



## **SHERWOOD CITY CHARTER REVIEW COMMITTEE MEETING December 6, 2018 Minutes**

1. **CALL TO ORDER:** City Attorney Josh Soper called the meeting to order at 6:05 pm.

2. **ROLL CALL:** Legal and Financial Assistant Jennifer Matzinger.

**COMMITTEE MEMBERS AND LIASONS PRESENT:** Brian Amer, Mark Cottle, Laurie Holm (via phone), Randy Mifflin, Bernie Sims, Nancy Taylor, Councilor Renee Brouse, Councilor Tim Rosener. Dave Grant arrived at 6:09 pm and Linda Henderson arrived at 6:17 pm. Bob Silverforb was absent.

**STAFF PRESENT:** City Manager Joe Gall, City Attorney Josh Soper, IT Systems Administrator Mark Swanson, Legal and Financial Assistant Jennifer Matzinger.

### **3. APPROVAL OF AGENDA**

There were no oppositions or changes to the agenda. Agenda was approved.

Chair Cottle addressed the next agenda item.

### **4. APPROVAL OF MINUTES**

#### **A. October 30, 2018 Committee Meeting Minutes**

**MOTION: FROM NANCY TAYLOR TO APPROVE THE MINUTES, SECONDED BY BERNIE SIMS. MOTION PASSED 7:0. ALL MEMBERS PRESENT AT THE TIME OF THE VOTE VOTED IN FAVOR.**

Chair Cottle addressed the next agenda item.

### **5. COUNCIL LIAISON COMMENTS ON CHARTER REVIEW PROCESS**

Councilor Brouse stated that part of the reason they meet is because of the bylaws that direct them to meet approximately every 6 years. Secondly, it is a way to prevent a few or one or two councilors from hijacking a meeting or to push their agenda through.

Councilor Rosener agreed with Councilor Brouse that part of the reason to meet this year was born out of some of the challenges we went through as a community last year. They now have a set of Council rules that help them govern that. It allows the entire council the opportunity to have something on the agenda. For example, it now only takes 3 councilors to put an item on the agenda or call a meeting instead of having the minority being silenced by the majority of the council. However, the challenge they have is the

Council rules can be changed every year. He stated our Charter has different standards. For example, it says that it takes 4 council members to put an item on the agenda. He said that while they have a great council right now they wanted to ensure that the voices of future elected officials could be heard.

*Record Note: Dave Grant arrived to the meeting at 6:09 pm.*

Chair Cottle summarized that what he was hearing as an important item to council is to amend the charter so that the minority or at least one less than a majority could put something on the agenda. In other words, currently if the majority was 4, then the number required would be 3, but if the number of councilors was changed to either 5 or 9 members it would resort to one less than whatever a majority would be at that time. Both Councilor Rosener and Councilor Brouse agreed that was correct. Councilor Brouse further clarified that they wanted to ensure that the charter reflects that in particular because the council rules can change from year to year and this would give the minority something to fall back on.

Chair Cottle asked if there was anything else the councilors felt were critical for the committee to look at or redo. There were no other comments from the Council liaisons.

## **6. CITIZEN COMMENTS – None.**

Chair Cottle addressed the next agenda item.

## **7. NEW BUSINESS**

### **A. Review Public Input Received**

Chair Cottle asked City Attorney Josh Soper if he had received any public input. Mr. Soper explained the various methods of advertising he explored, including a survey on the City's website, placing an announcement on Facebook as well as Twitter, contacting the Sherwood Gazette for placement online and in their printed paper. He said despite these efforts, they have not received any public input. Chair Cottle stated that he would like council members on the committee to make a statement at their next council meeting to let people know they can go online and provide comments. Mr. Soper explained they had done that at the last council meeting, but the deadline was that day. He stated that the link is still active on the website, however they have not received anything. Chair Cottle asked that we continue to make the announcement and further asked the council members to ask their committees as they meet to continue to make the announcement to ensure people are aware and point them toward the website for comments on the process.

Discussion ensued about potential future processes for input received from the public. Ms. Taylor stated that she believed public education on what they are voting on, the substance, and why they need to weigh in is important to her because in the future they may need to expand/contract on some of these ideas. Chair Cottle agreed that should be part of our outreach and providing education in order to have a meaningful dialogue for those citizens who are interested is important. He asked Mr. Soper to provide a short explanation of what the charter is and outline the hierarchy of governance of the City i.e. the charter, ordinances, policy, rules, etc. just so people understand the context as well as explain that a charter is not a place for specific items, it is to help us govern.

## **B. Review Committee Member Preferences Regarding Charter Issues to Pursue**

Chair Cottle then briefly reviewed the Sherwood Charter Review Issues prepared by Mr. Soper (see record, Exhibits A and B) and their respective ranked order. Chair Cottle asked if there were any sections that didn't get a top vote that somebody wanted to have time spent on.

## **C. Committee Discussion and Decision Regarding Charter Issues to Pursue**

Chair Cottle briefly reviewed the color coded system provided by Mr. Soper. He began with the items that were listed in red and explained those were the items that Mr. Soper deemed to be unnecessary and asked if any members had any questions. Mr. Soper clarified that the four sections that were highlighted in red were all items that clarified that the charter prevails over something else that is subsidiary to the charter. In his opinion, they were not sections that needed to be addressed as they simply discussed the inherent nature of the charter.

Chair Cottle asked if there were any items under housekeeping that committee members disagreed with. He explained for those that missed the last session the reasoning behind why they broke sections up into categories. He stated that the substantive issues would be stand-alone ballot issues and all of the other housekeeping items would go onto another ballot initiative. Chair Cottle clarified that the committee member's determination tonight was not final and was only asking if anyone wanted to address the housekeeping sections.

Mr. Soper stated that he did have some possible additions to the housekeeping items based on comments from committee members. He then briefly reviewed those additions, which included: grammatical and punctuation issues found in section 31; a reference to nominations to run for mayor or council in section 28, which were previously addressed in another section and should be made consistent; an effective date of January 1, 2015, which needs to be brought current; and adding a definition to the word "reside".

Chair Cottle stated he found one in section 21 that he did not think was necessary. He said they wanted to change the wording "may state the City of Sherwood orders as follows" to read as "must state the City of Sherwood orders as follows". His problem with that change is that if you put it as "must" and for some reason someone doesn't add "the City of Sherwood orders" do we really want to make an ordinance ineffective because we made an error and did not follow the charter language. He said as an attorney he would point out the discrepancy and challenge an ordinance that it is no longer effective. Mr. Soper stated that they have the "must" language currently in place for ordinances, but the wording in resolutions and orders is "may". He said the staff suggestion was to bring them all in line with each other so they all either say "must" or "may". Chair Cottle felt more confident that they should leave it at "may" to avoid any problem in the future. He said that whichever word they ultimately decided upon would affect both section 18 and section 21.

Chair Cottle reviewed the items labeled in green, which were issues Mr. Soper felt were most important. He asked if any of the members wanted to go over them. Councilor Tim Rosener said when they were setting council rules one of the issues that was discussed a lot was the definition of a quorum. He agreed that it is a legal term, however the question was does it apply to all 7 seats or how many are seated. He felt that there was some vagueness in that language. Mr. Soper stated he was happy to see that all of the items that he identified in green matched committee members picks as well. He agreed with Councilor Rosener's assessment about the vagueness around the word quorum, in particular given the recent experience with the number of vacancies that occurred on council. Mr. Soper certainly wants to address those in the event that situations come up again in the future.

#### **D. Begin Discussion of Selected Charter Issues**

Chair Cottle noted that there was a tie on section 5. He said he would like to address the issue of disposing of assets and said he thinks it is very dangerous if we want to go to a city vote on disposing of city assets of any size because he doesn't know what the future brings as far as emergencies that may arise or opportunities that may arise. He said he knows a lot of people went through some heartburn with a prior council and what they tried to do to the YMCA and said he believes the system worked as it did not happen. He said if the citizens are passionate enough they can do what they did then. He said it makes him very nervous when we delay selling assets or hold harmless an organization because currently we like it, but we don't know if that is going to be true in 20 years. He said in speaking of the Y, there are three people that were at the ground floor getting the Y to come to Sherwood and the Y is a wonderful partner today and he doesn't know if they will be a wonderful partner for Sherwood in 20 years. He said he doesn't know if Sherwood will outgrow what the Y can do or if they will want to take it on themselves and doesn't think we should hamstring the council from exploring those options by requiring a vote. He asked if anyone else wanted to put forward a charter amendment requiring a citizens vote? He stated there are many ways to do it and said we can have a charter amendment requiring citizens to vote on disposing of assets over a certain amount of value, or we can say, the council has to have their normal hearing on it and in three months, two or one month later, they have to have another hearing, so it can't be done in a quick fashion.

Nancy Taylor asked regarding disposal of assets, and referred to the property recently purchased by the Sherwood school district and if there was language in the charter would the citizens have had to vote. Discussion occurred regarding an asset being anything the city owns and has monetary value. Discussion occurred regarding various city owned properties with a value over \$2 million.

Ms. Taylor said her point is the school district purchased the property without any interference and that was the best way for that to happen and it needed to happen quickly. Chair Cottle commented regarding his tenure on the city council and purchasing property, and practices when selling property. City Attorney Soper commented regarding the selling of public property and there being state requirements that must be followed. Chair Cottle commented that his issue is more philosophical, and for him we vote on a city council for a particular purpose and this is one of them.

Chair Cottle asked if any of the committee members wanted to limit the city council's ability to purchase assets by way of the charter, or sell assets? Chair Cottle asked for feedback on limiting the selling of assets?

Bernie Sims said there has to be so much diligence so it feels like an unnecessary thing to cover at the charter level. Brian Amer agreed this is why we elected council. Linda Henderson added it takes a majority of council to make a decision.

Chair Cottle addressed the next subject. Mr. Soper referred to council vacancies and said currently the default in our charter is if anything is going to be approved by the council it has to be approved by a majority of a quorum, unless the charter says it has to be approved by a majority of the council. He said a majority of the council is at least 4 votes. He said if it's a majority of a quorum, a quorum could be 4 votes and a majority of that is 3. He said he is suggesting the group look at two questions; the division between what requires a majority of a quorum and what requires a majority of the council and whether that division makes sense, and then fixing the issue and clarifying what happens to the quorum and the majority of council requirements in terms of the numbers when there are vacancies on the council. He said he believes the simple solution here is to say, when there is a vacancy that empty position does not count towards the

total number. He provided an example and asked for discussion. Laurie Holm asked if it can be written such that, it's a majority of council as seated at the time of the vote. Mr. Soper replied this was his initial thought process to eliminate the vacant positions from the total that is being counted. Discussion occurred regarding "seated position" and "filled positions". Ms. Holm replied she would agree with this, referring to positions that are filled. Chair Cottle asked if it made sense in the charter to say a "quorum" versus a "majority" of the seated council? Mr. Soper referred to definitions in Section 19, Resolution and an Order Approval. Chair Cottle asked for an explanation of the difference between a resolution and an order. Mr. Soper gave the example of a high school civics class and the three levels of government. He said an ordinance is legislative actions, like Congress, a resolution is administrative actions, or executive actions like the presidency, and an order is like a judicial action, like the courts. Chair Cottle referred to orders and they being a land use decision, and provided examples of the differences between all three types of legislation. Mr. Soper stated as it is currently, resolutions and orders only require a majority of a quorum, but a majority of the council is required to enact an ordinance. Chair Cottle commented that this made sense to him and provided examples.

Council Liaison Tim Rosener referred to the current language and an ordinance requiring two public hearings, unless it's an emergency where you need to have the full council present.

Mr. Soper replied there is a majority of a quorum, a majority of the council and there is one thing that requires all council members, and this is the emergency ordinance adoption. Comments were received that this needs to be clarified; all "seated councilors", or "all councilors". Mr. Soper said he believes the easy fix to the vacancy language is to put something in the vacancy section that says, if there is a vacant position that position is treated as if it does not exist, so then all councilors would be all "seated councilors", by default. He said if fixed in one place it will permeate to the rest of the charter. Discussion followed with reference to section 31.

Chair Cottle asked the group if they thought there was any reason to make it always be the full council, a majority of the full council. Discussion followed regarding confusion with past issues with vacancies. Chair Cottle referred to the prior discussion and disposal of property and language stating, for example, disposal of property worth more than \$2 million requires a majority of the seated council. Mr. Soper referred to Section 13 the default rule is the majority of quorum unless specified otherwise. Discussion followed. Chair Cottle commented that when disposing of assets he wants the entire Council to make the decision. Discussion occurred regarding the decision surrounding the YMCA.

Mr. Rosener referred to having an opening (vacancy) on the council and controlling the agenda and delaying the filling of a seat if it favors the voting. He said we have previously seen this. Discussion occurred.

Mr. Soper recapped and said he will prepare an amendment to Section 31 that would clarify the vacancies in office don't count towards anything and word it accordingly. He explained and provided an example and said if you have a 7 member council and you have a vacancy, you treat it as if you have a 6 member council. He said if anyone has concerns with a "majority of quorum" versus "majority of council" to let him know, otherwise he will leave it alone. Discussion occurred.

Ms. Taylor asked regarding Section 31, section 4 an election to a different city office and what about a state or regional office. Chair Cottle replied his understanding it's an Oregon state law that you cannot hold more than 1 elected position. Discussion occurred. Mr. Soper said if cleaning up section 31, with the

consensus of the committee he will have the language state, "elected office". No objections were received from the committee.

The committee discussed the word "reside" in Section 31 and Mr. Soper said he would address this as a housekeeping measure and said his concern with the housekeeping measure is if he asked the committee to define reside, he would probably get 7 different definitions. Discussion occurred and Mr. Soper explained that to him a housekeeping issue is not a substantive change, noncontroversial and objective, and clearly a "fix", versus a decision about what the language should state. Discussion occurred regarding the "housekeeping" measure being separate from the other proposed measures.

Mr. Soper said we are not the first community to struggle with the word reside and said the law cannot come up with an effective definition. He said there are definitions for tax purpose, registering to vote, running for office, different states, different counties and different rules, but they all ultimately come down to a subjective definition. In Oregon for registering to vote a person's place of abode in the state, the person intends to remain in or if absent, to return to. Discussion occurred about different perspective of the definition and if the word "reside" was the right word to use. Mr. Soper said most of the sections where "reside" comes into play, it also requires a person to be a registered elector in this community, which then triggers the state definition he just stated. He said if we want to do our own definition of reside, we will probably do something similar to what the state already does for registering to vote. Discussion occurred.

Chair Cottle addressed Section 12-Quorum and asked if there was anything else in this section. Mr. Soper stated he believes the suggestion, unless someone feels differently for the quorum issue, was to use the definition we have in the council rules, which is the 50%, plus 1. Chair Cottle stated they also wanted to know what "compel attendance" means. Chair Cottle commented regarding historically, what "compel" attendance looked like. He said he has not seen it used since 1990. Dave Grant clarified that it would only be for an emergency ordinance because that is the only time you have to have everyone there. Discussion occurred and Mr. Soper said you could also have a situation where you couldn't establish a quorum because people were preventing something from happening. Chair Cottle stated this could happen in a land use decision. Council Liaison Brouse asked doesn't this go back to the rationale of having a majority of seated councilors, versus a quorum? Mr. Soper stated for orders, it's a majority of a quorum. Discussion occurred.

Council Liaison Rosener referred to the LOC (League of Oregon Cities) model charter language.

Mr. Soper said the other way the charter is written is less than a quorum could compel attendance as prescribed by council rules. He said the question here is whether we want to define it in the charter or leave it as is in the council rules. Ms. Henderson asked who compels the council to follow their rules. Chair Cottle replied no one. Ms. Henderson said you can't pass an ordinance without the majority of the council, if you can't change council rules with a majority of a quorum. Mr. Soper replied, correct. Discussion occurred and Chair Cottle said when the committee gets there, they can say that council rules are adopted by the council and can only be changed by the council. Mr. Soper commented regarding compelling attendance and adding some sort of penalty for not attending. Comment was asked, if monetary? Chair Cottle added, or you lose your office, it becomes a disqualifying event. Discussion occurred.

Chair Cottle suggested leaving it to council to suggest to the committee, as they have until May, if they needed to tackle that issue or if they are capable of tackling that. He said he liked the idea that council rules are voted on by the council every year, and ought not to be changed by a quorum but changed by the majority of council. Ms. Brouse asked to clarify that Chair Cottle was suggesting the Council decide what

compel means or how they would address that? Chair Cottle replied, the process of compelling. He said right now it's essentially left up to the council rules. He asked the group if they think the committee needs to be involved in the process, if it needs to be in the charter or can it stay in the council rules, the methodology of compelling. He said he liked not allowing the council rules to be modified midway through the year by a quorum because that just undoes the council rules of the entire group. Discussion occurred. Chair Cottle stated he believes the rules should only be modified by the same methodology as they were originally adopted. Ms. Brouse confirmed that that would be reflected in this document (the charter). Mr. Soper recapped and said we would amend section 10 to require approval of the council rules by a majority of the council. Chair Cottle added that he believes this is a housekeeping matter and should not create much debate. Ms. Henderson added that she would like to see under the council rules a penalty for violation of council rules. She said what is the point of specifying council rules if there is no enforcement, there is no due process. She spoke of censuring, striking a deal, people apologizing and then moving on. Councilor Rosener reminded the group of an occurrence where the council voted three times on the same subject because they did not like the result of the vote. Discussion occurred. Chair Cottle added that citizens should have the right to enforce council rules, but he did not know what the methodology is of enforcing council rules, is it requesting a hearing through the mayor claiming that someone violated council rules. Ms. Henderson commented regarding the current system and having to compel three councilors to put it on a future agenda, which would force the discussion.

Mr. Soper asked the group if enforcement of council rules was something they want to put in the charter, or something the council should look at and address in their own rules. Mr. Grant stated there was a mechanism for a majority of the council to remove another council member and that was removed from the charter a number of years ago. Discussion occurred that the provision was in Section 3, specified reasons. Discussion occurred. Chair Cottle stated that there is a big code of Oregon violation of laws that has due process language and said if the council is so inept that they can't figure out a way to have appropriate penalties without us writing them out for them, he thinks it becomes difficult although he also knows that the frustration is that those in the minority will complain that someone is violating the charter, but if you don't have four votes, there is no triggering event. Mr. Soper added there is no mechanism to prosecute someone for violating the council rules. Mr. Soper added that council rules could probably be more called council guidelines.

Ms. Brouse recapped and asked, should the mechanism for enforcement of council rules be in the charter or in the council rules, if the charter is the prevailing document of what is supposed to happen then it should be in the charter. Chair Cottle said yeah, but how do you want to do that? He gave the example of putting in the constitution the criminal code of the US in regards to the rules of the legislature. Mr. Soper added he thinks it depends on what you have in mind for what enforcement should look like. Discussion occurred regarding prior conduct of the council. Chair Cottle added that all we are going to do here is to allow those in the minority to put something on the agenda. He said to enforce anything you will either need to have a private office that has independent ability to look at it and enforce it or you will have to get a majority of the council to enforce it. He said these are the only two methodologies he can think of. He said the question is, do we want to vest some other person with the power to overlook the city council to make sure they are following their own rules. He said he did not think you want to do that. Discussion occurred. Mr. Soper commented and said generally what you would see is the only enforcement is censure and it does not have any consequences, it's just a public reprimand. He said this seems appropriate based on what's in the council rules. Chair Cottle reminded that four council members would be needed to agree upon this. Discussion occurred and comments were received regarding having language in the charter as it did not fluctuate like council rules. Discussion occurred regarding removal of council members through a recall process. Mr. Soper added that it could be as simple as putting something in the charter that says, "a

majority of council may censure a councilor for violating the council rules". He said the rules could elaborate what that means. Ms. Brouse agreed and said it gives us something to fall back on. Chair Cottle stated that it's dangerous to make policies for the next 20 years based upon a recent incident. He said let's look at putting something in the language.

Chair Cottle addressed Section 3 Boundaries. He said this is a suggestion of voter approval requirement for requesting expansion of urban growth boundary (UGB) in excess of 100 acres.

Chair Cottle said if he understand the request, it would not place in the voters hands of whether it could come in, it's whether we could seek to ask for more than 100 acres to come in. Mr. Soper confirmed. Chair Cottle asked Mr. Soper to explain the process and commented regarding Metro and current practices. Mr. Soper replied this is one of the challenges with the process for UGB expansion has changed recently and may change in the new future and changes with some regularity. He stated his suggestion for this issue would be that if we discuss this at the next meeting maybe bring in a subject matter expert to talk more in depth so we can look at what this looks like and our approaches. No objections were received from the committee.

Chair Cottle addressed the Mayors position, Section 25. He asked if anyone wanted to have term limits for the mayor. Ms. Brouse stated there should be consistency. Chair Cottle asked why? Ms. Taylor stated she liked the idea of term limits in general for the reasoning that we need new people. She explained her interpretation of the current process that seems to her to not have term limits but has a "cooling off" period. Discussion occurred regarding the consecutive term limits for council and if considering term limits for the mayor to also consider the term as it is two years. Chair Cottle suggested three consecutive terms, being six years in total, and he/she would need to sit out for one, two year term before running again. Discussion occurred regarding Tualatin's terms and recent changes. Mr. Sims stated there are two issues, what is the term of the mayor, as it's continually running every two years and where is the city benefiting on such a short term. Mr. Grant stated this was discussed when the committee previously looked at this and said the feeling was that since the mayors term was a two year term, that term limits might not be needed as the mayor is constantly running for office. Discussion occurred regarding if wanting to term limit someone out, to term limit them for one of the terms and allow them to run again. Comments were received that some people agreed and this was effective. Chair Cottle polled the committee members for term limiting the mayors position. He asked how many terms would be appropriate. Comments were received as 3 terms. Discussion occurred regarding the terms of councilor positions being a total of 12 years. Chair Cottle asked Mr. Soper to craft language that the mayor terms out after three terms and must sit out for one term before running again. Comments were received in agreement with Mr. Sims that term limits could be 2-4's instead of 3-6's. Chair Cottle stated this previously failed when wanting to increase the term of the mayor. Ms. Holm asked why did it fail and what is the rational of the mayor having a shorter term than councilor members if everyone is essentially equal. Chair Cottle replied they are not because the mayor sets the agenda and he/she can veto things. Discussion occurred. Chair Cottle provided an explanation of why he believes the terms are as such. He said if you want the term to go to four years, he suggested doing that separate from everything else as it recently failed. Mr. Soper added he recalls there was a proposal to change it to a four year term, but there were no term limits at the time. He said maybe if you're doing both at the same time, it would have a different result. Comments were received in agreement. City Manager Gall stated that he believes it has failed twice during his seven year tenure at the city. He said when he inquired with residents as to why they voted against it, one of the consistent responses was because you have three councilors up every two years and you get an opportunity to vote on the mayor, which is a quorum, it's a majority of the seven council members, and if things are really out of whack, and if we want a new majority on the council, every two years we have a chance to swap out four people. Comments were



received that this makes sense. Chair Cottles recapped the poll of hands to term out the mayors position at three terms and said the consensus was three terms (2 year term), and sitting out a term, before running again. Mr. Soper replied he would draft the language as such.

Chair Cottle stated he will leave Section 16 for the next meeting as it will involve a lot of discussion, unless the committee wanted to address it tonight. No objections were received.

Chair Cottle recapped and said Mr. Soper will propose concept language for what we spoke of tonight and put housekeeping into one section, and we will leave section 16 for future discussion and probably only focus on this section at our next meeting. Mr. Soper confirmed to have the UGB discussion as well with a subject matter expert.

The committee discussed their next meeting date and concluded to meet on January 24 with a 10-15 minute discussion on land use, and start discussion on Section 16.

Mr. Amer commented regarding a possible change on disposition of assets and if this would require a vote of the full majority of the Council, as opposed to a quorum. He asked if Mr. Soper has this in his notes. Chair Cottle added that he did not believe that the committee should propose a single dollar limit and it should float with the consumer price index so that in twenty years it's still semi relevant to the issue.

**8. COUNCIL LIAISON REPORT** – None.

Ms. Henderson commented regarding the challenge with a 6pm start time due to her employment and the committee agreed to start the next meeting at 6:30 pm.

**9. ADJOURN** - Chair Cottle adjourned the meeting at 7:31pm.