

DRAFT
For 12/13/18 Meeting



City of Cleveland Heights
Charter Review Commission

Draft

Report

2017 – 2019

Dated: [__ __], 2019

This Report of the Cleveland Heights Charter Review Commission (Commission) accompanies the delivery to the Cleveland Heights City Council of the Commission's recommendations for revisions to the City's charter, in the form of a First Amended Charter.

The Report is organized into three sections. The first, titled The Assignment, describes the purpose of the Commission as set out in the resolution that Council passed initiating the review. The second section, The Process, reviews the Commission's process and activities. The final section, The Conclusions, briefly describes the recommended changes of substance as well as areas of no proposed change, together with associated key reasons presented in support of these determinations (and opposing considerations). An appendix, presented in the form of a table, capsulizes the Commission's recommendations section by section.

Because of the integrated nature of the Amended Charter, reflected in the interdependence and interrelationship of the various provisions, the Commission strongly suggests that its recommendations, assuming acceptance by Council, be put before the voters as a single, whole ballot issue, rather than as a series of separate propositions.

THE ASSIGNMENT

The current charter requires the Council to assess every ten years whether to appoint a charter review commission. In addition, Council can convene a charter review at any time.

On May 1, 2017, Council resolved to create a commission of fifteen members to review the charter. The enacting resolution, No. *43-2017*, directed the Commission to answer the question, "What is in the best interests of the City of Cleveland Heights?" In developing its answer, the Commission was instructed to do "due diligence," which the resolution stated should include, but not necessarily be limited to, interviewing current and former City staff and elected officials as well as others whom the Commission "deems appropriate."

Further, the Commission was specifically charged to examine the governance of the city, and in doing so to be guided by the following inquiries:

1. What is the problem the Commission is trying to solve by considering a change to the Cleveland Heights current form of government?
2. How will a change in the form of government affect the balance the Commission seeks on issues of representation, policy leadership, and administrative efficiency?
3. What are the consequences of changing the governance of Cleveland Heights?

From more than fifty applicants, fifteen City residents were selected and appointed by Council.

The Council also hired Dr. Lawrence Keller to be a facilitator for the Commission (Facilitator). Dr. Keller is an Emeritus Associate Professor at Cleveland State University. He has worked with

more than twenty charter and charter review commissions. He also served as a member of the 2004 Lakewood charter review commission.

THE PROCESS

The members of the Commission were introduced to the community by the Mayor at a public meeting in the Community Center. The Facilitator followed with an overview presentation on charters and forms of government. The session concluded with a citizen's question and answer session.

The Commission held an organizational meeting in December 2017, at which it elected a Chair and Vice-Chair (the latter of whom later resigned from the Commission, with a successor Vice-Chair elected from the remaining members); determined to look at all aspects of the charter; adopted Robert's Rules of Order as its procedural framework; made various other organizational and procedural determinations; and formally became a Committee of the Whole, charged with developing recommendations regarding the charter, consulting with the City's legal staff about them, holding a public hearing on them, and then making final recommendations to the Commission, which would in turn decide on what would be presented to the Council.

With certain exceptions, the Commission (meeting as a Committee of the Whole) met on the first and third Thursdays of each month, beginning in January 2018, in Council chambers at City Hall. All sessions were videotaped and posted on YouTube. An agenda was posted in advance of each meeting, and the salient activities at each meeting were recorded in a document entitled Decisions & Rationales. At each meeting, time was reserved for public comment for any citizens who wished to address the Commission. The date and time of each meeting was publicized in advance in multiple media.

The City created a dedicated Commission website, accessed for most of the Commission's existence via an icon prominently displayed (and toward the end via a link also displayed) on the homepage of the general City website. The agendas, Decisions & Rationales, YouTube videos, interview reports, and large quantities of material developed by the Facilitator or by members of the Commission or submitted by third parties to the Commission were, and remain, posted on the Commission website, along with the email address of the Facilitator for use by citizens in submitting questions and materials to the Commission.

The Commission focused initially on form of government, encompassing the type of executive and the electoral structure Council. In doing so, it had in mind both the Council mandate and the central role form of government necessarily plays in structuring any city charter, and also knowing that other provisions that might in theory be thought to stand alone must be developed and drafted to align, or at least not conflict, with the underlying governmental form. Once this major issue had been decided, the Commission then moved to an article by article examination of the charter, and follow-on drafting.

Having reference in substantial part to the Council resolution, the Commission undertook a fact-finding process that involved a written survey directed to members of council as well as top level administrators; interviews by the Facilitator (in certain instances in conjunction with the Chair) of selected former and current city officials; appearances (by invitation) before the Commission of

several Council members and by a number of others, both within the City and without, who were thought to have information that could bear on the subjects of the Commission’s work, particularly form of government. The latter group, some of whose names were suggested by citizens either during public comment periods or through separate contact with the Facilitator, included, by way of example, leaders of neighborhood groups, representatives of special development districts, developers, persons with governmental and charter involvement in other nearby communities, and the senior executive of an international municipal management trade organization.

The following two tables list both those who spoke in person at a Commission session and those who were interviewed.

Table 1 Presentations to the Commission

Date	Name	Background	Topic
18 January	Carol Roe	Mayor	Experience serving in the system
18 January	Michael Ungar	Councilmember	Experience serving in the system
1 February	Melissa Yasinow	Vice Mayor	Experience serving in the system
1 February	Mary Dunbar	Councilmember	Experience serving in the system
15 February	Earl Leiken	Mayor, Shaker Heights	View of Strong Mayor system
15 February	Dennis Wilcox	Former Mayor	Experience serving in the system
1 March	Tom Wagner	Member of 2014 Lakewood Charter Review Commission	Explain preference for Council-Manager system when Commission recommended to retain the local Strong Mayor system
1 March	Leslie Jones	President, Forest Hill Home Owners Association	Experiences with Cleveland Heights government
29 March	Bud Hilf	Member of 2015-2016 Euclid Charter Review Commission	Explain preference to retain local Strong Mayor system when Commission recommended a Council-Manager system
29 March	John Zagara	CEO Zagara Marketplace and President Cedar-Lee Special Improvement District	Experiences with Cleveland Heights government
29 March	Steve Presser	CEO Big Fun and President Coventry Village Special Improvement District	Experiences with Cleveland Heights government
19 April	Marc Ott	Executive Director, International	Experience with Council-Manager system (he had been a City

		City/County Management Association	Manager) and its advantages and issues
3 May	Peter Rubin	CEO, Coral Company	Development experience with Cleveland Heights and other governments
3 May	Paul Volpe	Architect and Developer, City Architecture Firm	Development experience with Cleveland Heights and other governments
3 May	Tom Malone	Former Finance Director	Experience serving in Cleveland Heights and other local governments
17 May	Tanisha Briley	City Manager	Experiences and View of system in terms of the role of the City Manager
17 May	Karen Knittel	City Planner	Content and Purpose of Cleveland Heights Master Plan
17 May	Kahlil Seren	Councilmember	Experience serving in the system
7 June	Brenda May	Noble Neighbors	Experiences with Cleveland Heights government

Table 2 Interviews

5 March 2018	Alan Rapoport	Former Councilmember and Mayor
7 March 2018	Richard Wong Tim Boland Allan Butler Mary Trupo (Interviewed as a group)	Planning and Development Economic Development Housing Programs Communications and Public Engagement
7 March 2018	Tanisha Briley	City Manager
8 March 2018	Jack Boyle	Former Councilmember and Mayor
27 March 2018	Bonnie Kaplan	Former Councilmember
3 April 2018	Jimmie Hicks	Former Councilmember
15 August 2018	J. J. Costello	Judge, Municipal Court
19 September 2018	Tanisha Briley Laurie Sabin	City Manager Finance Director
4 October 2018	Richard Wong	Planning and Development
16 October 2018	Judith Miles	Chair, Civil Service Commission

Part way into the process, the Commission held a community meeting to gather views on charter issues, primarily but not exclusively on the form of government. The Chair started the meeting by overviewing the process of charter review and the purpose of the meeting, and was followed by the Facilitator, who presented a review of forms of government. The attendees, numbering about 80, divided into groups of seven to ten at a table. They undertook discussions of the type of executive and structure of council, compiling preferences and commentary and reporting the

results to the full group. The resulting data were compiled and analyzed by the Facilitator and posted to the Commission website.

Some [XX] separate speakers addressed the Commission during the public comment periods, several of the speakers on two or more occasions.

Drafting followed along as the Commission made its decisions. In the latter portion of the Commission's work, the City's legal staff reviewed and commented on the proposed revised charter, and the Commission responded with changes accordingly. A public meeting was then held to review and explain the document and receive any additional comments. In [late January 2019,] the Commission voted on the resulting proposed charter and delivered it to Council along with this report.

THE CONCLUSIONS

Core Issue – Form of Government

Members of the Commission exchanged views on this topic both orally and in writing over the course of several meetings. Ultimately it was determined in split votes, but in each instance by a substantial majority, to retain the council-manager form of government and also to retain a council in which each member is elected at large. A variety of circumstances and arguments were advanced and assessed on both points, with no particular consideration or set of considerations necessarily being persuasive in the same manner or degree among different members of the Commission as each came to his or her own view and cast a vote.

The Executive: City Manager or Strong Mayor

Those favoring a change away from the current system to an elected strong mayor (that is, for example, one with power of appointment and veto) argued a number of points in support of their position: that Cleveland Heights is one of only two cities in Cuyahoga County that has a council-manager government, rather than mayor-council; that election of the city chief executive was more in line with a democratic ideal in that it provided direct accountability of that executive to voters at each election cycle and better exemplified a system of checks and balances; that a mayor could more effectively interact politically with other local governments; that a mayor would likely have a better vision for the city and would promote that vision better; and that as a "mature" city that had experienced a population decline, Cleveland Heights was in need of a spark, with a change in form of government to strong mayor likely to provide that spark.

Considerations advanced in favor of retaining the council-manager system included that in Ohio as a whole and across the country, the council-manager form of government is widely and successfully used; that the City has had a long history of, and thus experience with, the council-manager approach; that there is danger in empowering a single individual with strong mayor powers, particularly when campaigning skills do not necessarily translate into ability to run a complex city; that a strong mayor system could generate conflict and gridlock, as opposed to the more collaborative process for executing a city vision that should be expected from a council-manager system and that has been generally found in Cleveland Heights; that a mayor is not necessary for developing or articulating a vision, which the City already has in the form of a

Master Plan; that the pool of professional persons qualified to run a city as city manager is larger and generally possessed of broader relevant experience than any group of local individuals who would likely seek to be mayor; that the City Manager, who serves at the will of the Council, is held accountable by the Council, whose members are the elected representatives of the people; that a fundamental transformation in governmental form not only could create gaps and uncertainties over a period of transition when the community needs consistent leadership, but also could bring longer term unintended and unforeseen consequences, all without bringing high confidence that perceived difficulties would be ameliorated; and that to the extent there might be shortcomings with the current system, they could be addressed by adjustments well short of replacing the historic structure.

The Legislature: Size of Council and Electoral Structure

There was discussion about increasing the size of the Council from seven to nine, the proposition being that the larger number could potentially enhance the body's representative character. The determination was unanimous that seven was an adequate number and no change was warranted.

The structure for electing council members – at-large or by ward – generated more extensive discussion and debate. While there was no substantial push for election of all members by ward, there was clear support for electing a portion – four of the seven—by ward. Arguments favoring this position included that several, although by no means all, nearby cities had a mixed ward/at-large system; that use of wards would help ensure closer representation of particularized geographic groups; that it would assist in placing localized issues on the City agenda; that it would identify a single elected person (“my council member”) whom a citizen could contact about concerns; and that it could reduce the cost of campaigning, potentially opening the political process to a larger number of candidates.

Those supporting retention of fully at-large elections for Council argued that it requires all candidates to understand and approach matters on a citywide basis and to campaign in all parts of the City, rather than confining his or her attention and concern to a narrower electoral constituency; that the requirement to take an overall view was healthier for the City than parochialized infighting that could result from institutionalized geographical splintering; that there was no record evidence of Council members being anonymous or unavailable to respond to citizen issues; and that the City's modest size did not render campaigning unduly expensive or so physically burdensome as to warrant a structural change, particularly in light of modern media.

In the course of discussing the council structure issue and deciding to retain at-large elections, the Commission raised and considered, but did not adopt, certain other ideas. One suggestion was to have a charter-mandated system of communication districts to be drawn up geographically from time to time by Council and to which, following each election, Council would assign one or more members for purposes of non-exclusive contact and communication with the residents of the district. A preliminary discussion draft of this kind of system was prepared. It was generally agreed, however, that although the concept might have merit as a method of enhancing what the Commission saw as a need for better communication between City government and the populace, it was too prescriptive and complex to implement through a charter and could unfairly and unnecessarily increase the burden on Council members. Instead,

the Commission thought it better to use this report to urge Council to consider, and if appropriate pursue, what it might regard as sensible structures and approaches to enhance the effectiveness of communications to and from City residents as to what their government can do and is doing in such areas as housing, infrastructure, and economic development.

A second suggestion was to have head-to-head elections, that is with each Council member occupying a specific seat and each candidate running only for a specific seat. The Commission did not see evidence that this approach would enhance either the electoral process or its result and rejected it for inclusion in recommended Charter changes.

Suggestions for changing Council terms from four years to two years, for having terms of whatever length end at the same time (that is, de-staggering the terms) and for imposing term limits were advanced for consideration but not favored by the Commission. To the extent there may have been arguable benefits from any of these measures, they were seen as outweighed by disadvantages.

Finally, a system of voting by ranked choice was raised by external commentary and considered by the Commission. In essence, the system would call for voters not simply to select and mark their ballots for a single candidate per available office slot, but rather to rank all candidates in order of preference. Methods of tabulating the ballots can differ, but a common element is that the largest first place vote getter does not necessarily win the election, depending on how voters distribute their lower place votes. An election expert consulted on a limited, informal basis by the Commission commented that the system was inherently complex, could be confusing to voters especially if other offices on the same ballot did not use it, and could be manipulated adversely to target particular candidates. Separate inquiry by some Commission members reached similarly negative conclusions. It also appeared that although the choice of method of voting is up to the City under the home rule rubric, the Board of Elections would be unprepared for it and therefore resistant to it. Ultimately, there was no support in the Commission for use of ranked choice voting.

Article by Article Analysis

In approaching the article by article analysis and related drafting, the Commission began with the recognition that the current charter had first been put in place almost 100 years ago. Although various amendments had been made since that time, there appeared to have been no comprehensive effort to update concepts or language (one notable example being a systematic disregard for gender neutrality), or to focus on plain, clear, readable wording, or to ensure structural or linguistic consistency from one portion of the document to another. The Commission felt the time had come to address these items in a meaningful way, in addition to considering and disposing of other more substantive issues that were likely to emerge in the course of its study. There are, accordingly, a host of textual changes, along with several alterations that are of substantive significance. For the most part, it is only the latter that are singled out for description and comment below.

In addition, in the interests of modernization and ease of reference, the Commission suggests changes in the identification, appearance and structure of headings, including elimination of Roman numerals and replacement with words (for articles) and with Arabic numbers separated

by periods (for sections), and insertion of a mini table of contents at the heading of each multi-section article.

The proposed charter reflects all the changes. This report uses the proposed new identification system for its references.

Title

In light of the whole-charter overview approach taken by the Commission and the many suggested changes (including in some instances restructuring), the Commission recommends the charter be re-named as The First Amended Charter of the City of Cleveland Heights, Ohio. This also sensibly allows elimination of internal references to long past dates that are no longer relevant for any operational purpose.

Preamble

The purpose of the charter -- to establish home rule for the City -- is clearly stated and remains the purpose today. No substantive changes are warranted.

Article One -- Name and Boundaries

This article provides a good first example of changes for plain language and readability. One important point of clarification deserving special mention is the change in usage from “electors” to “registered voters,” the latter having a facially certain meaning while the former does not. This same change is made throughout the document.

Article Two -- Form of Government and Powers

An examination of the charter’s provisions reveals that the City’s form of government is council-manager, but there is currently no explicit statement to that effect. The charters of at least some other cities with this form contain an explicit statement saying so. The Commission thought a statement of this kind would provide a helpful affirmance of the intended thrust of the charter. For that reason, it proposes to insert into this article, currently containing just a single paragraph dealing with powers, a new paragraph designated Section 2.1 that makes the statement. The former single paragraph on powers would be moved into a new Section 2.2, with appropriate words added to the title of the article to reflect its declaration as to form of government.

Article Three -- The Council

The structure of the Council and the method of electing its members would continue as it currently is. The Commission learned that the Council has sometimes exercised, or wished to exercise, powers that could be asserted to go beyond what might be argued as the boundaries of “legislative” power. In order to address this concern, Section 3.1 has been changed to broaden the powers that Council possesses or might be given by ordinance.

Section 3.2 on qualifications has been revised to eliminate the provision disqualifying employees of the Cleveland Heights/University Heights or East Cleveland school districts from service on Council. In the Commission’s view, the occasions that might give rise to a conflict of interest for these individuals are limited, and could in any event be readily handled by recusal of the affected

member. Several other qualifications were raised for consideration to be added, including a specific length of City residency, currency on tax filings, mandatory training, and performance expectations, but none of these was regarded as sufficiently compelling, wise, or practical for inclusion in the charter.

Section 3.3 on removal is substantively unchanged. **[Address elimination, or not, of first sentence dealing with Council as judge of election/qualifications of its members.]**

Section 3.4 on filling vacancies received substantial attention and debate, with resulting substantive change. Under the current charter, vacancies are filled by vote of the remaining members of Council. Arguments were advanced:

- that this process was undemocratic in that it occurs without direct voice of the voting citizenry;
- that it allowed the Council members to self-perpetuate themselves by bringing on people they knew and liked;
- that it gave an undeserved advantage of incumbency to the appointee when next required to stand for election; and
- that the Council was not constrained by any timing or other procedural requirements, thus opening the process to manipulation.

Arguments for retaining the current process, or at least some element of appointment, included:

- that the selection cannot fairly be described as undemocratic, since the elected representatives are making the choice as part of their charter-based responsibilities;
- that appointment allows quicker action to fill the vacancy than would be the case in an election; that it allows systematic vetting of candidates, thus potentially providing a better initial pool of aspirants; and
- that the evidence does not demonstrate the appointment system to have generated bad results.

The Commission determined, in a very closely divided vote, that appointment should be retained as the first line of replacement, but that changes should be made to address some of the perceived concerns. Accordingly, the new provision gives Council sixty days to make the appointment, using a process that it must develop and make a part of its rules; in the absence of timely Council action, the vacancy is filled by election; and depending upon when the vacancy occurs in relation to the next regular election, an appointee could end up serving a shorter period of time than under current provisions before having to undergo an election, whereas once a person is elected, he or she would serve the entire remaining unexpired term.

Concerns were raised about whether Council salaries were adequate to attract a sufficient number of qualified candidates. Under Section 3.5 of the current charter, it is council that sets the salaries, making a decision to raise them potentially troublesome politically, with the consequence that salaries could lag, to the eventual detriment of good City government. It was noted that Lakewood had confronted this same issue and had decided to give its Civil Service Commission responsibility for recommending salaries, which then come into effect unless the council affirmatively decides otherwise. There was considerable debate about the need for any change, and in particular about the necessity for involvement of the Civil Service Commission.

Some commented that council should simply face up to a decision that it would be making in the end anyway, that available data did not suggest Council salaries were materially out of line with those in other communities, and that the observations by a member of the Civil Service Commission in response to inquiry made by the Facilitator and the Chair were unfavorable or at best ambivalent on the suggestion. Others argued that current relative salary circumstances could change, that it was unwise to ignore the difficult political realities implicated in self-setting of salaries, and that the nature and amount of additional work required of the Civil Service Commission (likely borne to a substantial degree by City staff) was not unreasonable and should not be a deterrent. This Commission decided to adopt some, but not all, of the Lakewood approach. The existing provision, in which Council *may* consider and fix salaries issue every *two* years has been changed so that Council *must* consider and actually fix salaries every *four* years, and as part of its handling the issue, would receive and consider written recommendations from the Civil Service Commission. (A related provision would appear in a revised Article Twelve, adding the new responsibility for salary analysis and recommendation to the duties already being shouldered by the Civil Service Commission.) Unlike in Lakewood, where the recommendations of the Civil Service Commission come into effect automatically if the Council does not expressly act on the salary issue within a prescribed time, there is no similar default provision in the proposed amended charter for the City.

In addition, Section 3.5 would be revised to provide explicitly that all council members' salaries are to be identical, except for the President of Council, whose salary is to be 25% higher. This is generally in line with current practice, but was thought to warrant express recognition.

Section 3.6, dealing with Council appointments, would be supplemented with an express requirement that Council, no less than annually, conduct a review the City Manager's performance (which is in line with current practice) and publicly announce its having been undertaken and completed (which is not current practice). The thought is that this explicit statement and requirement for public notice would emphasize the Council's responsibility for exercising oversight. A further change makes clearer and more explicit the authority of Council to secure the services of outside personnel to assist it in its functions.

Section 3.7 on removal of Council members warranted no changes of substance.

Section 3.8 lists certain types of ordinances that, once adopted, cannot be change except by a vote of five members of Council. The paragraph includes the notion of "general" ordinance, which appeared to have no generally recognized independent meaning, and so it was eliminated. There was vigorous discussion about whether the charter should be augmented to contain detailed provisions falling generally under the category of "open government," to include provisions regarding public records, meetings of city bodies, recording of meetings by minutes, video and related transcript, and the like. The discussion included reference to applicable state law, current City practice, current technology, the potential for further technological developments not currently foreseeable, the desirability (or not) of inserting heavily prescriptive provisions in a charter, and the difficulty or ease of drafting provisions that would be clear and flexible and would avoid inviting legal dispute. The ultimate determination was to include reference to the notion but not attempt to define it, instead putting its interpretation and application in the

hands of Council, and to include ordinances dealing with the topic as among those that, once adopted, would require a vote of at least five Council members to change.

Section 3.9 dealing with franchises is renumbered to 3.10 and revised, as noted below. The new Section 3.9 deals with emergency measures. This concept is contained in the current charter, but only later in the document and with a somewhat obscure placement. There was concern over whether the “emergency” designation had been overused and whether its meaning and purpose had been adequately understood by citizens. Accordingly, while not proposing a material change in the definition, the Commission decided to move the topic forward to the Council portion of the Charter, give it its own subheading, and strengthen the focus on the need for a meaningful explanation when an ordinance is characterized as an “emergency” measure.

Former Section 3.10, labeled “Interest in Contracts,” has been eliminated. It dealt with certain ethical issues that are now handled within a new ethics provision that takes up an entirely new article later in the charter, Article Ten. Former Article Ten, labeled “Franchises,” has been eliminated, much of its content being evaluated as an anachronism and no longer necessary. The remainder of that article has been transferred to a new Section 3.10 of Article Three, now labeled “Public Utilities and Franchises,” which has become largely an enabling provision, putting in Council’s hands the responsibility for dealing with utilities and franchises. It would retain the existing prohibition on dealing with these matters via emergency ordinance.

In Section 3.11, the principal change, reflected in both the title and the text, is the removal of the titles Mayor and Vice Mayor and elimination of associated references to State law. The provision now recognizes the President of Council or alternatively the Vice President of Council as a City representative for ceremonial purposes. The Commission believes that the use of the title Mayor in the context of the City’s form of government could be confusing to citizens and others interacting with the City, and could restrain or inhibit the type of robust leadership by the City Manager that the Commission believes necessary for future municipal success.

Article Four --City Manager

In the title of Section 4.1, the words “Tenure” and “Removal” would be added to to the previous single word “Appointment,” to reflect the actual coverage of the section. The only substantive change in the text would be to recognize explicitly that the City Manager may be given an employment contract with post-employment payments and benefits, while at the same time providing that the relationship was at-will, such that the contract cannot limit the Council’s authority to suspend or remove the City Manager. This is the current understanding and practice, but the Commission believes it better to avoid any confusion or uncertainty by making explicit provision in the charter.

Former Section 4.2 required the City Manager to live in the City. Although most Commission members thought this to be a desirable requirement, a decision of the Ohio Supreme Court has held that a charter provision of this kind violates the state Constitution. For that reason, the requirement is eliminated (and subsequent sections of the article renumbered accordingly). It would be legally permissible to require the City Manager to live in an adjacent county, but the Commission did not see a provision of that kind as particularly beneficial. Instead the Commission felt that the Council should be at liberty to take account of anticipated residence

during the hiring process, as part of its overall assessment of the quality and dedication of candidates for the job.

Former Section 4.3 on powers and duties of the City Manager would be renumbered as Section 4.2, with its text substantially changed and expanded. The thrust of the alterations, in line with the determinations not to have a directly elected Mayor or even the title Mayor, reflects the desire of the majority of Commission members to emphasize the importance of the City Manager's visibility and exercise of leadership, and the need for particularized guidance as a foundation for accountability. Hence the change of description from chief administrative officer to "chief executive officer...and official head of City government" responsible to the Council not just for administration but also for "direction, supervision [and] management." Hence also the determination to set out in substantial detail the authority and expectations of the City Manager, some of which exist currently either expressly or by practice, and others of which are new or more directly and clearly laid out.

Former Section 4.4, now to be Section 4.3, deals with the Vice City Manager (title adjusted to insert "City"). Currently, this officer's charter-based authority is limited to exercising the authority of the City Manager during the latter's temporary absence or disability, and appointment to the office is made by the City Manager without any requirement for confirmation by Council. The Commission believes that in practice, the position of Vice City Manager has been more substantive than stated in the charter, that it should continue to be more substantive especially in light of the enhanced expectations of the City Manager, and that the charter should recognize that circumstance. Under changes proposed by the Commission, the Vice City Manager would be explicitly empowered and expected to assist the City Manager in City operations on a daily basis (not just act a substitute in the City Manager's absence or incapacity), and appointment to the office must be confirmed by the Council. In addition, the revised provision would make clear that the Vice City Manager reports to, and may be removed by, the City Manager. Finally, the provision would add a further step in contingent devolution of authority by designating the Director of Law to step in when both the City Manager and the Vice City Manager are unavailable; as to this point, the Commission understands there is an informal arrangement of this kind currently in place, but believes it better practice to have the arrangement embedded in the charter.

Former section 4.5, now to be Section 4.4, addresses a vacancy in the City Manager's Office. Under the current charter, there is no automatic succession for the interim; Council must act. The Commission thought it better to provide for automatic accession of the Vice City Manager to the vacancy on an interim basis, unless Council acts otherwise. This seemed sensible particularly given the greater dignity and responsibility of the Vice City Manager that would be recognized in the revised charter, and further given that the Vice City Manager would have been expressly confirmed previously. As noted, Council would still have the authority to appoint someone else to the interim position if it so chose. Consistent with the having a contingent provision to deal with the unavailability of the City Manager or Vice City Manager, this section would name the Director of Law as the person to step in upon the unavailability of the Vice City Manager when acting as interim City Manager.

Article Five -- Administrative Officers and Departments

The overall structure and most of the substance of this article would be retained.

Section 5.1, which identifies the administrative departments, would be updated to eliminate one department no longer in existence, add new ones that have been established by Council, and conform names to current usage. Consideration was given to specifying only certain departments whose existence and names were unlikely ever to change, but the Commission thought it desirable to include all current administrative departments. Council would retain the right to create new departments and to reorganize or eliminate departments, with the additional clarification (reflecting historical practice, but arguably ambiguous in the current charter) that the power to reorganize/eliminate would extend to charter-based departments not just those added by Council. Also, incorporating a suggestion of the City's legal staff, the provision would now require Council action on this subject to be taken via codified ordinance, thus creating a record that can be more easily traced and understood over time. Finally, ambiguities can arise when (as is currently the case) internal units or functions are, for convenience or other operating purposes, called or referred to as "departments" headed by "directors, even though the unit is not created by Article Five or by Council acting by ordinance under Article Five. The revised charter addresses this concern by using the terms Administrative Department or Department (with initial capitals) to refer to Article Five departments, and the term Director (initial capital) to refer to the heads of those Departments.

Under the current charter, only the Directors of law, finance, and planning must be confirmed by Council. Revision of Section 5.2 would require all Directors of Administrative Departments to receive voted approval of Council. The Commission could see no reason for a distinction among Department Directors in this regard, especially in light of the new emphasis on the authority and expectations of the City Manager and also the desire to emphasize Council's oversight role.

The current charter sets certain base qualifications for a Director of Law, but not for other Department Directors. Consideration was given to whether professional certifications or other requirements should be set for others, and the Commission decided that was neither necessary nor wise, especially since it could restrict the field of desirable and otherwise well qualified candidates. Consistent with that line of thinking, the Commission determined that existing requirements dealing with necessary experience for the Director of Law should be eliminated, leaving only a requirement for admission to the Ohio bar. The thought is that setting specific experience requirements could exclude otherwise good candidates for the position, unwisely for the City and possibly unfairly for the candidate (*e.g.*, family leave having interrupted the currently required five-year period of recent "continuous" practice). Instead, it would be expected that the City Manager (in deciding on an appointment) and the Council (in deciding whether to confirm) would take the nature and extent of a candidate's experience into consideration.

Sections 5.3 on eligibility of the City Manager head Departments and 5.4 on salaries and bonds for City employees would remain substantively unchanged. Although various adjustments were considered, none was deemed appropriate.

Article Six -- Municipal Court

An interview with the currently sitting judge of the Municipal Court confirmed that there were no substantive changes warranted for this article, and the Commission proceeded accordingly.

Article Seven -- Nominations and Elections

The Commission consulted extensively and in multiple ways with representatives of the Cuyahoga County Board of Elections (BOE) for information and views bearing on this article and Article Eight -- Initiative, Referendum, Recall. Substantive conclusions were guided in large part by the material gleaned from the BOE.

There are numerous changes proposed throughout the article, but most are changes of wording and structure for clarity and consistency, not changes of substance. For the most part, only the latter are discussed here.

Section 7.1, dealing with timing of elections remains the same in substance. Importantly, it uses the term “regular municipal election” and gives it a definition (the odd year November election); the revised charter makes it a point to use that term consistently throughout the document when referring to that election.

Section 7.2 sets requirements for ballots. The only material change is to eliminate certain particulars about how names must appear on ballots, in particular a requirement for “full” names and, in specified circumstances, addresses. Upon learning from the BOE the protocols for ballot names in actual electoral processing, the Commission determined that these provisions are not essential or even useful.

Petitions for candidacy are treated in Section 7.3, which would remain substantively as-is. The Commission determined to use the terms “petitioner” and “circulator” consistently throughout the charter to refer, respectively, to the person seeking to be a candidate (or in Article Eight, the person named as seeking action by ballot as provided in that article) and to the person physically requesting persons to sign a petition. The provision retains the restriction that signatures cannot be affixed more than 180 days before the election, but adds an explicit clause (already present in a similar context elsewhere in the charter, but not here) that signatures that are too early cannot be counted.

Section 7.4 on acceptance by candidates remains the same in all material respects.

Section 7.5 is currently entitled “Who Elected,” but deals exclusively with write-in candidates. The title has been changed to “Write-In Candidates, in order to reflect the contents accurately. The changes in the text do not alter the substance.

The changes in the text of Sections 7.6 on conduct of elections and 7.7 on voting by members of the armed forces, and in the title of Section 7.7, are not substantive.

Article Eight -- Initiative, Referendum, and Recall

The Ohio Constitution guarantees the availability of legislative initiative and referendum to all municipalities without exception, but does not set particular procedures. It does not have a provision on recall. The Ohio Revised Code provides for initiative, referendum and recall, and

sets certain procedures for each. These Code provisions apply only to municipalities without charters, or those with charters that choose to refer to the state law rather than establish their own procedures. The City's charter has always, as an exercise of its home rule powers, taken a full text approach to these governance elements, setting and controlling its own procedures. The Commission determined to continue that approach in the Amended Charter.

Each of the items involves a citizen petition process. Two major substantive issues presented themselves across all three of them: the percentage of required signatures for a valid petition, and the definition of the base population against which the percentages are to be applied. By their nature, these issues ought to be considered together, and the Commission did so.

The current charter is at best ambiguous on the question of base population, with its use of the term "electors" suggesting it means registered voters. In the most recent instance of application, however, the City gave it a meaning of voters in the most recent regular municipal election. The Commission decided this latter approach made sense, and the amended charter now clearly and explicitly establishes that definition as the base against which percentages are to be applied.

The current percentages for signatures are 10% for initiative, 15% for referendum, and 25% for recall. The Commission considered each of them and found no reason for change.

A lesser, but still meaningful, consideration across all three petition processes is that, despite their being similarly rooted governance concepts (that is, voter initiated), the structure and language in which the charter presents them varies between and among them, making them difficult to understand. Further, although they involve petitions and electoral processes, there seems to have been no effort to coordinate with language in Article VII on candidate nominations/elections. Wholly apart from any substantive issues, the Commission undertook a substantial effort to make all these provisions align with each other to the extent practical and also to clarify and simplify them, all in an effort to make them more understandable.

Certain issues arose only with respect to one or more of the sections in the article. In Section 1, dealing with initiative, The Commission considered whether to establish a length of time before the official submission of the petition, before which any signatures would not be valid, the thought being that aged signatures might be seen as stale. That notion was not adopted. The Commission noted that as currently delineated, the process contemplates and allows amendments to the proposal after signatures have been collected and before the proposal is put on the ballot. On the one hand, this could mean that the matter as presented to the voters is different than the legislative proposal that signatories to the petition said they were supporting. On the one hand, it was recognized that as the measure is being readied for the ballot (going through the mandated consideration by a Council committee, Council itself, and election officials) some changes might be recognized to be sensible and appropriate and yet not out of line with what had been on the executed petition. Having these considerations in mind, the Commission determined to add a proviso that change would be permitted if it does substantively alter the proposal as it had appeared on the petitions.

Section 8.2, the referendum provision, calls for the Council to reconsider the challenged ordinance, and in the absence of a full repeal upon that reconsideration, put it to a vote of the electorate. The charter does not, however, set a time within which Council must act, thus

potentially allowing the status of the ordinance to remain in limbo for unknown period. The amended charter sets a time of 30 days for Council either to repeal or set an election. Section 8.2 has also been the home of certain clauses bearing on emergency ordinances, which have been removed and put in Article Three, Section 3.9 of the Amended Charter, previously discussed.

Section 8.3 covers recall. The sole substantive change particular to this section is the addition of a time restriction, such that signatures affixed to a petition fewer than 180 days after the commencement of the term of the individual sought to be recalled are invalid. The Commission noted the existence of a “cooling off” provision of this kind in some other municipalities, and considered it to be a sensible approach, with six months an appropriate middle ground that would allow emotions to subside while also not extending the period so long as to undermine the effectiveness of recall in a situation truly warranting invocation of the process.

Section 8.4 deals with general procedural items that apply to all three types of petitions, and also (by cross reference from a later article) to petitions for charter amendments. There are three changes worthy of mention. First, unlike with respect to initiative and referendum petitions, the current charter does not specify particular contents of a recall petition. The Amended Charter would do so, requiring the petition to state the name of the person sought to be removed and the basis for removal.

Second, the charter provision that allows for amendment in the event a petition is found insufficient; the Amended Charter would make more explicit that this insufficiency refers only to an inadequate number of valid signatures. Further, the current charter refers to consequences of a “final determination of insufficiency,” but does not define when “finality” occurs. The Amended Charter would specify that finality occurs after a second failed attempt. The Commission thought clarity would be desirable, and noted that the finality would not preclude another attempt by the petitioners, but they would just have to start over from the beginning and not continue to operate by supplementation.

Finally, noting the costs associated with a special election, the Commission considered whether elections prompted by citizen petitions should be held only in conjunction with regular primary or general elections, but determined to retain the current provision that would permit a special election. The current provision is incomplete, however, in its specification of a timing calculation for determining whether a special election would be required in the (highly unlikely) case of simultaneous recall of four or more members of Council. The Amended Charter would fill that hole by adding an outside time of 180 days within which, if no regular election occurs, the recall must be the handled at a special election.

Section 8.5, entitled “Official Publicity,” has been divided into two sections, the first retaining its current title and the second, new Section 8.6, entitled “Statements in Support and Opposition.” As reflected in the new title, the latter portion of old Section 8.5 did not fit as “publicity,” official or otherwise. The titles would now conform in each case to the contents of the text.

The current charter permits public notice of the upcoming election to be made either by regular mail to registered voters or by publication in a newspaper of general circulation in the City. The Commission considered whether there should be an order of preference of the two means, or possibly a requirement for both; whether mail notice could be directed to residences, that is

places, rather persons; and whether some reference should be made to electronic methods of communication. The Commission decided to retain the provision without material change. The availability of two alternatives was regarded as desirable, since variation in the nature and size of the matter being considered could warrant differing approaches, especially given cost considerations. Electronic means were deemed insufficiently comprehensive in current circumstances when something as fundamental as voting is involved. And since mailing to registered voters, not places, is constitutionally required for elections as to charter amendments, the Commission decided not to vary that approach for other types of issue elections. One concern expressed about use of the notion “registered voter” for notice purposes is that it is a floating concept, with people coming on and going off the registration rolls over time. The amended charter responds to that concern by specifying that the determination is to be made as of the most recent general election.

No changes of substance are made in the body of new Section 8.6. All changes are to clarify or simplify.

Article Nine – Finances

In considering the finance portion of the charter, the Commission was influenced by two main considerations. First, much of municipal finance is governed by state law. Second, the extensive section on the City’s budget process no longer reflects (if it ever did) the manner in this aspect of City business is actually conducted, meaning that City must take extra steps for purposes of compliance with the charter but which do not help practical daily functioning.

With the assistance of City staff, the Commission has prepared a revised finance article that begins with explicit recognition of the role of state law, revises the budget section to conform with actual practice within the bounds of state law, eliminates sections that were deemed unnecessary given state law overlay, and makes certain other changes, including to clarify and simplify.

New Section 9.1 makes the general reference to state law.

Former Section 9.1, now Section 9.2, is the revised description of the budget process.

Former Section 9.2, now Section 9.3, handles appropriation ordinances. It now includes explicit reference to the availability of an interim as well as an annual appropriation ordinance, and to the ability to amend both types of ordinance.

Old Sections 9.3 through 9.7, dealing with certain aspects of funds handling, and old Section 9.10 on revenue anticipation borrowings, have been eliminated as unnecessary in light of state law governing the same subjects.

Former Section 9.8, now Section 9.4, on bond issues is not materially changed. Former Section 9.9, now Section 9.5, dealing with bond maturities, is changed to eliminate the restriction to use of serial bonds. Consultation with the City’s bond counsel made clear that the inability to issue term bonds placed an unnecessary limitation on the City’s financial flexibility, since in some instances investors might prefer them, and there is no economic or regulatory reason to impose the restriction.

Old Sections 9.11 and 9.11(A), dealing, respectively, with limitations on the property tax rate (measured as millage) for current operating expenses and for parks/recreation maintenance and improvement, have been reorganized into a single two-paragraph Section 9.6 (with the general title “Limitation on Rate of Taxation”) and clarified, but not changed in substance, including most particularly the specifics of the limitations. Because the two old sections dealt with coordinate subjects, the Commission thought it sensible to bring them together in one section. There was an external suggestion for creation of an additional provision, similar to these two, with new millage focused on infrastructure maintenance and improvement. Although the Commission recognized that the City’s aging infrastructure warranted continuing attention and devotion of resources, it did not adopt this suggestion. The proposal would, in effect, authorize a new tax, and the Commission thought it inappropriate for inclusion in the product of an overall charter review. Any such matter ought to be considered by Council and the voters on its own merits as a standalone issue.

Old Section 9.12, now Section 9.7, is changed to require an annual financial audit in accordance with state requirements. This does not change current practice, but it was thought desirable to insert a formal charter-based requirement. The Council would continue to have discretionary authority to engage independent accountants for other particular audit purposes.

Article Ten -- Ethics

As noted in the discussion of Article Three, the contents of former Article Ten, dealing with franchises, have been largely eliminated as unnecessary, with the remainder now covered by Article Three, Section 3.10. In the Amended Charter, Article 10 covers ethics. To the extent the current charter deals at all with ethics, it does so in a single section in Article Three entitled “Interest in Contracts.” The Commission believed it important to have a broader, more modern approach to ethics in government, and that the subject deserved its own separate article.

The Commission considered two approaches: a minimal enabling provision, with details to be fleshed out later, perhaps by an ethics board that would also have enforcement authority; and a more robust, detailed statement with Council having only supplemental authority. The Model City Charter demonstrates the former, while the Lakewood charter is an example of the latter. The Commission determined that the more detailed approach would be preferable. Accordingly, it used the Lakewood provision as a foundation.

Section 10.1 establishes general expectations of respect, honesty and fair treatment, and an obligation of senior City officials to monitor and support all City employees in this regard. There is nothing similar in the current charter, and the Commission thought it important for inclusion.

Section 10.3 sets out certain particulars covering financial or other misuse of public office, consequences of conviction of certain crimes, and the responsibility of the City Manager to see that appropriate implementing policies are put in place for all employees and properly communicated. Additionally, owing to their particular roles and responsibilities, Council members, the City Manager, the Vice City Manager and Directors of the Departments of Law and Finance are specified as owing fiduciary duties to the City, a higher standard of loyalty and care than expected of others in the service of the City. These provisions are the core particulars the Committee thought should appear.

Section 10.4 makes clear that Council retains inherent power to supplement these requirements by way of additional rules or penalties as thought desirable, so long as nothing it introduces would be inconsistent with the contents of the charter.

Article Eleven – City Planning Commission

With one arguable exception, no material changes were found warranted for this article. The Director of the Department of Planning and Development noted that the language of Section 11.2, Powers, speaks narrowly of matters affecting “physical” development, without recognizing the broad scope of considerations that the current Department and the Planning Commission believe should be examined, and in fact do examine, when addressing “physical” development issues. The Charter Commission agreed that the broader scope is sound, desirable, and important enough to be embedded in the charter, although without any suggestion that the items now to be expressly mentioned are intended to restrict the scope of considerations to which the planning function, in its discretion, may determine to be attentive. Hence the addition of the clause “including but not limited to such factors as economic, environmental, and social sustainability” as a modifier to “matters affecting physical development.”

Other edits were to remove language regarding dates and length of initial terms that was historically significant but is now irrelevant, to replace that language with a short provision on continuity of membership under the amended charter, and to make minor simplifications.

Article Twelve – Civil Service Commission

The one substantive change to this article is the addition of a new Section 12.4, which requires the Civil Service Commission to conduct a review of Council compensation every four years in the year before the year of a U.S. presidential election, and no later than May 1 of that year provide Council a written report on its recommendations. The background of, and the Charter Commission’s reasoning in proposing, this new task for the Civil Service Commission is detailed above in the discussion of Article Three, Section 3.5 on Council compensation.

Other suggested changes in the text of this article are primarily for clarification and simplification. The title of Section 12.2 would change from: “Officers and Employees” to “President and Secretary” in order to reflect the narrow, specific content of the text.

Article Thirteen – Amendments

Timing and procedures for amending the charter are governed in most respects by the Ohio Constitution, but the Commission believes it sensible to continue with a provision on the topic. It gives a compact and more readily accessible statement of what is required. The several editorial changes are directed toward clarification, readability, and consistency, such as with the substitution of other more precise language in place of “electors,” and the specific identification of Article Eight as the cross reference for the “manner and form” for filing citizen petitions seeking charter amendments.

Article Fourteen – Charter Review

In the current charter, Article Fourteen deals with savings clauses, and Article Fifteen with charter review. The Commission felt that provisions of these kinds should remain but logically belonged in reverse order, with Article Fourteen addressing charter review.

Under the current charter, Council can move forward on charter amendments at any time, and citizens may likewise seek to do so via petition. Council may also, at any time, form a charter commission to consider amendments. None of this would change in the Amended Charter. What would change is that whereas currently the Council must, at no more than ten-year intervals, *consider* whether to appoint a commission to review the charter, the Amended Charter would now *require* appointment of a commission for full review of the charter at an interval no greater than twenty years since the most recent commission. Furthermore, in the interim, the Council would be required every *five* years to *consider* whether to appoint a commission. The Commission concluded that because of the current and potential future pace of change in circumstances for the City, it would be desirable to have a mandatory commission review at a stated interval (which some other municipalities are known to have), while at the same time not having this substantial process required too frequently. Hence the conclusion to set twenty years as the longest time that can pass without a full commission review, and a mandate to Council that it consider no more than every five years the question of forming a commission for review. If, upon consideration Council, does exercise its discretion to form a commission that proceeds to a conclusion, then a new twenty-year period for mandatory commission review would start.

The Commission also considered whether the charter should specify a particular number of members for a commission and/or a particular set of characteristics for a diverse and representative commission; whether, with an objective of full transparency, it should set (or forbid) certain features for the selection process; and whether commission members should be elected rather than appointed.

As to size, the Facilitator referred to research data that suggested bodies ranging in size from five to nine provided the best combination of effective deliberation and ability to reach a consensus. On the other hand, the Commission recognized the practical and political realities that might warrant a different size in particular circumstances, and the arguable unwisdom of binding a future Council to a certain number in circumstances that could not be foreseen. It also noted that the current Commission of fifteen (fourteen after a resignation part way through) had not appeared to encounter any size-related issues in its functioning, and further that previous charter commissions for the City had had 19 (1972) and 15 (1982), without recorded reference to functional difficulty. The Commission was persuaded that the better route was not to specify a size for charter commissions.

As to other features of a commission and its selection, the Commission consulted and considered the ordinance establishing this Commission, including the specification of characteristics to be sought in the composition of the group as a whole (which was felt to be generally pretty good description) and the description of the manner of making appointments (which, as applied, had reportedly drawn criticism by some in the community). There was considerable discussion and debate over how the charter might be amended to ensure satisfactory transparency without wading into micromanagement. In the end, the Commission determined, with some dissent and

abstention, that while representativeness, fairness, and transparency were important for a charter review process, it would be very hard to write charter provisions that would prescribe these with suitable precision and in a manner that would not unwisely restrict Council's flexibility to deal with changing political and other circumstances or lead to undesirable collateral consequences. Rather, the details would best be left to the Council. As the same time, the Commission expresses its view that Council undertake responsibility to assure the process is representative, fair and transparent, and that Council seriously consider enacting and codifying an ordinance setting out an overall approach to charter commission composition and appointment.

In considering whether the selection method should be changed from appointment to election (or perhaps a hybrid, such as nomination by Council, but then subject to confirmation/rejection via election), the Commission noted that for initial charters, the Constitution requires members (numbering 15) to be elected, and further that some municipalities elect commissions to review existing charters. Straight election could help circumvent certain of the transparency concerns cited as attaching to the appointment process, but there was concern expressed that a requirement for elections could affect the number and nature of persons willing to serve. The Commission determined to retain the appointment approach (subject to the expression of view in this report, as noted above), but with no electoral component (other than that Council members, who are the appointers, must themselves face the voters).

Article Fifteen – Savings Clauses

The four sections that comprise former Article Fourteen, now Article Fifteen, have remained word for word identical since they were made part of the original charter in order to ensure carryover into the home rule regime all pertinent legislation, commitments and personnel from the pre-charter period. They are similarly necessary for the same relative purpose of carryover from the existing charter to the proposed new charter. Although there are a number of suggested changes in both titles and text, none is substantive. Rather, the edits are for clarity and precision, including to ensure that words and phrases are consistent with their usage throughout the Amended Charter.

Article Sixteen – Effective Date of Charter

Like the “savings” article, this article on the charter's effective date has been the same since inception and is thus not suitable for inclusion in the proposed amended charter. The Commission's view, as reflected in the proposed replacement article (with a slightly revised title), is that the Amended Charter would become effective on the first day of the calendar year immediately following its (assumed) approval by the voters. Of course, if the vote were to be held at a time other than a regular November election, Council would know the timing at that point, and may wish to insert a different date. Further, the provision would leave it open for Council to adjust the effective date even after the election, if in its judgment that were warranted.

Signature Statement and Signatures

The current charter still has a concluding statement by, and signature block of, the original commission. The Commission sees neither need nor good sense in continued inclusion of this material in the Amended Charter. The recommendation is that it be eliminated and not replaced.

APPENDIX

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Respectfully submitted,

THE CHARTER REVIEW COMMISSION OF
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