

reMinutes of a Meeting of
2022 CHARTER REVIEW COMMISSION
Held April 4, 2022

Present: Clete Miller, Vice Chair	Jennifer Lesny Fleming
Brian Cruse	Lynn Linder
Scott Dwyer	Jim Strunk
Law Director Barbour	Tara Wendell

Mike Young, Chair, and Peter Petto were excused.

Also Present: Members of City Council: Michael Greco, Peter J. Winzig, David L. Tadych, Police Chief Gillespie.

The fourth meeting of the 2022 Charter Review Commission was called to order at 5:00 p.m. on April 4, 2022 by Vice Chairman Clete Miller.

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

Motion by Mr. Cruse, second by Mr. Dwyer, to approve the minutes of the Charter Review Commission meeting held March 21, 2022.

Motion carried.

CORRESPONDENCE

Mr. Miller advised that the secretary had distributed correspondence prior to this evening's meeting. One item was a list of items for discussion that Chairman Young had submitted for keeping in the Charter Review Commission binder for later discussion. The additional item was a printed copy of the Rules and Regulations of the City of Bay Village Civil Service Commission that were updated in January of this year. Mr. Miller noted that Joan Kemper, the Secretary to the Civil Service Commission, is present and called on Ms. Kemper for comments.

Ms. Kemper stated that the Rules and Regulations of the City of Bay Village Civil Service Commission were reviewed with the help of outside counsel. A number of meetings were held by the Civil Service Commission with the outside counsel present on Zoom and the Rules and Regulations very thoroughly reviewed before making edits and revisions. The revised Rules and Regulations will be presented to City Council for acceptance by Resolution.

Mr. Miller stated that the Civil Service Commission is an organized body as part of the city operation and it is important for the Charter Review Commission to understand their role.

Review of the following articles of the Charter began with Article IV Administrative Officers and Departments. Mr. Miller called for comments on the individual sections of Article IV.

ARTICLE IV ADMINISTRATIVE OFFICERS AND DEPARTMENTS

SECTION 4.1 GENERAL PROVISIONS.

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

There were no comments regarding Section 4.1 General Provisions.

SECTION 4.2 DIRECTORS OF DEPARTMENTS.

The head of each department shall be a director, appointed by the Mayor, and who shall serve at the pleasure of the Mayor. No appointment as a head of a department shall be effective except with the concurrence of a majority of the total number of Councilmen provided for in this Charter. Upon the expiration of the term of the office of the Mayor, due to lapse of time, the person filling the next succeeding term of the office of the Mayor, shall, at the first meeting of Council after he has assumed office, submit to Council, as if an original appointment the names of all department heads. Should a majority of the total number of Councilmen provided for in this Charter fail to approve any or all of the names so submitted within thirty (30) days after said first meeting of Council, the positions occupied by the persons who were not so approved shall become vacant at the expiration of said thirty (30) days, and such persons shall be automatically discharged from said position. The Director of Law shall be duly admitted to the practice of law in the State of Ohio.

(Ord. 82-67; approved by voters 11-2-82.)

There were no comments regarding Section 4.2, Directors of Departments.

SECTION 4.3 DUTIES OF THE DIRECTOR OF LAW.

The Director of Law, or his representative, shall serve the Mayor, the administrative officers and departments, Council, officers and boards of the Municipality as legal counsel and attorney, and shall represent the Municipality in all proceedings in court or before any administrative body. He shall act as the prosecuting attorney before the Mayor or upon any appeal from the decision of the Mayor. He shall perform all other duties now or hereafter imposed upon solicitors in cities by the laws of the State unless otherwise provided by ordinance of the Council, and perform such other duties as the Council or the Mayor may impose upon him consistent with his office.

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

Mr. Strunk noted the gender reference “he.” Mr. Miller stated that Section 2.16 of the Charter references gender neutral legislation. The thought is to possibly make modifications in the Preamble to the Charter.

Ms. Lesny Fleming stated that looking at the Model Rules, there definitely should be a distinction between the lawyer representing the legal entity as an organization versus an

individual. The wording in the Bay Village Charter is unusual, and possibly should say “The Director of Law, or his representative, shall serve the “City” instead of the “Mayor” in the first line. Ms. Lesny Fleming stated that she does not know if the change is necessary.

Mr. Barbour stated that he always makes it a point to say he represents “the office of the Mayor” and not the Mayor individually. This is the same with any other entity within the City. He advises the department directors in their capacity as directors but not in their individual capacity. But, it doesn’t clearly say that.

Ms. Lesny Fleming stated that based on Mr. Barbour’s comments, she is in favor of the addition of the language suggested. This will help those who may not understand the distinction that the Law Director is there in the best interest of the City.

Mr. Dwyer stated that he is assuming the Mayor and Directors have D&O Insurance (Directors and Officers), as well as the members of City Council. Mr. Barbour stated that the Mayor, Directors Officers, and members of City Council do have the insurance. Mr. Dwyer noted that this insurance provides coverage in the event that if an Officer or Director is sued personally in addition to the City being sued, there is insurance coverage. Mr. Barbour noted that this insurance coverage is also extended to the members of the Boards and Commissions, while acting in the scope of the authority and not willfully with intent to cause harm. It is the same with the D&O Insurance, which will not provide coverage when acting outside the scope of employment as a Director or Officer of the entity.

Ms. Wendell asked Law Director Barbour if he is also the Prosecuting Attorney. Mr. Barbour stated that he appoints the Prosecuting Attorney. There is a separate office of Prosecuting Attorney. It can be the Law Director. In Bay Village there is and has been for quite some time another attorney who serves as Prosecuting Attorney, Mr. Gary Hotz.

Ms. Wendell asked where the authority for the Law Director to appoint a Prosecuting Attorney is spelled out.

Mr. Barbour stated that it is his appointment as provided by ordinance in the chapter that applies to the Director of Law.

SECTION 4.4 DUTIES OF THE DIRECTOR OF FINANCE.

The Director of Finance shall be the chief fiscal officer and shall be the collector and custodian and shall disburse all of the moneys of the Municipality. He shall supervise the keeping of all financial accounts of the Municipality and of the several departments and officers thereof. It shall be his duty to keep an accurate account of all taxes and assessments, all moneys due the Municipality, all receipts and disbursements by the Municipality, all the assets and liabilities of the Municipality, and all appropriations made by the Council.

He shall examine and approve, if in proper form, and if an appropriation has been duly made, payrolls, bills and other claims; prepare and sign all warrants and checks. He shall be responsible for the preparation and submission of appropriation measures and shall assist the Mayor and the Council in the preparation of estimates, budgets and other financial matters, and at all times keep the Mayor and Council fully advised as to the financial conditions and needs of the Municipality. He shall perform all other duties now or hereafter imposed on city

auditors or treasurers by the laws of the State of Ohio. He shall perform such other duties as the Mayor or Council may impose upon him consistent with his office.

Within the Department of Finance, there is established the position of Assistant Director of Finance, appointed by the Mayor, and who shall perform such duties as are delegated by the Director of Finance. In case of the death, disqualification, resignation, removal or incapacity of the Director of Finance, the Assistant Director of Finance shall perform the duties of the Director of Finance until a successor is appointed.

The present Auditor shall serve in the position of Director of Finance with all the powers and responsibilities of such office and he shall not serve at the pleasure of the Mayor until January 1, 1974.

The present Article V—Auditor, shall be deleted if Section 4.4, Duties of Director of Finance, is approved by a majority of the voters. Any reference to Auditor and/or Treasurer in this Charter shall be deemed to refer to the Director of Finance.

(Ord. 73-21; approved by voters 5-8-73.)

There were no comments regarding Section 4.4 Duties of the Director of Finance.

SECTION 4.5 DUTIES OF THE DIRECTOR OF PUBLIC SAFETY.

The Director of Public Safety shall be the head of the Division of Police, Division of Fire, Division of Building Engineering and Inspection, and the Division of Health. He shall make all necessary rules and regulations for the government of this department and the several divisions thereof, and he shall be charged with the duty of enforcing all police, fire, health, safety and sanitary regulations that may be prescribed by ordinances or rules of the Municipality or the general laws of the State of Ohio.

(Ord. 82-67; approved by voters 11-2-82)

Mr. Miller stated that in a previous Article it states that the Mayor functions as the Director of Public Safety.

Ms. Wendell stated that it states that the Mayor *may* act as the Director of Public Safety and Director of Public Service and Properties. Ms. Wendell stated that it is her understanding that the Mayor does, and has for years, acted as the Director of Public Safety.

Ms. Wendell asked if there was a change that occurred during the time that former Mayor Sutherland served.

Mr. Barbour stated that records were searched back to former Mayor Henry Reese and the Mayors served as Director of Public Safety back to that point.

Ms. Wendell stated that she recalls something about a \$5,000 salary and use of a vehicle. It was noted that when a resident questioned why the Mayor (Mayor Sutherland) had a vehicle it was explained that she was provided a vehicle because she served as Safety Director.

SECTION 4.6 POWERS OF DIRECTOR OF PUBLIC SERVICE AND PROPERTIES.

The Director of Public Service and Properties shall have charge of all public works, improvements, and construction thereof, and of all engineering and inspection in connection therewith. He shall be charged with the construction, improvement, repair and maintenance of streets, sidewalks, alleys, lanes, bridges, wharves, docks, and breakwalls; of water mains, pumps, systems, pipes, purification and filtration plants, and the water distribution system, of sewers, sewage system, drains, ditches, culverts, streams, water courses and harbors; of all

public buildings, parks, playgrounds, cemeteries and other public places belonging to the Municipality or dedicated to public use. He shall manage and control cemeteries, market houses, sewage treatment plants, waterworks and all public utilities of the Municipality supported in whole or in part by taxation, and shall enforce all the obligations of privately-owned or operated public utilities enforceable by the Municipality. He shall have charge of the making and preservation of all surveys, maps, plans, drawings and estimates for public work; the cleaning, re-surfacing, repairing, sprinkling and lighting of streets and public places; the collection and disposal of waste; and the preservation of all property belonging to the Municipality and pertaining to the functions thereof.

Ms. Wendell noted that she does not believe the Mayor has ever functioned as Director of Public Service and Properties as part of the duties of the Mayor.

Ms. Wendell asked if it is known why the Mayor can serve as the head of the Safety Department and the Service Department, but not any of the others.

Mr. Cruse stated that he would guess that going back it would need to be remembered how small the City (village) was and the duties were limited. Obviously, as the City grew, especially the duties of Public Service and Properties increased. For someone trying to be the Mayor and take care of all the infrastructure it may have been too overwhelming as the City grew. The Director of Public Safety usually only gets involved in emergencies.

Ms. Wendell questioned whether the Charter Review Commission might want to remove the Mayor serving as the Director of Public Service and Properties as an option. If the Mayor wanted to appoint himself or herself as both, would both salaries be received?

Mr. Cruse stated that the appointments would be subject to approval by Council. He does not think Council would let that happen in this day and age. Mr. Cruse stated he does not know the answer to the question of whether two salaries would be received.

Mr. Barbour stated that Council would have to approve the position and appropriate the funds to pay the salary. Even if the Mayor would find a way to appoint himself or herself to Public Service Director, it would not likely be approved.

ARTICLE V AUDITOR

Editor's note(s)—This article was deleted when Section 4.4 was approved by the voters on May 8, 1973. All references to Auditor and/or Treasurer were changed to Director of Finance.

Mr. Miller noted that Article V was removed when Section 4.4 was approved by the voters on May 8, 1973.

ARTICLE VI CIVIL SERVICE COMMISSION

SECTION 6.1 MEMBERSHIP.

The Civil Service Commission shall consist of three electors of the Municipality not holding other municipal office or appointment, to be appointed by the Mayor, with the concurrence of a majority of the total number of Councilmen provided for in this Charter, for terms of six years each, commencing on January 25th of such year, except that one of the three electors first appointed shall be designated by the Mayor to serve for a term of two years and one for a term of four years. A vacancy occurring during the term of any member of the Commission shall be filled for the unexpired term in the manner authorized for an original appointment.

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

The current electors of the Civil Service Commission are Mr. Thomas Wynne and Mr. John Bingaman, with one recent vacancy. Dr. Dennis Lekan retired as Chairman effective January 20, 2022. The Mayor is seeking to fill the vacancy.

Mr. Cruse stated that unless there is a huge outcry to expand the number of people serving on the Civil Service Commission he would not recommend any change to Section 6.1. SECTION 6.2 OFFICERS.

The Commission shall designate one of its members as Chairman and may appoint a Secretary who need not be a member of the Commission and may hold other municipal office or appointment.

Ms. Kemper noted that she serves as Secretary to the Civil Service Commission. The person serving as Chairman is one member designated by the members of the Commission and serves for two year terms.

Mr. Barbour stated by the language of the City Charter and the Civil Service Commission Rules, certain jobs are Civil Service jobs, meaning that they have to follow the rules of the Civil Service Commission for hiring. For Bay Village, it is primarily police and fire. That involves a process for testing, examination to qualify for the job in accordance with qualifications set by the Civil Service Commission. There is usually a written test and an assessment portion with a minimum grade for passing. The Civil Service Commission ranks the results of the testing process, and the appointing authority (Mayor) of the City picks from the list. Depending on the position it is either the top ten for entry level firefighter, police officer, or other positions. For promotional examination for Police it is one of the top two names, and for Fire Department it is one of the top three names. The process is done just for the Classified Service as defined in Section 6.3. The last page of the Civil Service Rules and Regulations lists the titles of the positions that are Classified Service.

Mr. Barbour noted that the Civil Service Commission might meet numerous times while they are working through the process of notification of testing, advertising for testing, actual testing, grading of tests, reviewing results, and providing a list of qualified candidates to the appointing authority. When there are no vacancies the Commission may not need to meet. Recently four police officer positions were filled, and there were several promotional appointments. Eligibility lists created by the Commission as a result of the testing process are valid for at least one year, and in most cases two years. The Civil Service Commission has not met since January 20, 2022 and will not meet again until another need arises.

SECTION 6.3 CLASSIFICATION OF SERVICE.

The civil service of the Municipality is hereby divided into unclassified and classified service. The unclassified service shall include:

- (a) All officers elected by the people;
- (b) All directors of departments, and assistants to the directors;
- (c) All officers and employees appointed by the Council, and a secretarial assistant to the Mayor;
- (d) All members of boards or commissions appointed by the Mayor;
- (e) Provisional employees whose employment without extension by the Commission shall not exceed one hundred and twenty (120) days;
- (f) Any office or position requiring peculiar or exceptional qualification;
- (g) Persons who shall have served the Municipality with fidelity for at least one year next preceding the taking effect of this Charter so long as remaining in the same or a similar position;
- (h) Unskilled labor.

Notice of any provisional appointment shall be given in writing by the appointing authority to the Secretary of the Commission within five (5) days after such appointment is made.

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.

All original appointments shall be for a probationary period of one (1) year, except for the Divisions of Fire and Police which shall be for two (2) years. All promotional appointments shall be for a probationary period of four (4) months. During the probationary period for original appointees, the employee may be dismissed, removed or reduced without restriction by the appointing authority. At the end of the probationary period for promotional appointees, the appointing authority shall transmit to the Civil Service Commission a record of the promoted employee's service, and if such service is unsatisfactory the promoted employee may, with the approval of the Civil Service Commission, be reduced to the position previously held by such employee without restriction, but reduction or dismissal may be made during the promoted employee's probationary period as is otherwise provided by law.

(Ord. 82-65; approved by voters 11-2-82.)

Mr. Barbour called attention to the second sentence of the last paragraph of this section, stating, "All promotional appointments shall be for a probationary period of four (4) months." Mr. Barbour noted that the police and fire personnel have a contract that dictates for promotional services. For some of the other positions in Civil Service, it might be better to have a longer probationary period of twelve months. Four months might not be a long enough period of time to see if someone can meet all of the requirements. Mr. Barbour noted that the City has survived with the four months, and this may not be something that the Charter Commission would propose to change just for this one matter.

Mr. Dwyer asked what is considered Best Practice with other communities. He noted that for business a year probationary period is super long, but he can understand the aspect of it for public safety.

Mr. Barbour stated that it is primarily public safety because most of the positions that are not in public safety would not be subject to promotion. He does not know what is considered Best Practice because each City has their own.

Ms. Lesny Fleming asked if there have been an issues with the four month probationary period. She noted that she has no objection to move it to twelve months.

Mr. Dwyer asked Mr. Barbour if the Collective Bargaining Agreements would have twelve months for the probationary period. Mr. Barbour stated that it is either twelve months or twenty-four months. A change would make them similar, but it is not a major concern.

Mr. Barbour stated that the other aspect of Section 6.3 is the Classified and Unclassified Services. What is a concern is the application of this section. As a practical matter, the Chiefs of the Police and Fire, and the Police Dispatchers are 95% of Civil Service, and that should continue. It is worth discussion whether a number of the other positions that are listed in the appendix of the Civil Service Rules should be unclassified positions. The Police and Fire personnel, including the Chiefs are Civil Service to prevent them from being used for political purposes. There could be a position where an elected official would request an employee of the safety forces to do something and threaten them with a loss of their job. Civil Service is designed to prevent that from happening and also to prevent unqualified candidates from being selected for these very important public safety jobs. Police and Fire personnel, including the Chiefs, should always be in Civil Service. Some of the other positions may not need to be Civil Service. Other cities, such as Rocky River, Westlake, and Strongsville, have taken that action to remove non-safety personnel from Civil Service. The Civil Service Commission can make a determination as to whether the position requires peculiar or exceptional qualification. For example, the Commission made a determination that Building Inspector requires those type of qualifications because it is difficult to find a qualified Building Inspector. A candidate may choose to apply to communities who do not require Civil Service testing. Recently, the Bay Village Civil Service Commission determined that the Building Inspector position was specialized due to a peculiar skill. The City of Rocky River recently changed their Charter for the same reasons.

Mr. Cruse stated that as he understands Mr. Barbour, the Charter Review Commission should consider whether they want parts (a) through (h) of Section 6.3 to exist.

Mr. Barbour stated that it would be changed to a paragraph that says the following are classified and everyone else is unclassified. The way it reads now all employees that do not fit in this list of (a) through (h) are classified.

The change would be to reword Section 6.3 to list classified, and if not listed the position is unclassified.

Mr. Barbour stated that Section 6.3 would read: "The Civil Service of the municipality is hereby divided into the Classified and Unclassified Service. The Classified Service shall include all sworn members of the Police and Fire Departments, including the Chief of the Police Department and the Chief of the Fire Department, and all full time Police Dispatchers. The Unclassified Service shall include all Directors, other than the Police Chief and Fire Chief, elected officials, members of Boards and Commissions, and all employees not specifically included in the Classified Service."

Further discussion followed.

Mr. Cruse noted that the last electorate objection in 2012 was an attempt to move the Police Chief and Fire Chief to be Unclassified employees. The positions of Police Chief and Fire Chief were felt to be protected from potential political fallout from a change in administration.

Mr. Barbour stated that it has more to do with making sure that there is the most qualified candidate by having a testing procedure and appointing someone who works very hard to become a Chief. The kind of work of running a Police and Fire Department is different than any other department.

Police Chief Gillespie, in the audience, commented that in the process of hiring you trust your leaders to hire the best people and to train and promote those people and get them to the top of the pyramid. The Ohio Association of the Chiefs of Police tests, grades the candidates, ranks the list, and the Mayor picks one of the top two. In some places, such as a big city where there is mistrust, someone may bring their own Chief in and redo the whole department. But, if it is done correctly, you trust your department to hire them correctly, and promote them correctly and the best candidate possible is chosen, which is the way it is done here.

Mr. Strunk asked Chief Gillespie if he thought it strange to have to retest for promotions. Chief Gillespie stated that he did not think it unusual; as part of the organization it is necessary to do what you have to do to achieve the next level.

Mr. Strunk noted that it gives the candidates faith in the process.

Mr. Barbour stated that the Civil Service gives promotional examinations. When an officer retires, for example, a Sergeant, and by ordinance there are four vacancies, patrol officers are eligible to take the promotional test. That process makes sure that the candidate that becomes the next Sergeant meets certain qualifications that are enumerated in a test. Civil Service was started to remove patronage from public employment by former President Theodore Roosevelt in New York. It has evolved in Bay Village that there are very few jobs outside of the Police and Fire that come into Civil Service. Also, for the Service Department, the Collective Bargaining Agreement requires job posting for vacancies and if an internal candidate wants the position and is otherwise suited, they will be granted the position without having to go through the Civil Service Commission because Collective Bargaining Agreements trump the Civil Service. Many of the Bay Village jobs are union jobs.

Mr. Cruse stated that he is willing to look at a rewrite of the section and would suggest tasking the Law Department with writing the wording for the Charter Review Commission to take into consideration.

Mr. Barbour will rewrite the section and provide samples from other cities.

Mr. Dwyer stated that the question becomes whether there is modification of the probationary period that is included in that section. Mr. Dwyer stated further that he is not in favor of

duplicating information in one document that is presented in another. Do you reference the Collective Bargain Agreement here as the source of truth for the probationary period, or is the probationary period retained in the section?

Mr. Barbour stated that he would prefer not putting anything about the Collective Bargaining Agreement in the Charter for the reason that perhaps one day there will be no more Collective Bargaining Agreements and there would be a reference to something that is no longer in existence.

Ms. Lesny Fleming stated that she could not find it in the Model Charter. She read the section of the Conneaut, Ohio Charter that states:

“Classified and Unclassified Service. Pursuant to this Council may establish a Classified and Unclassified Service for employees of the City. There is hereby established as follows: All employees of the City are presumed to be Classified employees, unless the positions which they occupy have been exempted from Classified Service, pursuant to this Chapter. After completion of the original probationary period following a promotion, Classified employees may only be disciplined for just cause and in accordance with the procedures contained within this chapter. Some of the employees of this City serve in the Unclassified Service or occupy positions which have been exempted from the Classified service. Such employees serve at the pleasure of the City, do not serve a probationary period and may be dismissed, disciplined or reduced in pay or position any time, without regard to the procedures contained within this chapter. The following positions are hereby designated as Unclassified: All seasonal, temporary, and emergency personnel, City Manager, Clerk of Council, Law Director, Assistant Law Director.”

Mr. Barbour noted that it would be preferred to have the Civil Service section in the Charter along with the definition of who is classified or who is not classified. The Bay Village Charter currently says that everyone is classified with the exception of the enumerated positions.

Ms. Lesny Fleming agreed that it is confusing to the citizenry and if there are changes suggested it should be made clear why the changes are suggested.

Mr. Barbour will put something together for the next meeting of the Charter Review Commission to consider.

Mr. Dwyer stated that the question between Section 6.3 and Section 6.4 is that Section 6.4 states: “and for appeals from the action of the Mayor in any case of transfer, reduction or removal..” Does this include termination for cause of Civil Service employees? The Civil Service Rules and Regulations are not referenced in the Charter and covers many of those details. Should the Civil Service Rules and Regulations be referenced?

Mr. Barbour responded affirmatively, and noted that this brings forward the next section:

SECTION 6.4 DUTIES.

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, as required by the Constitution of the State of Ohio and for

appeals from the action of the Mayor in any case of transfer, reduction or removal, and the action of the Commission on any such appeal shall be final. The Commission shall keep a record of its proceedings and examinations, which shall be open to public inspection and shall, in all matters not in conflict with this Charter, conduct its affairs in accordance with the provisions of the general law.

Mr. Barbour read the first sentence of Section 6.4 and commented that what that sentence says is that the Civil Service Commission devises its own rules as to how that process will proceed. There is probably a cleaner way to say that. The Constitution of the State of Ohio requires Civil Service. The Civil Service Commission can write its own rules, if the Charter permits it. If not, it has to follow the rules that are in the Ohio Revised Code. There is a cleaner way to state that than the original Section 6.4 that would establish that they clearly have the right to establish their rules for all their process and procedure. Mr. Barbour will circulate the suggested language. He noted that the Charter of the City of Bay Village sets out that the Civil Service Commission will have their own rules. The paragraph that states that is not a model of clarity. This was discussed during the review of the Civil Service Commission Rules. Sections 6.3 and 6.4 have served the City in a fine manner for a long time and the City would continue to function well without any changes, but the Charter Review Commission is here to determine if changes should be undertaken or not. It works well, but things can usually be improved.

Mr. Barbour will provide new language for review.

SECTION 6.5 REMOVAL.

The Mayor may at any time suspend any Commissioner for inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office, incapacity or incompetency, provided however that such suspension shall not be effective without the concurrence of two-thirds (2/3) of the total number of Councilmen provided for in this Charter, or until such Commissioner shall have been notified in writing of the charge against him at least ten (10) days in advance of any hearing upon such charge, and he or his counsel has been given an opportunity to be heard, present evidence, or examine any witness appearing in support of such charge.

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

Mr. Cruse stated that this section talks about the Mayor's ability to suspend a Civil Service Commissioner for the acts listed in the section. The next sentence states that the suspension shall not be effective without the concurrence of two-thirds (2/3) of the total number of Councilmen, or until such Commissioner shall have been notified in writing with an opportunity to be heard. Mr. Cruse stated that the word "*or*" should be "*and*" because the due process requires giving the person an opportunity to be heard and answer the charges and it is still going to need the concurrence of two-third (2/3) of Council to remove the person.

Mr. Barbour stated that he agreed, and that would fit with the underlying purpose of Civil Service. He suggested that the word "*or*" might be a typographical error.

Ms. Wendell stated that she also thinks it is a typographical error because Section 2.3 regarding removal of a Council member states, "without the concurrence of two thirds of the total number of Councilmen provided for in this Charter, "*nor*" until the accused member shall have been notified.

Ordinance No. 62-158 will be pulled for reference and provided to the Charter Review Commission to clarify what was actually done in 1962. Mr. Barbour noted that the ballot language will have to be reviewed.

Ms. Lesny Fleming stated that the language about the notification should come first before the clause about when the suspension is effective. If suggesting a change, the gender neutral change should be included.

SECTION 6.6 FUNDS.

A sufficient sum shall be appropriated by the Council each year to carry out the civil service provisions of this Charter.

Ms. Kemper noted that funds are appropriated for the work of the Civil Service Commission as needed to cover the actual cost of the testing.

The language will stay as written without a change suggested.

The Charter Review Commission finished their review of the Charter to this point and will begin their next meeting on April 18, 2022 with Article VIII, Department of Parks and Recreation.

Article VII, Planning Commission will be reviewed at the meeting of May 2, due to the fact that Ms. Lesny Fleming is a member of the Planning Commission and can provide valuable input, but will be out of the City on vacation on April 18, 2022.

EMERGENCY CLAUSE

Mr. Barbour advised that the Emergency Clause is found in the Ohio Constitution, Article II, Section 1 B, which provides that emergency law necessary for the immediate preservation of the public peace, health, and safety shall go into immediate effect. It is also in the Ohio Revised Code, Chapter 731.30 with very similar language. The adoption of the Emergency Clause language in the Bay Village City Charter is consistent with the language in the Ohio Constitution and the Ohio Revised Code. It is called the Emergency Clause in those two sections because the legislation is being enacted on an emergency basis for the preservation of the public, peace, health and safety. Another term for the Emergency Clause would be inconsistent with the Ohio Constitution and the Ohio Revised Code. The reason it is used in Bay Village is that most of the ordinances need to take effect immediately to conform with the necessary time limits after spending time deliberating and debating. He would not advise calling the clause something other than the Emergency Clause.

Ms. Wendell thanked Mr. Barbour for the explanation.

Upon motion by Mr. Cruse, the meeting adjourned at 6:00 p.m.

Clete Miller, Vice Chairman

Joan Kemper, Secretary