

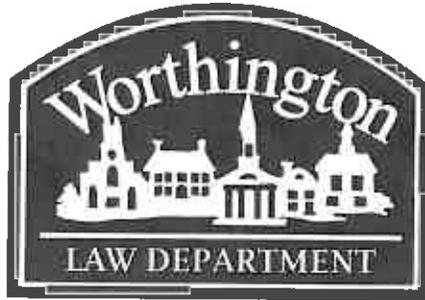
Worthington Charter Review Commission Agenda

Monday, June 20, 2016

5:45 P.M. – 7:15 P.M.

**Louis J.R. Goorey Worthington Municipal Building
6550 North High Street
Worthington, Ohio 43085**

1. Call to Order
2. Approve Minutes of June 6, 2016 Meeting
3. Charter Discussion
 - Article XI – Merit System
 - a. Continue discussion about maintaining the list of positions with some revisions or eliminating it and authorizing the list by ordinance
 - Article III
 - a. Propose clean-up of terms used to coincide with recommended changes in other sections
 - Article VI
 - a. Discuss suggested language provided by Mr. Pearlman to require the Municipal Planning Commission to state in writing the basis of its decisions and recommendations
4. Draft Report to City Council
5. Adjourn



To: Charter Review Commission

From: Pam Fox

Date: June 17, 2016

Subject: Meeting Materials – June 20, 2016 Meeting

The next scheduled meeting of the Worthington Charter Review Commission is set for Monday, June 20, 2016 at 5:45 p.m. at the Worthington Administration Building in the Second Floor Training Room. It is the last scheduled meeting of the Commission.

Included in this packet are the Agenda for the meeting and some proposed changes to Articles II and III, VI and XI.

The discussion on Article XI (§11.02) is carried forward from the last meeting. Suggested language was presented and discussed on June 6 that eliminated the enumerated exempt (or unclassified) positions and provided for those positions to instead be established by ordinance. As you may recall, the Staff initially proposed to either eliminate the list from the Charter or remove those positions from the list that generally don't fall within the merit system of appointment and removal. Attached is a proposal to address the latter. Also attached is some treatise information on the classified and unclassified service in Ohio and a Court of Appeals case that interprets Ohio law, the Ohio Constitution and a municipal charter on the topic. The discussion at the last meeting reflected some concern that changes to the list may have some unintended consequences in the administration's oversight of employment matters. Further, changes to an employee's classification may require the implementation of additional measures for that employee's protection, which further complicates the process. For these reasons, the attached proposal removes the City Council, Mayor and Vice-Mayor, and members of boards, commissions, and committees from the list and moves the reference to those offices to a statement below indicating that they are not subject to the merit system principles.

The proposed changes to Articles II and III are made as a result of recommendations that the Commission either has already made to the language in the Charter or which may result in recommendations that will be discussed on Monday. The reference to the competitive bidding method of purchase in §3.02 is deleted since the Commission recommends

broadening the procurement authority, and the references to 'exempt' and 'non-exempt' employees is amended to 'classified' and 'unclassified', should the Commission decide to recommend changes to Article XI.

Ken Pearlman brings forward some proposed language to add to §6.03 as addressed at the last meeting. He is unable to be at Monday's meeting, but he has prepared a memo outlining his proposal that he wants the Commission to have in its further deliberation of the issue. That memo is attached.

Because Monday's meeting is the last scheduled meeting, I will have a draft report to City Council detailing the recommendations of the Commission to date and providing a summary of the discussions supporting them. At the April meeting the Commission voted to provide the amendments to Council as a package, with the ability to pull items for further discussion. The draft report provides for that package submission, unless any one feels that one or more issues need to be pulled and forwarded separately.

Thank you for your dedicated service to the City.

SECTION 11.02 EXEMPT POSITIONS.—CLASSIFIED AND UNCLASSIFIED SERVICE

All positions in the service of the City shall be filled pursuant to open competitive examinations except:

- ~~(1) Members of the Council.~~
- (2) The Clerk of Council.
- ~~(3) The Mayor.~~
- ~~(4) The Vice Mayor.~~
- (52) The City Manager.
- (63) The Assistant City Manager.
- (74) The directors, assistant directors, and deputy directors of departments.
- (85) The Administrative Assistants.
- (96) The Assistant to the City Manager.
- (107) The **Executive Assistant Secretary** to the **City** Manager.
- ~~(11) Members of boards, commissions and committees.~~
- (128) Seasonal, temporary, and part-time employees.
- ~~(139) The Chief Building Inspector.~~
- (1410) The Clerk of the Mayor's Court.

(Amended November 5, 1996.)

Appointment to and removal from the offices of City Council, Mayor, Vice-Mayor and members of boards, commissions and committees shall be made in accordance with the specific applicable terms of this Charter and ordinances of the City, and shall not be subject to the provisions of Sections 11.01 and this Section 11.02.

SECTION 2.07 SPECIFIC POWERS OF COUNCIL.

In addition to its legislative power and its executive authority and its power to prescribe by ordinance or resolution the manner in which any power of the Municipality may be exercised, the Council shall have the authority to:

- (1) Appoint and remove the City Manager, appoint an Acting City Manager in the event the position of City Manager is vacant, and establish the salary for such positions by ordinance;
- (2) Establish administrative departments, define their duties and procedures, and confirm the appointment of officers in ~~exempt~~ **unclassified** positions and fix the salaries and wages for all employees;
- (3) Adopt the municipal budget;
- (4) Appoint and remove the members of the Municipal Planning Commission, the Board of Zoning Appeals, and of any board, commission, or committee created or authorized by this Charter or by ordinance or resolution of Council;
- (5) Adopt and modify the official map of the Municipality;
- (6) Regulate and restrict the use of public and private real estate in the interests of the health, safety, morals, and welfare of the people by establishing use zones and limiting area, land use, and building heights therein;
- (7) Adopt and approve subdivision plats and establish subdivision regulations therefor;
- (8) Authorize the levy and collection of taxes and the issuance of notes and bonds as provided in this Charter or as otherwise authorized by the laws of the State of Ohio;
- (9) Authorize an audit of the accounts of the Municipality or any officer or department thereof in such manner and means as Council shall deem necessary and appropriate;
- (10) Establish an Architectural District and appoint a Board of Architectural Review, in accordance with Sec. 6.02(7) of this Charter, to exercise such powers within the Architectural District as are established by ordinance.
(Amended November 8, 1983)
- (11) Adopt, and review at least annually, a policy on the investment of funds held by the City. (Added November 5, 1996)

The Council may delegate the administration of any and all municipal affairs to the City Manager who shall be responsible to the Council for the performance thereof.

SECTION 2.10 COUNCIL RELATIONS WITH CITY MANAGER.

Except for the purpose of inquiry, the Council and its members shall deal solely and directly through the City Manager with respect to any matter related to the administrative affairs of the Municipality which are within the scope of the power, duty, authority and responsibility of the City Manager. Except to confirm the City Manager's appointment of officers in ~~exempt~~ **unclassified** positions of the Municipality, the Council and its members shall not otherwise interfere with the appointment of officers in **unclassified** ~~exempt~~ positions or employees in the administrative service.

SECTION 3.02 CITY MANAGER: POWERS AND DUTIES.

The City Manager shall be the chief executive and administrative officer of the Municipality, shall be responsible to the Council for the proper administration of the affairs of the Municipality and, to that end and subject to the provisions of this Charter, shall have power and be required to:

- (1) Appoint and, when necessary, remove any of the **classified and unclassified** ~~exempt and non-exempt officers and~~ employees of the Municipality.
- (2) Prepare and submit to the Council annual appropriations budget estimates and lawfully administer the budget adopted by Council.
- (3) Prepare and submit to the Council and to the public an annual report including, but not limited to, the financial and administrative affairs and activities of the Municipality for the preceding year.
- (4) Inform the Council of the current financial condition and future financial needs of the Municipality.
- (5) Appoint such temporary advisory committees as are necessary and desirable.
- (6) Delegate to subordinate officers and employees of the Municipality such duties conferred upon the City Manager by this Charter or by action of the Council as are necessary or appropriate for the efficient and effective operation of the Municipality.
- (7) Perform such other duties, not inconsistent with this Charter, as may be required by the Council.
- (8) Execute, upon authorization of the Council, contracts, leases, deeds, easements, conveyances and agreements as are necessary and appropriate to the efficient and effective operation of the City. (Amended November 8, 1983)
- (9) Execute, ~~subject to the satisfaction of any requirements for competitive bidding and~~ without having to obtain additional authorization from Council, contracts for the expenditure of funds from the General Fund which have previously been appropriated by Council as part of the annual operating budget process or amendments thereto;
- (10) Execute, ~~subject to the satisfaction of any requirements for competitive bidding,~~ contracts for the construction of public improvements or the acquisition of capital assets only upon the specific authorization of Council at the time it appropriates funds from the Capital Improvement Fund for such construction or acquisition.
(Added November 5, 1996.)

SECTION 3.05 DEPARTMENT DIRECTORS.

At the head of each department shall be a Director, responsible to and appointed by the City Manager with the approval of the Council, and who shall be an **unclassified** ~~exempt~~ officer of the Municipality. The Director shall have supervision and control, subject to the direction of the City Manager, of the department and shall faithfully discharge those duties of the office and observe and enforce the provisions of this Charter and the ordinances of this Municipality. Two or more departments may be headed by the same officer and the City Manager may serve as head of one or more departments in addition to serving as City Manager, if approved by Council.

FROM: Ken Pearlman
TO: Members of the Charter Review Commission
RE: Proposal for Addition to 6.03 of the Charter
DATE: June 15, 2016

Unfortunately, I cannot be at the meeting on Monday, so I am preparing this brief written statement along with the proposal. I apologize for not being able to be present to answer questions, but Pam has worked with me on drafting the language so she is familiar with what I am trying to accomplish.

Ohio does not require that zoning actions be formally consistent with a written plan. Nonetheless, underlying land use regulation is the idea that regulation has to be done comprehensively and rationally. The exact meaning of these terms in Ohio is not clear. But at a minimum it means that individual land use actions cannot be considered solely on the facts of a particular case or issue but should also be broadly related to planning as a whole. I am enclosing proposed language for addition to 6.03, that mandates that the MPC in making decisions or recommendations consider the overall comprehensive planning goals of the city and issue a statement in writing to that effect. The proposal does not require that all zoning actions conform to a written master plan but is designed to make the MPC show that it has considered the broader planning implications of its actions involving zoning, rezoning, conditional use, and subdivisions. This also includes recommendations on zoning and conditional use categories. This proposed language should lead to consideration of broader factors than simply the agenda issue at hand. It should also help to provide support in the event of legal action against the city. The proposal does not cover the situations where the MPC acts as the ARB, since there we already have a set of design standards to be applied to individual properties. Finally, the proposal does not delineate the length or depth of the analysis needed. Some proposals may have very little effect on planning and the statement can be brief. Others may require more detail.

Instead of language “in accordance with a comprehensive plan” I have used the language “overall comprehensive planning goals of the City” to avoid confusion with the city’s master plan. The language of the proposal emphasizes that the overall issue is the relationship to the overall comprehensive planning goals of the city and the written plan (“Master Plan” in 6.03) is one example of evidence of the relationship. Indeed, it would be possible for the MPC to state that a particular decision did not conform to the master plan if developments subsequent to the plan indicated that the city was moving in a different direction—in other words, that there was a rational basis for not following the plan, with reasons given.

The proposal:

In rendering a decision or recommendation, the Municipal Planning Commission shall articulate its basis therefor, in writing, by reference to the relationship that decision or recommendation has to the overall comprehensive planning goals of the City, which may be found in the Master Plan, the zoning map, a course of zoning or subdivision practices by the City, or any other acknowledged comprehensive strategy or goals established at the time of the decision or recommendation.



6550 N. High Street.
Worthington, Ohio 43085

WORTHINGTON CHARTER REVIEW COMMISSION

Louis J.R. Goorey Worthington Memorial Building
John P. Coleman Council Chamber

Monday, June 6, 2016 ~ 5:45 p.m.

COMMISSION MEMBERS

Sue Cave
Chair

Mark Senff
Vice-Chair

Michael Bates
Commission Member

Dr. Trent Bowers
Commission Member

Tom Dalcolma
Commission Member

David Elder
Commission Member

Doug Foust
Commission Member

Bill Lhota
Commission Member

Scott Myers
Commission Member

Ken Pearlman
Commission Member

Becky Princehorn
Commission Member

STAFF MEMBERS

Pamela Fox
Law Director

Matthew Greeson
City Manager

The meeting of the Charter Review Commission was held on June 6, 2016, in the John P. Coleman Council Chamber at the Louis J.R. Goorey Worthington Municipal Building at 6550 N. High Street, Worthington, Ohio. Chair Sue Cave called the meeting to order at 5:47 p.m.

Commission members in attendance were: Michael Bates, Dr. Trent Bowers, Sue Cave, David Elder, Doug Foust, Bill Lhota, Scott Myers, Ken Pearlman, Becky Princehorn, and Mark Senff (Tom Dalcolma arrived shortly after roll call).

Also in attendance were: City Manager Matt Greeson, Law Director Pam Fox, Assistant City Manager Robyn Stewart, City Clerk D. Kay Thress, two residents and one reporter.

Ms. Cave asked if members had a chance to review the minutes of the Charter Review Board meeting of May 16, 2016.

MOTION Mr. Myers made a motion to approve the minutes as presented. The motion was seconded by Mr. Lhota.

The motion to approve the minutes as presented carried by a voice vote (Mr. Elder, and Mr. Pearlman abstained as they were not in attendance at that meeting).

Charter Discussion

Ms. Cave shared that tonight's agenda includes several items for discussion. The first item is Article VII – Nominations and Elections. Members are discussing the issue of the maximum number of signatures on a petition and not the number of signatures required to have on the petition. She asked Mrs. Fox for additional comments.

Mrs. Fox shared that some candidates indicate they usually get more than 100 signatures on their petitions as a safeguard to ensure they have enough verified signatures. She thinks the state code allows for three times the number required. The Commission can incorporate that or leave it open with a minimum number knowing the Board of

Elections can stop once there are fifty verified signatures.

Mr. Senff asked what happens if a candidate turns in 300 signatures. He asked if that will disqualify them. Mrs. Fox replied that is the reason for changing the max in the charter so there is not a question of whether somebody violated the charter.

Mr. Senff suggested just keeping a minimum of not less than fifty and leave off the maximum. Mr. Foust added his support to the suggestion. He understands there are many things that can cause a signature/petition to be disqualified and was advised to have signatures spread across multiple petitions to make sure no single petition can disqualify you. It is almost a disservice to have a large number in the charter and probably best to keep it at a rather small number.

MOTION Mr. Senff moved to change Section 7.03 Nominations to read: . . .
“Nominations for the office of member of Council shall be made by petition only, signed by not less than fifty resident registered electors, . . .” The motion was seconded by Ms. Princehorn.

Mr. Lhota asked what process is used to verify signatures. Do they take the first 150 or do they go through the signatures until they find 50 good ones. Mrs. Fox said she didn't know. She thinks once 50 are verified they stop looking at the signatures submitted. Mr. Lhota asked why then is the “three times” in there. Mrs. Fox thinks because candidates feel it is necessary to gather as many signatures as they can to ensure they have enough valid ones.

Ms. Princehorn recalls an old rule of thumb in that three signatures are needed in order to get one good one. That may be where it came from.

Mrs. Fox shared the statute is a plea by the Board of Election for candidates to not overwhelm them with signatures that they would need to verify. Ms. Cave agreed.

Ms. Michael shared that right now it is 50 to 100 signatures and anything over 100 is just ignored. If you don't have 50 good ones then your name is not added to the ballot. That has happened to some candidates who have tried to run for office in Worthington.

Mr. Lhota shared that he favored leaving a maximum number in because your good ones could be the last ones that are turned in.

Ms. Michael added that anyone who is really serious about running for office will go with whatever the maximum is. The higher the maximum the greater number of people out on the street to get the signatures. She will work to get just below the maximum number required.

Mr. Elder stated that if this section doesn't have a maximum, what will prevent the candidate from going ahead and turning in 150. Members replied nothing.

Ms. Michael thinks it encourages people to go out and get a lot more signatures. From a candidate's perspective, it is nicer to have an upper limit because then you know this is the upper limit for everybody so they are all treated fairly.

Ms. Princehorn commented that if members approve the motion, it kicks to state law. By keeping a maximum our charter could be out of sync with the state law if it were to be amended. She would almost rather have a minimum and then kick to state law, whatever it is. Mrs. Fox confirmed that state law applies even if we say nothing in the charter.

Mr. Lhota stated if you put 150 then you conform to the state law. Ms. Princehorn agreed as it stands now. This Charter Commission may want to establish a minimum that may not be the same as state law but let the maximum default to whatever is the state law.

Mr. Pearlman agreed that it makes sense not to have a maximum. Ms. Cave added that it depends on the type of community and where the signatures are gathered. Sometimes there will be more invalid signatures than valid one depending on where they are being collected.

Ms. Cave commented that they don't want to have a charter provision that would possibly invalidate someone's petition because the limit set in our charter is different from what state statute allows. That is what we are trying to get away from.

Mrs. Fox stated the question is do we want a number that might give rise to somebody's petition being challenged. Somebody could take the position that it violates the charter even though the Board of Elections has a different process. We could just keep silent and have a minimum and default to the state.

Dr. Bowers pointed out that Mr. Senff's motion would just have the minimum and then default to the state. Ms. Cave agreed.

David Robinson, a member of the audience, suggested that it state the maximum number of signatures would be in conformity of the Ohio Revised Code (ORC) in an effort to avoid confusion by candidates.

Dr. Bower commented that if we include a maximum number and the state changes the law then the charter is out of compliance. Ms. Princehorn's point was that this allows us to not have to make changes anytime the state makes a change.

Mr. Elder offered a friendly amendment of, "not less than 50 nor more than the number allowed by the Ohio Revised Code".

Mr. Senff replied that the way he reads (ORC) 3513 there really is no limit because it says: "When a petition of a candidate has been accepted for filing by a board of elections, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three

times. . .” If someone gets a 1,000 it doesn’t seem to matter. He worries if the charter states 150 and someone has 200 that others will argue that their petition is invalid.

Mr. Foust thinks the motion is in line with the Ohio Revised Code. He is fine with that.

Mr. Lhota read Section 7.03 in the Charter that states, “as are prescribed by the State elections laws”. He asked if that is referencing to the form of the nominating petition or to the number of signatures. Mr. Senff thinks it is referencing to form and not the signatures. Mr. Lhota stated that to Mr. Foust’s point, Section 7.03 is not conforming to state law referencing number of signatures because the coma is after “electors”.

Mr. Myers commented that he is trying to determine what evil the commission is trying to correct by limiting the number of signatures.

Mr. Senff shared that he is concerned that if a candidate comes in with 200 signatures, which under state law is fine, but under the charter it says that it can’t be more than 150...

Mr. Myers thinks he agrees with the concern but what problem are we solving by putting an outer limit on it? He asked if they were trying to make the board of election’s job easier by not submitting as many signatures. He doesn’t understand the evil they are trying to cure because he uses petitions as a method of campaigning and he feels like they are restricting his ability to campaign. He is arguing in favor of taking the maximum out and keeping it open-ended because he has routinely turned in more than 100 and more than 150 because he has multiple people who circulate his petitions.

Mr. Pearlman commented that their job is not to make it easier for the Board of Election. There is a minimum number of petitions and after that what makes the difference.

Ms. Cave shared that it is the Board of Elections job to verify signatures. She reported that the motion is to eliminate the maximum number of signatures. She asked for a roll call.

Yes 10 Bates, Bowers, Dalcolma, Elder, Foust, Myers, Pearlman, Princehorn, Senff, Cave

No 1 Lhota

The motion carried.

SECTION 9.01 OATH OF OFFICE.

Ms. Cave shared that this section is to address clearly in the Charter who may administer oaths of office to employees.

Mrs. Fox shared that members should have received a newer version of this section at their place tonight. This was revised based on subsequent conversations with the

administration. This would allow the City Manager or his/her designee to administer oaths of office to employees. The original version included the Council President who as an elected official can administer the oath. Notaries are also able to administer oaths under state law. This is just a clarification to indicate that the City Manager or the City Manager's designee has the authority to administer oaths.

Mr. Bates shared that a judge or some other official has administered the couple of oaths that he has seen. He asked why a change is needed. Mrs. Fox shared that typically the administrative head of administration would do the oath for new employees. It is a role of the city manager to welcome new employees and get them through the orientation process.

Mr. Bates asked if this would be for city employees that report to the city manager. Mr. Greeson replied that he is not trying to take anything away from anyone else. A designee makes that easier, especially for part-time employees.

Dr. Bowers asked if everybody that is hired takes an oath of office. Mr. Greeson replied everybody we hire is required to sign an oath of office. Not everybody stands before City Council to take their oath although a strict reading of the charter would suggest we do that.

Mrs. Fox further explained that in her previous employment there was a militia person who asked to see everybody's oath of office.

Mr. Lhota asked Mr. Greeson if he is saying that every employee does not take the oath. Mr. Greeson replied that everybody should have either had an oath administered or signed one. Some appear in front of council and some do not. Mr. Lhota believes the language is pretty clear. "Every officer and employee. . ." Others agreed.

MOTION Mr. Lhota made a motion to amend Section 9.01 to read: ". . . which may be administered by the City Manager, or designee, and. . ."

Mr. Bates asked if there is an auditing process to make sure everybody has a copy of their oath in their file. Mr. Greeson replied they should but he hasn't gone back and checked them all. But they have talked about doing that because of Mrs. Fox's experience.

The motion was seconded by Mr. Myers.

The motion passed unanimously by a voice vote.

ARTICLE X, WHEN CHARTER AMENDMENTS TAKE EFFECT.

Ms. Cave shared that staff is calling for eliminating Section 10.07.

Mrs. Fox commented that this section is open for debate. Typically when the charter commission has recommended changes, this section gets put into the ordinance because it is very specific as to when the last amendment takes effect. It is a bit awkward at times. For instances, when the citizen initiated amendment was submitted for the ballot, she added this section to the ordinance. When she met with the Board of Elections she included this with the language to be changed. It became a question as to the proper ballot language and it was rejected as part of the ballot language because it wasn't part of the citizen initiated petition. It was a question with her and the person at the Board of Elections and ultimately the Secretary of State rejected it. It's a bit unwieldy to always have it as part of the ballot.

Ms. Cave shared that some charter amendments will have a separate date as to when they take effect, other than the date of the election. There is a procedure where the Board of Elections to certify the results of each election and technically nothing is effective until the certification occurs. That may not occur until sometime after the election.

Mrs. Fox shared that she received questions from citizens as to when the initiative language would take effect. She responded that it takes effect on the date of the certification. She thinks that the default is that it takes effect on the date of the election or upon certification unless the amendment specifies a different effective date.

Mr. Elder asked why there would be a later date. This language indicates it take effective on the date it was approved. If those two dates are out of sync, you're saying that the date that is specified in the amendment is controlling. Mrs. Fox agreed.

Ms. Princehorn shared that an example of when you might want to set a later date would be if you vote in a charter millage provision that you want to sync with property tax collections. The Board of Election is supposed to certify within a certain timeframe but in a close, contested election, it may certify later. If you want a later date, that would be in the text of that section of the charter.

Mr. Pearlman commented that if that section is removed, then where in the charter does it say anything about amending the charter? Mrs. Fox replied that Section 9.04 addresses charter amendments.

MOTION Mr. Senff made a motion to delete Section 10.07 as recommended. The motion was seconded by Dr. Bowers.

Ms. Cave called for a roll call vote.

Yes 11 Bowers, Dalcolma, Elder, Foust, Lhota, Myers, Pearlman, Princehorn, Senff, Bates, Cave

No 0

The motion carried unanimously.

SECTION 11.02 EXEMPT POSITIONS.

Ms. Cave shared that recommendation is to remove the list of exempt positions in the Charter and to have the Council provide for those classifications. There is a further amendment to that section dealing with classified and unclassified service.

Mrs. Fox commented that many municipalities allow the council to do this by ordinance while others list out the specific positions. As explained at the last meeting, the organizational chart changes periodically and we change names of positions. The Council and boards and commissions shouldn't be included on this list as they are not employees. She feels that it is better handled to just have council establish those positions by ordinance and to establish the rules that govern those positions. She also changed the terminology from exempt/non-exempt to classified/unclassified which is a little more consistent with the way laws refer to those positions.

Mr. Myers shared that for a while he thought that one of Mr. Greeson's hobbies was organizational charts. In reality, the changes have been good. But sometimes the positions on this list are changed. If you allow council to do this by ordinance, then when we reorganize it allows Council to make changes. He thinks administratively it is much more convenient to take it out of the charter and give the authority to council.

Mr. Foust shared that the Department of Labor has changed the rules for exempt or non-exempt. It is easier for the City to administer payroll and staffing decisions if we just stay silent on this. Mrs. Fox agreed. It is important to note that we are required to follow this merit system as it is a state constitution provision. She thinks it is better to lie with council under the ordinances than the charter.

Mr. Greeson shared that this is not for fair labor standard act purposes but rather for who is an at will employee as opposed to someone who has protections similar to the civil service and appeal rights through the Personnel Appeals Board. One of the benefits of changing to the classified/unclassified is that it distinguishes it from the same vocabulary we use day in and day out about the fair labor standards act where we use the term exempt and non-exempt. Some of these positions are elected and do not really fit in this section. Some are appointed by Council, like Mayor and Vice Mayor and aren't hired in the same manner. Only long term concern is that many of these positions are on this list because of their discretion and managerial responsibilities or they handle confidential information. They are at will and he wouldn't want that list to shrink over time and erode the City Manager's managerial authority over his city staff.

Mr. Pearlman commented that suppose the city manager decides to terminate the secretary to the City Manager, he asked if there is protection for that employee. Mr. Greeson replied that if you are appointed to one of these exempt positions then you are at will and do not have the same protections under the personnel rules and regulations. There are state and federal laws that would apply.

Mr. Elder shared that they will have to go back and change Section 3.05. He looked at this starting on Saturday and this is the one that he has been thinking about and doesn't know what it does. It seems to erode some of the team approach to governance. There will need to be other changes. If the City Manager has a team and Council suddenly affords classified protections for the team that changes the dynamic between the City Manager and the department directors. Mr. Greeson agreed.

Mr. Myers commented that if he understands being a close advisor and the importance of a close confidant. He doesn't know why a Council would put them back into selected service.

Mr. Greeson stated that some of these need to be removed from the list because they are appointed, elected or are volunteers.

Ms. Cave shared that by eliminating 11.02 and by replacing it with the new language, you are giving council the ability to do this. It gives the public a better look at how employees are hired and dealt with as Council discusses it. If we eliminate this language in the charter, Council will have to do this by ordinance, which are subject to readings and public participation.

Mr. Elder shared that now Council approves the appointment of department directors.

Mr. Pearlman commented that one way to deal with Mr. Greeson's concern is to define what an exempt position is and then give City Council the ability to list those positions. They would need to fit within those definitions. There seems to be staff members that have a close relationship with the City Manager.

Ms. Michael shared that not that long ago we reorganized. We had an Engineering Department and a Service Department and there was a director in each department. The departments were reorganized for better efficiency. She asked if the charter limits those types of steps.

Mr. Bates asked if Section 3.05 already gives council the ability to do that. Mr. Greeson explained that the charter ties them to nomenclature of departments. Departments might be divided into divisions as a subordinate subset of a department. He believes our charter allows us to create departments and divisions underneath it but they probably have to stick with that nomenclature.

Mrs. Fox addressed Ms. Michael's question by stating that in reading the charter literally, division directors are positions that do not fall within the exempt positions. Chiefs are division directors and the charter language would bring in open, competitive examinations.

Mr. Foust stated that this is a general concept. It seems like council and the charter should provide very broad directives and allow the City Manager to make many of these decisions.

Mr. Greeson shared that the check on this authority is the confirmation process by City Council.

Mr. Lhota asked where in the charter it names the departments. Mr. Greeson replied that it doesn't. They are listed in the codified ordinances.

Mr. Elder asked what will be changed if this goes forward. He asked if there would have to be some concurrent changes in other sections of the charter. Mrs. Fox replied that she was going to bring those forward at the next meeting.

Ms. Cave confirmed that this section would be carried over until the next meeting along with any additional changes needed.

Mr. Elder stated the only people who aren't employees on that list are the members of council and the board and commission members.

Members debated whether the mayor and vice mayor were employees. Mrs. Fox confirmed that they were employees although they are different.

Mr. Myers commented that there is a whole body of case law discussing what makes an exempt employee, the parameters. Those two terms are pretty well defined in the law.

Mr. Elder noted that Section 2.05 in the charter stated that, "council shall elect a mayor and vice mayor." He asked if they are considered elected officials. Ms. Cave shared that the state statute also says that a Clerk of Council is "elected" by Council but is not considered an elected official. It was an old term that was used instead of "select".

Ms. Cave asked if members wished to table this topic until the next meeting.

MOTION Mr. Myers moved to place this item on the next meeting's agenda for further discussion. The motion was seconded by Mr. Lhota.

The motion carried unanimously.

SECTION 11.03 PERSONNEL DEPARTMENT

Ms. Cave shared that this would eliminate the Personnel Director's certification of payroll.

Mr. Bates asked what certifying payroll means in the government sector. Mr. Greeson replied that it means approving the payroll.

Mr. Elder asked if there were still two people who sign off on payroll. Mr. Greeson replied that he and Molly Roberts the finance director certify payroll. He thinks this language dates to when the City Manager also served as the personnel director.

Mr. Myers asked if it is typical that the charter would go into this much minutiae. Mrs. Fox replied that it varies by municipality.

MOTION Mr. Myers moved to adopt the recommended change. The motion was seconded by Mr. Bates.

The motion carried unanimously.

OTHER ARTICLES FOR DISCUSSION

Ms. Cave reported that at the last meeting there were a few items for discussion that we were not able to get to until tonight. One of those items was a discussion of Article I.

Mr. Myers shared that the Section is 1.04. The threshold question is whether that is even a topic for discussion since it was recently enacted. Every other provision of the charter is open for discussion so he thinks this is an appropriate topic for discussion. He has some strong views as to what that discussion should conclude. He doesn't particular care for the new 1.04 but it was approved by the people. It is the law and he is obligated to apply the law.

Mr. Dalcolma agreed with Mr. Myers. He thinks it needs to be looked at from the standpoint of reasonableness. Why hold every issue to the same high standard as something as big as UMCH. He thinks it warrants discussion.

Ms. Cave shared that this is a public forum. This is an opportunity to have issues discussed that are of interest to the members of the community. She believes that this is an appropriate forum to bring up this issue.

Mr. Myers commented that ultimately this is a recommendation that will go to City Council and be debated line by line. He asked if there is room for compromise to exempt out non-contentious projects from contentious projects. To allow for more publicity, he wondered if they should advertise it for the next meeting. He has prepared a potential compromise which preserves the 60 days. There could be other proposals from commission members. He asked if they would prefer to have them out in the open and brought back to consider at a future meeting.

Mr. Foust thinks they should re-think whether they really want to take this one on. It is unique in that he is a Council member, a member of this commission and he was very active in getting Issue 38 passed. He would hate to see the commission viewed as political. This issue was discussed heavily and voted on publicly. It's still very fresh and emotional.

Mr. Pearlman asked Mr. Myers what he meant by compromise. Mr. Myers shared that one of the ideas floating around, similar to medical malpractice lawsuits, in that a resident would file a letter of intent. If no letter of intent is filed then the legislation would go into

effect on a 30 day timeline. If a letter is filed, then on a 60 day timeline. The question is whether the commission wants to discuss this.

Ms. Cave said they can have a discussion and then decide whether to make a recommendation to City Council.

Mr. Pearlman thinks this raises political questions. If the commission decides to make a recommendation, then it will be seen as wading into the issue.

Mr. Foust pointed out that the commission consists of eleven people and 5,000 people spoke with their vote.

Mr. Lhota asked what the issue is that is trying to be solved. The City Council has the ability to change this at any time.

Mr. Bates noted that if it is in the charter then members need to abide by it.

Mr. Myers stated that they could propose a charter amendment.

Mr. Lhota asked if there is any data that this is not working. If not, then he doesn't want to make any changes.

Dr. Bowers and Mr. Bates shared that they are uncomfortable with the discussion.

Ms. Princehorn shared that this item is very fresh and we don't know whether it works or not. She suggested letting it work for a while and maybe it will be a matter for the next charter commission. Mr. Dalcolma said he was okay with that.

Mr. Myers reported that is what he and the Council when they talked about this last fall wanted to know. He just wanted to make clear that no provision was off the table for discussion.

Mr. Elder shared that when this issue was going on there were questions about whether he wanted a garage close to his property line and would that get caught up in the process. Mrs. Fox replied that issue would require a variance that is administrative and not legislative which is subject to referendum.

Ms. Cave suggested moving on.

Mrs. Fox shared that Mr. Pearlman proposed a provision in Section 6.03 POWERS AND DUTIES OF MUNICIPAL PLANNING COMMISSION. He would like to include something as guidance that directs members of the commission to provide a basis for their decision in writing.

Mr. Pearlman commented that in the 1920s the Department of Commerce said that zoning should be done in accordance with the comprehensive plan. Some states say

zoning should be consistent with the plan, but Ohio has not done that. When MPC is dealing with zoning issues, subdivisions, any recommendations to Council or decisions on Conditional Uses, it should be required to state how their action relates to the comprehensive plan. This is not the City's plan. It is not just a question of whether this is a good idea for the property but also whether it complies with the comprehensive plan. It enables us to decide if it fits with what the City is doing with its process, including the comprehensive plan and also how they have been interpreted and implemented.

Ms. Princehorn asked if the charter is the appropriate place for that. The charter has the powers and duties but how they execute their powers and duties she believes is done by ordinance.

Mr. Pearlman replied that there is increasing concern about how changes comply with the comprehensive plan. He is not talking about the Comprehensive Plan but rather it's planning and the Comprehensive Plan is part of that.

Ms. Princehorn asked if the Codified Ordinances have a list of items for MPC to consider and/or do. Mrs. Fox replied that there is a list of factors for MPC to consider. It is not as broad as what Mr. Pearlman is suggesting.

Mr. Pearlman shared that he is talking broadly in regard to their actions.

Mr. Bates asked if he was talking about intent. The Wilson Bridge Road corridor - it is common knowledge that it is intended for multi-use.

Mr. Greeson shared that they might have a multi-family development proposed for a property the City would prefer to keep for commercial and income tax generating.

Mrs. Fox reported that Wilson Bridge has an actual plan adopted for it.

Mr. Dalcolma commented that if there is anything we can do to make it clearer to the public and the private sector related to property rights is helpful.

Mr. Elder asked why MPC and not City Council. Mr. Pearlman replied because MPC is providing the technical expertise that goes to the Council so they should make the statement about the underlying issues. Plus, to tell Council what it needs to say may be a bridge too far. Council meetings are not public hearings in the same way as what occurs at MPC. Personally he has no issue with it.

Dr. Bowers asked if he could bring back proposed language at the next meeting.

Ms. Cave suggested he do that and have the item placed on the agenda.

Ms. Princehorn commented that the next meeting is the last meeting. Mrs. Fox agreed that it is the last scheduled meeting. Ms. Cave shared that it should be in order to meet the election deadline.

Mr. Elder asked how their recommendations would be presented to City Council. Will they be submitted as a package or individually? Ms. Cave replied that members discussed that early on and decided to wait until the end to decide.

Mr. Myers commented that City Council can decide how to package for the ballot.

A member of the audience asked if the agenda is posted on the website. Mrs. Fox suggested she provide the clerk with her email address so that she could e-mail the information out to her.

Mrs. Fox in wrapping up the discussion shared that there are a few changes to Article 3 related to exempt/classified that she will be bringing to the next meeting along with a draft of the report for Council that will include a few blanks for the final issues. It will also include Mr. Pearlman's suggested language.

Adjournment

MOTION Mr. Foust made a motion to adjourn. The motion was seconded by Mr. Myers.

The motion carried unanimously.

Ms. Cave declared the meeting adjourned at 7:21 p.m.

Respectfully Submitted,

D. Kay Thress, Clerk

Approved:

Sue Cave, Chair