



City of Cleveland Heights

Charter Review Commission

Decisions and Rationales

13 December 2018
Council Chambers
Cleveland Heights City Hall

Charter Review Commission: Present; Patrycja Ajdukiewicz, Craig Cobb, Jessica Cohen, Vice Chair, Michael Gaynier, John Newman, Jr., Chair, Howard Maier, Carla Rautenberg, Vince Reddy and Katherine Solender. Absent: Randy Keller, David Perelman, Maia Rucker, James Vail and Sarah West.

1. Acceptance of Decisions and Rationales from 29 November

The Decisions and Rationales from the meeting of 29 November were accepted by acclamation.

2. Lingering Questions and Unresolved Points

A. Time period for Council to fill a vacancy by appointment

A suggestion was made to revisit the Commission's earlier determination, currently reflected in Section 3.4(b) of the draft charter, to restrict to 60 days the time within which Council must exercise its authority to fill Council vacancies. Referring to the recent resignation of Council member Cheryl Stephens on November 27, 2018, it was argued that, particularly in view of the impending holidays, two months was not reasonably sufficient to allow a thorough process of applications, study, interviews, deliberations and decision, that the schedule established by Council in the Stephens situation demonstrated that insufficiency, and that there was a danger that good quality candidates might lose out because of a process that was rushed or even became preordained. The suggestion was to increase the allowable period to 120 days, this being urged as consistent with Commission decisions on other subjects not to hem Council in unnecessarily but to rather to allow meaningful flexibility for it to conduct business.

In follow-up discussion, some expressed the view that an extension would threaten to undermine the purpose for, and the effect of, the time restriction in the first place; that at it would likely result in a longer period of time with the vacancy unfilled; and that with an aggressive, efficient effort, Council should

be able to conduct a satisfactory process within 60 days. In addition, any extension of the time for Council to act would necessarily also extend the date for the election that would be held in the event Council were to fail to meet its deadline, since, as all acknowledged, a period of at least 120 days would still be necessary for the electoral process following a failed appointment, regardless of the time initially allotted to Council. The various time periods and their relation to each other prompted discussion about hypothetical timing of events depending upon when, during the year, a vacancy arises.

A motion was made by Mike Gaynier and seconded by Craig Cobb to change the time for Council action contained in 3.4(b) from 60 to 120 days, it being understood (following discussion) that such a change would necessarily involve changing the election timing in 3.4(a) accordingly to 240 days. Without a vote having first been taken on that motion, the motion was, on separate motion by Jessica Cohen and seconded by Carla Rautenberg and by a vote of 6-2 with 1 abstention, amended to make the proposed new period in 3.4(b) for Council action 90 (not 120) days from inception of the vacancy and to change the electoral period contained in 3.4(a) from 180 days after vacancy to 210 (not 240) days, a correlative 30-day extension.

Following approval of the Cohen/Rautenberg amendment to the underlying Gaynier/Cobb motion, the Commission, without the necessity for a new or further revised motion, proceeded to a vote on the underlying motion, as amended.

Vote on the Motion: Yes – 9 No – 0 Abstain – 0

B. Council as judge of election/qualifications of its members

The Commission revisited its earlier decision (which had been qualified by the recognition that additional research would be conducted on the topic) to remove the first sentence from 3.3 of the current charter, which provides that Council is the judge of the election and qualifications of its members. In support of the decision, points were again advanced, in particular, about the appropriateness of Council as assessing “elections,” given the involvement and authority of others such as the board of elections. A question was also raised about the desirability of having Council characterized as a “judge.” Information was provided to indicate that the formulation in 3.3 is the same as in the US Constitution, the Ohio Constitution, other state constitutions, and a number of other Ohio municipalities (although not all), and that the formulation had been the subject of treatment by the Ohio Supreme Court at a time well before its inclusion in the City’s original charter. Reference was made to a current situation in North Carolina involving an election for the US House of Representatives, in which there might be occasion for the House to

exercise power to seek to exclude the nominal winner of a very close race, pending results of an ongoing inquiry in that state into allegations of impropriety in the electoral process.

Jessica Cohen moved to reinstate the provision in 3.3 as it stands in the current charter. Katie Solender seconded the motion.

Vote on the Motion: Yes – 7 No – 2 Abstain – 0

C. Effective date of Council salary adjustment.

It was noted that in an earlier draft of 3.5, the effective date of a change in Council salaries would have been the beginning of the second calendar year following the year of the change. However, in the current charter, any change takes effect on January 1 of the year immediately following the year of a change. The suggestion was that there was no good reason for altering current practice by postponing effectiveness for a year since, in any event, given that any adjustment would occur in an odd year (that is, a year of a regular municipal election), at least a portion of the Council that votes for a salary adjustment would get the benefit of the change before having to stand for re-election. The Commission had not previously addressed this particular timing issue, which had surfaced as a point for consideration only during the drafting process.

After a brief discussion, it was agreed to keep the provision as it appears under the current charter (which is also as it appears in a recent draft of a revised charter), that is, with effectiveness on January 1 of the year following action on a change.

D. Provision on annexation.

Legal staff had commented that certain clauses in Article One dealing with detachment of territory from the City and annexation of the City to another municipality might not be seen as necessary, since they were covered by state law. Following brief discussion, it was agreed without dissent to retain the provision in the charter.

E. Contact information on petitions.

Legal staff had raised whether it would be desirable that petitions for initiative, referendum and recall, which in 8.4 require identification of a committee of petitioners for contact purposes, be required to contain contact data beyond what is already mandated (names and addresses), one such

possibility being telephone numbers. No member of the Committee favored requiring more information.

F. Scope of City employees who must give an oath.

Although certain City employees are required to give an oath, the current charter has no provision on the topic. The proposed new charter would contain a requirement in 10.2 for salaried employees to give an oath. Legal staff had raised a question whether an employee's presence (or not) in a bargaining unit should also play a role in defining who must give an oath. Following discussion about the breadth of persons that would be covered under the currently proposed language and related consideration of administrative burden, it was determined to retain the provision as currently drafted. In this connection, it was noted that most employees would likely sign oaths as part of the HR processing function, without need for more formal events or any involvement by Council.

G. Amendment of Council agenda.

Legal staff suggested consideration of including a provision in 3.11 on a manner for amending an agenda for a Council meeting. The Commission determined that no provision of that kind was warranted for the charter.

H. Calling Council meeting to order without President or Vice President

Legal staff noted the absence of a charter provision for who calls a Council meeting to order in the absence of the President or Vice President. There will now be a provision in 3.11 for appointing a President Pro Tem, but the appointment will not occur until after the meeting starts. It was noted by way of reference that Robert's Rules assigns to the clerk of council the task of calling the meeting to order in this circumstance. The Commission determined that this was a detail appropriately left to Council, and not for inclusion in a charter.

I. Role of President Pro Tem in preparing Council agenda.

It was noted that in the current draft of revisions, again 3.11, a President Pro Tem is reflected as potentially involved in drafting the Council agenda. But the identity of a President Pro Tem would not be known until selected at a meeting from which both the President and Vice President are absent, and thus the President Pro Tem cannot be expected to have been involved in preparing the agenda. It was agreed that the draft would be adjusted to recognize this circumstance.

J. Cross reference between Article Eight on initiative and Article Thirteen on Charter Amendments.

Legal staff raised for consideration the notion that since charter amendments can be presented via initiative, the provision in Article Eight on initiative might usefully contain a specific reference to Article Thirteen on amending the charter. It was pointed out that Article Thirteen already contains a cross-reference to Article Eight, and the Commission saw no need to add on a reference back in the other direction from Eight to Thirteen.

K. Enforcement of all laws v. ordinances only.

Referring to 4.2 and 4.2(d), legal staff raised the question whether it might be appropriate to limit the City Manager's enforcement duty to ordinances only, and not to include all laws, as is currently reflected in the draft. It was noted, however, that City authorities, such as the police, enforce state and federal laws as well as local laws, meaning that the City Manager has the same breadth of oversight responsibility, and further that oaths referring to enforcement of laws would be broad also. The Commission determined to retain the broader description.

L. Council confirmation of existing Directors.

Legal staff questioned whether, given the expanded requirement for Council confirmation of Directors of Administrative Departments under 5.2 of the revised charter, it would be necessary, in the absence of a special grandfather provision otherwise, for persons already holding those positions to undergo the confirmation process. It was noted, however, that the continuation of current officials in a transition from the current charter to a replacement charter was covered under the general savings provisions of Article Thirteen, specifically 13.3, meaning that confirmation of persons already holding those positions would not be required.

M. Possible unintended effects of removing the title of Mayor.

It was reported that Mayor Roe had recently inquired whether the elimination of the title Mayor, as would occur under the revised charter, would have any material impact on the City's relationships with other governments or on its participation in intergovernmental organizations. In discussion among the Commission, it was noted that the City would be the only one in Cuyahoga County whose government did not have someone with the title Mayor, although Mentor, in Lake County, has a Council-Manager government and no one with the title Mayor. It was further noted that in 4.2(a) the City Manager would have both the power and the duty to conduct intergovernmental

relations for the City. Two organizations were specifically identified: A regional mayors/city managers group, and the Ohio Mayors Alliance, consisting of Ohio's thirty largest cities and of which Cleveland Heights is a founding member. In the first group, the City Manager's empowerment by the charter should remove any question about continued participation, although the President of Council, no longer having the title Mayor, could not separately participate on her own authority. Contact with the executive director of the second group, the Alliance, had left it uncertain whether the removal of the title Mayor would affect the City's ability to remain in the group. The discussion closed by noting that when considering the proposed charter, Council will have the reasoning of the Commission on removing the title of Mayor and, at least to date, the inconclusive nature of the implications for participation in the Ohio Mayors Alliance, the significance of which (if any) Council will be in the best position to evaluate. The Commission agreed to make specific mention of this circumstance in its report.

N. Certain similar but non-parallel provisions of the finance article.

The finance article has two carryover taxing provisions, now combined in 9.6, that are very similar in that both deal with dedicated millage, but that also differ in that a particular clause appears in one provision but not in the other. It was not clear whether there was a substantive reason for the difference, but the Commission decided not to pursue further clarification, instead leaving the provisions as they are with regard to the clause.

O. Formatting

It was noted that the proposed charter would have several formatting changes, including eliminating Roman numerals, identifying articles by writing out the numbers, and providing a mini-table of contents at the beginning of each article that has more than one section. One comment cited as unusual the proposed use of periods following the section designations. Subject to the feature on periods, which would be changed, it was agreed that the formatting was acceptable.

Moving to an editorial issue, there was a discussion about the appropriate wording to begin each of the several items in the list of City Manager powers/duties in 4.2, and a possible need for a related change in the clause that introduces the list. No consensus was reached on the need for a change or, if there were a change, what the change would be. The situation will be further considered in the ongoing drafting process.

P. Comparison of provisions on Civil Service and Planning Commissions

Differences were noted in the current charter between the provisions for the Civil Service and Planning Commissions, beyond just the number of members and methods of appointment. These included the express requirement for Council to create a Planning Commission, while the Civil Service Commission is just provided without requiring Council to establish it; terms of Planning Commission members are staggered, while those of Civil Service Commissioners are not; Planning Commission members must merely be City residents, while Civil Service Commissioners must be registered voters in the City; and there is a continuance in office provision for Civil Service Commission members (in the absence of appointment of a successor) but no similar provision for members of the Planning Commission. There is no stated or clear reason for these differences, and it was suggested that consideration be given to making the two parallel. Following discussion about what might be reasons for the differences and what might be possible solutions, it was decided that in the absence of reported problems with the operation of the two Commissions attributable to the cited differences, there would be no changes directed toward resolving those differences.

The Chair advised that another draft of the charter would be forthcoming.

3. Draft Report

The suggestion was made and accepted to postpone discussion of the report until a subsequent Commission meeting, in view of the need to spend time at this meeting on planning the public meeting to be held in January. The report is well along in preparation but remains in draft form, with more work to be done. All are encouraged to read it and send any comments or suggestions to the Facilitator, who will share them with the Chair. Some members have already done this.

4. Public Meeting

Questions to be considered regarding the public meeting include the location, the date, the format, methods of notice, and whether and how to involve members of Council or otherwise to secure views they may wish to express on the draft.

It is not possible to predict the size of attendance. For that reason, it was determined to hold the session not in Council chambers, but rather in the Community Center, so as to avoid the potential for overcrowding or inability to accommodate all who might wish to participate.

Thursday, January 24 was set as the date for the meeting. There was resistance to changing to a day of the week other than Thursday, and earlier Thursdays – January 3, 10 and 17 – were determined to be unsatisfactory because of relationship to the year-end holidays, questionable adequacy of time for reasonable public notice and response, and/or unavailability of facilities.

Notice will be given by the City staff in a manner similar to what been done in connection with the community meeting that had been held in April. Initial notice would be posted on January 2, 2019 to the Commission's web page which is accessible via link on the City's website. Materials accompanying the notice will include at least a copy of the proposed amended charter as it currently stands, and a summary table containing guidance to key changes reflected in the charter draft. The posted notice will invite citizens to participate by commenting in person at the January 24 meeting, and/or by submitting comments in writing to the Facilitator at an online address or via delivery to Susanna O'Neill at City Hall on or before January 24. Any member of Council can make oral or written comments just as with any other citizen, the thought being that observations concerning what a member might regard as a mistake or an impracticality or an oversight in the drafting would be particularly welcome (as opposed to a disagreement on policy or other judgment, which Council can appropriately address as a body when it receives the Commission's final product).

At the public meeting the Chair will overview the work of the Commission and explain changes and other significant aspects of the proposed amended charter. Citizen attendees will then be invited to make comments, with a per-comment time limit to be established at the outset of the session, once the rough size of attendance can be observed.

5. Additional Business

It was decided to have at least one and possibly two meetings of the Commission after January 24, depending upon the number and complexity of citizen comments received at the public meeting and in writing. February 7 and 14 will be held in reserve at Council chambers for possible meetings of the Commission, with a decision on use of one or both dates to be made at the close of the public session. In the meantime, information will be solicited from members about availability on those dates, in order that the likely presence of a quorum can be evaluated.

6. Public Comment

Katherine Tsiakcirou-McMillan, who noted that it was her first time at a Commission meeting, stated that she appreciated the Commission's plans for finishing up, including having the public meeting on January 24 and giving a three week period for notice.

7. Adjournment

The Committee agreed by consent to adjourn.