



CLEVELAND HEIGHTS

COUNCIL UPDATE

November 5, 2021

MEETINGS & REMINDERS

Monday, November 8	6:15 p.m.	Special City Council Meeting City Hall – Council Chambers
	6:30 p.m.	Council Committee of the Whole City Hall – Executive Conference Room
Tuesday, November 8	6:00 p.m.	Racial Justice Task Force Subcommittee - Housing and Economic Opportunity Online
Wednesday, November 10	6:30 p.m.	Racial Justice Task Force Subcommittee - Public Safety Online
	7:00 p.m.	Planning Commission Online
Thursday, November 11	Veterans Day	City Hall, Community Center and Municipal Court are closed.

LEGISLATION

- **Second Amendment to F&C MOU.** A Resolution authorizing the City Manager to enter into a second amendment to the Memorandum of Understanding with F&C Development, Inc. concerning the “Cedar-Lee Meadowbrook” development;

CITY MANAGER'S REPORT

Regarding the Cedar Fairmount SID request

Staff reviewed the Cedar Fairmount SID request for additional funds. After discussion with the SID Director the request increased to \$35,000. Since review of the budget and the request did not justify the use of ARPA funds, the alternative is a loan from the Economic Development fund with a 2% interest rate. Payment to begin in 2022. (Please see enclosed the Finance Director's detailed memo).

Businesses in each SID

Cedar Fairmount: 11 Parcels and 23+ businesses

Cedar Lee: 67 parcels and 86+ businesses

Coventry: 18 parcels and 45+ businesses

Monday November 8th

- 6:15 Special Council meeting in Council Chambers with one piece of legislation – #137-2021 the extension of the Cedar Lee Development agreement to December 9th. This extension will enable the City and the Developer to complete details in the agreement.
- 6:30pm Committee of the Whole in the Executive Conference Room.
 - The first item will be the Code review/adjustments to prepare for 2022
 - Further Council discussion with Gannett Fleming regarding their report re Horseshoe Lake. They will be present via Zoom. Representatives of NEORSD will also be in attendance.
 - Executive session

Memo

To: Susanna Niermann-O'Neil, City Manager

From: Amy Himmlein, Finance Director

Date: November 3, 2021

Re: Cedar Fairmount SID \$35,000 Request

The Cedar Fairmount SID made a request of Council to receive \$35,000 in order to pay their bills for the remainder of 2021. At the November 1, 2021 Council meeting SID representatives indicated they are having difficulty paying their bills as a result of COVID. Council President Stein recommended using ARPA funds to pay the SID. Council Vice President Seren said if the SID was willing to do a loan with the City for the amount requested that should be used.

On Tuesday, November 2, 2021, I requested the SID's 2018, 2019, 2020 and 2021 year-to-date financials. Myra Orenstein promptly provided the requested documents. I reviewed those documents to discern if the SID had any significant revenue loss related to COVID which would qualify them for ARPA funding. There was some revenue loss, but not to the amount of funding requested by the SID. I also evaluated their financials to determine if there were operating costs that would qualify the SID to receive ARPA funding. The SID does not have payroll, rent or utility expenses which would qualify. They also did not have a period of business closure during the pandemic. Lastly, I spoke with Myra to review their other operating expenditures. She provided bills for their largest expenditures. While some expenditures may have increased between 2020 and 2021, there were no significant increases from 2019 to 11/1/2021. Based on these facts and my review, I do not recommend providing the SID a grant from ARPA funds.

The Cedar Fairmount SID is an important partner of the City. As such, I recommend the City provide the SID a loan from the Economic Development fund (fund 411). The loan could be a not-to-exceed \$35,000 which matches their request. I recommend a low interest rate of 2% annually in recognition that the SID has had shortfalls and a higher rate would be burdensome. The recommended term would be 10 years with repayment beginning in 2022. However, the agreement would provide the ability for the SID to repay the loan early with no penalties.

Once Council approves a plan of funding for the SID, and any agreement is drawn up and signed by both the City and SID, Finance will work quickly to get the funding to the SID.



THANKSGIVING FOOD DRIVE



SATURDAY, NOVEMBER 13
2-5 PM



CLEVELAND HEIGHTS
POLICE DEPARTMENT
WILL BE GATHERING
YOUR NON-PERISHABLE
FOOD & HOUSEHOLD
ITEMS AT ZAGARA'S FOR
THANKSGIVING FOOD
DONATION DRIVE ON
SATURDAY, NOVEMBER 13
FROM 2-5 PM.



ZAGARA'S
• MARKETPLACE •

All donations will benefit the
Start Right Church community
food pantry



CLEVELAND HEIGHTS

Committee of the Whole

November 8, 2021

6:30 p.m.

Agenda

1. Code Review
 - Link to Code Redline:
<https://www.dropbox.com/sh/v4sz1g753cdgpjb/AADbBojxgVWd02XFe-smr5ACa?dl=0>
2. Gannett Fleming Presentation
3. Executive Session
 - a. *To consider the investigation of charges or complaints against a public employee*



CLEVELAND HEIGHTS

To: Members of the Cleveland Heights City Council

From: William R. Hanna, Director of Law
Alix Noureddine, Assistant Director of Law

With: Luke F. McConville, Nicola Gudbranson & Cooper, LLC
L. James Juliano, Jr., Nicola Gudbranson & Cooper, LLC
Amy B. Hamilton, Nicola Gudbranson & Cooper, LLC

Cc: Susanna Niermann O'Neil, City Manager

Date: November 5, 2021

Re: Proposed Amendments to Cleveland Heights Codified Ordinances to Reflect and Conform to Issue 26 City Charter Amendments and January 1, 2022 Change in Form of Government

Link to Code Redline:

<https://www.dropbox.com/sh/v4sz1g753cdgpjb/AADbBojxgVWd02XFe-smr5ACa?dl=0>

Introduction

As Council is aware, the Law Department has worked with outside counsel – Jim Juliano, Luke McConville and Amy Hamilton of Nicola, Gudbranson and Cooper – and the City’s codifier, American Legal Publishing (AmLegal), to conduct a comprehensive review of the Codified Ordinances of the City of Cleveland Heights to identify and prepare those Code changes necessary to harmonize the Code with the Charter amendments approved in November 2019, and to ensure that the City’s Code would properly function under a strong Mayor form of government by the time the City’s first directly-elected Mayor takes office in January, 2022. In addition to the Codified Ordinance review, the group also reviewed dozens of departmental policies for the same purposes.

A summary of the process we have followed appears below.

First, we reviewed the Issue 26 Charter amendments individually and as they related to other amendments and charter provisions, as a whole, and identified some of the principal ways in which the Codified Ordinances would be impacted. We then engaged AmLegal to conduct an initial review of the Codified Ordinances as a whole and to call out each section in which the term

City Manager (or other related references, such as appointing authority) appeared, and to call out related cross-references and titles of particular sections and chapters. Following its review, AmLegal produced a *Legal and Editorial Research Report* based upon its review, in addition to a spreadsheet of the sections of the codified ordinances involved.

Next, Law Department attorneys reviewed each Codified Ordinance section that AmLegal identified in the referenced spreadsheet, with careful reference to both the Issue 26 Charter amendments and other interrelated codified ordinance provisions, to ensure that full effect is given to the amendments and inconsistencies between the amendments and the codified ordinances are eliminated. While we attempted to address and resolve issues not necessarily related to the change in form of government as we encountered them, we did not undertake to review every word and section of the codified ordinances for this purpose, which would have expanded the project beyond the scope described above and likely would have created a multi-year process.

Finally, the entire working group reviewed the compiled suggested revisions and the timeframe and form of the deliverable to be produced by AmLegal based thereupon. We transmitted the compiled revisions to AmLegal, which undertook to implement them and to produce a redlined proof copy. In September we received from AmLegal a comprehensive, redlined proof copy of draft revisions which exceeded 350 pages in length. We reviewed that document, provided edits and corrections back to AmLegal. We received a revised pilot copy of the proposed code revisions on November 1, and provide this overview for Council's review and discussion at the Committee of the Whole meeting of November 8, 2021, to be followed by the preparation of legislation that we expect to appear on the agenda of Council's November 15, 2021 meeting for first reading.

Fundamental Charter Amendment

Since its founding, the City of Cleveland Heights operated under a City Manager-Council form of government. But on November 5, 2019, the Cleveland Heights electors approved Issue No. 26, amending the Charter to provide for a Mayor-Council form of government beginning January 1, 2022. In addition to a strong Mayor, the amendments create a new City Administrator position, to assist and support the Mayor in the performance of the Mayor's duties.

As amended by Issue 26, the position of City Manager is eliminated from the City Charter effective December 31, 2021. The Charter sets forth the general duties, responsibilities, and powers of both the Mayor and City Administrator effective January 1, 2022. For example, Article IV, Mayor, Section 3, Executive Powers, provides in part that:

The Mayor shall be the chief executive officer of the City, and shall maintain an office at the Cleveland Heights City Hall. The Mayor, together with a full-time qualified City Administrator, shall supervise the administration of the City's affairs, and shall exercise control over all departments and divisions. The Mayor shall appoint, promote, transfer, reduce or remove all officers and employees of the City, except members of Council, judges, and any other persons whose terms of

office are fixed by this Charter or law. The Mayor shall be the chief conservator of the peace within the City, shall serve as Director of Public Safety, and shall see that all laws and ordinances are enforced therein.

Article IV, Mayor, Section 4, City Administrator, provides that

The City Administrator shall assist the Mayor in the operation of the Mayor's office and, subject to the Mayor's supervision and control, be responsible for the preparation of the annual budget for presentation to the Council, and supervise the administration of personnel policies and practices in all departments. The City Administrator shall render advice to the Mayor regarding appointment, promotion, transfer, reduction and removal of all City personnel. The City Administrator shall, subject to the supervision and control of the Mayor, establish reporting procedures, require the submission and review of progress reports and operating goals, and generally assist in the coordination of activities of all departments, division, boards, commissions, officers and employees of the City, except for the professional activities and responsibilities of the Law Department.

While Issue 26 effected other Charter amendments as well, those additional amendments serve primarily to harmonize other areas of the Charter with the changes directly above, or to effectuate and make those changes operational, such as through provisions for election, the setting of the Mayor's compensation, etc.

Project Mission

The fundamental restructuring of the City government resulting from the Issue 26 Charter amendments requires significant, comprehensive amendments to the Codified Ordinances, to ensure that they are compatible and consistent with the Charter changes. The need for such Code changes led to this project, culminating in the proposed Code amendments herein described. The proposed amendments: (1) reflect the elimination of the City Manager position; (2) give effect to the powers, duties, and responsibilities of the Mayor and City Administrator under the amended Charter; and (3) ensure consistency and eliminate any potential ambiguity or conflict between the Charter – the City's Constitution – and the Codified Ordinances.

In light of the above, the proposed amendments to the Codified Ordinances were driven first and foremost by the Charter as amended by Issue No. 26. They are secondarily based on current practice, future envisioned practices and best practices, and intended purposes of the particular ordinances, as well as practical process and structural considerations and attendant matters.

Finally, we feel compelled to comment that in developing these proposed amendments, we felt as a matter of legal and governmental philosophy that it was appropriate to not overreach, and to make those changes that are clearly necessary while refraining from making changes that the

City's new Mayor may be interested in weighing in on from the standpoint of policy and operations. Therefore we have not yet proposed certain administrative code amendments, including the authority and duties of the City Administrator position, pending the new Mayor taking office effective January 1, 2022.

Upon taking office, the Mayor will have the opportunity to consider the duties of the new City Administrator position, to consult with other City officials as to the duties and authorities of that position, including the designation of the new City Administrator as a delegatee of authority from the Mayor. The Mayor may want to propose amendments to the Code at the time of making such initial determinations, or he may prefer to wait for a period of time to determine whether such initial determinations are accomplishing the desired objectives or should be modified, at which time they could be codified.

Throughout the Code, the terms "City Manager" and "Vice City Manager" have been eliminated, and replaced with the terms "Mayor" or "Mayor or designee." For the reasons above, we did not, as a general matter, insert "City Administrator" into the Code at this time, recognizing that the City Administrator can be the designee of the Mayor. Below is an overview of some substantive issues and revisions prompted by the review of AmLegal and this working group.

Substantive Code Amendments

A. Current Section 121.07, entitled Commissioner of Community and Public Relations, is proposed to be repealed entirely in light of the reorganization of the Department of Community Services as its own department by Issue 26. The Department of Community Services would now have its own Chapter 136 as reflected in the Redline. New Chapter 136 would authorize the Department of Community Services to promote the City and to develop programs to encourage community participation.

B. Current Section 121.07 also refers to the Division of Real Estate Programs, to be reassigned to new Section 135, Department of Parks and Recreation. New Chapter 135 authorizes the control and management of all public property, including maintenance of all City buildings. New Chapter 135 also authorizes the Divisions of Pools, Ice, Sports, Community Center, and General Recreation, and the Division of the Office on Aging.

C. Section 123.08 establishes the power and authority of the City Administrator to approve invoices in the absence of the Mayor.

D. Current Section 135.04, Division of Public Properties, would become Division of Parks and Public Properties and Cain Park, under new Chapter 135, Department of Parks and Recreation.

E. Current Section 135.07, Division of Public Health, would be repealed in light of Ord. No. 8-2019 and the City's participation with the Cuyahoga County Board of Health.

F. Current Section 135.08, Division of Animal Control, would be repealed in light of more recent legislation, see Section 505.01 relating to the appointment of an animal warden.

G. Current Chapter 137 relates to the City Civil Service Commission. Proposed Section 137.04 would eliminate overlapping jurisdiction, such as the Cleveland Heights/University Heights School District.

H. Chapter 139, Employees Generally, remains largely intact. The major change is that the City's appointing authority, with the authority to hire, fire, and impose discipline, has become the Mayor rather than the City Manager. See Charter Sections IV-3 and III-6. See also proposed Cod. Ord. Sections 137.10 and 139.07.

I. In Sections 155.09, 505.20, 553.02, 711.08 and 1113.02, references to the "Mayor" under the current (pre-Charter-amendment) form of government have been changed to "President of Council."

- In Section 155.09, the President of Council is given a position of the Admissions Tax Board of Appeals.
- In Section 505.20, the President of Council is given the power to appoint a member of Council to the appeals board relating to appeals from decisions of the Animal Warden.
- In Section 553.02, the President of Council is given the power to appoint a member of Council to a Nuisance Abatement Board of Review, which hears appeals of orders issued under Chapter 553.
- Under Section 711.08, the President of Council is given the power to appoint a member of Council to the Medical Marijuana Review Board, which hears appeals by any licensee of a revocation, suspension or denial of a renewal license.
- Under Section 1113.02, the President of Council shall be a member of the Board of Control established to administer the provisions of Chapter 1143 governing the S-1 Mixed Use District.



CLEVELAND HEIGHTS

AGENDA (tentative) – CLEVELAND HEIGHTS CITY COUNCIL MEETING **COUNCIL CHAMBERS**

Monday, November 8, 2021
Special Meeting
6:15 p.m.

Cleveland Heights City Hall
40 Severance Circle
Cleveland Heights, Ohio

- 1) Meeting called to order by Council President**
- 2) Roll Call of Council Members**
- 3) Excuse absent members**
- 4) Report of the City Manager**
- 5) Report of the Clerk of Council**
- 6) Committee Reports**

a.) PLANNING AND DEVELOPMENT COMMITTEE

RESOLUTION NO. 137-2021 (PD), Second Reading. A Resolution authorizing the City Manager to enter into a second amendment to the Memorandum of Understanding with F&C Development, Inc. concerning the “Cedar-Lee Meadowbrook” development; and declaring an emergency.

Introduced by Council Member _____

Vote _____
For _____ Against _____ No. Reading _____

- 7) Council President's Report**
- 8) Adjournment**

NEXT MEETING OF COUNCIL: MONDAY, NOVEMBER 15, 2021

Proposed: 11/08/2021

RESOLUTION NO. 137-2021 (PD), *First Reading*

By Council Member Ungar

A Resolution authorizing the City Manager to enter into a second amendment to the Memorandum of Understanding with F&C Development, Inc. concerning the “Cedar-Lee Meadowbrook” development; and declaring an emergency.

WHEREAS, the City has identified the opportunity to develop the site known as “Cedar-Lee Meadowbrook,” located on land situated north of Meadowbrook Boulevard, east of Lee Road and south of Cedar Road, utilizing vacant land as well as parking facilities; and

WHEREAS, pursuant to Resolution No. 99-2021, this Council authorized the City Manager to enter into a Memorandum of Understanding with F&C Development, Inc. and move forward with negotiation of a Development Agreement consistent therewith; and

WHEREAS, the terms of the original Memorandum of Understanding, which was executed on July 12, 2021, provided for a period of 60 days for the completion of certain due diligence and for the parties to enter into a development agreement; and

WHEREAS, on August 30, 2021, this Council adopted Resolution 118-2021, authorizing an amendment to the Memorandum of Understanding to allow an additional 60 days to enter into a development agreement; and

WHEREAS, the City and F&C Development, Inc. wish to amend the Memorandum of Understanding for the second time, to allow a further extension of 30 days, until December 9, 2021, for the parties to enter into a development agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. This Council hereby authorizes the City Manager to enter into a Second Amendment to the Memorandum of Understanding with F&C Development, Inc., and to sign any other related documents, concerning the development of the site known as “Cedar-Lee Meadowbrook,” to provide an additional 30 days, until December 9, 2021, for the parties to enter into a development agreement. The Second Amendment to the Memorandum of Understanding shall be approved as to form by and subject to the final approval of the Director of Law.

SECTION 2. Notice of the passage of this Resolution shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one newspaper of general circulation in the City of Cleveland Heights.

RESOLUTION NO. 137-2021 (PD), *First Reading*

SECTION 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need for additional time to determine the terms of a development agreement and proceed with due diligence. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

JASON S. STEIN
President of the Council

AMY HIMMELEIN
Clerk of Council

PASSED: