

City of Independence
2022 Charter Review Commission
Wednesday, March 16, 2022
Annex Conference Room
6335 Selig Dr.

Minutes

Present:

Chris Walchanowicz

Craig Belec

Deena Rini (Chairperson)

Noelle Ostrowski

Dayna DePerro Milligan

Chad Vancure

Kenn Synek (Co-Chairperson)

Tim Lesh

Chris Mudra

Brad Chelko

Meeting called to order:

The meeting of the Charter Review Committee was called to order at 6:00 p.m.

Chairperson Rini advised the Committee that Ms. Cooper was unable to join the meeting this evening as she was out of town.

Approval of Minutes: 3/9/22:

The Minutes of the March 9, 2022 meeting were approved.

Chairperson Rini called for approval of the minutes via roll call. ROLL CALL: MOTION CARRIED 9/1 (VOTING YEA: Mr. Walchanowicz, Mr. Belec, Ms. Ostrowski, Ms. DePerro Milligan, Mr. Vancure, Mr. Synek, Mr. Mudra Mr. Chelko, and Ms. Rini. VOTING NAY: Mr. Lesh).

Announcements/Comments from Committee:

Chairperson Rini announced the visiting speaker for the meeting is Mr. Vern Blaze, Finance Director for the City.

Mr. Lesh advised the group that a letter had been distributed by Mr. O'Brien concerning the term limits to The Mayor, to clear up the confusion on when the last change in term limits occurred.

Mr. Walchanowicz addressed a topic from the previous meeting concerning family member appointments, to which he gave an example of other instances where family members of a Councilperson have been appointed to positions within the City. Therefore it is not an uncommon situation.

Article IV Administrative Offices, Departments, Boards and Commissions:

Section 1. General Provisions – No comments.

Section 2. Finance Director –

Mr. Blaze began tonight's meeting with a presentation he prepared, including distribution of handouts for the Committee.

Mr. Blaze focused his presentation on Section 2(a) of the Charter, which is directly related to his position.

The Finance Director position has been an elected position since the Charter was adopted in 1958. Mr. Blaze said he were to advocate in his best interest, he would suggest the position continue to be an elected position, explaining he believes he could be elected for another term when the November ballot is presented to voters as the Finance Department has done a good job under his management.

Referencing the handout he distributed, Mr. Blaze explained the City has grown and become much more complex since the Charter was adopted. He directed the Committee's attention to statistics presented in the handout showing how the city has grown during that time and how much more is required of his position since then.

The original Finance Director's position was created similar to that of a Treasurer's position, as the city was much smaller. With the size of the city, and 50 years' progression, the position has become a much more complex position requiring oversight of taxes, withholdings, and tasks related to having employees.

Mr. Blaze agreed with the discussion of last week concerning the Finance Director position being an appointed position. He went on to say he believes the framers of the Charter had the intention of keeping The Mayor and the finance director positions independent of each other. This was accomplished by making the finance director an elected position. This allowed for the position to operate in the best interest of the city, collaboratively with The Mayor, but not appointed by The Mayor.

Mr. Blaze suggested the Committee consider the finance director position be appointed by Council. This would honor the original intent of the framers of the Charter, but continue to maintain the separation between The Mayor and the finance director. It would fall on Council to appoint someone who would work collaboratively with The Mayor while respecting the separation of the positions, as both positions work hand-in-hand.

Electing to make such a change doesn't take anything away from The Mayor, as each successive mayor from 1958 until now has never had the ability to appoint the finance director. Mr. Blaze believes by placing the appointment duties on Council instead of the residents would not affect The Mayor's responsibilities.

Mr. Blaze advocated to changing the position to an appointed position, as it will expand the pool of potential applicants, removing the restriction of residency. He went on to explain not just any CPA will be able to fill the position, as it requires knowledge of governmental accounting and governmental finance.

Mr. Blaze referenced the qualifications listed in Section 2(b), stating many of the positions have minimal qualifications listed but also states, "...she or he shall possess such other qualifications as may be established by ordinance." Mr. Blaze suggested this language be considered with the finance director requirements. He suggested the same language be used in Section 2(a), if any requirements will be included in the language. He went on to suggest not placing any requirements in the Charter, and leaving that decision to City Council to determine what the City needs at the time an appointment is considered. This will allow for flexibility as the city grows.

Mr. Blaze referenced the current Charter, saying it states there is a requirement for experience in finance or accounting, however it does not require governmental accounting or governmental finance. He went on to say he knows a couple of people who are either finance directors of other cities or of independent school districts, and neither had accounting or finance undergraduate degrees. Each of them learned the skills necessary to do the position, and were able to assume the positions they now hold. Therefore, allowing Council the flexibility on selecting the person they believe will do the best job for the City would be worth discussion.

Concerning whether the position should be full-time or part-time, Mr. Blaze believes the Charter will not have to address that topic as it is an ordinance issue. Currently the Charter is silent about the classification of the position of mayor, Council, and finance director. The general assumption is the positions are part-time, but the position classification is not distinguished in the Charter language. The same is true for positions of Chief of Police, Chief of Fire Department, Law Director, and Service Director. However the positions of Chief of Police and Chief of Fire Department are determined full-time by City Ordinance. Therefore, that discussion is best left for ordinance discussions which do not apply to the Charter Commission.

Mr. Blaze stated his main objective in speaking to the Committee this evening is to advocate for the position of Finance Director being an appointed position instead of an elected position, and suggesting the appointment be made by Council to retain the position's independence of The Mayor's office.

Mr. Lesh brought up the point that currently the Finance Director, as an elected position, has legal obligations. He asked Mr. O'Brien what changes would occur concerning those obligations if the position were to become an appointed position. Would the legal obligations transfer to City Council, The Mayor, or do they remain with the Finance Director position.

Mr. O'Brien explained the legal obligations would remain with the position, regardless of appointment or election.

Mr. Lesh said the City of Independence is one of the few communities in Ohio that has an elected Chief Financial Officer type position. Most other communities appoint the position, either by city council, mayor, or the city manager.

Mr. Lesh then asked about the requirements of the position, and if they would remain the same. Mr. O'Brien said it would be determined by the Commission's suggestion to Council should they decide to make the change in how the position is filled.

Mr. Lesh went on to explain his reservation on making such a change is driven by current political history. He worries about instability in the city government if every four years there is a change in administration. He referenced a previous Finance Director, who held the position a long time, and said it is good for the residents to see stability in the position. If the City has a Finance Director who is doing a good job, putting out good reports, and keeping the City well-informed, the voters will keep re-electing that Finance Director and there will be more stability in the position.

Mr. Blaze said those concerns are the reason the Commission is convened every four years, to have those discussions and debates. He reiterated the pool of qualified and experienced applicants with elected officials. There is a requirement for five years of experience, per the Charter, however there is the off chance that someone with less experience will decide to run for the office. To have someone removed from the ballot, there would have to be a lawsuit filed with the Board of Elections challenging their ability to run for the office. Therefore, whoever is placed on the ballot will have the opportunity to be elected to the position, unless their qualifications are challenged. This leaves the City open to someone being elected to the position that is not able to do a good job for the City.

Mr. Lesh asked about the residency requirements, and was told to be an elected official you are required to be a resident of the city for one year. He agreed that would hinder the City's ability to attract the best qualified personnel.

Mr. Vancure made a suggestion to the Committee that they plan out their scenario where the appointment would be made by Council. Would the position be up for reconfirmation when Council changes every couple of years, or how would they like that to be handled. Mr. Blaze answered that he's not run the whole scenario through in his thoughts, whether the position would be a two-year concurrent appointment, or a four-year appointment. He went on to say if the position served Council, the Council would also have the ability to terminate the employment. That is something the Commission would need to discuss amongst themselves. However, it is not unheard of for the legislative body to appoint certain position in an effort to maintain separation between administration and the legislative body.

Mr. Lesh asked for further explanation on why The Mayor would not make the appointment. Mr. Blaze said by allowing The Mayor to make the appointment, there may be an issue of the finance director feeling limited in their ability to disagree with The Mayor due to a fear of being terminated. Mr. Lesh brought up the point that there is the same possibility if they appointment is made by Council, to which Mr. Blaze agreed but made the point that there are seven council members, and it requires four to agree to termination. However, The Mayor is a single individual and there would be fewer checks and balances. Because of that possibility, Mr. Blaze believes it a better idea for Council to make the appointment.

Mr. Vancure asked if there are any other seats appointed by Council, or would this be a new process should the Commission make the suggestion to Council. Mr. Blaze said the Clerk of Council is the only position currently appointed by Council.

Mr. Lesh stated for the record that he likes the idea of the finance director being an elected official, as he believes that makes the position more accountable to the voters. Mr. Blaze said he would benefit from the position remaining an elected position, as he would hope the voters will re-elect him in November. However, he stressed to the Commission to not make their decision based on who is currently in office. They need to focus on what is best for the City and the position.

Mr. Blaze was asked to remain during the meeting, so he may be available for any questions that may come up during discussion of Section 2(a).

(A) Election, Term of Office, and Vacancy:

Mr. Synek asked Mr. Blaze if he maintains employment outside of his position for the City of Independence, as it has been a common practice with previous finance directors. Mr. Blaze said when he ran for the position in 2019 he was aware the compensation was \$65,000 a year, which he does not believe to be sufficient considering what the position requires. He decided to run for the position anyway, and doesn't feel he has the right to complain as he knew what he was getting into. Prior to being elected, Mr. Blaze ran his own appraisal practice from 1988 to 2008. His intention was to continue working in his appraisal business a few hours a month, as his position with the City is a part-time position, to supplement his salary. Due to COVID and the moratorium on foreclosures, his appraisal business was reduced quite a bit.

Mr. Synek said while he understands the determination of part-time or full-time is not the responsibility of the Committee, however in an appointed position he assumes it would automatically raise to a full-time position. He went on to say he believes it serves the community better to have someone in that position full-time so they will not have a divided focus. A full-time position would allow for their sole focus, sole income, and sole source of employment to be the City of Independence. This would serve the residents best if the finance director is able to focus solely on the City's business and the many moving parts to the City's finances.

Mr. Synek spoke on the point raised by Mr. Blaze concerning who should appoint the position. He said in his school board experience, the five members of the school board directly hires for the positions of treasurer and superintendent. He believes this is a precedent for part-time elected officials to interview and hire employees. Mr. Synek went on to say human resource duties is not something that elected officials typically do in their everyday work, compared to The Mayor's position which works closely with human resources on a daily basis searching for employees to build his team. Mr. Synek believes The Mayor would be better equipped to make those decisions than part-time elected officials. Mr. Synek went on to say he is conflicted because he does see the benefits of the appointment being made by Council, as they are the legislative voices for the voters. The Mayor would also appoint someone they could work well with, which will serve the City well.

Mr. Blaze said the City of Independence has a full-time human resources director, who would be available to Council to assist them in the process of filling the position. He went on to agree that an organization as complex as a city the size of Independence with part-time employees in top positions.

Mr. Lesh brought up the point that whether the position is elected or appointed, the position can still be a full-time position or part-time position.

Mr. Walchanowicz asked those on the Committee if they had been aware of the information presented in the distributed materials before tonight's meeting, to which most members admitted they had not been aware. He went on to say after reviewing the materials he wonders why anyone would want the responsibilities of the finance director position for only \$65,000 a year salary.

Mr. Lesh said he would support a full-time position, were that a subject within the scope of the Commission.

Mr. Belec added he worked 32 years for a pretty large law firm, the managing partner who made all the decisions for the firm. He said the second most important position for the firm was the chief financial officer, who was appointed by the managing partner. Because the two employees worked so well together the law firm became extremely profitable. Mr. Belec used this example to show that particular setup for how appointing positions works.

Mr. Blaze referenced pages 2 and 3 of the handout, which says the CFO is effectively a combination of a CFO and CEO due to the close working relationship. He agreed that when both are in sync the results are dynamic.

Chairperson Rini summarized the comments and suggestions for the Commission and made notes of each, to be discussed later in the process.

Chairperson Rini asked if the Commission would like to take Mr. Blaze's suggestion concerning required experience for the position.

Mr. Blaze explained the suggestion, saying if the qualification criteria is included the Commission may want to consider amending the first sentence. If Council or The Mayor take over, and it becomes an ordinance issue, there can be any number of criteria included in the ordinance. Therefore it will be legislated one way or the other.

Mr. Lesh said he does not like the possibility of qualifications being diminished if they are legislated.

Mr. Blaze explained the qualifications are needed in the Charter if the position is elected, because that is the only backstop.

Mr. Lesh said he believed the law director should have a good amount of education and experience.

Mr. Blaze agreed, saying he doesn't believe anyone on Council would consider someone who is not qualified for the position. There would be checks and balances in the process. He referred to the hiring process when the City is in need of a Chief of Police or Fire Chief.

Mr. Vancure asked if the Commission made the suggestion that Council appoint the position, would the minimum experience requirements still be included in the Charter, or would that be handled by ordinance. Mr. O'Brien explained that is up to the Commission to determine what will be suggested to Council.

Ms. Rini brought up the possibility of keeping the position as an elected position, but no one in the city who wants the position has the qualifications to run for that office.

Mr. O'Brien said in that scenario The Mayor fills the vacancy by appointment.

Discussion ensued concerning city salaries and how changes are made to them.

(1) Purchasing: No Changes were suggested for this section.

(2) Appropriations and Reports:

Mr. Synek noted that the Charter says the finance director is there "to assist The Mayor in presenting the budget to Council." The finance director does not create nor makes the ultimate decision on the budget. The Mayor presents the budget to Council. He also noted the finance director has no vote. The position is the scorekeeper and information provider, but no voting power.

Mr. Blaze agreed, using an example of when he was a witness in court and opposing counsel asked him if he and The Mayor had advocated for the budget before Council. Mr. Blaze answered he wasn't able to speak for The Mayor, but his role is not to advocate. He assists The Mayor in presenting a budget to Council, but he does not advocate. He counsels The Mayor and Council of ramifications of budgets that are up for consideration.

(3) Collections:

No changes were suggested for this section.

(4) Certification:

No changes were suggested for this section.

(5) Funds Subject to Certification:

No changes were suggested for this section.

(6) Contracts:

No changes were suggested for this section.

C. Miscellaneous:

(1) Attendance at Council:

No changes were suggested for this section.

(2) Budget Preparation:

No changes were suggested for this section.

(3) Transfer of Funds:

No changes were suggested for this section.

(4) Payment:

No changes were suggested for this section.

(5) Purchasing and Contracts:

Mr. Belec brought up the approval of \$15,000, specific to ransomware, suggesting the amount be increased and language added for internet security.

Mr. Lesh made mention the City already spends quite a bit on internet security, and the common belief in the news is cyber-attacks are not going to stop. He asked Mr. Belec what his suggestion would be.

Mr. Belec agreed cyber attacks will happen in the city, to which Mr. Blaze said it did happen a couple of years ago.

Ms. Ostrowski asked what was amended in 2018, to which Mr. O'Brien said the amount was increased from \$7,500 to \$15,000.

Mr. Lesh asked if an emergency Council meeting to meet in Executive Session should an attack occur, to approve the funding needed. He does not think the limit should be increased, for example, from \$15,000 to \$250,000 or \$500,000.

Mr. Belec suggested adding a stipulation to address ransomware, however the day-to-day limit should remain \$15,000.

Mr. Walchanowicz said the city email has been hacked three times in the last two weeks, showing cyber attacks are a significant problem in the city. The attacks are caught quickly, and an email is sent to employees to not open the associated email, but it is still a concern and instances have increased since the first of the year.

Mr. Lesh asked if there is a need to expand the IT department. Mr. Walchanowicz said the City has actually hired a firm to handle IT, and there are two of the firm's employees on site daily. Mr. Gibbs is on site twice a week, but available by phone every day. At one point the City had a full-time IT professional, however he accepted a position with another city because he was offered a substantial increase in salary.

Vice Chairman Synek asked Mr. Blaze his opinion of the \$15,000 a day limit.

Mr. Blaze first addressed Mr. Belec's concerns, explaining there is currently some flexibility with ransomware situations until a permanent solution can be found.

Answering Vice Chairman Synek, Mr. Blaze said it would be ideal if the daily limit were higher, however he doesn't consider that one of his priority issues. In reality, anything the City purchases above \$15,000 are generally professional services contracts such as the Law Director position, vehicle and large equipment purchases by the Service, Fire, and Police Departments. Most of those larger purchases go through the state purchasing contract or a few other consortiums that Council has authorized the City to make purchases from. Most of the items sent out for bid are construction and road projects, which are multi-million dollar projects.

Ms. Rini asked what the ideal daily limit would be if a change were to be proposed, to which Mr. Blaze explained if the Charter were silent on the issue the limit would revert back to the state limit which is \$50,000. Mr. Blaze suggested a percentage of the state allotted amount instead of a dollar amount, and that being no less than 30 percent. This would allow for inflation and reduce the times the City has to debate the limit.

Mr. Lesh suggested leaving the limit at \$15,000. If there is a cyber attack there should be an emergency Council meeting convened to handle the situation. He said there is language in (c)5 concerning the nature of emergencies, and he has faith that Council will handle the situation correctly and immediately.

Mr. Belec said his concern is more so on who will deal with the situation, not so much about the funding limitations. He believes the Law Director, The Mayor, and the federal authorities should handle those types of situations. He asked for Mr. Belec's comments considering his previous experience in IT.

Mr. O'Brien said he has no comment on the policy questions, but agreed that the five or six times he's been involved in such situations there is a pattern. The first time he dealt with such a situation the ransom was a six-figure amount and there was no guarantee they would receive the key once the ransom was paid. Those handling the situation have many responsibilities, one of which is searching the known terrorist list to make sure you are not paying a terrorist. This is done through the federal government and takes time. Then there is the financial institution process that has to be followed. Therefore, these situations are not handled overnight. In the last situation, which happened fairly quickly, took approximately two and a half weeks and the negotiations began at \$5 million.

Mr. Chelko asked if a way to circumvent the daily limit is to break the project up into multiple projects, and if this is a concern. Mr. Blaze said his department tries to prevent that from happening, and gave an example of a recent purchase the Service Department made which turned into multiple transactions. Due to the total amount needed for the purchase, Mr. Blaze has asked that legislation be prepared and presented to Council to amend the original legislation that was passed to approve the purchase.

Off-topic discussion ensued concerning finances of the City.

Ms. Ostrowski verified the state average of \$50,000 for mayor daily limit and said if there is a need for an increase, she is open to discussion of a percentage or a dollar amount.

Mr. Belec said he likes the idea of a percentage, to which Ms. Ostrowski agreed considering the reasoning that was provided. She referenced #5, saying it speaks to the need of emergency action.

Mr. Belec agreed, but reiterated there should be specific language included for these situations.

Mr. Lesh asked if there could be legislation proposed to add a line item to the budget for emergency use in these situations. Mr. Blaze said there is a self-insurance fund that is budgeted for, however anything over \$15,000 still has to be presented to Council.

Mr. Synek asked if a department head (Police Chief, Fire Chief, head of Service Department) has the authority to make a \$14,000 purchase without prior consent. Mr. Blaze explained there has to be a requisition submitted, which is converted to a purchase order. A purchase order can only be created if the funds have been appropriated. Therefore, there is a system of checks and balances in place. This same process applies to The Mayor's office.

Mr. Synek said his concern is on what The Mayor can authorize in his sole discretion and authority, and he would like that limit to be low. There should be public scrutiny on such spending serves the public interest.

Mr. Lesh asked about something he heard concerning The Mayor being allotted \$100,000 each year to spend at his discretion.

Mr. Blaze explained The Mayor is subject to his \$15,000 limit. Mr. Blaze spoke up saying maybe there was an authorization like that relating to the COVID funding that was received when the pandemic originally began.

Mr. Blaze responded to the comment concerning the daily limit being a check on The Mayor. In his experience, since November 2019, The Mayor and mayor's office drives very little spending. Most spending in the City is department driven. Department directors working through the procurement coordinator, and then on to the Finance Department.

Mr. Lesh suggested leaving the limit at \$15,000 as he believes there has already been a problem with use of the daily limit less than two years ago.

Chairperson Rini made notes a note of suggestions, to be discussed later in the process.

D. Clerk of Council:

No changes were suggested for this section.

Section 3. Law Director –

Mr. Lesh asked Mr. O'Brien if he thinks the Law Director should get longevity pay, to which Mr. O'Brien said he removed himself from the retirement program for the City. That was 20 years ago, and he's regretted the decision ever since.

Mr. Blaze said he's familiar with someone in the medical field that lives in Independence who works for one of the two largest medical communities and regrets not working for Metro Health because Metro Health is a part of OPERS, the pension system and their salary would have been pensionable under OPERS. In their current organization they only have a 401k.

Mr. Synek asked if the law director position has always been an appointed position, noting the amendment in 1979. Mr. O'Brien said he's not aware of what the amendment addressed, but he believes the position has always been appointed as his firm has worked with the City for almost 60 years. Walter Kelley [ph] wrote the Charter, along with charters for other cities.

Section 4. Service Director –

Mr. Lesh referred to the Brecksville Charter, noting that all employment decisions go through Council, whether it be hiring, firing, or changes to position. He went on to reiterate his belief that anyone working at the will of The Mayor may not work to their full potential as their main focus may be on retaining their position. If employment is run through Council employees may work to their full potential.

With that said, Mr. Lesh suggested the Service Director be appointed by The Mayor and a majority of Council, and any termination should be handled the same way.

Mr. Walchanowicz said he believes that is already in place, saying the last Service Director and Police Chief had to be approved by Council before they were hired.

Mr. Lesh said when it comes to this dismissal of any department head, it is at the will of The Mayor. He believes that should be changed to match the requirements of dismissal of a Police or Fire Chief.

Mr. O'Brien brought up there is a codified ordinance already in place that requires a majority of Council to remove the Service Director. He offered to research the ordinance and present the information to the Commission.

Section 5. Planning Commission –

(A) Membership and Terms:

No changes were suggested for this section.

(B) Duties:

No changes were suggested for this section.

(C) Zoning Ordinances:

Mr. Lesh questioned the language that speaks of variances, saying he's seen variances applied discriminately, and the language has been abused. An example would be a neighbor building a fence on the property line, and the other neighbor is required to build their fence 3-4 feet off the property line. When asked to explain further, Mr. Lesh said the owner of said fence is required to maintain said fence. However, if a tree fell on the fence, and it is built on the property line, the resident would not be able to make repairs without trespassing on his neighbor's property. This is where Mr. Lesh has seen issues occur.

Mr. Lesh went on to explain a situation a neighbor of his is experiencing. There used to be an easement connecting two properties his neighbor owned. Unfortunately, the easement was also the driveway. Recently his neighbor sold one of the properties, and the easement was removed. This left the secondary property landlocked.

Ms. Ostrowski asked if the variance Mr. Lesh is discussing was in the Zoning Ordinance section, to which Mr. Lesh explained the Board of Zoning grants variances.

Attending Resident spoke on a situation she's had with a neighbor who installed a fence and violated fencing ordinances.

Chairperson Rini asked if there is any language that can be added to this section to correct the complaints the Committee members have concerning ordinances, to which Mr. Lesh suggested adding variances must or shall comply with ordinances.

Mr. O'Brien spoke up, saying under Ohio revised code your neighbor can legally come 10 feet onto your property to maintain their fence and it is not considered trespassing. Mr. O'Brien said he would send more information to the Committee members.

Motion to Adjourn: Meeting ended at 7:29 PM.

Chairperson Deena Rini

These minutes are unapproved as of
release date 3/22/2022.