

Minutes of a Meeting of
2022 CHARTER REVIEW COMMISSION
Held March 7, 2022

Present: Mike Young, Chair	Clete Miller
Brian Cruse	Peter Petto
Scott Dwyer	James Strunk
Jennifer Lesny Fleming	Tara Wendell
Lynn Linder	Law Director Barbour

Also Present: Members of City Council: Lydia DeGeorge, Michael Greco, Peter J. Winzig, David L. Tadych. Resident Jim Blocksidge, 401 Lake Forest.

The second meeting of the 2022 Charter Review Commission was called to order at 5:00 p.m. on March 7, 2022 by Chairman Young.

Mr. Young called for comments, changes or corrections to the minutes of the Meeting of the Charter Review Commission held February 21, 2022.

Mr. Young read changes concerning his personal history, beginning on Page 4. **Motion by Mr. Cruse**, second by Mr. Strunk, to approve the minutes of the Charter Review Commission meeting held February 21, 2022, as amended.

Motion carried.

Mr. Young presented the following correspondence:

- Letter dated March 6, 2022 from V. David Sartin, 29724 Osborn Road, Bay Village, Ohio addressed to the members of the Charter Review Commission suggesting an examination of procedures to fill vacancies on City Council, and a provision to prohibit Council members from voting on matters that primarily benefit themselves or members of their family.
- A memorandum from Mark E. Barbour, Director of Law dated March 3, 2022 concerning a suggestion that the Charter Review Commission review the Charter concerning Municipal Elections (Section 11) as a result of a write-in candidate for Mayor in the Bay Village election of 2013, and documents concerning this issue.

Jennifer Lesny Fleming asked if time is being allotted into the process to have a draft of the proposed changes to the Charter, show them to the citizenry and have them provide any comments. Ms. Fleming noted that this is one of the suggested mechanisms from the National Civic League Model Charter.

Mr. Young stated that this suggestion by Ms. Fleming can certainly be added to the process. Mr. Young continued, stating that the Charter Review Commission will try to frame discussion

around the order of the Charter, with opportunities to go back and revisit as necessary, or to respond to suggestions by residents.

Ms. Fleming noted that even if the Charter Review Commission says certain changes should be made they may decide at the end to proceed differently after continuous evaluation.

Mr. Young noted, that he would like to limit discussion, however, for future things for the time it is actually covered, while this does not mean that someone cannot raise their hand, ask a question, or submit a suggestion. So that by the time the commission does reach a section, a number of things have already been flushed out with comments or questions. By the time we get to a section we will have a folder of several questions or comments from either people within this committee, the public, City Council, and the administration that can add to that. Mr. Young stated that he would like to limit discussion until those points are reached. We can also go back and review the entire Charter or sections as necessary, especially if we receive questions we did not field prior.

In regard to the correspondence submitted by Mr. Sartin, Mr. Young will bring that forward when the sections pertaining to these particular matters in the Charter are reached for review.

Law Director Barbour briefed the Charter Review Commission on the necessity to adhere to the Ohio Sunshine Law as a public body. Communications among the members are subject to disclosure. The Charter Review Commission is required to abide by the Open Meeting laws. Closed door meetings are prohibited and notices of meetings must be published at least 24 hours in advance and meetings are open to the public. As far as communication among the members by email, administrative comments are acceptable, such as "I am not able to attend the meeting this week" or things of that nature. Substantive matters are discouraged from discussion via email because it might violate the Sunshine Law. Going back and forth, talking about an idea, any of those things that might be categorized as deliberation can not be done by email because the Charter Review Commission is a public body. Deliberation must be done in open meeting. A quorum of the Charter Review Commission would be five members, which is the number it would take for passage of a vote. If five or more of the members are together, that constitutes a public meeting. If two or three are together talking about something, that is not a public meeting and no official action can be taken. Email is a public meeting, when emailing back and forth that can cross over into a public meeting if talking about public business. Mr. Barbour will monitor the commission to make sure the laws are being followed.

Ms. Lesny Fleming confirmed with Mr. Barbour that the Charter Review Commission will not follow the Roberts Rules of Order in their meetings.

Mr. Young stated that the review will begin with the Preamble, Powers and Name of the Charter.

CHARTER OF THE CITY OF BAY VILLAGE¹

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PREAMBLE

We, the people of the Village of Bay in the County of Cuyahoga and State of Ohio, in order to secure for ourselves the benefits of municipal home rule and exercise all the powers of local self-government, do adopt this Charter of our Municipality:

Ms. Lesny Fleming noting that looking at the National Civic League Model Charter, she has the following comment regarding the Preamble. In the Model Charter, there is language to the effect of: “We, the people of the Village of Bay in the County of Cuyahoga and State of Ohio, in order to secure for ourselves the benefits of municipal home rule.” This language is standard, and the Model Charter suggests “to affirm the values of representative democracy, professional management, political leadership, civilian participation, diversity and inclusion, and exercise all the powers of local self-government, we adopt this Charter.”

Ms. Lesny Fleming stated that this is additional aspirational language that could be included. Some of the things are good, Ms. Fleming noted that she likes the whole clause, but especially to “affirm the values of representative democracy.” She noted that there are many people today that are very concerned with the state of government and feel their voice is not being heard. That is what the government is. It is about hearing diverse views and trying to get everyone involved. Ms. Fleming stated that she would be in favor of some kind of aspirational addition in the Preamble, but if this is the only change and we are not going to go to the citizenry for that simple little change, that is something we should consider.

Tara Wendell asked if changing the Preamble is something that would be submitted to the voters. Mr. Young stated that any change would go to the electorate.

Ms. Wendell asked if the commission is going to suggest that change, would they also want to change it to “We, the people of the City of Bay Village” instead of “the Village of Bay” just to bring it to more current to the actual City name. We are no longer the Village of Bay and have not been for quite some time.

Ms. Wendell suggested that perhaps the commission does not want to inundate the voters with a great number of amendments to consider. Ms. Lesny Fleming stated that if it is something positive right from the beginning it may be something that gets them involved and in the right mindset to approve things that perhaps we want to have approved.

Clete Miller commented that there may be some value or ranking of proposed changes. To say, that after four months of discussion these are the things that we really feel passionate about, and there are other things that we think are “in addition.” We put all these things forward and we still have a value to the election, whether it is one thing or ten things.

¹Editor's note(s)—The Charter herein was adopted originally at a special election on April 12, 1949. Sections with a date at the end thereof indicate those provisions were subsequently amended, enacted or repealed on the date given.

Ms. Wendell and **Mr. Young** agreed with the suggestion of Mr. Miller. Ms. Fleming added the suggestion to keep a running tally of everything the commission considers changing or evaluating at the end.

ARTICLE I THE POWER OF THE MUNICIPALITY

SECTION 1.1 POWERS.

The Municipality shall have all powers of local self-government and home rule and all powers possible for a municipal corporation to have under the Constitution of the State of Ohio.

SECTION 1.1(A) NAME.

This Municipality, regardless of its classification under the Constitution of the State of Ohio or the general laws of Ohio, shall be known as City of Bay Village.

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

SECTION 1.2 MANNER OF EXERCISE.

The powers of this Municipality shall be exercised in the manner prescribed in this Charter, or, to the extent that the manner is not prescribed herein, in such manner as the Council may prescribe. The powers of the Municipality may also be exercised, except as a contrary intent or implication appears in this Charter or in the enactments of the Council, in such manner as may now or may hereafter be provided by the general laws of Ohio.

Ms. Lesny Fleming suggested, under Section 1.1 Powers, adding to the sentence the words “and laws” so that the sentence would read:

“The Municipality shall have all powers of local self-government and home rule and all powers possible for a municipal corporation to have under the Constitution and laws of the State of Ohio.”

Mr. Young noted that one of the most important things is that the Charter Review Commission does not have to do everything; Council can present certain things in the Charter for change to the voters that we don't actually have to address.

Mr. Dwyer stated that Mr. Barbour said earlier that this is a framework to set guidelines as opposed to a very prescriptive document. It gives that boundary in which the City operates, as opposed to describing every single action.

Mr. Strunk stated that he researched Charters of many other cities and many do not even have a Preamble. They just address everything in each individual paragraph. With the preamble suggested by Ms. Lesny Fleming, a lot of things mentioned are already addressed in other sections in the start of each section.

Ms. Lesny Fleming stated that she does not think there is anything aspirational such as “affirm the values of representative democracy.”

Mr. Dwyer asked about the clause in Section 1.2 Manners of Exercise stating that he is unclear about the clause that says “except as a contrary intent.”

Ms. Lesny Fleming stated that this means unless there is something different in the Charter. The wording is a little archaic.

Mr. Barbour stated that the Charter can let you use many things that are contrary to the Ohio Revised Code. You do not get carte blanche to do everything you want because you have a Charter, but, your Charter can set different procedures than non-Charter cities might have to follow because that is contained in the Ohio Revised Code. For example, the City of Parma is a non-Charter city, so their procedures have to follow the Ohio Revised Code and they may do something different than Bay Village because we have a Charter provision that they do not have. Perhaps our Civil Service Rules are different than theirs, or the time ward councilmen serve, or things like that. The law is difficult to explain that exercise municipal powers and they are constantly being changed, with the boundaries being pushed by the Ohio Legislature. That is what that section brought out by Mr. Dwyer pertains to, we are going to follow the municipal law unless our Charter allows us to do something else.

Ms. Wendell asked for elaboration from Law Director Barbour before moving forward regarding Write-in Candidates. Ms. Wendell explained that Sue Fink, from the League of Women Voters, had made a comment about the City of Westlake’s Charter Review. They stated that their section about Write-in Candidates “wasn’t changed, it was restated for clarification.” Ms. Wendell stated that this stood out to her and asked if that is something the Charter Review Commission can do, and does that have to go to the voters? Instead of a change, it was “restated for clarification.”

Mr. Barbour stated that anything that is done to the Charter has to go the voters. A restatement for clarification is a change. Ms. Wendell asked if something very minor can be called a “restatement for clarification?” Mr. Barbour stated that he does not know what Westlake did, he will defer to anyone else who might have information. He would not counsel the Charter Review Commission to do anything like that as it would not be wise.

ARTICLE II THE COUNCIL

SECTION 2.1 NUMBER AND TERM.

The legislative powers of the Municipality, except as otherwise provided by this Charter and by the Constitution of the State of Ohio, shall be vested in a Council of seven (7) members, one of whom shall be elected by the people as President of Council. The President of Council shall assume office on the first day of January following his election and serve for a term of four (4) years or until his successor is elected and qualified. Two (2) members of Council shall be elected at large, one in each odd-numbered year as currently established, shall assume office on the first day of January following their election, and serve for a term of four (4) years, or until their successors are elected and qualified. Four (4) members of Council shall be elected, one from each of four (4) wards, shall assume office on the first day of January following their election, and serve for a term of two (2) years, or until their successors are elected and qualified. All candidates seeking election shall, in their petitions for nomination, designate the office sought and the term thereof.

The Council shall during the calendar year 1970 divide the City in four (4) wards. The fixed boundaries of each ward shall be the shore of Lake Erie on the North and the corporate boundary of the Municipality on the South, and every year following the United States decennial census, the Council shall determine if a change in the easterly and westerly boundaries of each ward is deemed necessary in order to equalize population as nearly as possible.

(Ord. 89-22; approved by voters 5-2-89.)

Mr. Young called for comments regarding Section 2.1. There were none. He stated that the only comments he heard over the years, and he does not agree, is changing the length of service for ward councilmen to four years. Mr. Young believes that two years has worked well.

Ms. Wendell stated that she would bring up for conversation whether we need two at-large Council members, or any. Looking at what neighboring cities are doing, Westlake doesn't have any at-large Council representatives. Ms. Wendell stated that she is bringing this forward for discussion, not arguing for or against it. Bay is a small city that has ward councilmen and two at-large.

Ms. Lesny Fleming stated that she likes having at-large because they are not beholdng to any particular constituency and are more independent. Ms. Lesny Fleming likes the idea of the two at-large.

Mr. Young likes that at-large Council representatives focus on the City as a whole as opposed to just a ward. As a City Councilman of a ward the things he would like to see the City do might be in conflict with another ward, as an example. Mr. Young favors the representation as the City as a whole, not just individual wards.

Ms. Wendell stated that she agrees, and also likes that they serve a longer term. You can have a lot of change over in the wards and at least the two at-large are there.

Mr. Miller stated the second paragraph of Section 2.1 describes the boundaries of the City. The fixed boundary of the lake shore being our north boundary, the south boundary is of the municipality on the south, which will always be Westlake, unless they change their name or hyphenate it, but then it does not describe the easterly boundary of an adjoining municipality and it doesn't describe the westerly boundary of the municipality being Rocky River or Avon. It does talk about the interior boundaries of wards, which were modified this past January 1. Should we add any language about municipality to our east and the municipality to our west?

Ms. Wendell stated that the thought she had when reading that was the reason they expressly stated the north and south boundaries are so that the wards are all going north to south and you don't create a ward that is Lake Road, and everybody north of Lake Road is one ward. There is a cross-section of the whole City for each ward rather than drawing boundaries. Ms. Wendell noted that she is paying a lot of attention to the current gerrymandering and the legislative redistricting going on. There are ways that you could potentially be drawing wards that would lump in groups in certain areas, this way you are defining not so much where the City starts and ends, but making sure you will have a cross section for each ward. Not to delineate the City's borders so much but to make sure the wards are encompassing the demographics of the City.

Mr. Miller stated that Ms. Wendell's point is well-taken. He was reading it as a parameter rather than defining the segments inside.

SECTION 2.2 QUALIFICATIONS.

Each member of the Council, including the President of Council, shall have been for at least one year prior to his or her election or appointment and during his or her term of office shall continue to be a resident of the municipality and a qualified elector thereof. A member of City Council shall not hold any other public office, be an employee of the City of Bay Village, the Bay Village Board of Education (Bay Village City Schools), or the County of Cuyahoga, except as otherwise provided in this Charter or ordinance and that of Notary Public or membership in the State Militia or Reserve Corps of the United States.

(Ord. 02-95; Approved by voters 11-5-02)

Ms. Lesny Fleming stated that she has a comment that she thought of from looking at some other charters, and thinks that we have a problem potentially. Ms. Lesny Fleming suggested adding a paragraph at the end that says "Any member of Council who shall seek to possess, or who violates any of the qualifications enumerated herein shall forfeit his or her office." The reason Ms. Lesny Fleming added that is if you look at Removal under Section 2.3, it obviously gives the Council the right to remove somebody for disqualification, but the expulsion can't take place without concurrence of two-thirds of the total member of Councilmen. If somebody is not living in Bay they should be disqualified immediately, they shouldn't have to be expelled by two-thirds of Council. If we add that paragraph to the qualifications it makes clear they forfeit their right to be on the Council if they do not meet those qualifications.

Mr. Cruse stated he read that as an automatic. He stated that if he were a ward councilman and got transferred and moved out, per Section 2.2 he is no longer qualified.

Ms. Lesny Fleming stated that if you read Section 2.3 it says if there is disqualification they can't be expelled until there is a concurrence of two-thirds of the vote.

Mr. Cruse stated that at that point you are not being disqualified because you already don't qualify because you don't live in the ward.

Ms. Lesny Fleming suggested that given other Charters have it, or it was in the model, the sentence should be included. A group in which Ms. Lesny Fleming is involved has a membership requirement of residency in the City. A member did not disclose that they were no longer a resident of the City and when approached still did not want to resign. It does happen. The extra paragraph would be helpful, especially given the conflict of Section 2.3.

Mr. Dwyer stated that at that point in time he would assume the Council would have voted that the person is no longer qualified.

Ms. Lesny Fleming stated that it is further ammunition (with the additional sentence added) if you have somebody that is elected as a Councilperson and refuses to resign. It is automatically forfeited given the strength of Section 2.2.

Mr. Young stated that with his experience on Council he knows the person would be disqualified immediately. No one on Council would allow having someone not living in the City represent a ward. It would not happen.

Mr. Barbour stated that looking at Section 2.2 (A) which was added in 1982, it has some ward requirements and it is a guess that in 1981 there might have been some kind of issue where someone didn't live there long enough, or moved away.

Mr. Young stated this Section 2.2 is the one he wanted to talk about more than anything else. Ms. Lesny Fleming's suggestion can be added to the discussion for later as far as revisiting Section 2.2.

Mr. Cruse stated that he understands what is being said, but his fear would be that at the end of all this we come up with such a laundry list of changes that voters are going to get lost in them. He would be willing to keep that one on our list for now and see where we end up.

Ms. Lesny Fleming stated that all of these changes have to be considered at the end.

Mr. Cruse stated that he believes that matter would be self-executing when somebody moved away. It is a little harder when you are one of the seven people representing the whole City.

Ms. Wendell noted that it could be something less severe than moving. It could be if the person is hired by the City. Ms. Wendell stated that she does not understand the section that says you can't be an employee of the City of Bay Village, the Bay Village Board of Education, and then in parenthesis (Bay Village City Schools.) Ms. Wendell asked why it is in parenthesis, and not just with a comma as part of the list.

Mr. Young stated that those are different entities. The schools are not necessarily the Board.

Mr. Miller stated that it may be just an explanation that it includes the schools.

Mr. Barbour suggested reviewing the minutes. That was added in 2002 and we can go through the minutes and determine the reasoning.

Mr. Miller stated that the person could be a crossing guard employed by the Police Department.

Mr. Young noted that he has no problem at all at the beginning of every meeting for someone in the audience to speak for a few minutes on a topic they would like to see the Charter Review Commission address. He asked the audience if they did have a question to raise their hand and he would call on them as the commission proceeds.

Mr. Miller asked that those speaking from the audience state their name and address for the benefit of the minutes.

SECTION 2.2(A) WARD RESIDENCY REQUIREMENTS.

Effective upon passage of this amendment, each candidate for election or appointment as a ward Councilman and the Councilman so elected or appointed must have been a resident of the ward in which he is elected or appointed for at least ninety (90) days prior to such election or appointment and shall continue to be a resident of that ward during his term of office.

(Ord. 82-63; approved by voters 11-2-82.)

Mr. Young stated that he would like to talk about ward residency. He noted that in January he received a letter stating that he is no longer a member of Ward 4, and is now a member of Ward 3. He used the example of being a Councilman and having his ward changed. He would no longer be a councilman because the boundaries have been changed. When a census is complete the changes should be done on the third year following, in an off year as opposed to an even year so that could not happen.

Mr. Miller stated that the council representative for the ward, if the ward is changed, would automatically be disqualified. In the section that talks about boundaries it also talks about the United States decennial census so you would have to modify the boundaries offset from that which is offset from the ward elections.

Mr. Young stated that he would imagine when you talk about moving wards around you would certainly note that an official serving would become disqualified. You could modify how the ward would be changed by that, but is that prudent?

Mr. Cruse asked Mr. Barbour if the ward boundaries are established by ordinance. Mr. Barbour stated they were changed by ordinance.

Mr. Cruse stated they would be effective then the date of the ordinance change. There is nothing in the Charter that says you must do this by a certain date after the census comes out. The latitude would already be there.

Mr. Barbour stated that the 2020 Census took place in 2021 because of COVID. It was unclear from this Charter provision when it had to be completed because it says every year following the United States decennial census. Does that mean we had to do it in 2022 or 2021? It became effective in 2022. The issue is that for voting purposes for party committee people, which are not subject to our Charter, they are using an old boundary to elect committee representatives because the way it was enacted the Board of Elections could not implement the change at the same time. There are several cities that are affected, and Bay Village is one of them. For the Democratic and Republican Committee representatives in that area they are not going to correspond exactly with the ward boundaries. But, that is not a municipal problem, that is a party problem and they can set whatever they want to do. They can set something completely different or divide the City differently. There were some complications from the timing of the census.

Mr. Petto asked when you use the words “following the census” what is the census. Is the census when they do their first release of numbers because they release numbers progressively with increasing granularity?

Mr. Barbour stated that is correct. There was a lot of uncertainty, not only in Bay Village but in other communities.

Mr. Dwyer asked if one possible solution is to add a clause that says should the ward boundaries be redrawn as a result of the decennial census and the councilmembers wards change we would have to do an election next time.

Mr. Barbour stated that the pandemic caused this uncertainty with timing. The way it is written now it is left up to Council to determine the best way to do it; they just have to do it the year following the census. City Council can decide that we don't need to make a change, or this is the change we are going to make, and they can make a determination of how it is affecting a particular representative or any of those kind of things. It just says the Council shall examine the ward boundaries after the census to make sure they do not get out of bounds.

Mr. Strunk asked how many times in the last forty years it has been changed.

Mr. Miller asked what the motivation of Council was for the change this year.

Mr. Young stated that it was out of balance. Ward 4 was much larger than other wards. It was based on that why they took some out of Ward 4 and gave it to Ward 3.

Ms. DeGeorge stated that they are required to rebalance the wards. That was the motivation - they had to rebalance it based on the census.

Mr. Young stated that if this was the case if a sitting Councilman's ward was changed he would be disqualified and Council would have to vote in a new representative.

Mr. Tadych stated that Council would simply change the recommendation of which addresses are going where and keep the sitting council person.

Ms. DeGeorge agreed, and stated that in particular the Democratic party precinct leaders when they do the boundary changes for the ward and the precinct leaders change, they are allowed to keep their seat until the next regular election. I don't know if something like that would be valuable or we could do that to handle that problem. The sitting Councilman wouldn't be out immediately, but he would have to wait until the next election. If the Ward 4 councilman's ward suddenly became Ward 3 he would still represent Ward 4 until the end of his term. When his term would be over there would be another election.

Mr. Dwyer stated that the people in Ward 4 might say that because the Ward 3 boundary changed so much we might want somebody else.

Ms. DeGeorge stated that they could say that but if that is not how it is written that would not be the case.

Mr. Young stated that this is something for the Charter Review Commission to come back and review further. He does not feel comfortable that the council person whose ward was changed would still represent the ward he was in before it was changed.

Mr. Cruse stated that a smart Council looks at that and adjusts the effective date. It is more to the point of when the ward change would take effect in the ordinance. It would be effective as of the next election.

Ms. DeGeorge asked if Council has the authority to do that.

Mr. Barbour stated that it could be put in the Charter that they will examine the boundary and a change will take effect in time for the next election for that ward seat.

Ms. DeGeorge asked if the county would allow that.

Mr. Barbour stated that you would say that the boundary will be effective in 2023, or whatever the time is that is necessary for someone to obtain petitions, file petitions and appear in a primary, all those kinds of things. Then you wouldn't have the potential of making a change that is effective in the middle of someone's term and because of where they live they are no longer in a particular ward. It wouldn't be effective until their term is over.

Ms. Wendell asked the date it would take effect, because if it would take effect at the next election would the person have been in the ward for 90 days?

Mr. Barbour stated that, to Mr. Petto's point, the information got released in a staggered fashion this time, which was unusual. We were getting dribs and drabs; whereas, in a normal year in early 2021, which would have been the year following the census, we would have known all this well in advance for the 2021 election and now we didn't. It is possible you would have a person who could no longer be a Councilman because they would be in the wrong ward, but that would be at the time of the election than all of the sudden in the middle of the term. This is the problem trying to be solved. The voters who elected the sitting councilman whose ward was changed no longer have their representation. The thing to think about is when would this take place. It just says the year after, every year following. You would just set a different time frame, which you would be allowed to do in the Charter.

Mr. Cruse stated that a risk is run when trying to make that specific of a change and accounting for all the possibilities like what we just lived through with the pandemic and what it did to the census. Mr. Cruse is suggesting that the way the Charter section is written it is general enough and the prescription is there when everything goes according to the plan cities have their census numbers early enough they can control the effective date of legislation to account for whatever is happening in the world. Is there a pandemic delaying information getting out, or delaying the census occurring? They can control that better than a charter trying to predict all these things down the road.

Mr. Barbour stated that when changing the boundaries they did look where all the Council people live to avoid a situation. That was taken into account, and based on Mr. Barbour's experience it would continue to be taken into account.

Mr. Barbour stated that his experience with proposed Charter changes is that if there are a number of changes proposed and one or two the voters' campaign against or feel strongly against voters will vote no on all of them. That is what happened in 2012. The Charter doesn't touch the average voter on a daily basis like Council people, administration, or ordinances. That is something to keep in mind.

Mr. Young asked if the issue of Ward Residency Requirements as they relate to boundary changes as a result of a census should be let go.

Mr. Cruse stated that he would let it go.

SECTION 2.3 REMOVAL.

The Council shall be the judge of the election and qualifications of its own members. It may expel or remove any member for gross misconduct, or malfeasance or 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, or persistent failure to abide by the rules of the Council, or the absence without justifiable excuse from three consecutive regular meetings of the Council; provided, however, that such expulsion 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 accused member shall have been notified in writing of the charge against him at least ten 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 witness appearing in support of such charge.

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

There were no comments regarding Section 2.3 Removal

SECTION 2.4 VACANCIES.

Any vacancy in Council shall be filled by appointment by a majority vote of the remaining members of Council. If the vacancy be not so filled within thirty (30) days, the Mayor shall fill it by appointment within thirty (30) days of expiration of Council's time period for appointment. Such appointee shall hold office for the unexpired term of the member in whose office the vacancy occurs or until a successor is elected and qualified. A successor shall be elected at the next regular municipal election provided that:

- (1) Such election occurs more than two (2) years prior to the expiration of the unexpired term; and
- (2) The vacancy occurs more than seventy-five (75) days prior to such election.

(Ord. 2-96; Approved by voters 11-5-02)

Mr. Young referred to the correspondence received from David Sartin who had a question concerning filling the vacancies.

Mr. Cruse stated that while he was not involved on the front line, he certainly heard vicariously the last time this issue came up deliberations that occurred at Council meetings and the voting, and he believes Mr. Sartin raises a very good point. It certainly did not come across as an open and transparent process because of the self-involvement of people that were very interested in the

position. The point in Mr. Sartin's letter is something the Charter Review Commission should really look at.

Mr. Cruse, in explanation, for an example, stated that if he is on Council and he is a Ward 4 person and an at-large vacancy comes up he would like, he applies for that at-large vacancy. He is permitted to be part of the discussions, part of the interviewing, and part of the voting on that succession. He should recuse himself. Apparently, the self-recusing did not occur this time around which prompted Mr. Sartin's comments in his letter. Aside from that, his comments are well taken. This is an easy framework to create. If a person wants to apply for that vacancy they are not part of the deliberation process, and everyone knows that going in.

Ms. Lesny Fleming asked if that person disclosed in advance that they were looking for that position.

Mr. Cruse stated that he thinks the applicants were known.

Ms. Lesny Fleming stated that she agrees with everything Mr. Cruse said. There was a large group of people applying for this at-large position, which was great to see all these citizens engaged and wanting to get involved. The perception was that all of a sudden this insider who was already a councilperson just shifted over to that at-large position taking the position away from all those others. When the position did come up to fill her regular ward position there were only one or two other people. They didn't really have that level of engagement, which was unfortunate.

Ms. DeGeorge stated that she found out all at the same time who all the applicants were, including the Council person. All of the resumes came in the same packet for review. If others knew she would say via another avenue, but Council found out all at once.

Mr. Cruse stated that he does not think there is anything wrong. But, once that person has applied they can't be part of the discussion anymore.

Ms. Lesny Fleming asked if the applicants knew that a ward councilman was also vying for the position.

Ms. DeGeorge stated that she did not know if the applicants were aware.

Mr. Cruse stated that although he was not intimately involved it is fair to say that everyone knew who applied.

Mr. Strunk said that he was one of those that applied. He did not know until it was done. He did not know who else applied. He ran into someone on the way out of his interview that he knew that applied. But, he did not know until it was done.

Ms. Lesny Fleming stated that this is not right.

Mr. Cruse stated that this underscores the issue.

Mr. Greco stated that it does need clarification. If there is a vacancy it should be offered internally first and if no one is interested internally then a public advertisement is placed. This is a big issue in Ward 3. He stated that he wants to see some sort of process for internal and external. That would have saved some consternation over it. Obviously, the Law Director would help us through that.

Ms. Lesny Fleming stated that she thinks it should be offered to everyone; it should just be more transparent. If somebody is a ward councilman and wants an at-large position they should have to announce that and then everybody who is in the running for that position knows that there is a current council person also running for the at-large position.

Mr. Petto said if you go internal-external it automatically means that the internal person is more qualified, which they might not be in an election like this.

Mr. Strunk said that what Mr. Cruse is stating is that the person that wants that position just has to step away from the voting process.

Ms. Wendell asked if the applicant participated in the questioning of other candidates. Fully participated?

Ms. Wendell was informed that the applicant did fully participate.

Mr. Greco stated that he was not part of that, but asked that this be clarified because he is asked about it all the time.

Mr. Barbour stated that the way to think of it is that rather than a Charter amendment or restatement would be an ordinance where Council prescribes the method that they would use going forward.

Ms. DeGeorge stated that they actually talked about doing both in the interim until it got to Charter review. Ms. DeGeorge thought Council put it off because Charter review was around the corner and we wanted them to decide. Ms. DeGeorge noted that she does not have a problem either way.

Mr. Barbour noted that it is not his decision to make and it will probably never come up again, after everything that happened.

Ms. Wendell stated that personally she thinks it absolutely needs to be addressed and it needs to be addressed very clearly, but she does not know if it should be in the Charter. It should be more of a guiding document, a broader document. It is not very descriptive on vacancies. It is pretty bare-boned. It would be more fitting under ordinances where Council can be a little more specific. We don't want to be too specific here now because it could have an effect down the road.

Mr. Strunk stated that the Charter does preclude Council in finances from having self-dealings so this would be another self-dealing.

Mr. Cruse stated that he likes the idea of leaving it open enough for Council to determine the framework for filling their vacancies, but include a statement in the Charter that says any sitting Council person that applies can't participate in that process. That would be the point that might make sense in a Charter.

Ms. Wendell stated that it would be broader if any candidate can't participate in the process.

Ms. Lesny Fleming said there is nothing in the section about the process. It is so bare bones we almost have to come up with all the processes and then inject what we are trying to add.

Mr. Cruse suggested including a statement that Council has the power to determine process for filling vacancies provided however any City Council person who applies for such vacancy shall not participate in the deliberation process.

Mr. Young asked if the commission should state that there are certain things that the Charter Review Commission does not believe should be in the Charter, but recommendations for legislatively addressing a matter instead. The commission is not trying to address all issues, but at least give some guidance in areas we think are too open.

Mr. Cruse stated that he will prepare a draft for the Charter and have the Charter Review Commission look at it and if they think it would be workable suggest a recommendation to Council in the final report.

Ms. Wendell asked the members of Council present if they had any thoughts on the matter.

Ms. DeGeorge stated that of the Charter Review Commission making decisions on what goes to the voters, in the five years she has been on Council this has been the biggest issue where voters want a say in it. To have Council do it, that's fine, because she believes they would reflect what the public wants, but there are really some things that the public wants to vote on and that is one of them.

Ms. Wendell asked if the members of Council have heard of anyone that would vote against it. Ms. Wendell believes that people just want it changed.

Ms. DeGeorge stated that there were people that were fine with the way things went down because they did follow the way it was laid out. Like it or not, we were allowed to do whatever was pertinent at the moment, and that is what they did. Some people were fine with that. The same people want a say also.

Mr. Barbour stated that it is worth noting that the person being discussed subsequently ran citywide unopposed.

Mr. Tadych stated if there is an opening on Council and an experienced Councilman wants to take that opening there isn't a problem with that happening before you ask residents to apply. It opens up the experienced Council person's seat, wherever they are coming from, and you have an experienced Council person moving into another seat, most probably at-large, unless you decide that all terms should be four years, and alternating. If you are moving one Councilman, then you have to replace the other seat. It is simply a process of if it is available and someone on Council wants that seat, o.k. give them that seat and let their former seat be open to the public. It is that simple.

Mr. Young stated that usually happens with the office of the President of Council. You want to have someone who is experienced on Council to take over a presidency vacancy. Then let the voters decide the next time around.

Mr. Tadych suggested putting it in the Charter. If the seat is empty the first choice goes to the existing Council people. If no one wants to fill the seat, apply for the job.

Ms. DeGeorge stated that if you put it in the Charter and you are going to change it, it has to go to the voters. If you put it in an ordinance, the next Council that comes in can suggest changing it back or another way if they don't like it. It is more permanent when it is in the Charter.

Mayor Koomar stepped in the meeting and said to Mr. Tadych's point when filling a ward seat and then moving up when there have been vacancies in the past, anyone in office can tell you there is a two-year learning curve. So, if you are going to be covering city-wide that is why you have seen in the past Council elect an experienced person to that seat. Experience does matter in this case, and then open it up. It just wasn't handled this way this time. To Ms. DeGeorge's point it raises questions with the public.

Mr. Tadych stated that it wasn't specified that the candidate wanted the seat until all applications were in and the candidate filed their application at the last minute.

Mr. Strunk stated that he doesn't have a problem that the person applied for the position. And, he doesn't have a problem that he didn't know that. He stated he does have a problem that the person, once they apply, should not be part of the process, should not be interviewing the other thirty candidates. They can be there but they are not asking questions, not voting, and so on. They should have abdicated from the process.

Ms. Linder stated that she thinks she is hearing two avenues. One avenue is on internal process where you don't do any of that because you have gone internally. If there is not an internal candidate you go externally and then it is not a problem because there isn't an internal candidate to recuse themselves. The other side is just put in the ordinance we do it this way or the other way where in any respect if there is an internal candidate they recuse themselves from being part of the decision making process. We are looking at one of two ways. You can't do them both.

Mr. Cruse stated that what he is saying is leave the process to Council, but put the statement in that if you are a sitting Council person you cannot participate in whatever that process is. This is what he will draft for review.

Mr. Young called for further comments.

Ms. DeGeorge stated that she would like to comment on changing Council terms. Being on Council, as the Mayor just said, it is almost a two-year learning curve. By the time you get in you have to run again. If you are on Council and you are in the middle of something and you have to stop to run a campaign, that takes time. The other thing is that new committees get formed, you have to bring a new Council person up to speed, you've been working on something on committee, e.g., the Tree Ordinance, for four years and the committee has changed and now we have a new Council person that is put into the committee, we have a new committee, it is a whole learning curve. If you have people in place for four years you can get something done. We are not the only city to do two year terms, but they are few and far between. It is more of a four year, staggered term. There is value in rethinking that, revisiting it. The comment heard tonight was the two-year term works, but there is value in a four-year position. Ms. DeGeorge would ask that the Charter Review Commission would rethink that and would like some feedback on the why's and why not's.

Mr. Young stated that he would be glad to go back and revisit Section 2.1 Number and Term.

Mr. Miller asked if the Charter Review Commission should also consider term limits.

Mr. Young stated that is a possibility as well.

Mr. Young thanked everyone for their attendance and comments. The Charter Review Commission will meet again on **March 21, 2022 at 5 p.m.** The remainder of Article II, and possibly Article III will be reviewed, as well as revisiting some of the topics discussed this evening and the matter mentioned by Mr. Miller at the end of this meeting.

In review of the possibilities of meeting in April, due to out-of-town commitments, the meetings will be held on April 4 and April 18. Ms. Lesny Fleming noted that the third week of April is spring break and she will not be in attendance. Mr. Miller will serve as chair in Mr. Young's absence on April 4, 2022.

Upon motion by Mr. Miller, the meeting adjourned at 6:10 p.m.

Mike Young , Chairman

Joan Kemper, Secretary