

MINUTES OF MEETING
2020 CHARTER REVIEW COMMISSION
APRIL 30, 2020

Members Present: John Urban, Pat Roberts, Linda Bartolozzi, Michael Coyne, Trevor McAleer, Bill Brink, Tony Bucaro, Steve Polly, John Lanning

Presence Noted: Andrew Bemer, Law Director
Michael O'Shea, Assistant Law Director

Administration: Mayor Pamela Bobst
Michael Thomas, Director of Finance

Council Members Present: Christopher Klym, At-Large Council Member
Christina Morris, At-Large Council Member

Mr. Urban began by welcoming the Director of Finance, Michael Thomas, to the meeting and thanked him for attending. Tonight's discussion will be about ARTICLE IV – ADMINISTRATIVE DEPARTMENTS, Section 3. Department of Finance and ARTICLE VII – FINANCES. The discussion will be facilitated by Commission member, Tony Bucaro.

Mr. Urban asked if the Commission members have any changes to the minutes of the April 23, 2020 meeting. Mr. Lanning moved to accept the minutes as presented. Mrs. Bartolozzi seconded. Motion was passed by unanimous acclamation.

Mr. Bucaro summarized ARTICLE IV – ADMINISTRATIVE DEPARTMENTS – Section 3. Department of Finance and ARTICLE VII – FINANCE. His suggested areas for discussion are Section 3. Department of Finance, paragraph 1, in that he thinks it is important to clarify and/or modify the educational certification requirements for the Director of Finance. There are currently 2 paths of either a Bachelor Degree in Accounting and Finance and experience requirements, or a CPA. Another area for discussion is in paragraph 2 of Section 3, where it seems to require that the Director of Finance examine every bill no matter the size, recalculate every item in the bill and tie every bill to an appropriation. Rocky River has a \$90M budget and it seems as though reviewing every bill would be extremely difficult.

In ARTICLE VII – FINANCE, Section 1. Tax Limitation, Mr. Bucaro said he would like to highlight that the 2014 Charter Review Commission indicated that the term "personal property" was not consistent with state law and in July, 2014, City Council passed an ordinance authorizing an amendment of Section 1, deleting the reference to personal property tax. He is looking for guidance as to whether it is alright that the Charter hasn't been changed and still has the term, "personal property" in it. In Section 4. Public Bidding, he questions the term, "lowest and best bidder" and wonders whether the term has a legal definition. In logical terms, the lowest bidder is not always the best bidder. He wonders if they should make some changes to the terminology based on the case law that they were presented by Law Director Bemer before they began these meetings, which might suggest that this terminology could cause some problems. There are 5 expenditures that are specifically called out in the first paragraph of Section 4, as not needing to go through a public bidding process, and they all make sense, except for

“personal services.” He said that the term stands out as being very overly general and subject to some extreme judgment and he thinks they need to discuss the meaning of that term. Another item for review is located in Section 6. Annual Appropriation Ordinance. If they decide to propose changes in Article III relating to meeting notices in newspapers, then they could propose to do that here, as well. If they do not propose to make that change in Article III, then it would make no sense to discuss that here. Section 7. Board of Control reads, “No contract involving an expenditure in excess of Five Hundred Dollars (\$500.00), but less than the amount set forth in Article VII, Section 4 of this Charter shall be entered into without prior approval of at least two (2) members of the Board of Control.” Unless he is misunderstanding the language, Mr. Bucaro said that his concern is that Article VII, Section 4, does not set forth a maximum amount. He thinks they should consider either striking or changing that language. Mr. Bucaro said that he would like to turn it over to Finance Director Thomas for any additional items he would like to discuss.

Mr. Thomas thanked the Commission for inviting him, and said that in preparation, he considered whether this governing document is too restrictive, and whether it has provided enough leeway with appropriate guard rails for the work that they have to do for the residents. He does not see the Charter as being overly restrictive or too unrestrictive for the work that they have to do. He feels there is a good balance between the authorities given to the Administration versus what is given to City Council. There is always some interaction in the work between those two branches of government and they get things accomplished for the residents. As was mentioned, there are designated positions in the Charter of the Director of Law, Director of Finance and Director of Public Safety Service. The reason the other directors are not mentioned in the Charter is to give the Administration or City Council some leeway to do that. State code requires that a municipality has a Fiscal Officer, which is what Mr. Thomas serves as, and that is why it is required in the Charter. The City has done a very good job of operationalizing the controls that are described in the Charter.

Mr. Thomas said that regarding what Mr. Bucaro mentioned about reviewing bills and the responsibility of the Finance Director, because of the volume of transactions, there is no way the Finance Director can complete every task that they have been assigned by the Charter. This is why they have staff that they have assigned those responsibilities to in order to get the matters completed. There are many people who combine their expertise and he is the shepherd who brings it all together on an annual basis and it becomes a budget that goes before Council. They get it accomplished in a timely manner so that they can achieve fully what the residents want them to achieve. Responsibilities are delegated by Director Thomas for a good amount of the necessary activity.

Mrs. Roberts asked why in the first paragraph of Section 3. Department of Finance, the Charter says that, “The individual who holds the position of Director of Finance on the Date these qualifications become effective shall not be subject to these qualifications.” Mayor Bobst said that at the time the amendment was passed to include the qualifications

for Finance Director in the Charter, the person who held the position of Finance Director did not have those qualifications and it allowed her to remain in the position at the time. It is no longer necessary to have that language in the Charter because we are long past her retirement, but it is left over from the transition when the qualifications were put into place. Mrs. Roberts asked if there is a way to remove that language from that Charter. Mr. Urban said that they can recommend that City Council remove it as obsolete language and Law Director Bemer agreed that it could be done by City Council, and a proposal to remove that language would not need to be placed on the ballot.

Where it says that the Safety Service Director acts as the purchasing agent for the City, Mrs. Roberts asked whether that accounting function of purchasing agent should be with the Finance Department. Mr. Bucaro said that the purchasing agent would be the individual or group responsible for deciding to authorize the purchase of goods, whereas finance would actually pay for the goods, which is a segregation of duties and is appropriate. Ms. Roberts asked whether there is someone who should have bigger oversight to look at all purchases for the City. Mr. Thomas responded that, because of the structure that is outlined in the Charter, they have set up their processes within that structure. The Safety Service Director chooses which vendor we use and what materials. It then gets handed off to finance to execute the transactions. Mayor Bobst said that the other Directors work on the purchasing piece of this and it is accomplished by a team of people. Mrs. Roberts thanked Mayor Bobst and Director Thomas for helping her to better understand how the process of getting things accomplished works.

Mr. Bucaro said he would like to better understand the qualifications of the Director of Finance as outlined in the Charter. It says that the Director must have either a Bachelor Degree with a major in Finance or Accounting and a certain level of experience, which he realizes is important. The Charter goes on to say that the Director of Finance can be a CPA. He said that a CPA can have absolutely no experience, they can even have a Master Degree in Accounting and no Bachelor Degree. He wonders if the requirement should be a certain level of experience, such as no less than 5 years of finance or accounting experience, with at least 2 of them in government finance or accounting, and either a Bachelor or Master Degree, or have an appropriate certification. He is a CPA, but there are other certifications that are just as qualified or more qualified for a position like this, such as Certified Management Accountant. He doesn't know anything about a Certified Government Financial Manager, but it certainly sounds like someone who may qualify for this position. In short, he thinks they should consider the experience as a necessity, whether the person is a CPA or not, and then either a Bachelor's or a Master's degree and the appropriate certification.

Mr. Urban said that Mr. Bucaro has a point in that a person can be a CPA and know nothing about public finance. Mr. Thomas said that he would like to point out that a Licensed CPA in Ohio can have an active license, meaning that they are keeping up with continuing professional education, but there is also an inactive license, meaning that they are not maintaining the educational requirements. He could let his license lapse and since

he passed his CPA exam years ago, he can serve as Finance Director because he has that certification. It means that since a candidate meets the black and white that is in the Charter for experience or license, it is being left to the Administration to make the judgment of whether an individual is actually a candidate. There is still back and forth there because Finance Director is a Charter position, but Council sets the compensation. Mayor Bobst said that she views these qualifications somewhat as minimum qualifications. There are all sorts of creative collaborative things that are happening such as the fact that communities are sharing that position because it is difficult to find qualified municipal Finance Directors. Our community has a multi-jurisdictional Municipal Court, a regional Waste Water Treatment Plant and other councils of government which all have to be managed financially, and Mr. Thomas does a tremendous job. Adding additional appropriate qualifications would make sense, but she is not familiar with all of the credentials that Mr. Bucaro mentioned. The City would be looking for someone who operates at a very high level. Mr. Thomas' CPA credential is important to the community for a number of reasons, with our contracts and signing documents, in addition to running the whole financial operation of the City. Mayor Bobst said that the discussion of the difficulty in finding qualified municipal Finance Directors is a constant topic of conversation among Mayors and City Managers and the Mayor is not sure why that is. Law Director Bemer said that he agrees that a Finance Director should have some experience along with the CPA credential. However, he asked whether the CFO of a major corporation who has never done any government work would qualify. He would think that, based on his background and experience, he would probably pick up enough information very quickly to more than adequately serve in the position, even though may never have been in public finance.

Mr. Urban said that he thinks this should be placed on the Master List of Items for Further Discussion. He does not think that the current Mayor would ever appoint someone who has the qualifications with no experience, but a future mayor could do that. He is on the Board of Directors of a small insurance company as a member of the Risk Committee to look at some of the potential exposures. He feels that the City has potential exposure in that we could have an unqualified person appointed as our Finance Director.

Regarding Article VII – FINANCES, Section 1, Tax Limitation, Mr. Bucaro questions whether the Charter is supposed to be modified to eliminate that language when an Ordinance is passed, or if it is fine to leave that language in it. Mr. Urban said that we removed it from discussion, recommending that City Council remove it as obsolete language. It was on the recommendation list to City Council to eliminate it because the state has indicated that personal property is not to be considered. We can put it on the list to recommend to City Council to eliminate it again.

Regarding ARTICLE VII – FINANCES, Section 4, Public Bidding, Mr. Bucaro said he questions the use of the term, “lowest and best bidder.” Law Director Bemer said that this entire section is guided by case law. Lowest bidder is the standard and the term, “best” does have a definitive definition. It really has to do with things such as the

working relationship with a particular bidder, the history of litigation, mistakes and other deleterious issues that may have come up. A bidder may be the lowest, but by experience, we know we don't want to award them the contract. We may have the burden of identifying what the problems were and why we wouldn't choose that particular bidder. All of these things would be some of the reasons a bidder would or wouldn't be the best qualifier. If there is some reason why the lowest bidder is not the best bidder, then we can move to the next lowest bidder. Mayor Bobst said that we probably do accept the lowest bid 98% of the time, and it is a rare occasion that we would use lowest and best. That nomenclature is heard in many communities, but we rarely have to go to the next bidder because if an individual is not qualified, they may not even submit a bid. We check references and they would know that because of issues they have had with us or with other communities, they are not the best bidder. Mr. McAleer agreed with what the Mayor and Law Director Bemer said, adding that "lowest and best" is pretty standard in public contracts.

Relating to lowest and best bidder, Mr. Thomas said that Council Member Klym can speak to what Council's perspective might be if the Administration presents him with an ordinance for a potential bidder that is not the lowest and best. Council Member Klym said that those are the questions they always ask. They currently have an ordinance before them relating to the Riverdale Dr. project. Some of those things they talk about came into play. Great Lakes came in quite significantly under the engineer's estimate as the lowest and best. The City has worked very closely with Great Lakes in the past and we were hoping that they would be the lowest and best bidder, so their past experiences with a bidder are some of the things they talk about when they are considering a bid and they do ask the Administration what they think will be best. There are a number of things they consider when they look at which bidder will be the lowest and best in the overall contract itself. In summary, Mr. Klym said that the "lowest and best" language gives them the ability to look outside of just the bottom line number.

Mrs. Roberts said that the second sentence of ARTICLE VII - FINANCES, Section 4. Public Bidding, is 109 words long, and the sentence following that one has 71 words. She has difficulty understanding the second sentence and had to read it a number of times to understand what it was saying. She asked if they have the ability to use punctuation rather than the confusing language that is there so that ordinary people can understand it. Mr. Bucaro said that the term "personal services" stood out to him as needing clarification, unless it is included in that paragraph for a specific reason. Law Director Bemer said that this is another area that has been adjudicated and the standards are identified in case law. As a result, you will see in our contracts professional services that are considered unique and peculiar, based on the firm's expertise. Mayor Bobst said that the "personal services" is confusing and she wonders what is specific about personal services as opposed to professional services. Law Director Bemer said that almost all the language in every Charter began with the Ohio Revised Code and things evolved over time through judicial interpretation. He does not recall whether personal services was the denominator rather than professional services, but we certainly refer to it as professional.

Mr. Bucaro said that there is a real distinction between personal services and professional services. Mayor Bobst said that we will look back at the ballot language to be sure that the word “personal” was not put in there when it was intended to be the word “professional.”

Regarding ARTICLE VII – FINANCES, Section 6, Annual Appropriations Ordinance., Mr. Bucaro said that his concern was related to meeting notices in newspapers. Mr. Urban said that they will add that to the Master List of Items for Further Discussion because the newspaper requirement comes up in a couple of different places in the Charter.

Mrs. Roberts said that the Charter requires that the annual appropriation ordinance shall be passed by the Council no later than April 1st of each year. Mayor Bobst explained that they do not follow that timeline, despite the fact that many communities do. That requirement is in state code, but we do not do it that way because we like to hit the ground running on January 1st with getting projects going and bids out, etc. We start the budget process in July and work our way into it because we want to be ready to go on January 1st.

Mr. Bucaro said he has a concern about ARTICLE VII – FINANCES, Section 7, Board of Control, regarding, “No contract involving an expenditure in excess of five hundred dollars (\$500.00), but less than the amount set forth in Article VII, Section 4 of this Charter shall be entered into without the prior approval of at least two (2) members of the Board of Control.” He wonders if the way it is worded is an oversight. Mayor Bobst said that the limit is tied to the state, so there is no specific dollar amount in the Charter. In the past, Mayor Bobst said that the Charter Review Commission, in its wisdom, was so helpful in tying the limit to the state bid limit. That limit is currently \$50,000.00 and the limit is not listed in the Charter because it can change based on the state bid limit. Mr. Thomas said that he thinks the state limit was last changed in 2012. It is limiting language and we have operationalized it to that dollar amount, which is how we manage the bid process for projects we publically bid. Mayor Bobst added that there are many times that when the contract is for less than \$50,000.00, but for the purpose of transparency, they will still send the contract to Council in an ordinance, just so the community is aware of the fact that they are awarding a certain contract for a specific project or a piece of equipment, etc. Mr. Bucaro thanked Mayor Bobst for clarifying this question because he could not find the language that this section refers to.

Mr. Bucaro said he would like to briefly discuss his concern relating to ARTICLE IV – ADMINISTRATIVE DEPARTMENTS, Section 3. Department of Finance, regarding the Director of Finance having to examine every bill and the fact that Director Thomas said that he delegates the authority to approve all of the different bills and costs. His only concern is that if the law says that a specific person is required to validate or recalculate every bill, but that individual does not because he has delegated that responsibility, he wonders if we need something in ordinance form that gives that individual permission to

delegate the authority, or whether it is simply considered acceptable business practice. Law Director Bemer said that the Director is always ultimately responsible just as in the corporate world. In any government organization that has a degree of sophistication, there will be assistants and the Finance Director has the ultimate responsibility to make sure that his subordinates are properly trained and supervised. Mr. Thomas said that the regulations provide that he has to be personally bonded, which is a control placed upon the office of Finance Director. They have created processes and routines and even though it doesn't appear that one person is responsible, there is individual responsibility and accountability for the public funds. Mr. Bucaro said that his concern is because the law says that the Finance Director must review every bill, but he is comfortable that there are no legal issues with the way it is being done. Director Thomas said that he thinks it could be done by ordinance, but it would be a question for City Council as to whether they feel it is necessary to do that. Mr. Bucaro concluded the discussion of the points he garnered from his review.

Mr. Lanning asked why in ARTICLE VII, Section 6, Annual Appropriation Ordinance, they would not want to include the timeline the City actually follows with regard to having the budget prepared by the first of the year, which is the way they do it anyway. Mayor Bobst said that she would be happy to see that, but there could be the problem of the voters re-electing a new Mayor or Council in November, who would not be seated until January 1st. To pass a budget for the years that newly elected officials would be serving would create issues. She said that the Charter is not prohibitive by saying that they cannot pass the budget ahead of March 31st. Law Director Bemer said that those are excellent points. Almost all Charters are founded upon state law and there is a lot of consistency in Charters throughout all cities in basic provisions, and this is one of them. In the case of having new administrations, this provides 90 days for them to figure out exactly where they are financially, and it is also consistent with state law. Mayor Bobst said that an example of the benefit of passing the budget earlier than state law requires us to, is one she is currently hearing in phone conferences with state and federal officials. There are now some reimbursements being offered due to the COVID-19 recommendations, but they must be referenced in the budgets. The Mayors are asking what happens if they had not passed their budgets before the end of March. We are fortunate that the Administration and Council along with the Directors are on the path to be thinking 6 months in advance to get the budget finalized, because it can have real consequences if they did not, such as in this instance. Director Thomas said that in Ohio, a city cannot spend public money unless it has been appropriated and what is in our Charter is defining the time frame for the permanent appropriation. If you follow the schedule defined by state law, then a municipality would have to have a temporary budget in place on January 1st so they have spending authority on the first of the year. At no time can Council authorize an appropriation that is in excess of the resources that are available. In summary, Director Thomas said that there is a nice balance of restrictions in the Charter so as not to be overly restrictive.

Mr. Urban thanked Mr. Thomas for his input and said he would like to move items from this discussion to the Master List of Items for Further Discussion as well as the list of recommendations to City Council for removal of obsolete language.

A brief discussion was had relating to Mrs. Roberts earlier question about whether changing punctuation in the very long sentence she brought to the Commission's attention would qualify as something that could be done by Council and not taken to the voters. Recording Secretary Straub said that she recalls in previous Charter Review Commission discussions that the Commission considered doing that, but ultimately decided not to because punctuation can be tied to the meaning or intent of a sentence or paragraph and that would not be something Council could do without a vote of the residents.

The Commission agreed upon the following items to be placed on the **Master List of Items for Further Discussion**:

1. **ARTICLE IV – ADMINISTRATIVE DEPARTMENTS, Section 3. Department of Finance** to discuss the CPA qualification of the Director of Finance and the need to change or enhance it along with the education and experience requirements.
2. **ARTICLE VII – FINANCES, Section 6, Annual Appropriations Ordinance**, Discussion of notices being placed in newspapers and whether or not the notice requirement should be modified to include an additional method.
3. **ARTICLE VII – FINANCE, Section 1. Tax Limitation**, if it is found that the term, "personal service" as used in this section is not a typographical error, then the Commission will discuss deleting that term "personal" and replacing it with "professional" services.

The Commission agreed to develop a new list of **Recommendations to City Council as Obsolete Language**:

1. **ARTICLE IV – ADMINISTRATIVE DEPARTMENTS, Section 3. Department of Finance**, ask City Council to consider removing the last sentence of the paragraph as obsolete language: "The individual who holds the position of Director of Finance on the date these qualifications become effective shall not be subject to these qualifications." as obsolete language.
2. **ARTICLE VII – FINANCES, Section 1. Tax Limitations, Paragraph (A)** should be examined by City Council to see if they want to eliminate the words, "personal property" due to it being obsolete language.

Discussion of the next agenda was had and determined to be as follows:

- **ARTICLE V - CIVIL SERVICE COMMISSION**
Discussion Leader: Bill Brink
Invited Guests: To be determined

There being no further business, the meeting was adjourned at 7:30 p.m.

Date

John Urban, Chairman

Trevor McAleer, Vice Chairman

Kate Straub, Recording Secretary