

Minutes of a Meeting of
2022 CHARTER REVIEW COMMISSION
Held June 27, 2022

Present: Mike Young, Chair	Clete Miller
Law Director Barbour	Peter Petto
Jennifer Lesny Fleming	Jim Strunk
	Tara Wendell

Excused: Brian Cruse, Scott Dwyer, Lynn Linder.

Also Present: Lydia DeGeorge, Councilwoman, Ward 2, Michael Greco Councilman, Ward 3, Peter J. Winzig, Councilman, Ward 4, David L. Tadych, Councilman, Ward 1, Dwight A. Clark, President of Council.

The tenth meeting of the 2022 Charter Review Commission was called to order at 5:00 p.m. on June 27, 2022 by Chairman Young.

Mr. Young called for comments, changes or corrections to the minutes of the meeting of the Charter Review Commission held June 21, 2022. Ms. Wendell noted a correction necessary for the spelling of the name of Mr. David Sartin, who submitted a communication to the Charter Review Commission on March 6, 2022.

Motion by Mr. Strunk, second by Ms. Wendell, to approve the minutes of the Charter Review Commission meeting held June 6, 2022.

Motion carried.

CORRESPONDENCE

Mr. Young acknowledged receipt of the following communications:

An email communication from Charter Review Commission member Scott Dwyer dated Monday, June 27, 2022, sharing his comments on the drafts for the Preamble and Section 2.4, stating:

- there is not a need to incorporate the option for Council to appoint a sitting Councilperson for an open Council-at-large position. Council should have that option whether its in the Charter or not;
- Mr. Dwyer also does not believe it is necessary to change the Charter to reflect the need to eliminate a sitting Councilperson from participating in the interviews for the seat they are interested in. This is something that Council should be able to determine by themselves;
- If the Commission decides to move forward with a change to Section 2.4, then he is supportive of submitting the changes to the Preamble.

(Please see copy of email attached for full comments.)

An email communication from Charter Review Commission member Brian Cruse dated Monday, June 27, 2022, stating

- support of updating the Preamble in accordance with recommendations of Jennifer Lesny Fleming;
- expressing favor of changing Section 2.4;
- noting ambivalence about changes to the parts of Article 6 relative to Civil Service.

(Please see copy of email attached for full comments.)

PUBLIC COMMENTS

There were no comments from the public at this point in the meeting. Mr. Young welcomed comments as the meeting proceeds.

Ms. Wendell expressed appreciation for the comments from Messrs. Dwyer and Cruse in their emails received and acknowledged.

CONTINUED REVIEW OF CITY CHARTER

Preamble

(From the minutes of the meeting held June 21, 2022)

Jennifer Lesny Fleming will provide the language that will be suggested to be added, including “to affirm the values of representative democracy, political leadership, citizen participation, diversity and inclusiveness.” These are the aspirational goals that were recommended in the model charter rules.

Village of Bay to be changed to “Bay Village.”

Mr. Young asked all those in favor of doing a pre-submission with the language prescribed for the preamble. All members voted Yea. None were opposed.

Ms. Wendell stated that she likes the proposed language and is favor of submitting it to the ballot. She expressed disagreement with the previous comment of Mr. Dwyer that he would not put it on the ballot if it were the only change to the Charter to be submitted to the voters. Ms. Wendell stated that she is in favor of putting the change on the ballot, either alone or with other issues.

Section 2.4 Vacancies (Article II The Council)

Mr. Young noted that Mr. Dwyer commented in his email that he does not believe it is necessary to change the Charter to incorporate the option for Council to appoint a sitting

Councilperson for an open Council-at-large position. Council should have that option whether it's in the Charter or not.

Mr. Young stated that as the President of Council described the process of someone submitting their name, it was done after the process started. Mr. Young thought it would be good to enumerate it so that Council people would know beforehand that if they are interested in running they should put their name out as soon as possible.

Ms. Wendell stated that she agrees and noted that it will save Council criticism from members of the public, who would express disfavor of Council appointing one of their own without taking the interested public into consideration. If the very first thing they did was appoint a sitting ward council member to the at-large position, as opposed to opening it up to the public, it would seem like back room dealing. The way to do it is first offer it to Council members and if no one is interested, then it is opened to the public.

Mr. Young noted the previous comments of Law Director Barbour that if three council members would express an interest in the position it would not leave enough members to achieve a majority vote. In that case it would be best to deny that interest and open it to the public.

Mr. Young stated (in the case of appointing a sitting council member to an at-large seat) that he would hope that the public would understand that there would still be an open position and the people would be voting for an individual ward seat. Mr. Young stated that the number of people applying for a ward seat would be at least a third less and if you only have thirty days to review all applicants it would be easier to accomplish that with the smaller number of people applying.

Ms. Wendell asked for clarification on the language that says "within thirty days of expiration of Council's time period of appointment."

Mr. Barbour stated that Council has thirty days from the date the vacancy is created.

Ms. Wendell asked if thirty days is enough time if the commission decides to suggest the two-stage process where it goes to a sitting Council member first, then opens up to the public if no ward councilman wants the at-large position. Should the time be increased to forty days or sixty days?

Mr. Barbour commented that the Council would want to fill that vacancy as soon as possible so there is not an empty seat.

Ms. Wendell asked the amount of time necessary for Council to deliberate or decide after offering the vacancy first to sitting Council members, including letting the time needed for the ward council people to decide if they want to put their name in. If no one wants the position, it would be a quick track to advertise the opening, schedule interviews, conduct interviews, deliberate and vote. It seems that the thirty days would go quickly, especially if the process is in two stages.

Mr. Barbour noted that the appointment is a temporary appointment, not a permanent appointment. The Charter requires that the position be made available at the next general municipal election. Someone could be in a situation where they are appointed, run in the following November election for the remainder of the unexpired term (depending on when it falls) and then they have to run again at the next election.

Ms. DeGeorge stated, to Ms. Wendell's point, if you don't give sitting Council members a time period to apply, what is to prevent them from deciding, after it is opened to the public, that they want to throw their hat in the ring.

Mr. Barbour stated that there is nothing to prevent that possibility.

Ms. DeGeorge commented that we would then still have the problem we had.

Mr. Young suggested that it would be up to the President of Council to set a limit on the amount of time given to a sitting Council member to apply for the vacancy.

Ms. Wendell stated that the way that the proposed language we have been discussing is that first it can go to Council, and if no sitting Council representative seeks to fulfill that position, then...

Ms. DeGeorge stated that it needs to be clarified regarding a date set by the President of Council.

Ms. Wendell stated that one of the other pieces of suggested language is "For vacancies of Council-at-large, Council may first elect a sitting ward council representative to fill it." That would be Stage 1. "Council shall establish such further process as Council may deem necessary to facilitate such vote." That could be a case where Council issues a time limit (number of days to decide) if they want to put their name in for the position. That could be a rule that Council makes that if the sitting Council member does not apply by a certain date, they cannot throw their hat in the ring when it gets opened up.

Mr. Strunk stated that there must be care that it is not made too tight. It should be up to City Council to decide the vacancies, and have their own rules.

Ms. Lesny-Fleming stated that she is in favor of the language Mr. Cruse submitted, with possibly some tweaks:

"Council shall establish such further process as Council may deem necessary to facilitate such vote. However, any member of Council who is a candidate to fill said vacancy is prohibited from participating in such process and vote."

Ms. Wendell stated that she took both Mr. Cruse's and Mr. Young's language:

Section 2.4 Proposed Language (added text in italics)

"Any vacancy in Council shall be filled by appointment by a majority vote of the remaining members of Council. *For vacancies of Council-at-large, Council may first select a sitting ward*

Council representative to fill it. Council shall establish such further process as Council may deem necessary to facilitate such vote. If no City Council Representative is selected to fill a Council-at-large position, and for vacant ward positions, Council shall fill 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:

Such election occurs more than two (2) years prior to the expiration of the unexpired term; and

The vacancy occurs more than seventy-five (75) days prior to such election.”

Ms. Wendell stated that she eliminated the comment “However any member of Council who is a candidate to fill said vacancy is prohibited from participating in such process and vote.” She noted that the reason that she thought that it could be done away with is that to her the biggest problem with having a member of Council participating in the process and vote if they are a candidate along with members of the public is because they have an unfair advantage, due to interviewing other candidates and participating in the vote. If it is put in a two stage process, where members of Council go first, and then if no one is interested it is opened up to the public, there would not be that conflict. Ms. Wendell stated that she does not want to have it in the language saying that a member of Council who is a candidate is prohibited from participating because Council may decide, if two council members put their name in, they want those candidates participating in the process. To bar any candidate, whether it is an intra-Council vote or not, we should give Council that leverage, that freedom, to decide maybe they do want people participating. By including the second sentence in the highlighted section, “Council shall establish such further process as Council may deem necessary to facilitate such vote” which refers specifically to their voting on a Council member, gives them the freedom that they need to make those decisions, and if not, it goes to the general public and it is filled by a majority vote of the remaining members of Council.

Ms. Wendell stated that she thinks the wording solves one of the main problems by separating it out. It is a little bit cleaner, and gives a little bit more latitude to Council.

Mr. Miller stated that he likes the idea of the removal of the second part. As long as we deem that any of the Council wants to apply for that open position, regardless of what it is, then that would satisfy him. It has to be up front, and then it goes public. If you make the change internally, that’s great, and if not, then it goes public. Mr. Miller noted that he was comfortable with Mr. Cruse’s language, but he can see the prohibition in Ms. Wendell’s suggested language strengthens the language Mr. Cruse provided.

Mr. Strunk stated that he thought that there was discussion previously that prohibition could cause problems, if there were multiple sitting members of Council interested. He thought that part of the language was going to disappear. What if we have two or three people, and as Mr. Barbour pointed out, there wouldn’t be enough people to vote to fill the position.

Mr. Miller stated that he thinks that is why he comes back to what Mr. Cruse has written, “that any member of Council who is a candidate, either internally, or in the public shall be prohibited from participating in the process.” The process could be removed but it is about the vote. Once they put their name in..

Mr. Young stated that if a majority cannot be achieved, then it is open to the public, less City Council members.

Mr. Strunk asked if their opportunity would be voided at that point. Mr. Young responded affirmatively.

Mr. Strunk stated that they would have a right as a citizen of Bay Village to apply for the position as anyone else. When it is open to the public they can become available again.

Mr. Petto stated that his thought has to do with the word “process.” A council person can vote – that is one thing. But there is a certain feeling he gets from the brouhaha around this when it happened before, that the candidate should not be interviewing other people who are candidates. That is something we want to heed.

Mr. Strunk suggested that the Council candidate be a silent participant in the process.

Mr. Young commented that he thinks that if Council can’t figure it out, they can’t get one person to apply then if three Council people still want it then it should be open to the Council as a whole. If you can’t decide among yourselves open it to the public and you cannot be a candidate for it. There still is the option of running against the person Council selected at the next election.

Jennifer Lesny Fleming stated that looking at Mr. Cruse’s version she is thinking that the second sentence could probably be edited to address the last discussion “for vacant ward representative positions or if no City Council representative is chosen by Council to be the designee,” instead of “seeks to fill a Council-at-large position.”

Mr. Young asked if it should also be stated that it shall be open to the citizenry less those serving on Council presently. If a Councilman still wants it later, then apply for it.

Mr. Barbour stated that as the Law Director he would advise that there should not be put forth a situation where less than a majority of City Council members are selecting an appointee to fill the appointment. That would seem to fly in the face of the current language and all the other processes used to select elected representatives.

Ms. Lesny Fleming stated that she does not think there is that problem with the edits to Mr. Cruse’s language that she just suggested because there is one person that is selected to be the designee, and if they are not selected it goes to the public.

Ms. Wendell asked if three City Council members put their name in and Council can’t decide among them and they open it to the public, can those three Council members put their name in

then? If they are allowed to, there is still the same situation of having a minority of Council picking them.

Ms. Lesny Fleming responded that every scenario can't be anticipated. She noted the conflict of interest of getting involved in the participation in a process of something of which they have personal interest. If something comes before Council and each one of the members happens to be interested in because it is their company or a member of their family's company, there might not be a quorum in that situation. This situation is no different. We are trying to adjust a conflict as best as we can, but can't anticipate all issues. It would be unlikely that it would happen anyway. Ms. Lesny Fleming noted that she is not even in favor of ward council representatives sliding over to an at-large position, but understands the practicality of it. We elect people for a position and it makes sense for that representative to stay in the position for which they were elected. With the edits to the language she suggested, the problem may be solved.

Ms. Wendell stated that there is still the language that Mr. Cruse suggested: "Council shall establish such further process as Council may deem necessary to facilitate such vote." Under that language Council has the flexibility to address a situation of three sitting Council people putting their names in for the position. Ms. Wendell stated that she is just concerned about the candidate being prohibited from participating because when it is an intra-Council vote it is a little bit more of a collegial atmosphere. She would like to see them being able to participate in the process, maybe not the vote because they would probably vote for themselves, not just whoever is left talking about the three outside the door.

Mr. Young suggested that Jennifer Lesny Fleming put in the language she suggested be added to Mr. Cruse's language and send to Ms. Kemper for circulation.

Ms. Wendell will send Ms. Kemper her edited version.

Section 2.1 Number and Term (Article II Council)

Mr. Young advised that Mr. Cruse communicated in his email dated Monday, June 27, 2022 that he is against changing the terms of office for Ward Council representatives from two to four years. He believes that the system in place works and that the two year cycle helps keep a ward representative more in touch with his/her constituents.

Mr. Young stated that based on previous comments, he is assuming that the Charter Review Commission would not want to recommend a change in anything regarding the number and length of terms.

Mr. Young asked if there is someone interested in seeing a change and would like to speak on that topic.

Mr. Miller stated that something he brought up initially and the sensibility of changing those terms at this point, or even reflecting on the other jurisdictions in our area how they have it structured, nothing really convinced him that any specific ward councilperson benefits from a longer term. It would have been helpful to have four years to work on more things, but, Mr.

Miller stated that he understands from the discussions here that the turnover, if need be happens, as it happened with Ward 2. Mr. Miller stated that he would be o.k. to walk away from changing the terms.

Mr. Strunk stated that he agreed that a two year term is more appropriate because if a change needs to be made it will happen in two years, whether it is good or bad.

Mr. Miller noted that the two year term is an incentive. There is only so much time to get things done and participate in the process. You can either sit on the sidelines and let the two years go by, or you can get involved and the two years go by. If people don't like what you have done, then you turn it over to the next person.

Ms. Lesny Fleming stated that it would be great for the really great Council people to give them a longer term, but, the more important objective to her is to have a shorter time to get off the people who are not doing their jobs. Ms. Lesny Fleming would not make a change to the language.

Mr. Young stated that he talked himself into keeping it as is, as someone who ran four times. He spent a lot of time talking to the people in his ward. It was a lot of work, but you do know at the end of that time what the citizens of your ward think. Mr. Young expressed appreciation to those two year Ward Councilman for all the work that they do to be re-elected.

Mr. Young noted that there are four people stating they are not interested in recommending a change to this section. With Mr. Cruse's recommendation, it would be five people. The matter will be brought forward for a vote at the next meeting of the Charter Review Commission.

Article VI Civil Service Commission

Sections 6.3 Classification of Service

Section 6.4 Duties

Section 6.5 Removal

Mr. Young noted that Mr. Cruse stated in his email dated June 27 that he is ambivalent about changes to the parts of Article 6 relative to Civil Service. He completely understands Cleve Miller's comments about how it is written "backwards," but worries about changing something that is working and how to explain that to voters.

Mr. Young called for further comments.

Ms. Wendell stated that while it would be nice to have different wording it is not necessary. It is a cumbersome thing to put on the ballot.

Ms. Lesny Fleming stated that the probationary period for promotional positions currently says four months, and there was a suggestion that it be twelve months.

Law Director Barbour stated that the four-month probationary period is for the Police Chief and Fire Chief. The other employees, firefighters and police officers primarily, have a collective bargaining agreement that dictates their probationary period of two years for entry level, and a stated probationary period for the next level. The collective bargaining agreement will take precedence over Civil Service rules for the purposes of probation, for people other than the chief.

Ms. Lesny Fleming stated that she believes changing the probationary period for the Police Chief and Fire Chief to twelve months is a working change.

Mr. Young stated that he would like to see this addressed by the next Charter Review Commission in ten years, as well as clarifying the language in Section 6.3, 6.4 and 6.5. It is also important to have the Civil Service Commission be part of the discussion and process. When it would be presented to the voters they could be assured that the Civil Service Commission and the Charter Review Commission worked out the changes together.

Mr. Petto asked if Mr. Young is thinking that if the changes do not include participation by the Civil Service Commission the changes would not be accepted by the voter.

Mr. Young noted that at this time there is not a full Civil Service Commission of three members. There are only two members serving at this time.

Mr. Barbour stated that he provides legal advice and opinions to the Civil Service Commission, attending all the meetings. Ms. Kemper is the Secretary to the Civil Service Commission. There not have been any issues with anything that is in the Charter. They have operated fine. We do not have an issue that needs to be corrected. The length of the probationary period would be a good thing to adjust.

Mr. Miller asked Mr. Barbour the benefit of going from four months to a twelve months for the probationary period.

Mr. Barbour stated that the Chiefs jobs are difficult jobs, and the kind of jobs that are hard to prepare for. Consequently, it can be difficult to accurately forecast whether somebody is going to be able to do the job up to the standard that the Mayor, who is the person who appoints the chiefs, has set for his administration. Four months goes by very quickly. A year would give the Mayor an opportunity to see if the chief he appointed is able to function at the right level or not. Once the probationary period is over, the way everything is structured, it is very difficult to remove a Police Chief or Fire Chief, by design. It is designed that way to protect the person from a new Mayor who would want to make political moves. It is designed to thwart that possibility. Changing to twelve months is more opportunity for the employer to make sure the selection is appropriate.

Mr. Young stated that he does not know what the neighboring communities have as far as length of term. Secondly, if he were the Fire Chief or Police Chief and without negotiating or changing anything else, he would not be happy with that change.

Mr. Miller stated that he thinks the conversation came up when the Police Chief was present and he did not verbalize any action.

Mr. Strunk stated that the Police Chief actually thought it was okay.

Mr. Barbour stated that you would never want a candidate that would say they would only want four months.

Mr. Miller noted that the Police Chief is in place now, so he can agree with anything.

Ms. Lesny Fleming stated that it would be interesting to see a survey as to what is the standard probationary period for the Police and Fire Chief. An assessment can be made after that survey is done.

Mr. Young stated he thinks it is better to look at the section as a whole as opposed to taking pieces out beforehand.

Ms. Lesny Fleming stated that she thinks it is more restructuring and not impacting the substance of the Article as much.

Mr. Barbour stated that for one example, the Bay Village Charter says that the Civil Service Commission shall determine by rules the merit and fitness for promotion. That means they can draft their own set of rules, which they have done. The City of Rocky River, a few years ago, changed their Charter to “beef” that up about the rules. It basically says that the Civil Service Commission in Rocky River can enact their own rules even if those rules are different than state law, under the basis of Home Rule. It incorporates the Home Rule concept from the Ohio Constitution into their Charter when it comes to Civil Service Rules. Mr. Barbour stated that may be overkill; it may be a little too far because the law is the law, there still is Home Rule. There is some thought in municipal law circles that Home Rule authority of municipalities has been eroded and what is the next step. Certainly no one has talked about Civil Service rules in any context. Changes have been made in the last few years that cleaned up their language in Rocky River. All of their proposed amendments passed. In Bay Village there has not been a problem. No one has said that our rules are not valid and the Civil Service Commission does not have the authority to enact those rules. We have had no problems relative to anything that would be in the Charter.

Mr. Young asked the Secretary to perform the survey with neighboring municipalities regarding the standard probationary period for Police and Fire Chief.

Ms. Wendell asked if the minutes of the Charter Review Commission in 1982 could be referenced to see why the four month probationary periods were chosen.

Councilman Greco, in the audience, stated that if a person receives the high position of Chief of Police or Chief of Fire, that twelve month period is a useful tool because it incorporates a budgeting period where the Chief would create his/her department budget, be involved in the hiring and training of employees, and exercise management skills. That twelve months is a

standard practice you will see across other cities. The City of Rocky River is “at will,” but the twelve month cycle is done on paper. The twelve month period provides a good appraisal, especially for those special departments and the public safety.

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.)

Ms. Lesny Fleming noted that the word “or” in Section 6.5 needs to be changed to “and” or “nor.” She noted that the person has to be notified of the writing of the charge so they can have the ten days to prepare for a hearing.

Ms. Wendell noted that Section 3.3 Removal of the Mayor has very similar language and the word used is “nor.”

Mr. Barbour stated that Ordinance No. 62-158 as referenced below the section was reviewed. It will be reviewed again. The minutes of the Charter Review Commission of 1962 cannot be found.

Mr. Young commented that the agenda for the next Charter Review Commission will include Sections 6.5 and Section 6.3 regarding the probationary periods for the Police and Fire Chief.

The next meeting of the Charter Review Commission will be held Monday, July 11, 2022 at 5 p.m.

Motion by Young, second by Wendell, at adjourn at 5:55 p.m.

Mike Young, Chairman

Joan Kemper, Secretary