

Minutes of the Committee-of-the-Whole of Stow City Council Meeting held on Thursday, June 28, 2018, at 5:56 p.m.

Council Members Present: Riehl, Lowdermilk, D'Antonio, Adaska, Pribonic & Rasor

Council Members Absent: Herchick

City Officials Present: Mayor Costello, Finance Director Baranek, Director of Budget & Management Earle, Service Director Wren, Director of Planning & Development Kurtz, Assistant Law Director Mackin, Lieutenant Snavelly, Captain Hohenadel, Parks & Recreation Director Nahrstedt & Clerk of Council Emahiser

Press Representative: Stow Sentry

Call to Order

Mr. Riehl called the meeting to order.

Approval of Minutes

MOTION:

Mr. D'Antonio moved and Mr. Lowdermilk seconded to approve the Minutes of the Committee-of-the-Whole Meeting of May 24, 2018 as circulated.

Yes Votes: Riehl, Lowdermilk, D'Antonio,
Adaska, Pribonic & Rasor

No Votes: None. The motion carried.

Business Items

Proposed Charter Amendments

Mr. Riehl stated they have talked about while they have an Interim Mayor possibly exploring different amendments to the Charter without the perception of bias against an occupant. He believed they had their first proposed amendment tonight, which is offered by Mayor Costello.

Mayor Costello stated as they had all stated when they had term limits come on, they had a domino effect with the Mayor leaving. So looking at that, he looked at the term situation.

Basically his proposed amendment here is just a clarification. It didn't change anything with the term limits. The only thing it states is that if the individual is filling an expired term of an individual, that does not count towards his/her term limit.

In other words, assuming Mr. Rasor wins his election for State Representative and somebody takes his place for the final year of his term and that individual says he likes what he is doing and wants to continue, based on the way it is written now that individual could only serve eight consecutive years, which means that he cannot run for the final two-year term because that would be consecutive years.

That is what he is looking at for him, Mr. Herchick if he decides to continue on or if the Law Director decides that she needs to be going elsewhere before her term limits are up then they are going to have the same domino effect. This has nothing to do with any one individual. He had seen the dominos starting to fall and thought that they needed to clarify that.

Mr. Lowdermilk stated that this would change the eight consecutive years to terms. That was a major change in the Charter and the way it's read. So he guessed he would respectfully disagree that this is just a text or a minor change. It completely changes the meaning of term limits and the way it was set forth by the Charter Review Commission.

It has been there for some time now. It was just now coming up. He thought those were the things that you have to decide when you are going to take an unexpired term. Do you want the full eight years or do you want the unexpired term and the other part? He thought that was a major change.

The second part was when circulating petitions for term limits as a resident they were told by the Law Department that they couldn't make it retroactive. Making this change effective as of January 2, 2012 would essentially change term limits and make it retroactive.

He wasn't sure if they had a better Law Director then they had then or if the laws had changed, but he had those two very serious concerns about this.

Mr. Mackin stated he was the Assistant Law Director. The language in the amended Charter is more legally and professionally accurate if the intent is to limit someone to two terms.

Just as an analogy could be made to when President Johnson fulfilled President Kennedy's unexpired term after he was assassinated, President Johnson ran for election,

was elected, he could have run for re-election but he decided not to on his own. That didn't change the fact that his term limit was limited to two terms. He did fill out that unexpired term of President Kennedy and that was not held against him for purposes of his term limits.

Generally, and it was his understanding going thru the history of these, term limits were put in-place by a ballot initiative. The intent was that they shouldn't serve more than eight years, but the intent was for two full terms. Up to the current law and the professional writing the more accurate way to put it is to make it two four-year terms rather than just saying serving eight consecutive years.

If a person fulfilled an uncompleted term and then did three two-year terms (6 years) and then did one more year, then you would have to have a special election or appoint someone to fill out that unexpired part of that Councilman's term, which would be inefficient, you would have to find somebody to fill-out that term and it would create more hassles for Council and the City. Wording it this way is more professionally and legally accurate to the intent of limiting someone to two consecutive terms.

Mr. Lowdermilk asked if there is a difference between eight years and two terms? Mr. Mackin stated yes. Mr. Lowdermilk stated so they would be changing the Charter. This isn't just a text clarification, they were changing the Charter and making the change retroactive.

Mr. Mackin stated that generally when you want to limit somebody's term limit you are limiting it by his term and his term is whatever the specified term is whether its four years or two years. You are not just saying you only want someone to serve five years in office, you are going by what the specified term is.

Council Members have two-year terms. The Mayor, Finance Director and Law Director have four-year terms. If someone is appointed to fill out an unexpired term of somebody else, that generally in other cities is not held against somebody.

He disagreed legally with what Mr. Lowdermilk was saying, that it is fundamentally changing the term, because this is how the recommended professional writing of people who do Charter reviews suggest that it be written.

Mr. Lowdermilk stated that was his point. He remembered it well. In the Charter Review Commission there was a lot of discussion on term limits. There were petitions being circulated for term limits. So there was a lot of discussion around two terms or eight years.

He wasn't going to second guess the Charter Review Commission today, but they came-up with eight years. Eight years is certainly different than two terms in the way it functions and works. He didn't know why they decided on eight years versus two years.

It would have been simple enough for them to say two terms and four terms. However, that is a fundamental change.

He thought if they were going to change the Charter, which that would be, now they were also making it retroactive. He asked if they were allowed to change the Charter and make it retroactive when it comes to elections?

Mr. Mackin stated he disagreed with how he was defining it. He wasn't present at the Charter Review Commission meetings when this was passed or if it was worded correctly.

The intent is no more than eight consecutive years. Usually a term is a four-year term and a four-year term, which would be eight years. They wrote this in a simple non-legalistic way which has then created the problem that they were dealing with now.

He didn't know who wrote it. He hadn't seen the notes of that Charter Review Commission. Mr. Lowdermilk was going by his memory. However, legally and professionally that is not the recommended way to write a term limit for an elected office.

Mr. Lowdermilk stated it certainly went thru the Law Department at the time. He believed it actually went back for a couple of amendments before it got on the ballot. So there was certainly legal review and Board of Elections' review. Now it's not right.

Mr. Mackin stated it was his understanding that this change went thru a ballot initiative. It didn't go thru Council. It was wording that was correct. It got on the ballot. The Law Department couldn't change it because the wording was right. It served its intent, but it wasn't the most professionally and legally accurate way to fulfill the intent of limiting somebody to two four-year terms or four two-year terms.

He didn't know what the history was. That was his understanding from his research. It was passed by petition and ballot rather than going thru Council, being certified by Council and undergoing a legal review. It was by a voter petition to change it. That was his understanding. He could be wrong. However, that was his understanding.

Mr. Lowdermilk stated nobody was proposing that this go on the ballot as a Charter change. They just simply want to change it. Mr. Mackin stated no. It has to go on the ballot as a Charter change. Mr. Lowdermilk stated so Mr. Mackin was suggesting that it go on the ballot. Mr. Mackin stated that was correct.

Mr. Lowdermilk asked if they didn't have the ability to do some minor text clarifications?

Mr. Razor stated changing the Charter without people's permission is very, very limited to areas where the law has changed making our Charter unconstitutional and unenforceable. He didn't think that would apply here.

Mr. Lowdermilk stated that was his point. They had a mechanism for making clerical changes. If it's not a clerical change, then it's a change to the Charter that's significant. He still questioned if they could change the Charter to make it retroactive?

Mr. Razor stated after FDR served he thought four terms, the U.S. Congress passed a proposed 22nd Amendment to the Constitution giving a President one of two different term lengths – two four-year terms or an unexpired two-year period plus one four-year term.

He thought the purpose, and he didn't want to put words in Mayor Costello's mouth, is that the person who happens to be stepping-up to the plate to fulfill an unexpired term shouldn't really have that held against him. However, on the other side of the coin, he thought people had decided eight years.

So without passing judgment one way or the other, he thought there was a difference. He thought if this was adopted by the voters, it would change the law. He didn't think it was a clerical change at all. That wasn't to pass judgment on the merits on whether it should change.

Mr. D'Antonio stated they certainly weren't asking it to be a clerical change. He didn't know why that came-up. It was certainly going to go on the ballot.

He did agree with it. He appreciated Mr. Costello bringing it up. He thought a better example would be had the person appointed Interim Mayor wanted to run for Mayor next time, he/she would have been able to serve under five years only. He thought the intent was two-elected terms and not be penalized.

He thought they should let the voters decide. It certainly could have been written better. He thought if it was challenged they would face some serious issues and there was a real good chance that it could be challenged based on what was going on right now with elected officials who could possibly be leaving their terms early.

Mr. Adaska asked if this would reset term limits once it was voted on? Mayor Costello did not believe so. Mr. Mackin stated no it would not change any term limits. If someone was term limited out after their next election it would not give them more time to run again for another term.

Mr. Riehl stated this may have come about thru citizens' efforts, but it was also brought back to them in 2010 by the Charter Review Commission. They also chose the eight year time frame.

For example, this was originally passed for all elected officials in the City of Stow. They then had some elected officials on Council who brought it to the voters to eliminate term limits on two offices. He believed they were Finance Director and City Council.

The Charter Review Commission came back in 2010 and put this on the ballot. Also in 2010 there were two Charter Amendments to eliminate the term limits on the Mayor and Law Director. The citizens decided to put the eight year terms on the Finance Director and City Council. At the same time, they voted to reject removing the term limits for the Mayor and Law Director.

This isn't something that happened 20 years ago. It is something that happened recently. Nearly all of them were on Council.

To him it was pretty clear. It says eight years. This isn't somebody who is innocent. People make decisions on whether or not they are going to do something based on the law at the time. They can't take office and then say well it isn't fair, I'm only going to be there for 5 or 7 years. It is what it is. They all make decisions based on the information that's in front of them and that's the information that is in front of them.

He didn't know where he was at on this yet. However, he was leaning.

Mr. D'Antonio wanted to clarify that somebody could run again. However, they would not be allowed to finish their term. There is nothing stopping that person from running for a second term knowing that he is going to have to resign at the end of the third year.

Mr. Riehl thought that would be up to the Board of Elections to determine whether or not he could seek that term or whether he would have to vacate it on a certain date.

This is the way it was written. This is the way their bosses signed-off on it. This is the way their bosses reviewed it numerous times. Since they had been on City Council, every single Charter Review Commission has dealt with or tried to deal with term limits and it has been awfully clear what the residents want often in the 60-70 percentile.

Mr. Lowdermilk wanted to reiterate what Mr. Riehl had said. The residents, when given the opportunity, overwhelmingly have supported it. It had gone thru several reviews to have changes made.

Mr. Riehl was absolutely right. They all look at the rules when they do it. They run according to the laws and rules that are in-place. That is the way it works.

He knew there were residents that every time term limits are about to affect their elected officials they try to find some way to undermine them.

He didn't even know whether this would have a chance of passing or not. However, that was neither here nor there. These were the rules. There have been several reviews of it. Nobody has changed it. He was a no vote. He didn't see the reason for changing it now.

Mayor Costello stated there was no intent to undermine term limits, just to clarify it and not penalized a person who steps up to take an unexpired term from getting his/her full value. That is the reason he had brought it forward.

Mr. Riehl stated let's not try to put intent and words in peoples' mouths. This is the process to examine this on its merits. On its merits and looking at it, he was a no vote.

Mr. Rasor asked Mr. Mackin if there was another way to word this? He was putting himself in one of his constituent's shoes. He sees this on the ballot and says sure he wants term limits, so he votes yes without really understanding the comparison between what it was and what it is going to be. He asked if there was a way to put in language that reflects what the voter is really doing?

Mr. Mackin was sure there is. They could take it back and review it a little bit more if that is Council's desire. They could make the wording more accurate, refer to the generally recommended Charter language and see if they could take another stab at it.

Mr. Rasor stated he would appreciate it if they could do that. He wasn't sure if it would make it more confusing or not. However, if they put this in front of ten random residents who were friends of his, they would probably all vote yes without really understanding that they are shortening the term limits and not implementing term limits.

Mr. Mackin stated he would talk to Mr. Rasor further about that.

Mr. Riehl stated that was a really good point because that's how term limits were eliminated in the first place. They had term limits on all offices. Then 5-6-7 years went by and City Council at the time, the Charter Review Commission or whoever put language on the ballot asked if they wanted term limits on all elected offices but Council?

Voters didn't know if there were term limits or not but liked term limits so they voted yes. Little did they know that they were removing term limits for Council. He thought that was a little creative lawyering. He felt clarity is extremely important.

The item was held.

Mr. Riehl stated if anyone had any Charter Amendments they were running out of time. The deadline is in August.

He thanked Mayor Costello for bringing this matter up for consideration. He felt it was always good to have healthy debate.

Since the deadline is in August, he thought if anybody had any ideas or suggestion, they better get going.

Adjournment

MOTION:

Mr. D'Antonio moved and Mr. Lowdermilk seconded to adjourn.

Yes Votes: Riehl, Lowdermilk, D'Antonio,
Adaska, Pribonic & Rasor

No Votes: None. The motion carried.

The meeting adjourned at 6:18 p.m.

Bonnie J. Emahiser
Clerk of Council

Matt Riehl
President of Council