

Minutes of a Meeting of
2012 CHARTER REVIEW COMMISSION
Held May 7, 2012

The fifth meeting of the 2012 Charter Review Commission was called to order at 6:00 p.m. by Chairman Don Zwilling. The following members of the Commission were present: Mark Barbour, Mike Caputo, Matt Clever, Dr. Gina Crawford, Brian Cruse, Sally Fell, Clete Miller, Barbara Quinn, Don Zwilling. Also present: Mayor Sutherland, Law Director Ebert, Councilman Tadych, Fire Chief Chris Lyons, Police Chief Wright, Civil Service Commission Chairman Jim Potter, and residents Dick Majewski and Susan Murnane.

The first order of business this evening was the review of the minutes of the meeting of the Charter Review Commission held April 16, 2012. **MOTION** by Miller, second by Fell, to approve the minutes as prepared and distributed. **Motion carried 7-0.** (Dr. Crawford and Barbara Quinn arrived after the minutes were approved.)

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 had come to this meeting to hear discussion about the charter provision for Civil Service. Since that discussion will not be held until May 21, 2012, Chairman Potter stated that he will be present at the meeting on that date.

Mr. Majewski asked if there is any type of specific evaluation of charter changes that were made in the past to see if the desired effect was received by those changes. Mr. Miller stated that Mr. Majewski's request initiated his probe back to what were the results of those prior commissions. Mr. Zwilling acknowledged receiving reports of the Charter Review Commissions of 1972 through 2002. A copy will be sent to Mr. Majewski

ARTICLE III THE MAYOR

Mr. Barbour reported that the sub-committee assigned to study Article III, the Mayor, consisted of himself as Chair, Dr. Gina Crawford and Sally Fell.

SECTION 3.1 TERM.

The Mayor shall be elected for a term of four (4) years, assume office on the first day of January following his election, and serve until his successor is elected and qualified.
(Ord. 68-97; approved by voters 11-5-68.)

The sub-committee saw no reason for change.

SECTION 3.2 QUALIFICATIONS.

The Mayor shall have been for at least three (3) years immediately prior to his or her election both a resident of the Municipality and a qualified elector thereof, and shall continue as both a resident and qualified elector of the Municipality during his or her term of office. The residency requirements may be waived in an emergency of temporary duration not exceeding six (6) months by a two-thirds vote of the total members of Council provided for in this Charter.

The Mayor shall be a full-time employee of the Municipality, and shall not hold any other elective or appointive public office for compensation, or other full-time employment, public or private, except that of Notary Public, member of the National Guard or Reserve Forces of the United States, or as otherwise provided in this Charter. The Mayor shall be permitted to serve on part-time appointive boards or commissions with compensation subject to the approval of Council.

(Ord. 02-99; Approved by voters 11-5-02)

The sub-committee saw no reason to change. In discussing the permission to the Mayor to serve on part time-appointive boards or commissions with compensation subject to the approval of Council, the sub-committee felt that such service can carry a benefit for Bay Village by raising the profile of Bay Village and giving Bay Village access to services that may not be available otherwise.

SECTION 3.3 REMOVAL.

The Council may remove the Mayor for gross misconduct, malfeasance, misfeasance and nonfeasance in or disqualification for office, or for the conviction while in office of a crime involving moral turpitude, or for a violation of his oath of office, provided however that such removal shall not take place without the concurrence of two-thirds (2/3) of the total number of Councilmen provided for in this Charter nor until the Mayor shall have been notified in writing of the charge against him at least ten (10) days in advance of any hearing upon such charge, and he or his counsel has been given an opportunity to be heard, present evidence, or examine any witnesses appearing in support of such charge.

(Ord. 62-158; approved by voters 11-6-62.)

The sub-committee saw no reason to change.

SECTION 3.4 JUDICIAL POWERS.

The Mayor shall have all the judicial powers granted by this Charter, the ordinances of the Municipality and the general laws of Ohio to mayors of municipalities of the class of this Municipality.

The sub-committee saw no reason to change.

SECTION 3.5 LEGISLATIVE POWERS.

The Mayor shall be entitled to a seat in the Council. He shall not have a vote in the Council, but shall have the right to introduce ordinances and resolutions and to take part in the discussion of all matters coming before the Council.

The sub-committee saw no reason to change.

SECTION 3.6 VETO.

Any ordinance or resolution passed by the Council shall be signed by the President or other presiding officer and presented to the Mayor by the Clerk. If the Mayor approves such ordinance or resolution, he shall sign it within ten (10) days after its passage or adoption by the Council, but if he does not approve it, he shall return it to the Council with his objections within said ten (10) days by delivery to the Clerk, which objections shall be entered in full on the journal of the Council. The Mayor may approve or disapprove the whole or any item of an ordinance appropriating money, but otherwise his approval or disapproval shall be addressed to

the entire ordinance or resolution. If the Mayor does not sign or veto an ordinance or resolution after its passage or adoption within the time specified, it shall take effect in the same manner as if he had signed it. When the Mayor has disapproved an ordinance or resolution or item of it, as herein provided, the Council shall, not later than the next regular meeting, proceed to reconsider it, and if on reconsideration the ordinance, resolution or item is approved by vote of two-thirds (2/3) of the total number of Councilmen provided for in this Charter, it shall then take effect as if it had received the signature of the Mayor. In all such cases, the votes shall be taken by yeas and nays and entered upon the journal.

(Ord. 62-158; approved by voters 11-6-62.)

The sub-committee saw no reason to change. The sub-committee thought the veto power is a good idea because it can be over-ridden and it is a built in check and balance system on the powers of Council.

SECTION 3.7 EXECUTIVE POWERS.

The Mayor shall be the chief executive officer of the Municipality. He shall supervise the administration of the affairs of the Municipality and shall exercise control over all departments and divisions. He shall be the chief conservator of the peace and shall see that all laws and ordinances are enforced therein. He shall recommend to the Council such measures as he deems necessary or expedient. He shall see that all terms and conditions imposed in favor of the Municipality or its inhabitants in any franchise or contract to which this Municipality is a party are faithfully kept and performed. The Mayor shall execute, on behalf of the Municipality, all contracts, conveyances, evidences of indebtedness and all other instruments to which the Municipality is a party. He shall have the custody of the seal of the Municipality and shall affix it to all of the above mentioned documents, but the absence of the seal shall not affect the validity of any such document. The Mayor shall be recognized as the official and ceremonial head of the government by the Governor for military purposes and by the courts for the purpose of serving civil processes.

The sub-committee saw no reason to change.

SECTION 3.8 TEMPORARY ABSENCE OR DISABILITY OF THE MAYOR.

If the President of Council elects not to serve as Mayor during the temporary absence of the Mayor, the Mayor shall designate a director of a municipal department who shall, in addition to his other duties, perform the duties of the Mayor when the Mayor is temporarily absent from the Municipality or unable for any cause to perform his duties. At the same time, the Mayor shall establish a line of succession among the directors of departments to assure the presence of an Acting Mayor in the event that the person designated under this section is unable to assume the duties of the Mayor. The person who shall become Acting Mayor shall have the same powers and perform the same duties as the Mayor.

(Ord. 73-14; approved by voters 5-8-73.)

The sub-committee saw no reason to change. The conclusion of the sub-committee, after discussion, is that it is important to continue to give the Mayor discretion to appoint a line of succession in the event of absence. Further discussion was centered on the possibility of having that information posted and available to the public. It was determined that the Mayor's Assistant would direct any inquiries from the public to the Acting Mayor, in the event of the Mayor's absence.

SECTION 3.9 SUCCESSOR TO THE MAYOR.

In case of the death, disqualification, absence or disability for more than six (6) consecutive months, removal or resignation of the Mayor, the President of Council shall become the Mayor and serve until a successor is elected. If the President of Council refuses to accept the position of Mayor, the Council shall, by vote of a majority, appoint a successor to the Mayor. Under such circumstances, the office of Mayor shall be filled at the next regular municipal election for the unexpired term. (Ord. 82-62; approved by voters 11-2-82.)

The sub-committee saw no reason to change.

Council – City Manager Form of Government vs. Mayor-Council Form of Government

Mr. Barbour stated that the second aspect of the sub-committee was to look at the Council-Manager Form of Government vs. the Mayor-Council Form of Government. In Bay Village currently, there is the Mayor-Council form of government.

Mr. Barbour stated that most of the information on a Council- City Manager form of government comes from city manager trade groups, who are advocates of the city manager form of government. They claim that the city manager form of government is the fastest growing form of government. Over 55% of government entities smaller than a state are the Council-City Manager form of government. This type of government is more prevalent in the Western and Southeastern United States, and less prevalent in the Midwest and Northeast. Mr. Barbour noted that many large cities that have city managers, e.g., Phoenix, Arizona, also have Mayors.

The typical city manager forms of government in Ohio have an elected Council. They may have an elected Mayor, or the Mayor rotates from Council. The Council oversees the general administration, enacts legislation, makes policy and sets the budget. The Council hires a city manager to carry out the day-to-day executive administration of the city, and the city manager provides information back to Council. The city manager is usually, almost always, a contractual employee of the city and usually, but not always, someone with professional, educational training and experience specific to municipal governing. There are many hybrid forms of this; there is no single description or template of these forms of government.

Some arguments for the Council-City Manager Form of Government are that this specific form of government professionalizes management of the city. There is greater attention to specific qualifications of the candidate, a larger pool of candidates (no residency requirement), and the candidates are more likely to have professional and educational training and experience. A major claim of the proponents for the Council-City Manager Form of Government is that a city manager is better suited to the increasing complexities of municipal management. Additionally, there is more emphasis on legislative body and policy making; the council and manager are more likely to be “on the same page” and share common interest.

The city manager serves at the pleasure of council and can be fired, although under contract. There is less potential for conflict with a city manager form of government. It removes politics from executive decision making and management, which is one of the major claims of proponents of this form of government. The city manager form of government could allow for

more efficiency due to experience, education, training, and less political interest, which may equal cost savings.

Some arguments against the Council-City Manager Form of government include putting significant power in the hands of one person that is not answerable to the voters. An outside professional may not know the community or have the same connection, feel, interest in or appreciation of the community. The outside professional may be operating from a mercenary or free agent standpoint only. The Council-City Manager form of government has a lack of a single leader in the community without an elected chief executive. While one of the members of Council may emerge in a leadership role over time or on a particular issue, it is not the same constancy as when you have an elected chief executive.

The city manager is a business or corporate model. That is not always suitable for community needs or the democratic process. The cost of a city manager exceeds the cost of a Mayor. The pay range for city managers in Cuyahoga County ranges from \$120,000 to \$160,000 per year plus benefits, which is substantially more than the City of Bay Village currently pays the Mayor. The city manager can leave for a better opportunity, or when the going gets tough.

Although a city manager can remove some of the conflict, there is a school of thought that conflict is good, and fosters compromise. Eliminating the elected Mayor eliminates some checks and balances on Council. The Mayor has veto power; Council can override the veto. The Mayor can introduce legislation, but cannot vote on it.

In conclusion, the sub-committee learned that change to a Council-City Manager Form of Government would be a complex undertaking that requires greater and deeper discussion than what is available at this time and with this commission before deciding whether to place the issue before the voters. The greater and deeper discussion should include:

- What are the specific duties, responsibilities and obligations of Manager? How would those be determined? How could they be changed or modified?
- Process of selection; what role would the public play in the selection?
- Terms of employment
- Costs
- Consequences of change; what happens to the office of Mayor?
- Is it the right change for our community? Philosophy of government function
- Must have public input: should not be only our decision on all aspects except whether to adopt or not

The sub-committee determined that it is not appropriate at this time to offer such a change to the charter to the voters. They would suggest further study of the issue. Changes to the Charter can be placed before the voters by Council at any time in the future.

Mrs. Fell added that there is a certain time frame with this Charter Review Commission. The study of a Council-City Manager Form of Government versus a Council-Mayor Form of Government is too large to fit into that time frame. A much longer, more in depth study would

be required to determine what the impact would be on the city. If this group feels it should go forward, they would recommend that more study be done and not go on the ballot at this time.

Mr. Cruse stated that this was going to be an issue he would support because he thought the idea of professionalizing the running of a city is something that should be done now. However, the more he reflected on how Charter sections inter-played, he has determined that changing the form of government would require giving up many checks and balances. Mr. Cruse thanked the sub-committee for their work and expressed agreement with Mrs. Fell that more thorough and extensive study would need to be done before considering a change.

Mr. Miller asked if any examples were found of how smaller cities have combined into a more regional form of government. Mr. Barbour stated that he did not find that specifically, but the City of Rockville, Maryland on their website came the closest to explaining why they switched in the last fifteen years. The other places where city managers came in are when cities have had tough times.

Mr. Barbour stated that he has difficulty in removing the Mayor and replacing that office with a person who is not answerable to the voters. We have been lucky in Bay Village, to not have had the problems that other municipalities have, which is a tribute to the Mayor, City Council, and department directors. If the Mayor is able to make the right hires at the departmental level, professionals are in place who are running the city to the best possible degree.

Mrs. Fell stated that Mayor Sutherland functions in all of the job descriptions of a City Manager, and has the education piece to back that up. The Mayor has pursued that in the way that she manages the city. The risk is that the next Mayor wouldn't have that sort of background. We would be eliminating a very important checks and balance system by eliminating the Mayor position and the Mayoral power in our government structure.

Dr. Crawford agreed that there are many questions raised for which there are no answers at this time. As a practical matter, to get this all on paper and to be able to answer voter questions would have to be investigated and prepared. Looking at all of the different models of cities, talking to people, and learning what works and what doesn't work would take a long time, and would probably not be feasible for this November.

Mr. Zwilling thanked the sub-committee for doing a good job in looking at this and giving such an in-depth report. He acknowledged the outstanding work of the past Mayors and present Mayor, as well as the Presidents of Council. He stated that they have been part of the fabric of the community and had a good outlook on wanting to do the best job they could do. He suggested that a comprehensive study of the Council-City Manager Form of Government could easily take a year's time.

Mr. Clever noted that there is an active, engaged population in the city. It leads them to be involved in municipal politics and also leads to good, qualified people to seek office.

ARTICLE IV ADMINISTRATIVE OFFICERS AND DEPARTMENTS

SECTION 4.1 GENERAL PROVISIONS.

A Department of Law, a Department of Finance, a Department of Public Safety, and a Department of Public Service and Properties are hereby established by this Charter, and the Council shall provide by ordinance for the organization thereof. The Council may establish by ordinance new departments or divisions thereof. With the exception of the Department of Law and the Department of Finance, the Council may combine or abolish existing departments and divisions as it may deem necessary and may authorize one person to be the head of two or more departments or divisions. The Mayor may act as the head of the Department of Public Safety and/or the Department of Public Service and Properties.

Mr. Clever as Chair of the sub-committee composed of Mr. Clever, Mr. Caputo, and Mr. Miller, studying Article IV, reported that the sub-committee started out by thinking about how they could make the charter a more nimble document, giving the administration and Council more flexibility, especially when defining more individual departments and individual positions. They studied the idea of inserting specific language in the sections of the Director of Law and the Director of Finance that would allow the city the option to enter into a partnership with surrounding municipalities, such as that described in Section 13.1 which establishes franchises for public utilities. For example, if Westlake or Rocky River, and Bay Village all came to the conclusion that we could benefit by having one joint Department of Law that represented each city's interest from one central location and share administrative costs.

Mayor Sutherland suggested that there may be language in the model charter that basically allows the Council and the Mayor to develop the organizational hierarchy as they see fit. You must have legal and financial departments, but you may have departments that evolve over time. All departments do not have to be outlined in the Charter.

Mr. Zwilling stated that Cuyahoga County Executive Fitzgerald has a Department of Regional Collaboration. In our county of 59 cities and townships, a county that hasn't grown tremendously in population, he is looking for ways to provide services across city lines. We are headed in that direction as state budgets and city budgets get tighter.

Mr. Miller stated that the General Provisions of Article IV, Section 4.1 provides that with the exception of the Department of Law and the Department of Finance, the Council may combine or abolish existing departments and divisions as it may deem necessary. If an outside collaboration or outside vendor would be sought, the sub-committee thought there may need to be very clear language joining those services from the city to a vendor but not necessarily abolishing those departments.

Mr. Zwilling noted that there are Law Directors that serve more than one city. Mr. Cruse added that there are Finance Directors that serve more than one city. He suggested the removal of the language in Section 4.1, which reads, "With the exception of the Department of Law and the Department of Finance." A Department of Law can be a shared expense among multiple cities and this would build in flexibility on how the department is staffed.

Mr. Clever stated that the committee questioned whether the Department of Law and Department of Finance are necessary, by the Ohio Revised Code, to be included in the charter.

Mr. Zwilling noted that in this day and age flexibility is a key word. Mayor Sutherland advised that she recently attended a retreat as a member of one of the community hospital's boards. The Cleveland Clinic did a presentation on what health care will look like in the next ten years, and how the baby boomer generation will impact the provision of health care. One of the key concepts is that we are in a period of ambiguity and things are changing rapidly. We have to be able to think outside the box, be creative, and when opportunities arise, go after them. It is going to be difficult if we do not have the ability to deal with that ambiguity in the charter. We have a chance here to set that stage.

Mr. Cruse noted that Mayor Sutherland commented about the flexibility in Section 4.1 in the first copy of the Charter she provided to the Charter Review Commission, and referenced the model charter, Section 4.01. In reading that and thinking about removing the one phrase, they are very similar in terms of flexibility.

Mr. Clever will confer with the Law Director on suggested language for Section 4.1 of Article IV.

Mr. Zwilling advised that the next meeting will be held at 6 p.m., on May 21, 2012, with a presentation by the Mayor on Article VI of the City Charter, Civil Service.

Meeting adjourned at 7:15 p.m.

Don Zwilling, Chairman

Joan Kemper, Secretary