

CITY OF UNIVERSITY HEIGHTS  
MINUTES OF CHARTER REVIEW COMMISSION MEETING  
MARCH 31, 2009

Chairman Harvey Morrison called the meeting to order at 7:37 p.m.

**A. ROLL CALL**

Present: Mr. Harvey S. Morrison  
Dr. Roderick H. Adams, Jr.  
Mr. F. Michael Boyle  
Mr. Jason Patrick Ferrante  
Mr. Luke McConville  
Mr. Paul M. Miller  
Mrs. Susan Pardee  
Mr. Mark N. Wiseman

Absent: Mr. Simon A. Carroll  
Mr. Robert McClintock  
Mr. Joseph M. Shafran

Also Present: Law Director Kenneth J. Fisher

**MOTION BY MR. BOYLE, SECONDED BY MRS. PARDEE to excuse the absence of Mr. Carroll, Mr. McClintock and Mr. Shafran. On voice vote, all voted "aye."**

**B. REVIEW OF AVAILABLE MEETING MINUTES**

There were no corrections or additions to the minutes of March 10, 2009.

**MOTION BY DR. ADAMS, SECONDED BY MR. BOYLE to approve the minutes of March 10, 2009. On voice vote, all voted "aye."**

There were no corrections or additions to the minutes of March 24, 2009.

**MOTION BY MRS. PARDEE, SECONDED BY MR. McCONVILLE to approve the minutes of March 24, 2009. On voice vote, all voted "aye."**

Mr. Morrison suspended the regular order of the agenda in order to allow Commissioner Boyle to respond to an e-mail sent to him on March 30, 2008 from Winifred Weizer regarding the source of the draft charter presented by Mr. Boyle on February 24, 2009.

Mr. Boyle stated that the mock draft was not written by himself completely, but was a compilation effort on the part of many people. Mr. Boyle stated that he found the review of the Charter a daunting task and asked for help to get started. He received the draft in early February and reviewed various other documents and found consistent language in all of them to promote discussion among the commission members. Mr. Boyle stated that he could not speak to how the original draft was created because he never saw it before February 2, 2009. He received portions of the draft from Councilman Steven Sims and Councilman Kevin Patrick Murphy and had discussions with both. He added that using available resources to assist the commission in its task could help open discussion and move the process along. Mr. Boyle stated that he and other members of the Charter Review Commission (CRC) are unpaid volunteers who are trying to do a job which they feel is in the best interest of the City.

Mr. McConville commented about the need for civility among everyone involved in the open proceedings of the CRC. He noted that it is acceptable to question the commission's judgment, and the commission welcomes public participation and input. However, Mr. McConville stated that it is not acceptable to question the commissioners' integrity, especially when the allegations and conspiracy theories are totally baseless. Mr. McConville stated that Mr. Boyle and all the commission members deserve an apology.

Mr. Wiseman echoed Mr. McConville's comments and thanked Mr. Boyle for his efforts to get a working document before the commission for consideration. He also noted that the CRC members are going through a process to do what they feel is best for the city in order to meet future challenges for the next 20 to 30 years and to be accused of wrongdoing is very offensive.

Mrs. Pardee stated that Mr. Boyle never misrepresented himself regarding the draft charter because he mentioned from the beginning that a number of people had worked on the draft. Mrs. Pardee noted that she too would have reviewed and taken portions of other documents in order to get a starting document for the commission to work from.

Mr. Morrison read the following portion of the February 24, 2009 minutes, in which, Mr. Boyle explained how he came up with proposed draft, "Mr. Boyle presented a draft City Charter which he prepared by starting with the current Charter and amending it to include excerpts from other Charters, items from conversations with City Council members, items from discussion among the Commission members, as well as items taken from the minutes and from discussions with the directors. He stated that the draft proposes a City Administrator which is nowhere near comparison to a City Manager.... Mr. Boyle stated that the draft is a compilation of time and effort on the part of many people, and he hoped the draft would be used as a starting point to enhance the Commission's future discussions."

Mr. Morrison added that he too has researched other cities charters in order to get a document that will meet the needs of University Heights. He echoed the comments of Mr. Boyle and Mr. McConville and did not appreciate the attack on the commissioners. Mr. Morrison welcomed participation and input but, pleaded with the public to let the commission finish its job.

Councilman Steven Sims addressed the commission because his participation in a conspiracy was insinuated regarding the development of the proposed draft charter. Mr. Sims noted that the proposed draft is similar to, but substantially different from the document which he circulated on or around July 8, 2008. He also noted that the document which he circulated was part of a earlier process that the Council and Mayor participated in. Mr. Sims commented that the source of the document is not important. What is important, however, is that the commission has a document which to structure its work around. Mr. Sims suggested that people put more effort into offering positive input instead of tearing down the work of the CRC. Mr. Sims also read his e-mail of July 8, 2008, which was sent to all Council members, Mayor, and Law Director, along with his proposed revision to the Charter providing for a City Administrator. A separate e-mail was sent to Vice Mayor Zucker on July 16, 2008 soliciting her feedback. A reply e-mail was received back indicating that she was working on it.

Winifred Weizer, 2177 Jackson Rd., clarified that she is not running for public office. Ms. Weizer stated that her e-mail of March 30, 2009 to Commissioner Boyle did not imply that there was a conspiracy. It addressed residents concerns regarding the way the commission was formed and how independent it would be to the desires of the Council. Ms. Weizer stated that at no time on February 24, 2008 did Mr. Boyle indicate that the base document used to draft the proposed charter came from Councilman Sims. However, she thanked him for clarifying that fact.

Ms. Weizer stated that she asked the question of Councilman Sims' involvement in preparation of the document because electronic tracking of Mr. Boyle's e-mail was linked to Councilman Sims' e-mail. She noted that the question was not asked to attack the integrity of the commissioners, but rather it was asked to get the information out publicly as to where the proposed draft came from. Mr. Morrison mentioned that attorneys use documents from other people and places to draft similar documents. He added that this is a common practice and should not be taken out of context.

Kate Uhlir, thanked the commission members for their volunteer work on the CRC even though it was difficult to hear Mr. McClintock describe the Finance Director as a payroll clerk.

Vice Mayor Adele H. Zucker stated that she does not agree with the document presented by Mr. Sims in July of 2008, and she does not agree with the current document. She pointed out that Mr. Sims' document matches Mr. Boyle's proposed draft charter in many, many places. Mrs. Zucker passed out a comparison of the two documents. She also mentioned that the Council members were not informed of the meeting between Councilmen Sims and Murphy and Mr. Boyle and no one else met privately with any of the commission members. Vice Mayor Zucker stated that the Council has tried not to taint the process. Mr. Boyle indicated that when the individual council members spoke before the commission they invited for CRC members to call them for help in any way. Therefore, he asked if there was anything he could work from and was presented with the document. Mr. Boyle emphasized that he had no knowledge of the document prior to that request. He added that his sole intention for asking for help was to come up with a proposal that would make the city better.

Mr. Miller indicated that he may not personally be in favor of what Mr. Boyle is proposing, but he has responded to the questions and suggested that the commission move on to conduct its business.

Mr. Wiseman suggested that the commission consider requesting additional funds in the CRC budget to pay Clerk of Council Nancy English to continue her work for the commission through the extended period. Law Director Kenneth J. Fisher stated that he has not billed the City for his services; therefore, funds are still available in the account.

### **C. CONTINUED DISCUSSION REGARDING INFORMATIONAL MAILING**

Mr. Morrison explained that Mrs. Pardee and Mr. Carroll developed an informational mailing piece which included: a welcome from the commission, the names and contact information of the commission members, a list of meeting dates, places where the public can find information about the CRC, and a summary of the various forms of government. Mrs. Pardee mentioned that there was some concern that the content of the mailing was not sufficient enough to warrant a mass mailing. She stated that it is a good idea to provide the information. Ms. English noted that the document was emailed to individuals on the City's email notification list and was posted on the website.

Mr. Sims, who had questioned the content of the mailing, noted that Council was willing to support the commission in its efforts to send out the mailing. Therefore, Mr. Morrison requested that Council at its next meeting consider authorizing the use of bulk mail to send the mailing out. Ms. English suggested that a date for the public hearing required by Ordinance No. 2008-45 be selected so that notification of the public hearing could be included in same mailing. Mr. Fisher agreed and stated that procedurally the public hearing must be held while the commission is still in session. He added that a draft of the proposed final report could be circulated to the residents so that everyone will have an opportunity to review the document prior to adoption of the final report. Mr. Morrison asked the Law Director to review the dates and present a calendar to the commission. It was also suggested that the draft of the final report be placed on the website for review if it is too voluminous to mail.

Mr. Miller stated that one of the experts from Cleveland State University informed the commission that in order to do its job at the end and get the proposed amendments adopted, the commission must tell the residents what is proposed and why it was proposed. He noted that opportunity must be given for the residents to understand everything that is going on, and in that respect, the commission cannot do too much. He added that maybe they will use email, send out one or two mailings, and/or hold a public forum. The point is the commission cannot do too much because this proposed Charter this is going to be a document that is going to run the City of University Heights and could possibly be substantially different than the current Charter. It was agreed that there will be various forms of announcements.

Mr. Wiseman recommended that a date be selected for a draft of the final report to be completed in order to set a date for the public hearing. He suggested that the public hearing be held on May 19, 2009; therefore, the draft should be completed and on file with the Clerk by May 12, 2009. It was noted that holding the public hearing on May 19 there will be time for the commission to finalize the report by June 5, 2009 deadline.

#### **D. CONTINUED DISCUSSION REGARDING ARTICLE 3**

The commission ended its discussion on March 24, 2009 with the new section proposed under Article 3 to establish the position of City Administrator in the draft Charter, which was named 4.1 for drafting purposes. NOTE: The following changes were also proposed at the March 24, 2009 meeting: The first sentence in the first paragraph was amended to delete the words "by a majority vote" and "and fix the salary of". The second sentence in the first paragraph was amended to delete the word "solely" and insert "and/or" for the word, "or." The third sentence in the first paragraph was amended to insert the word "Neither" at the beginning of the sentence.

Mr. Morrison stated that his substantive issue would be whether the position of City Administrator would be mandated or discretionary by using the language "may appoint" rather than "shall appoint." Mr. Miller stated that the language of this section will also affect Articles 5,6 and 7 and if the language is discretionary city official will not have to follow the Charter. There was also discussion on possible inconsistent ballot language. Mr. Fisher stated that the ballot language would have to be consistent. He advised that permissive language would not be appropriate.

There was also discussion of combining new Section 4.1 with the new Article setting forth the duties of the City Administrator so that it is all inclusive.

Mr. Wiseman stated that he does not agree with the City Administrator having as much power as given in the proposed draft charter. He preferred the Mayor to retain a lot of his/her existing power and that the City Administrator would be recommended by the Mayor and hired or fired by Council and would be in charge of fiscal responsibility.

Mrs. Pardee's vision was to see the City Administrator overseeing the staff, hired by the Council upon the recommendation of the Mayor and to be fired upon recommendation of the Mayor voted as a majority of Council. Further, if the Mayor does not recommend the removal then it would take a super majority of Council for removal. Some duties would include day-to-day operations of the city, doing economic development, overseeing communications, and making sure finances are in good shape. Mrs. Pardee stated that the Mayor would be responsible for overseeing the City Administrator, developing a vision for the city, working with other Mayors, and working toward the future.

Mr. Boyle stated that he does not feel the Mayor's customary powers are reduced under the proposed draft charter. He read some of the duties under Article 5, Section 4(D). Mr. Boyle stated that he was open to language regarding the hiring and firing of the City Administrator.

Mr. Fisher pointed out that Section 1 of the new proposed article entitled, City Administrator, states that, "The City Administrator shall be the administrative head of the government of the city and shall have the preponderance of executive powers as provided in this Charter.", which is a dramatic change in how the city will govern itself, if adopted.

Mr. Miller stated that he is totally against hiring a City Administrator. Mr. Miller mentioned that he visited Bedford, Bedford Heights and Campbell because they were the closest in size to University Heights, except for Campbell whose population has reduced from 16,000 to 9,000. He stated that since he did not know much about the process, he wanted to talk with individuals from the various cities who are running the cities under their governance. Mr. Miller stated that Bedford has a City Manager; City of Bedford Heights has a Mayor with two (2) administrators; and Campbell, which is near Youngstown has a Mayor-Council-Administrator form of government. He noted that the layers of the organizational charts were similar to that of University Heights. Mr. Miller stated that one idea that came out of his conversations, which the commission should consider, is how the Charter Review Commission is formed suggesting that the commissioners should be elected.

Mr. Miller pointed out that what has not been demonstrated during the CRC meetings is that there is a need for a change. He mentioned that there are no problems with the police, there are no problems with the fire department responding in a timely manner, there are no problems with the equipment needed to perform the services provided, and the City does not have severe fiscal problems. Mr. Miller stated that he is a proponent for a strong mayor, and what he has gleaned from researching other cities is that there is nothing that has demonstrated to conclude that University Heights' Charter should be changed. He added that the Law Director also supported a Mayor-Council form of government. Mr. Miller encouraged the commission to think long and hard before it emasculates a document that has been in effect for sixty-eight (68) years.

**MOTION BY MR. McCONVILLE, SECONDED BY MR. BOYLE to take the new Section (4.1), which appears between Sections 4 and 5 of Article 3 and moved it to Article 5, City Administrator, and to leave Sections 5, 6 and 7 of Article 3 in tact as they exist today.**

The new Article between Article 5, The Mayor, and Article 6, Administrative Officers and Departments, was designated as Article 5A for drafting purposes only.

Edmund Rothschild, 3785 Washington Blvd., inquired if the commission proposed to submit the new Charter all at once for a single pass or fail vote or if the amendments will it be submitted to the electorate section by section. Mr. Morrison responded that the amendments will be submitted section by section. Mr. Rothschild noted a possible conflict if certain sections do not pass. Law Director Fisher explained that when there is a modification in the form of government, there are several sections of the Charter which could potentially have to be modified and that is something he will have to contend with in developing ballot language.

Mrs. Pardee pointed out a typographical error in Section 2 of Article 4, the word "faxed" the fifth sentence should be changed to read "fixed." Mr. Fisher noted that grammatical errors can be amended with a general ballot question, such as, "Shall the Charter of the City of University Heights become gender neutral and all grammatical errors corrected?"

**E. INITIAL DISCUSSION OF ARTICLES 5, 6, & 7AS TIME ALLOWS**

Discussion of Article 5. The Mayor

Mr. Wiseman suggested that discussion take place regarding the conceptual position of the City Administrator prior to discussing the position of Mayor. He stated that the way the proposed draft is written the City Administrator, a non-elected official, is given the “preponderance of executive powers.” It was Mr. Wiseman’s opinion that the Mayor should have the preponderance of executive powers and the Administrator should have a defined role. Mr. Wiseman wanted to maintain a strong Mayor who has supervisory authority over the City.

Mrs. Pardee stated that her vision of the City Administrator is that the Administrator would report directly to the Mayor with the Administrator overseeing all the departments.

Dr. Adams stated that the commission had previously discussed the analogy of the Chief Executive Officer (CEO) being the Mayor and the Chief Operating Officer (COO) being the City Administrator.

Mr. McConville stated that he envisioned the City Administrator having the day-to-day operational authority and would conduct the performance reviews. He added that the Mayor would hire and fire all employees so there are two levels of authority. However, the Mayor would have the ultimate authority. Mrs. Pardee questioned the Mayor having the authority to hire and fire employees when the City Administrator would be more familiar with the performance of the employees. Mr. Wiseman pointed out that University Heights is a small city and the Mayor would not be far removed from contact with the employees. Mrs. Pardee noted that other sections of the proposed Charter requires the Mayor and Council not to interfere with the day-to-day operations as it relates to city employees. Mr. Wiseman suggested that the power be distributed so that one positions is dependent upon the other.

Mr. Wiseman pointed out that the proposed draft as written removes all the power away from the Mayor. He added that in a city the size of University Heights, the Mayor has to have some authority to effect how the city operates. Mr. Miller agreed that the proposal takes 95% of the power away from the Mayor. He noted that the ultimate question is whether or not the commission wants a strong Mayor, which he supports. He explained that either the Mayor or the City Administrator has to be given the preponderance of power because there cannot be two leaders in the organization.

Mr. Boyle stated that under the proposal, the Mayor would recommend the City Administrator to the Council for appointment and it also addresses the removal. He noted that language could be added where the Mayor could propose to the Council that the City Administrator be removed. Thereby the City Administrator is held accountable to the Mayor. Mr. Boyle stated that in developing the proposed draft, he took into account material from Dr. Keller at Cleveland State University and the Model City Charter from the National Civic League and determined that the political role of the Mayor has to taken out of the day-to-day operations of the city. He added that a City Administrator would not be worried about something which could effect the election, but rather would do everything in the best interest of the city or he would be held directly accountable to the Mayor. Mr. Boyle stated that there is language in the proposed draft that delineates the powers.

Mrs. Pardee stated that she reviewed the current Charter, the Charter from the City of Oregon, Ohio, and the proposed draft. What she gleaned from her review is that under the proposed draft, the Mayor basically has ceremonial powers and not a lot of actual authoritative responsibilities. She noted that making a few changes would provide better balance of powers.

Mrs. Pardee stated that someone has to oversee the City Administrator and hold him accountable, and she would prefer that it be the Mayor. She mentioned that the most important power within the structure is reporting, hiring and firing.

At the request of Mr. Boyle, Mrs. Pardee clarified her vision of the structure: Mayor to recommend City Administrator to Council; Council to hire City Administrator, City Administrator to oversee employees; City Administrator to either hire and fire all city employees or make a recommendation to the Mayor for hiring and firing (open for discussion); City Administrator terminated upon recommendation of the Mayor upon a majority vote of Council or non-recommendation of the Mayor then by a super majority of Council.

Mr. Morrison suggested that the members of the commission communicate through e-mail over the next two weeks with suggested language in order to reach an agreement on the language by the next meeting. Mr. Morrison reported that all e-mails are available to the public upon request. Mrs. Pardee stated that she will put her thoughts in writing.

Mr. Ferrante stated that both Mr. Boyle and Mrs. Pardee have similar points and general language allows for flexibility. He was confident that with some modification the language could be amended so that it is not too specific.

Mr. Miller expressed his dissatisfaction with the duties assigned to the City Administrator and reiterated that he has not found any compelling evidence which dictates a change to the governmental structure. Mr. Morrison stated that the CRC voted 9-0 to add a City Administrator to the Charter. He suggested that if Mr. Miller is adamant against a City Administrator, he should be prepared to write a dissent to the Commission's report.

Mrs. Pardee mentioned that Mr. Wiseman desired that the City Administrator have fiscal responsibilities which may involve discussion of the departments as well. Mr. Boyle suggested that the Mayor and Council should be given the flexibility to handle the departments as finances dictate.

Mr. Wiseman reiterated that he is comfortable recommending an administrator who runs the day-to-day operations of the city and reviews the employees. He added that his comfort level would be restored if the power of the Mayor included the authority to hire and fire the department heads while the administrator would oversee their day-to-day operations. Mr. Wiseman stated that if the City Administrator has all the power and can only be removed by a vote of Council then the City Administrator would be the person effectively running the city and would in essence be a City Manager.

The commission agreed to exchange ideas for amended language by e-mail and to take up Articles 5, 5A, 6 as time allows at the April 14, 2009 meeting and hold discussion of Article 7 to the meeting of April 28, 2009. The date for the public hearing will also be set at the next meeting.

#### **F. ADDRESS QUESTIONS/COMMENTS FROM OTHER ATTENDING CITIZENS**

Edmund Rothschild, 3785 Washington Blvd., husband of Mayor Beryl E. Rothschild, stated that since the proposed Charter amendments will not personally affect Mayor Rothschild because she will not be in office, his comments only reflect his opinion as a resident of the city and what is best for the City. Mr. Rothschild stated that by giving the City Administrator the most power the position is similar to a City Manager.

Mr. Rothschild noted that proposed draft only requires a majority vote of Council for the administrator to keep his job which does not allow for creativity. He also noted that the Mayor answers to the people and if he does not do his job can be replaced by the people at the next election. He pointed out that the people should have the voice of choosing the leader of the City.

Mayor Beryl E. Rothschild inquired if the Mayor will be part-time or full-time. Her personal opinion was that the position of Mayor should be full-time and a strong Mayor. She mentioned that there are only eight departments in the City and the City Administrator position should be established in the Codified Ordinances as an assistant to the Mayor not in the Charter. Mayor Rothschild stated that she could have used an assistant over her 32 year tenure, but she did the entire job herself and saved the City money. She also noted that all the employees are accountable for their performance. Mayor Rothschild pointed out that the CRC is doing the wrong thing by placing the City Administrator position in the Charter.

Steven D. Bennett, 3761 Hillbrook Rd., candidate for Mayor, suggested that the commission consider possible future consolidation of departments. He noted that if the City Administrator position is placed in the Charter and various departments (service or fire or building etc.) consolidate with other cities what will the City Administrator manage. He cautioned the commission of burdening the City with a costly position if consolidation of departments should occur. He added that a CEO and COO works as a team, but if the main person does not have hiring and firing authority, they do not run the organization.

Mr. Boyle concluded that the way he proposed the draft, the Mayor would recommend the City Administrator to the Council for appointment. Therefore, he would recommend someone he could work with to run the day-to-day operations of the city.

**G. ADJOURNMENT**

**MOTION BY MR. BOYLE, SECONDED BY MR. FERRANTE to adjourn the meeting. On voice vote, all voted "aye."**

The meeting adjourned at 10:13 p.m.

The next meeting will be held on Tuesday, April 14, 2009 at 7:30 p.m. in City Hall Council Chambers.

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Harvey S. Morrison, Chairman

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Jason Patrick Ferrante, Secretary