

CITY OF UNIVERSITY HEIGHTS  
MINUTES OF CHARTER REVIEW COMMISSION MEETING  
APRIL 28, 2009

Chairman Harvey Morrison called the meeting to order at 7:00 p.m.

**A. ROLL CALL**

Present: Mr. Harvey S. Morrison  
Dr. Roderick H. Adams, Jr. (arrived at 7:17 p.m.)  
Mr. F. Michael Boyle  
Mr. Simon A. Carroll  
Mr. Jason Patrick Ferrante  
Mr. Robert McClintock  
Mr. Luke McConville  
Mr. Paul M. Miller (arrived at 7:30 p.m.)  
Mrs. Susan Pardee  
Mr. Joseph M. Shafran (arrived at 7:31 p.m.)  
Mr. Mark N. Wiseman

**B. REVIEW OF AVAILABLE MEETING MINUTES**

Mrs. Pardee noted a correction in the minutes of March 31, 2009 on page 3, the third paragraph, the name "Doyle" in the second sentence should be changed to read, "Boyle."

**MOTION BY MRS. PARDEE, SECONDED BY MR. FERRANTE to approve the minutes of March 31, 2009 as amended. On voice, all voted "aye."**

There were no corrections or additions to the minutes of April 14, 2009.

**MOTION BY MRS. PARDEE, SECONDED BY MR. McCONVILLE to approve the minutes of April 14, 2009 as presented. On voice, all voted "aye."**

**C. FURTHER DISCUSSION REGARDING ARTICLE 5 AND 5A**

The commission ended its discussion on April 14, 2009 with the new Article 5.1, The City Administrator, Section 2(D). Mrs. Pardee was asked at the last meeting to prepare a new draft of Articles 5 and 5.1 though Section 2(D) with the recommend changes, which she did and it was presented to members. Mrs. Pardee mentioned that she incorporated titles in each section in order to be consistent with other sections of the Charter. Mr. Boyle stated that the sections are defined very well, but that the Law Director may make changes in accordance with law. There were no objections to the new titles.

**Article 5.1 The City Administrator**

The commission continued its review with Article 5.1, Section 2(E). Mr. Carroll presented an edited draft of Section 2(E) which divides the sub-section into two sub-sections, 2(E) and 2(F), in order to separate the directors from all other employees of the City. Under his proposal, the candidates for director positions would be recommended by the City Administrator for approval by the Mayor. In the event the Mayor rejects a candidate, the City Administrator may refer the candidate to Council for approval to hire.

It was agreed to add the words, “if any” to the end of Article 5.1, Section 2(E), which shall read, “E. Directors. For open Director level positions, except those otherwise specified by this Charter, the City Administrator shall recommend candidates to hire and/or appoint, for approval by the Mayor. In the event that the City Administrator cannot find a suitable candidate for the Mayor to approve, the City Administrator may refer any candidate rejected by the Mayor to Council, and that candidate will be hired if approved by a majority vote of Council. All Directors hired or appointed by the City Administrator, except those whose terms of office are fixed by this Charter or by law, may be removed by the City Administrator, subject however, to the Civil Service provisions of this Charter, if any.”

With regard to Article 5.1, Section 2(F) as presented by Mr. Carroll, it was noted that the directors hire their own staff and therefore a hiring provision is not required for general employees. Therefore, it was agreed that Article 5.1, Section 2(F) in Mr. Carroll’s draft be deleted.

It was agreed to accept Article 5.1, Section 2(F), Evaluation, as written.

It was agreed that the title of Article 5.1, Section 2(G) be changed from “Finance” to “Budget”, and was accepted as written.

It was agreed to accept Article 5.1, Section 2(H), Quarterly Report, as written.

It was agreed that Article 5.1, Section 4., Absence or Disability of the City Administrator, shall read, “During the absence, disability or vacancy of the City Administrator, the Mayor shall designate a properly qualified person as Acting City Administrator. No Acting City Administrator shall serve more than on hundred twenty (120) days without Council approval.”

It was agreed that Article 5.1, Section 5., Removal from Office, be amended to delete the word, “regular” and to change the word “six” to “five.”

It was agreed that Article 5.1, Section 5.1 be accepted as written.

It was agreed that Article 5.1, Section 5.3 be accepted as written.

It was agreed that Article 5.1, Section 5.4 be amended to delete the word, “uncontrolled,” and to accept it as otherwise written.

It was agreed that Article 5.1, Section 5.5 be accepted as written.

There was extensive discussion regarding the technicalities of removal of the City Administrator with regard to notice, hearing, suspension and removal. It was suggested that the City Administrator should be given due process of a hearing even if removal is recommended by the Mayor. Mr. Wiseman suggested an amendment to Section 5, which read, “The removal of the City Administrator and all other sub-parts of the Section shall be upon a vote of Council at a Council meeting with four members voting in favor of such action if the action is recommended by the Mayor. If the action is not recommended by the Mayor, at least five members voting in favor of such action subject to the following notice and procedure.”

He also suggested an addition at the end of Section 5.2 so that it would read, “The City Administrator may within seven days after receipt of the notice of Council’s intent to remove him, by written notification to the Clerk of Council, request a hearing before the Council, which shall fix that hearing to be the same date enumerated in Section 5.1 where the City Administrator may appear and be heard with or without counsel.”

Mr. McConville was asked to redraft Section 5 for review at the next meeting. It was noted that a clean copy of the draft Charter will be presented at the next meeting for a vote on the proposed changes in Article 5 and Article 5.1.

**D. REVIEW OF ARTICLES 6, 7, AND REMAINING ARTICLES IF TIME ALLOWS**

Article 6. Administrative Officers and Departments

Mr. Morrison stated that he redrafted Article 6 to establish Sections for the various departments and presented his amendments:

Article 6, Section 1, General Provisions, was amended to include a sentence at the end of the section reserving the title and position of Director of Public Safety for the City Administrator, which reads as follows, "Provided, however, the title and position of Director of Public Safety shall be reserved for the City Administrator unless otherwise provided by Council through an ordinance that shall be subject to annual consideration."

Article 6, Section 2, Department of Law, was amended to incorporate the change of October 30, 2009 so that the first sentence reads, "The Director of Law shall be in charge of the Department of Law, appointed by the Council to serve at the pleasure thereof."

Article 6, Section 2, Department of Finance, was amended so that the first sentence reads, "The Director of Finance shall be in charge of the Department of Finance, and shall be the fiscal officer and Treasurer of the City. The third sentence as amended to change the word "or" to "and/or." The fourth sentence was amended to add the word, "City Administrator" after the word, "Mayor."

In the second paragraph of Section 3, a comma was added after Director of Finance and the first "shall" and the first "and" were deleted from the first sentence. Also the words "as Treasurer" was deleted from the last sentence.

Article 6, Section 4, Department of Public Safety, was proposed to read, "The Director of Public Safety shall be in charge of the Department of Public Safety, and shall direct the following divisions thereof:

- A. Division of Police;
- B. Division of Fire
- C. Division of Building and Inspections
- D. Division of Engineering."

Article 6, Section 5, Department of Public Service and Properties, was proposed to read, "The Director of Public Service shall be in charge of the Department of Service and Properties. He shall perform such duties as are imposed upon him by ordinance."

With regard to Article 6, Section 1, Mr. McConville stated that by reserving the position of Safety Director for the City Administrator, the commission will be changing the Mayors position which has in practice been a full-time position and in essence establishing a part-time position of Mayor. Mr. McConville stated his position that the City Administrator position should be in addition to a full-time Mayor. He wanted to maintain a full-time Mayor and suggested that other duties be assigned to the Mayor in order to make the position full-time.

Mr. Morrison stated that the Mayor holds two part-time positions that of Mayor and that of Safety Director. He added that prior to the Mayor serving as Safety Director, it was held by another individual on a part-time basis. Mr. Morrison stated that Council could select whomever they want to be Safety Director, and he was of the opinion that the City Administrator should be the Safety Director.

Mr. McConville noted that taking the position of Safety Director away from the Mayor represents a cut in pay which will have practical consequences. Mr. Wiseman agreed that by cutting the salary of the Mayor from approximately \$68,000 for the two positions to approximately \$33,000, the pool of candidates for Mayor will be limited. He also pointed out that by adding the Safety Director position to the City Administrator's full-time duties creates a position with potentially too much to do. Mr. Boyle and Mr. Carroll stated that one person is currently doing both jobs.

Mr. McConville explained that with a Mayor and City Administrator, similar to the structure of Shaker Heights, the City would have the advantage of the political expertise and economic development expertise of a Mayor as well as adding human capital of a City Administrator with management, budgetary, grant writing, etc. expertise to address the variety of issues the City is currently facing and will be facing in the future.

Mr. Ferrante stated that the bottom line question has been will the position of Mayor be part-time or full-time. He added that the position of Mayor has always been part-time, and that it is not under the CRC's authority to determine if the candidates running for Mayor will also be running for the Director of Public Safety. Mr. Carroll pointed out that the person elected Mayor is only elected as the Mayor not the Safety Director. Mr. Miller asked how a person can run for an elected office if they are unaware of what the duties will be. Mr. Morrison replied that there is no guarantee the Mayor will be the Safety Director; therefore, the person will be running for the position of Mayor only. Mr. Ferrante reiterated that the issue is for a higher authority to decide.

Mr. Shafran stated that he likes the City Administrator handling the day-to-day operations of the various departments. He also envisions the Mayor being above the day-to-day operations, being ultimately responsible to citizens and handling other elements such as economic development.

Mrs. Pardee stated that the commission is not mandating a part-time or full-time Mayor, but rather is providing duties and responsibilities for the Mayor. She added that the amount of time the person puts in and how much compensation is provided is not the charge of the CRC, but rather that of Council. Mrs. Pardee stated that in the future there may be functions added to the position which would require the Mayor to be full-time.

With regard to the additional language in Article 6, Section 1, Mrs. Pardee suggested that it could read, "The title and position of Director of Public Safety shall be provided by Council through an ordinance." Mr. McConville did not have an objection to the language as written and agreed that the City Administrator should perform the duties in his daily operations of overseeing the departments. However, his concern is that it does effectively create a pay cut for the Mayor. Mr. McConville also pointed out that the electorate will ask if the Mayor will be full-time or part-time and he felt the commission should provide that answer.

Mr. Boyle explained that the Mayor's position currently is a part-time job and because nothing in the Charter has been changed to affect that it will continue to be a part-time job. Mr. Wiseman stated that Mr. McConville has a valid point and pointed out that even though the Charter does not specify full-time, it has been that way for almost thirty years.

Mr. Ferrante stated that he is not comfortable with specifying the full-time or part-time role of the Mayor. Mr. McClintock stated that the issue is going to come up at the public hearing and he is comfortable in addressing the Mayor's role as a part-time position that has taken on the additional duties of Safety Director.

Mr. Shafran stated that it was important in drafting the Charter to look at what is typical, but to also have the ability to envision what has not come to fruition yet. He added that there is much that needs to be done and he felt that affiliating the Mayor to a specific department is not the way to go. He reiterated that the Mayor should be separate and above the day-to day operations so he has the opportunity to handle issues which affect the future of the entire city such as economic development, clustering, etc. Mr. Boyle agreed and suggested that the Council, Mayor and City Administrator be given the flexibility to function efficiently for the City to survive and prosper.

**MOTION BY MRS. PARDEE, SECONDED BY MR. CARROLL to accept Article 6 as presented with the amendments. On roll call vote, all voted "aye," except Mr. Miller and Mr. McConville, who voted "nay."**

In regard to Article 6, Section 2, Mr. Morrison noted that Mr. Wiseman, in an e-mail, suggested that the Law Director and Prosecutor positions be combined into one full-time position. Mr. Morrison noted that most cities have a separate Law Director and Prosecutor, which works well. Mr. McConville concurred and stated that the Law Director and Prosecutor may have different expertise. However, he suggested that it should be left open because one person could handle both jobs. Mr. Carroll mentioned that the way the section is written it does not specify that there shall be two people.

#### Article 6.1 Mayor and Members of Council Relationship To City Employees

The new article entitled, "Mayor and Members of Council Relationship To City Employees," was numbered 6.1 for drafting purposes. "Section 1" was deleted and the paragraphs were numbered 1, 2, and 3.

**MOTION BY MRS. PARDEE, SECONDED BY MR. CARROLL to accept Article 6.1 as presented with the amendments. On voice vote, all voted "aye," except Mr. Miller, who voted "nay."**

#### Article 7. Commissions and Boards

Article 7, Section 1, General Provisions, was amended to add the Charter Review Commission to this section.

Mr. Morrison suggested that an "anti-nepotism" provision be added to the end of Section 1 to read, "No person shall be appointed to any commission or board of the City who is related by blood or marriage to the Mayor of any member of Council." He suggested this amendment to avoid the potential appearance of impropriety.

Mr. Ferrante inquired if this matter could be covered by the adoption of an ordinance. Mr. Boyle suggested a provision which would require the person to recuse himself from the vote. Mr. McConville noted that there are ethics provisions which govern certain matters and he objected to excluding persons related by marriage.

Mr. Shafran noted that he felt this matter was out of the purview of the CRC. He was concerned about including language into the Charter that could be dealt with by an ordinance approved by Council.

Mr. Miller agreed with Mr. Morrison because the provision will eliminate any question of impropriety.

**MOTION BY MR. MORRISON, SECONDED BY MR. MILLER that the language, “No person shall be appointed to any commission or board of the City who is related by blood or marriage to the Mayor or any member of Council.” be added to Section 1 of Article 7. On voice vote, all voted “aye,” except Mr. McConville, who “abstained.”**

Article 7, Section 2, City Planning Commission, under the draft Charter changes the appointment of the Planning Commission members from the Mayor to being “recommended” by the Mayor “subject to the advice, consent, and approval of a majority of Council.”

In regard to Article 7, Section 3, Civil Service Commission, it was noted that the CRC received a letter from Thomas G. Belden, chairman of the University Heights Civil Service Commission, recommending that the Charter be amended to allow the top ten (10) candidates on the eligibility lists to be certified by the Civil Service Commission for new hires on the Police and Fire Departments.

**MOTION BY MR. McCONVILLE, SECONDED BY DR. ADAMS to revise the draft Charter to replace “seven (7)” with “ten (10)” in two places on page 15. On voice vote, all voted “aye.”**

Article 7, Section 3 under the draft Charter also changed the appointment of the Civil Service Commission members from the Mayor to being “recommended” by the Mayor “subject to consent, and approval of a majority of Council.” It was also changed so that the removal of the members by the Mayor is “subject to consent and approval of a majority of Council” and the public hearing regarding such removal would be before the “Council.” Further, the “City Administrator” was added to the second to the last paragraph in Section 3 in two places.

Article 7, Section 4, Board of Zoning Appeals, was not changed from the current version.

Article 7, Section 5, Charter Review Commission, establishes the CRC in the Charter.

Mr. Carroll suggested that the Mayor have more input into the composition of the Charter Review Commission than one member. Mr. Miller stated that Charter Review Commission members are elected rather than appointed in many other cities in Cuyahoga County. Mr. Miller noted that based upon his experience on the current commission, the election of members is a good idea. Mr. Morrison stated that an election of CRC members could potentially cost the City a substantial amount of money. Mr. Wiseman stated that election of members may preclude those individuals who do not want to run for election. He also noted that having the members appointed takes the political element out of the process.

Article 7, Section 5, was amended to read, “A Charter Review Commission shall be convened the first Monday in November within seven years after this section becomes effective, and at intervals of no less than seven (7) or no more than fifteen (15) years thereafter.” The remaining paragraphs of the section regarding terms and composition were deleted from the draft.

**MOTION BY MR. McCONVILLE, SECONDED BY MR. McCLINTOCK to enact Article 7, Section 5, to read, “A Charter Review Commission shall be convened the first Monday in November within seven years after this section becomes effective, and at intervals of no less than seven (7) or no more than fifteen (15) years thereafter.” On voice vote, all voted “aye,” except Mr. Miller, who voted “nay.”**

Article 8. Miscellaneous Provisions

There were no changes to the current version of Article 8.

Mr. Wiseman suggested that the commission consider a residency requirement for all department heads, if legal. Mr. Morrison stated that the commission already discussed this and he noted that there are legal ramifications connected with requiring residency. It was noted that the City of Cleveland residency requirement case is currently before the Supreme Court.

Mr. Wiseman noted that as the draft Charter currently reads there are no provisions for the City Administrator to terminate a department head with the approval of Council. It was noted that Article 5.1, Section 2(E) addresses the removal of a director by the City Administrator at his discretion. This section will be reviewed.

Mrs. Pardee suggested that the draft Charter be revised incorporating all the amendments thus far for review and consideration at the next meeting. Mr. Morrison requested that Mrs. Pardee prepare a clean copy of the proposed draft Charter.

**MOTION BY MR. CARROLL, SECONDED BY MR. MORRISON to convene on Tuesday, May 5, 2009 at 7:00 p.m. in Council Chambers. On voice vote, all voted “aye.”**

**E. ADDRESS QUESTIONS/COMMENTS FROM ATTENDING CITIZENS**

Mr. Morrison announced that the Charter Review Commission will hold its required public hearing on Tuesday, May 19, 2009 from 7PM to 9PM at Wiley Middle School. At the public hearing, the commission will present its report, which will be on file for public inspection no later than May 12, 2009. Mr. Miller stated that he will be presenting a dissenting opinion to the CRC’s report.

Laurie Albright, 3617 Silsby Road, expressed her concern for the welfare of University Heights and being able to attract a qualified mayoral candidate to run for Mayor when the Charter amendments will be placed on the ballot at the same time as the mayoral election. It was Ms. Albright’s opinion that the Mayor’s position should be full-time. She requested that the Charter amendments be delayed until after the mayoral election and placed on the ballot next year. Mr. Morrison stated that the CRC is governed by time constraints imposed by City Council and there will not be any extensions. He added that currently the Mayor’s position is part-time and the Safety Director position is part-time, but there is no guarantee that the Mayor will continue to hold the position as Safety Director.

Mr. Wiseman inquired if the Council could adjust the salary of the Mayor to compensate for full-time without a vote of the people. Mr. McConville replied that Council would have to establish the salary by ordinance prior to the mayoral election.

Councilman Peter R. Bernardo, 2332 South Belvoir Blvd., prefaced his comments by stating that he was impressed by the intellectual discussion which has been taking place and thanked the commission for the time and effort expended since October, 2008.

However, Mr. Bernardo stated that he understands why the public feels disenfranchised because he too had comments to make regarding amendments to the Charter, but was not allowed the right to speak until the issues were already voted upon. He noted that this was not the open process the Council envisioned. Mr. Bernardo's comments are attached hereto and made part of this record.

Mr. Bernardo stated that he has not said much during this process because it was decided among the Council members that they would not influence the commission, but rather will allow the commission to come to its own conclusion, and he has tried to respect that decision. However, with the recent articles in the newspaper, he felt it was time to express his opinion whether the City needs a full-time or part-time Mayor. Mr. Bernardo stated that he is an avid supporter of a strong Mayor form of government and does not believe a weak Mayor is right for University Heights. He mentioned that the organizational structure has to have a strong leader at the head of the organization in order for it to be successful. He also noted that having the Mayor as the head of the executive branch of the government and the Council over the legislative branch provides the checks and balances desired. He pointed out that the removal of the strong Mayor with an administrator who reports to Council would remove those checks and balances.

Mr. Bernardo stated that University Heights has done well with a strong Mayor form of government and has benefitted from the current Mayor working full-time. He stated that the City is not in debt, personnel is not being laid off, and services are not being reduced. Therefore, he asked the commission "what is broken" and "why are they proposing to continue a part-time Mayor." He noted that the part-time office will essentially attract people who want to increase their income and not do any work. Mr. Bernardo stated that he has confidence the voters will elect the best candidate of those running for the position. He added that City should pay a salary comparable to the quality of person desired.

Mr. Bernardo pointed out that in speaking to residents throughout the city, it is clear that they do not want a weak or figurehead Mayor. He believes that if it is presented to voters in November, it will be defeated. Mr. Bernardo stated that Mayor Rothschild will be leaving a solid City, and he added that they owe it to the citizenship that the same type of leadership and organization remains. He urged the commission to learn from the last thirty years and keep the strong Mayor form of government on a full-time basis. Mr. Bernardo stated that he is not running for Mayor in November nor is he backing anyone for Mayor. However, he does intend to run for a Council seat in November, and he is representing the people of the University Heights with his comments.

Rick Adante, 2247 Fenwick Road, stated that he presented questions at the last meeting and he was referred to CRC minutes of previous meetings. He noted that he reviewed the minutes, but did not find the answers to his specific questions. Mr. Adante noted that he also posed the questions to the Council at its meeting, but did not get answers there either. Mr. Adante resented that fact that he was directed to read the minutes when the answers to his questions had not been addressed.

Mr. Morrison answered Mr. Adante's question regarding the rush to completion by stating that the CRC is mandated to have the review finished by a particular deadline. As to why is it necessary to have the vote for a government restructuring this year, Mr. Morrison replied that Council directed the commission to review the Charter so that it gets on the ballot this year. Mr. Morrison stated that the Charter is being changed in the best interest of the city. He noted that the commission is not changing entire governmental structure, but rather is creating a City Administrator position in the Charter and defining the position. In regard to Mr. Adante's other questions regarding the specific problems facing the City and how that the new structure will fix these problems, specifically. Mr. Morrison replied that accountability was the major issue facing the city.

Mr. McConville stated that the questions are valid, but the commission is struggling to come up with the answers because there are an array of issues facing the community going forward. However, he will try to provide more concrete responses at a later date.

Mr. McConville stated that he does not view the process of the commission as being rushed. He noted that the members have put in a lot of time and effort over the last six months. However, they are held to a time frame established by ordinance.

Mr. Morrison added that the commission is looking to have more efficient operations of the City. Mrs. Pardee expressed that all the members of the commission, except one, came to the same conclusion after its research and discussion. She also noted that the commission will present its reasons for the proposed amendments in its report.

Mrs. Pardee expressed her regret that they did not get to hear Mr. Bernardo's comments earlier, but she noted that the commission tried to come up with a hybrid form of government which retains a strong power base for the Mayor. Mrs. Pardee also mentioned that she has not gotten the same response from the residents as Mr. Bernardo relative to not backing the proposed amendments. Mr. Bernardo also noted that he does not think the residents will understand a hybrid form of government.

Mr. Bernardo stated that the commission decided to leave the appointment of the Safety Director up to Council. He inquired how the Mayor could do the job of Safety Director if the position cannot interfere with duties and responsibilities of the Police and Fire Chiefs as indicated in Article 6.1.

Councilwoman Frankie Goldberg, 4325 Churchill Blvd., requested a clarification as to whether or not the City Administrator will hire all directors of the City. Mr. Morrison explained that the City Administrator would recommend candidates for hire to the Mayor. However, the appointments of the Police and Fire Chief would be the responsibility of the Safety Director. He added that it will be left up to Council to decide who will hold the position of Safety Director whether it be the Mayor or another person.

Mayor Beryl E. Rothschild reiterated her statement made earlier in this process that a City Administrator would be useful to have, but that the position should be put in the Codified Ordinances not in the Charter because it would be difficult to remove later. Mayor Rothschild noted that the City of Shaker Heights has a full-time Mayor and a City Administrator. Mr. Morrison stated that Shaker Heights' Charter does not designate the Mayor as full-time.

Nancy English, 4107 Washington Blvd., stated that the commission has indicated that the Council will ultimately decide who will be the Safety Director, but under the non-interference provisions of Article 6.1, as written, the Mayor cannot be appointed as Safety Director.

#### **F. ADJOURNMENT**

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

The meeting adjourned at 11:30 p.m.

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Harvey S. Morrison, Chairman

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Jason Patrick Ferrante, Secretary