

MINUTES OF MEETING
2020 CHARTER REVIEW COMMISSION
MAY 21, 2020

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

Presence Noted: Andrew Bemer, Law Director

Administration: Mayor Pamela Bobst

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

Mr. Urban opened the May 21, 2020 Charter Review Meeting at 6:00 p.m. via ZOOM virtual platform. He asked if the Commission members have any changes to the minutes of the May 14, 2020 meeting. Mr. McAleer moved to accept the minutes as presented. Mr. Brink seconded. The motion was passed by unanimous acclamation.

Mrs. Roberts began by summarizing ARTICLE VIII – INITIATIVE, REFERENDUM AND RECALL. It was agreed that this is typical recall language and that this Article is very straightforward.

Mrs. Bartolozzi summarized ARTICLE IX – NOMINATIONS AND ELECTIONS. She said that this section is also very straightforward and she does not see a need to change anything. Mr. Bucaro said that he would like to point out a typographical error, which he feels actually changes the meaning of the paragraph. Section 3, line 2 uses the word, “shall” when he believes it is supposed to be the word, “to”. Section 5 has a similar sentence, but includes the word “to” rather than “shall,” which he feels is correct. Mr. McAleer and Mr. Urban agreed with Mr. Bucarro and it was suggested that Article X, Section 8 allows Council to make that change as a grammatical error.

Mrs. Roberts asked if we have to have partisan elections because many cities are non-partisan. Law Director Bemer said that there was a petition in 2002 to put the issue of going to non-partisan elections and it failed by 58% to 42%. There are 5 communities in Cuyahoga County that are partisan and Rocky River is one of them. Mrs. Roberts asked what the benefits of partisan elections are. Mayor Bobst said that one of the benefits is that party affiliation could be another element of information that could be important and might be meaningful to the residents to take into consideration when choosing a candidate. Mrs. Roberts said that it has been 18 years and that is a long time since this was on the ballot. Mr. McAleer said that this is something that the Commission could look at but he actually likes the fact that the elections are partisan. Even in non-partisan races, you are usually endorsed by one of the parties and it is on their slate of tickets that are mailed to your house. Mrs. Roberts said that the “label” can skew somebody’s judgment and it can push a voter toward someone without fully investigating the substance.

Mrs. Bartolozzi said that any Federal Employee is prohibited from participating in a partisan election, due to the Hatch Act. Mr. McAleer said that it holds true for state and county employees, as well. If you are in classified positions, you cannot run for political

party affiliation seats. If you are a Federal, State or County employee, you cannot run in partisan elections, so if we became a non-partisan community, it would open the door for more people to run. It would rewrite most of Article IX but he believes it could be done in one ballot issue.

Mrs. Bartolozzi said that she wonders why an independent candidate is required to get more signatures than a partisan candidate. Mayor Bobst responded that an independent candidate can get signatures from both parties as well as from independents. She said that an independent can sign a petition for a democrat or for a republican who is running. Mr. McAleer said that independent filing deadlines with the Board of Elections tend to be later than the partisan filing deadlines. This means that you can see who is running as a democrat or a republican and then the person can decide if they want to run as an Independent. He thinks that because an independent has some advantages in running for office because they have already seen who has filed, they make it just a little tougher for the independent. Law Director Bemer said that if a person did not vote in any party primary in the last two election cycles, he or she becomes an independent. Mr. McAleer said that when you are an independent voter and you show up on Election Day and you pull a democratic ballot, then you become a registered democrat. Mr. Urban asked Mayor Bobst if she has heard anything in the community about a desire to hold non-partisan elections and Mayor Bobst responded that the City is divided by about 1/3 of each party. They may have slightly more independent voters right now while democrats and republicans are about evenly divided. Historically, there have been a number of republicans elected but there have also been democrats who have been successful when they have run. Her view is that the more information that residents can have about an individual is important. In the communities that are non-partisan, they still become partisan because they are being supported by one or the other political party and receive their endorsements. Mayor Bobst said that she has been asked many times what party she represents, so that information is something that is meaningful to voters.

The Commission agreed to move the discussion of partisan versus non-partisan elections to the Master List of Items for Further Discussion and invite City Council to next week's discussion for their input on this item as well as the terms for the Mayor, City Council members and the Law Director.

The Commission moved to the review of ARTICLE X – GENERAL, with Steve Polly as the discussion leader. Mr. Polly said that he noted three areas that warrant a little more discussion. The first area is regarding to whom this section applies. It mentions City officer or employee and he feels that the term City officer is vague. He knows it is referenced elsewhere in the Charter, but there is an Ohio Revised Code section 733, which talks about City officers really being members of the executive branch of the City. It talks specifically about the Mayor, the President of Council, Auditor, Treasurer, Director of Law, Director of Public Service, Director of Public Safety and other such officers. He thinks this is a section that should also be applied to City Council as well, but the way it is written, it clearly does not apply to them. Law Director Bemer said that

the Officer has a distinct definition in the Ohio Revised Code in Section 124.01, which talks about anyone who is elected is an Officer and is not, therefore, an employee. Provisions that apply to employees do not apply to them.

Mr. Polly's second area for discussion in Section 1 is that it states that if you are an officer or an employee and you willfully conceal your financial interest, then you will forfeit your position. He would like to know the process that takes place to determine whether someone has willfully concealed, which seems to be different than merely concealing because of the mental aspect to the word "willfully." He asked what would happen if that employee is subject to the Civil Service Commission or a collective bargaining agreement and the fact that they would be entitled to that process prior to forfeiting their position. Law Director Bemmer said that there is an Ohio Ethics Commission and those types of cases are almost invariably referred to them. The Ohio Ethics Commission has the jurisdiction to do the investigative background. If they see a clear violation that is tantamount to criminality, they refer it to the County Prosecutor for prosecution. He has not seen or heard of an internal situation where anyone was brought on charges and a determination was made internally. It is always done by the Ohio Ethics Commission who will follow the Ohio Revised Code.

Mr. Polly's last area for discussion refers to the last sentence in Section 1 of Article X. It basically says that if the entity with whom the City is doing business is aware of the violation of this section, a sale to the City, "... shall render the contract or sale voidable by the Council." He said that it seems like the sentence should end with the word voidable. He is not sure what Council is supposed to do with that because a voidable contract is still an enforceable contract. He does not understand whether City Council acts to make the contract voidable or whether they vote to decide to void the contract. Mr. Bucaro said that he believes that in this situation the contract would already be voidable and nobody has to do anything to make it voidable. Council Member Klym said that this situation has never come up and when it says that Council, "...shall render the contract or sale voidable" it seems to him that they would have to take some type of action to void the contract by resolution. Mr. Polly said that he is not sure if this is something that really needs to be on the ballot or if it is something that Council can do internally. Council Member Klym said that maybe that is worded that way on purpose in order to give Council the opportunity to void the contract because they still may be getting a very good price. Mr. Urban agreed and said that it gives Council the opportunity to take a second look at the contract and he thinks they should leave it as written. Mr. Klym said that there is so much in the Ohio Revised Code now than was in the ORC in 1972. Mr. McAleer said that under the ORC regarding public corruption, if someone is found guilty under certain sections, then whatever contract that was the subject, automatically becomes voidable.

Regarding Section 4 of Article X, Mr. Polly said that it relates to Charter Review and he wonders whether it makes sense for City Council to appoint two alternates who participate in the discussions in case a member could not finish the process, much like a

jury. This way, the alternate would be involved in every meeting discussion and they wouldn't potentially be appointed late in the process after all of the discussion was had and they would be at a disadvantage. Mr. Urban said that this is the third Charter Review Commission he has served on and they have not had a vacancy. His question is how quickly City Council could convene to make the appointment. Law Director Bemer said that it is a practical problem that could come into play when you have a terrible pandemic and you have more than one member who now cannot serve. The question is how someone at the end of the process could be brought up to speed. It may make more sense to have alternates than trying to figure out whether filling the terms of someone who could no longer serve really has much of a practical utility. Mr. Urban asked if City Council can appoint an alternate without having it be in the Charter and Law Director Bemer responded that they can do that. City Council decides among themselves how to determine who to appoint via resolution, so it could be done within a 2 week period. The more difficult part would be to find candidates to serve in the middle of the process. Mr. Klym said that there may not be a lot of people who would want to sit through the meetings and the process but not actually have a vote on it. The suggestion of alternates is an interesting one, but there may be some practical issues. He added that it also does not say in the Charter that you have to finish with 9 members. He said that if there was an issue and they needed to put someone in place they could do that rather quickly and he doesn't see it as a timing issue. Law Director Bemer said he does not think that appointing an alternate needs to be explicit in the Charter. Mr. Klym agreed and said that the language of the original resolution could include language relating a first and a second alternate if a member is not able to finish the review. They would not necessarily be appointing the alternates, but they would just be naming them as available to fill an open seat. Law Director Bemer agreed with that concept. Mr. Lanning said that he feels they already have enough people to vote on the Commission even if 1 or 2 members could not finish, because they start out with 9 members. Mayor Bobst asked Law Director Bemer whether this could be added to the Administrative Code where it talks about the rules of City Council or whether it already exists in the Administrative Code. Law Director Bemer said that he will check on that information. Mr. Urban said that they will consider this to be old business for the next meeting.

In section 5 Use of Gender in Article X, Mr. Polly said that it seems a little antiquated and he thinks it may be able to be changed under Article X, Section 8. Mr. Urban said that as they revise sections of the Charter, they try to do so in a neutral way and he thinks that City Council can do it under Article X, Section 8. Mrs. Roberts asked if it would be appropriate for the Charter Review Commission to go through the Charter and identify the new language in order to make it gender neutral and then they could propose it to Council. This would make getting that done easier for City Council. Mr. Urban said that they can make the recommendation to City Council that they change the instances for general neutrality.

Regarding ARTICLE X – GENERAL, Section 6. Open Meetings, Law Director Bemer said that if the consensus is to add Economic Development as an executive session item,

it should be indicated in the Charter as Section 7 of Article X. Mr. Urban suggested that they add this to the Master List of Items for Further Discussion.

Law Director Bemer said that the Commission was forwarded information that includes allowing meetings by means of electronic technology if health or safety emergencies exist. He said that the judiciary has determined home rule authority over open meeting and he is surprised by that fact, but that is how the cases have gone. Mr. Urban said that Law Director Bemer has proposed that ARTICLE X - SECTION 6, Open Meetings should be revised so that the first sentence reads as follows: “Notwithstanding any other provision of this Charter, all meetings **or hearings**, both regular or special, **which shall include any meeting or hearing by means of electronic technology if circumstances of public health or safety emergency exist.**” Mr. Urban said that this will be a recommendation to place this on the ballot for the electorate to decide and he would like a vote by the Commission for this revision to go to ballot.

A motion was put forward by Trevor McAleer, and seconded by Linda Bartolozzi, that the following revision be placed on the ballot: The first sentence of Article X – GENERAL, Section 6. Open Meetings, should be revised to read, “Notwithstanding any other provision of this Charter, all meetings **or hearings**, both regular or special, **which shall include any meeting or hearing by means of electronic technology if circumstances of public health or safety emergency exist.**” The motion passed by unanimous acclamation and was moved to the Ballot List.

Mr. Urban said that next week will be the discussion of the Master List items and City Council will be invited to be part of the discussion about the terms of office for the Mayor, City Council and the Law Director. He would like to limit that conversation to 30 to 45 minutes because they have a lot of Master List items to cover next week.

Mr. McAleer moved for the meeting to be adjourned. Mr. Brink seconded. The motion was passed by unanimous acclamation.

There being no further business, the meeting adjourned at 8:15 p.m.

Date

John Urban, Chairman

Trevor McAleer, Vice Chairman

Kate Straub, Recording Secretary

