

CHARTER REVIEW COMMISSION

A meeting of the Charter Review Commission was held on Wednesday, February 5, 2020 in the Council Chambers, 869 Park Ave., Cranston, Rhode Island.

1. Call the meeting to order:

The meeting was called to order at 6:00 P.M. by the Chairman.

Present: Michael Lepizzera, Esq., Matthew Pallini; Steven Frias, Chair, Ellen O'Hara, Vice-Chair; Dan DosSantos, Katie Nee, Esq., Edward Coccio, Evan Kirshenbaum, Esq., Joseph Agresti, Robert Santurri, Jr. and Matthew Reilly, Esq.

2. Approval of the minutes of the last meeting:

On motion by Mr. Kirshenbaum, seconded by Ms. Nee, it was voted to dispense with the reading of the minutes of the last meeting and they stand approved as recorded. Motion passed unanimously.

3. Public Comment:

Councilmember John Donegan, Ward 3 Representative, appeared to speak on behalf of the Council Democratic caucus and stated that they are opposed to the proposal to extend the City Council terms from two years to four years. He stated that the proposal could have the Mayor and City Council all elected in the same year and all serve at the same time or the Mayor elected on the off year the City Council is elected. This would be detrimental to the City of checks and balances and also there would be less voter turnout in non-presidential year elections.

Mr. Lepizzera questioned who presented this proposal. Chair indicated it was Mr. DosSantos who made the suggestion at the last meeting and this is why it is listed on the agenda for this evening.

Councilmember Donegan stated that the way it is now, the Mayor is elected every four years during Presidential Election and there are less turnout on the off year for the City Council Election.

4. Discussion and possible vote on whether the Charter Commission can or will permit members to engage in proxy voting or voting telephonically.

Chair stated that this item was placed on the agenda at the request of Ms. Nee. He asked that Ms. Nee speak regarding it.

Ms. Nee stated that she is expecting twins sometime around February 25th and she had asked the Chair of possibility of her voting by telephone when it comes time to vote on items. She has since inquired with the Governor's Commission on Disabilities and there is a provision under Open Meetings Act, which allows for a waiver that is granted by the Governor's Commission on Disabilities, but it specifically excludes any disability that lasts less than six months. She is not asking for six months and, hopefully, it would be only for a few weeks. She is confident that the Commission will do its best in scheduling the meetings and she will try to attend as much as possible, but potentially, she will miss meetings in March.

Chair stated that the Commission will make sure it complies with Open Meetings Law. At the end of this meeting, additional meetings will be scheduled and will try to make sure Ms. Nee can participate. The next meeting will probably be two weeks from now and Ms. Nee could probably attend more meetings after that. The Commission would probably want to wrap this up sometime in early April so the City Council has the final report for May.

Mr. Lepizzera suggested that Ms. Nee follow up with the Attorney General's Office and ask for an opinion regarding this.

Mr. Reilly stated that if Ms. Nee sends a letter to the Attorney General's Office, he is sure all members of the Commission would be willing to co-sign it in supporting her.

5. Discussion of possible vote on changes to the City Charter:

Chair spoke on how to proceed with proposed amendments and stated that he sees the process as follows: the proposal is put on the table. He will then ask the sponsor to explain the proposal and then he will open it up for questions of the sponsor for clarification purposes and then discussion will continue on the proposal with speakers alternating pro and con until the Commission gets to the point of either voting for or against the proposal.

A. Amendment to Chapter 2.03 to extend the term of City Council members from 2 to 4 years (Sponsored by Mr. DosSantos).

Chair stated that he did not receive the language from Mr. DosSantos for this proposal, but if Mr. DosSantos would like to speak on his proposal, he will allow it.

Mr. DosSantos stated that he can draft the language for the next meeting, but he would like to speak on this proposal. Chair stated that he would allow discussion, but no vote will be taken this evening since the Commission does not have the language before it.

Mr. DosSantos stated that this change would be in the City's best interest regardless of party and it would be more productive changing the term for the City Council to four years.

Mr. Kirshenbaum stated that, currently, the Charter states "two year terms with a maximum of ten years". He asked Mr. DosSantos what he would set the maximum term limit if the term was changed to four years. Mr. DosSantos stated that maximum of eight years would be appropriate.

Mr. Santurri stated that his opposition is, logistically, if you stagger the terms, you would be causing voter confusion. If the election for City Council only occurred in non-Presidential years you would have lower voter turnout. His biggest concern is related to the money/funding part because currently, if someone wants to run a City Council campaign, it costs approximately \$5,000 to \$7,000 for Ward level and on the City Wide level, it would cost approximately \$10,000 to \$15,000. So, if you are having four year terms and someone who campaigns and fundraises for four years leading up to a vote, you are looking at possibly some Ward races or City Wide races doubling in terms of costs. What will end up happening is you will see less candidates come forth for office because of the cost factor and also less diverse candidates. He does see the benefit in doing this, but he has not seen too many examples where four year terms are favorable for the State of Rhode Island.

Ms. O'Hara stated that she is undecided about this. The possibility of staggering the terms, having been on the City Council, is not a good idea. The City Council works as a group together. You will have people always playing catch-up.

Chair stated that he is opposed to this concept on philosophical terms. His view is based on accountability to the voter. In this State, we used to elect people every year until the early 20th century and we went away from that process because of cost savings for elections. The only time you deviate from a two year term for elected officials, as he sees it, is for only two reasons: one reason is if you are electing people to a four year term because they are an executive and they need to hire people for some duration. That is why we went from two year term to a four year term for Mayors because people do not want to give up their career for just two years. The other reason you would go to more than two year term is if you were a bicameral legislative body and you want to create a check within that body, as they have at the federal level. Chair stated that because of all this, he would have to have to see a pretty good reason to move to a four year term to offset that reduction of accountability.

***B. Amendment to Chapter 2.03 related to redistricting to prevent gerrymandering
(Sponsored by Chairman Frias and Ms. O'Hara).***

Chair explained this proposal and stated that he modeled on a section of the Providence City Charter as suggested by John Marion of Common Cause. As to the addition of the language "by ordinance", in the proposal, Providence, as most cities and towns do redistricting by Ordinance, Cranston is doing it by Resolution. One reason it should be done by Ordinance is it allows for a check from another branch. Chair addressed the addition of sub-clauses #2 and 3 of this section and stated that this mirrors the language used by the City of Providence. He stated that the concept is that you do not want a District drawn in order to break up a neighborhood. Chair addressed the last three sentences in this section and stated that this language is from the Providence Ordinance and California Constitution. This, basically, is so that you do not want maps to be drawn to favor a candidate, an incumbent or a particular party.

Ms. O'Hara spoke regarding gerrymandering and stated this occurred during the time she served on the City Council and even afterwards. This also addresses the idea that we should not draw lines that would benefit an incumbent or potential candidate. We need to put into print what the criteria is and we need to follow it.

On motion by Mr. Kirshenbaum, seconded by Mr. Agresti, it was voted to consider approving this amendment.

Under Discussion:

Mr. Reilly indicated to the language “by Ordinance” being proposed and stated that the current Charter states “the City shall”, it does not state “by Resolution”. He would like some clarity because right now, the way he reads it, it states that “the City shall be divided into six Wards”. He does not see any language that would afford either the City Council or the Mayor any powers to vote in any way possible to change it from six Wards. What concerns him is the language “by Ordinance”. He sees that as the City Council would then have power, for instance, vote on making it ten Wards or two Wards.

Chair addressed the issue of “shall be divided into six Wards” and stated that, let’s say, by Ordinance, the City Council decides in 2021 to make it nine Wards. It would be in contrary to the City Charter. If you want to make it nine Wards, fifteen Wards, you have to amend the City Charter because the City Charter specifically states six Wards. By making it “by Ordinance”, it does not affect the Charter provision, which specifically states six Wards. An Ordinance would never trump the Charter.

Mr. Coccio asked who does the Redistricting. Chair stated that the last time the Redistricting was done was in 2012. It is done by the Board of Canvassers, specifically the Registrar. The Registrar would come up with different proposals that would meet the census and present the proposals to the City Council Ordinance Committee.

Ms. Nee asked, since she also has an amendment to same Section 2.03, procedurally, assuming they are both approved by this Commission, would they be combined and forwarded to the City Council as one proposal. Chair stated that assuming that both proposals to Section 2.03 passed, the Commission could recommend that they be forwarded separately or singularly and one of the issues would be are they two different concepts or are they concepts that work together? It would be up to the Commission to decide.

Mr. Reilly stated that he is undecided about this proposal, however, as it was indicated before, we have limited space on the ballot. He questioned where the sponsors feel this falls. Are these drastic changes or is this just further explaining what we hope is already done? Chair stated that the only things he would like to propose in general, will be things considered material and important. The reason he considers this important is because if we do not make the change on the 2020 ballot, we might as well not put anything forward for ten years because Redistricting only occurs every ten years. The reason why this criteria has to be specified is, as Ms. O’Hara pointed out, is because the criteria is not always followed because we know gerrymandering has occurred in the City and Redistricting will be occurring in 2021. It is important that the criteria is followed because if it is not, people will do whatever they want.

On motion by Mr. Agresti, seconded by Chairman Frias, it was voted to approve this amendment and forward it to the City Council. Motion passed on a vote of 10-1. The following being recorded as voting “aye”: Mr. Lepizzera, Mr. Frias, Ms. O’Hara, Mr. DosSantos, Ms. Nee, Mr. Pallini, Mr. Coccio, Mr. Santurri, Mr. Agresti and Mr. Reilly -10. The following being recorded as voting “nay”: Mr. Kirshenbaum -1.

C. Amendment to Chapter 2.03 to exclude ACI inmates from the census for purpose of redistricting of Wards (Sponsored by Ms. Nee).

On motion by Ms. Nee, seconded by Mr. Santurri, it was voted to consider this proposal.

Under Discussion:

Ms. Nee explained this proposal. She stated that, as everyone knows, the City is divided into six Wards. There are 3,400 inmates at any given time at the ACI. That means that the number of true constituents in Ward 6 is approximately 10,209 and the number of constituents in all the other five Wards are 13,300. In her view, the residents in Ward 6 have more influence in the voters than the other five Wards. The status quo is also inconsistent with State Law, which has a very specific Statute, RIGL 17-1-3.1, for domicile of each person and specifically provides that that domicile does not change by reason of incarceration. What that law means is even if you are eligible to vote at the ACI, which some of the inmates are, you do not vote in Ward 6 and you do not vote in Cranston, unless you happened to have lived in Ward 6 or in Cranston prior to being incarcerated, you vote where you were last domiciled. At least four states and over 200 municipalities and counties have made this change to reduce what is known as prison gerrymandering.

Ms. Nee addressed Mayor Fung's three arguments he provided in a letter sent to the Commission members. The first argument he made regarding funding. She stated that funding is not affected. There is no State or Federal funding that are apportioned to Redistricting data. It does not change the census data that Federal and State Grants might be based on. Cranston or Ward 6 would not lose any funding by making this change. The Mayor points out First Responders services. Ms. Nee stated that that is just a red herring, in her view. There is just no correlation between Redistricting and the money that is spent if there is a fire at the ACI or Pastore Complex. Ms. Nee addressed the second point of the Mayor, which is inmates are entitled to constituent services. She stated that the ACI inmates do not obtain constituent services and have little to no interaction with our elected officials. The crux of the Mayor's argument is that there is a First Circuit Decision, Case of Davidson, which states that Cranston can do this and he is correct about that, but just because we can do it, does not mean it is the right thing to do or is the right way to count people. Even though that decision states we can do it, it does not state we can't change it.

Mr. Lepizzera stated that Ms. Nee is correct about the Davidson decision, but it also notes that the majority of the jurisdictions in this country follow this rule and count the inmates. He noted that the inmates are in that particular Ward so the Fire Department has to go there in an emergency, also the Police Department from time to time have to go there. They are using our roads and our property and they are in Cranston and absolutely need to be counted.

Mr. Santurri stated that he is in favor of this proposal and the argument about First Responder services is facetious because the Cranston Fire Department is the most busiest Fire Department in the State. We send First Responders to Providence, Warwick and to other towns, but no one is suggesting that those people get a vote when it comes to Cranston politics. He does not think that First Responder services or City services necessarily imply that that means we should keep this policy. We have an ethical and moral responsibility for one person one vote.

The question is you either believe that the residents of Ward 1 and Ward 6 both have one vote or do you believe that the residents of Ward 6 have slightly more influence because there is less of a voting population. We all know that the inmates are not getting constituent services. We all know that the City Council Ward 6 Representative is not going to the ACI and the City Wide Council Member is not going to the ACI. He also stated that, to his knowledge, the Mayor has never gone to the ACI to visit a constituent and ask about constituent services. He supports one person one vote.

Mr. Kirshenbaum stated that he knows there are meetings frequently conducted by the Ward 6 Representative involving residents affected by the facility, such as Harrington Hall and what happens to the people who are on work release and who wander around Garden City and who may be in the library from time to time. He also stated that this is an issue within the Ward that they have to deal with regardless of whether they vote or not.

Chair spoke in opposition to this proposal. He stated that he first would like to clarify that Ward 6 does not produce less votes than other Wards, in fact, they produce more votes than other Wards. In the 2016 Election results, Ward 6 produced slightly more votes than Ward 2 for City Council. Ward 6 produced a lot more votes than Ward 3 for City Council. Ward 6 produced 5,300 votes in 2016 for City Council race and Ward 3 produced approximately 4,000 votes. He stated that he understands the passion related to this amendment. He looks at this as to why do we want to exclude the prisoners from the census data. Is it basically because they are transient and non-voters? There are other people in our City that are transient and non-voters who are counted in the census. Even people under the age of 18 are non-voters, immigrants who are non-citizens are non-voters, college students are transient to some extent, people in nursing homes who are sometimes there temporarily, people who are in homeless shelters who are there sometimes temporarily, people in the military who are here sometimes temporarily. We do not treat those people differently. If we start excluding one group then the question becomes do we exclude others. If it is in the census data, it should be counted. The question for him is, is Ward 6 getting some clear advantage? Based on the election data, he does not see it. In regards to constituent services, he stated that he is aware that the City provides a lot of services to the prison. When you provide services to a prison, you are providing services to the people there and those people have the right to try to contact whoever represents Ward 6. The fact that those people are transient non-voters, it should not be excluded from the census. He understands the passion and concern over its unfairness from some people, but as he stated before, in his view, the fact that a group of people are transient and non-voters, does not mean they should be excluded from the census for the purpose of Redistricting.

Ms. O'Hara spoke in favor of this amendment and stated that she knows this has been an issue for a long time. She knows the issue of one person one vote is meaningful. She does think it is the right thing to do and is in favor of it.

On motion by Ms. Nee, seconded by Ms. O'Hara, it was voted to approve this amendment and forward it to the City Council. Motion failed on a vote of 3-8. The following being recorded as voting "aye": Ms. O'Hara, Ms. Nee and Mr. Santurri -3. The following being recorded as voting "nay": Mr. Lepizzera, Mr. Frias, Mr. DosSantos, Mr. Pallini, Mr. Coccio, Mr. Kirshenbaum, Mr. Agresti and Mr. Reilly -8.

D. Amendment to Chapter 3.14 and Chapter 6.10 related to expansion of a Mayor's veto power (Sponsored by Chairman Frias).

On motion by Mr. Frias, seconded by Mr. Lepizzera, it was voted to approve this amendment and forward it to the City Council.

Under Discussion:

Chair stated that currently, the Charter provides that the Mayor can only veto increases in the Budget. The problem is, it does not allow for him to veto decreases. This is important because the City Council can make changes to the Budget that causes decreases that are not really decreases. He gave an example of a union concession, that does not actually occur. The Mayor should be able to veto increases or decreases because decreases could sometime be used as Budget gimmicks. Chair stated that the second part of the amendment is giving the Mayor the ability to veto the Budget overall. Sometimes there are so many changes in the Budget and instead of the Mayor going through it line item by line item, where under this amendment, he can simply veto the entire Budget. It would create more flexibility for the Mayor. It could be used as a tool to ensure fiscal stability and prudence in City finances.

Mr. Santurri asked if any other cities and towns have this type of proposal in their Charter. Chair stated that he did not look into that and does not know instead he looked at other sates some of which have a similar provision. Mr. Santurri stated that he is undecided regarding this amendment. He does not know what kind of impact this would have on the City Council powers when it comes to the Budget. Chair stated that it would be part of compromise in politics. This would be true in any situation.

Mr. Kirshenbaum stated that he is three quarters opposed to this amendment and one quarter undecided. He referred to Section 3.16 of the Charter and stated that in some cases, the City Council may choose to exercise this section of the Charter, which could cause a decrease. The Chair explained that you would read Section 3.16 in harmony with other sections of the Charter. You cannot fund a department through a veto that does not exist by Ordinance.

Roll call was taken on motion to approve this amendment and forward it to the City Council and motion passed on a vote of 6-5. The following being recorded as voting "aye": Mr. Lepizzera, Mr. Frias, Mr. Coccio, Mr. Kirshenbaum, Mr. Agresti and Mr. Reilly -6. The following being recorded as voting "nay": Ms. O'Hara, Mr. DosSantos, Ms. Nee, Mr. Pallini and Mr. Santurri -5.

E. Discussion as to other changes to Chapters 1 through 5 of the City Charter.

Chair asked if any Commission members have any changes or amendments they would like to address at the next meeting.

- **Mr. Agresti** stated that he does not see this in the Charter, but he does not like any politicians giving themselves raises. He stated that if a Commission member would like to work with him in drafting language to address this, he would appreciate it.

- **Ms. O’Hara** stated that she would be interested in exploring the Mayor’s request regarding appropriation in case of an emergency. She stated that the current Charter provides that special meetings can be called and acted on in 24-hour’s notice and she stated that that is pretty fast. She referred to Sections 3.07 and 3.13 of the current Charter. In reading all that, she stated that there is a lot of overlap and not a lot of clarity as to what would apply in certain instances. She also stated that there is also an option for the Mayor to meet with three City Council members. She thinks the notification issue in any of the Sections she cited may be the hang up.

- **Mr. Reilly** stated that he would like to address Section 3.07 of the Charter and what the Mayor is requesting is we do away with registered mail and we add the option to be able to notify the City Council members by e-mail in proper form.

Mr. Reilly made a motion to enact the Mayor’s proposal as to Section 3.07, however, He stated that given the practicality that, as we have discussed before, we have to limit what is to be placed on the 2020 ballot, he would be open to discuss making this change, but perhaps not in the first election and putting it on perhaps the second election.

Chair asked that procedurally, Ms. O’Hara, Mr. Reilly, Mr. Agresti and any other members, provide a redline version of their amendments to him and the Clerk one week prior to the next meeting so they could be listed on the agenda for discussion and vote.

Chair stated that for the next meeting, he plans on sponsoring two amendments that are consistent with what the Mayor recommended. The first is the one dealing with the Rainy Day Fund and the other is the property tax cap.

Chair stressed that if any members have any amendments they would like to have discussed and voted on, they provide the redline version to him and the Clerk one week prior to the meeting.

6. Scheduling of additional meetings.

The next meeting was scheduled for Wednesday, February 19, 2020 at 6 p.m.

7. Adjournment

The meeting adjourned at 7:40 P.M.

Respectfully submitted,

/s/ Rosalba Zanni
Assistant City Clerk/Clerk of Committees