

# City of Vermilion, Ohio

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## CHARTER REVIEW COMMISSION -- MINUTES of April 6, 2021

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ROLL CALL: Eileen Bulan, Tami Horton, Read Wakefield, Lee Howley, Ihor Suszko

Attendees: Mayor Forthofer, John Gabriel, Homer Taft, Drew Werley,  
Ben Chojnacki, Esq., Skip Griffith

L. Howley called the meeting of April 6, 2021 to order.

L. Howley asked for any comments regarding the Minutes of March 29. No comments additions or corrections.

E. BULAN MOVED, R. WAKEFIELD seconded the motion to accept the minutes as written. 4 YEAS, MOTION CARRIED.

L. Howley asked for correspondence received, noting that a Legal Opinion was received today by the member and attorney Ben Chojnacki is in attendance to help us clarify items and noted that Dr. Suszko has also entered the meeting.

L. Howley stated his understanding that the Mayor has the right to participate at any meeting of executive session. He asked if we wish to strengthen that language, or should we leave the language alone? E. Bulan stated she would like to hear the opinion of Attorney Chojnacki, first.

Attorney Chojnacki would like to reiterate that the Charter is pretty clear that the mayor is entitled to be in executive session however to the extent that there be ambiguity in the law when you have the opportunity to eliminate that ambiguity you should do so. The proposed charter amendment will ensure that that question is explicitly and unequivocally clear.

R. Wakefield stated that some exceptions that have occurred in the past. When the mayor was a litigant against city council, how does the council deal with things and react to that litigation. Would that pose an exception? T. Horton asked if council had to vote each time to be included the mayor in all executive sessions, or is he

automatically included? Members stated he is automatically included as it is stated now.

E. Bulan stated as she did last meeting, she sees that when Council wishes to choose a successor to a vacant seat of council, the Mayor never went in on that session. Would that be an exclusion? L. Howley, stated he can attend the session, but the Mayor may choose not to attend.

Mayor Forthofer stated he agreed with R. Wakefield that in the case of litigation he can agree with the exclusion of the mayor from executive session.

Attorney Chojnacki stated there is often a gray area outside of the chartered municipalities under the Open Meetings Act whether a member of the legislative body is entitled to be in an executive session, where the litigant is a member of the body and where to the executive session is occurring, the most common method by which that issue is resolved is that the motion is to exclude that elected official or that member of the body from participation. A simple addition to the proposed amendment would say Except in those matters where the mayor is the subject of discussion by the legislative body could carve out the narrow situation we are contemplating here. The concern is we would want to make explicit that the mayor is entitled to participate in those discussions that relate to administrative officials who are appointed to and are subject to his role as the Chief executive officer but not the situation where he is a litigant in opposition to being council as a legislative body.

Attorney Chojnacki stated perhaps a minor revision to the proposed March 26 memo stating “The mayor is entitled to participate in all closed executive sessions, except those executive sessions where the Mayor is a litigant in opposition to the council.

Dr. Suszko wanted to reiterate that he did write in his previous correspondence that the mayor should be in all executive session, which is the way it is. He thought it would be very difficult to think of every exclusion or what if for the next 5 years. We could come up with all kinds of exclusions. Maybe starting off with the simple item of litigation is a good way to start.

R. Wakefield asked if recommendations go into Council as one overall change request, or are there multiple categories? Mayor Forthofer recalls from the last charter review the letter comes to council as one letter with separate recommendations. E. Bulan concurred that the items stay separate and go on the ballot separately.

L. Howley open questions to the audience. Mr. Taft stated that as to executive session, it seems that many situations may not allow the mayor into executive session. He would like to state that we should trust the council with the reason to exclude the mayor, you should allow the council to make their own determination that they do not want the mayor to enter the executive session.

J. Gabriel stated he does not understand the reasoning of why the language needs to change if the current language states that the mayor is allowed in all executive sessions. What is the need for the further change? In 2012 when he first participated on council, he received a power point presentation stating reasons for executive session. It came from the Auditor of States office at the time, Dave Yost. It stated who could be present in executive sessions or who is included and who you can exclude. He feels there are circumstances past and future, where you need to exclude people from the executive session.

L. Howley thanked both gentlemen for their participation. He suggested that the challenge here is that if you leave it to the vote of Council or try to identify exceptions, it creates the opportunity for abuse or the use of those exceptions on a blanket basis. He is inclined to leave this item alone. He welcomed other thoughts.

D. Werley stated he would recommend that the commission give full power to city council. To go along with what Mr. Gabriel stated to invite or not invite anyone who they choose. Leave a provision where the Mayor can choose to have an executive session, but you should have faith in the elected officials of city council. You do not have to worry about thinking of every scenario where you may exclude someone, it is up to them. Full power should go to city council.

R. Wakefield commented that he has bounced back and forth about the recommendations as drafted for the Commission. With the participation and input from members and public, can he ask if Attorney Chojnacki can give more thoughts?

Attorney Chojnacki stated, he will speak with the understanding that he does not know the historical basis which prompted the provisions, but generally, it makes sense that you would want a provision that is as clear as possible as to what everyone is entitled to do. In that capacity, the proposed amendment allows for that because it is understood that the mayor is entitled to be present, which the current charter provides for.

If you are going to take a different interpretation than what the Law Director advised in the 2018 opinion you really are looking at a different charter amendment which excludes the mayor from those executive sessions, so either way if the

objective is to not allow the mayor to participate, then you must change your charter accordingly.

L. Howley thinks the Charter is not broken and no one has asked to make a 180-degree change. It is L. Howley's suggestion that we leave it alone or clarify as suggested by the Law Director.

Dr. Suszko commented on the suggestion put forth by Mr. Griffith, former council member, he stated that we should leave the Charter as it stands, it has stood the test of time and he agrees. I would want to make a motion to include the 2 sentences that the attorney suggested to make it a little clearer that the mayor is allowed in all executive sessions.

T. Horton agreed and E. Bulan concurred that if the language makes things clearer, or an easier interpretation, we should move to make that happen.

DR. SUSZKO MOVED, E. BULAN seconded the motion to include the language as prepared by legal counsel in their written opinion of March 26, 2021 stating in SECTION III-7 to include the sentence **“The Mayor is entitled to participate in all closed executive sessions.”** And continuing in SECTION IV-4 (b) to add the language **“,including all discussions that take place in an open meeting and in all discussion that occur in executive session.”** 5 YEAS, MOTION CARRIED.

L. Howley introduced the next topic of clarifying the language regarding separating powers.

The administration and council currently share the duties as the Clerk of Council and for the administration while performing the duties of Boards and Commissions. The question posed is Does the administration have the right to their own clerk position and does the council have the right to their own position? Legal Council has suggested language in response to that. It is Mr. Howley's position that both entities have the right to ask that their duties get performed at their time and focus. Hopefully going forward they will be able to continue to share and there will not be conflict between the two bodies.

R. Wakefield liked the recommendation of adding the language to Section IV-6. The other two pieces need to be added to designate legislative authority of council and the awarding of contracts and that council had no more duty after awarding the contract. L. Howley stated we only needed to address this section as to the clerk issue. R. Wakefield agreed.

E. Bulan stated that the Boards and Commissions Secretary has always been under the Mayor. She asked if there is an ordinance change that has been passed to say otherwise regarding the Boards and Commissions secretary? Is there a conflict as to what we are trying to do here? R. Wakefield stated there is an ordinance. R. Wakefield thought it stated that the Council and the Mayor agreed on those items. Council had the authority over the Clerk of Council and the Mayor has the authority over all other employees, so there should be a separation.

L. Howley referred the focus to the yellow lined items that he provided regarding the suggested amendment. If we can review that, it would be our recommendation to the Charter. E. Bulan, R. Wakefield and T. Horton agreed that the present clerk stepped in at a time when it was needed but she stated they do need to keep the positions separate. Each member concurred that the positions needed to stay separate.

Mayor Forthofer stated that there may be good practical reasons why the functions should be merged, but the default position should always be that they should be separate unless agreed upon by the two different bodies, the legislative and the administration. The default position is that they should be separate.

L. Howley asked Mayor Forthofer if he saw a change in the short term. Mayor Forthofer stated no, his concern is that the position be forever drifted into this as this amendment would change it. If each body met, and the question was posed, Mayor Forthofer stated he wants to continue with the way things currently are.

Dr. Suszko stated he sees that as the City grows and positions change and get more complicated. Thinking forward we can have that separation. Definitely the better way to go.

R. WAKEFIELD MOVED, T. HORTON seconded to accept the proposed language for from the legal opinion of March 29, 2021 creating **SECTION IV-6 Administrative Clerk of Boards and Commissions** “The Administrative Clerk of Boards and Commissions shall keep an accurate and complete journal of the proceedings of the various Boards and Commissions established by this Charter and the City’s Codified Ordinances and shall perform such other duties as those Boards or Commissions may require. The Administrative Clerk of Boards and Commissions shall be appointed and may be removed by the Mayor. This administrative position shall exist independent of, and without supervision or oversight from the Clerk of Council; provided, however, that if the Mayor and Council agree, the Administrative Clerk of

**Boards and Commissions may also separately serve the City as the Clerk of Council.** 5 YEAS, MOTION CARRIED.

L. Howley stated the last item is weather we as a charter review committee should address or recommend any adjustment in compensation for the elected positions as Councilmember and Mayor. He stated he feels people need to be properly compensated for their difficult job. If we want to attract and hold good people, we need to address these things. I am not sure if we have the ability to do this. Can we do this as a part of the Charter?

R. Wakefield asked that we refer to Section XI-5, salaries, and compensation. He states that Council has the ability to compensate all employees fairly. They cannot do it during their current term or the mayor's current term. He continued by asking if we can prod our council members to take a look at this seriously and to look at it periodically. \$300 per months does not even begin to compensate a council person fairly nor does \$65K compensate an executive fairly.

E. Bulan agreed with R. Wakefield that everything needs to come to council. She liked the idea that we could encourage them to look at it. L. Howley suggested we be specific on a dollar amount? He has heard a 15% increase which would make it \$350 per month, and instead of \$65,000 yearly it would be \$75,000. And in addition to that it should tie it to the CPI index. It would take the pressure off future council member in the terms of voting increases.

Dr. Suszko can make a correction and then when you do the cost-of-living adjustment it makes it a fair compensation. Sometimes you need to tell the people it is the right thing to do. He feels it is a good way to go. L. Howley stated it is difficult for a sitting council member to look for a salary increase when they are trying to get elected. It is a catch 22.

H. Taft disagrees with the charter messing with compensation. Every city in the state has the council sets the compensation. If council believes they are not compensated fairly, they should say so. Same with the Mayor.

L. Howley stated he has heard from the members and comes to the conclusion that we will not make it a part of the charter, but we can give them a recommendation letter, give them a little backing. T. Horton agrees it should not go the voters.

Next question. Formalizing our recommendation.

R. Wakefield has a question for the attorney asking about the language in Section XI-5 regarding the word "elective". Is that an error and should it be elected?

Attorney Chojnacki stated the language is correct and should stay as written. The word elective is correct.

L Howley asked about the timeline of bringing the recommendations to Council. What is our timeline from here?

E. Bulan stated that an ordinance is prepared by Legal Counsel and the legislation is then presented to council.

L. Howley will be in touch with the law director and have the paperwork prepared for Charter Members review and presentation to council.

L. Howley thanked the members for their time.

R. WAKEFIELD MOVED; T. Horton seconded a Motion to Adjourn.

Submitted by Anne Maiden, Administrative Assistant