

**MINUTES OF THE CITY OF STRONGSVILLE  
CHARTER REVIEW COMMITTEE**

**HELD ON APRIL 28, 2008 IN THE MAYOR'S CONFERENCE ROOM**

Mayor Perciak – Who is going to take the Chairwoman's place today? Who wants to be the Chairperson today? Well, I tell you what we're going to do. What we'll do is have Ms. Barth, since she was the Council President so many years. I think she could handle this.

Ms. Barth – I knew he was going to do that.

The meeting was called to order at 7:00 p.m. by Charlene Barth.

*(The Pledge of Allegiance was recited by all present.)*

**CERTIFICATION OF POSTING:**

Ms. Barth – Please certify the posting.

Ms. Sikorski – Yes, I certify that the Meeting Notice and Agenda were posted in accordance with Ordinance No. 2004-273.

Ms. Barth – Roll Call please.

**ROLL CALL:**

Present were:           **Members of the Committee:**

Charlene Barth  
Anthony Bialowas  
R. Rea Cantwell  
William J. Harr, Jr.  
David Jager  
David R. Knowles  
Susan Mayher  
Thomas Stehman

Also present were: Mayor Thomas P. Perciak  
Kenneth A. Kraus, Law Director  
Daniel J. Kolick, Assistant Law Director  
Nancy M. Sikorski, Secretary

Ms. Barth – Can I have a motion to excuse Ms. McGrath?

**Motion made by Mr. Harr, second by Mr. Cantwell.**

**Roll Call: All ayes. Motion carries.**

### **APPROVAL OF MINUTES FOR MEETING OF APRIL 14, 2008**

Ms. Barth – We have the Minutes from April 14<sup>th</sup>. Are there any corrections or additions to those Minutes? If not, then they will stand approved as submitted.

### **REVIEW OF FINAL, REVISED DRAFT OF ARTICLE IV, SECTION 7 AMENDMENTS**

Ms. Barth – We will review a final, revised draft of Article IV, Section 7. Is there any conversation or discussion on this?

Mr. Kraus – I would like to point out to the Committee where the areas of change were. There were really just a couple. In Section 7(a), there had been a suggestion by a member of the Committee that we reinsert the vacancy language towards the end of that paragraph, and we thought that was a good idea. So pursuant to that suggestion, we have reinserted the vacancy language in there. And then we readjusted where the other new language would fall, and we put it in the logical order that we had discussed at the last meeting, so that was one area of change in (a). The other area, I don't think there was any change in (c) of any consequence, but there was some change in (d). We went back and re-reviewed the Civil Service Rules that are in effect here, and we saw some other categories of rule-making that we have in our Rules that had not been covered in this language that we're proposing to insert in (d). For example, eligibility lists. I think the lay-off language and some of the others; and we've tried to make the language more complete. Again, you'll recall that this language that we're proposing to insert in (d) is to enable the City to promulgate its own rules and regulations, as indeed we have and we do in the Civil Service area, so we want it to be as specific as possible in that regard. So we tried to make this a bit more complete; and you'll see some other categories in there that hadn't been in the prior language. I believe, Dan, am I missing anything here? I think those are the changes.

Mr. Kolick – I think that's everything that we changed this last meeting.

Mayor Perciak – Does anybody have any questions about (d)?

Mr. Cantwell – I have a question about (a), if we could back up for just a minute. And maybe I might just be missing something here. In the sentence above the last sentence, the bold sentence, the one above that: "A vacancy occurring during the term of any member of the Commission shall be filled for the unexpired term by the Mayor with the approval of a majority of the members elected to Council." Is there a reason for the word "elected?" Suppose you have one or two people who've been appointed to that Council?

Mr. Kraus – Actually, that's a good point. That was the old language that had been in there but it doesn't make it right nor does it make it not susceptible to. . .

Mr. Cantwell – Challenge.

Mr. Kraus – Challenge or adjustment. We could just say “a majority of the members of Council.” Are you okay with that?

Mayor Perciak – Yes.

Mr. Kraus – “A majority of the members of Council.”

Ms. Barth – So, since we are in this particular paragraph and we’re getting down to (c) in this Article, did we get an inventory of classified and unclassified?

Mr. Kraus – We distributed the list with respect to the Safety Departments. This might be an appropriate time – we would recommend at this time, there are some specific personnel/legal issues that we would like to discuss with regard to this Section that we would like to discuss with the Committee in what we call, and what you know, is an Executive Session. But maybe some of the other members of the Committee don’t, but it would be appropriate, we believe, to discuss those in a closed session, off the record, and in an Executive Session because they involve personnel and legal matters. Mayor, if you’re okay with that, we would look for a motion by someone on the Committee to move to go into Executive Session, then the second, and then the Secretary would take a Roll Call vote on that.

Ms. Barth – Can I have that motion?

Mr. Jager – I make motion to go into Executive Session for the stated reasons.

Mr. Harr – Second.

Ms. Barth – Roll Call.

**Motion made by Mr. Jager, second by Mr. Harr.**

**Roll Call: All ayes. Motion carries.**

*(The Committee then adjourned into Executive Session at approximately 7:20 p.m. Motion was then made by Mr. Harr to conclude the Executive Session and reconvene in open session at approximately 7:35 p.m. The motion was seconded by Mr. Bialowas and unanimously approved.)*

### **FURTHER DISCUSSION OF MUNICIPAL POWERS (ARTICLE I, SECTION 3) AND REVIEW OF PROPOSED DRAFT**

Mr. Kraus – We had discussed the possibility of drafting some language for consideration by the Committee with respect to an attempt to emphasize and solidify as much as is possible in the municipal Charter, the Home Rule powers of the municipality in terms of self-government vis a vis the recent attempts by the State to, in some instances, attempt to supersede or usurp, if you will, those powers, so we came up with the language that’s reflected in Article I, Section 3. We thought that the language in Section 2 should remain as is and that it was sufficient and appropriate. After reviewing language from a number of other Charters, we kind of synthesized that and really put

our own language together down at the bottom of Section 3 and put that out for discussion and consideration by the Committee. Dan, do you have anything you want to add on that?

Mr. Kolick – No, we probably looked at 12 or 15 different Charters. Some of them we agreed with, and some we didn't agree with at all; some we agreed and took the best elements of each and made up our own section.

Mayor Perciak – You better get a little more definitive as to what you're talking about.

Mr. Kolick – What happens and what's been happening with it, and this cycle of law seems to go up and down, when the Courts start striking Home Rule powers and other times they're granting it in favor of the State. The State recently in many areas is now coming hard against municipalities either because of lobbyists or other things that are occurring. For instance, they've now taken all of our authority, at least ostensibly, to regulate oil and gas wells.

Mayor Perciak – That is a real issue. Maybe not here, but go to North Royalton, there are 45 different places that they have now contacted there to start drilling oil and gas. . .

Ms. Barth – Brecksville, too.

Mayor Perciak – And right now, right behind St. Paul's Hellenic Church, you have this huge well going, and it's unbelievable the noise abutting all these residential neighborhoods.

Mr. Kraus – On the face of it, the law changed in 2004 on the gas and oil drilling, and basically the State has taken it over and really in derogation of our, and notwithstanding all our local zoning. We have a provision in the Strongsville Code now that provides that you have to apply to the Planning Commission for a Conditional Use Permit if you own an oil or gas drill. And basically these companies are taking the position, we don't need to go through all that. We have a permit from the State of Ohio, the Department that licenses and permits these and that's it.

Mr. Jager – But the adoption of this provision. . .

Mr. Kraus – The adoption of this provision isn't going to automatically change it, but if we end up in litigation with one of these companies, which as the Mayor indicated is a possibility, you don't know what's going to happen, we want to have the strongest possible circumstance that we can.

Mayor Perciak – I'll give you some examples – some of these churches – and pick one it doesn't matter which denomination that abut a lot of property. They are doing exactly this because their heating bills are so high, this way they have free fuel to heat their churches and their all-purposes centers and everything else they're doing. St. Joe's would be a prime example with all the land that they have. They could actually put a well there and these companies are approaching the churches and the major schools. Out where you live, Ken, in Pepper Pike, there are several working wells at several of

the major secondary education level schools – Hawken, Gilmour – they're all drilling and have wells going. It's an issue.

Ms. Barth – Carriage Hill, where my mother lives, there's a perfect example.

Mayor Perciak – That's right and Jerry Hruby's got to be going crazy with a situation like that – can't stop it.

Ms. Barth – They have two of them in there, front end and the back end.

Mr. Kolick – That's like the other area – cable. We used to issue our own franchises, now the State is trying to come in and cramp that; the residency requirement, the State is trying to take that. These are real things; these aren't just pie in the sky, maybe come along items. It's happening and it's going to continue to happen until it gets stopped through the Courts. This will give us another leg up to attempt to do that when it hits home. It's just a matter of time. It's going to hit here.

Mr. Harr – Is that really why they're trying to control. . .

Mr. Kolick – A lot is lobbyists. Lobbyists for the franchises – you can't believe the money and the time. . .

Mayor Perciak – We went down there I don't know how many times. . .

Mr. Kraus – John Bedford went down there, too.

Mayor Perciak – And we made our presentations before the different Committees, the House and Senate Committees – it was a waste of time. Their minds were made up. They listened to us, but that was it. Right now, if they take away in the City of Strongsville, between the schools and the City, our cable stations, 21, 22, 23, it will cost the schools and the City about \$638,000.00. And that's where it's going. And, of course, our contract with Time Warner, they kept quiet through this whole thing because they said, "Hey, at the end of the day, we're going to be able to go and clip them at the same rate that AT&T is." So they've been very, very quiet.

Mr. Kraus – They just opted out, as did WideOpenWest. So the ones that we have existing franchise agreements with, on the face of the new State law, they have a right at this point to say "bye-bye, our agreement means nothing, we're under State franchising."

Mayor Perciak – And they have done that.

Mr. Kraus – And they have done that. We've written a letter; we've preserved our rights; we did all the right things legally, but we're only one community for us to take on Time Warner, the State and everybody, is a big undertaking.

Mayor Perciak – The only thing that's happened with the State with Time Warner – not Time Warner – Adelphia, they did wind up paying the schools, how much, Dan?

Mr. Kolick – That was through bankruptcy. They actually paid over a million dollars.

Mr. Cantwell - \$900,000.00 some.

Ms. Barth – When they laid the cable, that was our right-of-way, they should have done something at that time and come up with a way, even the franchise, I felt they should have done internet services as well and they were just looking at cable tv. They should have taken advantage of all those services – a bigger piece of the pie – it's too bad.

Mr. Kolick – So that's what this clause says. The other, residency, you asked who's behind it – the unions. The unions pushed the residency requirement. They did not want the residency requirement included, period. They went down to lobby the State hard and they got it.

Mr. Kraus – And that's being hotly litigated all over the State and headed for the higher Courts.

Mayor Perciak – So you can see the reason we have Home Rule and must if we want to remain independent.

Mr. Jager – What do you think the average voter who reads this will say? In other words, when you hear the words like “liberally” . . .

Mr. Kolick – It's up to us to educate them. We need to educate. Not just with this, but with any number of these, we need to educate.

Ms. Barth – We need to provide some examples.

Mr. Cantwell – Procedurally though, if this were adopted, what would we have to do to enforce it?

Mr. Kraus – Well, I think it's the flip side. It's there when we need it, if you will, when either someone is challenging us or we decide to challenge some action or activity. So, for example, somebody comes in and the Mayor decides he wants to challenge a permitting of a well and we have it. It would be one more item to go with here. The day after it passes, if it does, we're not going to do anything, undertake any affirmative action, but it will be there for us when we need it.

Mr. Cantwell – Could it, in fact, apply to conditions that already exist prior to its approval? Say the oil and gas wells?

Mr. Kolick – Sure, because you're talking about enforcement. What we need to do is at the time they want to enforce it, then we utilize it. Yes, because that's when it will come up. It's when someone wants to put an oil and gas well in the middle of Highpoint somewhere, behind someone's house.

Mayor Perciak – Sure, my subdivision!

Ms. Barth – Really, this language really is for reinforcement that we want to be guided by Home Rule. . .

Mr. Kraus – As much as possible.

Ms. Barth – You have to clearly state that because what they're doing is a lot of these judges are going back and saying "it's not clearly defined, it's not in your Charter, you don't clearly define where Home Rule has precedence." So all we're trying to do is reinforce that language so that we will have precedence.

Mr. Kraus – Well put.

Mr. Harr – I agree with Dave though. The only word that jumps out at me is "liberally."

Mr. Stehman – Do you really need that word? "Construed in favor of" pretty much already puts you there, doesn't it?

Mr. Kraus – Well, it's a way to say as much as possible. . .

Mayor Perciak – You got these lawyers thinking now!

Mr. Knowles - What about "in all instances?"

Mr. Stehman – In all instances, I like that.

Mr. Kraus – There may be another alternative word that we can use, it's not coming into my mind right now, but. . .

Mayor Perciak – Listen to the counsel of your other lawyers in this room.

Mr. Kraus – I am, but what you're saying though. . .

Mr. Knowles – He's trying to find another word that means the same thing without using that word.

Mr. Stehman – Do we really need another word? "Construed in favor of" period.

Mr. Harr – "Construed consistently."

Mr. Kraus – What you're really saying is "construed to the maximum extent possible in favor" but that's too many words.

Mr. Knowles – This is very good language because it allows a Court, if I understand correctly, to find in our favor, to point to this and say "This is why I agree with the City of Strongsville." So that's very good language.

Mr. Kraus – How about if we look at our thesaurus' and our other sources in between now and the time we incorporate this into ordinance form, if you're okay with it otherwise. . .

Mr. Kolick – We'll come back with other alternatives.

Mr. Kraus – We'll try and come up with another word or words other than that word. It seems to be not a word that the majority of this Committee wants to see for whatever reasons.

Mr. Jager – I just think the average individual would see the word "liberally" and say "what is that supposed to mean."

Ms. Barth – It's a good comment because they're going to be voting on that language. Is there any other discussion on this? Any other comments? Okay, we'll go to the next item.

**REVIEW OF ORDINANCE REGARDING ARTICLE V, SECTION 5(b); AND  
ORDINANCE FOR ARTICLE IV, SECTION 7**

Mr. Kraus – We've drafted two of the four or five ordinances – five maybe – that we're going to end up with here depending on what the Committee decides to do at the end. These were not chosen in any particular order, but the first one that you have before you is with respect to Article V, Section 5(b). You will recall that we had two things in Section 5 that we were probably going to run with here. One is changing the unanimity to two-thirds, that's what this is; and the other was changing the bidding threshold that's in 5(a), that's going to be incorporated into a totally separate ordinance. The format for these ordinances is pretty well set by law. These formats that are before you are reflective of what we did generally four years ago. This first one took the language – we have not changed the substantive changes that we had on 5(b) or on the next one which is the one with the Civil Service changes.

Mayor Perciak – I suggest you do something with 5(b) if you have it worded the same way, unless we really have to by statute. It didn't go the last time, why do you think it's going to go this time? The same people are voting.

Mr. Kraus – Well, hopefully, we can talk about it later, who and how the public might be better educated. But as far as the format. . .

Mayor Perciak – If you take this and "Shall Section 5(b), Article V of the City Charter be amended to provide that Council by a two-thirds vote of its members may authorize certain expenditures without public bidding?" everybody and their brother hears about public bidding and how advantageous it is, they're not in the public sector, they don't understand that it's not an advantage. They think it is an advantage and that the City's getting a better deal by public bidding. I mean, I got to tell you that if I weren't here, that's how I would see it.

Ms. Barth – So the language "without public bidding" . . .

Mayor Perciak – We have to find a way to re-write this. Let's take all of you who are not. Sue, how would you?

Ms. Mayher – When we discussed this in the beginning, I was very fearful about how this would be voted because it looks like too much control, government control.

Mayor Perciak – Right and Rea, you understand it because you were in public sector all your life, but how about you, Billy?

Mr. Harr – I understand it. I mean, but then again, I read through the whole thing and I see that it's for emergencies and it's for items that seem to make sense.

Mayor Perciak – But that's not how it's going to be on the ballot.

Ms. Mayher – Because this is all new to me, I only saw it from the public perspective. Educating me here about it makes sense, but that's the trick, to educate the public about it.

Mr. Harr – I don't know how much you can tinker with the language to make it that much different.

Mr. Kraus – It needs to, obviously, fairly represent the change that you are proposing. But I guess what's running through my mind, Mayor, is whether it would be possible for us to contrast what it is now "to provide that Council by a two-thirds, rather than unanimous vote of its members may authorize certain expenditures under certain circumstances."

Mayor Perciak – I would think that would be better "by a two-thirds rather than unanimous." I would try to add something to that language because if it was shot down last time the way it is, it's going to get shot down this time, because the last time it lost by a significant number of votes.

Ms. Barth – What are you suggesting?

Mr. Kraus – I'm suggesting one or maybe two changes to this. "Shall Section 5(b) of Article V of the City Charter be amended to provide that Council by a two-thirds rather than a unanimous vote of its members may authorize certain expenditures in limited circumstances without public bidding."

Mayor Perciak – Anybody have any problems with that?

Mr. Cantwell – "Without public bidding," that language would be required?

Mr. Kraus – Yes. We can't get away with that.

Mayor Perciak – I think where he could further define "by a two-thirds vote rather than..."

Mr. Jager – I think there's two things, one's that, the other one is you're moving the concept of an exception situation up front. The way this reads, it's buried in here, "in the case of a real and present emergency arising." When you go into vote, you're going to read the first paragraph.

Mayor Perciak – This is what you're going to see on the ballot - this simple language here. Ken, this is what they're actually going to see, just this little bit on the ballot, not the whole thing.

Mr. Kraus – They're going to get a book thirty days before the election. Our Clerk of Council is required to send out. . .

Mayor Perciak – Who's going to read it?

Mr. Kraus – I'm not disagreeing with you, I'm just telling you what will be sent out. We'll go back and see if we think these two changes in here still fairly represent this.

Ms. Barth – I agree that you should define it up front. . .

Ms. Mayher – Define it up front.

Ms. Barth – So that when you're reading in that first paragraph you get the concept of what you're doing.

Mr. Harr – The general context of why it's necessary would be helpful.

Mayor Perciak – But how do you do that? It won't show up on the ballot. That's the issue.

Mr. Kraus – I think the two changes I'm proposing soften it up somewhat from a sales standpoint. I'm not saying it's the answer.

Mayor Perciak – I'm concerned about the language on the ballot.

Mr. Kolick – Maybe add "without public bidding in certain instances."

Mr. Kraus – "In limited circumstances."

Mayor Perciak – I don't know what you can get away with. Tony, what do you think? You're in the public sector.

Mr. Bialowas – That's about as good as you can get, I think. As soon as someone wants to try to take it down, even it were to pass, that they found that they want to challenge. . .

Mr. Kraus – That's right.

Mr. Bialowas – When they put it back on the ballot, of course, often times the Courts will say “just redo,” and the redo is what would kill you on that. So, you have to be as fair as you can up front so that someone, you don’t have certain letter writers to the Sun News bringing up challenges to it right after it passes.

Mr. Kolick – We can try to do something. The Board of Elections will look at it, too, and we’ll see what they say.

Mr. Bialowas – Talk to Dave down at the Prosecutor’s Office who handles a lot of that stuff and see if he might have any one of a number of other examples that might be helpful. Dave Lambert.

Ms. Barth – Any other comments from other members?

Mr. Kraus – Then the Article IV, Section 7, we have one change from tonight that we have to put in here that was in (a) – “Members of Council,” so that has to be cleaned up. So the ballot language in this one, “provide for a four year term of office for a member of the Civil Service Commission and removal from office only for cause; to provide for the division of employees into the classified and unclassified service; to authorize the Civil Service Commission to adopt rules and regulations which differ from state law; and to remove any provisions dealing with the suspension of Civil Service members.” Do you think there is anything in there that is as inflammatory as the type of language you saw in 5(b)?

Mayor Perciak – Anything there, David, that you don’t like or you think should be brought before this Commission?

Mr. Knowles – No, I think we’ve discussed all of the items that are of concern.

Ms. Barth – In what section are you making that change?

Mr. Kraus – In (a), towards the end of (a) where it talks about vacancy, “with the approval of a majority of the members of Council.” We deleted “elected to Council.”

Ms. Barth – Any other comments on this or questions? Mr. Jager, do you have any?

Mr. Jager – No

Ms. Barth – Okay, then we have Miscellaneous Business.

Mayor Perciak – I want to go back to this again, may I?

Ms. Barth – Sure.

Mayor Perciak – Everybody, David, you’re sure on this, this is okay with you and Charles Hawk?

Mr. Knowles – Yes. Again, as Chair of the Civil Service Commission, I want to avoid even the appearance of any conflict, but understanding the proposed changes that the Commission has suggested, I understand all of those items, and they clarify the information.

Mayor Perciak – Since I've been here, David will attest to this, and so will Dan. We've really cleaned up Civil Service. There are detailed Minutes; there is absolutely no "i" that is not dotted and "t" that is not crossed simply because of the litigious society that we live in and that's why I keep asking him if this is okay. As most of you know, from time to time, I inherited some issues from the past that we still have not cleaned up, and that's why I'm such a bug on this Civil Service Commission. We just don't have a lot of flexibility there. Is there anything we need to add on this, Dan?

Mr. Kolick – You addressed it all, Mayor. No, we've cleaned it up.

Ms. Barth – So where do we go from here? What's next?

Mr. Kraus – Our hope is, number 1, we will draft the remaining three Ordinances that would be for Article V, Section 5(a); for the Home Rule under Article I, Section 3; and the Ordinance for levies which was Article VI. So it's our hope, and I believe the Mayor's hope, that on May 12<sup>th</sup>, which is our next meeting date, is that right, Nancy. . .

Ms. Sikorski – Yes.

Mr. Kraus – That we would be in a position to present the final Ordinances and hopefully that this Committee would be in a position to make any final adjustments at that meeting, that we can note in the record and then take final votes on all five of the Ordinances that potentially you might want to recommend to City Council. So, it's our hope that the last meeting of this Committee will be May 12<sup>th</sup>. We think that's not unrealistic. Mayor, did you have anything to add?

Mayor Perciak – No.

Ms. Barth – Does anybody have questions or comments that they want to make or something else they think needs to be addressed?

Mayor Perciak – Did we ever get, did Don get everybody, so that everyone can get paid for this?

*(Several members nodded in the affirmative.)*

## **ADJOURNMENT**

Ms. Barth – Yes. Right. Okay, if there's no other matters to come before this meeting, I'd like to have a motion to adjourn.

**Motion made by Mr. Stehman, second by Mr. Harr.  
All ayes. Motion carries.**

There being no further business to come before this Committee, the meeting was declared adjourned at 7:50 p.m., unanimously without objection by the Members.

Respectfully submitted:



Charlene Barth, Acting Chairperson



Nancy M. Sikorski, Secretary