

MINUTES OF MEETING
2014 CHARTER REVIEW COMMISSION
APRIL 2, 2014

Members Present: Campanella, Hower, Hanson, Hvizda, Keenan, Robenalt,
Welsh, Yezbak

Members Not Present: Urban

Presence Noted: Andrew Bemer, Law Director

City Council Present: Jim Moran, Council President
Brian Sindelar, At-Large Councilmember

Vice Chairman Robenalt opened the April 2, 2014 meeting of the 2014 Charter Review Commission at 6:00 p.m. in Council Chambers at Rocky River City Hall by welcoming all of the members.

Mr. Robenalt asked the Commission if they have any corrections to the Minutes of the March 26, 2014 Charter Review Commission meeting.

MOTION: Moved by Mr. Hvizda, seconded by Mr. Hanson, to approve the Minutes of the March 26, 2014 Charter Review Commission meeting. Minutes were approved by unanimous acclamation.

Law Director Bemer suggested that the discussion leaders paraphrase or summarize what is in Article II of the Charter, and if there are any questions raised by something someone sees, then it can be presented for discussion at that point. He advised against taking things out of context because it may be explained later when they are further into their review.

The Commission determined that there is no old business to discuss and they will move on to the review of Article II.

ARTICLE II – THE MAYOR

Mr. Hvizda invited the Mayor to the podium and welcomed her to tonight's review meeting.

Section 1. Term. Mr. Hvizda said that after reviewing the minutes from 6 years ago, he has a question regarding the cost to the City for a General Election every 2 years, as opposed to every 4 years. With budgetary constraints, etc., he asked Mayor Bobst if that consideration changes her opinion from 6 years ago in any way. Mayor Bobst said that it does not change her opinion and explained that there will still be an election because of state and county offices and issues, as well as local and School Board issues. There is a minimal cost savings if we do not have anything on a particular ballot. Each City shares a portion of the cost of an election and the Board of Elections has a fairly sophisticated formula to determine what each City pays for a given election.

Mayor Bobst said she reviewed the minutes of the last Charter Review and recalled that as she stood before the Commission 6 years ago, she wondered how she will feel after 6 more years of experience, if she is still in the position of Mayor. She feels the same as she did then, as there is a high level of accountability with two year terms and it provides continual momentum with what they are doing. A 2-year term means you have to get things done, and if you promise something, you had better well deliver it within 2 years' time. She believes that the Charter is about our residents and to ask them to deny themselves one of their voting privileges by going to an every 4-year voting cycle, does not serve our residents well.

Mayor Bobst used the example of the Sewer Maintenance and Rehabilitation Plan, which was a very large project to put into place. It was done in one term but the momentum is continuing today and, as time moves forward, they are seeing the effects of that critical investment in the City. It has also helped build their relationship with the U.S. EPA and Ohio EPA. Another example is the review and revision of the Development Code that went through an extensive process, which took more than 2 years, but they are able to do it because there is a fair amount of stability. Mayor Bobst added that she wonders which residents would vote for this when they would essentially be asked to deny themselves an additional opportunity to vote. She believes that the bottom line for all of this is that the structure of government and 2-year election cycle in the City of Rocky River have served the community well. We have a highly successful community that is always in the top ten and we receive numerous awards for various things in the City. Mayor Bobst said that she is more convinced than she was 6 years ago, that the 2-year term creates the high level of accountability. The process of everybody being elected at one time, has served the community well.

Mr. Hanson asked Mayor Bobst if she thinks that a 2-year term gives her sufficient time to implement the things she would like to do for the City. For example, he presented the possibility of the Mayor having a successor at some point in the future, and he or she may not agree with her about something. Mayor Bobst said Mr. Hanson has asked a great questions. She explained that, as a practical matter, we have the Mayor and City Council, who are elected officials, but there is also an Administrative staff. She supposes there could be a situation where a Mayor is elected and then removes all of the Administrative staff, but doing so would probably not be a wise idea in a community like ours. We have individuals who have been in those positions for many years and there is a lot of institutional knowledge, which serves to support the elected officials and allows for the opportunity to keep the momentum going. She has never felt hindered by the length of her term and believes that every day that an elective official serves this community or any other community, they are running for re-election. If he or she does their job, then they will be recognized for that. The Mayor is aware that there is a concern that they somehow stop everything and run for re-election every couple of years, but that does not happen because there are things they want and need to accomplish. She thinks there is an energy that is created, in that they never slow down. However, it does not mean that if someone else were elected, then those priorities would not change.

Mr. Hvizda said he believes that the Mayor would want to surround herself with the best people and asked Mayor Bobst if she thinks that it would be more attractive to a prospective candidate for her Administration if the terms were changed to 4 years. Mayor Bobst said that she has never heard anyone remark that they were concerned about that, but she is probably not the person that they would voice that concern to. She believes they have attracted the brightest and the best because of the type of community we are, and the longevity of the Directors is tremendous. She thinks that it could be an issue in a community where there is a lot of volatility and changeover in Council, but Rocky River has been a very stable local government for many, many years. Mr. Hvizda said that regardless of the business that a person is running, turnover is always a factor because turnover costs money. Mayor Bobst agreed with Mr. Hvizda and said that there is not a lot of turnover in the City of Rocky River. Employees have good working conditions and good benefits. Above all, we have residents who appreciate the work that the Administration does.

Mr. Robenalt asked Mayor Bobst what she thinks would be the major benefits of a 4-year term. Mayor Bobst said that one could make a point that you do have more time to make changes if you are a brand new Mayor and just learning how things are accomplished. A new Mayor may want to set their own agenda that is different than the course the previous Administration set. If they don't have results with the momentum that they create, then it doesn't mean anything. Results can happen in one year, two years or even 6 month but the focus has to be on getting the job done. Mayor Bobst added that elected officials cannot campaign for 4-year terms because it is too self-serving, and residents won't campaign for it because it would mean we are asking them to deny themselves one of their voting privileges. The 2-year cycle engages our residents in a very public dialogue, which is very good because they talk about and get feedback regarding important issues. She believes that the level of engagement and social infrastructure in our community is foundational to Rocky River's success.

Mr. Welsh asked Mayor Bobst if she is aware that we are probably the only West Shore community that has 2-year terms. Mayor Bobst said she is aware of that fact and recalled a quote by former Mayor Martin who said, "If it is good enough for a Congressman, then it is good enough for a Mayor."

Section 2. Qualifications. Mr. Hvizda said that there are higher requirements in surrounding communities compared to our Charter requirement of at least one year as a resident of the City. He asked Mayor Bobst how she feels about that requirement. Mayor Bobst responded that she still feels the same way she felt 6 years ago during the last Charter Review, which is that this ends up taking care of itself in an election. If someone is new to the community and has not engaged in it or been a part of it, then it is probably pretty difficult to be elected Mayor. Engagement and longevity, especially in our community, tend to be important attributes of a candidate, and each resident would evaluate that for themselves.

Mayor Bobst said that she has a question for Law Director Bemer about this section of the Charter. Currently, a compensated RTA appointment in the West Shore exists, which is held by Westlake's Mayor Clough. She asked Law Director how that would be viewed in the context of our Charter. Law Director Bemer said that this would be a key provision in the entire article to ensure that a public official only has one master, which is the electorate whom they are serving. Regarding some collateral appointment such as this, there is always the question of potential conflict of interest. For instance, a specific plan for RTA could be presented in the city where the appointed official holds an elected position. Our Charter provision is somewhat relaxed and it would not prohibit a county appointment, even a compensated one. Mayor Bobst added that there are many appointments that Mayors have the opportunity to seek or are nominated for within the context of regional or county government. The Review Commission members agreed that this section is not well written and believe it is vague. Law Director Bemer said that it is certainly something that needs to be looked at, and it could be revised to say that such a situation would be reviewed on a case-by-case basis.

Discussion was had about the interpretation of the second sentence in Section 2, Qualifications, and it was decided that they should vote to determine if it should be added to the Master List of Items for Further Discussion.

MOTION: Moved by Mr. Hanson, seconded by Ms. Campanella, to move the discussion about interpretation and/or clarification of the last sentence of ARTICLE II - MAYOR, Section 2. Qualifications, which reads "He shall not hold any other compensated public office or public employment of either the City of Rocky River or of the Board of Education of a school district including within such district a portion of the territory of the City of Rocky River, nor shall he serve as Director of Finance." To the Master List for Items of Further Discussion. Motion passed by unanimous acclamation.

Mr. Welsh asked Mayor Bobst what her feelings are about a person's ability to run for a second public office if they already hold one public office in the City. He used the example of the Mayor deciding to run for State Representative while she is holding office in this City. Mayor Bobst assured the Commission that she has no plans of doing so, but she would not be prohibited from running for a second elected office while she is the Mayor of Rocky River. Mayor Bobst said that her view of campaigning is that it is done completely outside of City Hall, on the candidate's own time, and it should in no way conflict with what happens here. However, the perception may be quite different. Some may believe a candidate running for a second elected office may make decisions that are politically expedient or somehow have to do with the office that person is seeking, as opposed to serving the residents of the City of Rocky River. Individuals run for another elected office from an elected seat quite often in other communities. She has never been asked the question or thought about it, because it is not something she has been interested in pursuing.

Mr. Robenalt said that he does not think that they would want to prohibit a Mayor from seeking higher office because then a person would less likely to run for Mayor in the first

place. Law Director Bemer said that Mr. Yezbak's point about whether that is Ohio law might be well taken. Even though our Charter may not prohibit that, the State provision in the Ohio Revised Code may prohibit it. However, he is sure that judges are prohibited from seeking a second elected seat. The Commission asked Law Director Bemer to research whether it is prohibited in the Ohio Revised Code and provide information for the next meeting.

Mr. Hvizda said he has one more comment on this section. He asked Mayor Bobst to define "resident" for him. Mayor Bobst responded that a resident is a person whose permanent address is in the City of Rocky River. Mr. Hvizda said that we have residents in the City who rent, versus residents who are property owners. Mayor Bobst said that her definition is that a resident is a resident whether they own the property in which they reside, or whether they rent it.

Section 3. Removal. Mr. Hvizda said that he thinks there is some ambiguity to the term "qualifications" and that this section needs to be looked at. Mr. Hanson said that the term "moral turpitude" seems to be a term of art, rather than a term of law and is subject to interpretation. He said he believes that whole section should be discussed further. Mr. Robenalt said he believes that moral turpitude is defined in the Ohio Revised Code. He is sure that term is in a rule of evidence and he believes that case law defines it. Mr. Hanson said he does not believe it is statutory.

Discussion was had regarding the phrase, "crime involving moral turpitude." Mr. Robenalt said that he believes this includes crimes of dishonesty, such as passing bad checks or forgery and this section relates to a Mayor who is convicted of some type of crime. Mr. Yezbak said he thinks the term is more of a blanket term. Law Director Bemer said that he will check on that and get some definitions of "moral turpitude" and look into what type of crimes would qualify under that term.

Councilman Sindelar spoke up from the audience after looking it up on the internet and said that the Ohio Revised Code does define moral turpitude. He said it lists many other Ohio Revised Code Sections and the Commission can refer to those sections to see what other crimes that term includes.

MOTION: Moved by Mr. Hanson, seconded by Mr. Hvizda to move discussion about ARTICLE II – MAYOR, Section 3. Removal, to the Master List of Items for Further Discussion. Motion passed by majority acclamation: 5 Ayes – 3 Nays (Robenalt, Welsh, Yezbak).

Section 4. Vacancy and Absence in Office of Mayor. Mr. Hvizda said that he would like clarification on what time frame would qualify as a "temporary absence" and when a temporary absence becomes a vacancy. Mayor Bobst said that she believes she made this comment 6 years ago, but with technology being what it is today, unless the Mayor is under anesthesia or there is some other incapacitating issue, a Mayor is always accessible and available. When she is on vacation she often has long and very productive

discussions with the Law Director and with Council President Moran. Law Director Bemer said that there are other communities where the Mayor is not in the City for 50 weeks out of the year or not as hands on. But in our case, the President of Council is available to sign documents and legislation. This section probably covers the limbo state of a very, very serious situation where physically and mentally the Mayor could not perform. In that case, the Mayor could either resign or there would be proceeding to have the Mayor removed due to legal competence, which would be more of a permanent state of affairs. Council President Moran said that in the last 7 years that he has been Council President, he has signed one piece of paper that the Mayor was supposed to sign because she was absent. Other than that, Mayor Bobst is very accessible via e-mail or voicemail.

Mr. Robenalt asked what the procedure is if the Mayor were to become ill and whether Council would have to vote on whether it is considered a temporary absence. Council President Moran said that if the Mayor were to become incapacitated, the Council President takes over that position. Within 60 days, Council appoints a new Mayor for the duration of the Mayor's unexpired term. Mayor Bobst said that what Council President Moran described is what would happen if there were a vacancy. Mr. Hanson said that Mr. Robenalt is asking what the process is to determine that a temporary absence has become a vacancy. Mayor Bobst said that during her time as Council President, there was only one time that there was an issue because of anesthesia for the Mayor, but she did not have to sign anything or perform any duties of the Mayor at that time. She said that in her experience, they have never had to make the decision about a temporary absence.

Mr. Yezbak gave the example of a temporary absence due to maternity leave where the Mayor could still perform her duties. Mayor Bobst agreed and said that there are rare circumstances that a Mayor would be under anesthesia and someone needs to perform their duties, but those are short durations and are usually planned absences. Ms. Campanella said she wonders if it needs to be more clearly defined since it could be an issue for future Administrations. Mr. Hanson asked at what point a temporary absence becomes a vacancy. Mr. Robenalt said he believes that it is what Council President Moran explained. He does not think that they should require City Council to meet every time the Council President has to sign a document, because it defeats the purpose of the section on temporary absence. However, he is not opposed to including a time limit on a temporary absence. The question of a personal leave of absence was discussed and Law Director Bemer said he does not think that anyone would disagree that a personal leave of absence would be considered a temporary absence. Mr. Robenalt said that the Charter says that after 60 days, even a personal leave of absence would be considered a vacancy.

Mr. Robenalt asked if there are any other issues that any of the Commission members would like to discuss concerning temporary absence. Mr. Hvizda asked Mayor Bobst if she agrees with the section regarding temporary absence. Mayor Bobst said that it gives City Council sufficient time to make a decision, and it provides that the Council President serve in the Mayor's capacity on an interim basis and also allows Council to appoint

someone as Mayor. If they don't make a choice within 60 days, the Council President becomes the Mayor for the remainder of the term.

Section 5. Duties and Powers of the Mayor. Mr. Hvizda said that this section is relatively self-explanatory but he asked for clarification on section (2) where it mentions City Council's officers. He asked who would be considered "officers" of City Council. Law Director Bemer said that City Council is the gatekeeper of the expenditures and revenue. The position of Clerk of Council is a direct appointment of City Council and the person who holds that position is considered an employee of City Council. Mayor Bobst said that the Charter Review Commission is also appointed by City Council and she does not have any control over the selection of those members. Mr. Hvizda asked if the City Council President and Council President Pro Tem are considered officers. Law Director Bemer said that City Council elects their President and President pro tem and those positions are considered officers. Mayor Bobst added that City Council is a separate branch of government, which is why she exercises no control over those positions.

Mr. Hvizda asked Mayor Bobst if she has any thoughts on ways to revise Article II – The Mayor. Mayor Bobst said that she thinks this Article is adequate and it provides structure, guidance, and flexibility regarding how they conduct their daily business with the Administration.

Mr. Hvizda asked if there are any duties and responsibilities that Mayor Bobst has taken on, other than what is listed in this section. Mayor Bobst said a lot of these are all encompassing. For instance, they do not hire someone to serve the City in the capacity of negotiator, and she chooses to participate in negotiations with Law Director Bemer. She thinks these duties and responsibilities are broad enough and they encompass her work day. Law Director Bemer agreed, and said that there is a very strong system of checks and balances with City Council and it works well. Because there is a strong Mayor form of government, the Mayor is able to make appointments to the Boards and Commissions and employees, etc., but City Council controls the purse strings, which means they control the priorities of the City.

Ms. Campanella asked for clarification on the sentence that says, "The Mayor may approve or disapprove the whole or any item of an ordinance or resolution appropriating money, but otherwise his approval or disapproval shall be addressed to the entire ordinance or resolution." Mr. Hvizda said that it refers to the line item veto. Mayor Bobst agreed and said that sentence is referring to line item vetoes.

Mr. Hvizda asked Mayor Bobst about her feelings regarding Section (b) Judicial Powers. Mayor Bobst said that the State of Ohio still allows Mayor's Courts to be established but philosophically, she does not believe that the executive branch and judicial branch of government should be one in the same. Rocky River is the host city for a multi-jurisdictional municipal court and we are about making that institution stronger. One of the Communities that is a part of our multi-jurisdictional court did form a Mayor's Court

and they have done a great job of managing that. When North Olmsted formed their Mayor's Court, 34% of the cases in the Municipal Court were basically eliminated. Mr. Hvizda asked if she would have any objection to the language in part (b) Legislative Powers, being removed. Mayor Bobst said she would have no objection to that language being removed from the Charter. However, she does not know what other judicial powers are provided for under this section. For instance, she does have the power to perform marriages. Regarding establishing a Mayor's Court in Rocky River it is not the same issue for us as this section may be for Westlake or Bay Village. Rocky River hosts the Court and we would obviously not establish a Mayor's Court because every dime comes back to the City of Rocky River. Law Director Bemer said that City Council would have to allocate the funds for a Mayor's Court and we have a system of checks and balances in place. Mr. Hanson asked Law Director Bemer if he knows of any other judicial powers that can be conferred upon the Mayor, other than the Mayor's Court. Law Director Bemer responded that he will research the judicial powers and provide information to this Commission.

MOTION: Moved by Mr. Hvizda, seconded by Ms. Hanson, to define judicial powers in ARTICLE II – THE MAYOR, Section 5(c) Judicial Powers. Motion passed by majority acclamation. 7 Ayes – 1 Nay (Robenalt).

Mr. Hvizda asked Mayor Bobst if there are any provisions in the City Charter that make her position more difficult or less cost efficient than necessary. Mayor Bobst said that the Charter serves as a productive framework that provides for an appropriate level of accountability and transparency. It is a guiding document that also provides flexibility so that they can react quickly and seamlessly to some of the challenges that they are faced with.

Mayor Bobst said she would like to make a general comment about the Charter as it relates to how we use technology today. There are a lot of ways that we can communicate very quickly and effectively with residents today. Language regarding how many copies of something are available in the Clerk's office for review should perhaps be changed to reflect that it will appear on the City's website or be provided electronically to anyone who requests it. She asked the Commission to think about technology and our access to it, which may streamline some of the things they will find in the Charter that are over 6 years old. Paper copies are always for review, but the question is whether something like that is really worthy of placing on the ballot for residents' consideration.

Mayor Bobst asked the Commission if they would like her to go through her list of minor items in the Charter that she has found to be obsolete. The Commission said they would appreciate it if she would point those things out to them. Mayor Bobst had the following comments:

In Article III, Section 15, Legislative Procedure, she asked Law Director Bemer about the 72 hour notification rule because she does not see it in the Charter. She wonders if it is

contained in our Ordinances or whether it needs to be included in the Charter. The 72 hour notification rule is that we must post the legislative agenda of Council 72 hours in advance. Law Director Bemer said that there are Codified Ordinances that address the council manic process. Chapter 121.01, Rule 8, identifies the 72 hour rule and much of that will follow Robert's Rules of Procedure of legislative processes. It is also addressed in the Ohio Revised Code. Ms. Hower asked whether the 72 hour notification rule needs to be included in the Charter if it is already contained in the Codified Ordinances. Law Director Bemer said that items that are in the Codified Ordinances derive authority to Council from the Charter, so it does not need to be in the Charter also.

Page 10, Section 18, contains the language regarding 10 copies of standard ordinances and codes being kept in the office of the Clerk of Council and copies shall be available for sale by the Clerk of Council. Mayor Bobst said that this would be an opportunity to include that a copy will be placed on the website or will be provided through electronic media.

On Page 12, Section 3. Department of Finance, the last line in the first paragraph states 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 explained that this sentence can now be removed because, at the time this was put into place, there was a Finance Director that did not hold the required degrees and it was not the Commission's desire to disrupt City Government. It meant that, if the proposed amendment passed, which it did, then it would not apply to the current Finance Director. This could be considered obsolete language because it no longer applies. The Commission agreed that it would qualify as obsolete language.

In Article VI, Section 3 (b), regarding powers and duties of the Planning Commission, the second paragraph talks about the Master Plan to be prepared by the Mayor or his designee by May 15, 2005. Mayor Bobst explained that we will start the Master Plan review process later this fall and hope to have a finalized document by May 15, 2015. The Master Plan is reviewed every 10 years and the date of May 15, 2005, could also be considered obsolete.

Mayor Bobst concluded by saying that she has asked all of the Directors to review the Charter as a whole and specifically the Articles that pertain to their departments. If they have any suggestions or concerns regarding the Charter, then she advised them to bring them to this Commission for review. To date, no specific concerns have been brought to her attention.

Mr. Robenalt referred to the 10 copies that are said to be available in the Clerk of Council's office and asked whether the Mayor has an understanding of what the budget is for paper. He wonders if the Mayor recommends that this Commission try to move in the direction of becoming "green" or sustainable. Mayor Bobst said that those documents can be provided electronically to anyone requesting them at no cost to the City, and they disseminate copies to the library and other places now. The fact that it defines 10 copies

is not necessary anymore. She suggested adding language that says, “Documents are available upon request for an individual’s review.”

Mr. Robenalt said that he thinks they should address the recommendations the Mayor raised tonight at the time they discuss each specific section. The Commission members agreed.

Mayor Bobst thanked the Commission for their thorough questions and a good review of Article II.

Mr. Robenalt thanked the Commission for their attendance tonight and said that the next meeting will be a review of Article III – The Council, and all City Council members will be invited.

There being no further business, the meeting was adjourned at 7:22 p.m.

Date

TOM ROBENALT, Vice Chairman

Kate Straub, Secretary