

**NORTH RIDGEVILLE CIVIL SERVICE COMMISSION
MINUTES OF THE
REGULAR MEETING – MONDAY, AUGUST 26, 2024**

CALL TO ORDER:

The meeting was called to order at 5:00 PM.

ROLL CALL:

Present were Secretary Amie Espinosa-Gonzalez, Vice-Chairman Sam Spann and Chairman Donald Schiffbauer. Also present were Law Director Brian Moriarty and Deputy Clerk of Council Tina Wieber.

APPROVAL OF MINUTES:

Regular Meeting Minutes of July 22, 2024

Chairman Schiffbauer asked if the Commission had any questions or comments regarding the regular meeting minutes of July 22, 2024.

None were given.

Moved by Schiffbauer and seconded by Spann to approve the regular meeting minutes July 22, 2024.

A voice vote was taken and the motion carried.

Yes – 3 No – 0

REPORTS:

Retirement of Police Sergeant Corey Sabo dated August 16, 2024.

Chairman Schiffbauer stated that the Commission received communication regarding the retirement of Police Sergeant Corey Sabo and congratulated him on his retirement and thanked him for his service.

Discuss Municipalities' use of Home Rule versus ORC.

Chairman Schiffbauer stated that Law Director Moriarty was present to provide some information regarding home rule versus ORC and why some municipalities choose to exercise home rule.

Law Director Moriarty explained that when the State was formed and the larger cities started developing, that was when the home rule became effective and basically was based upon the fact that the citizens of the city or the municipalities should be able to create their own rules that they were going to live by. He discussed that as the State developed and the Constitution had amendments where they finally recognized home rule in the Constitution, what happened was that the way the Constitution is written, there are two forms of home rule, and it was kind of complicated. He stated that it said right off the bat the any municipality may frame or adopt or amend its' charter for its' government and may, subject to Section 3, exercise all powers of local self-government. He commented that the first general rule was basically that if a municipality, and it could only be a charter municipality, villages and townships had different rules that applied to them, but if you are a charter municipality in the State of Ohio, like all big cities pretty

much in the State are, they can have their own city charter, which was their own basic guidelines and or constitution that applied to that city. He said that Section 3, which was mentioned in there, said that municipalities shall have the authority to exercise all powers of local self-government and or adopt and enforce such as police, sanitary or other similar regulations not in conflict with general laws. He indicated that they decided that there were two aspects of home rule. One is local self-government, matters of local self-government and other ones are police powers, sanitary issues, sewage issues, things that applied to everybody in the state equally. He stated that the Criminal Code is a police power and that was something that applies to everybody equally. He said that if it's not a police power or sanitary issue, any kind of issue regarding Civil Service was one of local self-control. He discussed that the charter could but didn't have to create rules for its own Civil Service Commission. He stated the Charter itself right at the beginning declares that this is a charter city, and we are going to use our home rule powers as provided in the Constitution. Now purists would say, oh, the Constitution doesn't give us the home rule authority, we had it inherent in the cities, the fact that we created our own city or municipality and that was a debate that goes between courts and was just a matter of interpretation. He went on to state that the Constitution says that you can have this home rule authority. Our city has in its charter declared the intent to use all of its' local self-governing powers in two ways, one through the charter itself, and two, through ordinances. He commented that we are able to create rules that are applied to everything within our jurisdiction through ordinances or in the charter itself. Civil Service Commission rules set forth the duties and powers of the Commission, and number one, had a couple of things in there and states that the charter expresses the intent to create the home rule. He added that there was a general delegation of duty or authority to make rules and commented that that has been upheld in other courts and in fact, that's been upheld in a case recently in our district where once that general rule making authority has been set forth in the charter, you can go ahead and create any rules and general law doesn't matter. He stated that there was another one in there that talked specifically about the authority to make rules regarding promotions. He stated that it was in Section 10(4)(a) and was more specific to promotions and the Civil Service rules regarding appointments in that. He explained that in two areas they had the rule making authority being put upon the Commission through our charter to make rules and regulations and those can conflict with state law. He added that because they were not police power, these are matters of local self-government and so that's really the big distinction. He discussed that in the court cases that they had pending, a good example of it is the residency. He described that it used to be a state law that applied to everybody throughout the state, but they found that to be unconstitutional and that it took away the power of municipalities to set up their own rules and that was a pretty well-known example of where not all rules that relate to Civil Service Commission are general rules that apply throughout the state. He continued that they came out and said actually just the opposite, saying no, charter cities are allowed to have residency requirements, or they're not allowed to have residency requirements, but it was up to the state or up to the city and was an example of it. He stated that regarding the rule of three, that was another example that was done throughout the state and he looked up that there were forty-some cases just in putting in the rule of three from all different municipalities throughout the state where it's been talked about and upheld. He explained that that was because their charter provisions provide for either one, general rulemaking authority for Civil Service, or two, specific authority to do it. He said that in one case it had exactly the same language that we have where they did it through an ordinance and in fact, we did it both ways. He said we did an ordinance, and Civil Service made the rule through the Commission, so he felt that the rule of three as an example was just as an example of the city's exercise of local self-government.

Chairman Schiffbauer stated that he thought that was good information for the fact that there have been several issues that have come before the Commission regarding rules that have differed from the ORC and it was important for them to be able to level set and have an appreciation of why they were able to do that, so that when they did engage in discussion about whether or not to adopt a rule, change a rule

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and such, that they had the opportunity to know how they got there in the first place with home rules and stated that he appreciated that.

Law Director Moriarty stated that when he was talking about the two areas where it was local rules of self-government or police powers, the police powers we are able to as a city add to them. He stated that we could take a traffic code and increase the penalty from the state, we just can't go anything less than the state code in matters of police and or sanitary or sewer or rules and regulations regarding those issues. He explained that we are able to be stricter, but they set the bar saying that, since this applies to everybody throughout the state equally, those were going to be the rules and they cannot go below them.

Chairman Schiffbauer asked if there were any questions or comments from the Commission.

None were given.

UNFINISHED BUSINESS:

Rule X, Reductions, Suspensions, and Removal, Section 1, Disciplinary Action. Rule XI, Hearings.

Procedure, Section 1, Time of hearing; notification.

Chairman Schiffbauer stated that there was communication sent regarding Rules 10, Reduction, Suspensions and Removal, specifically Section 1 about Disciplinary Action. And Rule 11, Hearings and Procedures in Section 1, Time of Hearing and Notification. He stated that he had pointed out that there was a discrepancy between the two rules. He discussed that Rule 10, Section 1, read "An employee except members who are subject to a collective bargaining agreement, may be suspended for a period of not to exceed three working days for purposes of discipline without the right to appeal. He explained that he interpreted that, not to exceed three working days meant three working days or less for the suspension. He stated that the next bullet point to say that it meant equal to or less than three days. He stated that however, in Rule 11, Section 2, it alluded to the same thing and read "Upon receipt from an employee or officer in a classified service of the city of a timely appeal from an order of removal, reduction in pay or position, or suspension of more than three days, the Commission et cetera, et cetera". He indicated that that particular language implied greater than three days and what he had requested was that they work to align Rule 10 and Rule 11, so that they mean the same thing.

Police Chief Freeman stated that he just wanted to make sure they were doing the right thing. He said that he didn't want to open the city up to liability and we're following the law. He stated that that was his concern, and he was sure it was Brian's concern as well. He commented that the problem though, was that if you looked at the charter of the city, it said it will follow the Constitution in reference to Rule 10. He stated that his recommendation to the Commission would be to get somebody from the outside to rule on it who was an expert in that field. He mentioned that there was a court order in place from Lorain County Common Pleas Court that said the interpretation the city made was in error and if they looked at the City ordinance in reference to Civil Service, it said we follow Ohio Constitution. He stated that the charter said we follow the Ohio Constitution, and it was his belief, not being a lawyer, that there needed to be a vote of the people like any other charter amendment. He said that he just wanted to get the process correct. He added that it wasn't for him to say who or what the process was and that was for Civil Service, but they were dealing with complicated issues. He stated that he wanted to make sure that it was right because his job as the Chief of Police, in all facets of his operation, was limited liability. He discussed that going back and looking at the city ordinance that controlled Civil Service it was the Ohio Constitution. He stated that

the charter followed the Ohio Constitution. He added that the way they changed things through the Ohio Constitution when you're a charter city was that they had the opportunity to vote and so the public could vote things in. He indicated that in 2022, if they went back and looked at the things that were passed through the City, there was like 15 city charter amendments on there and they had to pass those to legally change them. He mentioned that if they didn't do it that way, they couldn't have changed them through the City of North Ridgeville's charter. He said that he wasn't saying that he was right and that someone else was wrong, but he thought that they needed to study that before they just jumped to conclusions where people were going to file lawsuits. He stated that he was there for the best interest of the city and had no horse in that game.

Law Director Moriarty stated again, he and the Chief had known each other a long time and they worked together, appreciate each other, but he thought he was wrong. He indicated that there was no need to take a vote and that the charter already had been voted on and the rules had been put in place and set forth in the charter itself. He discussed that there was nothing to vote on at that point and that it had already been determined. He mentioned that they went ahead and got outside legal counsel to review mainly the rule of three before they went ahead and did it, and they got the same opinion that he had just set forth for them, regarding how the law works and how the Constitution works. He commented that he would just respectfully disagree.

Request for waiver to Rule VI, Section 3 (a), Special Requirements in Police Department.

Chairman Schiffbauer stated that this was to waive upon request, the age restriction that was in place for application to take the patrol officer and that was submitted by a gentleman named Duane Smith. He stated that prior to the meeting, he had reached out to the Human Resources Director for Springfield, Ohio, because back in April they voted to waive or eliminate the age requirement and he was pleased to hear that that did translate into additional applicants and that they were able to subsequently hire at least one officer as a result of that action and that their eligibility list had some market growth. He commented that regarding the information and articles that were sent to the Commission members, he wanted to open it up to the Commission members if they have any questions or comments regarding the request to waive the age requirement. He asked Police Chief Freeman if he had any comments that he wanted them to take into consideration before they voted.

Police Chief Freeman asked if it was going to be an individual vote.

Chairman Schiffbauer stated that at that point he would support an individual vote and not overall. He stated that to the Chief's point earlier, he thought it warranted further discussion. He indicated that the Commission had not had a conversation with the Police Chief about it, but he thought it was an enterprise change that required more than just...

Police Chief Freeman stated that obviously with officers in the drop program they were getting officers from 55 to 58 years old. He mentioned that he wouldn't be opposed to overall see if they could boost the ranks. He stated that he would like to have a good quality guy for 10 years rather than not have him at all. He discussed that regarding the maturity of an officer, sometimes they needed young people and older-minded folks. He commented that it wasn't ideal, but they weren't living in an ideal world, but he thought maybe taking small increments instead of just saying, anybody that could basically stand up, because it was a young man's job from a physical standpoint. He added that he thought if they were reasonable enough where they wanted push the age but if they were just going to make an exception for one, he wasn't sure that would be fair for everybody. He stated that doing that every time instead of just

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making it a general rule, they would get bogged down because they did that process for that individual and now, they would have to do that process for another individual.

Chairman Schiffbauer stated that he thought what he wanted to do there was doing that as a one off per the request but then it also begged the conversation for the Commission to have as to whether they should look at making just a general elimination of the age requirement going forward.

Chief Freeman commented or raise the age limit.

Chairman Schiffbauer commented or raise it. He stated that knowing that those items needed to be on the agenda before they could take action on them, they could table that until the next meeting. He discussed that Mr. Smith had formally requested a waiver of the age requirement and that would be what they would decide. He asked if there were any questions or comments from the Commission.

Member Espinosa-Gonzalez asked if it was as long as they could meet the other requirements.

Chairman Schiffbauer stated that it didn't waive any of the agility or testing requirements at all. He commented that they had to meet all of that and asked if that was correct.

Police Chief Freeman stated that in order to get on the list they would test the same way, correct.

Vice-Chairman Spann stated that coming from the HR world, as long as they met what the minimum qualifications were, they really couldn't say, "Hey, you meet everything but you're too old or your male or your female". He added that to him he thought it was definitely something that they needed to look at for kind of the big picture.

Police Chief Freeman asked if there was any case law out there in Ohio that referenced a municipality could say that there was a cut off age based upon recent standards.

Law Director Moriarty stated that he was sure there was and that again would just be an exercise of home rule, yet another example.

Moved by Schiffbauer and seconded by Espinosa-Gonzalez to grant the waiver request of Mr. Duane Smith of Rule 6, Section 3(a), regarding special requirements in the police department.

A voice vote was taken and the motion carried.

Yes – 3 No – 0

Moved by Schiffbauer and seconded by Spann to go into executive session for the purpose of discussion of personnel issues.

A voice vote was taken and the motion carried.

Yes – 3 No – 0

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Adjourned into Executive Session at 5:25 p.m.

Reconvened into the Regular Council meeting at 5:46 p.m.

NEW BUSINESS:

Certification of payroll by Civil Service Commission (Per Rule I, Section 3).

Chairman Schiffbauer stated that due to the retirement of Sergeant Corey Sabo, the Commission would need to certify the payroll.

Moved by Schiffbauer and seconded by Spann to certify the Civil Service payroll.

A voice vote was taken and the motion carried.

Yes – 3 No – 0

PUBLIC COMMENT:

Moved by Schiffbauer and seconded by Spann to open up the floor to public comment.

A voice vote was taken and the motion carried.

Yes – 3 No – 0

Chairman Schiffbauer invited members of the audience who wished to make public comment to come forward and do so.

None were given.

Chairman Schiffbauer stated that the next Civil Service Commission regular meeting was scheduled for 5:00 PM on Monday, September 23, 2024.

ADJOURNMENT:

Moved by Schiffbauer and seconded by Spann to adjourn the meeting.

A voice vote was taken and the motion carried.

Yes – 3 No – 0

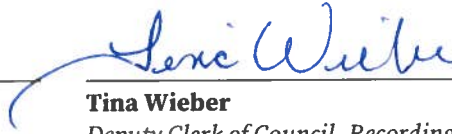
The meeting was adjourned at 5:48 PM.

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Donald Schiffbauer
Chairman



Tina Wieber
Deputy Clerk of Council, Recording Secretary

Monday, September 09, 2024

Date Approved