

Minutes of a Meeting of
2022 CHARTER REVIEW COMMISSION
Held August 8, 2022

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

Also Present: Mayor Paul A. Koomar.

The thirteenth meeting of the 2022 Charter Review Commission was called to order at 5:00 p.m. on August 8, 2022 by Chairman Young.

Mr. Young called for comments, changes or corrections to the minutes of the meeting of the Charter Review Commission held July 25, 2022.

The minutes of July 25, 2022 were approved as presented and distributed.

CORRESPONDENCE

Mr. Young noted receipt of the following correspondence:

Memorandum from Mark E. Barbour, Director of Law dated August 1, 2022 listing the positions covered by Civil Service in the City of Bay Village currently by job title as found in the Appendix of the Civil Service Commission rules. Mr. Barbour's memorandum states that other than the safety forces (police, fire, dispatch) there are currently two job titles, mechanic and clerk/secretary, which are occupied by two individuals in each job title, for a total of 4 employees (two mechanics and two clerk/secretaries).

Mayor Koomar noted that the position of Building Commissioner has not been utilized. The position serving the City of Bay Village is entitled Building Director.

Mr. Barbour explained the process of civil service testing and creation of eligibility lists. The police testing is done by the National Testing Institute, a nationwide test service. The other positions for police, fire and dispatch, as well as safety force promotional examinations, are tested by contracting with testing agencies.

The proposed language for submission to the ballot would remove the positions of mechanic, clerk-secretary, and Building Commissioner from classified Civil Service. The two clerk-secretaries and two mechanics currently employed as Civil Service employees would retain their Civil Service status until their employment is terminated by resignation or retirement.

Ms. Wendell commented that she thought the proposed rewrite of Section 6.3 Civil Service was to clarify language and not to remove positions from classified Civil Service.

Mr. Petto agreed, stating that it was just to enable those reading the section to more clearly understand the section.

Mr. Barbour stated that Section 6.3 (f) gives the Civil Service Commission the right to address any office or position requiring peculiar or exceptional qualifications. There can be times when the Civil Service Commission can decide if a position being filled does not require a Civil Service examination. It also allows for non-competitive examinations, where a very limited number of people or if an internal applicant applies. For example, the position of mechanic might change to the point of being so unique it cannot be a Civil Service position. If the position is in the Charter the City might be forced to use a Civil Service examination when they possibly shouldn't in that particular instance.

Mr. Cruse stated that part of the issue is that Civil Service requirements may be limiting the pool of applicants for certain positions. Mr. Barbour agreed, noting the example in the past of seeking Building Inspector candidates. The Civil Service requirement was removed and a person was hired that was very qualified and experienced. The Mayor stated that there are many state certifications required for the Building Inspector position. Mr. Young and Mr. Miller noted personal or work related experiences due to a shortage of inspectors.

Mr. Young noted the many certifications required for the position of mechanic which establish the credentials for the position without the necessity of testing.

Mr. Barbour commented that with the existing Civil Service rules, a mechanic applicant would have to take a Civil Service examination, but in the City of Bay Village the mechanic is a member of the AFSCME union. In that case, the union rules require that the job be posted internally. If a mechanic vacancy occurs, the City is required to internally post the job for a set period of time. An outside mechanic has probably not been hired in a long time because someone internally applied who is qualified and is hired. When it is that kind of situation, there is no test given because the collective bargaining agreement does not require a test for a job change within AFSCME. The specialist category still applies with the additional position of mechanic. The Civil Service testing does not apply to the mechanic that is an internal candidate; it would only apply to an external candidate. If no one applies internally after the job is posted, then outside applicants would be sought with the necessity of testing.

Mayor Koomar stated that it has changed since the last collective bargaining agreement. There was really no job description. It was baked in the union contract so if someone applied internally who did not have much mechanic experience, there was no reason to turn them down, yet they were working on city vehicles, i.e., squads, vehicles, and were trained as they went along, which isn't a great thing. At the last bargaining agreement it was decided to get that job description out. It was necessary to bargain to get that out so that there would be a set of standards that the Law Director said could be applied. If an internal candidate did not meet those standards, there is the ability to go outside and find someone with mechanic experience.

Mr. Barbour added that an internal candidate, assuming they met the job qualifications, would not have to take the Civil Service exam.

Mr. Strunk asked if what he is hearing is that the Law Director and Mayor are recommending that the language for the mechanic and the clerk-secretary is not added to the language proposed by Mr. Miller.

Mr. Cruse stated that it would help operationally with the City and it would not impact existing employees, they would be grandfathered and protected. Mr. Cruse expressed agreement to proceed with Mr. Barbour's suggested language.

Mr. Barbour noted that the last ballot issues had several Civil Service matters on it from the Charter Review Commission that were not successful. The main ones that failed were the proposals to remove the Police Chief and Fire Chief from Civil Service.

Mr. Cruse noted that the language proposed by Mr. Miller for Section 6.3 Classification of Service makes the section much easier to understand.

Mr. Miller asked if there should be any notation added that would refer back to the original unclassified Section 6.3 (f).

Mr. Barbour stated that the only employees included, if adopting the proposed Section 6.3, would be safety forces, including full time dispatchers (Police, Fire/EMS Dispatchers).

Mr. Cruse asked if there is some job position where a Civil Service examination would be the measure between hiring person (a) or person (b) rather than their qualifications for the job.

Mr. Miller stated that for a classified member they all require some test, even including the mechanic. There is not a Building Commissioner and most likely the City will not go back to that title.

Mr. Cruse explained further that if he is looking at two resumes for a certain position and looking at peculiar qualifications, he does not see where the Civil Service exam is going to help him shed any light on those peculiar qualifications.

Mr. Miller stated that the Clerk-Secretary is not of those safety forces.

Mr. Cruse stated that he does not think Section 6.3 (f) "Any office or position requiring peculiar or exceptional qualification" is not important in the scheme of things because the test itself isn't going to identify those peculiar qualifications or requirements.

Mr. Miller noted that Section 6.3 (f) is for unclassified service. The Civil Service Commission may change that requirement, but that should be under their rules, not the Charter.

Mayor Koomar stated that for the revision of the Civil Service Rules and Regulations outside counsel was hired. That wording was referred to and he would not want to remove it without

checking with that counsel. Mr. Barbour added that approximately eight months were spent revising Civil Service Rules and Regulations with an experienced Civil Service lawyer. The revised rules were adopted in January of 2022.

Mr. Cruse stated that to Mr. Miller's point, if Section 6.3 (f) is still in the Civil Service Rules it doesn't need to be in the Charter necessarily.

Mr. Barbour reiterated that the proposal in front of the Charter Review Commission limits Civil Service classified service to just police and fire, including dispatchers.

Mr. Strunk stated that EMS was added as well.

Mr. Barbour stated that in our system we do not have separate EMS people. Mayor Koomar stated the wording would be Police, Fire/EMS.

Mr. Strunk noted that things change and this could be a forty year decision.

Ms. Wendell stated that if the Charter Review Commission adopts the proposed language that Mr. Miller wrote as is, it obviously contradicts the Appendix of the Civil Service Commission rules because it removes Mechanic, Building Commissioner, and Clerk-Secretary. The Appendix, then, is in conflict with the new, if it is adopted, Charter language.

It was noted that the Charter rules. The Civil Service Commission can change their rules.

Mr. Miller noted that the dispatch position might change in the future, going to a different model, and dispatch would not be in the Appendix as well.

Mr. Barbour noted that the language can only apply to City of Bay Village employees.

Mr. Young summarized that the change to Mr. Miller's proposed language would be to change "all full time Police Dispatchers" to "all full time Police, Fire/EMS Dispatchers." Mr. Barbour noted that dispatchers refer to themselves as Emergency Medical Service.

Mr. Young called for any further comments regarding the proposed changes to Section 6.3 Classification of Service, noting the change will also include the probationary period of twelve months, changed from four months in the existing language. The language proposed would read as follows:

Section 6.3 CLASSIFICATION OF SERVICE

The civil service of the City is hereby divided into classified and unclassified service. The classified service shall include all sworn members of the police and fire departments, including Chief of Police Department and Chief of the Fire Department, and all full-time Police, Fire/EMS Dispatchers. The unclassified service shall include all directors other than classified members, elected officials, members of boards and commissions, and all employees not specifically included in the classified 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 *twelve (12) 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.

Mr. Young called for a vote on the approval of the language.

All members voted Aye. Section 6.3 Classification of Service. Language as written above is adopted.

Section 6.4 Duties.

Mr. Barbour stated that changes to this section are an attempt to more fully define the ability of the Civil Service Commission to promulgate and apply their own rules for appointments and promotions. He noted that the first reference to "as the basis for appointment and promotion" be removed because it is used elsewhere in the section and doesn't need to be used twice. The suggested language shall read:

The Commission shall provide by rules of Civil Service Commission for ascertainment of merit and fitness in the classified service of the City, as required by the Constitution of the State of Ohio; for the basis and method for determination of eligibility, certification, appointment and promotion of candidates for the positions in the classified service; for the conduct of the affairs of the commission; 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. The Commission shall have the authority to adopt rules and regulations in accordance with home rule which may differ from State law, to govern its proceedings and fulfill its duties hereunder, and in such event of a conflict with State law, rules adopted by the Commission shall supersede provisions of State law and be determinative and govern the Commission's proceedings.

Mr. Barbour noted that these are things they have always done, but it expands the description so there is no room for doubt that they are acting in their authority. The language suggested is how it is stated in a number of other cities.

Mr. Young noted that the portion that reads "rules adopted by the Commission shall supersede provisions of State law" sounds rather harsh. Mr. Barbour stated that there is a huge body of state law regarding Civil Service with a large chapter in the Ohio Revised Code. The Ohio

Constitution allows municipalities to prescribe their own rules for Civil Service, but the Charter must say that specifically.

Mr. Young stated that it would help to say in explaining the proposed change that Bay Village is rather unique compared to most other cities.

Mr. Barbour stated that Bay Village is not unique in this regard because all charter cities have their own charter amendment that gives their own Civil Service Commission the ability to write rules. Most cities around Bay Village are charter cities. An example of a statutory city is the City of Parma. They do not have their own charter and have to follow the Ohio Revised Code. Bay Village is unique, but in this instance it is more the norm.

Mr. Young stated that the needs of our city in comparison to other cities based on size, and the fact that it is a bedroom community, would be different than another city that has more commercial area.

Mr. Barbour stated that the suggested language gives our Civil Service Commission more control over the process. Our Civil Service Commission members are appointed from members of the public. In that sense it insures some local control over the process that you might not have if it is not in the Charter.

Mr. Strunk asked if this is too confusing to be on the ballot. Will it cause voters to vote no on all Civil Service matters?

Mr. Cruse stated that he is sure there will be some of those but this is a good step to trying to further protect our City's ability to write its own rules. This can be said in the letter to be sent out by the Charter Review Commission to the voters.

Mr. Dwyer noted that it probably is easier to pass this with something else related to Civil Service than if it stands alone.

Mr. Miller commented that if the Charter Review Commission was trying to take power away from the Civil Service Commission and hand it to another elected body, that would be a real concern.

Mr. Barbour commented further that this came up in the review of the Rules of the Civil Service Commission when the outside counsel hired suggested that the language be debunked and make it clearer that we are operating under our Civil Service Rules. There was an issue a few years ago that brought some of this to light and created questions that needed to be addressed.

Ms. Linder stated that it will probably be confusing to the average person but if the Charter Review Commission works on a communication piece prior that may help. It is the time to bring it in because it ties to other things that are being proposed.

Mr. Petto stated that he thinks if there is an explanation people will go along with it as long as there is no kickback from another group.

Ms. Lesny Fleming stated that she is reading an article from a group that is advocating home rule Charters, talking about the practical implications of trying to do that in a tumultuous period. We are not particularly in a tumultuous period, but we see from the School Board there are definitely different groups in Bay with different ideas. We have to know going in that it could spark some controversy.

Mayor Koomar commented on the zoning overlay issue on a previous year ballot. Q and A spots included on the City website were helpful in a successful outcome. He noted that one question unanswered can cause disruption in the process leading to success. There were multiple City staff meetings to determine what questions might be asked. He stated that if the Charter Review Commission continues to meet on the communication piece it will be helpful.

Mr. Dwyer stated that in Bay Village we are pretty well insulated. There are issues at the state level and national level, but there are no major issues with how the City is being run. Being involved with the Board, many of the issues last year have resolved themselves. We are probably in a good place to propose some of these things.

Mr. Miller stated that the previous Charter Commission proposal to remove the Police Chief and Fire Chief from classified positions did not include conversations about how that might be perceived by the public. The perception of Mr. Miller was that it quickly went out and as soon as it hit the Board of Elections what we were trying to move forward the public response was “no.” This proposal is cleaning up a lot of confusing, detail-oriented things. Some may be concerned about the promotional period, but not as far as righting Section 6.4 and saying the Civil Service Commission rules, not a council person, or a Board, it is their rules.

Mr. Dwyer commented that there are probably two big concerns. People will look at it and ask themselves if anyone is losing their job, and do I have to pay more.

Mayor Koomar stated that the union contracts have a two-year probationary period for new police officers and fire fighters. The two-years is a reasonable probationary period.

Mr. Young called for further comments. There were none.

Mr. Young called for a vote on the proposed changes of Section 6.4 Duties as follows:

Section 6.4 Duties

The Commission shall provide by *rules of Civil Service Commission* for ascertainment of merit and fitness in the classified service of the City, *as required by the Constitution of the State of Ohio; for the basis and method for determination of eligibility, certification, appointment and promotion of candidates for the positions in the classified service; for the conduct of the affairs of the commission; 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. *The Commission shall have the authority to adopt rules and regulations in accordance with home rule which may differ from State law, to govern its proceedings and fulfill*

its duties hereunder, and in such event of a conflict with State law, rules adopted by the Commission shall supersede provisions of State law and be determinative and govern the Commission's proceedings.

All members voted Aye. Section 6.4 Duties. Language as written above is adopted.

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, *and* 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.

Mr. Young noted the only change was to change the word "or" to "and" in the sentence that refers to the Mayor may at any time suspend any Commissioner for inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance in office, incapacity in 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, *and...*

Mr. Young called for a vote on the approval of the language.

All members voted Aye. Section 6.5 Removal. Language as written above is adopted.

A document was prepared, reviewed and signed by the members of the Charter Review Commission and will be presented to City Council with ordinances prepared by the Law Department for submission to the Board of Elections. Mr. Barbour noted that the Board of Elections has asked for all Charter amendments to be sent to them well in advance of the September 9 deadline because their mail-in ballots for the military have to go out 45 days before the election.

PUBLIC COMMENTS

There were no comments from the public this evening.

The next meeting of the Charter Review Commission will be held Monday, August 22 at 5 p.m. to prepare the Frequently Asked Questions and information to the public. Mr. Cruse suggested a mailing to the voters when early voting starts, and another closer to election date.

The meeting was adjourned at 6:15 p.m.

Mike Young, Chairman

Joan Kemper, Secretary