Minutes of a Meeting of
2012 CHARTER REVIEW COMMISSION
held July 2, 2012

The ninth 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, Don Zwilling. Absent: Barbara Quinn. Also present: Mayor Sutherland, Law Director Ebert, Brandon Dimacchia, Jerrie Barnett, Sally Irwin Price.

The first order of business this evening was the review of the minutes of the meeting of the Charter Review Commission held June 18, 2012. **MOTION** by Cruse, second by Clever, to approve the minutes as prepared and distributed. **Motion carried 8-0.**

PUBLIC COMMENTS

Jerrie Barnett addressed the commission noting that she very frequently attends Council meetings. Mrs. Barnett has been perusing the Charter and has all the minutes from the Charter Review Commission meetings, although this is the first meeting she has attended.

Mrs. Barnett quoted the April 2, 2012 minutes of the Charter Review Commission, stating:

"The strong Mayor form of government does encourage discussion and compromise, as well as input from many divergent points of view. A Mayor has strong community ties, (and is the) clear leader of the city. The cons are that the Mayor is subject to elections and fickle voters, and there are no required qualifications beyond residency."

Mrs. Barnett asked what is meant by the term "fickle voters."

Mr. Cruse responded, stating that Mrs. Barnett is pulling an excerpt from a larger discussion. The meeting of April 2 was a presentation trying to compare, side by side, a Mayor/Council form of government versus a City Manager/Council form of government. The con that is referred to in that part of the discussion was the theory that a city manager is a "professional" hired by a city council to manage the city, under the direction of the city council. The proponents of that form of government often point to the negative that you could have a very good Mayor, from a managing standpoint, that may be doing some unpopular things that are actually good for the city. When reelection comes around, the Mayor could be voted out of the office because someone is running against that person that comes across as sweet and lovable. That is the reference to fickle voters. It was not a comment that was made specifically in the context of Bay Village. It was part of a larger theoretical discussion trying to compare the two forms of government.

Mrs. Barnett thanked Mr. Cruse for his explanation.

Brandon Dimacchia, a Bay Village firefighter, stated that he has been coming to a few meetings of the Charter Review Commission to voice his opinion on the changes in Civil Service in the

charter. Mr. Dimacchia stated that Mr. Cruse made comments at the last meeting that were repeated from the comments of the members of the Civil Service Commission when they came to a prior Charter Review Commission meeting and expressed, "If it's not broke, don't fix it." Mr. Dimacchia stated that in that same thought, keeping Civil Service in the charter prevents the hiring or promotion of friends, family, in-laws, etc. It keeps a fair and prudent system in place. By attempting to move it from the Charter to gain some flexibility, it may backfire. Mr. Dimacchia noted that he does not mean for this Council, or this Mayor, just in the future, there may be some politicians that would have the opportunity to damage the consistency of non-biased employment opportunities. Mr. Dimacchia further stated that he also mentioned at a previous meeting that a former county commissioner had some questionable employment practices, and did a little bit of reading up on Rocky River. In 2010, the former Mayor of Rocky River also ran into some major hiring issues and eventually resigned from office. Mr. Dimacchia expressed that keeping the Charter the way it is for hiring practices for Civil Service is the best way to go, and he hopes that this committee realizes the best predictor of future performance is past practice. In Cleveland's No. 1 suburb, the past practice has worked.

Mr. Dimacchia thanked everyone for the opportunity to speak this evening.

Mayor Sutherland announced that Bay Village was just recognized by a national magazine, *Family Circle*, as being one of the top ten communities for families. The Mayor stated that the magazine will be in the stands on Wednesday, July 3, 2012. National media is expected.

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

OLD BUSINESS

Article VI – Civil Service Commission

Matt Clever thanked Mark Barbour for his assistance in reviewing these sections. He noted that they have taken into account the comments from the public, Fire Chief and Police Chief and have come to the conclusion that it is important to retain Civil Service language within the Charter itself, with just making some minor, progressive tweaks to the language that will provide the flexibility that is being sought. He stated that they are not building a mandate in the Charter, but simply adding in increased flexibility to the city if an opportunity ever arises for the city to enter into a cost savings arrangement such as the Regional Fire District that has been discussed, or a Regional Service District.

Mr. Clever stated that the two changes that they have made are with Section 6.3, striking:

"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, adding, Section 6.7:

"Section 6.7 Regional Participation
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 for providing regional 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 this Article VI inconsistent therewith."

Mr. Clever stated that what Section 6.7 does is not only restate the city's commitment to civil service in a regional format, it also codifies the commitment to staying within the confines of the Ohio Constitution. Article 18 of the Constitution states that any municipality or form of government must participate in Civil Service. This gives flexibility to work with not only our own Civil Service Commission, but with a Regional Civil Service Commission that may be developed around a collaborative enterprise.

Law Director Ebert stated that after much dialogue and long conference calls, there is still the issue that if a regional fire district or regional fire authority is adopted, and there would be a change in the upper echelon at that time, there would still be civil service commissions. Other cities will use the language Bay Village will adopt as formulated by the Charter Review Commission in their charter reviews in order to all be consistent. Mr. Ebert stated that he has some concern that if you created that type of district today or that type of authority today, and you start to form a regional civil service commission, the civil service rules of the city are probably obsolete. Instead of having three Civil Service Commission members, there may need to be five members, one from each representing city. Separate civil service commissions would combine for regional testing. Mr. Ebert would recommend that after that Section 6.7 is implemented, the City Council, in the respective cities, would go back and repeal the rest of the sections out of their charters, once they adopt a regional civil service commission with rules and regulations. All of the individual charter sections pertaining to civil service would become moot upon the adoption of a regional civil service commission. This would be submitted to the electorate at the next election following the establishment of a regional civil service commission. The inclusion of new Section 6.7 at least sets the tone of being able to establish a regional civil service commission. If something is not done now, while the charter review commission has this opportunity, to create a regional service program, there will be an inconsistency in the Charter that is challengeable, especially in talking about police and fire. This will be something that will serve as notice to the voters that we are hoping to get regional services in the future, especially with what is going on in cities now as far as consolidation of services and benefits. Mr. Ebert stated that he has spoken with the Law Directors of Rocky River, Fairview Park, and Westlake and they are all on board; it is just a matter of trying to get the language that is most comfortable. This language spells it out and gives the first step to move forward. Mr. Ebert noted that Council can place a charter amendment on the ballot at any time.

Mr. Ebert noted that the language they have proposed can be tweaked. It represents a lot of ideas and a lot of people trying to put something together. They actually look at Section 6.1, establishing the Civil Service Commission, whether that is where it should go. It was thought that putting a new section at the end serves as a catch-all in the event of a regional form of government, for any type of service.

Mr. Zwilling stated that, for example, if the fire services were regionalized you might end up with five members of a different civil service commission. The three members that are established in Section 6.1 of the charter would continue on in other civil service functions in the city.

Mr. Cruse stated that he agrees with that comment. We are all aware that the fire district is the most realistic possibility that is being discussed now. If that was formed, you would not have four or five cities, with four or five tests and hiring lists for a regional department. Mr. Cruse stated that he can envision the creation of a regional civil service commission to consolidate that effort so there would be one hiring and promotion list for that fire district. At the same time, you could have five individual police departments that each city wants to do their own testing and have their own lists for their own police departments. That is why this Section 6.7 should be separate because you are not ready to do away with the Bay Village Civil Service Commission yet, until the point is reached where everything is regionalized. To the short point, there is a function and a purpose to the local civil service commission. But you could see the advent of a regional board, and how does the city get the authority to participate in that? That is where this section goes.

Mrs. Fell asked the fastest turn-around time in getting something in the charter changed. We know that the Charter Review is every ten years, but this could be changed by City Council with approval by the voters. Mr. Cruse stated that charter changes must be submitted to the electorate at a regular municipal election, which would suggest November. Mr. Ebert added that there is a distinction between regular election, and regular municipal election. It could be close to two years to effect a change.

Mr. Cruse stated that some of the thought process he had is very clear from the Ohio Constitution that until that gets changed, civil service, being measured in terms of competitive examination and merit for hiring and promotions, is not going to go away. Even if a regional district were formed, it is going to be a political entity that will fall under the requirement of the state constitution of civil service. Until there is a big change in the state constitution, that is going to be a directive to all cities, counties, and political "entities." Section 6.7 is consistent with that in making a statement that this is for civil service and is a vehicle to allow our city to participate on a regional basis in that framework.

Dr. Crawford asked about the last sentence in Section 6.7 relative to inconsistency with civil service rules. Mr. Cruse stated that part of Mr. Ebert's concern is that if you look at Section 6.1 and Section 6.7 there is a conflict between having a city civil service commission and having a regional civil service commission as it is envisioned. The thrust of the second sentence was to say that in terms of these regional programs, if there is that inconsistency, the intent is for the regional to cover the regional program. For example, if fire were regional, regional rules would apply but local rules would still apply to the police.

Mrs. Fell asked if there is a possibility of a conflict between the regional and local at any point. Mr. Ebert stated that as long as the regional does not address that, the local would. When you write the regional civil service rules and regulations, there must be time taken to make sure that

all of the issues that are addressed in the charter are covered. If something is missed in creating a regional civil service program, but is addressed in the local civil service provision, the local provision would prevail.

Mr. Ebert stated that we do not want to eliminate the basics: testing, promotional examinations, etc. The entity itself would be changed dramatically; there would be a combination of regional representatives for purposes of governing that entity. It would be a regional civil service commission and every city would be represented. Some of the same rules and regulations would be adopted for promotional examinations. Entry level testing is already being combined with cities; it is going to make it less costly and more efficient to do so. The civil service by region would still have the body of the mayors and council of governments would have some say for the appeal process.

Mr. Jim Walts, firefighter, stated that when you strike the line of "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" it appears that classified civil service is being eliminated. Mr. Ebert stated that they are eliminating the classified position of Chief of Police and Chief of Fire in order to create a district. Mr. Cruse stated that too many words may have been struck from the sentence.

In addressing the rules of the Civil Service Commission, established by authority of the charter, Mr. Cruse explained that Bay Village may give points and credits in examination results in a different manner than another city. As a regional group comes together they are going to have to work out all those differences in their rules and procedures. But anything that is done locally would still be subject to Bay Village's rules and procedures.

Mr. Ebert referred to Section 6.4 of the City Charter which states, "The Commission shall provide by rule for ascertainment of merit and fitness as the basis for appointment and promotions in the classified service of the Municipality…" This section of the charter is not addressed for change.

Mrs. Fell asked the next step. Mr. Ebert stated that a formal draft of the suggested changes will be presented to the Charter Review Commission to be voted on at their next meeting. Each individual suggested charter amendment will be voted on individually. Mr. Zwilling stated that it is hoped to be able to vote on all of the proposed amendments at the next meeting of the Charter Review Commission.

Mr. Ebert commended Mr. Clever, Mr. Miller and Mr. Caputo, and their consultation with Mr. Barbour and Mr. Cruse for their work in getting to this point with Article VI.

Mr. Walts asked if there is a reason why the police and fire chiefs have to be eliminated from civil service pending the formation of a regional district. Essentially, maintain the status quo unless a regional district is formed. Mr. Ebert stated that you try to steer away from an "if" provision in the charter.

Mr. Zwilling stated that he does not know where the regional fire initiative is headed. Mr. Ebert had touched on the possibility of commanders in each city and one fire chief overall. Mr. Cruse stated that it goes to the interplay of collective bargaining agreements and civil service. The firefighters and the police officers are covered by collective bargaining units. However, they, to a great extent, fall back on civil service rules and regulations for hiring and promotion. True city employees that are classified and not covered by collective bargaining agreement number between four and six.

Mr. Zwilling asked what would happen if the regional fire authority created other positions. Mr. Ebert stated that would have to be covered under the new civil service rules and regulations. The last sentence of Section 6.7 states, "The regional civil service programs shall supersede any provisions of Article VI inconsistent therewith."

Mayor Sutherland commented that the proposed changes will allow flexibility and will also allow time in a transition process going into a regional collaboration. As they design civil service rules, the Mayor would envision the cities becoming more standardized in their rules and regulations.

Mr. Zwilling asked that changes to the draft of proposed language for the charter amendment be sent out via email include everyone on the Charter Review Commission. Mr. Ebert stated that they will have this accomplished within the next week.

Mr. Caputo asked what type of implication electronic communication to the entire Charter Review Commission will have on the Sunshine Law. Mr. Ebert stated that no action is being taken through the email so it would have no implication. The email is a public record and is a distribution of information.

Article IV – Administrative Officers and Departments

Mr. Zwilling asked if there are any questions on the removal of the words "With the exception of the Department of Law and the Department of Finance" from Section 4.1

Mr. Miller asked if Section 8.1 establishing a Department of Parks and Recreation is being eliminated, does that general provision need to be added to Section 4.1 General Provisions of Officers and Departments? Mr. Cruse stated that the point of eliminating Section 8.1 was that with the exception of Law and Finance, that are mandated by Ohio law, Parks and Recreation is the only department in the city that is in the Charter in its creation. To do away with the Parks and Recreation Department, if the city so decided, you would have to go back and seek a vote of the people to do that. By eliminating this from the Charter, the follow-up is going to be that Council will authorize the Parks and Recreation Department by ordinance so that there still is a department. Two years from now, if Council decides to put Community Service and Parks and Recreation in one department, as it is now, you would have to go back for a vote of the people to do that. By repealing that section you would not have to submit that to the voters.

SECTION 13.3 DISQUALIFICATIONS.

"No Councilman, Mayor, Director of Finance or any other officer, employee or appointee to any board or commission of the Municipality shall 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. Such interest shall disqualify any such officer or employee from holding office in addition to the other penalties provided by law."

Mr. Caputo stated that the way this reads is that even if a member of Council recuses himself or herself from a vote that may be of financial interest to the member, that member shall be disqualified from serving. Mr. Caputo stated that he believes this is not consistent with the intent. The intent would be to preclude anyone from awarding a contract or voting on a contract in which they may have an individual financial interest. Mr. Caputo stated that he would propose, in the first sentence after the word "shall," insert the words "cast a vote" or "approve a contract that may." This would clarify that if an individual takes an action that causes that financial interest to be gained, then the individual would be disqualified. But, it also allows for the individual to remain serving in whatever capacity that person is serving while allowing for the recusal without causing the disqualification of the member.

Mr. Caputo further explained that he does not think the city wants to be punitive to a member of Council, director, or member of a Board that is approving contracts. If that member acknowledges that there is a conflict and recuses himself accordingly, then that person should be allowed to continue serving in that capacity.

Mr. Barbour questioned whether the office holder could exert influence on the decision making process without actually casting a vote. Mr. Caputo stated that under that scenario you might find that the person is subject to another section under the Charter that could cause removal from office. The Mayor noted the existence of the Ohio Ethics Commission. Mr. Zwilling noted that members of Council have to file a report every year with the Ohio Ethics Commission.

Mr. Barbour commented that he did not see anything in the Charter such as referred to by Mr. Caputo that could cause removal from office in the instance of exerting influence on the decision making process without actually casting a vote. The Ohio Revised Code and Ohio Ethics Commission would probably prevent that behavior. Mr. Ebert noted that Section 2.3 of the City Charter provides for disqualification, or removal from office.

Mrs. Fell stated that another situation that might be problematic is if a company were the sole source provider of a service and a councilmember worked for that company. There is no choice; that is the only way the service provided by that company can be obtained. Mrs. Fell indicated that she would be going back and looking at it with that in mind as well.

Mr. Clever discussed the definition of "interest." Mr. Zwilling stated that it could be from sharing the profits of a firm; if a firm makes a profit from that contract with the city. Mr. Cruse noted that the Ohio Ethics Commission requires reporting of all credit cards of elected public

officials. Mr. Barbour added that you report your financial undertakings and the Ohio Ethics Commission decides whether you are running afoul of their rules.

Mr. Barbour gave the example of owning shares in a mutual fund that owns the company that is paving the roads in Bay Village, and someone points out that the council person has a financial interest in the contract, with the final result that the council office is lost. Mr. Caputo noted that this could happen after doing everything correctly: identifying the financial interest and recusing yourself from vote. Under Section 13.3 of the Charter, award of that contract would still result in removal from office.

Law Director Ebert and Mr. Caputo will work together on formulating proposed revised language for this section.

Dr. Crawford asked if rationale is explained to the voters in regard to proposed charter amendments.

Mr. Ebert stated that what is generally done is a flyer is distributed to the community with an explanation of every proposed charter amendment. This is of assistance to the voters because an explanation is not included on the ballot. It would be helpful to have this information go out prior to the absentee ballot distribution.

Mr. Cruse suggested a letter from the Chairman of the Charter Review Commission to explain the thought process of each proposed amendment. This letter would be published in the city newsletter, posted on the city web site, and sent out via email.

Article XI- Nominations and Elections

Section 11.3 Nonpartisan Ballots/Primary Elections.

Mr. Zwilling stated that the motivation for review of this section could be the cost of holding a primary election. Section 11.1 was passed last fall, changing the date of the primary election to the second Tuesday in September prior to the General Municipal Election.

Mr. Zwilling stated that the cost of a primary election is approximately $30,000 to the city. Mr. Clever stated that in addition to the cost, the concern is also the timing in relationship to the early, open voting for the general election. Depending on which date in November the general election falls on, you could potentially have early voting opening at the end of September. When the primary election was passed by the City of Bay Village in 2007, people were not used to the early voting the way we are now. The fact that we are not leaving much of an opportunity for a general election campaign should be included in the discussion.

Mr. Zwilling stated that maybe the issue is whether we should have a primary election at all, or go back to the old way which was if there were more than two people running for office they had to get a certain percentage of the vote.

Mr. Cruse stated that there was also a period of time in the history of Bay where the Charter provided for an after-the-fact run-off election. Mr. Cruse added that having lived through 2007, he would state emphatically that five years later he cannot support going back to the voters to eliminate a primary election that they voted in five years ago.

Mr. Barbour stated that he was on Council in 2007 as well, and to go back over the history of the matter there were a large number of people who signed petitions that were circulated, and a lot of discussion about the primary, and Council voted to put it on the ballot and the voters approved it. Mr. Barbour expressed agreement with Mr. Cruse that he would not want to go back and ask the people to repeal the primary. Mr. Barbour noted that he feels that a primary is not well suited to Bay Village because he personally believes it discourages people from running for office. First you have to get on the ballot to make the primary. Then you have to run for office in the primary, if there are more than two candidates. Then, if you win, you have to run a second campaign for the general election. The fact of having to raise money twice and campaign twice may discourage office seekers. Mr. Barbour noted that he voted to put the primary election issue on the ballot and let the voters decide and he would not vote to repeal that decision.

Mr. Caputo stated that he was not part of the discussion in 2007. He would look at the issue from the conversations he is part of today with respect to the discussions that are taking place between the city and the schools. He has sat in meetings where they have talked about things that are $10,000 to $25,000 savings, all of which are services that are directly to the benefit of the residents. We are talking about the possibility of having to cut some of these services because there is just no money. In light of that conversation, and in light of the fact that this is the potential of a $30,000 savings, which he struggles to view the benefit to the residents on equal footing as the benefit to the residents associated with something like Safety Town or Dare. If he had to choose between savings $30,000 by eliminating the primary election, or saving $30,000 by eliminating Safety Town, that's where he is. At the end of the day, it is a question for the voters to decide.

Mr. Barbour stated that the argument that was emphatically made was, that for the sake of democracy the $25,000 or $30,000 that a primary might cost, if there ever was a need for one, assured that you had an elected official that gathered a majority of the votes cast and was money well spent. That point was well raised in 2007. Mr. Cruse added that he received a lot of opposition in trying to push back on the idea of a run-off election, and how much more sense a run-off made if one of those multiple candidates didn't get at least 50% of that vote. He acknowledged the point of the cost savings brought forward by Mr. Caputo, but stated that aligning with other issues in Cuyahoga County on a primary election it won't cost that much, at least not right now. Mr. Cruse reiterated Mr. Barbour's comments, that to the essence of democracy and people's right to express their opinion at the ballot box, it was non-negotiable. Mr. Barbour added that it was well broadcast then that these elections would cost at least $25,000 to $30,000. Mr. Cruse stated that he even went to the point of writing an open letter going into the election asking the voters to think about it and outlining the reasons why it should not be passed. If you look at the election results, in spite of his letter the issue passed overwhelmingly.

Mr. Zwilling commented on elections in the past. In 1989 there were three running for Ward 2. At the time, the rule was whoever got the most votes, won. Before that, when Henry Reese ran for Mayor, there were more than two candidates. The winner had to get at least 40% of the total. When Mayor Chapman won election there were five people running for Mayor. The top vote getter won. He noted that it has been rare in Council races when there are more than two people running for one spot.

Mr. Cruse stated that the mere prospect of a primary pushes the filing date back for a candidate back from August to mid-June. Mr. Clever stated that it also affects the financial reporting deadlines.

Mr. Caputo stated that he believes it fair to suggest that there is probably far greater awareness to the city's fiscal challenges today then there was in 2007. People may be more cognizant of the city's financial condition today than they were in 2007.

Mr. Cruse stated that based on what happened in 2007 he does not sense a fundamental shift in voting of the electorate and cannot support a charter amendment to repeal the primary election.

Mr. Caputo stated that in his personal point of view they are not forcing it down the throat of anybody but putting it up for a question.

Mr. Zwilling stated that everything that the Charter Review Commission is trying to do is set the table for more efficiency and to save money. He totally understands if it was an overwhelming vote in 2007 to have the primary. He asked how many members of the Charter Review Commission would be opposed to addressing a change to the issue, or in favor of keeping it the same.

Mr. Miller stated that he abstains.

Mrs. Fell asked Mr. Zwilling if he is asking if the commission is in favor of researching this issue more or that they need to make a change. Mr. Zwilling stated that it could be researched more to give it a fair assessment.

Mr. Caputo stated that he is in favor of moving forward on the issue but if he the only person that feels that way he defers to his colleagues.

Mr. Barbour stated that he stands with Mr. Cruse in not wanting to support a change.

Mr. Zwilling stated that he thinks it is something to at least consider.

Mrs. Fell stated that in light of today's fiscal restraints on communities, it deserves another look and she would be happy to research it further.

Mr. Cruse noted that the dollars are somewhat nebulous because the way the calendars are set up the city is not in a standalone position anymore where the city is going to bear the whole brunt of the cost.

Mayor Sutherland stated we know what we get charged per precinct for an election and it doesn't matter whether there are other primaries in other cities; the city has to pay per precinct. The cost could be less if it is a ward councilman and there is a primary; there would be a lot less precincts. The cost is about $1,500 per precinct.

Mr. Cruse stated that he has no argument on the economics of a primary and really thought that the answer was a post general election run-off, if necessary. If the philosophical concern was that the winner was being elected with less than a majority of the vote, a run-off election with the top two made sense.

Mr. Barbour stated that a number of public hearings were held on the issue with several alternatives proposed and discussed. Those people who responded to the public meeting overwhelmingly favored a primary system as called for by the petitions that were filed.

Mr. Caputo stated that if the Board of Education had responded to the people that came to the Board of Education meetings to complain about a levy campaign the levy would have failed miserably.

Mr. Barbour stated that the residents collected 2,000 or more signatures, and had enough signatures to make the ballot. It wasn't a situation of the Council wilting to public pressure because there were certainly a lot of issues where Council received a lot of pressure and withstood that pressure. What came out in the meetings was that overwhelmingly there was a feeling that it needed to go on the ballot for the voters to decide. That's what Council did. When the voters did render their decision it was overwhelmingly in favor of a primary system, despite the potential added costs and all the other arguments that were made for different systems.

Mr. Clever stated that there are 12 precincts in the city. He is open to taking a closer look into this. From the initial conversation, he did not realize this was amended so recently, which puts a little different light on it. We are still dealing with not only fiscal reality, but the reality of election time. The primary is not only bumping up against the open, early voting for the general election. A lot more impediments are being created to people running by holding primary election. For every election there is a pre-election and post-election finance report which is a lot more paperwork for someone seeking a Council seat.

Mr. Barbour noted that all of the arguments that are being made were made previously and the voters overwhelmingly rejected them in 2007.

Dr. Crawford asked the procedure prior to the charter amendment in 2007 calling for a primary election. Mr. Cruse stated that the history was that the charter started with the provision that the top vote getter, if he received 40% of the vote, was elected to office. That went away, and it was just the top vote getter who won election. The idea of a run-off election, if someone didn't get 40% of the vote, came back. For a while there was a primary that went away, and it has come back.

Dr. Crawford asked if the people realize this costs them money. Mr. Cruse responded affirmatively.

Mr. Barbour explained the mayoral race that preceded the filing of the initiative petitions calling for a primary election process. He stated that at that election, with five mayoral candidates, the Mayor did not receive a majority of the votes, although a plurality was received, and there was a feeling that somehow if there had been fewer candidates the Mayor would not have been elected.

Mr. Caputo stated that his personal feeling and what is driving his opinion is the extent to which the process can be managed in a more efficient way that isn't going to cost residents money and still provide a level of clarity and comfort on the part of the electorate that they are getting the candidate that should have been elected. If a run-off is a better way to do it, then that is what he would more toward. Mr. Caputo stated that he understands the concern about having someone win an office with 30% of the vote. There is a way to potentially satisfy the will of the voter through a run-off method without creating an additional financial burden on the part of the city.

Mr. Cruse stated that a run-off election would still be an additional financial burden on the city because there would still be the same election costs with a post general election. Mr. Cruse stated that his whole reason for distancing himself from this issue is because five years ago the voters said, overwhelmingly, this is what we want.

Mr. Caputo stated that the Charter Review Commission is trying to do things in the abstract. They are trying to remove circumstances when they try to make these decisions. Mr. Caputo stated that it is his opinion that what happened in 2007 was not done in the abstract. There were personalities involved that caused 2007 to go the way it did. That was not an abstract discussion. That was a very subjective discussion.

Mr. Miller stated that he feels it would be worth taking some time and looking at this issue.

Mr. Caputo stated that it would be helpful to understand what the financial impact would be if a primary process was completely removed, the section left intact, or moved to a run-off election process. If there is an opportunity to save money, he would like to explore it. If there isn't that opportunity, if a run-off ends up costing as much money as the current system, that would equally be important.

Mr. Barbour stated that the purpose of a run-off is to have a post-election election if the winning candidate does not garner a certain amount of votes. Mr. Cruse stated that there are two possible solutions that work. With three or more candidates initially in a general election, if the top person gets 40% or more they win, without a run-off election. Or, the top two candidates go to a run-off, regardless of totals. Mr. Cruse noted that an election is an election, expense-wise, whether it is a primary or run-off.

Mr. Miller asked how the factor of a percentage of the votes falls into this argument. Mr. Cruse stated that it would be the determined trigger to have the next election. Mr. Barbour stated that it is important because there is a perception, rightly or wrongly, in an election, if somebody doesn't gather a majority of the votes that somehow they have a lack of mandate. Mr. Miller noted that

there have been United States Presidents that have not had a majority of the votes. Mr. Zwilling commented that what counts in the presidential election is the electorate college, not the popular vote.

Mr. Barbour noted that if you have a primary election, at the general election there would only be two candidates running. By definition, one of them would have to get more than 50 percent of the vote.

Mr. Caputo stated that he would be happy to volunteer doing the research to identify some options in light of any financial considerations that might be learned.

Mr. Miller suggested balancing the pitfalls and challenge to candidates to have equal representation, whether it is a percentage of the majority or whatever that might be. He stated that he does not believe it has to based solely on financial considerations.

Mr. Cruse stated that in 2007 there were some empirical studies that showed participation in a primary election by voters was higher than a post general election run-off. Less people voted the second time around.

Mr. Zwilling made the following assignments for the next meeting in regarding to Section 11.3:

> Mr. Clever will check on the cost of a primary election, and run-off election.
>
> Mr. Caputo has volunteered to identify options to a primary election.
>
> Mr. Barbour will provide material in support of not changing the primary election process as approved by the voters in 2007.

Meeting adjourned at 7:55 p.m.

The next meeting of the Charter Review Commission will be held Monday, July 16, 2012, at 6 p.m.

_____	_____
Don Zwilling, Chairman	Joan Kemper, Secretary