposition in front of the voters to change something in the charter?"

Article II The Council
Section 2.1 Number and Term

Mr. Cruse stated that the sub-committee reviewed this section, discussed the idea of the number of people that are on Council, the number of seats, and the number of wards. It was the consensus of the group not to propose any changes. The sub-committee felt that going to the voters and saying they would like to shrink the size of City Council diminishes the voice of the electorate by reducing the number of elected representatives of the residents. There was also some concern from Mr. Zwilling and Mr. Cruse, who have served on Council, as to how a reduction would affect Council committee structures and workloads. Economy and dollars spent on Council as a function of government, was the only thing they could come up with on a plus side of the ledger.

As to the subject of changing the terms of office, Mr. Cruse stated that having been a ward councilman that faces a two year term and having served in an at-large position as Council President which is a four year term, it is much nicer having a four year term. Mr. Cruse stated

that when he first got on Council it took him a year to learn the basics, and suddenly there was concern about the need to campaign because the election is coming up again in less than a year. The sub-committee could not come up with a compelling reason for changing the terms. The sub-committee decided that the cycles, overlaps and staggering of terms works well in terms of not locking the city in for a long period of time with any group of people and providing the necessary possibility for changing.

Mrs. Fell stated that in considering this section she thought of the cost of the elections. She asked if there would be any sort of cost savings to the city if the ward councilmen were elected every four years versus every two years. However, if the terms are staggered, elections will still be held every two years, with no cost savings.

Mr. Cruse stated that the sub-committee could see no benefit in stacking them for election at the same time. He noted that all elected officials in Rocky River, the Mayor, Council, Law Director, are two year terms.

Article II. The Council
Section 2.2 Qualifications
Section 2.2(A) Ward Residency Requirements

The sub-committee left this as an open issue, waiting for feedback from Law Director Ebert on the Hatch Act and how that might play in. Other than that, in Sections 2.2 and 2.2 (A), Ward Residency Requirements, the sub-committee did not see any reason to propose any change, especially on the ward residency requirements. The logic is that there is an overall requirement to run for office in the city that you have lived in the city for at least a year. To run for the ward, you have to live in the city for a year, and in that particular ward, for at least 90 days. Currently, the way the election calendar is set up, with the potential of a primary election, the filing date for a candidate has now been moved back from late August to the middle of June. That almost pushes residency to five months because you have to be a resident 90 days before the filing deadline, which is in June, and there still remains June until November. Using the barometer of compelling reason to place before the voters, the way the system is set up now dictates that you have to be a six month resident in the ward and a year in the city, there is not a compelling reason to present to the voters for change.

Article II. The Council
Section 2.3 Removal

The sub-committee saw no reason for change

Article II. The Council
Section 2.4 Vacancies

The sub-committee saw no reason for change

Article II. The Council
Section 2.5 Salaries

The sub-committee saw no reason for change.

Article II. The Council
Section 2.6 President of Council – Duties

The sub-committee saw no reason for change.

Article II. The Council
Section 2.8 Vacancy in Office of President of Council

The sub-committee saw no reason for change.

Article II. The Council
Section 2.9 Employees of Council

The sub-committee saw no reason for change.

Article II. The Council
Section 2.10 Meetings

Mr. Cruse stated that the sub-committee spent some time with this section, noting that this was changed ten years ago. The reason for the change at that time was to specify an 8 p.m. start time for the organizational meeting of Council the first business day in January, following a municipal election. The sub-committee was concerned about coming back and offering a change to what was changed ten years ago. Mrs. Fell will check back through her notes from ten years ago to see what the rationale was for change at that time.

Article II. The Council
Section 2.11 Special Meetings

The sub-committee saw no reason for change.

Article II. The Council
Section 2.12 Quorum

The sub-committee saw no reason for change.

Article II. The Council
Section 2.13 Procedure

The sub-committee did discuss Roberts Rules of Order and the requirement of three readings versus the way the model charter suggests another possible way of doing this through public hearing. The consensus was that those are things that are probably better addressed in the administrative code and Council's rules and procedures, rather than a charter requirement.

The sub-committee saw no reason for change.

Mayor Sutherland stated that if the Charter requires three readings, that cannot be circumvented by ordinance. Mr. Cruse stated that the thought of the sub-committee was if the Council really wanted to move that to their administrative code, they could do that and bring a charter amendment forward. The sub-committee reached out early on to the Council to see if they had any burning issues that they wanted looked at and there was no response.

Mr. Cruse explained that legislation is proposed and the normal course of events is that it would sit for three regular meetings, which are held every other week. Council meets four weeks a month, the first and third Mondays are regular voting meetings. The second and fourth Mondays are committee sessions, where no business is acted on. The second and fourth Mondays are used for discussing issues and listening to reports. Those do not count as reading meetings. The normal course of legislation is that when it is proposed it would go on first reading that week, would sit two weeks to go to second reading, and another two weeks to the third reading where it could be voted on. By and large, everything Council does is done under what is called the Emergency Clause Provision which allows, with the proper voting and passage of the emergency clause, an ordinance to be acted on and voted on immediately. Mr. Cruse related that in his experience on Council, the only things that were stretched for three readings were building ordinance changes where it was necessary for word to get out to the public to allow for feedback from the public. Many things such as agreements for services for the city and equipment purchases are reviewed by Council thoroughly before going on the floor, in the interest of time they are passed under emergency clause so the city can get on with day-to-day business without the six week delay.

Mrs. Fell asked if it is ever a problem to get the two-thirds vote of the members of Council to pass legislation with the emergency clause. Mr. Cruse stated that it can be a problem. That usually gets down to whether a group does not want to move so quickly on an issue. The counter to that is it is a safeguard if somebody is not comfortable with immediacy. With the Council President, it would take three to feel that way to stop an emergency clause from passing.

Mrs. Fell asked if Council has ever been hindered because of needing the two-thirds vote for passage of an emergency clause. Mr. Cruse stated that would depend whether you are part of the four or part of the three. Mrs. Fell suggested removing the dissension issue and considering the issue from the standpoint of the absence of a member of Council to vote. Mr. Cruse stated that the emergency clause is based on two-thirds of the members present at the meeting. Ultimately a minority can't prevent something from passing. The question becomes how fast it was passed. The best a minority can do is keep it from passing under emergency clause and ultimately they are going to run out of time. Mrs. Fell stated that conceivably you could have a situation where one person dissents and then it slides over to the six weeks. Mr. Cruse stated that the legislation could be put back up on the second reading date with the emergency clause with everyone there and it could pass at that time. Mr. Cruse noted that the emergency clause is not usually used where there are issues. He stated that from his experience on Council, the people that served understood that's not the place to draw the line in the sand. If you are going to vote "no" because you disagree with something, you vote "no" on passage. The sub-committee felt that they were not comfortable with the ability of the city to get word out fast enough for the general

public on something they wanted to pass through a public hearing instead of three readings to have a fruitful public hearing. They felt letting it sit and going through three readings was a better way.

Mrs. Fell asked if six weeks is too long given the type of communication that can be done today.

Mr. Cruse stated that Council can call special meetings on those off weeks and move legislation along. It can be cut down, theoretically, to three weeks.

Mr. Cruse reiterated that the Charter Review Commission should not consider any of these issues closed. They can be revisited at the will of the commission.

Article II. The Council

Section 2.14 Effective Date of Ordinances or Resolutions

Mr. Cruse noted that this particular section was also left open pending information from the Law Department on why the effective date of legislation is forty days if not passed as an emergency measure.

Mayor Sutherland stated that the forty days is a fairly lengthy time frame for something to sit if it went to three readings, and wasn't passed as an emergency.

Mr. Clever asked the reason for the specificity of having the readings only at voting meetings of Council, since the working meetings are public meetings as well. Mr. Cruse stated that Council is only required to meet twice per month. (See Section 2.10) Council chooses to meet more times per month.

Article II. The Council

Section 2.15 Emergency Ordinances or Resolutions

The sub-committee saw no reason for change.

Mrs. Fell referred to the first sentence of this section, stating: "An emergency measure is an ordinance or a resolution to take effect at the time indicated therein, for the immediate preservation of the public peace, property, health or safety." She asked who decides what is the public peace, or if it is health or safety concerns. Mr. Cruse stated that the members of Council decide when they choose to vote for or against the emergency clause. Mr. Cruse further noted that preservation of the public peace, property, health or safety is often called statutory language. When you look at the emergency ordinances they almost always contain, verbatim, that phrase. As an example, Mr. Cruse stated that if the Police Chief advised that he needed two new police cruisers, the city would do the work-up, obtain the state bid numbers, including information as to time frames and dealers, and the ordinance will come before Council with the emergency clause included. For public safety purposes, the city wants to get the best price and wants to get the vehicles as quickly as possible, which becomes the reason for the application of that clause. It is a public safety matter; we need the police cars. We need to do it quickly so we can get on the state bid contract and get the best price.

Mrs. Fell confirmed with Mr. Cruse that it is the Council that decides this is a public safety concern. Mrs. Fell stated that she thinks the language is a little vague, but does not think that it is so vague that it needs to be changed. In the future, if that paragraph is ever updated, it needs to say who is responsible for determining the importance of the matter.

Mrs. Quinn noted that Section 2.15 states that “Emergency ordinances and resolutions upon a year or nay vote must receive the affirmative vote of two-thirds (2/3) of the total number of Councilmen provided for in this Charter...”

Article II. The Council
Section 2.16 Gender Neutral Legislation

The sub-committee saw no reason for change.

Mrs. Quinn stated that there should be a separate article on how to call a special meeting. Mr. Cruse stated that Section 2.11, Special Meetings, refers to the procedure to call special meetings of Council.

Mr. Miller noted that the nine ordinances and resolutions to be voted on by City Council this evening all have the emergency clause. The legislation varies from authorizing the Mayor to sign contracts for street striping and road resurfacing materials to purchasing vehicles. Council has a choice to agree with the immediate, emergency measure. The clause is a standard part of the draft of the ordinance. Whether Council chooses to vote for or against it is up to them.

Summary of Article II – The Council

Mr. Cruse stated that his presentation this evening represents the initial review of Article II by the sub-committee so assigned. They realize that there may be changes in other sections that will also force them to have to go back and revisit some of the sections in Article II.

Dr. Crawford commented that Mr. Cruse’s presentation gave her a better understanding of the structure of Article II, rather than just reading through the section.

NEW BUSINESS

Mr. Cruse stated that the next meeting will be held May 7, 2012 at 6 p.m. Mr. Cruse will let Chairman Zwilling know what was covered this evening.

Mayor Sutherland stated that she contacted two of her previous professors from Cleveland State University about the City Manager issue and the possibility of addressing the group.

Meeting adjourned at 6:50 p.m.

Brian Cruse, Co-Chairman

Joan Kemper, Secretary