

**MINUTES OF THE CHARTER REVIEW COMMISSION OF THE CITY OF AVON, OHIO
HELD THURSDAY, MARCH 9, 2017, AT 7:00 P.M. IN THE COUNCIL CHAMBERS OF
THE MUNICIPAL BUILDING, LOCATED AT 36080 CHESTER ROAD**

Chairman James Smith, called the meeting to order at 7:00 p.m.

ROLL CALL- COMMISSION MEMBERS PRESENT:

Greg Dziak; Pat Jankowski; Marcel Mylen; Mark Principe; Frank Root, Jr.; Vice-Chair, Bruce Klingshirn; Chairman, James Smith; Alternate A Patricia Ashley

ALSO PRESENT:

Law Director, John Gasior; Secretary to the Commission, Barbara Brooks

ABSENT:

Jeff Lindsay, Anthony Moore, Alternate B Eugene Rouse

APPROVAL OF MINUTES OF THE THURSDAY, FEBRUARY 23, 2017 CHARTER REVIEW MEETING

A motion was made by Ms. Jankowski, seconded by Mr. Klingshirn to approve the minutes of the meeting of the 2017 Charter Review Commission, held Thursday, February 23, 2017, and to adopt said minutes as published, and the vote was unanimous in favor and the motion carried.

DISCUSSION OF AMENDING ARTICLE IV SECTION 7 – REGARDING COUNCIL PAY

Mr. Smith indicated that in looking at Council pay for other cities, many of them with staggered terms pay according to their term in office. He felt that simplifies it and people usually do not run for City Council office for the pay. Mr. Smith stated he did not know the opinions of the others on the Commission, but he felt they should leave the Charter language as it currently reads and the pay increases, if any, will follow according to their terms in office albeit staggered.

Mr. Klingshirn agreed and stated he did not see why they needed to change the Charter. Mr. Smith stated it was a good exercise to review it and perhaps the rest of the Commission might feel differently and that the Charter should be amended. Mr. Smith inquired of Finance Director Bill Logan as to what other cities do in regards to Council pay when there are staggered terms. Mr. Logan advised he felt other cities were very similar to how it is structured here. Mr. Smith stated those who are elected 90 days from establishing the pay would receive the increase and the others would wait until their new term in two years to receive the increase. Mr. Logan confirmed that was correct.

Ms. Jankowski stated there was obviously some question or we would not have discussed changing the Charter. Mr. Smith said it is an issue that was good to look at. Ms. Jankowski said the way Mr. Gasior proposed at the last meeting taking out those sentences she felt it reads better and the rest was not necessary.

Mr. Gasior advised last meeting when discussing this topic, several ideas came up because Council has staggered terms now. He stated with the help of Ms. Brooks, we were able to track a number of municipalities that have staggered terms for their Councils and we asked how they are paid. Mr. Gasior advised in all but two or three they pay them just the way our Charter will pay them. He said in the other cities that pay them differently, closer to what we were considering, they allow their Council to vote a pay raise every four years and it was generally increased by one or two percent and these are smaller cities. Mr. Gasior stated he spoke with the Chief Counsel for the Ohio Municipal Attorneys Association who is very knowledgeable and he pointed out to him that this issue comes up all the time with staggered terms and it is generally left alone. The Chief Counsel for the OMAA also told him that most County Commissioners have three Commissioners and they have staggered terms. Mr. Gasior advised when a County Commissioner votes to approve a pay increase for their position prior to the election, only those who begin new terms receive the pay increase, which is very similar to how our Charter is structured right now. He said if this body decided to leave the Charter the way it currently reads, he felt the City would be operating in the safest spirit by not making any changes to this section. Mr. Gasior stated like the County Commissioners, City Council can pass legislation this year for Council pay increases and the four Ward Council Members receive that pay increase with their new term in January. He said the three At-Large Council Members

were elected two years ago and they were elected at their current salary and probably they should not receive an increase until their term is expired and then they would receive their pay at the new rate beginning with the new term. Mr. Gasior recommended not making any changes to the Charter regarding Council pay based on everything that he has researched and we would be on par with all the County Commissioners and 90% of municipalities that have staggered terms for their Councils. He stated it is the theory that these elected officials ran for their office knowing the established pay and it may not appear fair to increase that pay during their current term. Mr. Gasior advised if Council passes a pay increase this year for their position, the newly elected or re-elected Ward Council Members will receive it in January 2018 and the At-Large would receive it with their new term in January 2020.

Mr. Mylen inquired if Council passes a pay raise, the At-Large Council Members would not be eligible to receive it until 2020. Mr. Gasior confirmed such and added until their new term begins. Mr. Gasior noted, the pay increase for all seven members of Council could be done prior to the 2017 election, but would take effect for each position when their new term would begin and that is fair. He said or the At-Large Council could institute a pay raise for Council just before they are elected or re-elected and they would receive the increase in January 2020 two years prior to the Ward Council in 2022 and it would balance out. Mr. Smith advised if the Charter remains the same and Council passes a pay ordinance for their positions they do not receive the increase in their pay until the next term. Mr. Smith stated the next term would be January 2018 for the Ward Council and January 2020 for the At-Large Council as long as it was passed a minimum of 90 days prior to the filing election. Mr. Smith said for the At-Large it would be 2 years and 90 days before their pay increase would take effect. Mr. Gasior agreed the pay could be set for the At-Large Council now to be effective in 2020. Mr. Smith advised they could set it for the whole Council.

Mr. Gasior stated they are talking about the Ward Council Members passing an Ordinance this year to raise their pay for the four wards beginning January 2018 because they are up for election in November of 2017. He said the pay increase for the Ward Council Members would be a valid pay raise because it would take effect in their next term. Mr. Gasior added that same Ordinance could then set the pay for the At-Large Council Members that would take effect January 2020. Mr. Klingshirm agreed and said that would be the new term for the At-Large Council Members.

Mr. Smith inquired if the wording stating when the pay would take effect for each elected official would have to be in the Ordinance. He said if it is a minimum 90 days before an election, the ones whose terms are not ending until 2019 were still not eligible until their new term. It was noted, the minimum requirement was met and for some it was 2 years and 90 days prior to their new term. Mr. Smith believed previously a pay raise for Council was set a year before the new terms would take effect and that was fine as long as it was a minimum of 90 days before the election.

Mr. Gasior advised there was another nuance to this that supports leaving the Charter the way it is currently. He said there is a State statute in the ORC 731.07 that reads like our Charter that states you cannot increase the pay of elected officials in the middle of their term. Mr. Gasior stated from researching this topic he got the feeling that it is not a good idea to allow those elected to public office to make changes to their pay in the middle of their term. He said it is a practical matter that these people knew when they ran for the office what the pay consisted of and what the duties entailed and they were just going to have to carry it out for the four years of their term. Mr. Gasior advised as a Council Member, you can set the pay for the next group that comes in after you and that was fine, but he felt you should never be able to set that pay for yourself. He said when we looked at the language two weeks ago and discussed striking part of it, they were rationalizing that the checks and balances of Council giving themselves a raise was that the voters could vote them out of office if they were not happy with their decision. Mr. Gasior said the State statute has never been tested in the Supreme Court, but there is an argument that it conflicts with the Home Rule provision of the Ohio Constitution. He said this is an issue that auditors will look at if there are pay raises for Council Members and the auditor would ask to see when their terms expire. Mr. Gasior stated the auditors would bring up the State statute and ask what their authority was for giving raises in term and it could become a Home Rule issue if they want to challenge it in our Charter. He said after doing the research he would recommend they leave the Charter language alone with regards to Council pay.

After a brief explanation of how a proposed change would go to City Council in Ordinance form and then placed on the ballot for the voters, no further discussion of amending this section of the Charter was given and no formal action was taken and the matter essentially died.

DISCUSSION OF AMENDING ARTICLE VII SECTION 1(b) POWERS AND DUTIES OF THE BOARD OF ZONING AND BUILDING APPEALS

Mr. Gasior stated the Commission Members had a copy of the proposed Ordinance for Council to adopt and the language to be placed on the ballot. The proposed amendment is as follows with the proposed changes in bold:

SHOULD BE AMENDED TO READ AS FOLLOWS:

Article VII, Section 1 – Boards and Commissions.

(b) Powers and Duties. The Board of Zoning and Building Appeals shall have the following duties and powers, to be exercised in conformity with the purpose and intent of the ordinances governing zoning and building in the Municipality of Avon and in accordance with such guidelines, standards and procedures as from time to time shall be promulgated by Council:

- Zoning (1) To hear and decide appeals made for exceptions to and variations from the application of the Code and the Building Code;
- agencies, (2) To hear and decide appeals made from decisions and rulings of administrative officials and **other than Council**, including the Building Inspector and Zoning Enforcement Officer;
- regulations; (3) To interpret the Zoning Code and the Building Code, ordinances, resolutions, rules or
- exercised (4) To exercise, with respect to buildings situated in the Municipality, the same powers as are by the Board of Building Standards under the laws of the State of Ohio to the extent that it is competent for this Charter so to authorize the Board;
- Zoning and (5) To recommend ~~changes to the Council for~~ changes in and amendments to the **Planning**, Building Codes;
- (6) To establish rules and regulations for its own procedure not inconsistent with this section;
- Charter, (7) To do and perform such other duties and functions as may be imposed upon it by this existing ordinances or ordinances and resolutions of the Council.

Nothing herein contained shall be construed as authorizing the Board of Zoning and Building Appeals to exact changes in a zoning map or to add to the uses permitted in any zoning district. **Administrative decisions by Council on any matter involving the Planning and Zoning Code shall be deemed final and not reviewable by the Board of Zoning and Building Appeals.** (Amended 11-8-66; 11-2-71; 11-7-95; 5-6-97)

Mr. Gasior pointed out that in Section 1(b)(2) it states “administrative officials” and while City Council is a legislative body, legally, when making decisions on a Special Use Permit they are acting as an administrative body. He stated City Council’s decision is subject to challenge in Common Pleas Court. Mr. Gasior said if City Council approves rezoning of a property they are acting as a legislative body and the only way to challenge that decision is through a referendum on the ballot. He advised you cannot go to court on a legislative action, but you can when Council acts administratively. Mr. Gasior noted the differences are subtle, but for purposes of a Special Use Permit it is absolutely administrative action and an appeal should go to the Common Pleas Court and not to the BZA.

Mr. Gasior stated this section was further amended in subsection (5) where he clarified some of the sentence structure and added the words Planning and Zoning. He said the last sentence of the last paragraph of this section of

the code was added as the key and in case subsection (2) was misunderstood, he felt this additional sentence should further cement the intent of this section. Mr. Gasior advised if the Commission is okay with these changes he would ask for a motion to recommend it to Council or they could continue to discuss it.

MOTION TO RECOMMEND THE PROPOSED CHARTER AMENDMENT TO ARTICLE VII SECTION 1(b) TO CITY COUNCIL AS PRESENTED TO THE CHARTER REVIEW COMMISSION BY LAW DIRECTOR MR. GASIOR

A motion was made by Mr. Principe and seconded by Ms. Jankowski to recommend the proposed Charter amendment of Article VII Section 1(b) [in bold above] to City Council for placement on the November 2017 ballot, and the vote was: Mr. Mylen, “yes”, Mr. Principe, “yes”, Mr. Root, “yes”, Ms. Ashley, “yes”, Mr. Dziak, “yes”, Ms. Jankowski, “yes”, Mr. Klingshirn, “yes”, Mr. Smith, “yes”

The vote was 8 for and 0 against and the Chairman declared the motion passed.

DISCUSSION OF ARTICLE V SECTION 6 – TREASURER

Mr. Gasior said there was a question from one of the Commission members about the position of Treasurer and what the Treasurer does for the City and for Council and the City’s Finance Director is here to explain the function of the Treasurer position.

Mr. Logan explained he has been Finance Director for Avon for approximately 9 years and the word Treasurer in this instance for Avon is a part-time position and not the Chief Financial Officer like in other entities such as the schools. The responsibilities of the Avon School Treasurer are much like his as the Finance Director for the City of Avon. He said the position of Treasurer for the City of Avon is a part-time position and has been in place since the 1960’s. Mr. Logan stated the Treasurer is paid between \$19,000-\$20,000 a year and is a salaried part-time position and the person holding the position sets their own hours. He said this person signs off on every check, every payment that leaves the City as one of two signers on every check. Mr. Logan stated she verifies every check with every invoice making certain they match and auditing the payments and she does the same thing with payroll for every employee and signs off when they match. He said the Treasurer reviews all of the receipts for the month at month end and reconciles all the bank statements. Mr. Logan advised at the same time the Finance Department is reconciling the bank accounts independently. He said the Treasurer provides a copy of the bank reconciliation to the City Council every month and a fund report from their own software where the receipts and payments have been tracked and rolls forward her fund balances independently of the Finance Department and provides that report to Council at the end of each month as well. The Treasurer approves any kind of wire transfers initiated by the City. The Treasurer is the custodian of the municipal funds and the Finance Department looks at it like an audit function. Mr. Logan felt for the 10-15 hours the Treasurer works each week, it is a great function as this person audits every single payment and they write close to 300 checks every month. The Treasurer reports to the President of Council and City Council can call a meeting with her at any time and they do not have to include the Finance Department in the meeting. Mr. Logan advised the Treasurer provides a very good independent check of what goes on in the Finance Department.

Mr. Smith stated she is one of three people that are hired by City Council. He said it is City Council’s checks and balances with the administration.

Ms. Jankowski inquired if the Treasurer was under the jurisdiction of the Finance Director. Mr. Logan advised no, the Treasurer truly works for City Council. He said she relies on the Finance Department to provide her with certain information, but his department does not direct her. Mr. Klingshirn stated it sounds like an internal audit function and the Treasurer has direct access to City Council and they can talk to her at any time the same as a Board of Directors could call an internal audit or independent accountants and the Treasurer reports to Council and not the Finance Director. Mr. Logan confirmed that to be correct.

Ms. Jankowski inquired if the name Treasurer was confusing to people rather than calling this position Auditor. Mr. Logan answered that a Treasurer in this instance is a different function than a Treasurer at the schools or other entities. Mr. Gasior guessed the word Treasurer came from the State because the State has a lot of provisions that govern the municipalities. When you are not a Chartered City then you follow Title 7 of the ORC and the same language was most likely brought over into the Charter when it was adopted. Mr. Smith stated it was probably a

term used in the 1960's and no one ever changed it. Mr. Logan stated to him it is an audit function, but the Treasurer does have custody of funds going out and signing checks and approving and signing off on receipts and has direct access and accountability to City Council. He said the current employee in this position has an accounting background and only wants part-time for now and she has done a great job and City Council is happy with her work.

Mr. Gasior inquired if Mr. Logan could give a real life example of something the Treasurer picked up on that was an oversight in the Finance Department. Mr. Logan stated they have mistakenly paid sales tax on occasion and the City is an exempt entity and when the Treasurer checks the invoices line by line and finds where sales tax was listed then that check will not be signed and it will be brought back to the accounts payable clerk and the check will be voided and reissued. Mr. Logan indicated the Treasurer also scrutinizes the bank statements for ACH payments or the daily cash deposits made by the aquatic facility and so forth.

Mr. Klingshirn wondered if the title should be changed to Treasurer/Auditor. Mr. Logan felt it might confuse the issue as there are independent external auditors who do the audit on the State's behalf. The City is required to be audited every year. The State Auditors are true auditors and he personally preferred the title Treasurer for this position so as not to confuse with the job the State does for the City. Mr. Logan noted the City pays approximately \$40,000 for the State Audit and the GAAP conversion each year, which was reasonable.

DISCUSSION OF CHARTER SECTIONS

- ARTICLE III SECTION 4 – VACANCY IN THE OFFICE OF MAYOR

Ms. Jankowski inquired as to why the order of succession in the office of the Mayor during a vacancy is the Director of Finance, Director of Public Service, Director of Public Safety, Director of Law; provided such person is a resident of the City of Avon. She stated the third succession for Acting Mayor is the Director of Public Safety, which is the Mayor succeeding himself since he is also the Safety Director. She also inquired if this is a common succession.

Mr. Smith advised previously the Charter stated the Council President succeeded the Mayor during a vacancy. He said that was changed because the Mayor is a full-time position now and the Council President could have a full-time job at the time of a vacancy and they would have to quit their job to become Acting Mayor. Mr. Smith stated the Charter Review Commission at that time felt it should be someone who could fill in the duties of that office full-time for a period of time until there was an election. Mr. Smith also noted that not all of the time is the Safety Director also the Mayor and while it is currently held by the Mayor that may change in the future.

- POSITION OF MAGISTRATE

Mr. Root inquired as to who hires the Magistrate. Mr. Smith advised the Mayor because the position directly represents the Mayor in Mayor's Court. Mr. Root inquired if we should go by the State regarding the position of Magistrate or should something be included in Avon's Charter. Mr. Gasior advised the Magistrate position does not have to be an attorney for Mayor's Court, it could be the Mayor, but most are attorneys and there is some training involved and technical law with regards to a traffic offense that involves a driver's license suspension and sentencing. Mr. Smith clarified that the Mayor's Court in Avon can only accept Guilty or No Contest pleas. Mr. Gasior agreed and stated if the plea is Not Guilty the case is transferred to Avon Lake Municipal Court because you cannot hold a trial as a Magistrate or as a Mayor in a Mayor's Court. Mr. Root inquired as to who authorizes the pay for the Magistrate. Mr. Gasior said he believed it comes out of the Mayor's budget. Mr. Smith clarified that the pay was authorized by City Council.

Mr. Gasior said one of the biggest expenses a City can have mandatory jail time associated with some traffic offenses now is to have a case go to Avon Lake and have the charge under the municipal code instead of the State statute. The person pleads Not Guilty in Mayor's Court and ends up being sentenced to jail in Avon Lake and then the City of Avon is made to pay for that jail. Mr. Gasior stated the City

Prosecutor is asked to rewrite the ticket to make it a State offense then the County has to pay. Mr. Gasior said if they are not sentenced to jail the ticket is rewritten under the City code and we receive the fine monies.

- ARTICLE III SECTION 5 DUTIES AND POWERS OF THE MAYOR (b) – LEGISLATIVE POWERS

Mr. Principe stated he noticed that if legislation is passed as an emergency, without a dissenting vote, the Mayor has no option to veto. Mr. Smith clarified that to be true if it is passed 100 percent. Mr. Principe inquired if the Mayor should have a chance to veto and then be overruled. Mr. Smith noted that if there is not a dissenting vote, the Council can override the veto anyway so that would be an effort in futility. Mr. Smith believed there has to be one or two dissenting votes in order to veto. Mr. Gasior advised if the legislation passes without unanimity then you can veto.

- ARTICLE IV SECTION 3 – PRESIDENT OF COUNCIL

Mr. Smith stated the position of Council President was changed in 2007 as it used to be whoever received the most votes among the At-Large candidates became Council President automatically. Mr. Smith said it was changed to the Council President is selected from the 3 At-Large Council Members by a vote of all the Council Members. Mr. Smith felt it was a good move because you could have someone conducting the meetings that might not have any experience. Ms. Jankowski said the person who is running the meeting, their main function is to run the meeting and he/she does not have two votes or cannot sway anything. Mr. Smith stated the Council President is the deciding vote if there is a tie. Mr. Gasior confirmed the Council President is the last one called to vote. Mr. Smith said the Council President is chosen amongst the At-Large Council Members because they are voted on by all the people and not just those who live in a specific Ward. Ms. Jankowski stated they are not lesser just because they are Ward Council Members. Mr. Klingshirn stated they only represent a quarter of the City and not the entire City. Ms. Jankowski said she understood what they were saying, but she felt it should be the Council as a unit. Mr. Smith indicated the Council President can also stifle the conversation.

- ARTICLE V SECTION 2 – POSITION OF PROSECUTOR

Mr. Root stated at the next meeting he would like to look at the position of Prosecutor as it states that the Law Director may act as the Prosecutor. He felt that is a very important position and they should look at it in the Charter. Mr. Root said he would like to know whose authority the Prosecutor falls under among other powers and duties. Mr. Root felt it was definitely a full-time job. Mr. Gasior reminded them that the court is not full-time in terms of his docket; he did not believe he was doing criminal docket every single day. Mr. Gasior advised the current Prosecutor only has Avon on his docket on Tuesdays and Thursdays. Mr. Smith advised they would put it on the agenda for discussion at the next meeting.

ADJOURN: 8:05 p.m.

A motion was made by Ms. Ashley and seconded by Mr. Klingshirn to adjourn the meeting of the Charter Review Commission, and the vote was unanimous in favor.

Respectfully submitted by:

The Clerk of Council
Secretary to the Charter Review Commission
Barbara Brooks