

BEAVERCREEK CITY COUNCIL
Work Session, March 26, 2009, 5:00 p.m.

PRESENT: Mr. Hadley, Mrs. Howard, Mr. Jarvis, Mr. Leonard, Mr. Petrak, Vice Mayor Giambrone, Mayor Vann
ABSENT:

Mayor Vann called the meeting to order followed by roll call.

Mr. Hadley MOVED to approve the agenda, seconded by Mr. Jarvis. The Motion PASSED by unanimous voice vote.

Mr. McHugh reviewed the proposed changes that were submitted by the Beaver Creek Charter Review Commission

Section 4.03 Qualifications

(A) "Any qualified elector who has been a resident of the city or of territory annexed thereto for a period of one (1) year immediately prior to the date of the election or appointment, and who is not the occupant of an incompatible elected or appointed office, shall be eligible to serve as a member of council or as mayor"
Mr. McHugh was neutral on this subject but thought " At the time of swearing in" should be added.

Section 4.04 Officers of the Council

"The Mayor is recognized as Chief Executive Officer as required by the Ohio Revised Code for purposes of declaring an emergency, but not for appointments or any action other than as required by declared emergencies" Mr. McHugh was neutral on this subject but would like to have (Executive Officer) added behind CEO..

Section 4.05 Prohibitions

"No member of Council shall serve or be appointed to any Board or Commission designated within this charter. No Council Member shall hold any compensated Beaver Creek municipal office, while serving as a member of Council nor shall any member of Council hold appointive or municipal employment with the Municipality of Beaver Creek for a period of one (1) year after leaving or resigning from the office for which that Council member was elected or appointed".

Mr. McHugh was neutral on this subject and stated that any potential conflict of interest that could be an issue would be addressed by the Ohio Ethics Laws and the Ohio Criminal Code.

Section 4.08 Procedures

"The Council shall hold all public meetings at such times as may be prescribed by its rules, and within the geographical confines of the City or Township of Beaver Creek, but not less frequently than once each month. All meetings shall be open to the public, except as otherwise allowed by law. A majority of the members of Council shall constitute a quorum to do business. Special meetings may be called by the Mayor or three members of Council on 24 hours notice. The purpose of a special meeting shall be stated in the notice".

Mr. McHugh did not recommend this subject as it placed a geographical restriction on Council. It also reduces the number from four (4) to three (3) members to call a special meeting and increase from 12 hours notice to 24 hours

March 26, 2009

notice to each member, which restricts the ability of Council to act quickly when required.

Section 4.10 Compensation

(A) Council Salary. Council members shall receive an annual salary. The salary is set by ordinance in accordance with the provisions of this Charter.

(B) Change to Council Salary. Changes to Council salary shall only occur during presidential years. Council may vote to increase its salary by one of the two following methods:

(1) By a percentage not to exceed the cost of living allowance (COLA) established by the federal government for the total of the previous four (4) years. This requires an affirmative vote of a majority of the members of Council.

(2) Council may also increase or decrease the salary of its members in order to establish a new salary baseline in lieu of the COLA increase for that four (4) year cycle. This requires an affirmative vote of a supermajority (two-thirds) of the members of Council.

(C) Restrictions on Salary Changes. The Mayor and Vice Mayor shall receive no additional compensation for their duties. No member of the Council shall benefit from any increase in salary during such member's current term of office.

(D) Expenses. Council members may by resolution, stating the exact purpose thereof, receive their necessary and reasonable expenses incurred in the performance of their official duties.

Mr. McHugh did not recommend this being placed on the ballot; he recommended the last sentence dealing with Council expenses and current sub paragraph (B) and the proposed paragraph (D) be deleted. He stated that the amount of salary could be corrected for clarification by an Editors note added after paragraph (A) with notation of the ordinance number, date of adoption and amount of salary.

Section 5.02 Action Requiring an Ordinance

(10) "No ordinance may be passed which calls for using Municipal Tax revenue for uncompensated financing of development without the vote of public".

Mr. McHugh did not recommend this because it places a number of restrictions on Council because 1) it is unclear what is meant by municipal tax revenue; 2) the definition of uncompensated financing is not clear; 3) our street improvements that benefit citizens and the developer could be in violation of this and 4) this provision could be very expensive to implement.

SECTION 5.03 Introduction and Adoption of Ordinances

Any member of Council may introduce an ordinance. However, no ordinance shall be adopted at a special meeting.

Every proposed ordinance shall be introduced in written or printed form after review by the City Attorney. It shall be in the form required by the Council for final adoption. No ordinance shall contain more than one subject, which shall be clearly expressed in its title. The enacting clause shall be, "The City of Beaver Creek hereby ordains..." A written summary shall also accompany each

March 26, 2009

proposed ordinance at the time of introduction. The fact that the summary contains errors or is incomplete shall not affect the validity of any ordinance.

(A) *First Reading.* Upon introduction of any proposed ordinance, a copy shall be distributed to each Council member and to the City Manager, and the summary of the proposed ordinance shall be read.

After the first reading and upon approval for additional readings by the Council, the Clerk shall: file copies of the proposed ordinance in office of the Clerk of Council; post the proposed ordinance in full in the city offices; post the proposed ordinance in a designated place for public view in City Hall and publish one time the summary of the proposed ordinance or the ordinance in full in one or more newspapers or other printed publication regularly distributed and of general circulation in the City or public media forums as required or allowed by law. All publications of the ordinance shall also include the date, time and place for a public hearing, and for the third reading and final consideration on the proposed ordinance. The public hearing on the proposed ordinance shall follow the publication by at least seven (7) days. The public hearing shall be held in connection with a regular or special Council meeting, and may adjourn from time to time.

(B) *Second Reading and Public Hearing.* At the date, time and place of the regular Council meeting so advertised, the summary of the proposed ordinance shall be read for the second time, unless a member of the Council present requests a reading of the ordinance in full. All persons present shall be given an opportunity to be heard on the proposed ordinance subject to the rules of the Council. Following this hearing, the Council may cause the proposed ordinance to be returned to the first reading, or proceed to the third reading.

(C) *Third Reading and Adoption.* At the next regular meeting of the Council following the public meeting, the summary of the proposed ordinance shall be read for the third time. After such reading, the Council may adopt such ordinance by an affirmative vote of the majority of the members of Council unless conditions defined in other sections of this charter require Council to reject this ordinance.

After corrections are made a summary of the amended ordinance shall be published at least once, together with a notice of the date, time and place where such amended ordinance will further be considered. A public hearing on the amended ordinance shall be held. After such hearing, the Council may adopt such amended ordinance or again amend it subject to the same conditions.

(C) Conditions for the Rejection of Ordinance. At any time during the ordinance adoption process, Council shall reject any ordinance when: 1) the ordinance contains incomplete or erroneous information in its summary or any other part of its contents; and 2) if substantive changes have been made to the summary or any other part of the ordinance since its introduction. Upon rejecting the ordinance, Council shall ask for the ordinance to be corrected and reintroduced.

For purposes of this charter, "incomplete or erroneous information" and "substantive changes" are defined as errors and changes that materially involve or affect named parties, subjects, other proper or improper nouns, or actions called for in the summary or ordinance, or numerical discrepancies involving monetary amounts of at least \$500 or 1%, whichever is greater. Grammatical or punctuation errors are not "incomplete or erroneous information" and grammatical or punctuation corrections are not "substantive changes" unless they cause alteration to the meaning of the summary or ordinance as defined in

March 26, 2009

this charter. Any changes to the document structure such as numbering, formatting or paragraph ordering are not “substantive changes”.

- (D) Notice of Adoption. Within ten days after adoption of any ordinance, the Clerk shall post the summary of the ordinance in a designated place for public view in City Hall, and shall publish one time the summary of the ordinance or the ordinance in full in one or more newspapers or other printed publication regularly distributed of general circulation in the City, or public media forums as required or allowed by law together with a notice of its adoption.

Mr. McHugh did not recommend this section because the Commission had removed language that was in old sub Section C, which provides for a new second reading “...except that if an amendment changes it as to any matter of substance...” This would also not allow an ordinance to be adopted at a special meeting, which prohibits Council to act when emergencies exist that require prompt Council action. This imposes additional restrictions in sub paragraph C that require Council to reject an ordinance if there are conditions as defined in other sections of the Charter that require rejection. Sub-Section (D) is new and requires Council reject an ordinance when it has: “incomplete or erroneous information in any part of its content...” and “substantive changes have been made to the summary or any part of the ordinance since its introduction.” The restriction on a monetary amount revision of \$500 or 1% whichever is greater, is very restrictive. The Courts use a standard of what is the intention of the ordinance and what is the subject matter of the ordinance and not what is incomplete or erroneous.

Section 5.06 Emergency Ordinances

Council may adopt one or more emergency ordinance when sudden, urgent, or unforeseen circumstances require immediate action to avert possible adverse conditions on life, health, safety, property or public welfare.

(8) Levy Taxes

(9) No emergency ordinances shall be passed which calls for using Municipal Tax revenue for uncompensated financing of development without the vote of the public.

(10) Increase Council salary.

Mr. McHugh stated that the introductory paragraph has been significantly revised. The existing language mirrors case law in the interpretation of the Courts including the Ohio Supreme Court of what is an emergency. Imposing a requirement of sudden, urgent, or unforeseen circumstances is not required by the Courts. Additionally, sub section 8, 9, 10 impose restrictions on the ability of Council to legislate.

The Commission also imposed a requirement of a supermajority (two-thirds) of the members of Council. Mr. McHugh does not recommend the change because it is much clearer the way it is stated currently in the Charter by an affirmative vote of five (5) members of Council required for adoption. If there are vacancies on Council this new language creates a question on how many affirmative votes are required for an emergency.

March 26, 2009

Section 7.03 City Attorney

In conducting City business, the City attorney may be required to meet with private parties promoting a variety of political, commercial, personal or other interests with the City. However, the City attorney shall not provide advocacy legal council to private parties except when directed by the City Manager officially acting under the authority of the Office of City Manager. No member(s) of Council acting on their own shall ask, direct, or put the City Attorney in a position to provide advocacy legal council to private parties without official approval from the City Manager or through a majority vote of the members of Council.

When necessary, the City Manager may appoint special legal council to represent the city, together with or in place of the City Attorney. All special legal representatives shall be bound by the same guidelines as the City Attorney.

Mr. McHugh stated that the restrictions imposed on the Law Director would not be efficient for the City Manager or the City Attorney. The Ohio Supreme Court rules of professional conduct impose restrictions that he is professionally bound to and this provision creates uncertainty as to how the City Attorney is to respond to questions raised by third parties.

Section 9.02 General Rules for Boards and Commissions

(4) A citizen shall only serve on a single Board or Commission (internal to the City or external) at any one time. No member of a Board or Commission shall hold any compensated Beaver creek municipal office.

(11) A Board or Commission Member is entitled to apply for another appointed position without affecting their current appointment. If the Board or Commission Member is subsequently appointed to the new Board or Commission (internal to the City or external), the member's original appointment is automatically terminated.

Mr. McHugh stated that he would clarify section (4) not to exclude City Employees because he did not think that was their intention.

Section 10.04 Transfer of Appropriations

At any time during the fiscal year the City Manager may transfer part or all of the unencumbered balance within a fund; and upon written request by the City Manager, the Council shall by ordinance transfer any unencumbered balance between funds. The ordinance to transfer any unencumbered balance shall become effective upon adoption.

Mr. McHugh stated that this section was revised per request of Mr. Kucera to address an issued raised by the State Auditor, which he responded to last year.

Section 10.10 Annual Appropriation Ordinance

Amendments to the annual appropriation shall be passed by ordinance with an affirmative vote of a supermajority (two-thirds) of the members of Council and shall become effective upon adoption.

Mr. McHugh explained that this section is intended to clarify the adoption of the annual appropriation ordinance and recommended the removal of supermajority and insertion of five (5) members of the Council be required. He also wanted added "Provided Council expenses are approved in the annual appropriation ordinance or an amendment to the annual appropriation ordinance, no resolution

March 26, 2009

otherwise required for by Article IV Section 4.10 shall be required to be approved by Council to expend or pay necessary and reasonable expenses of a Council Member incurred in the performance of their official duties" per discussion of 10.04.

Section 12.05 City Responsibilities

When submitting a Referendum, Initiative or Recall petition, all procedures are executed as outlined in state statutes except as provided here:

The Clerk of Council shall provide all the necessary forms to gather the required number of signatures for a petition drive; at the cost charged to the city, or the cost incurred by the City for reproduction.

All petitions shall be filed with the Clerk of Council, and the Clerk shall transmit and receive all petitions between the Greene County Board of Elections as specified by state statutes.

A minimum of three (3) petitioners are needed to establish a committee to file the petition.

A petition need only be signed by five (5) percent of the number of electors who voted for governor at the most recent general election for the office of governor in the municipal corporation.

Mr. McHugh stated that this section changes the State Statutory requirement of a referendum, initiative or recall petition being filed with the City Auditor and reduces confusion in requiring these petitions be filed with the Clerk of Council although sub section 3 removes the ability of the Clerk to not certify the petitions. The proposal also reduces the requirement on referendum and initiatives of the number of Committee members from five to three and a reduction in the State requirement of ten (10) percent of the number of electors to five (5) percent of the number of electors who voted for governor at the most recent general election for governor. He said Council should consider the implications of reducing the number of signatures required to place a referendum or initiative on the ballot.

Mr. McHugh stated that Sections 12.01 through 12.04 require the matter be held at the next election occurring 75 days after the recall petition is certified by the Board of Elections and that Special Elections are expensive. He recommended the Committee remain at five (5) and the petition requirement remain at ten (10) percent.

Council was not in favor of this section going to the voters but thought it would be a good idea to have information on the website similar to Columbus, Ohio with the Ohio Revised Code information.

Vice Mayor Giambrone stated that it made sense to clarify CEO in section 4.04 and that 10.4 and 10.10 which were recommended by Mr. Kucera to clear up operational problems also made sense.

There were also administrative changes suggested including definitions, spelling errors, a correction to section 6.02 (7) to fix editors note, adding City Manager section 6.04, replace the word sympathetic with knowledgeable section 8.02 and clarify language in 12.03 by using the same wording as in 12.04 that Council agreed should be changed.

March 26, 2009

Vice Mayor Giambrone MOVED to adjourn at 7:13 p.m. seconded by Mrs. Howard, the motion PASSED by unanimous voice vote.

Julie Vann, Mayor

ATTEST:

Clerk
Cmin032609