



Charter Review Commission
December 18, 2018 Regular Meeting Minutes
Village Hall

Call to Order:

The meeting was called to order by Chair Cooke at 4:00 p.m.

Roll Call:

Andy Cooke, Chairperson	P
Patrick Weyers, Vice Chair	A
Debra Lowery	A/P – arrived at 4:05 p.m.
Bill Carleton	P
Johnna Evans	P
Mary Fee	P
Glenn Redick	P

Clerk Mason reported that Vice Chair Weyers emailed her stating he could not attend due to illness.

Council/Staff members present: Council Member Matt Shull, Council Member Chip Fellows, Mitch Banchefsky, Law Director, and Jennifer Mason, Clerk of Council.

Approval of the November 27, 2018 meeting minutes:

Chair asked if members had reviewed the proposed November 27, 2018 meeting minutes. Clerk Mason told the members that she corrected the date on the title from October to November. Member Carleton moved to adopt the November 27, 2018 meeting minutes as corrected. Chair Cook seconded and all members voted to adopt the minutes as corrected.

Approval of the Agenda:

Member Redick moved to approve the agenda. Member Carleton seconded and all members voted to approve the agenda.

Hearing of Visitors:

None.

Approval of Revisions:

Article VI

Member Fee moved for the approval of the changes to Article VI per Law Director Banchefsky's Memorandum (attached). Member Carleton seconded and all members voted to approve the changes.

Review of New Albany Charter:

Article VII

Law Director Banchefsky summarized Article VII saying it provided for the appointment, and powers and duties, of the city manager. It set out the procedure to designate an acting manager and the procedure for removal of the city manager. Law Director Banchefsky stated he did not highlight the non-substantive changes, but highlighted three substantive changes.

Regarding Section 7.01, Law Director Banchefsky stated that the Ohio Revised Code (ORC) changed from mandating that a city manager's residency be within city limits to allowing the city manager to reside in the related county. There were reasons for the prior mandate and there was conflicting case law about city manager residency. City Manager Joseph Stefanov lived in Gahanna. When he was hired, Council granted him an ongoing waiver of the residency requirement. For New Albany to match current ORC language, Law Director Banchefsky recommended changing the requirement in Article VII, Section 7.01(B) to make the city manager's residency to be within Franklin or Licking County. CRC members agreed with the recommendation. Secretary Lowery noted that school districts were moving away from in-district residency requirements. Law Director Banchefsky pointed out that no one wanted to lose a good candidate because of where they lived.

Law Director Banchefsky reviewed Section 7.02 Powers and Duties which laid out the general and specific powers of the city manager. Law Director Banchefsky considered the most important part to be subsection 11 which set forth that the city manager would perform such other duties as were conferred or required by the charter or council. Council could add to or modify the responsibilities. No changes were proposed other than changing "administrator" to "manager" and "village" to "city."

Law Director Banchefsky and the CRC discussed Section 7.03 Acting Manager. The proposed change called for the manager to designate an acting manager in written correspondence to council. The prior language specified the designation be made by letter filed with the Clerk of Council. Clerk Mason noted that a filed letter was not the current practice. City Manager Joseph Stefanov conveyed that he wanted to make notification by email. Chair Cook asked and Law Director Banchefsky replied that there was no specified length of absence that triggered the designation of an acting manager. Law Director Banchefsky stated that council could add a time period in the Council Rules of Procedure if it became an issue.

Law Director Banchefsky told the CRC that he debated recommending changes to Section 7.04 Removal of the Manager because it said that a manager could be suspended by a resolution of council which would set forth a reason for suspension and removal. Given that the manager served at the pleasure of council, he opined that a written reason was not necessary. The charter spelled out the steps for the manager's removal. Secretary Lowery asked and Law Director Banchefsky answered that removal of the department heads was completely different because the city manager served at council's pleasure and most department heads served at the direction of the city manager.

Law Director Banchefsky stated the city had never had to go through the process of removing a city manager. His ultimate opinion was that the city couldn't go wrong by allowing too much due process, whereas not enough due process could be problematic. He noted that the hearing as part of the removal process made sense given some "name clearing" hearing decisions in case law. Member Fee suggested that the reason language could be struck. Secretary Lowery asked and Law Director Banchefsky replied that City Manager Stefanov did not have any feedback on this section. Council Member Shull stated and Law Director Banchefsky agreed that the wording of a reason for removal was at council's discretion and didn't have to be specific. Law Director Banchefsky stated that wording could be broad and typical phrases were "philosophical differences" or "different management style." Bottom line was, if council wasn't happy, they could remove the manager.

Law Director Banchefsky stated that the language could be left in as it didn't make much difference in the outcome. Member Redick agreed that it appeared to be due process. Law Director Banchefsky added that all charter changes went before the electorate and they would likely appreciate the process.

Article VIII

Law Director Banchefsky told the CRC that the city had two kinds of employees, classified and unclassified. Classified employees could not be terminated without cause. Unclassified employees served at the pleasure of the appointing authority. Most employees served at the will of the city manager.

Article VIII set out that the city would have a department of law, finance, and other departments as council may create. The ORC also specified that law and finance positions must exist. Council could merge, change, or abolish any other city department. The departments acted under the supervision of each department director. The law and finance directors were separated out as directly serving council to prevent a scenario where a city manager might tell a law or finance director to do something they didn't want to do under threat of losing their employment with the city.

Secretary Lowery asked and Law Director Banchefsky answered that if a different department head were to be fired, there was no separate appeal process in the charter.

In theory, that department head could go to court if they felt they had legal grounds to challenge their firing. Classified employees, who had bargaining units, went through a process set forth in their contract.

Law Director Banchefsky reviewed Section 8.04 which set forth the duties of the Director of Law. The charter specifically stated that the law director was not required to represent any school district or other unit of government other than the city. That section was there because, in years past, the city law director also had to represent the school district at no cost. The New Albany school district had and preferred their own counsel. No substantive changes were recommended in that section. Chair Cooke asked and Law Director Banchefsky answered that he was not required to appear if there was other counsel in place, for example, a tort case where the city was represented by insurance counsel. Law Director Banchefsky stated he could designate outside counsel with the approval of the city manager.

Law Director Banchefsky reviewed Section 8.05 regarding the Director of Finance. Member Carleton was concerned about this language as it did not have any educational or experience requirements for this position. Law Director Banchefsky stated that those requirements would be up to council and the city manager when the person was hired. The city's current finance director was a CPA and had previous experience with the City of Upper Arlington. Member Carleton suggested some broad language including a qualification and experience standard. The CRC discussed how the city had not had any previous problems with hiring capable persons. The CRC agreed that accreditation and experience were preferred. Member Redick stated he would leave the existing language because if a director wasn't qualified and wasn't performing, they wouldn't last long. The CRC discussed the checks and balances that currently went into hiring someone who was qualified, how accreditation standards could change, and whether the city's standards needed to be in the charter. The CRC member consensus was that they were satisfied with the existing language.

Law Director Banchefsky reviewed Section 8.06 Administrative Code with the CRC. He stated the last paragraph was consistent with the city's position as a "home rule" community which wrote its own laws to the extent allowed by the State of Ohio.

Law Director Banchefsky reviewed Section 8.07 Personnel Systems with the CRC. This section allowed the city to operate outside of a civil service system which had a number of procedures, requirements, hearings, and boards. The city had a Personnel Appeals Board and the same types of protections without a burdensome bureaucracy.

Law Director Banchefsky explained that there were two kinds of employees, classified and unclassified. Classified employees could not be terminated without showing cause. Unclassified employees were "non-exempt" and served at the pleasure of someone, usually a director or city manager. In the police department, everyone below the level of chief was classified, meaning they received the full protection of the policies in city

code (Chapter 155) and the protections in their collective bargaining agreement. As the charter was currently written, the chief could be terminated without cause by the city manager. Everyone else in the police department had the right to a hearing process. New Albany and its police department had grown. The city was considering creating a lieutenant position. The city manager requested that the lieutenant position, which was also a supervisory job similar to a department head, be unclassified and serve at the pleasure of the city manager. The same would be applicable to a deputy chief.

Secretary Lowery asked and Law Director Banchefsky confirmed that anyone at or below the level of sergeant was classified. New Albany's sergeants were not part of the union, but Law Director Banchefsky believed that they voluntarily opted out. Member Redick preferred that all employees below the level of chief be classified. He stated that the Chief of Police set policy and should be following council's direction. Anyone below that could be on the chief's management team, but it was the chief's ultimate decision when it came to setting policy and the lieutenants would be following the chain of command.

Secretary Lowery asked if Chief Jones had given feedback on this issue. Law Director Banchefsky answered that Chief Jones met with City Manager Joseph Stefanov and the two of them recommended making a lieutenant an unclassified position. Law Director Banchefsky offered to invite Joe Stefanov and Chief Jones to the next CRC meeting. When asked for clarification, Law Director Banchefsky stated he understood that lieutenants would be considered part of the "command staff" and would be in a policy or quasi-policy making role. Unclassified lieutenants were not unique among municipalities. Where the line was drawn varied in other police departments.

Council Member Shull asked and Law Director Banchefsky confirmed that the employment distinction was often drawn at the "director level." Council Member Shull referred to the city's current employment organizational chart. The CRC further discussed the differences between classified and unclassified employees and what employment appeals processes were available to each. Law Director Banchefsky stated he would bring both the Chief Jones and City Manager Stefanov to the next CRC meeting. The CRC agreed to defer decision until further input.

Member Fee asked and Law Director Banchefsky answered that the fire department was mentioned because the city could create a fire department. Smaller communities like New Albany usually relied on the expertise of the township for fire services. The fire department language was in the charter for future flexibility.

Law Director Banchefsky stated that he was not proposing any changes to Section 8.07(C) regarding elected or appointed officials. There were board and commission rules which stated that council could remove them, and that language was not needed as part of the charter.

Law Director Banchefsky reviewed Section 8.07(D) with the CRC. He stated that this referred to the public retirement system (PERS) and police and fire retirement (OPF). The city did not get involved, and whatever the state statute said controlled how retirement functioned for employees.

Other Business:

Law Director Banchefsky told CRC members that the next memo would discuss Articles IX Taxation, Borrowing, Budgeting, and Contracting Procedures and X Boards and Commissions.

Poll public for comment:

None.

Poll members for comment:

None.


Adjournment:

Member Redick moved to adjourn. Member Evans seconded. The meeting was adjourned at 4:52 p.m.

Signed:



Andrew Cooke, Chair



Debra Lowery, Secretary

1/22/19
Date



Memorandum

TO: The New Albany Charter Review Commission

FROM: Mitch Banchefsky, Law Director
Jennifer Mason, Council Clerk

DATE: December 9, 2018

MEETING: December 18, 2018

RE: Meeting #5 – Proposed Revisions to Charter Article VI

Article VI: Legislative and Other Procedures

As discussed at the November 27, 2018 meeting, detailed below are the proposed revisions to Article VI of the current Charter, entitled “Legislative and Other Procedures. Only a couple of changes, shown in ‘redline’, while sections without changes are marked (No change).

Section 6.01 Form of Action (No change):

Non-legislative action of Council shall be by motion and legislative action shall be by resolution or ordinance. No action of Council shall be invalidated merely because the form of the action taken fails to comply with the provisions of this Charter.

(A) **Motions.** Council shall use a motion to determine policy and procedural matters; to conduct elections among and make appointments by Council; and as otherwise provided in this Charter or by Council.

(B) **Resolutions.** Council shall use a resolution, where practicable, for any legislation of a temporary, informal, or ceremonial nature and as otherwise provided in this Charter or by Council.

(C) **Ordinances.** Council shall use an ordinance, where practicable, for any legislation of a general or permanent nature and as otherwise provided in this Charter or by Council.

Section 6.02 Form of Legislation (No change):

The form of legislation shall be established by the Council Rules. Legislation shall contain only one subject, which shall be clearly expressed in its title; provided that appropriation ordinances may contain the various accounts for which monies are appropriated, and that ordinances which are codified or recodified are not subject to the limitation of containing one subject.

Section 6.03 General Procedure for Consideration of Legislation:

(A) **Introduction.** Legislation may be introduced by any Council member at any regular or special meeting of Council. Prior to the introduction of any legislation, the Clerk of Council shall distribute a copy of the legislation to each Council member and to the Manager, ~~file a reasonable number of copies in the office of the Clerk of Council and such other public places as Council may designate~~, and publish the title of the legislation together with a notice setting forth the time and place for its public hearing before Council.

(B) **Public Hearing.** The procedure for public hearings shall be determined by the Council Rules. The public hearing of any legislation shall follow its publication by no less than seven days; may be held separately or in conjunction with a regular or special Council meeting; may be adjourned or recessed from time to time; and may be dispensed with for an emergency ordinance. The public hearing of a resolution shall be conducted at the time of its introduction. The public hearing of an ordinance shall be conducted at the next designated meeting subsequent to its introduction, unless otherwise specified by Council. Unless dispensed with by Council, the public hearing of an emergency ordinance shall be conducted at the time of its introduction. Upon closing the public hearing and after discussion by Council, Council may adopt the legislation, with or without amendment, reject it, or table it.

(C) **Vote Recordation and Publication.** The vote on legislation shall be entered in the minutes or other record of Council proceedings. As soon as possible after adoption, the Clerk of Council shall have the legislation and a notice of its adoption published and available to the public at a reasonable fee.

Section 6.04 Procedure for Consideration of an Emergency Ordinance (No change):

(A) **Public Hearing Notice.** An emergency ordinance shall be introduced in the form and manner prescribed for legislation generally, except that each emergency ordinance shall declare that it is necessary for the immediate preservation of the public peace, health, safety, or welfare, and shall clearly specify the nature of the emergency.

(B) **Voting Requirements.** Upon a successful motion to treat an ordinance as an emergency, and to dispense with the public hearing when appropriate, an ordinance may be

adopted as an emergency ordinance by an affirmative vote of no less than five Council members after its first reading. If an emergency ordinance fails to receive an affirmative vote of at least five Council members, but receives a majority vote of Council, the ordinance shall become effective as non-emergency legislation.

Section 6.05 Procedure for Consideration of a Zoning Ordinance (No change):

(A) **Public Hearing Notice.** In addition to the requirements provided in Section 6.03, as to any zoning ordinance, initiated by an applicant or by Council, the Clerk of Council or designee shall mail written notice of the public hearing to the owners of the property within, 200 feet of the affected parcel or parcels. The failure of delivery of the notice shall not invalidate any zoning ordinance.

(B) **Disposition Procedures.** Council, by ordinance, shall establish procedures for the disposition of ordinances establishing, amending, revising, changing, or repealing zoning classifications, districts, uses, or regulations.

Section 6.06 Adoption of Technical Codes (No change):

(A) **By Reference.** In conjunction with the procedures provided in Sections 6.03, 6.04, and 6.05 of this Charter, Council may, by ordinance, adopt codes relating to technical matters, construction standards, fire prevention, electric wiring, plumbing, heating, air conditioning, housing, health, safety, and such other matters as Council may determine to be appropriate for adoption by reference.

(B) **Publication Not Required.** An ordinance adopting any code shall make reference to the date and source of the code without reproducing it at length in the ordinance. In such cases, publication of the code shall not be required. A copy of each code and a copy of the adopting ordinance shall be authenticated and recorded by the Clerk of Council as provided in Sections 6.08 and 6.09 of this Charter. If the code is amended after its adoption by reference, Council may adopt the amendment or change by incorporation by reference under the same procedure established for the adoption of the original code.

6.07 Effective Date of Legislation (No change):

(A) **Effective Immediately.** All resolutions and the following ordinances shall take effect upon adoption, unless a later time is specified by Council:

- (1) appropriations of money;
- (2) annual tax levies for current expenses;
- (3) improvements petitioned for by owners of the requisite majority of the front footage or of the area of the property benefited and to be assessed;
- (4) submissions of any questions to the electorate or a determination to proceed with an election;
- (5) approvals of a revision, codification, recodification, rearrangement, or publication of ordinances; and
- (6) emergency ordinances.

(B) **Effective After Thirty Days.** Unless otherwise provided in this Charter, all other ordinances shall become effective thirty days after their adoption or at any later date specified by Council.

Section 6.08 Authentication of Legislation (No change):

Legislation shall be authenticated by the signature of the presiding Mayor, President pro tempore, or Acting Mayor and the Clerk of Council. The failure or refusal to sign shall not invalidate otherwise properly enacted legislation.

Section 6.09 Recording and Certification of Legislation (No change):

Legislation shall be recorded in a book or other record prescribed by Council. The Clerk of Council or designee, upon request of any person and upon the payment of a fee if established by Council, shall certify true copies of any legislation.

Section 6.10 Amendment of Legislation (No change):

(A) **Pending Legislation.** Pending legislation may be amended at any time prior to its adoption by Council, and such amendment shall not require an additional public hearing of the legislation.

(B) **Existing Legislation.** Any legislation may be amended by the adoption of subsequent legislation that revises existing section or parts; enacts new or supplemental sections or parts; or repeals existing sections or parts. This Section does not prevent, prohibit, nor preclude repeals by implication.

Section 6.11 Codification:

Council shall provide for the preparation of a general codification, a recodification, a revision, or a rearrangement of all ~~City Village~~ ordinances, which shall be adopted by Council by ordinance and shall be published in printed form, together with this Charter. A current service supplementing the ~~City's Village's~~ codified ordinances shall be maintained in the manner prescribed by Council.

Section 6.12 Publication of Legislation ~~(No change):~~

(A) **Publish Defined.** Unless otherwise provided by this Charter, legislation shall be published after its adoption. As used in this Section, the term "publish" shall mean to post the legislation or a summary of the legislation in at least three public places as designated by Council for a period of at least fifteen days after its adoption, and to take such other actions as provided by Council. Failure to publish legislation as required by this Section shall not invalidate the legislation, and in such event, the Clerk of Council may authorize the legislation to be published at a later date.

(B) **Certification.** The Clerk of Council shall make and retain a certificate as to the times and places by which the legislation is published. The certificate shall be prima facie evidence that the legislation was published as required by Section 6.12(A). Failure to make or retain the certificate required by this Section shall not invalidate any legislation.