

MEETING MINUTES
CITY OF WILLOUGHBY HILLS 2014 CHARTER REVIEW COMMISSION
Monday, July 28, 2014

Call to Order:

Meeting called to order by Chairman Andy Gardner at 6:33 p.m.

Roll Call:

Members Present:

Dr. Stephen Atkins, Chairman Andy Gardner, Mrs. Joyce Grady, Mrs. Judy Shrefler, Mrs. Sandy Taddeo, Mrs. Tanya Taylor-Draper, Vice Chairman Jim Walsh and Jerry Wolanin

Members Absent:

Mr. C.J. Latsa

Eight of nine members are present – recognized as quorum.

Approval of Charter Review Commission minutes of 07/22/14, as amended:

Motion to approve by Mrs. Tanya Taylor-Draper

Motion seconded by Mrs. Judy Shrefler

VOTE: 6 AYES, Chairman Andy Gardner and Mr. Jerry Wolanin abstained.

MOTION PASSES with 6 AYES and 2 Abstentions.

Public Portion:

Public Portion opened at 6:35 p.m.

The following individual spoke:

1. Mr. Robert Kowalsky, 2585 Timberline Drive, Willoughby Hills, OH 44094

Mr. Kowalsky asked Chairman Gardner if he would be permitted to speak longer than the allotted three minutes since he wanted to speak on the “Grace period for Initiative Petition” and “Civil Service.” Chairman Gardner asked him to provide something in writing and the Commission would consider it at the next meeting.

Mr. Kowalsky initially spoke about “wagging the dog” and the “Marines in Lebanon” and “the invasion of Grenada.” He then spoke about the 2008 Charter amendment on the 10-day grace period for the Initiative Petition. He offered “Cleveland Magazine’s” publication entitled “Terror and Repression in Willoughby Hills” and explained how it related to Section

8.32 of the Charter and the “right to petition.” He completed his discussion by mentioning that the Civil Service issue is “important given the increase in part-time employment.”

Public Portion closed at 6:47 p.m.

Correspondence:

Chairman Gardner read the 7/6/14 email from Council President Raymond Somich regarding the role of the Charter Review Commission and his encouragement and appreciation for their task to review our Charter.

A Presentation regarding Article IX by Law Director Thomas Lobe and Assistant Prosecutor (& resident) Karen Kowall:

Law Director Lobe introduced Mrs. Kowall as a “wealth of knowledge.”

Mrs. Kowall indicated that she was not here as an Assistant Prosecutor for the Lake County Common Pleas Court, but instead is here as an “interested citizen.” She commended the CRC for its volunteer efforts to get the Charter reviewed. She feels that it is “time to revisit” the provisions of the Charter. Mrs. Kowall believes the provisions of Article IX are “pretty complicated” and “how you are going to handle all staff members is not simple.” She is concerned that the Charter does not currently provide a “provision of notice”, does not treat all individuals equally and lacks adequate removal provisions. She believes the City needs to seek an “impartial body to give direction” and then adopt that procedure. Mrs. Kowall further stated that “removing an employee can be complex regarding appeals and checks and balances.” “How you treat Union members may be different than Classified or Unclassified positions.”

Vice Chairman Jim Walsh indicated that he had reviewed the Ohio Ethics information provided by Law Director Lobe and asked Mrs. Kowall about vendors in that regard. Mrs. Kowall indicated that she has some concerns about our Charter currently with that item (Article 9.21), asking, “How is an individual put on notice that he may now be in violation?” Currently, “this is vague. Be clean, concise and defined.” “How far back do you go for vendors? A vendor could inadvertently violate.” Law Director Lobe referenced page 21 of his handout and asked if we need that in the present day (referring to “Officer” definition).

Vice Chairman Jim Walsh asked if there were restrictions placed on vendors by the Ohio Ethics Commission or ORC? Mrs. Kowall offered that the Ohio Ethics Commission could probably give a case specific response. Also, review of other City charters provided by Mr. Lobe

may be helpful in “something meaningful to craft.” Ohio Ethics Commission is a good resource to help craft as well.

Mrs. Taddeo asked why Civil Service was in Article IX of the Charter. Mr. Lobe agreed that it “probably does not belong there.” “Other charters have it all in one section.” Mrs. Kowall added that “you need to create something to put someone on notice” regarding the Civil Service section and recommended to “look for definitions of ambiguity.” “When you create difficult procedures, it can cause problems down the road.”

Vice Chairman Jim Walsh asked Mrs. Kowall if it would be prudent to have removal of Mayor or Council go to the voters. Mrs. Kowall indicated that you need to “act quickly” and if you involved the Board of Elections (with their time tables) and the possible cost of a Special Election, it may not be wise to do it in that manner. Vice Chairman Jim Walsh further stated that he is “uncomfortable with a small group of people taking away peoples’ choice, but there are a lot of ancillary issues to consider.”

Law Director Lobe presented his 96-page document and referenced page 36, which is the Ohio Ethics Opinion 2010-03 indicating that “no public official shall knowingly authorize or employ the authority or influence of the officials office to secure authorization of the employment of a family member...” and further stated that Council’s recent action to “remove immediately” another Council member was not in line with the recommendations of the Ohio Ethics Commission. He stated that the Ohio Ethics Commission “takes the politics out of it” and has a more routine practice of doing business.

Mrs. Tanya Draper inquired about Mrs. Kowall’s availability for future questions. Mrs. Kowall indicated that she would be “happy to come back” or help in any way, including “finalizing the language.”

Mrs. Judy Shrefler said she reviewed the Ohio Ethics Commission documents previously provided by Mr. Lobe and finds them to be “brilliant” in dealing with nepotism and conflict of interest, but did not find that it has provisions for due process. Mrs. Kowall indicated that the Ohio Ethics Commission “puts you in a position to deal with it by not violating the law.” While the Ohio Ethics Commission does not have the procedure for due process, “how detailed should the Charter be to handle that?”

Law Director Lobe referenced page 33 of his handout regarding case law from the Ohio Ethics Commission regarding “no relatives policy”, preventing local governments from

implementing a broadly inclusive “no relatives” employment policy. Mrs. Kowall agreed that if “you adopt language of that kind, you could have legal issues.”

Mr. Lobe reviewed Article 9.34 Removal by Council of Mayoral Appointees where a long process must be gone through before an employee is removed. Yet, Council tried to use 9.32 with less due process to remove a fellow Councilman. He further spoke about the lack of clarity between “direct” and “indirect” and spoke of the ramifications of so many individuals being in violation with the current Charter language in this regard.

Dr. Stephen Atkins asked about the length of time Ohio Ethics Commission would take to rule on something. Mrs. Kowall responded that it “can be pretty quick.” She indicated they are mindful that the City or Commission is awaiting an opinion. Mr. Lobe agreed that the Ohio Ethics Commission is very narrowly construed, more so than Attorney General.

Vice Chairman Jim Walsh indicated he may not necessarily agree with the Ohio Ethics Commission’s definition of “immediate family” given unmarried couples cohabitating, and other more modern family situations. Mrs. Kowall indicated that you could have legal issues if you make it so broad against the Ohio Ethics Commission. Mr. Lobe agreed that “once you put it in our Charter, you are locked in. Other charters are much more narrow.” “Felony is nowhere in our Charter. We rely on the State for criminal statutes. Sometimes it is better to let the State handle it...they are more informed and have a larger staff to work on it.”

Mrs. Joyce Grady asked “who takes precedence?” Mrs. Kowall indicated that the Ohio Ethics Commission is “advisory but not binding. They are the authority in the area.”

Mr. Lobe pointed out the example of “gratuity” in our Charter, which would probably produce a great number of Charter violators when this provision is reviewed. The OH Ethics Commission, however, “spells out more” and defines it much more clearly to identify violators.

Chairman Andy Gardner voiced his concerns about “going without procedures” and letting a judge (probably not a WH resident) make the court decision. Mr. Lobe suggested reviewing Wickliffe’s Charter (page 53) where they actually put in ordinance (i.e. Ordinance 525.10) such items as unlawful contracts. He further spoke about removal provisions compared to Wickliffe, Willoughby and Kirtland Charters. Mrs. Tanya Taylor-Draper asked if these were same-sized cities that he was comparing. Mr. Lobe indicated that he just “tried to give some samples of surrounding cities.” Mrs. Judy Shrefler asked if other cities address them in ordinances? Mr. Lobe said, “Yes, some do. They can change it at a Council meeting.”

The presentation of Law Director Lobe and Mrs. Karen Kowall ended at 8:05 p.m.

Old Business:

Vice Chairman Jim Walsh reviewed the CRC decisions made in the absence of Chairman Andy Gardner and Mr. Jerry Wolanin. This included: 1) The group's prioritization of ballot issue items using the worksheet Chairman Gardner provided, 2) Deadline of 8/12/14 chosen, with 8/19/14 being the extension deadline, and 3) The group's decision to work on Article IX.

Chairman Gardner and Mr. Jerry Wolanin shared their prioritization results with the group. Chairman Gardner agreed it would seem prudent to tackle Article IX based on the prioritization results.

Mrs. Judy Shrefler stated that 5.62 was also a "stand alone" issue regarding election dates that most members gave a priority rating of "1". Chairman Gardner agreed that he was "open to that" as it was "more mechanical" and the group agreed to begin work on that article tonight.

To begin the discussion, Chairman Gardner started with Item numbers 19 through 26 on the Prioritization Worksheet, all relating to Charter Review Commission:

#19 Section 5.61 - Clarification that "elected public office" refers to any public office or any public office in the City of Willoughby Hills.

Group's consensus to defer action – "city" is stated throughout the Charter when "city" is intended to be used, one can probably assume that it is not "Willoughby Hills specific."

#20 Section 5.62 – Should appointment of CRC members be changed to have 1 per Council member appointment and 2 per Mayor appointment?

Group's consensus not to take any action at this time.

Vice Chairman Jim Walsh indicated he felt there was a balance now because Mayor makes appointment, but Council approves appointments.

#21 Section 5.62 – Revise dates regarding submission to Board of Elections

Group's consensus (vote 8 to 0 – unanimous) to take no action at this time.

There was a considerable amount of discussion weighing the advantages and disadvantages of establishing a date based on a body such as Secretary of State or Board of Elections. Chairman Gardner was not in favor of anyone else giving us a date; Vice Chairman Jim Walsh agreed that "we should be hesitant to give our authority away." Mrs. Judy Shrefler was concerned about Council approving

a date as late as July 15, given Council's August recess. Chairman Gardner reviewed last CRC's submission of ballot issues to Council, whereby a Special Meeting was called, two-day notification was waived and three-reading rule was waived to pass the ballot issues in the same night. Council must act to get them on to the Board of Elections, so we should be fine with the current language.

#22 Section 5.62 – Council's right to approve (perhaps by 2/3 vote) the submission by CRC

Group's consensus was to take no action at this time.

#23 Section 5.62 – Revision to provide CRC appointed in January

Group's consensus (vote 8 to 0 – unanimous) was to take no action at this time.

There was much discussion on this item from various members, with suggested dates ranging from January 1 to April 30 to May 31. The main concern for establishing a date was to ensure a realistic date "to get the job done." Comments included: "I would like to have flexibility", "It should be left open", "Mayor should have discretion as to start date", "Given the crisis this year, Mayoral discretion would be better to handle one issue versus review of the whole Charter", "Is this a solution looking for a problem", "We should not make it too restrictive", "We should learn from this year and know what we need to do in the future" and "All may not be having to handle 49 items as we do this year".

#24 Section 5.62 – Deliberations of CRC findings be delivered to Council?

Group's consensus (vote 8 to 0 – unanimous) was to take no action at this time.

The minutes and recording may serve to supply this information to Council and the public in the future. Dr. Stephen Atkins offered, "The final product should suffice – "how you got there is not vital."

#25 Section 5.62 – Date change to allow Council for time to review

Group's consensus was to take no action at this time.

This item was previously discussed in #21 above.

#26 Section 5.62/10.4 Potential ambiguity between 5.62 and 10.4 (2/3)

Vote of 7 to 1 (All Aye, except Dr. Stephen Atkins "Nay") – to clarify that 2/3 of vote refers to Council and CRC should discuss appropriateness for 2014 ballot.

Further, just changing the order to read "by a Charter Review Commission

or 2/3 of the members of Council" will be adequate.
All agreed that the Electors have the final vote on all ballot issues for changes to our Charter.

That concluded review of Items #19-26 on the Prioritization Worksheet.

New Business:

Article IX will be discussed at tomorrow night's meeting.

For the Good of the Order:

None

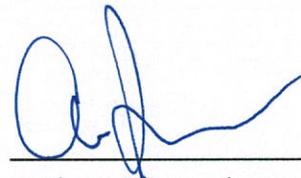
Adjournment:

Motion to adjourn by Vice Chairman Jim Walsh seconded by Mr. Jerry Wolanin.

ROLL CALL: 8 AYES – unanimous MOTION PASSES.

Meeting adjourned at 9:17 p.m.

APPROVED: 7/28/14



Andy Gardner, Chairman

ATTEST: Gloria Majeski
Gloria Majeski