

Meeting Minutes for the Charter Review Commission
May 22, 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 fourth meeting of the Charter Review Commission.

Approval of the Minutes: Mr. Curtin requested the following typographical and grammatical changes to the minutes from the last meeting: On the first page, second to last line, change "static" to "statistics". On the second page, in the second paragraph, second line from the bottom, change "fundament" to "fundamental". Additionally, on the second page, third paragraph from the bottom, change "who have" to "that have". On the third page, third paragraph from the top, change "publically" to "publicly". Finally, on the third page, fourth paragraph from the bottom, add the word "the" before the word "thought".

Mr. Cabot made a motion, seconded by Auditor Dorrian, for adoption of the Minutes for the April 25th meeting as Amended.

- Yeas – 5
- Nays – 0
- Motion carried

Clerk Blevins summarized the public comments received on the commission website since the May 7, 2014 Commission meeting. The first comment was received on May 19, 2014 on the subject of Council composition, public meetings law, and rules for speaking before Council. The second comment was received on May 18, 2014 on the subject of Council composition, public meetings law, rules for speaking before Council, and campaign finance laws. The final comment was received on May 21, 2014 on the subject of Council composition. Clerk Blevins stated copies of the comments are reflected in the Commissioners' packets.

Mr. Greg Davies, Director of Public Utilities, presented Sections 118-124 of the Columbus City Charter. Mr. Davies reported that in Sections 118, 119, 120, 122, and 124, the current terminology in these sections does not reflect the full services of the Public Utilities department. Mr. Davies also reported that Sections 118, 119, and 120 do not adequately describe the funding mechanisms utilized by the department, and Sections 121 and 123 are no longer reflective of current times and no longer applicable. Mr. Davies recommended that the applicable sections be changed from water-centric references to reflect the mission of the department and that water references be updated to "utility" or "utilities". Mr. Davies also recommended that the applicable sections be updated to include debt obligation and interest as a part of the cost of service calculations and that Sections 121 and 123 be stricken. Finally, Mr. Davies

recommended that Section 194 be updated to reflect common business practice that will prevent unjust discrimination in service or rates should the utility allow a franchise.

Auditor Dorrian concurred with Mr. Davies recommendations. Auditor Dorrian reported on Section 121, subparagraphs A and B, as well as the Depreciation Fund. Auditor Dorrian clarified that if the City were to follow these sections as written, it would pay less than half its debt and recommended the Section be deleted. Auditor Dorrian commented on Section 123 and asked that it be eliminated. Auditor Dorrian added that Council could enable it in the code and establish a more reflective interest rate.

Mr. Curtin inquired if there would be any interruptions in service if these recommendations were made. Auditor Dorrian confirmed there would be none. Mr. Curtin asked if these were just antiquated in nature. Auditor Dorrian responded the Sections were not being used and not workable.

Mr. Curtin asked what the process would be to notify the public following the Commission's vote. Mr. Clark responded that City Council would have to act by ordinance, place it in the City Bulletin, hold hearings, and then it would be on the ballot. Ms. Kish stated that the public would also see the language through the process of the Commission's voting process.

Mr. Cabot made a motion, seconded by Ms. Tyler Lee to charge staff with drafting sample language for the Commission.

- Yeas – 5
- Nays – 0
- Motion carried

Ms. Moore asked for clarification on the voting process and whether all official recommendations would be voted on at the last meeting as previously discussed so that the sample language could be posted to the Charter's website for the public. Auditor Dorrian added a request for a synopsis of the recommendations. Mr. Cabot requested that the sample language be added to the Commission's website.

Mr. Cabot asked if there was any language that addressed the lack of competition except for electricity. Mr. Clark responded that Section 124 addresses the lack of competition and read the section.

Ms. Tyler Lee added that the word 'asylum' in Section 122 may not be the politically correct term and consider revising the word. Ms. Tyler Lee asked about the assistance offered to "other charitable institutions devoted to the relief of the poor, the aged, the infirm or destitute persons or orphan children" and whether organizations accessed it currently. Mr. Davies responded that this is no longer done but that they will work with the Development department and other programs to help pay the bill in full, or there is a twenty percent discount to those who qualify. Mr. Curtin added Ms. Tyler Lee's comments should be added for modernizing language.

Mr. Irwin presented on Sections 133 – 141, and the Sinking Fund's history, function, evolution, and future recommendations. Ms. Moore asked what the annual operating costs of the sinking fund are. Mr. Irwin responded that it includes salary, insurance, worker's compensation, PERS retirement contribution, office supplies, and other capital and that a debt service budget is due by May 1st of every year.

Mr. Irwin summarized that the process has moved from a staff of three people processing paper to a simplified way of electronic transfers through a third party and the Sinking Fund is responsible to make sure that payments are made and records are kept. Mr. Irwin stated that the City Auditor's office keeps the same records as the Sinking Fund to provide a "checks and balance" mechanism for payment of debt service.

Mr. Curtin asked who holds Mr. Irwin accountable. Mr. Irwin responded that he serves at the pleasure of four trustees appointed by the Mayor and meet every other month or during tax season, January through April, once a month. Mr. Curtin asked who conducts Mr. Irwin's job performance review. Mr. Irwin responded that he did not receive formal job performance review and that the salary and benefits package are discussed in April of each year.

Mr. Cabot asked if there were other cities that have a Sinking Fund and if there is a benefit to the City of Columbus for having one. Auditor Dorrian responded that specific duties of the Sinking Fund could be farmed out to another financial institution, which would reduce duplication and add efficiency. Auditor Dorrian recommended striking the sections of the Charter referencing the Sinking Fund with a future prospectus date so that administrative duties can be covered. Mr. Irwin agreed with eliminating the Sinking Fund.

Mr. Curtin asked if this had been fully vetted with the City Attorney's office and City Council. Auditor Dorrian stated there were meetings with the Department of Finance and Management and Mr. Clark with City Council but only had brief comments with the City Attorney's office.

Ms. Moore asked about the administrative functions being outsourced to another financial institution and if the other administrative duties would be absorbed by the City Auditor. Auditor Dorrian responded that these were functions already performed by the Treasurer's office, Auditor's office, and Department of Finance and Management. Auditor Dorrian stated the outsourced functions would include paying agent, registrar, and transfer agent. Ms. Moore asked if these functions were largely duplicative and Auditor Dorrian confirmed that fact.

Mr. Curtin referenced Auditor Dorrian's statement regarding fewer institutions carrying out these needed services and if there would be a day when no institution would offer these services, and if so, what the recourse would be for the City. Auditor Dorrian responded the Sinking Fund would return to the city and did not see it being an issue of concern.

Mr. Cabot made a motion, seconded by Ms. Moore, to charge staff with proposing language to eliminate the Sinking Fund.

- Yeas – 5
- Nays – 0
- Motion carried

Mr. Cox presented on public records and open meetings and referred to Section 149.011, Public Office/Records, and Section 149.43, process for making requests, disputes, and bulk commercial requests.

Mr. Cabot asked if he is aware of other places where the Charter is in conflict or inconsistent with state laws. Mr. Cox replied that it was not and commented that the recently added language pertained to meetings of Council and executive sessions to bring it in line with state law. Auditor Dorrian added that the Commission should emulate the State code and not add language that could be misinterpreted and that the merit of the State Code is universal, tested, and proven.

Mr. Cabot clarified that the Charter should not repeat but refer to the State requirements on open records and record retention. Auditor Dorrian agreed.

Mr. Cabot referred to a previous discussion about the availability of documents and whether the records are permanent and whether those sections should refer to state law instead of writing provisions. Ms. Kish added that there is specific language for the sections and documents as requested but agreed that with public records or open meetings, the Charter should refer to state law. Mr. Curtin added the primary

goal is to do no damage and keep the historic sense of the Charter and was sensitive to the City Attorney and City Auditor's concerns about not enacting any language that could have unintended consequences.

Ms. Kish stated that area commissions and other non-advisory committees could be considered public bodies, and the Commission may want to make that language firmer and gave an example that another Charter Review Commission would also be considered a public body, and would also be required to conduct open, public meetings.

Mr. Clark presented on ethics provisions of the Charter on Sections 6, 155, 156, 157, and 227 as well as the inconsistencies of the sections when applied to City officers and employees and when the Charter does not mirror but does not conflict with state law. Mr. Clark recommended that Sections 6 and 227 should be harmonized and Council action to void a contract be made mandatory, since state law automatically voids such a contract, but does not prescribe the mechanism for municipal authorities. Mr. Clark also recommended that Section 227 be improved by expressly incorporating state law, adding a mechanism for voiding a contract, and expanding the provisions to apply broadly, mirroring state law.

Ms. Kish stated that state law should guide the language. Mr. Cox agreed the ethics should follow state law and a provision should be repealed if it is found inoperative.

Auditor Dorrian referenced a Charter provision on elected officials not being able to hold other jobs. Ms. Kish responded that it only prohibits the Mayor from holding another job. Mr. Clark added that it only prohibits other employment within the City and would not include outside employment.

Ms. Moore asked if that would include only public offices. Mr. Clark responded that it only includes public offices.

Mr. Curtin asked whether board positions would qualify as public office. Auditor Dorrian responded that even if it is an unpaid position, board positions could qualify as an elected position or office. Mr. Curtin clarified that he does not want any language to discourage ancillary employment as long as it does not conflict with city business.

Mr. Clark added the issue of outside employment would fall under the category of City Officials, which staff has begun to review internally. Mr. Cabot added that it was strange this issue fell under qualifications of City Officials when it does not take effect until they have been elected to Council.

Mr. Curtin asked if there had been any conflict with an employee being asked to serve at the state level but could not due to Charter provisions. Mr. Cox said there had been a previous case but did not remember the outcome. Auditor Dorrian added that there was a provision in the Charter that allowed City employees to run for school board. Mr. Cabot added that elected officials are not allowed to serve on the central committees of the party. Auditor Dorrian agreed with Mr. Cabot.

Mr. Cabot stated it might be important enough to have its own title and state directly and succinctly what constitutes conflicts for all city employees instead of having it under miscellaneous provisions.

Ms. Moore added that language on steps "that would need to be taken" would not be necessary because it would be void by operation of law. Mr. Cox agreed with Ms. Moore and clarified that corresponding Section 2921.41 of the state law is a criminal provision, which then triggers the voiding of the contract.

Mr. Clark presented on the history and current state of equal rights and non-discrimination in the City of Columbus. Mr. Clark recommended the Commission seriously consider an equal rights and non-discrimination amendment to the Charter of the City of Columbus.

Ms. Tyler Lee supported staff recommendations. Auditor Dorrian asked if there was submitted language from staff. Mr. Clark responded that it had yet to be proposed.

Mr. Curtin asked how comprehensive the review had been of other city charters on this matter. Mr. Clark responded it was very comprehensive and there is a handout that lists, by category, the protections that are afforded by other cities. Ms. Kish added that the administration is working on foundational language with the City Attorney. Ms. Moore asked for staff to provide a spreadsheet of state law versus the City Code.

Mr. Curtin asked if there had been any litigation or any other override attempts brought against the cities that have recently adopted expanding language. Mr. Clark responded there had not been any issues identified and stated the city of Detroit had the most recent, which has a significantly, well-crafted charter and has a Declaration of Rights as a preamble to the charter.

Ms. Tyler Lee made a motion, seconded by Ms. Moore, to charge staff with composing sample language.

- Yeas – 5
- Nays – 0
- Motion carried

Mr. Curtin announced the future meeting dates would be Thursday, June 19, 2014; a public hearing on Thursday, June 26, 2014 and Monday, June 30, 2014. Mr. Clark added additional meetings might be added before the June 19th meeting.

Auditor Dorrian asked when the list of recommendations would be ready for the Commission to review. Mr. Clark responded the goal was to have the list ready by the last meeting on June 30, 2014.

Mr. Curtin asked if there was any public comment by those in attendance.

A public commenter asked for clarification that the city does not have provisions for executive sessions and that it currently follows State law. Mr. Cox responded that the gentleman was correct. The gentleman asked if there is any kind of public input on executive sessions. Mr. Cox responded that this is not a current proposal with this Commission as it was covered within the work of the previous Charter Review Commission.

Mr. Clark noted that the most recent Charter Review Commission dealt specifically with bringing the charter in line with current state law regarding open meetings, which was subject to vote by the people and supported and amended to the charter.

Another public commenter stated that she heartily supports equal rights and non-discrimination and wanted the document presented available publicly. Mr. Clark said it would be on the website soon. Mr. Curtin added that all the documents presented to the Commission are also on the website of the Charter Review Commission that is accessible through the City of Columbus website itself.

Another public commenter stated it would be helpful if we had the list of potential recommendations ahead of the public meeting. Mr. Curtin stated the comment was well taken.

Mr. Curtin made a motion, seconded by Auditor Dorrian, to adjourn the meeting.

- Yeas – 5
- Nays – 0

- Motion carried