

MINUTES OF MEETING
2014 CHARTER REVIEW COMMISSION
MAY 14, 2014

Members Present: Campanella, Keenan, Hanson, Hvizda, Hower, Welsh, Urban

Council Members: Brian Sindelar, At-Large Councilmember

Chairman Urban opened the May 14, 2014 meeting of the 2014 Charter Review Commission at 6:00 p.m. in Council Chambers at Rocky River City Hall. Mr. Robenalt and Mr. Yezbak are not able to attend tonight's meeting.

Mr. Urban asked the Commission if they have any corrections to the Minutes of the May 7, 2014 Charter Review Commission meeting.

MOTION: Moved by Mr. Welsh, seconded by Mr. Hvizda, to approve the Minutes of the May 7, 2014 Charter Review Commission meeting. Minutes were approved by unanimous acclamation (Abstain: Hower, Keenan).

Charter Articles for Review: ARTICLE III – THE COUNCIL
Section 12. Clerk of Council
Section 13. Enactment of Zoning Ordinances

Discussion Leader: John Urban

Mr. Urban said that Council Clerk, Misao Kurokawa, is unable to be here tonight because she is out of town.

ARTICLE III – THE COUNCIL.

Section 12. Clerk of Council.

No comments by Commission Members.

Section 13. Enactment of Zoning Ordinances

Mr. Urban said that this section provides for the procedure that the City has to follow and how we notify people of various zoning changes. The list of property owners that must be notified can be as large as 20 or more properties, depending on where the property is located. One of the issues the Council Clerk wanted to bring to this Commission's attention is the requirement that these notices must go out by Certified Mail at least 20 days prior to the date of the public hearing. As this Commission may well know, Certified Mail is not well received by people. At the cost of \$6.48 each, most of them were coming back to the Clerk's office and needed to be re-mailed in order to get service on them.

Mr. Urban said that the Ohio Statute on the requirement for notices for such zoning changes, which was enacted a number of years ago, allows for these notices to be sent out by First Class Mail and this may be something this Commission may want to consider, as well.

Mr. Urban said that we have a couple of extra things in our Charter that are not contained in the State Statute. For instance, the State Statute is almost identical, word for word, to this section in our Charter, except for the last sentence in our Charter, which reads, “The passage an emergency measure of any ordinance effecting a change in zoning or districting is prohibited.” An additional difference is the State Statute says that “The failure of delivery of such notice shall not invalidate any such ordinance, measure or regulations.”

MOTION: Moved by Mrs. Hower, seconded by Mr. Hanson, to add discussion of changing language to match State statute and keep the last sentence as currently written, in **ARTICLE III, THE COUNCIL, Section 13(3). Enactment of Zoning Ordinances** to the Master List of Items for Further Discussion. Motion passed by unanimous acclamation.

MASTER LIST DISCUSSION

Mr. Urban suggested they begin the discussion of the Master List with the item they just added, regarding the notification process for proposed zoning changes.

Master List Item #11. *Discussion of changing language to match State Statute and keep the last sentence as currently written, in **ARTICLE III, THE COUNCIL, Section 13(3). Enactment of Zoning Ordinances.***

Discussion: Mrs. Hower said that the Charter requires that notices for rezonings be mailed via Certified Mail so that there is confirmation of delivery. If something is mailed via First Class Mail, then the City will not receive confirmation that it was delivered. She said that one of the neighbors could use the defense that they never received the notice if they wanted to make it an issue. Mr. Urban said that the State statute says that failure of delivery of such notice shall not invalidate any such Ordinance, so they could revise our Charter to read that failure of delivery of the regular mail notice shall not invalidate any Ordinance. Mr. Urban said that the return rate on Certified Mail receipts is very low, according to the Clerk of Council. Mrs. Hower asked what the return rate actually is, but Mr. Urban did not have the answer to that question. He informed the Commission that the Clerk said that she has tried sending them on Friday so that they would be delivered on Saturday, but it was not anymore successful. In addition, she is not notified of the mail that is undeliverable for some time.

Mrs. Hower said that she doesn't think it is a problem to follow the State statute. Mr. Urban said he had lunch with a Law Director from another city, who was shocked that we still sent proposed rezoning notices out via Certified Mail.

Mrs. Hower asked if anything has ever come up in the past where the Clerk of Council has needed the receipts she received to help the case for the City. Mr. Urban said that he does not have an answer to that question. Mr. Hanson said that they could just use a Certificate of Mailing that is kept at City Hall. Mr. Urban explained that a Certificate of Mailing is a form that is filled out and taken to the post office, where they stamp it to show that you actually mailed it. Mr. Hanson said he thinks that could be a way around Certified Mail because he

thinks there should be some sort of proof that they mailed the notices. Mr. Welsh said that if the State only requires that notices be mailed via First Class mail and that is what the City does, then the City has done their due diligence. Mrs. Campanella said she thinks they should consider the fact that the Clerk of Council says that the Certified Mail process is not working. Mr. Hanson said that there will be problems with any system of notification, but they should try to minimize the problems and wonders if it is worth putting it on the ballot. Mr. Urban said that the State has had these regulations on the books since 1970 and he imagines it has been litigated many times since then. The Commission decided that they would like to invite the Clerk of Council to discuss this issue further. Mr. Urban said that the Clerk informed him that she will be available to attend on May 28th.

Master List Item #1: *Discussion to clarify the meaning 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.” (See 4-2-14 Minutes for discussion.)*

Mrs. Hower explained that when the Mayor was before the Commission, she asked Law Director Bemer for clarification. She relayed that there is a compensated RTA appointment in the West Shore, which is currently held by Westlake’s Mayor Clough and the Mayor asked Law Director Bemer how that would be viewed in the context of our Charter. The Law Director was going to get back to this Commission with information. Mr. Welsh said some of the other cities actually list the positions the Mayor can and cannot hold in their Charters. Mrs. Hower recalled that there was some confusion because there is not a comma in the sentence 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.”

The Commission discussed changing the word “compensated” to “elected”. Mr. Sindelar said that he believes that under State statute, a person cannot hold two elected public offices. Discussion was had about changing it from saying “compensated public office” to “compensated elected office”. That way, a Mayor would be able to accept an appointment to a compensated position, such as the RTA appointment. They then discussed the need for the word “public” in those phrases and it was determined that if the term “public” was eliminated, then she would not be able to hold any other employment in the City of Rocky River.

Mrs. Campanella wondered whether the removal of the term “public” in those two phrases would help to clarify anything. Mrs. Hower said that it could clarify some things in the eyes of the residents. Discussion was had about Council being able to add a comma to that section and whether it changes the meaning of that sentence. Mrs. Campanella said she thinks that it changes the meaning because with the comma, you cannot read it to mean anything else. Without the comma, it can mean one of two things. The Commission decided to defer to Law

Director Bemer about that fact. Mr. Urban said that they are sure they are going to make the change to read, “any other compensated elected public office,” in order to make it clearer and allow the Mayor to serve on an outside Board or Commission because this Charter Review Commission believes it is for the benefit of Rocky River for the Mayor to serve on outside Boards. Mr. Urban said that if this Commission is satisfied, they can move to add this to the ballot, and that Law Director Bemer will review all of their recommendations anyway.

MOTION: Moved by Mr. Hanson, seconded by Mr. Hvizda, to revise the second sentence of **ARTICLE II – THE MAYOR, Section. 2. Qualifications** to read, “He shall not hold any other *compensated elected public office, or public employment* of either the City of Rocky River or 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.” Motion passed by unanimous acclamation.

Mr. Welsh asked if they will address the same qualifications as it refers to Council in **ARTICLE III – THE COUNCIL, Section 3. Qualifications.** It is not included on the Master List, but he wonders if they should have it read the same way as it reads for the Mayor. Mrs. Hower said that it makes sense for them be the same. Councilman Sindelar our Charter does not bar a member of City Council from serving on the School Board. Mr. Urban suggested they mirror the same language. Mr. Sindelar cautioned the Commission that if they made that change, then a teacher in the City cannot also serve as a City Council member. Mrs. Hower said she would want to allow a teacher to be a member of City Council. Mr. Welsh suggested they change this section to add “elected” and a comma. It should read, “No member of Council shall hold any other compensated elected public office, or public employment of the City of Rocky River.”

MOTION: Moved by Mr. Hvizda, seconded by Mrs. Campanella to change the last sentence of **ARTICLE III – THE COUNCIL, Section 3. Qualifications,** to read: “No member of Council shall hold any other compensated *elected* public office, or public employment of the City of Rocky River.” Motion passed by unanimous acclamation

*Master List Item #2: Discussion of **ARTICLE II – MAYOR; Section 3. Removal,** to coincide with any changes in the terms of qualifications following discussion of item #1 above and further clarification about “crimes of moral turpitude”. (See 4-2-14 Minutes for discussion.)*

Mrs. Hower said that Law Director Bemer clarified the meaning of “crimes of moral turpitude” for the Commission. Upon further reflection, the Charter Review Committee decided that no change is recommended for this section.

MOTION: Moved by Mr. Hanson, seconded by Mr. Welsh to remove discussion of **ARTICLE II – MAYOR; Section 3. Removal,** to coincide with any changes in the terms of qualifications following discussion of item #1 above and further clarification about “crimes of moral turpitude,” from the Master List of Items for Further Discussion and not

recommend a change to this section in the Charter. Motion passed by unanimous acclamation.

Master List Item #3: Discussion regarding the length of term in ARTICLE III – THE COUNCIL, Section 2. Term of Office. (See 4-9-14 Minutes for discussion.)

Mr. Urban suggested that this discussion covers 3 of the Master List Items: Terms of office for Mayor, City Council Members, and Law Director. Mr. Hanson said that Mayor Bobst was pretty adamant that she did not want the term changed from 2 years to 4 years. Mrs. Hower said that all of the representatives said they were fine with the 2 year terms. Mr. Hvizda said he thinks it is time they put it to the vote of the people. Mrs. Campanella and Mr. Welsh agreed. Mr. Welsh said there was something in the State Code that the term of Mayor shall be for 4 years. Mr. Urban said that part of their justification could be that even the Statute recommends 4 year terms. Mrs. Campanella said she does not see any advantage to 2 year terms and that most other cities and suburbs have 4 year terms. Mrs. Hower said she thinks it is fine to see what the people say and it is time again to put it to the people to vote. Mr. Hvizda agreed and said the advantage is that they will attract some more qualified people to run for office and he does not see a disadvantage to it. Mrs. Hower said that there are certainly enough benefits to putting a sound rationale for putting it on the ballot. Mr. Welsh said that when it was put to vote 12 years ago, it was defeated soundly. If the voters don't want that change, then it will be defeated again.

Mr. Hvizda said he would like to discuss staggered terms for At-Large Council and Ward Council members so as to maintain some continuity. Mr. Urban said that it would be a very complicated ballot issue because some would be elected for the correct terms and then for a lesser term the next time around. He suggested taking this in small steps and see if the 4-year terms of office are passed. The next Charter Review Commission can propose staggered terms.

MOTION: Moved by Mr. Hvizda, seconded by Mr. Hanson, to recommend the following changes to the Charter: Change the term of office to four (4) years for the Mayor in **ARTICLE II – THE MAYOR, Section 1. Term.** Change the term of office to four (4) years for the members of Council in **ARTICLE III – The Council, Section 2. Term of Office.** Change the term of office to four (4) years for the Director of Law in **ARTICLE IV – ADMINISTRATIVE DEPARMENTS, Section 2. Department of Law.** Motion passed by unanimous acclamation.

Master List Item #4: Discussion of ARTICLE III – THE COUNCIL, Section 6. Removal. (See 4-9-14 Minutes for discussion.)

Mr. Hanson said that they now have an understanding of moral turpitude. He recalled that Mr. Robenalt said that they should change it to include conviction of a felony before the word "crime". Mr. Hanson said at the time, he agreed with that and suggested they add it to the Mayor's Removal section, as well. Mr. Urban said that if a person is convicted of a felony, then he or she cannot hold public office anyway. Discussion was had about some

people who currently hold office in other cities who were convicted of felonies. Mr. Urban said that they are not supposed to be able to run for office if you are a convicted felon, so those people may have had their conviction expunged. Mr. Urban said that he cannot see that a convicted felon would attempt to run in Rocky River. Mr. Welsh suggested they not recommend changing this section.

MOTION: Moved by Mr. Welsh, seconded by Mr. Hvizda, to remove this Item from the Master List and not recommend a change to this section in the Charter. Motion passed by unanimous acclamation.

Mr. Sindelar asked the Commission if they know if the Law Director has always been an elected position. Mr. Hvizda said that it has always been elected. He said that they tried several years ago to get it to the point where Mayor Martin could appoint the Law Director, Police Chief and Fire Chief, but it did not pass. He thinks that Mayor Knoble may have brought that issue up, as well. Mr. Welsh said he believes that an elected Law Director helps to leave the politics out of it. Mr. Sindelar said usually people choose their lawyer because he is a trusted advisor and not because someone told them they have to. However, he sees arguments on both sides, but he feels that it is odd that the Law Director is the only Director position that is elected. Mrs. Hower pointed out that if there is a conflict between the Mayor and the Law Director, then this Commission is asking them to wait 4 years to resolve it.

Master List Item #5. Discussion referencing the number of copies of Ordinances and codes to be available in the Clerk of Council's office in **ARTICLE III – THE COUNCIL, Section 18. Adoption of Ordinances by Reference.** (See 4-9-14 Minutes for discussion.)

Mr. Hanson asked if this would be an item that could be changed by Council as obsolete language processes. Mrs. Hower said that the issue is that there were 10 copies available in the Clerk's office, but there are never 10 people coming to look at it simultaneously. Mr. Sindelar said the Sunshine Laws say the City must make information available for copying but does not specify the number of copies that must be made available. Mr. Hanson said he does not believe removing the number of 10 copies would be considered changing the meaning in any way.

Mr. Urban said they could say it is obsolete due to a change in technology and/or the Records Act, which requires certain things. He thinks they could propose change the language to say that, "Copies will be available in accordance with the Records Act." This is an item that could be recommended to Council for that change.

MOTION: Moved by Mrs. Hower, seconded by Mrs. Campanella, to send to Council the recommendation to change the last sentence of **ARTICLE III – THE COUNCIL, Section 18. Adoption of Ordinances by Reference,** to be in accordance with the Ohio Records Act or Freedom of Information Act. Motion passed by unanimous acclamation.

Master List Item #6. *Discussion of the requirement of Architects and Engineers to hold a license in the State of Ohio in **ARTICLE VI. BOARDS AND COMMISSIONS, Section 5(a).** (See 4-30-14 Minutes for discussion.)*

Mr. Urban said the discussion was what license you have to hold in the State of Ohio. Mrs. Hower said she recalled that Mr. Christ said that an Engineer has to be licensed in the State of Ohio in order to perform such duties. The Charter reads that, "Each member of the Design and Construction Board of Review shall be an architect or engineer duly licensed or registered by any State of the United States to practice their profession." Mr. Hanson said that the point that was brought up is that you have to be licensed in the State of Ohio to be part of this Board.

MOTION: Moved by Mr. Hanson, seconded by Mr. Hvizda, to change the language in **ARTICLE VI. – BOARDS AND COMMISSIONS, Section 5(a)**, to read, "Each member of the Design and Construction Board of Review shall be an architect or engineer duly licensed or registered by *the State of Ohio* to practice their profession."

Mrs. Hower asked if Mr. Christ will have the opportunity to review this change to make sure the language is correct because she wants to be sure they captured his intent because he is closer to it than this Commission is. Mr. Urban said that Law Director Bemer will be consulted on all of these changes and since he has missed these last two meetings, he would like the opportunity to look at these recommended changes and bring them back to this Commission if there is something that stands out to him.

Master List Item #7. *Discussions of adding an attorney to the required professions of the members of the BZA; to require that the professionals be licensed in the State of Ohio; and adding the number of alternates required for the BZA in **ARTICLE VI. BOARDS AND COMMISSIONS, Section 2(a).** (See 4-30-14 Minutes for discussion.)*

Mr. Urban said that they removed the issues about the alternates at the last meeting. The only remaining decisions for this Commission is whether to require that professionals be licensed in the State of Ohio. Mrs. Hower said she recalls that another concern is that at least one of the members be an Attorney. Mr. Urban explained that he spoke with the Administration and a couple of members of City Council. The Mayor indicated to him that she would always look at the makeup of the Board and see what profession is needed on each one. She feels that it would not be a good idea to be constrained by the requirement of having to put an Attorney on the Board of Zoning Appeals. Mr. Hvizda said he agrees because the Law Director is an Attorney and is there to advise the Boards and Commissions. Mrs. Hower said she feels is well balanced with an Attorney, but there is no need to constrain the Mayor by requiring an Attorney because they have the Law Director to consult. Mr. Urban asked whether City Council has to approve the Mayor's appointments. Councilman Sindelar said that they do not approve the Mayor's appointments to the Boards and Commissions. He said that Law Director Bemer is there to give the Boards advice, but it is ultimately up to the Boards to make a decision on what is before them.

Mr. Urban said that they probably want this section to read the same way they recommended the prior item to read. He suggested they change the language to read, "...at least three (3) of whom shall be architects or professional engineers duly licensed or registered by the State of Ohio to practice their profession."

Mrs. Campanella asked the Commission how they resolved the alternate situation that is contained in this Master List item. Mr. Urban said that the Mayor advised him that she will look at all of the alternates to be sure there are at least 2 alternates on every Board and Commission, rather than be constrained by the Charter. The General Provisions section of ARTICLE VI says that, "There shall be no more than 2 alternates appointed to each Board or Commission..." Mr. Hanson said that it was a big discussion at the time. Mrs. Hower said that it was because it was inconsistent and they were not sure who was enforcing the rules. At the time, they did not realize that it said there could be up to 2 alternates in the General Provisions section and found in their review that there were Boards that were required to have 2 alternates but actually only had 1 alternate. Mr. Urban said that all of the Boards and Commissions members said that it is working as is, and the Mayor feels that it is working well also.

MOTION: Moved by Mr. Welsh, seconded by Mr. Hanson to change the language regarding the organization in ARTICLE VI. BOARDS AND COMMISSIONS, Section 2(a), to read "...at least three (3) of whom shall be architects or professional engineers duly licensed or registered by *the State of Ohio* to practice their profession." Motion passed by unanimous acclamation.

Master List Item #8. Discussion of adding the requirement for 2 alternates for Planning Commission in ARTICLE VI – BOARDS AND COMMISSIONS, Section 3(a). (See 4-30-14 Minutes for discussion.)

Mr. Urban said that this issue has been resolved and according to the Mayor, he does not believe that there is a problem with alternates for any of the Boards and Commissions. The Mayor has the power to have alternates, as needed, in the General Provisions section of ARTICLE VI. Again, the Mayor does not think it is necessary to make it mandatory. Mr. Hanson said that it all seems to be working.

MOTION: Moved by Mr. Welsh, seconded by Mr. Hvizda, to remove Item #8 from the Master List and not recommend a change to this section in the Charter. Motion passed by unanimous acclamation.

Master List Item #10. Mr. Urban said that this item deals with Executive Sessions and he would like to have Law Director Bemer present for this discussion because he requested that this Commission consider a change to this section.

Mr. Urban said that they will discuss Master List Item #10 and #11 sometime in the next two weeks. He will invite the Clerk of Council to attend the meeting on May 28th for further discussion and clarification of Sections 12 and 13 of ARTICLE III – THE COUNCIL.

Next week's meeting will review ARTICLE V – CIVIL SERVICE COMMISSION and if there is time following that discussion, they will continue with the Master List. If there are no more issues and all of the recommendations for changes have been made, meaning their Charter Review is complete, then they will approve the list of recommended changes on May 28th. Their recommendations will first go to Law Director Bemer to draft the Ordinances and then go to City Council for passage to the ballot. He said he thinks they may want one more meeting to review the ballot language before it is forwarded to City Council.

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

Date

John Urban, Chairman

Kate Straub, Secretary