

**XENIA CITY COUNCIL
MEETING MINUTES
APRIL 29, 2021
SPECIAL MEETING
6:00 P.M.**

A. CALL TO ORDER: President Wesley Smith called the Special Joint Meeting with the Charter Review Commission to order at 6:10 p.m.

B. ROLL CALLS: City Council: Vice President Levi Dean, Councilman Thomas Scrivens, Councilwoman Rebekah Dean, Councilman Cody Brannum, Councilman Will Urschel, Mayor Sarah Mays, and President Wesley Smith were present.

Charter Review Commission: Jeanne O’Callaghan, Chelsey Garrett, Howard Horstman, and (Alternate) Nancy McPeak (*Also includes Mayor Sarah Mays and Councilman Thomas Scrivens – included in Council Roll Call above).

President Smith turned the floor over to Charter Review Commission Chair Ms. O’Callaghan.

C. NEW BUSINESS:

Charter Review Commission:

1. Approve 04/06/2021 Meeting Minutes. Ms. O’Callaghan entertained comments or questions on the April 6, 2021, meeting minutes as written. Hearing none, she entertained a motion.

Motion by Mr. Horstman, seconded by Ms. Garrett, to approve the April 6, 2021, meeting minutes as written. No discussion followed. The voice vote was as follows:

Ayes: O’Callaghan, Garrett, Horstman, Mays, Scrivens

Nays: None motion carried.

2. Presentation of Proposed Charter Amendments to City Council. Ms. O’Callaghan shared that she joined the Charter Review Commission in an effort to improve the City. She has four sons, and she has worked with the City’s youth and wants to improve the City for all of them. She then provided an overview of the Charter Review Commission’s process, which included reorganizing the information, modernizing it noting the last comprehensive update was done in 1998, and reconciling it with Ohio Law. Regarding the Mayor and Council’s compensation, she reported that the Commission discussed the subject at multiple meetings and spent a lot of time discussing this issue. She said the Mayor and Council’s current compensation does not match the amount of their work. However, they are not recommending any changes to the Mayor and Council’s salaries at this time because they feel it may defeat all the changes. However, they noted in their report that the next Charter Review Commission should review and consider this subject during the next review period. She and the other members have each chosen a specific article to present to City Council. She then asked Mr. Horstman to present *Article IV – City Council*.

Mr. Horstman said he supported the Charter amendment in 2018 to add Section 8.05 to create the Charter Review Commission because he felt it was important to modernize the Charter. The current Charter (somewhat) worked for the 20th century, but it needs to be updated to work for the

21st century. He focused on the proposed changes to the election cycle in §4.02, noting the current schedule calls for the Mayor's seat and two Council seats in one election cycle and then the remaining four Council seats in an election cycle two years later, which creates an opportunity for a turnover of the majority of Council seats and that disruption would not serve the City well. A continuity of government and experience is important, and there is a huge learning curve for new Councilmembers. The current Charter does not address how the terms of office are staggered, and the Commission felt that recommending a change to a 3:2:2 system would remedy this issue. The schedule is as follows per the report:

3:2:2 – 2 Members + Mayor, 2 Members, 2 Members – All w/ 4-year terms

*Beginning in 2025, elections three years in a row (2 Council + Mayor in odd year, 2 Council in even year, 2 Council in odd year) with one off year.

Election 2023

2 members for 4-year terms (2024-2027)

2 members for 3-year terms (2024-2026)

Election 2025

2 members for 4-year terms (2026-2029)

Mayor for 4-year term (2026 -2029)

Election 2026

2 members for 4-year terms (2027-2030) *2 seats w/ 3-year terms from 2023 election

Election 2027

2 members for 4-year terms (2028-2031)

Per the above schedule, Mr. Horstman said the top two vote getters on the 2023 ballot would serve four-year terms, and the next two vote getters would serve three-year terms. The staggered terms would provide a more orderly transition of Councilmembers, and voters would have more opportunities to provide their input.

Councilman Urschel asked if a 2:2:2:1 (Mayor) schedule was considered. Mr. Horstman said yes; the Commission considered just about every option, including a six-year Mayor's term. However, the Commission did not feel the cost of the election and going through the election process was justified for only one seat. Mayor Mays agreed, adding that the proposed schedule allows for one year when there would not be an election or any newcomers. Councilman Scrivens said the Commission wanted continuity, and the new election cycle will be fully implemented by the 2026 election when the three-year terms will appear on the ballot again for four-year terms. He knows this proposed change may be a hard sell. Councilman Urschel asked why the Commission felt this particular change was a "hard sell." Mr. Horstman said they feel it may be confusing to some.

Law Director Donnette Fisher said there is nothing set forth in the current Charter regarding how the terms of the members of Council will be staggered. While the current practice is two members of Council and the Mayor in one election and the remaining four members of Council two years later, it is not prescribed in the current Charter. She agreed that the Commission considered every possible combination, and what they proposed is the least disruptive option.

Mr. Horstman said the Commission is also recommending changes to *Article XI – Elections for City Office* with regard to a more formalized elections procedure. He said the Greene County Board of Elections has made it clear that they cannot be responsible for certifying City Council and Mayor

petitions according to the City Charter. Therefore, the proposed changes modify the process to make the City responsible for certifying its own candidate petitions. Specifically, the candidates will get petitions from the City Clerk, they will go get their required 75 signatures, they will turn everything back in to the City Clerk. The City Clerk will transmit everything to the Board of Elections. The Board of Elections will examine the signatures and determine the number of qualified electors of the City who signed the petition. The Board of Elections will then return the petition to the City Clerk, who shall determine the sufficiency and validity of the petition and statement of candidacy per the requirements of the Charter. If the City Clerk determines an insufficiency due to a clerical error, the candidate will have seven (7) days to correct the error(s).

Vice President Dean asked why the Commission is recommending such a complicated process instead of just changing the number of qualified electors' signatures to 50 (instead of 75). Mr. Horstman said the Commission did not wish to change the current requirements; rather, they wanted the opportunity for the City to have the option to review and take responsibility for certifying its own candidates for Mayor and City Council. Vice President Dean said he appreciated their efforts, but he felt the proposed changes were over complicated. Mayor Mays said the Commission did not feel confident with the Board of Elections being in charge of certifying the City's petitions.

Councilman Urschel said there are about 12 criteria on the petition forms—it was not just about the 75 signature requirement—and the Board of Elections does not provide any assistance, answer any questions, or give any feedback. Mayor Mays agreed. Councilman Urschel said even when the Board of Elections provides erroneous directions, they do not stand behind them. They are no help at all, and it's not just Xenia ... it's all over the County and all Boards of Elections in the State of Ohio. Citizens who are trying to engage in this process for the first time do not understand the context; whereas, party candidates have a party on either side to help them. The Commission's proposed changes will provide them an opportunity for Mayor and City Council candidates to get some help with the process. Mayor Mays agreed; the Commission's suggested changes will provide an opportunity for people to ask questions and for the City of Xenia to maintain some control.

Vice President Dean said the Board of Elections does not give out advice or provide information to anyone to avoid any sign of favoritism. He feels the City could provide information to those wishing to run for Mayor and Council, but it could be provided in a different way while avoiding any impropriety. If the City Clerk will be certifying petitions and giving out information, technically, that position serves and is answerable to the Mayor and City Council. Councilman Urschel asked Vice President Dean who he thought the Board of Elections answers to. Vice President Dean said the Board of Elections answers to everyone in the County. Councilman Urschel disagreed; the Board of Elections is answerable to the two political parties because that's who appoints them. They are not elected and they are not answerable to the Ohio Secretary of State, who states the Board of Elections is an independent agency. Vice President Dean said the Board of Elections does not get involved in local elections. President Smith disagreed; the Board of Elections has not certified four Councilmember's petitions in the past six years; the Board of Elections could have provided a courtesy review and let the candidates know of something that wasn't quite right (so they have an opportunity to fix a minor error). Vice President Dean said the Board of Elections is not permitted to do that, by law. Councilman Urschel said by law, the Board of Elections is required to provide accurate information to those pulling petitions, which they did

not do. Councilwoman Dean said when she pulled her petition to run for City Council, the Board of Elections also told her that only 50 signatures were needed, but she did her own research and knew that 75 were required per the Charter. Councilman Urschel said per the Ohio Revised Code, the Board of Elections is required to provide correct information, and at the end of the day, they are not held accountable for their mistakes. Mayor Mays felt the proposed changes would encourage more citizen participation, provide an opportunity to answer questions about the election process, and maintain some control. Councilwoman Dean asked if they could just simply put some information about how to run for Mayor or a City Council seat on the City's website. Vice President Dean agreed; an information sheet could be developed and provided to everyone. He reiterated that he felt the proposed changes were over complicated and gave the City too much power, which he felt was a knee-jerk reaction to issues with past election results. They should never, ever make changes based on emotional, knee-jerk reactions. Councilman Urschel said in a sense, the proposed changes are going back to what the City was doing for decades by using its own petition form. He noted the Board of Elections requested that the City switch to using the State of Ohio's generic petition form.

Mr. Horstman said the current process, and the process with the proposed changes, is not an easy process, but being the Mayor or a City Council member is not an easy job. He understands that mistakes happen, and the proposed changes were meant to inject a process of review and an opportunity to correct those mistakes.

Councilman Urschel said if someone wants to petition a grievance, he asked if they would go to the Board of Elections—not the City Clerk. Mr. Horstman said yes. Vice President Dean asked about the petitions for grievances and protests relative to §11.05(a), which states the following:

§ 11.05 SUBMISSION TO THE ELECTORS.

~~General Recall Laws to Apply.~~ *[Moved to § 11.07]*

A. Placement on Ballot. The Board of Elections shall place the names of all candidates nominated by petition that are certified to it by the City Clerk under Section 11.02 on the ballot for the municipal office for which the candidate(s) seek election and shall provide space(s) for write-ins for all declarations of intent to be a write-in candidate certified to it by the City Clerk under Section 11.03. Ballots used by the Board of Elections shall comply with the relevant provisions of the Ohio Revised Code.

Vice President Dean said if there is a protest, the City Clerk would have already certified the petitions and the Board of Elections is directed to place the names on the ballot. If the results of the protest determines that a candidate is ineligible, he asked if the candidate's name would still appear on the ballot. Ms. Fisher said no; protests cannot be filed until a candidate has been certified to be on the ballot—preemptive protests cannot be done. She noted all the regulations in the proposed Charter language are per State Law. The proposed changes do not change the requirement for 75 signatures, and the Board of Elections will still verify signatures and handle all protests. The only major difference is the Board of Elections will not certify that the requirements of the petition are met—the City Clerk will do that. State Law dictates the protest process, which is why it was not expressly stated in the Charter. Further, the Board of Elections makes the final decision as to what names appear on the ballot.

Councilman Brannum said the proposed changes seem like a lot of work for the City Clerk. He asked if other municipalities do things this way. Ms. Fisher said yes. Councilman Urschel agreed;

with home rule abilities, they can manage as much or as little of the election process as they want. Ms. Fisher said the City of Xenia can establish for itself how candidates for Mayor and City Council get on the ballot, noting some things are under the jurisdiction of the Board of Elections (such as taking of votes, canvassing, tallying, protests, etc.), but how to get on the ballot to run for Mayor or a City Council seat can be established by the City per the Charter.

Councilman Brannum inquired about write-in candidates, noting the proposed language indicates that if there are enough certified petitions for the number of available seats, then write-ins will not be permitted. Mr. Horstman agreed. The petition process exists for a reason, and the Commission feels that the petition process is a vetting process. Candidates who are willing to go through the certification process to get on the ballot should take priority over those who skip the process entirely to be a write-in. Councilman Brannum said those whose names are on the ballots, especially incumbents, are more likely to win versus write-in candidates. Write-in candidates will likely put in even more work to actually win a seat over a front-runner. Councilman Urschel asked why someone would go through the petition process, getting 75 valid signatures, etc., if a person could just be a write-in. Vice President Dean said it is statistically much harder for a write-in candidate to win. The odds of a write-in candidate winning without putting in significant time, money, or effort are small. Councilman Urschel said if the odds are so small, he asked why they want to ensure that option remains in place. Councilwoman Dean said the reason is because it is an American citizen's right. Councilman Urschel said the petition process weeds a lot of people out, which means there would not be an exorbitant amount of names on the ballot and is the whole reason the petition process was started in the first place. Councilman Scrivens said the Ohio Revised Code, Section 3513.041 Write-In Votes, is restrictive, and at least the City's Charter is allowing write-ins to run. Per the ORC, if someone messes up his/her petition and is not certified, they cannot be a write-in candidate. The City's home rule ability provides them an opportunity to push people toward the petition process, which the Commission has recommended. If they make an error, the proposed changes will provide an opportunity to fix that error. Currently, if there's an error, the person is not certified and cannot be a write-in.

Councilman Urschel inquired about *§4.07 Removal from Office*, noting the recently approved Rules of Council provides a censure process. Ms. Fisher said the current Charter talks about forfeiture of office, but there is no process. Therefore, the Commission is recommending the addition of a process of how the removal would actually work. Councilman Urschel felt this recommended language was significant. If Council gets in that situation, they will need some structure and prescribed methodology to follow. Mr. Horstman agreed; there are currently no procedures or steps on how to remove a member of Council. He noted there are many instances where the Commission tried to fill in the missing information in an effort to forestall legal challenges.

City Manager Brent Merriman said the Commission's consistent theme with regard to the proposed amendments was not wanting to be overly verbose but to be properly prescriptive. He said the current Charter is a bit ambiguous on many things, so the Commission tried to fill in those gaps. During his time with the City, he's encountered many situations where the Charter is ambiguous about things. He appreciated the Commission's efforts to fill in those blanks so expectations would be clear to everyone.

Councilman Urschel noted the proposed language in *§4.04 Chairperson and Vice Chairperson of the Council* gives Council the ability to call the Council President and Vice President multiple

names. Ms. Fisher said those titles were a subject of several conversations, and the late Dr. Edgar Wallace (former Council Vice President) felt very strongly about only using the titles of President and Vice President. Therefore, the Commission is recommending the use of interchangeable titles. Mayor Mays noted former City Councilman Dr. Eric Winston also felt strongly about only using the terms President and Vice President.

Vice President Dean inquired about §13.01 *Prohibited Activities; Penalties*; specifically, subsection B. states that any person found guilty of a violation shall be ineligible for five years to hold any City office or employment. Mr. Horstman noted the existing text is in black, and the five-year penalty was an existing provision. Ms. Fisher said subsection B. *Penalties* applies to the subsection A. *Prohibited Activities*. Council will define the process to find a person guilty with passage of an ordinance, noting they may want to differ the process for an elected vs. appointed official.

Mr. Horstman said Ms. Garrett would address *Article V – Legislation*, specifically the proposed changes regarding Ordinances and Resolutions.

Ms. Garrett shared that she grew up in Dayton but has been part of the Xenia community since her senior year in high school, which is when she fell in love with the City. After college, she was employed here, and she and her husband decided to purchase a home here. They celebrated their 14-year wedding anniversary yesterday. They have enjoyed watching Xenia grow, including the addition of Progress Drive and the development of that area of town, and she wants to see Xenia continue to grow.

Ms. Garrett said the Commission comprehensively reviewed *Article V - Legislation*, and she read the following rationale, which is included in their report: “*The changes to this Article are among the most significant and most important of all recommendations by this Commission. Currently, the City’s Charter does not differentiate between ordinances and resolutions, treating them as interchangeable, and requiring two readings of both ordinances and resolutions. No other City in Ohio treats ordinances and resolutions this way. The Commission is recommending language to recognize that ordinances and resolutions are different and are properly and legally used for different purposes.*” The Commission’s recommended changes outline the proper matters for each of the three types of Council actions, which are ordinances, resolutions, and procedural motions:

- **Ordinances** will be used for formal, written enactments of legislative powers and are more permanent in nature of cover matters of finances, such as annual appropriations. Another recommendation will require public hearings for any ordinances that set law or policy for the City as a whole so that citizens can provide their input at that time. She noted there is currently no opportunity for citizen input other than during the general audience comments section of the agenda, except for certain items, such as rezoning requests, et al.
- **Resolutions** will be used for the disposition of specific matters but are ministerial or temporary in nature such as awarding a bid, setting yearly salaries, purchasing vehicles or supplies, approving a grant, etc. The Commission is recommending that resolutions would only require one reading and would be approved at that time.
- **Procedural motions** will be used to conduct matters relating to Council’s organization or housekeeping functions including making appointments to Council Committees, electing the Council President and/or Vice President, etc.

Ms. Garrett said the Commission is recommending changes regarding the publication of ordinances and resolutions per subsection §5.02 *Ordinances in General, E. Adoption and*

Publication to be on the City's website and three (3) public places in the City versus the current requirement of publication in a newspaper of general circulation and five (5) public places. Another recommended change in this subsection is the elimination of the requirement that passage of all ordinances require a majority vote of the membership and instead will only require a majority vote of those Councilmembers present at a meeting, unless otherwise required by Charter, such as for emergency ordinances, which will still require five (5) affirmative votes.

Ms. Garrett noted that any existing text that has been moved to another article or section of the Charter is noted in brackets in blue text.

Councilman Urschel said Council is often being asked to pass emergency legislation. He asked if the Commission's proposed changes would reduce the number of emergencies. Mr. Merriman said yes. If the proposed changes are approved, there would not be any "emergency" resolutions anymore because there would no longer be a requirement for a second reading, and the resolution would be passed at the meeting it is presented. Ms. Fisher said many items are currently being approved via "administrative motion," when they should actually be approved by resolution. If the Commission's proposed changes are approved, many things will then be approved via resolution and procedural motions would be used as noted above.

Ms. Fisher said the Commission also built into the Charter that the public has the opportunity to provide input on ordinances. Mr. Horstman agreed; at no point did the Commission reduce a citizen's ability to provide input. Public hearings would be required at the second readings of ordinances, and Council may entertain public comments for resolutions.

Ms. Garrett said Ms. O'Callaghan would address *Article X – Civil Service and Personnel*.

Ms. O'Callaghan said the Commission recommends changing the title of this article as the matters covered deal with the Ohio Constitution's required civil service and other personnel matters. Further, they felt the previous name of the article, which was Human Resource System, implies the department or organization that deals with the administration of employee benefits, policies, and training. The Commission is recommending expanding the unclassified service list of positions in §10.02 A. She said it appears that this article was completely overhauled, but they really just tried to match the Ohio Constitution and the way the City was currently doing things. Mr. Merriman said staff provided a lot of input on the suggested changes to this article. The labor and employment environment is getting more and more difficult, and there are fewer people interested in civil service (especially public safety and public service) positions. He said Council should anticipate additional information in the coming weeks regarding the number of applications received and test takers. They want to ensure that they are creating a civil service structure that is compliant with State requirements but gives City Council the flexibility to meet the needs of this community that is practical for today. When considering the employment environment in the 1990s vs. the 2020s, the world has changed a lot during that time.

Ms. O'Callaghan recognized alternate member Ms. Nancy McPeak, noting at the beginning, she attended their meetings as a concerned and interested citizen. When there was change on Council, she was made an alternate member. She said Ms. McPeak has been very helpful throughout the review process and asked if she had anything to share. Ms. McPeak said she hopes the Commission's recommended changes are put on the November ballot and that it passes. She reiterated that the recommended changes do not include raises for the Mayor and Council

members, although the Commission recommends that the issue be addressed during the next review.

Ms. O'Callaghan said the Commission was available to any questions Council may have.

Councilman Urschel asked if there was an easy way to show what existing language was simply moved to another location/another article, even though much of the language stayed the same. He said the red text will cause some people to think that the scope of the changes are more extensive than they really are. Ms. Garrett said there are previous versions of the Commission's recommendations that includes all the strikethroughs and recommended changes but does not include all the rationales, which cuts the report down to 55 pages. Mr. Horstman agreed; the rationales more than doubled the number of pages of the report.

Ms. Fisher said it is important for Council to realize that the Charter should be considered a "living, breathing" document. With the built-in five-year review process, each Charter Review Commission will review the Charter and make recommendations to Council, and the next review will not take another 20+ years. If Council finds that some changes are not working, they can recommend changes to the next Charter Review Commission. Regarding the current proposed changes, the Charter Review Commission members were provided with relevant background information before each discussion so they would understand State Law. She would be happy to meet with any Councilmember and/or provide the background information so they can also better understand State Law.

President Smith asked where they go from here and if any action was requested this evening. Ms. Fisher said no action is needed this evening; Council has until after July 5th but before September 3rd to decide whether to put the Charter on the ballot in its entirety or just specific articles. Council can use the time before July 5th to continue their review of the Commission's recommendations. Councilman Urschel asked if the Council has any ability to amend or modify the Commission's recommendations. Ms. Fisher said no; they cannot make any changes to the Commission's recommendations. Councilman Urschel asked if the Commission recommended the entire Charter be put on the ballot as one item due to the reorganization/rearrangement of existing information. Ms. Fisher said yes.

Ms. Garrett said the Commission members look forward to participating in the City's public relations campaign in an effort to educate and inform voters.

Councilman Scrivens thanked the members of the Commission, who stepped up to the plate. They have been diligent and knowledgeable, they showed up and worked together, and their work will endure and guide this community. He was very proud of them and all of their work.

Mr. Merriman said the Charter Review Commission's effort was a significant amount of work because it has been so long since the Charter was comprehensively reviewed, and it deserves careful consideration. Staff can give Council policy, financial, and legal perspectives, and he encouraged Council members to engage in dialogue with staff as needed. He noted the Commission's job is considered complete with submission of their report to Council. However, they have expressed that they will help the City carry their message to the community.

Motion by Councilman Scrivens, seconded by Councilman Urschel, to direct staff to prepare a Resolution of Appreciation for the Charter Review Commission members and that the City Clerk would affix the official City seal to said Resolution. Brief discussion followed. President Smith said he cannot thank the Charter Review Commission members enough, including alternate member Ms. McPeak, for all their work over the last almost two years. The Roll on this was the following:

Ayes: L. Dean, Scrivens, R. Dean, Brannum, Urschel, Mays, Smith
Nays: None motion carried.

D. ADJOURNMENT: Motion by Councilwoman Dean, seconded by Councilman Brannum, to adjourn the Special Meeting at 7:29 p.m. No discussion followed. The Roll on this was the following:

Ayes: L. Dean, Scrivens, R. Dean, Brannum, Urschel, Mays, Smith
Nays: None motion carried.

Ms. O'Callaghan declared the Charter Review Commission meeting closed with Council's motion to adjourn.

Michelle D. Johnson
City Clerk

Wesley E. Smith
President, Xenia City Council