



CLEVELAND HEIGHTS

Charter Review Commission

April 13, 2024

10:00 AM

City Hall – Executive Conference Room

**Minutes approved at April 27 meeting with
amendment as reflected in underlining in 2)b.**

1) Call to Order

- a. Chair Linda Striefsky called the meeting to order at 10:05 A.M.

2) Roll Call

- a. Members present: Linda Striefsky, Jonathan Ciesla, Roland Anglin, Harriet Applegate, Graham Ball, Drew Herzig, and Guy Thellian.
- b. Members absent: Stephanie Morris, Graham Ball and Graig Kluge.
 - i. Graig Kluge participated via videoconference. [Original draft of minutes included Graham Ball in this paragraph.]
 - ii. Graham Ball participated via teleconference until 11, when he joined the meeting in person.
- c. Staff present: Assistant Law Director Lee Crumrine. Facilitator Kevin Butler participated by videoconference.

3) Approval of Minutes of March 20, March 27 Meetings, and April 3

- a. Motion to approve the meeting minutes of March 20, March 27, and April 3 by Roland Anglin, seconded by Guy Thellian. Approved unanimously.

4) Review and Confirm or Amend Agenda

- a. The CRC proceeded directly to consider the proposed non-discrimination amendment to take advantage of the presence of the Facilitator via videoconference.

5) Public Comments

- a. None.

6) Old Business

- a. Report from Assistant Law Director Crumrine or Kevin Butler on selected questions posed by CRC

- i. The CRC reviewed the charter of answers provided by the Law Department, focusing on items not already covered in prior meetings. (Copy attached)
- ii. Drew Herzig asked if Graham Ball would draft the land acknowledgment provision for the CRC to consider. Graham Ball stated that he reached out to organizations about whether it would be worthwhile to pursue such a provision, and he will report back on their response. Graham Ball will work on drafting it once he heard back from those organizations if they believe it would be worthwhile. Harriet Applegate also offered to contact someone about it. Facilitator noted that New York City has a land acknowledgment in their charter as well. Chair noted that there are criticisms of the practice from Native American organizations, she cautioned care, and she stated her opposition to recommendation of such a provision.
- iii. Chair asked whether, based on the answer to the question related to territorial annexation, that language in Article One should be removed. Facilitator stated that the language is neither harmful nor helpful and therefore superfluous. Motion to remove by Harriet Applegate, seconded by Drew Herzig. Motion passed 5-0. Jonathan Ciesla and Guy Thellian abstained. Guy Thellian asked to categorize these revisions in the bucket of general language update, simplification, and modernization.
- iv. Regarding Section 2.1, Chair stated her preference for keeping the language referring to mayor-council form because it is helpful. Guy Thellian and Drew Herzig agreed. Facilitator asked to add “a” before “Mayor-Council.” Approved unanimously. Motion to adopt Section 2.1 as amended adding “a” before “Mayor-Council,” seconded by Drew Herzig, seconded by Roland Anglin. Motion passed 7-0.
- v. In Section 2.2, Chair noted that the Law Department stated that a reference to “home rule” is unnecessary in this section. Motion to approve the section as drafted by Chair, seconded by Guy Thellian. Motion passed 7-0.
- vi. Regarding franchises in Section 3.10, Facilitator noted that largely regulation of franchises has been usurped by the state, and he agreed that it is appropriate to remove the language. He also stated that the general language as drafted is appropriate to retain as well. Harriet Applegate asked the Facilitator if senior transportation could be an example of a franchise, and Facilitator responded that only if senior transportation were such a highly regulated industry that the city believed only one vendor and no others should be providing the service. Motion to adopt Section 3.10 as drafted was made by Jonathan Ciesla, seconded by Roland Anglin. Motion passed 7-0.
- vii. In Section 3.11 regarding Council President Pro Tem, Chair stated that there is a reference to City Manager that needs to be removed. The Chair stated that the 2017-19 CRC recommended this provision, which has additional provisions compared to the ordinance, including regarding the preparation of agendas and selection of the Council President Pro Temp. The CRC discussed striking the last two sentence of subsection (b). Assistant Law Director Lee Crumrine noted a potential conflict with Section 4.3. Motion to approve the draft section as amended (deleting last 2

sentences) was made by Jonathan Ciesla, seconded by Graham Ball. Motion passed 7-0.

viii. The CRC discussed the use of “moral turpitude” in Section 3.3. Harriet Applegate expressed a preference for keeping “moral turpitude.” Assistant Law Director Lee Crumrine suggested considering reconciling this section with removal of the mayor under Section 4.9. Motion to postpone this matter until the next meeting by Jonathan Ciesla, seconded by Harriet Applegate. Motion passed 7-0.

ix. The CRC discussed the timing differences in filling vacancies. Chair noted that this difference is due to the mayoral primary and that ranked choice voting would eliminate primaries.

x. Chair noted that Roland Anglin has provided proposed amendments regarding salaries.

xi. Regarding Section 4.5 and the right of the Mayor to participate in Council meetings or attend executive sessions of Council, Facilitator stated that it would be usual for Council to adjourn to executive session and specifically ask the Mayor not to attend because the topics discussed usually involve the administration; but there are examples where it is possible that Council may want to exclude the Mayor, including appointments and employment matters. He stated that executive session is a closed-door meeting of only the members of the body. He said that to the extent that there is a dispute arising because the Mayor is entitled to participate in all meetings of Council, the Charter can clarify this issue. He suggested that in Section 4.5 could be amended to add “including executive sessions on the invitation of Council” after “meetings of the Council.” Jonathan Ciesla asked why the Charter could not strike the provision allowing the Mayor to participate in Council meetings. Chair disagreed with removing that provision. Harriet Applegate stated that the Mayor was present during her interview for an appoint to Council vacancy. Facilitator noted that Council is permitted to invite whomever they want to executive session, and he noted that the current provisions creates some haze on this authority. Drew Herzig noted that he is worried about abuse of this provision. Motion to approve revising the first paragraph of Section 4.5 to “including executive session on the invitation of the Council, but shall not vote” after “meetings of the Council” by Jonathan Ciesla, seconded by Guy Thellian. Motion passed 7-0.

xii. Regarding questions in the chart as to petitions and whether “electors” or “registered voters” should be used, Chair suggested putting aside the issue of recall, initiative, and referendum until the CRC considers Guy Thellian’s proposal on that subject. Regarding how much time should be given for the submission for a referendum petition, Chair asked about the pros of cons of extending the deadline to file a referendum petition to 40 days from 30 days. Facilitator stated that the time period is related to when ordinances become effective and ordinarily the deadline would not be after the effective date. Chair suggested that this be included in the postponed discussion of referendum too.

xiii. Regarding “emergency measures”, Chair noted this is a term of art and should not be changed. Harriet Applegate stated that the provisions related to emergency legislation is abused and gave examples. Guy Thellian made

a distinction between poor time management and abuse. Drew Herzog noted that five votes are needed to pass an emergency measure and Council can address this issue by ordinance. He asked whether Council is including that in their current discussions of their own internal processes and rules. Chair agreed that this is a planning issue, but that does not mean it is abused. Graham Ball stated that there is no language that they could include that would go further than what is already provided. Drew Herzog noted that the CRC has been legally advised not to change the wording with it and that Council could address this by educating the public concerning “emergency measures”.

xiv. Regarding references in the charter to “canvass” in the context of certifying election results, motion to empower Assistant Law Director Lee Crumrine to identify where in the charter simply “certification of the official election results” can be used and make those revisions by Chair, seconded by Roland Anglin. Motion passed 7-0.

xv. CRC to discuss time limitations on removal of officers when discussing Graig Kluge’s proposed amendments.

xvi. Chair, Guy Thellian, and Harriet Applegate agreed that there is no reason to add a provision related to Council’s subpoena power. Drew Herzog stated a preference for it. Guy Thellian asked whether Council would have to go through a court for a subpoena, and Facilitator stated that Council would issue it itself. Chair suggested including in the report that the CRC did not include it in the Charter because it is addressed in state law. Facilitator noted that this provision is so rarely used that it does not need to be a part of the Charter. Motion to include Council’s subpoena power in the Charter by Jonathan Ciesla, seconded by Graham Ball. Graham Ball stated that it would not hurt to include in the Charter, and it would make it clear. Motion passed 4-3.

b. Ongoing consideration of contents of proposed charter amendment “buckets” (See Exhibit A) and on whether CRC recommendations will be presented as one amended charter and/or as buckets.

- i. Chair suggested having that discussion at the April 20 meeting.

c. Continue discussion of proposed text from Drew Herzog on non-discrimination provision as Charter amendment, including input from Facilitator.

- i. Drew Herzog stated his reasons to support the proposal.
- ii. Drew Herzog stated that if a group is not specified in a law that ultimately the group will not be protected by that law, that it is important to imbed it in the charter because the charter is more durable, and that no list can be fully inclusive but it can be as inclusive as possible. Harriet Applegate raised the idea of using “any other minority or marginalized group” as a catchall because a list will always leave a group out. Jonathan Ciesla expressed concern with listing protected classes, and he made a distinction between what is appropriate for a charter versus an ordinance. He asked if the CRC could consider an advocacy statement. Harriet Applegate said that she was not initially inclined to support it, but there is an advantage in putting the city on record on these issues.
- iii. Jonathan Ciesla asked the Facilitator whether language subsequently added by Drew Herzog to the proposal that he originally drafted would cause any conflict or other issues.

iv. Facilitator noted that he has heard from the CRC their concerns about underenforcement and overenforcement in a document such as the charter that is not easily amendable. It is easier if protected classes are cognizable and delineable and the wrongdoing is clear. He identified a couple of problems with draft from the perspective of a law director's ability to enforce the provisions. He said that the protected classifications are easily definable, so that is not an issue, but the "traditionally marginalized group" catchall suggested during the meeting might pose problems. He said that in the compilation of charter provisions that he shared that those provisions generally relate to discrimination in employment and city services. He noted that the additional language in the proposed draft "or discriminate or have the effect of discrimination" carry the provisions outside the areas of employment and city services and that may be more difficult to enforce. He suggested that the CRC could make a statement on this topic that leaves the legislating to Council. He cautioned against a provision that would make it difficult for the enforcers of that policy to enforce it. Harriet Applegate asked whether he was speaking to "or discriminate or have the effect of discrimination" or the whole provisions. Facilitator said that if we eliminated that language, then the policy is more enforceable.

v. Drew Herzog stated that he prefers to keep the language and identified as a concern awards and grants, including ARPA funds. Facilitator stated that it is a fair argument, but countered that an organization denied an award or grant, such as a religious organization, could counter that the very same provision protects them.

vi. Guy Thellian stated that the City has a greater budget for vendors and contractors than for personnel, and this provision would not address that problem, and he asked the Facilitator whether the provision can maintain enforceability and still address that problem. Facilitator stated that the charter would need to be prescriptive and detailed enough and that that language can be brought into the charter. His overarching concern is with the broad nature of "discriminate or have the effect of discrimination." Facilitator noted that the City has antidiscrimination ordinance as to contracts already.

vii. Jonathan Ciesla asked about the additions of language concerning "systemic inequities or animus," and Facilitator agreed that that language can also cause problems for enforcement of the provisions because it is a more shifting standard with a looser definition. Drew Herzog responded that he included that language because structural discrimination exists without personal animus. Chair noted that the city has a current definition of "discrimination" in its ordinances, and she asked the Facilitator if it is better for the charter to have the same definition as in the ordinances.

viii. Assistant Law Director Lee Crumrine suggested that if "discriminate or have the effect of discrimination" is struck, then a definition of "discrimination" is unnecessary and that provision could be struck as well.

ix. Motion to approve the proposed amendment as amended striking the language "or discriminate or have the effect of discrimination" and "Discrimination, as used herein, means action or inaction based on systemic inequities or animus affecting a person or persons in the protected classification" by Chair, seconded by Harriet Applegate. Facilitator stated

that the motion as amended makes the provision more enforceable. Drew Herzig asked whether this provision would invalidate city ordinances regarding city contractors, and Facilitator stated no, but the CRC could add “contracting” to the provision. Jonathan Ciesla asked whether it would apply to privatized city services, and Facilitator stated no. Jonathan Ciesla asked why “legislation” is left out. Drew Herzig suggested that legislation would be included with “act, policy, or practice.” Chair cautioned against overlooking unintended consequences of hurting groups that they want to help, and Jonathan Ciesla agreed. Graham Ball recognized that there is a problem of the sword cutting both ways. Motion passed 4-1.

x. The CRC returned to discussion of the provisions addressing contracts, awards, and grants. Chair reiterating that she is concerned about the provision inadvertently prohibiting affirmative action that addresses inequities. Jonathan Ciesla expressed a preference against including contracting in this provision, and Guy Thellian agreed. Harriet Applegate suggested that they ask counsel how to say it, and she would like to do it if it can be accomplished by a simple phrase or sentence. Guy Thellian noted that ordinances already address contracting. Drew Herzig agreed with Harriet Applegate, and he suggested that the CRC can address that issue later. Facilitator and Assistant Law Director Lee Crumrine identified for the CRC Art. II, Section 5, of the Bexley Charter regarding diversity in contracting. Motion to further consider at a future meeting expanding the nondiscrimination provision to awards, grants, and contracts and discrimination by Jonathan Ciesla, seconded by Harriet Applegate. Passed by 5-2. Facilitator offered to take a stab at drafting provisions regarding awards, grants, and contracts and discrimination by contractors.

d. Continue discussion of plan for second public input meeting to be held in May; defer to discussion after New business item 7.e.

i. Assistant Law Director Lee Crumrine reported on booking a date for this meeting, and he reported that May 21 would be the best date because of the availability of Steve Barker. He stated that he is still working on getting a space for the event on that date. Graham Ball will be unavailable on May 21.

7) New Business

a. Discussion of proposed text from Guy Thellian on Finance and Budget matters.

i. Guy Thellian presented his proposals related to the budget. He stated that the most recent budget process was universally upraised. He explained his process in developing this proposal. He used the model charter as a template for form and organization. The CRC discussed the use of “sustainability” and whether it means “environmental sustainability” or something else. Guy Thellian explained that it derives from ESG (environmental, social and governance) and goes beyond environmental context. Guy Thellian stated that the goal of the draft overall is to be clear that Council and the administration should work together on the budget. Drew Herzig asked about its placement in the charter, and Guy Thellian stated that it would replace current charter provisions in Article 9. Drew Herzig stated that he understood Council felt rushed and suggested delivering the budget to Council in September and October, and Chair agreed.

Jonathan Ciesla stated that some provisions of this proposal are too prescriptive for a charter because it is too hard to change, and he stated that it reads like an ordinance, which Harriett Applegate agreed with. Guy Thellian explained that some cities have minimal provisions and other are more extensive, and he has been encouraged by reports of the experiences in the latter. Guy Thellian agreed to make revisions based on the CRC's discussion.

- b. Discussion of suggestions from elected official's for Charter changes. (See list attached, including for numbering items.)
 - i. Chair reviewed which subjects that the CRC has already discussed and what matters are still pending CRC discussion. From the Mayor's list, Items 1, 3, 4, 7, 9, plus 6 is no longer applicable. From the Council President's list, items 1, 2, 3, 4, 5, 6, 8, and 10.
 - ii. Regarding the Mayor's suggestions of an explicit grant of power to the Mayor for investigations (item 2), Harriet Applegate noted her opposition if it includes investigations of Council Members. Chair noted this was not need as to Council. Guy Thellian read the provision from Lakewood's City Charter that the Mayor referred to, which includes Council and directors. Facilitator stated that there are other ways to investigate a matter, including referring to law enforcement, and he stated his opinion that it is problematic to allow either Mayor or Council to investigate each other. He stated that, based on how the term "officer" is used in the Charter, that it would include other elected officials. He stated that the provision in the Charter stating "The Mayor shall be the chief conservator of the peace within the City, shall serve as Director..." would encompass investigative powers. Motion to add mayoral investigative power to the charter was made by Jonathan Ciesla, seconded by Guy Thellian. Chair stated she thinks it is a bad idea. Facilitator noted to the CRC the provisions of R.C. 733.34, R.C. 733.35, and R.C. 733.04. Graham Ball compared it to the subpoena power because it is similarly stated in state law and stated it should be consistent, and Drew Herzig agreed with Graham Ball. Motion failed 2-5.
 - iii. Regarding Mayor's item 5, in Section 7.3, the CRC agreed to strike the provision prohibiting an elector signing more nominating petitions than there are offices to be elected. Harriet Applegate stated her experience being that this limitation is widespread. Drew Herzig is in favor of the change because it allows more people to run. Guy Thellian stated that he prefers to keep it simple unless there is a good reason to differ. Motion to adopt the section as amended striking "No elector shall sign more nominating petitions for different candidates for a particular office than there are positions to be filled for that office at the election for which the petition is signed. If he does so, his signatures on all petitions which postdate his signing the permissible number of petitions shall be invalid" was made by Drew Herzig, seconded by Jonathan Ciesla. Motion passed 7-0.
 - iv. Regarding Mayor's item 8, Chair explained that a provision explicit granting power to individual members of Council to introduce legislation addresses potential limitations placed on that practice

provided in Council's rules of order. Chair stated her support for permitting Council to set its rules, which would allow for more diverse input. Jonathan Ciesla noted that the Charter explicitly allows the mayor to introduce legislation, but that that makes less sense for legislators. Facilitator agreed that that power is inherent in any legislator's office. Facilitator noted that CH Ords. 111.16 states, "The Director of Law, upon the request of any member, shall draft the form of any proposed legislation desired by such member, and any legislation not prepared by the Director of Law shall be referred to him for approval as to form and have his approval endorsed thereon before adoption." Guy Thellian said he would not support such an amendment. Drew Herzig suggested including discussing this issue in relation to training and orientation. Motion to explicitly grant the power to introduce legislation to individual Council members was made by Guy Thellian, seconded by Drew Herzig. The motion failed 0-7.

v. Regarding Council President's item 7, the CRC discussed the charter provisions for charter review and the need to provide for how members are appointed. Jonathan Ciesla noted that there are potential problems with the review period. Motion to pass the charter review provision as amended striking "Each new Review Period shall commence on January 1 of the year following the year in which Council takes action on the recommendations of a Commission that has most recently reviewed the entire Charter" by Jonathan Ciesla, seconded by Graham Ball. Motion passed 7-0.

vi. Regarding Council President's item 9, the requirement that City Administrator should have "experience in the day-to-day operations of municipal governments", Chair and Harriet Applegate agreed that this could be too much of a constraint on the pool of candidates. Guy Thellian stated that this is unnecessary. Motion to add the requirement to Section 4.4 by Jonathan Ciesla, seconded Guy Thellian. Motion failed 0-7.

- c. Discussion of proposed text for ranked choice voting provisions from Drew Herzig and Harriet Applegate
 - i. Chair stated that she had some questions. She noted that Cuyahoga County uses the same voting machines as Portland, OR. She suggested that the advocates present proposed ordinances to Council as well. Further discussion tabled until next meeting.
- d. Discussion of proposed changes to salary provisions for City Council and Mayor from Roland Anglin
- e. Discussion of proposed changes to votes needed for initiative, referendum, and recall from Guy Thellian.
 - i. Chair

8) Review of Meeting Action Items

- a. Facilitator will look at adding contracts and grants to the nondiscrimination provision.
- b. Graham Ball will identify language concerning "moral turpitude."

- c. Assistant Law Director Lee Crumrine will replace language regarding “canvassing.”
- d. Graig Kluge will add ability to introduce legislation into training and orientation proposal.
- e. The CRC will discuss buckets at the April 20 meeting.
- f. Graham Ball will research land acknowledgment
- g. Guy Tellian will draft text for report on finance/budget provisions.

9) Public Comment

- a. None.

10) Review of Meeting for Lessons Learned

- a. None

11) Adjourn

- a. Motion to adjourn made by Roland Anglin, seconded by Jonathan Ciesla. Approved unanimously. Adjourned at 3:08 PM.

Next meeting: Wednesday, April 17, 2024, at 6:00 P.M.