



Charter Review Commission Minutes

Stow City Hall Boards and Commissions Room, Thursday, July 16, 2015, 5:30 p.m.

Members Present: Andrea Denton, John Long, Tim Schofield, Nicole Walker, Annal Vyas, and Mary Botts

Members Absent: Kelly Johnson and Robin Kory

Also Present: Councilman Lowdermilk, Law Director Amber Zibritosky

Meeting called to order at 5:34 p.m. by Annal Vyas

Approval of Minutes ó Motion to approve the minutes of July 9, 2015 by Andrea Denton, seconded by John Long, motion passed 5-0 with no changes.

Amber Zibritosky stopped in to answer a few questions for the Commission. She wanted to explain item #4 (Section 3.07). This was regarding if the Mayor is called up for military service or incapacitated. Amber said basically I think there are some red flags in that one. A vacancy means you have lost your job permanently. That means you can't come back, it is done, it is over. That is why the only way you can leave office is if you are recalled where you are kicked out of office, the public does that or a resignation or a death. Those are the only legal things that can create a vacancy. It would also cause issues of what is military service? I have somebody working for JAG right now and sometimes it is just a day a month that we have to deal with, sometimes longer like two weeks a year, sometimes and very rarely, it's a deployment which our past Law Director did have. Under Federal Law, if they were employed anywhere else, they can't lose their job because of that. Those are the type of things that electors should consider. I would very much advise that you do not use that language in that section. It really is addressed by the Acting Mayor. It is already addressed in Section 3.06. Mr. Long said so in your opinion, we should leave that and don't touch it. Ms. Zibritosky said yes, that would be my recommendation. Ms. Denton said we had it in our heads that vacancy could mean some of these occasions when he or she would need to be an acting mayor. Ms. Zibritosky said Acting is very different than a vacancy. Vacancy means that they are gone and we need a new Mayor because she is not coming back. Mr. Schofield said part of the problem was the way it was worded was that one acting mayor was temporarily absent from the municipality. Ms. Zibritosky said that is acting, that is Section 3.06. That is what Acting Mayor is essentially for. It is for when whatever reason, she is gone. Somebody needs to have the final say, she can't be it but she is coming back. Mr. Schofield said so eliminate changing Section 3.07 but keep the changes in Section 3.06? Ms. Zibritosky said you can but it is not that big of a deal but if you want to, there is nothing wrong with that. Ms. Denton said one of our issues with the Acting Mayor was absent from the municipality and we were saying so if you go on vacation and the way we have cell phones are these days. Ms. Zibritosky said I saw that was probably a

concern but kind of the way our system of government in general, that is why we have the recall. That is what that is supposed to be. If the people see the person they elected is doing nothing or doing a bad job, they don't have to wait four years, they can go out and take them out. Mr. Vyas said what are the procedures for recall? I didn't know there was case law, common law definition of vacancy. Ms. Zibritosky said that is the more common definition of vacancy. Vacancy is they are not coming back, they are gone. Mr. Vyas asked is there a recall procedure in there? Ms. Zibritosky said all the recall stuff is in the Ohio Constitution typically but there may be some variations in the Charter. Mr. Vyas said but there is at least something in the Ohio Revised Code? Ms. Zibritosky said yes, the Ohio Constitution mandates that there be something. It is a core part of our democracy. We have initiatives, we have referendums which take laws up and recalls are an option for public officials. That is what we would use if someone wasn't showing up to work or doing a terrible job.

Ms. Zibritosky said the rest of the items are items I can work with. I did have one question on the first item regarding public notices in Section 4.12, 10.02, and 10.05. So you want the internet to be the seventh place or do you want to cut down on the six? Mr. Vyas said I think, at least from our conversations, was I viewed it as in addition because there was some discussion on certain people who don't go on the internet ever. We need to add to the Charter to make sure it is on the internet somewhere. Ms. Zibritosky said so just in addition plus the other six.

Mr. Vyas said the only issues going to vote would be the increasing Council terms from two to four and changing the loophole for term limits. Ms. Zibritosky said the loophole should be pretty easy to change overall. I don't think I will have a problem with that. I will have to look into the four year term. That is why we looked at that section why do they all start at different times? That is why. How do we make it fair? Remember, we are running elections right now too. The good thing is that when the term limits came into the effect, a lot of the same people are on Council now so you are not going to have this where you are going to have four years so it won't take forever to be able to switch that out. It should be still kind of relatively easy, it may be two years from now. The start of, I remember Mike Rasor's term is the start of, or at least he is on his six year so something like that so I think he only has one more term after this one or this is his last term. I have to look at it. Whatever it is, that is when you want to start because you don't want it to be okay, he only has two years, he has served six, now he is getting elected to four, and not just him, I was just using him as an example.

Council Brian Lowdermilk spoke next. Mr. Lowdermilk asked if the commission was close to wrapping up. Mr. Vyas said we have one more meeting next week. Mr. Lowdermilk said I have been looking at some of the meeting minutes and that this meeting you are going to narrow your list down. Mr. Vyas said it has been narrowed down, we are down to five items that we are looking at. Mr. Vyas said we are removing two of the items now (Section 3.06 and 3.07 wording). Mr. Vyas said it really only seems like there are two issues. The first one is taking out the loophole regarding term limits for councilmembers who are jumping in Section 21.08. Mr. Lowdermilk, that was one of the things I was looking at, I guess I am not sure, when you look at the past Charter Review, there was actually an article in the paper, interviewing Elgie Underwood, because they addressed that and it was worded specifically, they included all

Councilmembers in one so not to allow that so I am not so sure there is a loophole there because it says councilmembers cannot hold office for more than eight years. It doesn't mention going between Council At-Large and Ward Council. Mr. Vyas said it says "in the same elected office" so no elected official shall serve more than eight consecutive years in the "same elected office." So we were worried, there were a couple of people on council who wanted term limits and who were very much in favor of term limits that said this would be even more in line with the spirit of term limits because the voters did seem to overwhelmingly want term limits in the last election. Mr. Lowdermilk said I think their clarification, their intent was not, obviously, to have people be able to jump from council at large to ward council. Mr. Vyas said yes and that was what we were concerned about because people can jump because it says no elected official shall serve more than eight consecutive years in the same elected office, and so that same elected office provision would allow the jumping to occur and by taking and getting rid of that, then you can't jump and say, hey I am eight years At-Large, okay, now I am eight years Ward. Mr. Lowdermilk said is that consistent with legislation that was passed by the voters? Mr. Vyas said the last election it seemed that the voters really wanted term limits. This is the way to get around the term limit if someone were in Council they could get around the term limit issue. Mr. Lowdermilk said I agree with you and what I would like to see is the legislation and what the voters voted on. It may have been worded a little different than what was put into the Charter and obviously the Charter is written after these things. Is this a clerical error (after looking up the last ballot, the wording was correct on the ballot as it was in the Charter).

Mr. Lowdermilk said my other issue is if you do anything with the term limits, does that reset the term limits. Ms. Botts said they had talked to Amber Zibritosky and she said that this would not reset term limits. Mr. Lowdermilk said she needs to give you a legal opinion on this in writing.

The other item I have, it looks like the salary item is off the table too. Ms. Walker said the only items are the ones before you. Mr. Long said, yes, items 1, 2 and 3. Items 4 and 5 we have removed. Ms. Walker said item 1 is just putting it on the internet, so it is really just items 2 and 3. Mr. Vyas said so it is really just changing terms of Council from two to four years, that is the one issue and the then the other one was closing the loophole for term limits. Mr. Lowdermilk said in her opinion (Amber), on number 3, that this does not apply. Ms. Botts said that question was, for an example Mr. Rasor, he would be at six years now so if we went to four years, he would be at ten years so she thought it would be we would not start that until maybe the 2017 election. Mr. Lowdermilk that is assuming we are all still here. Bob Adaska started a different time than the rest that are here so you are potentially going to be in the middle of a term for somebody so you would reset their term, right? Mr. Vyas said I think one of the ways we can address it, and maybe we will talk to Amber about it is for "newly elected Council" and maybe just deal with it that way. Mr. Lowdermilk said that was what I said about the legal end, when we looked at this going back five years ago and I was one of the ones who circulated a petition prior to that, Council for term limits and pay, and what we were told, you can't make that retroactive and what you would be doing, say Bob Adaska continued to get elected, you would be making his term limits retroactive. Ms. Walker said how is that retroactive? Mr. Lowdermilk said because the new guys coming in, of their terms, that is what we want to make sure I am understanding, would change the term in. So you

would have two, four year terms. I guess what I get from this here you are changing just the At-Large? Ms. Walker said no, what we would do if this goes forward, and correct me everybody if I am wrong, is saying beginning in the 2017 election, a newly elected councilmembers, so that would start for new people in 2017 so anybody who is currently serving a term that would go into that. I don't think it would affect them. If we put that language in there to say "newly elected". Mr. Lowdermilk said that is one thing I would make. In the past, trying to make changes that could somehow be retroactive, especially when it comes to elections, could be problematic. Ms. Walker said that would not be our intent and we would need very specific language to say, newly elected 2017 in going forward. Mr. Vyas said and we have to be careful that all the language makes it so that there is no weird issue or loopholes. Ms. Denton said we may have to map out each council person and where they are to make sure it is all covered. Mr. Lowdermilk said I guess what is the rationale? The City has been at two year terms for a long time. Mr. Vyas said we talked about this and this was one of the items that was discussed. Mr. Lowdermilk said I saw that going to the people and it is a lot of work and you have to go and do it every two years but you don't seem to have trouble finding people willing to do that. Ms. Walker said yes but I guess our thing is, and maybe you can help educate us on this point, two years, by the time you get in here and learn the ropes if you are new, which I am sure at some point you were new, how did that work for you to get acclimated to the process, the procedures? Mr. Lowdermilk said I guess you hear it thrown out that you learn the ropes and I think I may have said this when I was here before. There aren't too many people who wake up and in April or June prior to the filing that say I want to be a councilmember. Myself, I attended meetings for five, six or seven years on a regular basis prior to even getting here, interacting with the City. If you looked at most of the people, this is not something they just decide to do one day before the election. They have been involved. Even past Charter Review Commission members that ran for election, they got involved prior to running. The most people may not be familiar with is "Roberts Rules of Order." Ms. Walker said if you have someone who isn't used to serving? Mr. Lowdermilk said the council secretary and the council president run that meeting and it is very unlikely that you would ever have a council president on their first term. It is not likely to happen because it tends to rotate. Mr. Schofield said so you wouldn't go to four year terms. Mr. Lowdermilk said I would keep it at two simply because it forces people to get out and shake hands and meet the people and find out from a wider group of people than the ones who call you on a regular basis what is going on and what their thoughts are.

Mr. Long said we tried to look at this as objectively as we can. I have to tell you that I feel that nobody came here with an agenda or a motive to try to get behind a cause or issue and push it through and I think we have done a very good job of it objectively, we had every councilperson come in here and it was pretty much split; half are coming from your explanation of why it is two and the other half came with their way of four so it was divided. Mr. Lowdermilk said I don't want to run every two years and raise the money to run every two years, but the residents aren't concerned about my fundraising and I think you lose an opportunity to make a change if the residents are not particularly happy with a ward or city wide councilman to make a change.

Mr. Vyas said with term limits the vote was overwhelming and I thought they just voted on it a few years ago and maybe in fifteen years from now or another cycle, it has been a

little while and we can revisit it. To your point about the two versus four years, I agree with you in that it should be two, that is my personal feeling but here is the thing, we had half the council people say two and half the council people say four. If council people are split, I am for two and others are for four, why don't we just put it to the voters because the voters are ultimately the ones to decide this type of thing, not just a few people.

Mr. Lowdermilk said it really is unfortunate that we don't get more residents showing up for something like this. I think five years ago, we had a good flow of residents and I look at some of these things and that is why I have been for term limits. In the 90's they voted overwhelmingly and the last time they voted overwhelmingly. It is pretty clear what they want. If I had a lot of residents saying you should have four years, if the residents are telling me that, it is another guy running for election telling me that, I would take it with a grain of salt. As I stated when I was here before, where is the benefit lay? Is this something that benefits the residents or is this something that benefits a councilmember and I think you have to fall on the side of the residents because here is what you have. Every five years we have a group of residents that have an opportunity here to come in and input that is outside our normal legislation process. My view is that this is the residents' opportunity to come in and say we may have lost a little power here. We need to take that back for the residents. The Mayor or the Council could become too powerful. Your original founding legislation changed for whatever reason and I kind of view it that way so when I look at some of these things I look and going to four years, is there a benefit to the resident? Ms. Walker said is there a benefit to having additional experience on Council? What is it that you can offer your constituents in your ward as having prior experience, if anything. Is there a benefit to having more experience, for example, a two year term limits your experience where a four year term you are going to have more experience. Mr. Lowdermilk said I don't know if there are as most people who come and get into this, this isn't your first time showing up. Ms. Walker said so when you run for reelection, you don't say anything about having the experience. Mr. Lowdermilk said no, as a matter of fact, I turned down a chairmanship and quite frankly, I could have said I will be the chairman and next time I can put down that I am chairman. Ms. Walker said so being able to say look I have been doing this job for four years versus two, doesn't make a difference? Mr. Lowdermilk said would it make a difference to some voters? Ms. Walker said to the people you serve, by serving a longer term in Council? Mr. Lowdermilk I don't see that as it takes four votes to pass anything, whether I am two years or four years, I can't pass anything on my own. Ms. Walker said what do you think of relationships among councilmembers, do you think that there is any benefit, do you think there is anything to relationship building by serving a longer term or not? Mr. Lowdermilk said no, I vote and quite honestly, I see that as a detriment. Do I really want my councilman spending more time building a relationship because we had a lot of votes that were 7-0 or 0-7? It was like they talked about it before the meeting and the vote was decided before anybody ever walked into the room and so you got to build a relationship to the extent that you need to get things done and you need to be able to say all right, I am 60/40 on this but I can see the benefit over here, I am not going to hold up projects because Ward 3 didn't get their road paved this year or Ward 4 needs a storm sewer. To that extent, I would hope people would be professional in their interactions that they are not working to do the best thing for their residents but the city as a whole so we don't

have to be friends, we don't vacation together, we just need to be professional and be able to work together to get things done.

Mr. Long said obviously being a businessman, I look at things from a business prospective and logic tells me in my experience in the business field, to have somebody in there for a few years, it takes you a good year and maybe two years, depending on any visual to get a grasp on how things work and have that little bit of expertise behind you to move forward and be more effective. My logical thinking would be to have a few more years under your belt as opposed to every two years having all the changes.

Mr. Schofield said we have heard a mixed bag of thoughts on this. Ms. Walker said I don't know what your elections look like, I don't know how contested or how much effort that you have to put in that takes away from whatever you are doing to run. Mr. Lowdermilk said it depends on how committed are you and that is why I saw people don't just wake up one day and say I am going to run for Council. Mr. Long said well with Mr. Vyas's point, let's the folks decide, let's let the voters decide. We can sit here going back and forth with pros and cons on both sides of it with very good explanations why. Let the people vote.

Mr. Lowdermilk said once you do this, we are five years away from undoing this. You will never get an elected official voting against cutting his own terms. We fought to cut council pay. You had constant raises. When you looked at council pay, that was another petition I began circulating before being on council and if you looked around, we had one of the highest paid salaries in the county. I guess the consequences, these could take a long time to reverse. Mr. Vyas said I voted for two years but I think we have internally decided that this is going to the voters.

Mr. Lowdermilk said I think you need a solid legal opinion on any changes to the terms and the unintended consequences because there has been a history that just as something is about to take effect, it is reset. Mr. Vyas said we will reach out to Amber. That is why she was in here beforehand because we want to make sure we are not opening a Pandora's box of unintentional Charter consequences. Mr. Lowdermilk said you want an official legal opinion, not just of what it should be. She needs to really do the research into the Ohio Revised Code and similar things where it is at so it is a legal opinion, it is not her opinion.

Mr. Vyas said as far as formally putting these on the ballot, I would like to have everyone's vote so we all have a clear understanding. I am okay with a majority vote, so if there is a majority, it will go to the voters. Mr. Long said I think, we as a group, have talked and talked about this and I think we have exhausted these and I am comfortable with moving forward and making a decision tonight, that is my take on this. Ms. Walker seconded that, especially with only one more meeting. Mr. Vyas said maybe the next meeting we can have the language. Amber will be here. Council's next meeting is July 23rd and the next meeting after that will be August 13th so they need to button this down. Amber will do the wording and then it will go forward to Council. We will finalize the issues today and have Amber do the wording before the next meeting. Ms. Walker said I will be comfortable with reviewing the language before the next meeting. Mr. Vyas asked Mary Botts if she would ask Amber if it was possible to prepare the language, in

advance of the meeting, maybe a few days in advance, so they can review the language on the items. I don't want to just sit down at the meeting and say that is fine. I really want to go through this and make sure there is nothing that is unintended. Ms. Walker agreed.

Mr. Schofield said so just for clarity tonight, what we accomplished tonight in addition to hearing the comments made, items #1, #2 and #3 are the live ones that would potentially go to the ballot or are planning on going to the ballot. So that would be closing the loophole on council term limits, council terms from two to four years, and adding on the public postings to include the internet. Items 4 and 5 (Section 3.07 and 3.06) have been removed. Mr. Vyas said the only two substantial items are loopholes and terms from two to four years.

Charter Review members voted on these three items to put forth for the ballot. All were in favor, motion passed 5-0.

Motion to remove items 4 and 5 (Section 3.07 and 3.06) passed 5-0.

July 23rd will be the final meeting with Law Director Amber Zibritosky in attendance.

Motion to adjourn by Tim Schofield, seconded by John Long. Meeting adjourned 6:25 p.m.

Mary Botts, Secretary

Annal Vyas, Vice Chairperson