



City of Cleveland Heights  
**Charter Review Commission**

**DRAFT**

**Charters and Elections in Ohio**  
**An Overview and Data on Selected Charters**

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This document is an overview of elections in Ohio as well as an examination of charter election provisions. The latter depend upon and use terms from the former. Most importantly, the purpose of elections is addressed. Other provisions of a charter must complement election provisions. This synergy can only be understood by looking at how elections function in governing.

Though provisions from other charters are summarized, decisions on all charter provisions should reflect how you as representatives of the community think your community should be governed. Concentrate on the reasons for provisions and select those provisions that achieve the kind of government you believe is in the best interest of the community. To achieve the end of desired government, all charter provisions should be compatible with the desired governance. Form of government is the core but how effective it can work depends upon the other charter provisions as well as how effectively officeholders perform their roles.

## Elections in American Governments

### *Purpose and Nature of Elections*

The main purpose of an election is to select an officeholder. The representatives of the people must be popularly elected. Note executives are not representatives. Representatives are the legislative body and thus they possess the law-making authority. The election does not grant any specific authority to the representatives either philosophically or legally. The election does legitimate them as representatives. This is why those seeking power often use elections, which may be rigged, such as the case of Putin in Russia. They seek legitimacy.

The authority an officeholder has is in the office. The authority is spelled out in an authoritative document, often a constitution – state or national – or a city charter. Often, the authority is spelled out in legislation, especially for those offices which do not directly represent the people. A fire chief is an example. Governing documents allocate public authority which is why the rule of law is so important. In a democratic republic, democracy is the possibility of citizens being able to contend for public offices while a republic is a design of offices outlining and ideally channeling how the community wants the officeholders to use their public authority.

However, politically, election can allow an officeholder to garner power beyond the authority granted to the office. This why elected executives were of great concern to the founders. They wanted an executive with sufficient authority to provide effective governance but not to be able to contest the system itself. This is one of the main purposes of the electoral college; it is structured to elect an executive representative of public opinion as expressed through the states but not one who can claim she or he represents the people as a national entity. Trump's concern with the popular vote as empowering is an example of what the founding fathers did not want.

The founding fathers were wary of a strong national government, especially the executive, but realized after dealing with the aftermath of a successful revolution that they needed one. They carefully designed a constitutional system of governance that could address the dire circumstances they faced while avoiding creation of an oppressive remote politics. How they structured elections was a key part of the process. The election structure philosophically helped avoid an oppressive remote national government but does complicate dealing with current issues of cyber security and foreign interference in elections.

Elections are the domain of the states. States operate elections for federal offices, even setting up congressional districts. This is a real constraint on the national government. Thus, elections are reserved to the states via the Tenth Amendment. Ohio has enacted an election code, **Ohio Revised Code 3501** and following. However, home rule for municipalities enables villages and cities to have their own election system. Often, municipalities adopt election processes that are compatible with state systems to minimize any extra costs.

## Ohio Election System

### *Structure*

The Secretary of State is the chief election official. By the way, the title, secretary of state, emphasizes such administrative functions as maintaining state election systems. However, the implementation of the voting system is through County Board of Elections. The county is an administrative unit of the state and thus houses basic functions of the state, such as courts and elections. The Board of Elections has four members, no more than two from a specific political party, serving four-year terms. The Board elects a chair. The County political party executive committee recommends appointments to Board. The Secretary of State must appoint the recommended person unless he or she believes they are not qualified. If the party disagrees with the Secretary of State they can seek mandamus to compel the appointment. If they don't disagree, the party can recommend another person. If the party does not recommend another person, the Secretary of State must make the appointment. The Secretary of State provides required training for board members.

(As a side note, the Ohio Constitution provides for the original jurisdiction of the Ohio Supreme Court for five important writs of the Common Law. Parties in a law suit may seek writs, such as a Writ of Certiorari from the U. S. of the Supreme Court. If the writ of certiorari is granted, the party can bring an appeal to the U. S. Supreme Court. The Writ of Mandamus seeks to compel a public official to perform a required duty. The other four writs are: quo warranto, the issue is whether the defendant is entitled to hold the office he claims, or to exercise the authority he presumes to have from the government; habeas corpus, a court order to a person or agency holding someone in custody (such as a warden) to deliver the imprisoned individual to the court issuing the order and to show a valid reason for that person's detention; prohibition, an order directed to the judge and parties of a suit in a lower court, ordering the court not to exercise jurisdiction in a particular case as it lacks authority and a judicial remedy; and procedendo, an order from a court of superior jurisdiction to one of inferior jurisdiction to proceed to judgment.)

The board of elections can appoint a director and deputy director for two-year terms. They must be of different political parties as must be the chair and the director. All employees, including the director and deputy director, are at-will employees, serving at the pleasure of the board. The board can replace the chair, but the replacement must be of a different political party. All other officers must also be reelected if the chair is replaced. A board is authorized to investigate irregularities, nonperformance of duty or violations of election laws by election officers and other persons. The board reports the facts to the county prosecutor or Secretary of State. In conducting an investigation, a Board can administer oaths, issue subpoenas, summon witnesses and compel the production of books, papers, records and other evidence.

In all cases of a tie vote or other reason no decision can be made, the director or chairperson must report the matter in controversy to Secretary of State whose decision is final. Secretary of State cannot send matter back to Board for further action; he or she must decide the issue. The board must remain in session from the time polls open until election results are received from every precinct and communicated to the Secretary of State.

### *Implementation*

An “election” refers to the combined actions of voters and officials meant to make a final selection. The election code defines four types of elections: General Election, first Tuesday after first Monday in each November; Regular State Election, first Tuesday after first Monday in each even-numbered year; Regular Municipal Election, first Tuesday after first Monday in odd numbered years. Special elections are those in addition to the defined elections. A separate category of elections are primary elections, held for the selection of candidates for general or special elections.

The board of elections determines the nature and content of the actual ballot. The order of candidates on the ballot vary across ballots so no candidate has an advantage from being listed first. Some voters vote for the first candidate listed on the ballot. The board also oversees the conduct of state elections, using precincts as the basic unit for all elections. State and county officers are elected in even numbered years and all other officials in odd numbered years. **Ohio Constitution Article XVII, §1** However, municipalities could use a municipal board of elections under home rule. If a municipality exercises that option, it would bear the cost involved.

In addition to elections to fill offices, the **Ohio Constitution, Article II, §§1a – 1g**, guarantees the Initiative and Referendum to the people. §1f reserves I and R for people in municipalities to be exercised as controlled by law. Under home rule, this permits municipalities to shape I and R as desired. The state election code controls all these elections at the state level. Thus, state wide issues are determined by the Office of Secretary of State. The final ballot that municipal voters see has state issues listed first, numbered by the order in which the issue qualified for the ballot, followed by the specific municipal issues numbered by all municipal issues in order of qualifying for the ballot with the municipalities listed in alphabetical order within counties. Thus, all voters see the state issues with the same numbers, but the local issues have increasingly large numbers depending upon where the municipality is alphabetically in the county list of all municipalities.

The board must conduct the regular municipal elections as they are specified in municipal charters. Other elections may incur costs to the municipalities.

### Charter Election Considerations

#### *Municipal Election of Officeholders/Officials*

Election provisions reflect the offices established in the Charter as well as particular values such as having non-partisan elections. Also, some may want elected officials to have a majority vote or, in contrast, providing as many choices as possible. For example, whether a primary election is useful depends upon how the offices are designed as well as the values preferred in election outcomes. In the case of at-large elections for council, a primary could be used to determine a particular number of final candidates, such as reducing the number of candidates to double the number of positions up for election. If three council positions were in contest at a regular

municipal election and more than six candidates were qualified, a primary could be used to select the final six candidates.

If an at-large election were structured on specific seats, if more than two candidates filed for a specific seat, a primary election could be held to reduce the number of candidates to the two candidates with most votes. These examples illustrate the value of elections having winning candidates have a majority vote. In contrast, an at-large election can be structured without a primary to give the voters the maximum number of choices. In this case, some winning candidates may not receive a majority of the votes cast. Both values are equally valid and a choice between them should reflect what value is most desired.

Alternatively, other methods for election can be used. Rank choice voting, similar to the traditional Hare system of proportional representation (PR) that was in previous model city charters as a preferred option, can be used. The **Model City Charter** commentary provides specifics on the Hare system, pp. 40 - 42. In this system, voters rank candidates in terms of preferences. The ballot requires voters to use numbers to rank their choices. The numbers range from 1 to the number of seats available. Thus, when the system was used in Cleveland during the time the city had the Council-Manager system, voting for city council was conducted in four quadrants. Up to six council seats were allocated to each quadrant. Voters ranked their choices from 1, first choice, to 6. If a candidate received 1/6 plus 1 first choice votes they were elected. Votes were allocated from other ballots to candidates as specified in the above commentary, until six candidates were elected. As noted in the commentary, more information on similar systems is available at [www.fairvote.org](http://www.fairvote.org).

Cincinnati used the Hare System from 1924 to 1957. The council election had all nine seats up for election. The candidate who received the highest number of first choice votes became mayor. The office of mayor was purely ceremonial. The city changed the method in 1957 quickly when a black vice mayor, the person with the second highest number of first choice votes, was elected. Purely a racist response to the outcome. The choice of a Mayor pro tempore in Davis, California, is based on the number of votes received in the election. Councilmember Mary Dunbar shared the Davis Ordinance in the Submissions of 29 December.

Obviously, whether to have the title of mayor in a council-manager plan is a structural issue. Mentor removed the title from its charter when an incumbent with the title undermined a professional city manager. If the title mayor is used, then the selection of mayor must be determined and stated in the charter. Most importantly, regardless of how the mayor is selected, the clear delineation of authority is necessary, particularly in relation to the authority of the city manager. The selection method of the mayor needs to be evaluated in terms of how much power it may provide to an incumbent in contrast to the authority stated in the office. This is particularly serious if the mayor is separately elected as in Brunswick. The Commission needs to evaluate all methods of selecting a mayor in a council-manager system carefully. Details on the selection of mayor are in the **Model City Charter** commentary, pp. 10 - 12.

The most important election and associated provisions are those dealing with a strong mayor system. Strong mayor is a legal term and reflects an executive office with appointment, budget and veto authority. The office could be full-time or part-time, with full-time defined as the focus of the officeholder rather than prohibiting having other employment. Any specific office of mayor may lack one or more of these authorities. Chicago, for example, has a relatively weak office of

mayor. However, because of sources of power other than charter provisions, some mayors in Chicago have been quite powerful. The legendary Richard Daley is an example, whose power came from being Chair of the Cook County Democratic Party rather than the charter. The infamous Jimmy Dimora also was Chair of the Cuyahoga County Democratic Party. Caution is required in the design of the office of strong mayor as voters, and citizens in general, may see election as empowerment rather than as a method of selecting a mayor.

### *Municipal Elections and Issues*

In the reform of municipal politics around the turn of the 20<sup>th</sup> century, three processes were created to provide citizen driven political involvement. In many cities, politics were controlled by parties and the infamous bosses who did not care for the law in many cases. Thus, reformers provided ways in which citizens could combat abuses of authority and law. Two of the processes, initiative, proposing an ordinance or charter amendment, and referendum, placing an ordinance on the ballot, (I and R), were added to the **Ohio Constitution** as part of the 1912 reforms. However, the details are up to municipalities if they adopt a charter or by the relevant state statute.

The Ohio Constitution required the legislation to create general law for the creation and government of municipalities. **Ohio Constitution Article XVIII §2**. These general laws function as a charter unless a city adopts a home rule charter. Cleveland Heights adopted a home rule charter in 1921. However, a charter city can adopt provisions of these general laws in its charter. Thus, Shaker Heights has adopted the I and R provisions of the general law in its charter. **Article III**. Even though villages are exempt from the general law on public sector unions, Brooklyn Heights waived the exemption in their home rule charter.

I and R as well as Recall are petition processes. Citizens must circulate petitions with provisions they want to activate among the registered voters. Details on I and R concern the requirements of the petitions and the timing of events after a valid petition is submitted to the city. Specifically, I and R provisions as well as recall require a certain percentage of the voters to sign the petition. This typically ranges from 5 to 25 percent. The base on which the percentage is calculated is either the number of registered voters in the municipality or those voting in the last regular municipal election. The latter is calculated on the total vote for mayor as often some do not vote for other offices. In Cleveland Heights, the number would be those voting for members of council in a regular municipal election as the mayor is selected by council.

Events after the acceptance of the petition detail how council must respond to the petitions. Typically, council is required to accept the petition and act upon it within a specified period of time. Council has a specified period of time to consider a proposed ordinance or charter amendment in an initiative and can amend it with the provision then stating what the petition submitters may then do. Recall involves an election to remove an elected official and the provision needs to specify time to the election of whether to remove the official as well as the provisions of the petitions.

Charts 1 through 3 summarize the specific provisions for initiative, referendum and recall respectively. The charts list specific city charters, using abbreviations for the cities.

## Chart 1 Initiative Requirements

### *Election*

Regular Municipal Education LKW,

Municipal Primary Education

### *Election/Other Criteria for Base*

Regular Municipal Education LKW,

Municipal Primary Education

Total Registered Voters UH

### *Petition*

5% at last Mayoral Election  
(Regular Municipal Election) LKW,

5% of electors UH,

10%

15%

### *Time for Council Action*

#### *Receiving/Hearing by Council*

First Meeting after receiving petition  
Read and refer to Committee LKW,

Public hearing within 30 days after receiving petition UH

#### *Council Action on Proposed Ordinance*

40 days after receiving petition UH

By the third regular Council Meeting LKW

*State Law* RR, SkHgts

## Chart 2 Referendum Requirements

### Time to File

30 days UH

40 days LKW

### *Election/Other Criteria for Base for Petition*

Regular Municipal Education LKW,

Municipal Primary Education

Total Registered Voters UH

### *Petition*

5%

10% UH

15% LKW,

20%, can set date of election UH

### *Enactments not subject to Referendum*

to appropriate money for any lawful purpose or for a purpose not subject to referendum; annual tax levy;

LKW, UH,

to create, revise or abolish departments or to provide regulations for their governance

LKW,

to authorize the appointment of employees in any of the departments

LKW,

to authorize or otherwise affect the issuance of bonds, notes or other debt instruments of the city

LKW,

**Chart 2** continued

to authorize a contract for a public improvement or an expenditure of money which contract is to be paid or expenditure is to be made, in whole or part, from the proceeds of bonds, notes or other debt instruments of the city

LKW,

to provide for the payment of operating expenses of any department of the city

LKW,

Subsequent ordinances for public improvement; only first ordinance can be referred

UH,

Improvements petitioned by owners of a majority of the feet front of the property benefitted and to be specially assessed therefor

UH,

*State Law*

RR, ShHgts

### Chart 3 Recall Requirements

*Time in Office subject to Recall*

6 months RR, UH,

1 year LKW,

*Election*

Regular Municipal Election LKW, RR, UH  
(Office focus of recall)

Municipal Primary Election

Incumbent on ballot unless otherwise requests UH

*Petition*

5% at last Mayoral Election  
(Regular Municipal Election) LKW,

10%

15% LKW at large,

25% LKW ward, RR at-large and ward, UH

*Timing of Election*

Not less than 30 nor more than 40 days petition received by council

UH

Not less than 30 nor more than 45 days petition received by council

RR

Not less than 60 nor more than 90 days petition received by council

LKW,

*Charters without Recall*

SkHgts,