

Jack Newman  
 August 6, 2018  
 Comments on items in Article IV, and Articles V-VII

A note that Larry Keller circulated prior to the August 2 meeting contained comments from me on certain portions of the charter. Some of those items have now been assessed and conclusions reached. What appears below is a copy of portions of that note dealing with Articles IV and V-VII, but with some additional changes and observations not in the earlier note. Items in red are stricken. Items in blue are added. Items in dark blue/bracketed are comments and questions.

## ARTICLE IV CITY MANAGER

[Solely in order to avoid confusion, the proposed edits here and elsewhere continue to use the term City Manager, but I believe it would be very desirable to change the title to “City Executive” There should be no need for a corresponding change in the title of the governmental system.]

### **SECTION IV-1. APPOINTMENT, TENURE, REMOVAL.**

~~—The City Manager shall be appointed by the Council to serve at the will of the Council, a majority of all the members of the Council being required for his appointment, suspension or removal.~~

~~(Amended 11-7-72.)~~

The Council, acting by a majority of its members, shall select and appoint a City Manager. The City Manager serves at the will of the Council, which, acting by a majority of its members, may remove or suspend the City Manager with or without cause. No employment agreement between the City and the City Manager may limit the Council’s authority to suspend or remove the City Manager, but the agreement may provide for post-employment payments and benefits.

### **~~SECTION IV-2. RESIDENCE REQUIREMENTS.~~**

~~—The City Manager need not be a resident of the City at the time of his appointment, but shall reside therein during his tenure of office.~~

~~(Amended 11-7-72.)~~

[The revised paragraph IV-1 is both a clarification and a reflection of existing practice.]

adjacent cou[According to the Ohio Supreme Court, a city may not, as to employees, impose a requirement for residence in the city. The most the city can do is require residence in the county or an adjacent county for persons needing to respond in an emergency. Under the

circumstances, I would favor having no residency requirement in the charter. Discretion should be left with Council to evaluate all pertinent factors in the process of hiring the city manager.]

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**SECTION IV-32. POWERS AND DUTIES.**

The City Manager ~~shall be~~ is the chief ~~administrative~~ executive officer of the City and official head of City government, and ~~shall be~~ is responsible to the Council for the ~~proper~~ general direction, supervision, management and administration of all ~~the~~ City affairs ~~of the City~~ and the enforcement of all the laws and ordinances, except as ~~herein~~ otherwise provided; ~~and to that end he shall have authority to appoint and remove all other administrative officers and employees, except as otherwise provided herein. He shall attend all meetings of the Council, by federal,~~ state or local law or by this Charter. The more particular powers and duties of the City Manager include but are not limited to the following:

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- (a) To represent the City in intergovernmental relationships;
  - (b) To represent the City in its relationships with business and residential interests consistent with the City's master plans and strategies adopted from time to time by Council and with the ordinances and policies approved by Council;
  - (c) To appoint, promote, suspend, discipline and/or remove all City employees and appointive City officers except as otherwise provided by federal, state or local law or by this Charter. The City Manager may authorize any City officer, subject to the City Manager's direction and supervision, to exercise these powers with respect to subordinates in that officer's department, office, or agency.
  - (d) To be the chief conservator of the peace within the City, and to see that all laws and ordinances are enforced;
  - (e) To develop and submit to Council policy proposals, including from time to time proposals for new or revised master plans and strategies, and to provide advice to Council on matters of policy;
  - (f) To develop, introduce and recommend ordinances and resolutions for consideration by Council and otherwise make recommendations for actions to be taken by the City;
  - (g) To prepare and to submit to Council annually, and publish contemporaneously in media of ready availability to City residents:
    - A proposed operating budget for the upcoming year;
    - A proposed capital improvements program and budget containing at least the improvements scheduled for or proposed for the upcoming year and for each of the next succeeding three years;

- A written message accompanying the budget proposals that (i) describes the state of the City, including but not limited to its financial condition and its future needs, and identifies any longer term risks the City Manager believes are reasonably likely to have a material impact on the City's future financial status and/or other aspects of its well-being; (ii) makes recommendations for the establishment and achievement of future City goals and deals with the risks identified; and (iii) sets forth the initiatives proposed for the year and for the next succeeding three years;

(h) To promote and pursue the vision and plan for the City as determined from time to time by Council in light of and in response to the proposed budgets, the description of condition and needs, the identification of risks, and the proposed goals and initiatives;

(i) To execute on behalf of the City all contracts, conveyances, evidences of indebtedness and other instruments to which the City is a party;

(j) To attend meetings of Council, with the right to participate fully in its discussions and bring matters to its attention, but without the right to vote; ~~and he shall on or to veto any measure, and to attend meetings of any committee of the Council when so required by such committee. He shall prepare and submit to the Council the annual budget, after receiving estimates made by the directors of the several departments, and shall perform such other duties as may be prescribed by this Charter or by the ordinances or resolutions of the Council.~~ permitted or requested by that committee and to bring matters to the committee's attention but without the right to vote on or to veto any measure;

(k) To perform such other duties as may be prescribed by this Charter or by ordinances or resolutions of Council not inconsistent with this Charter;

(l) To delegate to any other City officer, department head, or supervisor, subject to direction of, supervision of, and ultimate responsibility of the City Manager, the authority to exercise any of the City Manager's powers and duties.

[Suggestions have been made that perhaps the city manager's powers should be expanded, or alternatively that they should be reduced. The changes in this long section would not necessarily alter the powers either way, but they would clarify and expand the dignity and expectations of the office, by referring to "chief executive" and by providing a detailed recitation of duties and expectations.]

#### **SECTION IV-~~43~~. VICE CITY MANAGER.**

There shall be a Vice City Manager who is selected and appointed by the City Manager on the basis of executive and administrative training and experience determined by the City Manager to be appropriate to fulfill the responsibilities of the office, and whose appointment is subject to , and effective only upon, approval by Council acting by a majority of its members. The Vice

City Manager reports to, is responsible to, and serves at the will of the City Manager, and may be suspended or removed by the City Manager without the approval of Council.

The Vice City Manager ~~shall appoint a qualified City administrative officer as Vice Manager to exercise~~ assists the City Manager in the operation of the City Manager's office and the execution of the City Manager's powers and duties, subject to the direction of, supervision of, and ultimate responsibility of the City Manager. During any temporary absence, suspension or disability of the City Manager, the Vice City Manager has and exercises the powers and ~~perform~~performs the duties of the City Manager ~~during his temporary absence or disability. The City Manager shall certify such appointment in writing to the Council.~~  
(Amended 11-7-72.)

[The changes and expansion (to two paragraphs) would enhance the authority and the expectations of the Vice City manager beyond just stepping in for an absent city manager (as in the current charter), instead providing for an explicit, regularized, broad, day-to-day role. To a certain extent, it might represent actual current practice, but something very clear and explicit still seems warranted, especially given the additional requirements placed on, and consequent assistance needed by, the City Manager]

#### **SECTION IV-~~5~~4. ACTING CITY MANAGER.**

~~—If the Council suspends the City Manager or there is~~Upon a vacancy in the office of the City Manager, the ~~Council may appoint an~~Vice City Manager serves as Acting City Manager ~~to serve until such suspension ceases or~~ until another City Manager is appointed and qualified, ~~or Council appoints a separate person to be Acting City Manager.~~ The Council may suspend or remove an Acting City Manager from that office at any time.  
(Amended 11-7-72.)

[This change is consistent with and reflects the enhancements in the position of Vice City Manager.]

## **ARTICLE V ADMINISTRATIVE OFFICERS AND DEPARTMENTS**

### **SECTION V-1. DEPARTMENTS.**

The following administrative departments are hereby established: (1) Department of Law; (2) Department of Finance; (3) Department of Planning; (4) Department of Public Safety; (5) Department of Public Service; and (6) Department of Public Health.

The Council shall determine and prescribe the functions and duties of each department, and, by vote of five of its members, may create new departments, combine or abolish existing departments and establish temporary departments for special work.

(Amended 11-7-72.)

[The departments currently in existence do not fully conform to those established by the current charter. It might make sense to reduce to a minimum (e.g., finance, law, public safety, ) the number and identity of departments named in the charter, based on those that are the very basic necessities of municipal existence and thus can be expected always to be present in recognizable form (should they be subject to elimination by Council, which seems to be the case under the current charter, or should that require a charter amendment?), and to leave others to the creation, organization, re-organization and abolition by Council. At the very least, the charter should be amended to remove the Health Department, which does not exist, and to change names to conform to the current names.]

#### **SECTION V-2. DIRECTORS.**

There shall be a director of each department who ~~shall have~~has the supervision and control ~~thereof of the department~~, and who ~~shall be~~is appointed by, and ~~shall be~~is immediately responsible to, the City Manager for the administration of ~~his~~the department. The City Manager's appointment of the Director of Law, Director of Finance and Director of Planning ~~shall be subject to and~~ effective only upon the approval of Council acting by a majority of ~~the its~~ members ~~of Council~~. The City Manager may remove the director of any department without the approval of Council.

[It seems sensible that at least the directors of Charter-created departments be required to be confirmed by Council. If that is the approach taken, then the contents of this paragraph will depend on which departments remain as charter-created in the preceding paragraph. But why should not all directors require confirmation by council? The Director of Public Service (or "Public Works," as it is currently called) is a pretty important position, whose function faces the residents every day]

The Director of Law shall be an attorney at law duly admitted to practice in the State of Ohio, and shall have been engaged in active practice of law continuously for a period of five years next preceding his appointment. The Director of Finance shall also have the title of City Auditor. Nothing herein shall be construed as preventing the same person from being director of more than one department.

~~(Amended 11-7-72.)~~

[It is unclear to me what the significance is of the title "auditor." Does the presence of this title play any practical role in the functioning of the city at present?]

#### **SECTION V-3. CITY MANAGER AS HEAD OF DEPARTMENTS.**

Excepting the Departments of Law, Finance and Planning, the City Manager may be the director of each and every department of the City government unless otherwise provided by the Council.

~~(Amended 11-7-72.)~~

[One can see that the need for a degree of independence would mean the City Manager should not be head of either Law or Finance, but why should Planning (or, for that matter, any other department) also be forbidden territory for the City Manager?]

#### **SECTION V-4. SALARIES AND BONDS.**

The Council shall fix by ordinance the salary, rate, or amount of compensation of all officers and employees of the City, except as otherwise provided in this Charter. The Council may require any officer or employee to give a bond for the faithful performance of his or her duties, in such an amount as it may determine, and it may provide that the premium therefor shall be paid by the City.

### **ARTICLE VI MUNICIPAL COURT**

#### **SECTION VI-1. ESTABLISHMENT.**

The Cleveland Heights Municipal Court has been created and is in existence pursuant to the laws of the State of Ohio.

~~(Amended 11-7-72.)~~

#### **SECTION VI-2. NOMINATION AND ELECTION.**

The provisions of Article VII of this Charter shall govern the nomination and election of the Judge of the Cleveland Heights Municipal Court.

~~(Amended 11-7-72.)~~

#### **SECTION VI-3. GENERAL PROVISIONS.**

Except as otherwise specifically provided herein the Cleveland Heights Municipal Court shall be governed by the laws, rules and regulations of the State of Ohio.

~~(Amended 11-7-72.)~~

[Nothing in the record to date would indicate any changes are necessary or advisable in this article. Before any change is seriously considered, it seems there ought to be a discussion with the current judge (via interview or perhaps even testimony) and if possible (because the current judge is new) the immediately preceding judge.]

### **ARTICLE VII NOMINATIONS AND ELECTIONS**

[Any conclusions we reach as to the contents of this article, whether to change or keep as-is, should be regarded as subject to being revisited upon hearing from the Board of Elections, targeted for September 22. ]

#### **SECTION VII-1. TIME OF HOLDING ELECTIONS.**

The regular municipal election shall be held on the first Tuesday after the first Monday in November in the odd numbered years. Any matter which, by the terms of this Charter, may be submitted to the electors of the City at any special election, may be submitted at the time of a primary election or of a general election.

## **SECTION VII-2. BALLOTS.**

The ballots used in all elections provided for in this Charter shall be paper ballots or mechanical or other devices for voting not inconsistent with the general election laws of the State of Ohio.

The ballots used in all elections provided for in this Charter shall be without party marks or designations. The names of all candidates for any office shall be placed upon the same ballot and the names shall be rotated in the manner provided by the laws of the State of Ohio.

The full names of all candidates shall be printed on the ballots. If two or more candidates for the same office have the same surname or surnames so similar as to be likely to cause confusion, their residence addresses shall be printed with their names on the ballot.

~~(Amended 11-7-72.)~~

[As to full names on ballots, the Board of Elections has already commented that Ohio law permits “derivatives” of names, and that the Board has never followed a policy requiring full names. Under the circumstances, does it make any sense to retain this requirement? Has the city even followed it, or tried to follow it, in practice?]

## **SECTION VII-3. PETITION FOR PLACES ON BALLOTS.**

The name of any ~~elector~~registered voter of the City shall be printed upon the ballot if there is filed with the election authorities prescribed by general law a petition in accordance with the following requirements:

(a) ~~Such~~The petition shall state the name and place of residence of the person whose name is presented for a place upon the ballot and the name of the office for which ~~he~~the person is a candidate. The nomination of each candidate shall be made by separate petition.

[Proposed changes are for consistence and readability.]

(b) ~~Such~~The petition shall be signed by ~~electors~~registered voters of the ~~Municipality~~City equal in number to not less than two percent of the total number of registered voters voting at the last regular election of ~~municipal officers~~members of Council.

[Proposed changes are for consistency and readability.]

(c) Each ~~elector~~person signing a petition shall add to his or her signature, his or her place of residence, with street and number, and date of signing. No ~~elector~~person shall sign more nominating petitions for different candidates for a particular office than there are positions to be filled for that office at the election for which the petition is signed. ~~If he~~For any person that does so, ~~his~~that person's signatures on all petitions ~~which~~that postdate his or her signing the permissible number of petitions shall be invalid. All signatures shall be made with ink.

[Proposed changes are for consistency and readability. The Board of Elections has commented that the invalidation of excess signatures based on date signed is hard for the Board to administer, and that the Board generally proceeds based on the order in which petitions are filed, not dates of the signatures. If this clause is retained in any form, it probably ought to be changed to conform to the Board's practice.]

(d) The signature of ~~all petitioners~~ persons signing a petition need not all be appended to one paper, but to each separate paper there shall be attached a signed statement of the circulator ~~thereof of the paper~~, made under penalty of election falsification, stating the number of signers ~~thereto of the paper~~, that each person signed in the circulator's presence on the date mentioned, and that the signature is that of the person whose name it appears to be.

[Proposed changes are for consistency and readability.]

(e) ~~Such~~ The petition shall not be signed by any ~~electors~~ persons more than one hundred eighty (180) days prior to the day of ~~such~~ the applicable election, and ~~such~~ the petition shall be filed with the election authorities prescribed by general law not less than ninety (90) days ~~previous~~ prior to the day of ~~such~~ the election. ~~This section shall become effective January 1, 2017.~~  
~~—(Amended 11-8-16.)~~

[Proposed changes are for consistency and readability. Also, the Board of Elections has asked what the rationale is for the 180 day limitation. To me it seems pretty obvious -- to be sure the signatures (with addresses) are reasonably fresh. In my view, this is a sound reason, and no change should be made.]

#### SECTION VII-4. ACCEPTANCE.

Any person whose name has been submitted for candidacy by ~~any such~~ petition shall file an acceptance of ~~such~~ candidacy with the election authorities not later than eighty-five (85) days ~~previous to said~~ prior to the applicable election; otherwise, the name of that person shall not appear on the ballot. The signature of a candidate upon a declaration of candidacy contained as part of ~~petitions~~ a petition filed with the election authorities, in accordance with law, shall constitute compliance with the requirements of this section. ~~This section shall become effective January 1, 2017.~~  
~~(Amended 11-8-16.)~~

[Proposed changes are for consistency and readability.]

#### SECTION VII-5. ~~WHO ELECTED~~ WRITE-IN CANDIDATES.

The voter may write on the ballot the name of any candidate who has properly filed a declaration as a write in candidate with the election authorities ~~on or before the seventy-second~~ not later than seventy-two (72<sup>nd</sup>) day ~~days~~ before the election, and that vote shall be counted. ~~Such~~ The declaration shall state the name of the candidate, his or her place of residence, and the office for which he or she desires to run. A write in candidate shall be ~~an elector~~ a registered voter of the City at the time his or her declaration as ~~such~~ a candidate is filed with the election authorities. ~~This section shall become effective January 1, 2017.~~

(Amended 11-8-16.)

[This section appears to deal with write-in candidates only. The current title does not fit. Proposed changes in the text are for consistency and readability.]

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**SECTION VII-6. CONDUCT OF ELECTIONS AND CANVASS OF VOTES.**

All elections shall be conducted and the results canvassed and certified by the election authorities prescribed by general election laws, and all other election matters ~~relating to elections not herein~~ for which no specific provision is made in this Charter or by ordinance of the Council ~~specifically provided for~~ shall be determined by the general election laws of ~~the State~~ Ohio.

[Proposed changes are for consistency and readability.]

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**SECTION VII-7. VOTING BY A MEMBER OF THE ARMED FORCES AND ~~HIS~~ FAMILY.**

A member of the Armed Forces of the United States or a member of his or her family shall be entitled to vote in accordance with and pursuant to the procedures of the general election laws of ~~the State of~~ Ohio.

(Amended 11-7-72.)

[Proposed changes are for consistency and readability.]

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