



City of Cleveland Heights Charter Review Commission

Submissions to the Commission 24 January 2019 with Comments of the Chair

Committee of the Whole
24 January 2019

Messages and Documents Index

1. Message from Vice Mayor Melissa Yasinow
2. Message from Vice Mayor Melissa Yasinow
3. Message from David Porter
4. Donalene Poduska
5. Michael Bennett
6. Mayor Carol Roe

The following messages and other materials have been submitted to the Facilitator since the last sharing of Submissions. The materials are ordered by date received.

1. Vice Mayor Melissa Yasinow – 20 January 2019

Larry:

First of all, thank you and the entire Commission for all of your work. It is greatly appreciated and clearly great attention was paid by the Commission in its completed draft.

Second, I have cc'd Commission Chair Jack Newman, Law Director Jim Juliano, Vice City Manager Susanna Niermann O'Neil, and Mayor Roe and Councilman Ungar. I am uncertain if including any further councilmembers in my response could impact public meeting laws.

I've completed my initial review, and I have some initial thoughts/questions. Please do not view these thoughts/questions as comprehensive, as I was only able to complete one read-through before writing. However, I did not want to fail to respond prior to this Thursday's meeting:

1. Section 3.1: In lieu of "his or her respective successor" I would recommend "their" as it is gender-neutral language. This is a running comment throughout the document. Also, in Section 3.1, I believe it is "then-existing" as opposed to "then existing".

Comment: A new version of the revised charter will have suggested changes that avoid the necessity of using pronouns.

2. Section 3.4. I am concerned about the 90 day time limit for vacancy filling, and I know that this time limit was an issue of discussion in the Commission. I view our current vacancy as instructive. In our current situation, Councilwoman Stephens resigned effective November 26, 2018, which means that the vacancy would need to be filled (i.e. the next councilmember taking the oath of office) by no later than Monday Feb. 24, 2019. Due to the timing of her resignation, the holidays played a material role in us not even closing the application period until January 15. We now have 41 applications for this single spot, and Council just received electronic copies of those applications on January 18. The League of Women Voters will be conducting recorded interviews with each person who passes the basic background check of having paid their taxes and being a registered voter. We anticipate that those interviews alone will take a minimum of three days. If each interview lasts only 5 minutes, Councilmembers will still be viewing over 3 hours of interviews. Then Council must decide which finalists we want to bring in for an in-person interview, and then conduct the in-person interviews, and choose the next Councilmember. While I do not think that a Feb. 24 deadline for swearing-in would be per se impossible, I would not be shocked if our newest member isn't sworn-in until early March.

Additionally, I would note that we are in this current situation with plenty of advance notice. Not all vacancies are the result of planned departures--a councilmember could become unexpectedly and gravely ill, or worse. We are human, and if, God forbid, something truly unfortunate were to happen to one of our colleagues that resulted in an immediate vacancy, I imagine that we would need time to process the situation. We may not be equipped to immediately start a 90 day replacement procedure in all circumstances.

Finally, what if that 90th day is a weekend or a state/federal holiday? If that last date is one that would be impossible for a person to take the oath-of-office, wouldn't the time period be per se shorter than 90 days?

Were all of these contingencies/scenarios considered by the Commission? I wasn't certain if they had also considered 120 days, and, if so, why 90 was recommended.

Comment: This issue has been debated at great length, with just about every angle explored thoroughly. It will take a focused effort to conduct a thorough process in 90 days, but it can be done, and it seems the best option for balancing

the desire to have an effective selection method while avoiding an overly extended period of vacancy and limiting the potential for what has on occasion in the past been regarded by some as an opportunity for unfair handling. By way of comparison to a small sampling of nearby cities, it appears that 60 days (Lakewood, Shaker, Euclid) is a time frequently given to council to fill a vacancy while some give only 30 (UH, Brunswick and Mentor), in default of which the authority goes to the mayor or the president of council. As to the 90th day falling on a weekend or holiday, this is a circumstance that can occur whenever there is a set number of days established forward or backward from a particular happening, not only in this instance but elsewhere in the City's charter and in charters in general, the latter of which do not appear to concern themselves with it. One approach, if it were thought to be a problem warranting attention, would be to specify that if the 90th day falls on a weekend or holiday, then the first business day that follows. In that event, should other portions of the charter be revised in the same fashion? I would suggest not making the change. If something needs to be accomplished in a 90 day period that end on a Sunday, that same thing could surely, with focus and advance planning, be accomplished in 88 days.

3. Section 3.9: I have some concerns about the limitations put forth in the Emergency Measure provision, limiting it only to situations that are "necessary for the immediate preservation of the public peace, health or safety in the City." Although I could be reading that section more narrowly than the Commission intended, I am concerned if my reading is accurate. There are many ordinances that we pass that do and should go into immediate effect, from small to big. For example, the idea of waiting 30 days to allow the Police Chief to sign a contract for an updated computer system, for the City to issue an RFP/RFQ for a development project, or for the Public Works Department to get a new cherry picker or order next year's road salt seems inefficient and harmful to good management....do these examples satisfy the requirement of necessary for the immediate preservation of public peace, health or safety? What about the ordinances that Council has to pass for our budget/appropriations process? Or if we want to authorize the City Manager to enter into negotiations or enter into any type of contract? Council will be using an ordinance to create a Refuse & Recycling Task Force--under my admittedly narrow reading of the proposed language, the establishment of commissions/task forces and the appointment of their members would need to wait 30 days. What if there's a development project with time-sensitive aspects (such as application deadlines for tax credits, or a developer who needs to move quickly to secure favorable interest rates?). Can you please provide the reasoning behind this proposed language? Also, it is not clear in this section that Emergency Measures are NOT subject to a referendum. In Section 8.2(e) of your summary chart you wrote that "Reference to emergency ordinances is eliminated because will be covered elsewhere in charter". However, Section 3.9 does not explicitly spell out that emergency measures are not subject to referendum.

Comment: The definition of what constitutes an emergency would not change from the existing charter to the new one. It has been removed from Article Eight, Section 2 dealing with referendum and placed in Article Three Section 9 dealing with Council, and given its own heading. Similarly moved to that new section are the clauses calling for a supermajority vote and for a statement of reasons. The notion was to put the concept where it logically belongs; to make it more evident to anyone consulting the charter; and, by adding the word “specific” to modify “reasons,” to emphasize that it was to be used only when there is a clearly articulable factual justification. Accordingly, to the extent the examples cited here or in the supplemental comment below have been handled historically by Council via the emergency method, there is no reason to think this cannot or should not continue with similar effectiveness, so long as there is a specific reason that can be articulated.

Ohio law provides a detailed procedure for referendum that is applicable to non-charter cities. Ohio law further provides that charter cities must have a referendum process. Charter cities that do not have their own referendum process must follow the process set by state law. Those that do have their own referendum process need not follow the particulars of the state process but instead can have their own. In this case, the Cleveland Heights city charter does have its own process, but at least as to the exemptions from referendum, the Cleveland Heights charter has followed the state approach, including as to the concept of emergency measures and the definition of emergency. For what it is worth, the Ohio Constitution, in dealing with referendum as applicable to enactment of state statutes, uses the same definition of “emergency.”

Section 8.2 currently, and in the proposed revised charter, sets out the types of measures that are that are not subject to referendum, and emergency measures are listed there as one of those types. The observation about whether, by reference to the summary chart, emergency ordinances are actually excluded from referendum exposes a shortcoming in the chart, not the draft charter. References in the summary chart to 8.2 and 3.9 will be revised in the next draft, so as to eliminate any misunderstanding.

4. Section 3.11(a): Has there been any analysis into how/if removal of the titles Mayor/Vice Mayor will impact the ability of Cleveland Heights to participate in the Ohio Mayor's Alliance and other organizations? I know that you briefly mentioned this as a concern in one of your more recent emails. The Ohio Mayor's Alliance is very influential--indeed both 2018 gubernatorial candidates spoke to this non-partisan group with promises of restoring local government funding. Any insight you can provide on this matter would be appreciated.

Comment: Yes, this issue has been considered. The inquiry has not produced a clear answer on future participation in the Mayors Alliance, and it is being pursued further. The report that will accompany the proposed charter will flag this issue for Council, with whatever information has been developed by that time.

5. Section 4.2: Why was the residency requirement for the City Manager removed? I think that it is incredibly important for our City Manager to live in Cleveland Heights. Was there concern that this requirement is unconstitutional? Please advise.

Comment: An Ohio statute forbids a city to require residence in the city as a condition of employment by the city. In 2009 the Ohio Supreme Court upheld that statute against a challenge by two charter cities that argued it is unconstitutional as a violation of home rule. The same law provides, in summary, that Council can, in order to ensure prompt responses to emergencies, pass an ordinance requiring residence either in the county or in an adjacent county. Nothing inserted in the charter could either add to or subtract from that authority. The expectation is that Council will evaluate all factors, including but not limited to commitment to the City, in making a decision on hiring a City Manager.

6. Section 8.1(a): Is there any deadline for persons to circulate initiative petitions? I see that for a referendum to occur, petitioners must get signatures from at least 15% of those who voted in the most recent regular municipal election, and they must do so within 30 days. However, for initiatives, they need only 10% and appear to have an unlimited time. What if, within that unlimited amount of time, matters concerning an initiative issue substantively change? Arguably, a signature would be valid so long as the signatory is still registered to vote at the address listed on the petition. Was there any discussion of limiting the time to something significant, but reasonable? Such as six months or one year from the date a petition is pulled? Also, why is the threshold for an initiative with an unlimited deadline smaller than that for a referendum with a 30 day limit? Can you please provide the rationale?

Comment: There is no front end cutoff period for gathering signatures for an initiative. The Commission did consider whether to impose one, such as 180 days, but decided against doing so. The terms of the initiative itself would have to remain the same from the first signature to the last. If external circumstances were to change, rendering the initiative unnecessary or undesirable in the eyes of the promoters, they would presumably not continue with it. But the process would appear to entitle them to make that judgment.

The percentage thresholds in the proposed new charter are the same as in the old. The Commission considered whether there was cause to change them and found none. One basis for making the hurdle for a referendum higher than for initiative is that in the case of a referendum, the elected representatives on Council have already decided there should be an ordinance or other measure, and the referendum seeks to undo it. The initiative typically tries to fill a void where the council has not acted. Also, keep in mind that an initiative can be used to undo an ordinance already in effect, and in that instance the threshold percentage would be 10%, not 15%. The referendum procedure with its 15% allows for an early attack to keep a new ordinance from coming into effect in the first place.

7. Section 8.1(c): I have a few questions with this provision. First, what if the petition requests that which is impossible or unconstitutional? The language of this section says that the petitioners may still "require" that the initiative go on the ballot, even if Council rejects the initiative for its impossibility or unconstitutionality. Second, I noticed a difference between the acts allowed by Council and those by the petitioners. I do not quite understand the purpose of this difference. Under 8.1(c), the petitioners may demand that an initiative be submitted to the voters if Council "passes it in a form different from that set forth in the petition." However, petitioners may put something directly to the voters, with changes, so long as those changes do not "substantively amend" the measure as listed on the petitions. Why is the right reserved to petitioners to put something on the ballot directly if there are even the smallest changes passed by Council? Also, who has the right to determine/challenge whether an initiative hews to or "substantively amends" a petition's language?

Comment: The initiative process, by its nature, allows citizens to enact an ordinance directly, regardless what Council thinks of it. The process allows Council a role to suggest or urge changes, which may or may not be accepted, but in the end, in order to preserve the character of the initiative process, the promoters of the initiative must be final arbiters of what goes on the ballot. A successful initiative would be susceptible to court challenge for unconstitutionality just like a charter provision or a council-passed ordinance – such as the residency provisions discussed above. Similarly, the nature of a change as substantive or not, assuming there were a dispute about it, would be for the courts to decide; if there were a big enough change from the precise contents set out in the petition, the proponents would risk a declaration of invalidity.

8. Section 8.2 -- see earlier questions re: emergency measures and amount/deadlines of 15% for 30 days, while initiatives have only 10% and unlimited time.

Comment: I think the earlier responses cover this.

9. Section 8.3(c): The first word of the last sentence needs to be capitalized.

Comment: The last few lines of this paragraph were editorially botched even beyond the cited error and will be repaired in the next draft.

10. Section 8.6(b): Although this was edited for clarity, I am still confused. Who gets to submit an argument for/against a measure? What if there's a citizen initiative that the Council President either personally supports or opposes and wants to influence the City's answer? Can the Council President be a member of this Committee? For example, let's say that there's a citizen initiative that the Council President and only two other members of Council agree on, can those 3 be the only ones that prepare the answer, even though a majority of Council may have the opposite view? Must the answer be unanimously approved by those 3 members? Does the Law Director have to review and approve of this answer for accuracy?

Comment: By definition, an initiated charter amendment or ordinance or a referendum proceeding is something that does not have the support of the Council or as to which Council has for whatever reason determined to step to the side. The purpose of the “explanation or argument” is to allow the Council, which acts by a majority, to state its view, meaning that the three drafters appointed by the President of Council (who is not excluded from being one of the three) would be expected to reflect that view. An edit could be made to the text to confirm this interpretation.

Also, what is meant by "An explanation or argument for or against any measure or recall must be signed by the person or persons authorized to submit it."? Does that limit the City's answer to only those 3 committee members, as they are arguably the only persons authorized to submit it? Alternatively, is this simply a "warrant of authority" sentence, along the lines that a lone member of an organization isn't speaking for that entire organization?

Comment: As noted above, the design is that the appointed drafters would be, and would be understood to be, explaining the Council's position. This would be the only submission on behalf of Council that would be subject to handling in the manner prescribed in 8.6(b).

Those are all of my thoughts, questions, and comments for now. Again, thank you for all of your service.

2. Vice Mayor Melissa Yasinow – 21 January 2019

Larry:

Thank you. One other example of legislation that we regularly pass: resolutions declaring the importance of certain days or months, such as February being African American History Month. Using my previous example, it makes sense to pass the resolution in February (this year is February 4) and for it to take immediate effect. However, if we could not have it pass as emergency legislation to take immediate effect (ie not related to the immediate preservation of public health or safety) then the resolution recognizing February as African American History Month would not actually take effect until 30 days later, ie in March.

I do not believe that the above scenario would be intended by the Commission, but that is what would occur under the revised Section 3.9. Was this type of legislation, which we regularly pass each month, considered when the Commission made its recommendation?

Comment: The earlier response on emergencies should covers.

3. David Porter – 24 January 2019

Dr. Keller and the Commission:

First, let me join those thanking you for the more than year-long efforts you have devoted to this project, with more yet to come. I hope the Commission members understand how valued their work is.

Second, I am not going to nitpick the draft charter. Having written countless documents like this one, I know that one can always change a word here and word there, making little if any improvement. Good enough is good enough, especially since this is going to the Council as recommendations, rather than straight to the voters. I am certain there are minor fixes that will be required, but it is time to push ahead.

My one bit of disappointment is that, while this document is a most excellent model charter, one that could readily be used by other communities, *it is* a model charter, one that could be used by other communities. Save, perhaps, for the Ethics provisions, it lacks any unique character that says “this is Cleveland Heights.” Maybe that is a good thing, and certainly I can accept ubiquity and similarity in type as being a drafting good. But coming as I do from a corporate law background, where we in Ohio have striven for a century to maintain our unique form of corporation law, though adapting it to incorporate good ideas found

elsewhere, I myself would have tried to find ways to make our charter a bit more “us.”

- That might have included a preamble, for example, that highlights core values of our community, such as diversity. I know better than to permanently enshrine a marketing pitch, such

as the current City pitch of “Neighborly, Diverse, Cultural, Unique, Artistic, Progressive, Friendly” but some of that flavor, right up front, could help us both to remember who we are and to tell others how important we view our character to be.

- For example, here is what the preamble for the charter of the City of Burbank, CA says: We the people of the City of Burbank, in order to exercise the benefits of home rule and establish a responsive, effective and accountable government that maintains the highest level of integrity, provides an outstanding quality of life through excellent municipal services, and through which all voices in our diverse society can be heard, and to provide fair representation and distribution of government resources and a safe, harmonious, and sustainable environment based on principles of liberty and equality, do enact this Charter. (Added by Charter Amendment approved by the voters on April 10, 2007.)

Or as I suggested back in March, demonstrate our uniqueness among suburban communities in our commitments to the arts through creating a standing arts commission, as one finds in a few charters outside our state. The same concept might have applied to Diversity.

Comment: I question the value of doing something like this. It could make members of the Commission and the Council feel good, but does it genuinely advance the good governance of the City? If the latter, then maybe there is a need to re-think portions of the body of the charter, where, in my view, the substantive governance provisions are supposed to lie. The contents of the sample preamble sound to me more like part of a marketing program. The charter is, of course, not an effective vehicle for day-to-day marketing. Citizens do not examine the charter for that purpose, nor would one expect a real estate agent to use it as a reference for potential incoming property purchasers. Further, at any given point over time, the City may want to emphasize something different about itself in a publicity campaign – witness the current branding exercise, which I do not believe is complete and which may itself be superseded by yet different thinking at later points in the City’s life.

The current preamble, which simply says, in effect “we want to govern ourselves to the extent permissible, and this charter is designed to do that”

should be enough, in my view. Besides, keeping it simple avoids what would surely be a difficult process in drafting something more, and prevents the possibility that a flowery, end-of-process tack-on might someday be argued (though not originally intended) to have real substantive impact for the interpretation of the concrete provisions in the sixteen articles that we have spent many months setting up to stand on their own.

A determination not to supplement the existing preamble with a more extensive presentation would not, of course, preclude mentioning the issue in the report, in case Council might have a different view. On the other hand, if there is a movement within the Commission for an expanded, discursive preamble, I do not think we should just punt to the Council. Rather, we should go back to work and see whether, upon additional careful reflection and analysis and debate on wording, usefulness, and potential implications for what the Commission has already done, we can wind up with something that commands a majority of the Commission.

4. Donalene Poduska – 24 January 2019

Mr. Keller, I read the article in today's Sun News about the charter review committee recommendations. I am very glad that they recommend keeping the at-large elections. I definitely support keeping the city manager-form of government. Both of these can help to keep politics out (at least, a bit but not thoroughly).

I do wish that they had looked closely at the timeline when a vacancy in council occurs. Having 45 days to apply and then 45 days to appoint means that there would be the possibility of being without a full council for 3 months -- a lot of business can be done in that time.

When I was president of the Cleveland Heights-University Heights Board of Education in 1982, we had a member who needed to resign. I "worked" with the person in order to give us the best way to handle the timeline. We were required to fill the vacancy within 30 days! It is possible -- I had been one of the 35 or so who had applied for one of the two vacancies occurring on the BOE back in 1975 (I believe that was the year). After all the interviews, the remaining members made a decision that evening.

I, therefore, would recommend reducing the timeline as proposed to -- 10 days for people to apply and then 20 days to appoint for a total of 30 days of vacancy. I believe that it is doable. People who are interested should not need more than 10 days. The council should be able to make an appoint within 20 days -- or at most 30 days. It is not that difficult to narrow down the field to that is why I feel 20 should

be sufficient and 30 should definitely be all that is needed. By the way, the three remaining members of the school board, even though I was not selected for one of the vacancies, did choose two very good people -- and remember the tight timeline!

Thanks for considering my suggestion.

Comment: There is a lot of merit to this suggestion, and as noted above, some cities give the Council just 30 days to fill a vacancy before other forces take over. However, the information developed by the Commission indicates that for a robust process of the kind desired for our City, and actually undertaken by the Council to fill a vacancy within recent years and now again for a current vacancy, 30 days is not realistic, nor is 60. 90 seemed to be the best middle ground for action that is both prompt and well considered.

5. Michael Bennett – 24 January 2019

Date: January 24, 2019

To Charter Review Commission, c/o Dr. Larry Keller

Re: Submission related to Draft First Amended Charter discussed at Public Meeting
January 24, 2019

From: Michael Bennett, 2914 Hampshire Road, Cleveland Hts.
(mebennett@outlook.com; 216-408-3874)

Larry, congratulations again to you and the Commission for providing badly needed revisions to our city's charter. I appreciate everyone's long hours of service – the result is a much better document.

But as I mentioned at tonight's meeting, I urge the Commission to reconsider the form of government and include in the charter an elected Mayor as the executive leader.

The rights and responsibilities the Commission drafted for the City Manager is a great list and what we need in Cleveland Heights – but we need an elected official accountable directly to voters to fulfill them. A chief executive can't be effective if that executive is hired, supervised by and responsible to a 7-member Council. Residents of Cleveland (and most other municipalities in our county) don't elect council members to elect a mayor – they elect council members AND they elect a mayor. We want to do the same:

1. **An elected mayor would be accountable directly to voters.** As chief executive, the mayor would collaborate with city staff and the elected City Council to move Cleveland Heights forward, rather serve an employee of the Council and have to answer to seven bosses.
2. **Cleveland Heights has suffered under the current structure of city government.** Development has been stymied (Top of the Hill, Lee and Meadowbrook), opportunities have been missed (Severance, Coventry School) and we have lost population and housing values at a far greater rate than comparable suburbs – suburbs that not coincidentally have visionary, strong elected mayors who are better able to lead their communities in addressing economic development, housing issues and tax rates.
3. **The city needs stronger leadership.** The buck needs to stop at the Mayor, who would be seen by residents, business owners, developers and others as the executive authority who runs the city. Most of the comments in favor of a strong mayor from the April Town Hall meeting and online survey agreed that our city suffers without bold, visionary leadership – the kind of leadership that a City Manager, no matter how capable, can provide.

I remain concerned that the Commission had very little open discussion or debate about the Mayor form of government. I attended or watched all the meetings leading up to its decision to retain the City Manager form ... in not one was there substantive or even long discussion weighing pros and cons, and at no time did anyone bring up the results of the April Town Hall meeting and online survey which reflect at least a portion of the public's desire.

I urge the Commission to have the discussion now and to revise the proposal before it reaches Council

(As an aside, if the Commission agrees to propose a Mayor form of government, it would need to restore the residency requirement. The Ohio Revised Code is clear on that requirement for elected officials -- which points out the irony that the Commission wants to have an appointed City Manager who essentially acts as Mayor but conceivably could not be a city resident – someone who does not have live nor pay property taxes in the city they govern, and only pay a portion of their income tax here.)

Comment: The arguments are not new. I do not favor a redo.

6. Mayor Carol Roe – 24 January 2019

Duties of President of Council:

Add explicit provision to Assure yearly evaluation of City Manager is completed with the input of every Council member.

Add to preparing meeting agendas, consistent with codified ordinances and Roberts Rules of Order.

Comment: These can be easily accommodated in drafting. However, I suggest not including reference to Robert's Rules, an outside source that might change or be superseded at some point, or that might already have one or more obscure provisions that, if they ever were to come into play, the Council may wish it were not charter-bound to follow.