

**MINUTES
OF THE
COMMITTEE OF THE WHOLE
MAY 1, 2017
AUDITORIUM
6:30 PM**

Present: David Anderson, Tom Bullock, John Litten, Cindy Marx, Ryan Nowlin, Sam O’Leary, Dan O’Malley.

Also Present: Law Director Butler, Former Commission Members Tom Brown, Steve Davis, Andy Meyer, Former Consultant/Charter Facilitator Larry Keller, Members of the audience Pam Wetula, Dean Dilzell; M. Hagan recording minutes.

PROPOSED ORDINANCE 28-16 Third Amended Charter (1st & REFERRED TO THE COMMITTEE OF THE WHOLE 5/16/16, 2nd READING 6/6/16)

Chair O’Leary called the meeting to order 6:40 PM.

Mr. O’Leary reminds members of the timeline (3 years this August since Commission made its report) & recommending document. (attached to minutes)

Mr. O’Leary indicates the number of changes make the document more readable and more user-friendly, clear and consistent throughout. Thanks provided to the Commission; appreciation of good drafting stated.

Refresher for some members of Council; introduction to others.

Mr. Butler references that page 13 of the Report is the Table of Changes.

Proposal to amend the 2nd amend Charter.

Details why Commission recommended certain changes; Mr. Butler indicated that many of the changes updated, modernized, simplified, made more readable the Charter itself.

He gave example of simplify - change 100 year old legalese language to every day modern writing. He indicted Chair Brown was a big proponent of that at the outset.

Moved some sections from the Charter to the Codified Ordinances to provide flexibility as times, needs change Council more able to respond “quickly and nimbly” to those changes. Example Article XVI in Charter – detailed language regarding Special Assessments. He cited Council’s recent address of Meridian/Winton Place, Arthur Avenue lighting project, assessment requirements. Process “extraordinary detailed/antiquated”; better to be homed in Codified Ordinances. This eliminated a number of pages from the Charter right away.

Franchises; no longer granted by municipalities; - consequently moved franchise language into Codified Ordinances.

Some of the required positions in the government would not be specifically identified in the Charter any longer. There would be two positions mandated under the State Code; the Law Director and the Finance Director but other than that – Director level positions would be moved into the Codified Ordinances.

Commission worked hard to simplify Charter, narrow its scope and give government a little more flexibility in terms of how to set up government to meet current needs.

All changes found section by section in the final report.

Law Director provided a draft (attached)

There are also found Law Director's recommendations since the Commission has completed its work. Mr. Butler indicated that the suggestions are based on very recent experience. At the time the Charter Review was started; Letter of Intent that kicked off Hospital Negotiation was not formed - making Lakewood Hospital provisions within Charter not necessary. (found on pg. 41 of draft)

It was found too that it was easier to get a Charter Amendment on the ballot than it was to get an ordinance by Initiative Petition or Referendum on the ballot. Current Charter has a higher bar in order for Initiative and Referendum matters before the voters.

A couple of Charter Commission Members proposed – (Law Director indicated he concurs based on recent experience) to make those all the same. Mr. Butler referenced Pgs. 32 & 33 of document draft he handed out. Not sense that Charter being most sacred document governing – versus a referendum or initiative Proposal is to even out playing field between those types of ballot issues. Proposal to knocking down 15% requirements down to 10% to match State Code in terms of the number of signatures required. This has not been vetted by Commissioners; Council.

Mr. Butler indicated that in 2015 a Charter Amendment was addressed first. Mr. Butler stated that he would argue that that was a poorly worded amendment, did not provide voters clarity; it would have been better to have faced an Initiative Petition that fall, that would have been put into the Codified Ordinances and Council would be able to work with petitioners. Mr. Butler stated that there were no other recommended changes at this point to Commissions work.

Mr. Butler indicated there was time, that the matter did not have to get to the Board of Elections vote until late summer; exact date will be provided.

Mr. O'Leary indicated asked if it would be fair to say – since Council normally recesses in August that the last meeting in July would be deadline – especially given lengthy translation requirements afoot here with Board of Elections. Not as simple as a simple question.

Law Director Butler indicated the ballot language and translation would be simple; “Shall the Third Amended Charter be adopted but the Charter itself must be translated; Board of Elections ask to get issues to them as soon as City can.

Deadline for Charter Amendments - September 8, 2017. Would encourage Council to get this down to the Board of Elections before that; Late July ideal.

Law Director Butler indicated that procedurally Charter Amendments either coming from a Commission review process or Council's own process is a 2/3 majority vote of Council, will need a super majority vote to send this to ballot.

Mr. Brown indicated that in 2014 the Commission decided to meet every Monday and did that for six months; including meeting with Council mid-way through process. He indicated discussion of substantive issues were had including changing from current strong Mayoral form of government to City Manager government. He indicated there was robust debate ending in a 5 to 4 vote in favor of staying with strong Mayoral government. He indicated everybody contributed; detailing what Commission did was before Council but wanted emphasize the number of people the Commission met with; including people in and outside government in addition to reviewing any number of charters from other communities to come up with what they thought was a good, comprehensive, readable, understandable by lay people charter. He added to Law Director Butler's comments indicating the Commission also addressed ethics provisions for Council (Mr. Brown added, "no reflection on current Council") and training provisions. Mr. Brown indicated that the Commission also put in the Charter even though it was not required that Boards and Commission members be appointed early enough to have opportunity to with the Boards and Commission they've been appointed to (at least one or two meetings).

Mr. Brown continued indicating that the Charter as it is now is "truly not readable". He indicated that the Charter currently contained a 180 word sentence, 140 word sentence – not understandable.

Mr. Brown attributed the great report and guidance provided by Mr. Keller and guidance from Law Director Butler.

Mr. Keller gave great review of the Commission indicating he had consulted approximately 20 Charter Reviews and that first time a Commission reviewed entire Charter; He indicated the Commission also put in a Finance provision making it much easier for everyone to find provisions –

Steve Davis indicted he had been reviewing Charters in Lakewood for years and this was the most organized process he's experienced. He indicated the Commission went through all the dates, visited Board of Elections, secured Lakewood dates for filing election petitions; all lined up with Board; Simplified the math for Council for voting; either simple majority or super majority; none of this "5/7, 6/7, 3/4, 2/3 – indicating confusing equations. He said proposed Charter is all standardized.

Mr. David added that there were philosophical differences but that he fully endorsed the Proposed Charter and indicated it was a document that made sense.

Commission Member Andy Meyer indicated his agreement with previous comments; efficiency, best practices. The 100 year old document still retained sexist language, non-gender neutral.

Mr. Keller indicated he endorsed Law Director Butler's proposal to have the Charter Amendment as easy as referendum; initiative.

Mr. O'Malley asked Commission about the Special Assessment provisions in Charter indicating that it appears references were removed save very few; He asked to expand on recommendation then to simply codify indicating it appears lengthy and complex.

Law Director Butler responded that companion legislation would be placed on Council docket close to time of popular vote on the Charter to ensure voters are aware of intentions with respect to moving

certain provisions out of the Charter into the Codified Ordinances. He indicated this would also assure voters that their government “would not change overnight”. He indicated Director levels as an example – that exact titles may not appear in the title.

Mr. O’Malley asked about reasoning behind that. Mr. Brown indicted flexibility. Mr. O’Malley asked – “flexibility for Mayor?”. Mr. Brown indicated as an example that the Health Commissioner remained in the Charter and the City no longer has a Health Commissioner. Mr. Brown said it would make things easier for government - as changes occur.

Mr. O’Malley asked about the new sections proposed regarding removal of President and Vice President requiring a 2/3 majority required to remove President. (He qualified for Mr. O’Leary not to take the question personally – chuckles ensued). He asked why not a simple majority.

Mr. Brown indicated he was unsure since time has passed Commission’s exact reasoning – offering that he thought it was such a serious move and would invite in-fighting. Mr. Meyer indicated that he believes those were the sentiments.

Law Director Butler indicated he believed that the debate was whether council officers should hold that position throughout that Council term. Debate was whether Council had power to appoint if it had power to remove that officer. He indicated clarification was proposed to see if Council had authority to do that – and that there was not full agreement on the issue. He said that he recollects that a higher bar be set as a way to have this part become a part of the Charter. Setting a higher standard to avoid throwing Council into chaos whenever Council didn’t like a ruling of the chair.

Mr. O’Malley indicated he knew there would be future opportunities to address other questions but was cognizant of others wanting to ask questions.

Chair O’Leary reinforced the scheduling of other meetings and wanted the opportunity of Commission members present to be first sounding board.

Councilmember Marx thanked Commission for providing a Charter that was understandable.

Councilmember Bullock referred comments to Council – indicating highest standards to be set for deliberations because 1) legislative process for this is utmost importance; nothing more far-reaching and longset in duration, and do not have a tradition in Lakewood with with “fiddling with Charter frequently” (Mr. Bullock indicated he agreed with that idea) 2) Have to be satisfied we can recommend language to voters; be conversant in explaining too. Mr. Bullock indicated he would avail himself for a public library forum;

Mr. Bullock referenced legal timeline; September 8th deadline referenced earlier. He indicated he was not interested in seeing a rushed deliberation by Council. He indicated having a regular hearing schedule similar to the schedule for deliberation on Hospital to go through section by section. He indicated this could maybe be covered in 2-3 hearings and devote another 2-3 hearings to some amendments that may be proposed before finalizing. Mr. Bullock asked if that’s how colleagues envisioned it. He indicated structural changes would be one or two major areas that would need to be addressed. Mr. Bullock indicated that he could assume comparative reading done by the Charter Commission was more extensive than he has but Council and different folks carrying out government have more day to day experience in actual conduct. Mr. Bullock made special reference to Council sections in Charter and specified further regarding threshold for amendments. He said he’d argue

Charter Amendments threshold should be higher because, “if you’re an advocate it shouldn’t be easy to conduct policy by charter”. He indicated that this was case at State level – “because of cost of state-wide referendum the casino advocates used a constitution amendment that includes parcel numbers...” He indicated this is not the way to use Constitutions or Charters.

Mr. O’Leary stated he wanted to clarify Charter threshold - that it is set by the State Constitution so that Council would not have authority to set the bar higher than what State Constitution had.

Mr. O’Leary indicated appreciation Mr. Bullock bringing up the timeline and regularity of hearings; stating that he certainly wanted Council to have a thorough process and that he had advocated that back in September of last year. He said he wanted to acknowledge Council’s responsibility to citizens of Lakewood to complete this; issues with current Charter such as its un-readability but also acute issues such as ballot submission; deadlines with Board of Elections – making it important to focus both on the quality of the process but also on the outcome of the process being, “ that we get something on the ballot this year to the extent that it’s humanly possible...” Mr. O’Leary indicated he hoped to have adequate hearings to hear all of the concerns referenced but part of the reality of the document is that it is an involved document and there’s going to be some homework for some Councilmembers in term of using meeting times most effectively – either coming with their questions pre-answered by Law Department or Commission members that they’ve been able to bounce ideas off of or at very least defined before going into the meeting so it is known; these are the list of amendments Council is thinking about, so far – so go into next deliberation with something like that.

Mr. O’Leary re-iterated the timeline – and need to move swiftly and to stay focused on getting this out there for folks in enough time to be reviewed.

Councilmember Litten asked about process that would appear to be substantial to address some of the Charter issues within the Codified Ordinances.

Law Director Butler indicated that he did prepare a memo to former Council President Madigan in 2014 as far as the aspects of Charter to be moved to Codified Ordinances. He indicated there would be four main areas. 1) Departments and officers (example – Charter used to make mention Division of Smoke Inspection – possible that Division would be needed one day but ever since incinerators were generally banned; haven’t had a need for a Division of Smoke Inspection. Similarly – can imagine a day where the manager of Information Systems which is currently a position in the City’s; Director title flexibility would be useful. Council has authority to establish director level positions. Move Charter references to directors into those already within Codified Ordinances. 2) Finance provisions. Such as step by step special assessment process. 3) franchises would most likely be appropriate in Codified ordinances for limitations on the City to grant franchises. State has taken away the municipalities ability to grant franchises in a number of areas – still want to maintain protections in some areas. 4) Ethics portions in Code; The Commissions language is very broad other than the training provision; high minded; meant to give, “overarching instructions to our officials as to how they’re supposed to act as officers of the city...” Example – Article XXIII of Charter – with whom you can partner and put those in to Codified Ordinances.

Councilmember Litten asked if that process begins post election; if it should begin prior to that?

Law Director Butler indicated he would recommend that as soon as Council advances Charter to Board of Elections (if in late July), by first meeting in September, legislation would be introduced that would carry those changes into effect assuming Charter passes.

Councilmember Nowlin asked about the through process behind the reduction of the number of Planning Commission Members. Chair O’Leary asked if it may have been parity with BZA. Mr. Keller said he remembered it as being one of standardization; one member who was voting – make an ex-officio member. On the Commission because of the office.

Mr. Anderson wanted to clarify that the recommended term remains same; five year.

Mr. Brown said he wanted to address the idea of timing – stating he didn’t think anyone could accuse Council of rushing through this.

Mr. Bullock responded that “the key is – that ...deliberative focus as a Council body, together hasn’t really begun in earnest...” He indicated he agreed with chair that it would be both desirable and doable to get Charter on the ballot this year.

Mr. Bullock indicated he would be amenable to accommodate schedules, making other committee schedules lighter to address Charter.

Mr. Davis stated that it should be known that the proposed Charter is an apolitical document. He indicated that everyone in the room and outside the room should understand that.

Chair O’Leary indicated he understand questions might evolve as deliberations go on but would request an initial list of areas councilmembers are looking to to amend, or justification not to amend in advance of our next meeting on this. If that has to be kicked out the next Monday then the one after that to allow councilmembers additional time to do that. (Mention of Public Safety Committee was previously scheduled). Mr. O’Leary indicated to get it back on schedule as soon as we can. Request that Councilmembers have their homework done on the front end and ready to dive in to areas they have suggested changes.

Mr. Davis indicated that some of the areas had specific groups working on it and suggested emailing concerns on different areas to those people for feedback/those involved in that part of Charter would be able to explain it the best.

Chair O’Leary thanked Mr. Davis – reminding folks so as not to get “messy email chains” that get into deliberation - that if a councilmember has one of the areas to hear some background information on, to forward that through Director Butler.

Motion by Mr. O’Leary, seconded by Mr. Anderson to adjourn.
Meeting adjourned. 7:29 PM.