



To: Worthington City Council

From: Worthington Charter Review Commission

Date: June 27, 2016

Subject: Report – Recommended Amendments to Worthington City Charter

### Background

The 11 members of the Worthington Charter Review Commission were appointed at the February 8, 2016 meeting of the Worthington City Council. The last time the Charter was amended on changes recommended by an appointed Charter Review Commission was on November 6, 2007. On November 3, 2015, the Charter was amended pursuant to a citizen-initiated petition. The 2016 Commission was asked to review the Charter and consider whether changes should be made, and forward to Council specific prepared recommendations for Council's approval for placement of those amendments on the November 8, 2016 general election ballot.

### Work of the Commission

Sue Cave was nominated and elected to serve as the Chair of the Commission with Mark Senff chosen as Vice-Chair. The Commission held five meetings from March to June. Approval of recommended changes was made upon a majority of the Commission, or at least six votes. With two exceptions, which will be detailed later on, all of the changes were approved unanimously or nearly so. Many of the proposals discussed were based on submissions from the City administration. The Commission was given the opportunity to submit issues to discuss. One issue was submitted by Ken Pearlman related to duties of the Municipal Planning Commission; another set of proposed changes was submitted by Becky Princehorn related to financing and bond law processes. The Charter Review Commission was deliberative in its decisions and believes that the proposed amendments maintain the integrity of the Charter while conforming provisions to current City practices, changes in technology and revisions in Ohio statutory laws and procedures. The Commission recommends that Council approve these amendments for submission to the November general election ballot.

At the June 6 meeting of the Commission, the members discussed whether to consider any changes to Section 1.04, the Issue 38 amendment that was approved by the voters last November.

After most of the members agreed that it was in the Commission's purview to discuss this section, the dialogue turned to whether it should be discussed, in light of its recent adoption. Many weighed in on the subject and the group ultimately determined that now is not the appropriate time to offer any recommendations for amendments to this section. Most wanted to allow time to pass to afford everyone the opportunity to see the effects of Section 1.04. The Commission ended the debate without any recommendations made.

### Preservation of the Power of Local Self-Government<sup>1</sup>

The core philosophy of our Charter is to reserve to the City the widest possible power and authority of local self-government. Our Charter is written in such a way as to permit the City to do all things a charter city may do under the Ohio Constitution while, at the same time, providing the City with the broadest flexibility for exercising that power and authority. The Charter is basically an enabling document which permits exercising the power and authority of local self-government through the enactment of legislation or the adoption of regulations. The charter sets forth all of the things the City needs to have the right to do; choosing whether to do those things and, if so, how to do them is mostly left to legislative and administrative decision-making.

### Recommended Charter Amendments

The Charter Review Commission recommends that the following Charter amendments be submitted to the voters of the City of Worthington as one ballot issue:

#### Article II – The Council

Section 2.04 – Salary. The Commission members agreed that the salaries currently established for City Council are low, especially in comparison to other jurisdictions in Central Ohio. There was significant discussion about whether all Council members could receive a one-time increase in salary as a means to bringing them all more in line (or closer to) those other jurisdictions, even when that means that some current members would receive an increase during their term. Receiving an increase (or decrease) during a member's term is currently prohibited by the Charter. The general consensus of the Commission was that a one-time increase for all Council members is warranted, but subsequently no raises should be voted for in-term members. A prohibition on emergency legislation to set the salaries was also approved.

Section 2.05 – President of Council, President Pro-tem of Council, Mayor and Vice-Mayor. This Charter section sets forth the qualifications for Mayor and Vice-Mayor. The chief duty of these appointed officials is to preside over Mayor's Court. Under Ohio law, Ohio Mayor's Courts can appoint a magistrate to act as judge, rather than the municipality's mayor doing so. The City of Worthington in the past several years had to take the responsibility of appointing a magistrate when our Mayor and Vice-Mayor were unable to perform those duties in court. The recommended change makes it clear that our Charter permits the appointment of a magistrate.

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<sup>1</sup> This section was originally drafted by Mike Minister, former Law Director for the City. Because these statements still ring true to the process of the 2016 Charter Review Commission, I have included them in this report.

Section 2.06 – Salary of Mayor and Vice-Mayor. In order to simplify and bring the process for establishing a salary for the Mayor and Vice-Mayor in line with current budgeting practices, the Commission recommends broadening the language in this Charter section by directing Council to set that salary by ordinance.

Section 2.07 – Specific Powers of Council. The simple recommendations in subsection 2.07(10) are to change the reference to the Board of Architectural Review to the Architectural Review Board and to correct a cross-reference error to Section 6.03(7). Also, as explained in the Section 11.02 recommendation below, a change was made to subsection 2.07(2) to refer to ‘exempt’ officers as ‘unclassified’ officers.<sup>2</sup>

Section 2.17 and 2.18 – Procedure in the Passage of Ordinances; Publication of Passage of Ordinances. The current Charter language requires the full reading of an ordinance title when it is introduced and when it is up for public hearing. A City Council member asked if those titles might be read in summary fashion because of the length of certain titles, mostly dealing with TIF or bond legislation. The discussion focused on whether to allow for the reading of the title and the publication of the title in the required newspaper advertisement (and electronically as described below) in an abbreviated fashion. The Commission decided to vote in favor of that concept. Ms. Cave indicated that the State legislature provides notification in this manner.

In order to bring the notification requirements more in line with current technology, the debate was centered on whether publication of public hearings on ordinances should be restricted to publication in a newspaper of general circulation, or whether additional (i.e., electronic) methods were warranted. After a lengthy dialogue, the Commission decided on maintaining the newspaper publication requirement, but adding to that requirement an electronic method of notification that would be determined by City Council. The Commission acknowledged that maybe when the next Charter Review Commission is appointed in ten years, the print notification requirement may be obsolete, but now was not the right time to eliminate it. There were divergent opinions on this particular issue (with some in favor of maintaining the print and others believing electronic methods are more effective and should be the only method used), resulting in one of the two 6-5 votes of the Commission. A similar change was approved for language contained in Article IV, Section 4.03, pertaining to the public hearing on the budget ordinance.

Section 2.19 – Effective Date of Ordinances. There are a few different types of ordinances passed by City Council that go into immediate effect. Section 2.19 lists what those are. The City is required, on an annual basis, to pass an ordinance and provide it to Franklin County authorizing the annual tax levies imposed upon Worthington property owners. The submission of the annual tax budget is a statutory requirement. Because the timing of the approval of this ordinance conflicts with the Council’s summer recess calendar, it is usually difficult to pass it in the ordinary course of our legislative process and submit it on time. Council often has passed the measure by emergency, solely to comply with the County’s statutory deadline. The proposed

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<sup>2</sup> Similar recommended changes were made to Sections 2.10, 3.02(1) and 3.05.

language would eliminate that problem by allowing for the ordinance to become effective upon passage and publication.

There was an additional recommendation to cross reference the Issue 38 Charter amendment in Section 1.04 as an exception to all other ordinances that would become effective 20 days following passage and publication.

Article IV – Finance  
Article V – Taxation and Borrowing

Section 4.10 – Purchasing. The recommended change in this section addresses the way the City administers its purchasing function. Because the purchasing function may change from time to time, instead of requiring that function to rest in a single department, the recommended language was broadened to simply allow for City Council to establish the manner in which the City performs it. Our administrative code would be the appropriate section to establish that process.

Section 4.11 – Competitive Bidding. The Charter requires open competitive bidding for the purchase of supplies, materials and equipment and the construction of public improvements. In 2012, the State legislature allowed for public entities to utilize a variety of purchasing methods in addition to competitive bidding. In order to afford the City the ability to take advantage of the State amendments and to tailor its purchases in the most effective manner, the Commission agreed that it is in the best interest of the City to allow it to make purchases by any method authorized by the State for public entities.<sup>3</sup>

Sections 4.13, 4.14, 5.04 and 5.05 (Public Financing). Certain changes to these sections are recommended primarily to bring the Charter into conformance with State-authorized changes to the nomenclature and processes of the Ohio Uniform Public Securities Act.

Article VI – Boards and Commissions

Section 6.03 – Powers and Duties of the Municipal Planning Commission. Ken Pearlman requested a paragraph be added to the end of this section to address the decisions made by the MPC. Specifically, the clause he drafted requires the MPC to articulate the basis of a decision and how that decision relates to the overall comprehensive planning goals of the City. He explained that while Ohio does not require that zoning decisions be formally consistent with a written plan, they nevertheless must be done comprehensively and rationally. In the second of the two issues that garnered a 6-5 vote, and after a lengthy dialogue and debate about how the MPC may arrive at an articulated basis and whether it was beneficial to include this language in the Charter (as opposed to having similar language in the zoning code), the Commission approved a motion to insert the clause at the end of Section 6.03, which is included with the attached amended provisions.

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<sup>3</sup> Based on this recommendation, the reference to the authority of the City Manager in Sections 3.02(9) and 3.02(10) to execute contracts *subject to the satisfaction of any requirements for competitive bidding* was deleted.

Section 6.05 – Powers and Duties of the Board of Zoning Appeals. The authorization granted to the BZA by Charter in approving variances is by a method that has changed over time as court rulings have been handed down. Specifically, the recommended amendment is more consistent with the language in our Code and the standard by which those variance decisions are authorized.

#### Article VII – Nominations and Elections

Section 7.03 – Nominations. A significant amount of time was devoted to discussing this section, which sets forth the requirements for candidates to the office of City Council when submitting petitions. The current Charter language sets both a minimum and a maximum number of valid signatures required to be submitted to the Board of Elections. The Ohio Revised Code already has a procedure established for the Board of Elections in its acceptance of petitions, which provides for a maximum number of signatures to be submitted (3 times the minimum number, or in Worthington’s case, 150). The Commission members ultimately decided to eliminate the maximum number and instead rely on State law to control.

#### Article IX – General Provisions

Section 9.01 – Oath of Office. Section 9.01 requires officers and employees to take and subscribe to an oath of office. Because the Charter is silent on who administers the oaths and because there are some limitations under Ohio law regarding who is qualified to administer an oath, it is suggested that we include the City Manager or the City Manager’s designee as two individuals in the City who may do so. Elected officials and those authorized to administer an oath (i.e., a Notary Public) are also eligible individuals who may administer the City’s oath of office under the Ohio law. The Commission voted specifically to designate the City Manager or a designee.

#### Article X – Transitional Provisions

Section 10.07 – When Charter Amendments Take Effect. The Commission agreed with the information that was presented by the Staff that described this provision as a ‘belts and suspenders’ provision and not one that had to be included in the Charter in order for Charter amendments to take effect. Those amendments take effect when passed and certified or on the date provided for in the ordinance. The recommendation was made to delete this section of the Charter.

#### Article XI – Merit System

Section 11.02 – Exempt Positions. The Ohio Constitution requires that appointments to and promotions in public positions be made on the basis of merit and fitness and pursuant to open competitive exams. However, exceptions can be made for those employees that work in positions of trust, discretion and confidence, who are not required to be protected under this system and who serve at the pleasure of the appointing authority. The Charter lists each of those

positions that fall within the merit system exemption. Based on a suggestion by the Staff, the Commission was presented with two alternative suggested amendments to this section. The first involved eliminating the list all together and instead referring that list to Council to establish by ordinance. This alternative would make it easier if changes in the list were warranted, due to the creation of new positions or changing the title of a specific position. There was a robust discussion on this topic with no decision made at the meeting when it was initially addressed, resulting in a request that additional information on this topic be presented at the next meeting. At the following meeting, a second alternative was presented that removed the elected and appointed officials from the list (Council, Mayor, Vice-Mayor and members of boards and commissions) on the basis that the Charter, and not necessarily the merit system, provides for the election, appointment and removal of people in those positions. However, a clause was added to the end of the list clarifying that those positions fell outside of the merit system. This second alternative was accepted by the Commission and recommended for approval.

The Commission also approved changing the reference from 'exempt' positions to 'classified' and 'unclassified' positions, to conform to general statutory references and to help differentiate these employees from those who may be 'exempt' under the Fair Labor Standards Act for overtime purposes, unrelated to the merit system.

Section 11.03 – Personnel Department. One of the enumerated duties in this section for the Personnel Director is to “certify the payroll.” This is no longer a function of the Personnel Director and instead lies with the Finance Director. The Commission agreed that this duty should be eliminated.

Respectfully submitted,



Sue Cave, Chairman