

Meeting Minutes for the Charter Review Commission
June 19, 2014
Columbus City Hall, Conference Room 225

Attendance:

- Marchelle E. Moore, Esq., co-chair
- Representative Michael F. Curtin, co-chair
- Dawn Tyler Lee, commissioner
- Jeff Cabot, commissioner
- City Auditor Hugh J. Dorrian, commissioner
- City Clerk Andrea Blevins
- Josh Cox, chief counsel, city attorney's office
- Bryan Clark, Columbus City Council liaison to the Commission

Mr. Curtin welcomed fellow Commissioners, staff, and the public to the sixth meeting of the Charter Review Commission.

Approval of the Minutes: Mr. Curtin requested the following changes to the minutes from the last meeting: On the second page, second paragraph, change "address" to "addressed". Also on the second page, in third paragraph from the bottom, strike the two sentences after the phrase "could be considered". On the third page, second paragraph from the bottom, change "change if" to "be changed to". Finally, on the fourth page, second full paragraph from the bottom, add the word "office" after the word "public".

Auditor Dorrian made a motion, seconded by Ms. Tyler Lee, for adoption of the Minutes for the June 11th meeting as Amended.

- Yeas – 5
- Nays – 0
- Motion carried

Clerk Blevins stated there were no public comments received on the commission website since the June 11, 2014 Commission meeting.

Auditor Dorrian presented the proposed language for the Sinking Fund including the addition of the Mayor and the City Treasurer to the City Auditor as the offices presenting data and certifying funds for the tax budget ordinance to Council and that the proposed changes have an effective date of July 1, 2015 to give approximately six months for administrative changes to occur.

Mr. Curtin asked that the effective date be added to proposed language of the amendment. Mr. Curtin asked how the Commission would present the changes to the voters while out in public. Auditor Dorrian responded that this would eliminate duplicative services, eliminate an office that is no longer actively needed, and streamline government efforts.

Mr. Curtin called for a vote on the draft language. Ms. Moore asked if the Commission was voting on the language going on the ballot. Mr. Cabot added the understanding was that draft language would be on the website and available to the public before a final vote by the Commission. Mr. Clark confirmed that staff's recommendation would be to vote to approve as draft language so staff understands the sense of the Commission and that no further research or changes should be needed with the understanding that the Commission will take final action on June 30 on all the proposals to Council. Mr. Curtin stated that this would be a vote to finalize language for the website and final vote during the June 30 meeting.

Auditor Dorrian made a motion, seconded by Mr. Cabot, to approve the proposed language to be drafted into a final format for consideration by the Commission.

- Yeas – 5
- Nays – 0
- Motion carried

Ms. Kish presented the updated language for the Utilities amendment (Sections 118-124 and 194) to include all the utilities owned and processes that are currently in place. Mr. Curtin asked if this new language changes city policy regarding how it works with non-profit organizations for forgiveness of their bills. Mr. Clark responded this language builds on Council's desire to expand what is permissible under the Charter to those who are eligible and forgive a percentage of their bill.

Mr. Cabot asked if the footnote on the bottom of the second page, Section 123, of the draft language should be removed. Ms. Kish responded that it would be removed.

Ms. Tyler Lee made a motion, seconded by Auditor Dorrian, to approve the proposed language to be drafted into a final format for consideration by the Commission.

- Yeas – 5
- Nays – 0
- Motion carried

Mr. Clark presented the updated language for the Ethics section of the Charter including retaining the exception of the Council President serving as the Acting Mayor, moving the provision of the prohibition of a city official's benefit from a contract job, work or service from the qualifications section to the Prohibited Acts section, and addressing the legal question of the term "willful". Mr. Cox stated the relevant sections of the Ohio Revised Code (ORC) were reviewed for the drafted provision. Mr. Clark recommended that instead of referencing the bulk of potential violations, current state law regarding ethics should continue to control as applicable.

Auditor Dorrian asked for clarification that the word "willful" was going to be removed. Ms. Moore asked if Section 2921 called for the forfeiture of office under violations and if staff could speak to other penalties offered. Mr. Cox gave the example that soliciting and receiving improper compensation allows a disqualification of public office or employment for seven years and added the Charter provision would incorporate all of the ORC 2921 violations and provisions and would then disqualify the individual from their position.

Auditor Dorrian stated concern about removing "willful" from the amendment language. Mr. Cabot also expressed concern about an individual that might unwittingly benefit from a contract and have to forfeit his/her office. Mr. Cox replied he was not aware of a violation of ORC 2921 that had not been done unwittingly. Mr. Cabot replied that the standard was more than solely following ORC 2921.

Ms. Moore asked what the hesitation was to following the statute. Mr. Clark responded that the current framers of the Charter believed that if an individual had a beneficial interest a city contract, that person would lose their office and that in reviewing ORC 2921, the state of mind standards were not ones that could be done accidentally and many of the violations were felonies.

Mr. Curtin stated that he was not comfortable moving forward if there were substantive conflicts and would like to see clarifications made for Auditor Dorrian and that Mr. Cabot's concerns were addressed. Mr. Cabot proposed that the language could read "any willful violation of this Section or any conviction under 2921". Mr. Curtin asked if there were any legal hesitation to that language in the Charter.

Mr. Cox stated that the City Attorney's preference would be to handle the section legislatively and not have an ethics provisions in the Charter. Auditor Dorrian asked if there were issues with leaving the language as it is currently written.

Ms. Moore asked Mr. Cox to clarify his statement about handling ethics legislatively. Mr. Cox responded that the prohibition in the Charter is already covered by state code and that Section 227 only adds the forfeiture of office. Mr. Clark responded that this is the only section that pertains solely to Council, there would be concern in removing it, and is an appropriate check to have in place for elected officials. Mr. Clark added Council would be supportive of Mr. Cabot's suggested wording. Mr. Cabot asked if the current language already accomplishes what it needs to. Mr. Clark replied only with regard to contracts and only in a limited instance.

Auditor Dorrian stated that he wanted to keep the provision in the Charter. Mr. Cabot and Mr. Curtin agreed with keeping the provision.

Mr. Clark presented the revised language on the equal rights Charter amendment and added the only substantive change was the removal of reference to a contractor of the City and read the new section in its entirety.

Mr. Cabot asked if this was already accomplished in the statutes of the city. Mr. Clark responded that this amendment is a long time coming and sends a strong message on the 100th anniversary of the Charter's adoption. Mr. Curtin added equal rights language is also found in most fundamental documents. Mr. Cox added there is no legal reasoning for this provision but policy reasons are valid for adding the language. Ms. Kish added the Mayor's support for any type of equal rights movement either by ordinance or in the Charter. Auditor Dorrian added his support for the provision.

Ms. Tyler Lee made a motion, seconded by Auditor Dorrian, to approve the proposed language to be drafted into a final format for consideration by the Commission.

- Yeas – 5
- Nays – 0
- Motion carried

Mr. Clark presented the new language for the open meetings and public records Charter Amendment including the presumption that records are easily available and that standards for these records are the state law.

Mr. Curtin asked what this would change in the Charter. Mr. Clark responded that the Charter is currently silent on public records. Ms. Moore asked if the language proposed tracked public records law and recommended the language change to mirror the direct wording of the state statute.

Mr. Clark presented the updated language for open meetings language and stated there should be no question that certain public bodies are subject to open meetings laws and operate under full Sunshine laws. Mr. Clark added that the proposed language does not amend state law standards for requirements for a public body but adds to the definition of what constitutes a public body.

Auditor Dorrian added that some boards have a confidentiality clause that might cause conflict with this language.

Mr. Curtin proposed language that would replace "appointed by the mayor or council" with "appointed by elected officials". Ms. Kish replied that would be acceptable.

Ms. Kish presented the updated language for Recreation and Parks, Section 128, which would remove the recommendation of the Board of Education, and the recommendation of the non-existent Council of Social Agencies or its successor. Ms. Kish added the language would retain the Columbus and Franklin County MetroParks as having a representative on the Board, yet removes the qualification of proficiency in forestry and retains the residency requirement.

Mr. Cabot commented on the original language and the need to add Franklin County because the framers were looking at how these services are expansive and regional and added that “contiguous counties” might be included for the residency requirement. Mr. Clark stated Council would defer to the administration on the matter. Ms. Tyler Lee added there could be benefit from having wording including contiguous counties. Auditor Dorrian also deferred to the administration.

Mr. Curtin asked for clarification on the residency language proposed. Ms. Kish replied the Commission would be agreeing on “bona fide residents of the city of Columbus or Franklin County” with the potential to add “Franklin County or a contiguous county”.

Ms. Tyler Lee made a motion, seconded by Auditor Dorrian, to approve the proposed language to be drafted into a final format for consideration by the Commission.

- Yeas – 5
- Nays – 0
- Motion carried

Mr. Clark presented the revised language for city official qualifications, Sections 6, 58, 66, and 79, and added that all officeholders now have standardized qualifications for election. The Commission discussed the proposed one year residency requirement and the current provision in the Charter that an individual running would need to be an elector of the city.

Auditor Dorrian asked if the phrase, “excepting that at the first election under this charter the auditor/city attorney shall be elected for a term of two years” in Sections 66 and 79 could be removed as is no longer applicable. Mr. Clark responded that it would.

Mr. Cabot made a motion, seconded by Auditor Dorrian, to approve the proposed language to be drafted into a final format for consideration by the Commission.

- Yeas – 5
- Nays – 0
- Motion carried

Mr. Clark presented the proposed language changes on the proposed “inability to hold office” Charter amendment.

Mr. Curtin asked if this was essentially the same as granting power of attorney. Mr. Clark replied it was.

Mr. Curtin asked if the President of Council could be the Acting City Mayor and serve as both simultaneously. Mr. Clark responded the current language in the Charter allows for the Council President to serve as Acting City Mayor. Mr. Clark added staff attempted to make as few changes as possible to the currently established line of successors.

Mr. Clark noted that the provision's time period for permanent inability was changed to 90 days but still kept the requirement that "the individual has not taken any action he or she has the authority to take within this time frame and has not filed assigned temporary authority".

Ms. Moore asked about the procedural execution and if there was a hierarchy to the agents listed. Mr. Clark responded that there would be a need to work on some of the administrative procedures.

Auditor Dorrian asked if there would be a health professional on the panel to make the decision. Mr. Cox responded that the Charter would outline what constitutes a forfeiture of office and a probate court would decide whether that criterion was met.

Mr. Clark added that listing all the potential disabilities would be near impossible and that the broad definition of inability was taken verbatim from the 25th Amendment of the US Constitution.

Mr. Cabot asked whether the language in Section 64-2 referencing the "Director of Public Safety or Director of Public Service shall" should be changed because it was giving an option under a "shall" requirement. Mr. Curtin asked if the first obligation should be given to the Director of Public Safety and the second obligation to the Director of Public Service. Ms. Kish offered replacing "or" with "and". Ms. Moore asked what would happen if those two directors come to an impasse. Mr. Curtin replied this would add an extra layer of caution to the decision.

Mr. Cox added the only two courts that could entertain this type of case would be the Court of Appeals and the Supreme Court so it would be a panel of judges making the decision. Mr. Cabot asked what the time period was for temporary authority because a temporary agent could potentially serve rest of the four-year term and not be an elected official. Ms. Kish replied staff would work on language for a time period.

Mr. Clark presented the draft Charter amendment on the prohibited use of public funds and read the section in its entirety.

Mr. Curtin addressed the communication of bond issues and asked if this language would limit the common practice in place. Mr. Clark replied it would not.

Mr. Cabot asked what prompted this provision to be added to the Charter. Mr. Clark responded that this issue was so fundamental that it should not be in the control of council action but the electoral adoption. Mr. Cabot asked if the state statutes regarding this issue applied to the city. Mr. Clark responded that they did not. Mr. Cabot clarified that it was state statutes and not the state constitution that applied to the city. Mr. Clark replied that was correct.

Mr. Curtin asked that this issue be put on hold for further analysis and refinement.

Mr. Clark presented the draft Charter Amendment for the Council, Sections 3-19, 33, 34, 145.

Auditor Dorrian asked about Section 19 language reading, "except further that an ordinance placing a charter amendment before voters may contain more than one subject to be amended and submitted as a single ballot issue" conflicted with the idea of one subject on a single ballot issue for the purpose for clarity. Mr. Clark responded this provision came from an example out of Cleveland when its Council adopted an entirely new Charter and needed all issues to pass at the same time. Mr. Curtin replied that this issue should be given to the discretion of Council.

Deputy Director Eccard from the Civil Service Commission presented proposed changes to Section 7, 15, 59 and recommended changing the timeframe referenced in the sections from “one year” to “three years”.

Mr. Curtin asked if this would change the Charter to update it to the current practice. Mr. Eccard replied that this updated language and timeframe would cut down on redundancies and bureaucracy.

Mr. Cabot asked if this language could be removed entirely. Ms. Kish replied the Civil Service Commission is Charter driven and the proposed change is one that can be made immediately and that future Charter Review Commissions could examine the necessity of Section 149.

Ms. Tyler Lee made a motion, seconded by Auditor Dorrian, to approve the proposed language to be drafted into a final format for consideration by the Commission.

- Yeas – 5
- Nays – 0
- Motion carried

Mr. Clark presented proposed language for officeholder compensation and recommended the establishment of a Citizens’ Commission on Elected Official Compensation in the Charter.

Ms. Tyler Lee asked who would staff this council. Mr. Clark responded there is the potential for a lot of variability in who might staff the commission. Auditor Dorrian added that there should be a broad range of economic representation.

Mr. Cabot gave support of a cost of living cap but stated it should not be added to the Charter. Auditor Dorrian stated the cap was needed. Ms. Kish added the administration asked for the cap specifically to show restriction. Ms. Moore and Ms. Tyler Lee agreed with Mr. Cabot about removing the salary cap.

Mr. Clark presented on Elections, Sections 41-56, 200-223, and 224, and proposed recommendations for general provisions, campaign finance, ballots, nominations, petitions for ordinance, referendum, recall, charter amendment, initiative and referendum, charter amendments, recall, establishment as voting as fundamental right, and establishment of a sunset provision on initiated ordinance or referendum.

Mr. Curtin stated that discussion of this item should be conducted at the next meeting.

Ms. Kish presented proposed language for residency for city employees and concluded there were four different options to consider under the current state of the public employee residency law.

Mr. Curtin stated that discussion of this item should be conducted at the next meeting.

Mr. Clark announced the future meeting dates would be Thursday, June 26, 2014, including a meeting and a public hearing, and a meeting on Monday, June 30, 2014.

Ms. Moore made a motion, seconded by Mr. Cabot, to adjourn the meeting.

- Yeas – 5
- Nays – 0
- Motion carried