



MINUTES
CUYAHOGA COUNTY CHARTER REVIEW COMMISSION
WEDNESDAY, SEPTEMBER 6, 2017
CUYAHOGA COUNTY ADMINISTRATIVE HEADQUARTERS
COMMITTEE ROOM A – 4TH FLOOR 4:00 PM

1. CALL TO ORDER

Nate Kelly - called the meeting to order.

2. ROLL CALL

The Honorable Judge Ronald B. Adrine (present after the roll call)

Diane Downing

The Honorable Susan A. Drucker

Dennis G. Kennedy

Michael W. King

The Honorable Thomas P. Perciak

Claire Rosacco

Victor A. Ruiz

Dauida Russell (present after the roll call)

A quorum was established. Mr. Kelly proceeded to give a brief overview and turned the meeting over to the County Executive Armond Budish.

3. WELCOME

County Executive Armond Budish – welcomed the members and participants to the meeting. County Executive Budish asked each member to introduce themselves and give a brief background. Executive Budish thanked the Commission members for their service and highlighted the significance of their effort on behalf of the public, county employees and elected officials.

4. SWEARING IN: CHARTER REVIEW COMMISSION MEMBERS

County Executive Budish administered the Oaths of Office to the Commission members.

5. PURPOSE OF THE COMMISSION

Nate Kelly introduces Law Director Bob Triozzi to explain the purpose of the Commission. Director Triozzi provided background on the Charter from state enabling legislation, through citizen initiative in Cuyahoga County and recent amendments. He briefed the Commission on the sections of the Charter that addresses the Charter Review Commission and amendments.

6. HISTORY OF THE COMMISSION

Nate Kelly introduces Councilman Miller to explain the history of the commission. Councilman Miller's testimony provided as an attachment.

7. NOMINATIONS

Nate Kelly opened the floor for nomination of Chairperson and Vice Chairperson. Motion was made (Ruiz) and seconded (Kennedy) to nominate Judge Ronald Adrine as Chairperson. Motion passed unanimously. Judge Adrian is elected as Chairperson for the Charter Review Commission.

Nate Kelly opened the floor for nomination for Vice Chairperson. Motion was made (Downing) and seconded (Rosacco) to nominate Dennis Kennedy as Vice Chairperson. Passed unanimously. Dennis Kennedy is elected as Vice Chairperson for the Charter Review Commission.

Councilman Miller administered the oath to Judge Adrian and Davida Russell who arrived late.

Nate Kelly handed the meeting over to Chairperson Judge Adrian.

9. ADJOURNMENT

Judge Adrian thanked the Commission members. A motion was made to adjourn (Kennedy) and seconded (Drucker). Meeting Adjourned.

Next meeting date is scheduled for October 4, 2017. Judge Adrian adjourned the meeting.

Presentation to Charter Review Commission

Dale Miller

Wednesday, September 6, 2017

Mr. Chairman, and members of the 2017-8 Cuyahoga County Charter Review Commission:

Part 1: Foundations of the Charter Review Process

Thank you very much for your willingness to serve on Cuyahoga County's 2nd Charter Review Commission. We at county government take the Charter very seriously as our foundational document, and your help in improving our Charter will be immensely valuable.

The purpose of my presentation is to shed light on the history of the Charter, Charter Review, and Charter Amendments to provide some context for your work. Thanks to Trevor McAleer for his research assistance on this presentation.

The Charter was written fairly quickly in the spring of 2009 in response to the county government scandals at that time, placed on the ballot by petition, and approved 2-1 by the voters in November, 2009. The 2009 Charter reflected lofty ideals but not all of it had the benefit of guidance from practical experience. Your job is to remain true to the ideals of the framers while incorporating the benefits of nearly 7 years of real world experience to recommend improvements.

Charter Amendment through the Charter Review Commission is a three step process, requiring recommendation by the Review Commission, placement on the ballot with a minimum of 8 of 11 votes by the County Council, and approval by a majority of the voters at a November General Election. Therefore, you should not hesitate to recommend any amendment that you believe will benefit the County, as the three-step process guarantees a very deliberative process for Charter amendment.

Some opportunities for charter improvement became apparent almost immediately with the start of the new government in 2011, and discussion ensued as to whether the County Council could place proposed Charter amendments on the ballot outside of the Charter Review process. A careful reading of the charter made it clear that this is an option, and the County Council placed two such amendments on the ballot in November, 2012, at the same time the first Charter Review Commission was getting started.

This did not, however, show disrespect for the Charter Review Commission. A much larger number of proposals were discussed and deferred to see what the Charter Review Commission had to say about them. We were also disinclined to put a large number of proposals on the ballot at one time, and we felt that early passage of a couple of consensus proposals would create ballot space for proposals coming from the Charter Review Commission. The County Council at this time created its own two-step process in which Charter Amendment proposals were first heard by the subject committee with

jurisdiction over Charter Amendments and then by the Council's Committee of the Whole, a process used for virtually no other legislation.

The first Charter Amendment created a two-year budgeting process and the second one changed the term of the Director of Internal Audit so that its term does not coincide with that of the County Executive. Councilman Jack Schron sponsored the first one, and Council President C Ellen Connally sponsored the second one. Both were passed by the voters.

Per County Charter, the County Council also passed operating rules for the Charter Review Commissions. These rules were updated slightly, based on experience, following the first Charter Review Commission.

Part 2: The 2012-3 Charter Review Commission and 2013 Amendments

The 2012-3 Charter Review Commission, led by Chairman Bruce Akers, started in October, 2012, and issued its final report on July 1, 2013. The Review Commission held many long meetings; heard testimony from county administration leaders, County Councilmembers, and the public; held field hearings on draft amendment proposals; and considered many potential amendments. They recommended 15 potential Charter Amendments that were approved by a majority of the Commission, and they presented 6 additional concepts in minority reports.

The Charter requires that County Council vote on each proposed amendment within 60 days of submission, as to whether to place it on the ballot at the next General Election, which the Council did. The timing of the Commission's report provides just enough time for the Council to vote amendments onto the ballot in November of the same year in which the report is issued. The Council used the same two-step process as in the previous year, and consideration of the proposed Charter Amendments was lengthy and dominated the Council's activities during the summer of 2013. The Council considered the merits of the amendment proposals, how many we could realistically place on the ballot at one time, and which were the highest priorities. Members of the Charter Review Commission were present at most of the hearings and provided insight into their thinking on the amendments.

The 2012-3 Commission placed more emphasis on concept development than detailed drafting. This might be avoided in the future by developing concepts early and creating drafting subcommittees to work on the details of the more complex amendments. As a result, a few of the amendment proposals were found to have technical deficiencies. To comply with the Charter language on voting on the amendments, this required the Council to first vote down the submitted amendment and then introduce a new resolution containing an amended version. The Council did the same when it desired substantive revisions to an amendment proposal.

The County Council placed four amendments on the ballot in 2013, all of which were approved by the voters. The first one extended the time allowed to Council to consider executive appointments from 30 to 60 days and to allow the executive to make interim appointments for up to 120 days. The

Commission draft Amendment #1 also included language regarding diversity and inclusion in appointments, but the Council found that this language solved some questions and raised others, and chose not to include it in the version submitted to the voters.

The second amendment changed the name of the Human Resources Commission to the Personnel Review Commission to avoid confusion, clarified its duties, provided for the appointment and duties of the Human Resources Director, and provided that the Council would appoint the PRC members to avoid appearance of conflict relating to the PRC's personnel appeal responsibilities. The first three provisions tracked CRC Amendment #15, while the last provision was a County Council addition.

The original Charter suggests that all County Council resolutions be reviewed by the Executive although there are clearly situations where this doesn't make sense. This is a problem that I identified almost from the start of the new government and worked on for months before submitting it to the CRC for their consideration. The CRC recommended it essentially as submitted as their Amendment #5, and the Council submitted it in the same form to the voters as the third amendment submitted that year. The amendment simply enumerates ten exceptions in which resolutions passed by Council do not require action by the Executive.

I also identified early on that the original Charter language on the Board of Revision was seriously deficient. It mixed up the Board of Revision itself and the hearing boards, had inflexible language on the number of hearing boards that was not responsive to workload, and had confusing administrative language, among other problems. I worked diligently and collaboratively on corrective language for a year and a half and submitted a proposed amendment to Council in the summer of 2012, at which time it failed by one vote to make the ballot. I then submitted it to the CRC, which retained about 80% of it, and made the rest of it even better. CRC Amendment #4 without significant further change became the fourth amendment submitted to the voters that year, and despite its complexity, was strongly approved by the voters.

The amendments that did not make the ballot in 2013 failed for a variety of reasons. In some cases, Councilmembers disagreed with them on policy grounds; in other cases they needed more information; and in some cases they felt that the amendments were good but not high enough priority to make the ballot in the first year. The Ohio Constitutional requirement of an affirmative vote of two-thirds of all the members of the legislative authority, meaning eight votes out of eleven, has proven to be a high hurdle.

Part 3: The 2014 Amendments

The County Council also placed four Charter Amendments on the ballot in 2014; however, only two of them related to the work of the 2012-3 CRC. The first amendment increased the residency requirement for the County Executive to two years, matching that of the Council, and corrected Charter language that could have forced a Councilmember to give up his/her Council seat in mid-term, simply

due to redistricting. Other than combining CRC Amendments #7 and #8 into a single proposal, this amendment was submitted to the voters essentially as recommended by the CRC.

The second amendment, CRC Amendment #10, modified the timing of the appointment and Council review of appointments for the CRC itself. The 2012-3 CRC made wide use of outside input in developing its amendments, and this is the only amendment ultimately approved that developed totally within the CRC itself. The County Council really liked this amendment as it was corrective of serious problems that arose during the appointment of the first CRC, and placed this issue on the ballot with modest technical correction. Both of the CRC-related amendments were approved by the voters. This second amendment enabled the Executive and Council to replace an appointee to the current CRC who proved unable to serve without slowing down the process.

Then the County Council moved in its own direction. Councilman Dave Greenspan became concerned that having the Executive and the Fiscal Officer on the County Audit Commission created a potential conflict of interest in implementing external audit findings, and proposed to remove them and replace them with a Council member and an additional member of the public. However, the County Executive and the Plain Dealer opposed the amendment, and it was narrowly defeated by the voters.

Responding to the state's actions aimed at preventing local Boards of Elections from mass mailing absent ballot applications, County Executive Ed FitzGerald proposed a Charter Amendment asserting voting as a fundamental right and authorizing the county to take action in support of voting rights. The amendment was approved by Council and by the voters. It was the only Charter Amendment approved by County Council on a party-line vote, with the eight Democrats voting in favor and the three Republicans voting against it.

Part 4: The 2015 Reprise

I felt that Councilman Dave Greenspan's basic concern about the Audit Commission was well taken and encouraged him to rework the amendment into an acceptable form. He proposed to comprise the Audit Commission as the President of Council (or another Councilperson) and four County residents with appropriate expertise, aiming to get high quality external advice from the business community. However, some remained concerned about not having the Executive and Fiscal Officer on the Commission. It appeared that the amendment would not make the ballot until I came up with the suggestion that the Executive and Fiscal Officer remain on the Commission as ex-officio, non-voting members, creating a conflict-free voting membership but also enabling the Executive and Fiscal Officer to work with the Commission directly on implementation of improvements. This version won the unanimous support of Council and the approval of 75% of the voters.

I also felt that I had the votes in County Council to place an updated version of CRC Amendment #6 institutionalizing the Inspector General as a Charter agency; however, Executive Budish preferred to let the upcoming Charter Review Commission take another look at the issue. I deferred to his wishes.

Part 5: The Amendment Proposals That Didn't Make It.

The County Council placed proposals closely corresponding to seven of the fifteen proposed amendments of the 2012-3 CRC. In this section, I will discuss the eight that did not make the ballot.

CRC Amendment Proposal #2 would add regulation of campaign finance as one of the County Council's enumerated duties. Among the 11 members of County Council, there are 11 opinions on campaign finance. We just don't have a consensus on this issue.

CRC Amendment Proposal #3 would require the County Executive to solicit recommendations from the Administrative Judges when appointing the Clerk of Court. There were various views on this topic, but a majority of Council favored giving the Executive some check and balance over the Courts by not including this requirement.

CRC Amendment #6 is the Inspector General Amendment. Council held off, wanting to see how well the IG works out. There are also differing views on how much specificity to include in the Amendment. However, the version developed in 2015 is the result of three years of work and discussion and is definitely worth a look.

CRC Amendment #9 related to the allocation of duties between the Law Director and the County Prosecutor, an area not well defined in the original Charter. There was clearly support on Council for this amendment but the administration opposed it, and an agreement was reached for the Law Director and the County Prosecutor to operate under a Memorandum of Understanding. The new County Prosecutor may wish to revisit this issue, and there is room for discussion as to whether the Memorandum of Understanding can really correct for the deficiencies in the Charter language.

CRC Amendment #11 made a proposal on how to address a vacancy in the office of County Executive. There is almost universal agreement that having the Council President succeed automatically is not the best way to do it; however, there are so many alternative ways to handle succession, and it is very difficult to get a consensus on any specific proposal. This issue also brings in the related questions of whether Executive and Council vacancies should be filled by special election or by appointment and the question of nonpartisan elections, which are both discussed in some of the 2012-3 CRC Minority Reports. The questions of election timing are thorny, as vacancies occurring at different times within a term of office create very different situations. Your Commission would do well to recognize the complexity of these questions and create a subcommittee early on to consider a wide range of options and come up with a really well thought out proposal or proposals to deal with this set of questions.

CRC Amendment #12 deals with a problem that I identified early on, specifically, that it is a practical impossibility to comply with Charter Section 3.07 on the timing of the next election after a Council vacancy is filled by appointment. Council took no action on this issue because there is not yet a consensus on whether to do a narrow fix, just fixing the dates, as in 2012-3 CRC Amendment #12 or

whether to go to special elections. This is part of the complex of succession issues identified in connection with the previous issue.

CRC Amendment #13 would require conducting audits of the justice system. Because of concerns over balance of powers and cost, there was not sufficient support on Council for this issue to make the ballot.

CRC Amendment #14 would have required the Sheriff to serve a set term of office and provide for removal of the Sheriff during his/her term of office only by the Executive with approval of two-thirds of Council. This amendment was meant to be a compromise between direct election by the voters and at-will appointment by the Executive. There was not enough conviction on Council that there is a problem with the current method of appointment for this issue to make the ballot.

There were also six concepts presented as minority reports—appointment of the Clerk of Court by the Administrative Judges, a version of Amendment #9 giving stronger powers to the Law Director, specific campaign contribution limits, limits on retiring and rehiring, nonpartisan elections, and special elections to fill Council vacancies. None of these issues made the ballot, but interest in the elections questions remains strong. I encourage your Commission to make use of the minority report provision to make Council aware of additional ideas that may not have majority support on your Commission but are worthy of consideration.

Part 6: Conclusion

This brings us to the current time, the start of the 2017-8 CRC, the last Commission scheduled for ten years. I encourage you to use the ten months you have to tackle the most basic, thorniest, and most complex issues relating to the County Charter and bring us some good ideas. Allow plenty of time for drafting, given the importance of getting the details right. Consider sending us drafting variants of the same amendment proposal, something the last CRC did not do. I hope that you will bring us a fresh look at some of the ideas that have been floating around for several years and also come up with some entirely new ones that no one has thought of before.

Experience shows that CRC recommendation does not automatically get a proposal on the ballot. However, I will close by emphasizing that every member of Council gives enormous weight to your recommendations. This is especially true when it is clear that the proposal is based on careful study, extensive consultation, and diligent drafting. Yours is a difficult and time-consuming undertaking. I am most grateful for your dedication and commitment, and I look forward to working with you actively throughout this process