

Minutes of a Meeting of  
2012 CHARTER REVIEW COMMISSION  
held July 16, 2012

The tenth 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, Clete Miller, Don Zwilling. Absent: Sally Fell. Also present: Mayor Sutherland, Law Director Ebert, Brandon Dimacchia, Jerrie Barnett, Sally Irwin Price, Bruce Geiselman, Jeff Gallatin, Richard Majewski, Conda Boyd, Barbara Ebright, Darrell Mattern, A. Fuchs, Susan Murnane, Kent Silverberg, Anne C. Smith

The first order of business this evening was the review of the minutes of the meeting of the Charter Review Commission held July 2, 2012. **MOTION** by Cruse, second by Miller, to approve the minutes as prepared and distributed. **Motion carried 7-0.** (Barbara Quinn arrived at 6:17 p.m., after approval of the minutes.)

**PUBLIC COMMENTS**

Brandon Dimacchia, representing the Bay Village Fire Department and the Firefighters Association stated that he was looking at the Bay Village Web Site today and there was a quote on the welcome page that read “Bay is consistently rated as one of the top communities in all of northern Ohio and we strive to provide the best services possible for our residents.” Speaking for the Fire Department, Mr. Dimacchia noted, he would have to agree with that statement, and he believes that we already, currently, today, now, are providing the best services to our residents, and he hopes that whatever changes that the Board is proposing today, or in the near future, don’t cause anything to the contrary. Mr. Dimacchia thanked the Board for their time.

Mayor Sutherland stated that her role has been fulfilled with the Charter Review Commission in appointing the members, asking questions, providing research and access to directors. Since there will be discussion this evening the Mayor stated that she will withdraw and will be in her office if the Commission needs her.

Darrell Mattern, long-time resident of Bay Village, having grown up in Bay Village, and recently retired firefighter for the City of Bay Village, stated that the reason he is present this evening is because he has read a number of the minutes of the Charter Review Commission and saw the police chief and fire chief comments about preserving the civil service appointments for those two offices. Mr. Mattern stated that he has enjoyed the protection of civil service in the course of his duties and he is not sure what is planned but he would urge the Commission to keep the notes containing the comments of Chief Wright and Chief Lyons, since they have a very valid argument for saving their appointments in Civil Service.

Conda Boyd, an officer in the Bay Village League of Women Voters thanked the Charter Review Commission for the wonderful job they have done. It is a herculean labor and a debt of gratitude is owed for looking at the Charter and keeping it up to date. Ms. Boyd stated that she is present this evening to remind the Commission that five years ago the League of Women Voters was

very much involved in the primary election issue, coming out very strongly in favor of having a run-off election if there were three or more candidates for a given office. The League's position has not changed and they strongly urge the Commission to abide by the will of the people. The people spoke overwhelmingly, 65 percent to 35 percent in favor of having our officials elected by a majority vote instead of a plurality. This is not about money; this is about democracy. Ms. Boyd thanked the Commission for hopefully not going the route of removing the primary election.

There being no further comments from the audience, the public comments section of the meeting was closed.

### **OLD BUSINESS**

Mr. Zwilling stated that the Commission is looking at final language on Article IV, Article VI, and Article VIII.

#### **Article VI – Civil Service Commission**

Law Director Ebert provided revised, proposed language for Section 6.3, changing the provision for the Chief of Police and Chief of Fire to say that the “The classified service shall be comprised of all positions not specifically included within the unclassified service”, and indicating below that all directors of departments, including Chiefs of the Division of Police and Division of Fire, and Assistants to Directors are in the unclassified service, and therefore, are removed from the classified service.

Section 6.7 (new) reads “Notwithstanding anything to the contrary in this Article VI, the City Council shall have the authority to enact such laws and ordinances as may become necessary to permit the City to participate in regional civil service programs related to providing services to the residents of the City as may be deemed appropriate. Should City Council adopt any laws or ordinances pursuant to this Section 6.7, said regional civil service programs shall supersede any provisions of Article VI inconsistent therewith.”

Mr. Ebert explained that this began with the regional fire meetings that are being conducted. If the time comes for having a regional fire authority/district, the goal would be to hire a commander of the fire departments of the four cities participating. There would not be a fire chief in each department. There would be an officer in charge of each department reporting to the one commander. The idea is to save money on officers from the top down, and also to save on the purchase of equipment and training. The regional meetings have not discussed police, they have only discussed a fire authority. The amendment to this section is to be consistent by saying both chiefs would no longer be chiefs; they would be directors.

Mr. Cruse added stated that what is being reviewed in Article VI is the culmination of the discussion of the Charter Review Commission on July 2, 2012.

## **Article VIII- Department of Parks and Recreation**

Law Director Ebert explained that the purpose of eliminating the Department of Parks and Recreation from the Charter is for future combination of departments. He noted that there is a levy for parks. If the elimination of Section 8.1 is approved by the voters, the Council will have to segregate the funds collected by virtue of the parks levy. Mr. Ebert stated that his only concern is that if this will cause an issue with the voters as to knowing whether the funds will be truly segregated.

Mr. Cruse added that the premise of this is that if the voters pass an amendment to the Charter taking Parks and Recreation out of the Charter, Council will immediately need to establish a Parks and Recreation Department by ordinance to be true to the levy. If Council, at some time in the future, decides that they want to combine the Parks and Recreation Department with another department, the internal accounting issue would come in. If this goes forward, Council needs to be aware of the necessity of creating a Department of Parks and Recreation by city ordinance so that the transition will be seamless.

Mr. Clever asked if Council can create a Department of Parks and Recreation by ordinance prior to the election, regardless of the election. Mr. Ebert stated that he believes the purpose of this action is really to combine two departments, and theoretically save money. It was discussed in the past of combining Community Services with Parks and Recreation. Mr. Ebert stated that Council can immediately establish a Parks and Recreation Department by ordinance, but he is concerned about the checks and balances in the mind of the voters as it relates to the proper distribution of the funds from the parks levy, as directed by Section 10.1 of the City Charter.

Mr. Cruse stated that instead of submitting this Article VIII, Section 8.1 to Council as a charter amendment, he would recommend suggesting to Council that Council tie this together with the proper ordinance creating the department, and place it on the ballot.

## **Article IV – Administrative Officers and Departments** **Section 4.1 – General Provisions**

Mr. Miller asked how the removal of the Department of Law and Department of Finance from Section 4.1 differs from the removal of the Parks and Recreation Department from the Charter. Mr. Cruse explained that the city is required by state law to have a Department of Finance and a Department of Law. What is being proposed in the change in Section 4.1 is that there would still be a Department of Finance and Department of Law, but removing the specific wording from the charter would provide the city with the ability to share those departments and directors with another municipality.

Mr. Barbour stated that Ohio State Law requires that the city have a Director of Law and Director of Finance. Mr. Zwilling agreed, noting that removing the specific language from the Charter provides the flexibility of combining these services with other cities sometime in the future, as expressed through the idea of regionalization. He stated that the comparison of the economy five years ago to now indicates a real change. Northeast Ohio continues to lose

Fortune 500 companies with their large payrolls. Cuyahoga County and the City of Cleveland have lost population in the last ten years. State funding has been reduced and communities are taking action to set the stage for trying to budget tighter and tighter.

**Motion** by Cruse, second by Quinn, to submit a proposed charter amendment to City Council for submission to the electorate, removing the phrase “With the exception of the Department of Law and the Department of Finance” from **Article IV, Administrative Officers and Departments, Section 4.1- General Provisions. Motion carried 8-0.**

**Motion** by Caputo, second by Clever, to submit a proposed charter amendment to City Council for submission to the electorate, modifications to **Article VI, Section 6.3, Classification of Service (b)** to read: “All directors of departments, including the Chief of the Division of Police and the Chief of the Division of Fire, and assistants to the directors” and eliminating under Section (h) “The classified service shall be comprised of the Chief of the Division of Police and the Chief of the Division of Fire and all other positions not specifically included within the unclassified service” and replacing those words with “The classified service shall be comprised of all positions not specifically included within the unclassified service.” **Motion carried 8-0.**

**Motion** by Clever, second by Miller, to submit a proposed charter amendment to City Council for submission to the electorate, the addition to **Article VI, Civil Service Commission, Section 6.7 Regional Participation**, reading “Notwithstanding anything to the contrary in this Article VI, the City Council shall have the authority to enact such laws and ordinances as may become necessary to permit the City to participate in regional civil service programs related to providing services to the residents of the City as may be deemed appropriate. Should City Council adopt any laws or ordinances pursuant to this Section 6.7, said regional civil service programs shall supersede any provisions of Article VI inconsistent therewith.” **Motion carried 8-0.**

### **Article X111 – Miscellaneous** **Section 13.3 Disqualification**

Mr. Caputo addressed this section with an attempt to align the Charter with an appropriate step for anyone casting a vote on a contract to be allowed to recuse himself from a vote without facing disqualification. Currently the Charter states that if you are on Council and even if you recuse yourself from a vote, and it is determined that you have a direct or indirect financial interest in the outcome of that vote, you shall be disqualified from office. In an effort to try to allow for a member of Council, or anyone listed in Section 13.3, to take the appropriate action and recuse themselves from a vote in which there may be a direct or indirect financial interest, Mr. Caputo proposed inserting after the word “shall” the words “cast a vote or approve a contract that may.” Also, the last sentence of the section would be amended to read “An action that violates this section shall disqualify any such officer or employee from holding office in addition to the other penalties provided by law.”

Mr. Caputo noted that the existing language of this section forces disqualification even if a person recuses himself from voting.

Mr. Barbour offered an alternate proposal of striking the last sentence from Section 13.3.

Mr. Cruse noted that Mr. Caputo's modification would give an officer or employee the opportunity to recuse themselves from voting.

Mr. Zwilling noted that the practice that has been in effect is that the council member would recuse himself from voting in any case of suggested interest. Mr. Ebert noted that former Councilman Joseph Santone, who was an employee of The Illuminating Company, would always leave the room when there was discussion about energy rates.

Mr. Caputo stated that there is a process in place whereby one may recuse himself or herself without having some type of forced disqualification.

Mr. Miller asked if Mr. Caputo would suggest that there be language in addition that further influences that an elected officer, director or employee should acknowledge an interest and remove themselves from the discussion. Mr. Caputo stated that he does not think the language is necessary for the Charter. It is incumbent upon the individual when they take office or when they are appointed to a position of authority that the acknowledgement is consistent with their obligation.

Mr. Barbour commented that ethics laws are in place now that probably were not in place when this section of the charter was written. The Ohio Ethics Commission requires an annual statement of public official disclosing financial interests.

**Article X1- Nominations and Elections**  
**Section 11.1 – Municipal Elections**

Mr. Zwilling stated that the impetus for the provision of a primary election in 2007 was the desire for someone to be elected with over 50% of the vote cast. This Charter Review Commission has discussed the cost of a primary election, which is approximately \$30,000. Mr. Clever stated that the cost is approximately \$2,200 to \$2,400 per precinct, and there are 12 precincts in the city. He stated that the Council and administration have done the best job they can in saving money, and asked Mr. Caputo to report on his recommendation following the review of this section.

Mr. Caputo stated that he has looked at what other municipalities have done. He advised that there are five options that can be pursued. Option No. 1 is to do nothing; leave the language as it is. Option No. 2 is to entirely eliminate the primary. Option No. 3 is to replace the primary with a run-off election in the event the general election does not yield someone with at least 50% of the vote. The fourth option includes the fact that at this time the Charter requires primary elections to be held on the seventh Tuesday prior to the general election, which is an odd day in light of when there may be other elections on the ballot. From time to time, there are questions on the ballot in May of an odd-numbered year that ride on their own. The primary election date in September exists solely for municipal elections. Mr. Cruse noted that last year the voters approved a date which aligns all communities' primary elections to occur on the same Tuesday. Mr. Caputo stated that he is emphasizing that this is the only question for Bay Village residents

to vote on at the September primary election. The fifth option addresses the fact that municipal elections in state law are held in odd numbered years. If and when, that law was to be changed to provide the flexibility of a municipality to have their elections in an odd-numbered year, or an even-numbered year, our Charter would not allow that. If state law were to allow for a municipal election to occur in an even-numbered year, our Charter would not allow Bay Village to piggy back on that election schedule, should it choose to do so. If that wasn't done, Bay Village would lose out on the ability to share in the cost of the election at the time when there are other county and state offices that are up for election.

Mr. Caputo continued, stating that there is a way to structure this section of the Charter to basically refer to Section 3501 of the Ohio Revised Code, which defines Regular Municipal Election. That section now states that regular municipal election means the election held on the first Tuesday after the first Monday in November in each odd-numbered year. If the General Assembly were to redefine what a regular municipal election means to provide for an odd-numbered or even-numbered year, would we want, in this Charter, to allow for the city to potentially take advantage of that, and undertake the mechanics necessary to shift from the odd-numbered years to the even-numbered years?

The first two options presented would eliminate a primary. The remaining three options would keep the primary section as is, and allow for the Charter to reflect the general laws of the state that define regular municipal election, or switch the primary date from the seventh Tuesday before the general election to the first Tuesday in May.

Mr. Caputo stated that there is a lot of interest on this issue. What he is trying to do is present to the Commission, options beyond up or down. Some of the options are certainly unconventional. We have tried to maximize flexibility in every area of the Charter that has been discussed. He stated that he does believe there is a way to maintain a primary system, if that is the will of the Commission, while at the same time positioning the Charter in a manner that could be more efficient than what the Charter currently reads. Mr. Caputo invited any questions as to the specifics of what he has outlined this evening.

Mr. Clever clarified that the potential cost savings by going to a first Tuesday in May primary wouldn't necessarily be sharing that election with other entities. It would still be the same scenario. The potential cost savings would be that we would potentially not have a special election for a tax levy or school levy in May. Mr. Caputo stated that his premise of how he perceived cost savings would be that potentially the first Tuesday in May ballot would have other issues that are not city issues. Whereas, the way we currently date our primary elections, there are no other issues on the ballot for that day.

Mr. Barbour stated that he has prepared some historical points for the other side of the issue of the primary elections. The mission of the Charter Review Commission is to review these issues. On this particular issue, Mr. Barbour noted he had the privilege of serving on City Council at that time. The minutes of some of the meetings regarding a proposed primary election have been provided to the members of the Charter Review Commission. There have been three changes to Bay Village election law in the last sixty years. In 1949, the city switched from a primary system to a run-off election. That stayed the same for the next thirty years. In 1979, City

Council put on the ballot to eliminate the run-off to go to the system that we had until 2007, which was a plurality or, winner-take-all system. In 1989, Mayor Chapman got 34% of the vote. In 1993, Mayor Jelepiss got 34% of the vote. In 2005, Mayor Sutherland got 49% of the vote in a five-way race.

In 2006, a group of citizens, along with the League of Women Voters, came to City Council and brought up the idea of returning to a primary, initially for the office of Mayor and city-wide offices. In March of 2006, the President of Council, Brian Cruse, assigned the topic of primary election to the Committee of the Whole for discussion and review. It was discussed by various Council members until 2007. At that point the League of Women Voters produced their election study recommendation, which was over 40 pages with attachments. Council received a presentation of their findings in July of 2007. In the interim, a group of citizens started a petition drive to get signatures to put the issue of a primary on the ballot for the voters to decide. In the spring of 2007, at the time the Council was getting ready to hear from the League of Women Voters with their formal presentation, it looked like the petition people had enough valid signatures to place the issue on the ballot. The League of Women Voters looked at election history, they looked at other cities, conducted a survey of candidates and former candidates, and a citizens survey. A public hearing was held July 9, 2007, and all of the topics touched on were brought up. The cost was a prominent discussion. Voter turn-out was a prominent discussion because one of the issues with primaries, historically, is that they lag significantly behind the turn-out in general elections. Timing was brought up and one of the reasons that the spring primary of March or May was not favored was because of creating a long campaign season and having to declare for candidacy. A considerable amount of time was spent talking about the methodology of the League of Women Voters study. The League of Women Voters made their recommendation of non-partisan primary in the fall to align with other cities that have primary elections. There were articles in the newspaper and considerable discussion. It appeared that the petition was going to go to ballot, so City Council unanimously voted to put the issue before the voters with the language that it would be a non-partisan primary to take place in September of the year of the municipal election. The issue was adopted on November 6, 2007 by 63.7% in favor to 36.3% against with a total of 3401 votes cast in that election, less than half of votes cast in the previous two or three general elections.

There was concern that maybe the voters had not had a full opportunity to hear all of the points about the pros and cons of primary. Mr. Cruse wrote a letter and sent it to every house, at private cost, in the city, laying out all of the pros and cons of a primary system, including cost, timing, encouraging or discouraging people to run or not run, and to really realize what a primary might mean if it were passed. The electorate voted overwhelmingly to adopt the primary system. Of importance to note, is that since that time there have been two election cycles and there have been no primary elections. It hasn't been tested yet. There have been no results or feedback about how voters feel about it in practice. There has been no feeling of the real effect. It is all theoretical at this point and we have incurred no cost. This was just decided in 2007. The people wanted it; they voted for it. Mr. Barbour stated further that in his opinion not enough time has passed for an opportunity to evaluate it. Ms. Quinn expressed agreement.

Mr. Barbour stated that he personally was not in favor of a primary election for reasons of voter turn-out, reasons of timing, and his personal view is that it discourages people from running.

Those particular views were obviously in the minority and the people of Bay Village spoke. You have to let it stand.

Ms. Quinn stated that her only comment is that having this primary election in the Charter and not having to do a primary speaks volumes. She stated that if a candidate is really serious about the position of Mayor, then they will take the time required. A primary election basically separates the people who are serious about the position and the people who just have an ax to grind about one thing or another. Keeping the primary election levels the playfield as far as professionals who really want the job. Mayor Sutherland captured 49% of the vote in a field of five candidates, compared to 34% in 1989.

Dr. Crawford stated that she received the information sent out by Mr. Barbour and commented that there was considerable discussion about this issue, which made her rethink the issue as well.

Mr. Caputo acknowledged that there was a tremendous amount of time and effort put into crafting this particular issue when it was placed in front of the voters. He stated that it is his personal opinion that the economics of the city have changed. He is sensitive to the comment made that it is not about money, it is about democracy, but does not feel any less democratic because our governor only got 49% of the vote. He does not feel that this is a compromise of democracy, but as a member of the Commission he is trying to come up with ideas that can allow for flexibility. There are potential ways to look at this and create that flexibility or allow for the possibility of opportunities down the road that our charter doesn't currently contemplate. Those suggestions will not violate a primary system if that is the direction the Commission would like to go.

Mr. Zwilling expressed agreement with Mr. Caputo and reiterated his previous comments about the economy. Mr. Cruse noted that after what he went through in 2007, he would vote for a primary election every single time. Voting is the essence of what we do as a democracy in this country and people's recognition of what the economy is like now versus 2007 is different at all. The city was redlining budgets for many years and this is not the place to make that analogy. Ms. Quinn expressed agreement.

Mr. Barbour noted that the voters decided this issue in recent history. He applauded Mr. Caputo for proceeding with this because that is what the Commission is charged, even though they disagree. Mr. Barbour expressed agreement with Mr. Cruse, stating that he learned his lesson in 2007, the people spoke. All of these issues were brought forward and the Council thought they were being the best stewards possible with the funds. The people spoke loudly. At this juncture it is far too soon.

Mr. Caputo stated that he would somewhat challenge those who say we are no worse off than in 2007, noting the repeal of the Estate Tax which was available in 2007. If there is not the desire to review this section as it relates to primary elections, he would strongly suggest that it be questioned as to whether or not there is a better way to do it, whether that is moving the primary date up to May or allowing the primary election to reflect state law in terms of the regular municipal election that is currently in code, and potentially harmonize with state law should they provide for flexibility. If the state law were to change and allow for municipalities to have their

elections on the same cycle as state-wide elections, that has merit and is a cost saver. It does not do anything to compromise a primary system. Mr. Zwilling noted that Council could react in that event and put something before the voters.

Mr. Clever stated that if the change would be made to Title 35 of the Ohio Revised Code, there would be a different metric in an even year as opposed to an odd year. If we were to move our entire municipal election cycle to an even-numbered year, at that point, whether or not we had language referring to state law, we would still have to go back into the Charter and change the date of the primary to align with other elections in a non-municipal election. Mr. Caputo stated that both issues would have to be addressed. It would be necessary to reflect that a primary would be held in accordance with the general law of the state.

Mr. Cruse stated that he appreciates the forward thinking of Mr. Caputo and the inside track he may have on some of the discussions in Columbus. He would be concerned putting something before the voters here that is so nebulous that they would look at that and question what is being done with their primary and risk losing all of the changes that are trying to be made.

Mr. Zwilling stated that Council will be informed that the merits of this issue were discussed by the Commission and it was decided not to proceed with a proposed change. Mr. Barbour thanked Mr. Caputo for bringing the issue forward for thought. Ms. Quinn stated that the primary election has not been tested yet, and the fact that we haven't had a five way race speaks volumes to the fact that the primary requirement is there and keeps down people that aren't really serious about the position.

**Article X111 – Miscellaneous (continued)**  
**Section 13.3 Disqualification**

Mr. Caputo read proposed new language that forces recusal from voting. In the absence of that recusal, one would become disqualified from serving in office. Mr. Caputo read the new proposed language as follows:

**SECTION 13.3 DISQUALIFICATION.**

No Councilman, Mayor, Director of Finance or any other officer, employee or appointee to any board or commission of the Municipality shall **cast a vote or approve a contract that may** directly or indirectly be financially interested in any contract, job, work or service with or for the Municipality, nor in the profits or emoluments thereof, nor in the expenditure of any money on the part of the Municipality other than in his fixed compensation and expenses; and any contract with the Municipality in which any officer or employee is or becomes financially interested may be declared void by the Council. **An action that violates this section** shall disqualify any such officer or employee from holding office in addition to the other penalties provided by law.

After further discussion, adjustments were made to the language with the following final version:

SECTION 13.3 DISQUALIFICATION.

[Revised 7/16/12]

No Councilman, Mayor, Director of Finance or any other officer, employee or appointee to any board or commission of the Municipality shall **cast a vote or approve a contract that he may** directly or indirectly be financially interested in any contract, job, work or service with or for the Municipality, nor in the profits or emoluments thereof, nor in the expenditure of any money on the part of the Municipality other than in his fixed compensation and expenses; and any contract with the Municipality in which any officer or employee is or becomes financially interested may be declared void by the Council. **Any such individual who takes an action that violates this section shall be disqualified from holding such office or position in addition to being subject to any other penalties provided by law.**

**Motion** by Cruse, second by Caputo, to accept the revisions to **Section 13.3, Disqualification** as read by Mr. Cruse and noted above as the final version, and to submit this version to City Council as a proposed Charter amendment for the ballot. **Motion carried 8-0.**

Mr. Zwilling addressed the audience stating that the Charter Review Commission is appointed by the Mayor once every ten years for a review of the Charter. Suggested revisions to the Charter are presented to the Council for placement on the ballot.

Mr. Zwilling thanked the members of the Charter Review Commission for their work. Further discussion will be held to determine how to present this information to the voters. Mr. Cruse suggested a letter to the voters from the Charter Review Commission, possibly in the beginning of September.

Meeting adjourned at 8:05 p.m.

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Don Zwilling, Chairman

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Joan Kemper, Secretary