



City of Cleveland Heights Charter Review Commission

Questions for Members of Council, City Manager, Department Directors and Chairs of Boards and Commissions

The Commission has been specifically directed by City Council to look at some critical parts of the City Charter, such as the form of government. However, as part of that effort, the Commission wants to be sure to deal with any provision that needs attention. To help ascertain views of the form of government as well as what provisions need attention, the Commission is sending out this brief survey. The questions are open ended, so you can fully express your views. You may also suggest specific changes to any provision.

In addition, the Commission may invite some respondents to attend a meeting of the Commission to further explain their views.

If you have any questions on the survey, you can contact Dr. Larry Keller, Commission Facilitator, at 216-496-4184. Please return completed surveys either by E-Mail to Dr. Larry Keller at lkeller@clvhts.com, or by envelope to Susanna O'Neil, Assistant City Manager, snoneil@clvhts.com. If desired, department heads and chairs of boards and commissions can return surveys without any identity.

Please return completed surveys by Monday, 15 January.

1. What parts of the Charter should be considered by the Commission, without necessarily implying that you believe a change should or should not be made.

The three (3) most important elements for consideration, not necessarily in order of importance to you.

Any remaining elements, preferably in order of importance to you.

I believe that this Commission should review all aspects of the Charter and make recommendations to Council based upon what it believes to be relevant, separate and apart from the beliefs of individual Councilmembers. All of the provisions of the Charter are intertwined, particularly as it relates to the City's form of government. Given the interrelated nature of the Charter's provisions, I do not believe that any provision is *per se* "more important" than the others.

In general, however, I recommend that the Commission review the language of the Charter, which I consider to be outdated and not fully reflective of our City's values. For example, the Charter overwhelmingly refers to City Staff and elected officials only in the masculine form. Likewise, there are many provisions that are confusing, do not contain clearly defined subparts, and are written in "legalese." For example, Article VIII looks overwhelming and is difficult to understand. I believe that the Charter should be written in plain English and be accessible and understandable to all members of our community.

Similarly, although the Charter states that the City is an "equal opportunity employer," Article III, Sect. 6, I believe that it is imperative to send a stronger message that Cleveland Heights is welcoming to all, with specific enumerations. Such categories could include, but not be limited to, real or perceived: race, religion, ethnicity, nationality, age, sex, disability, citizenship, gender, and sexual orientation. Finally, I recommend that this Commission look at the titles of Councilmembers and determine if they should be changed or retained.

I trust this body to review the models and best practices of other municipalities, from form of government to election procedures, and determine if any of those models or practices would be beneficial to Cleveland Heights.

2. For each part identified in Question 1, explain briefly,

- (a) why the item should be considered and if you think a change may be warranted, then
- (b) what the change should be and why.

I believe that my response to Question 1 answers the substance of Question 2. Although I more fully articulate related issues in other responses, I would recommend that this Commission consider abolishing the titles of “Mayor” and “Vice Mayor,” in favor of the titles Council President and Council Vice President. I believe that such a change would reinforce that all members of Council are equal, with leadership being only first among equals.

3. Identify any change or changes you have observed in the facts and circumstances of the city (other than personnel changes in the City Council or City Administration) in the five (5) years since the on-cycle determination by Council in 2012 that no charter review was warranted. Note the changes that warrant this off-cycle review, and how any such changes relate to what you noted in Questions 1 and 2 above.

I supported the creation of this Charter Review Commission because I was concerned by both the intended and unintended consequences of the conduct of our previous Council President / Mayor. From early 2016 onwards, our prior Council President / Mayor engaged in behavior that I believe was designed to undermine the authority of the City Manager and Council, and continued such behavior despite repeated requests from multiple Councilmembers to stop. In my view and the view of other Councilmembers, such conduct deteriorated intra-Council relations and was motivated by a desire for personal gain. In February 2017, as fully and accurately reported in the City Council Retreat Report by the Novak Consulting Group, our previous Council President / Mayor expressly rejected the following expectations of the position and of her fellow Councilmembers:

- 1) “Communicating interactions with the community that impact governance of the City;
- 2) Be a stabilizing force for the organization and the community.”

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Among other actions, many of which were never communicated to Council, our previous Council President / Mayor created or helped create an organization in late 2016 and/or early 2017 for the express purpose of changing our City’s form of government via ballot initiative from Council-Manager to Strong Mayor. The first meeting of this organization was at her house, and her expressed intention was to hold the position of a strong mayor.

I held and continue to hold the opinion that if such a major change to the founding structure of our City is to be made, then it should be done only after careful deliberation of its consequences by an impartial group that is not swayed by the desires of individual Councilmembers, myself included. Further, any such change to the Charter should be carefully crafted and deliberated in an open and transparent process.

In law school, I studied the background of ballot initiatives, particularly in the context of LGBT equality, and wrote on their unintended consequences. In general, I am concerned that ballot initiatives are often crafted in secret by special interests with narrow goals. Further they typically employ vague and undefined language,

and elections concerning their impact often misstate or omit the potential ramifications. As a result, ballot initiatives, even those that start with the best of intentions, usually result in ambiguity and unintended consequences.

For example, the 2004 Ohio Marriage Amendment, which was drafted and passed as a ballot initiative, was sold to Ohio voters strictly as a way to define marriage as between one man and one woman. Once it took effect, however, this vaguely written ballot amendment wreaked havoc in unrelated areas. For example, several lower courts ruled that the Marriage Amendment invalidated Ohio's domestic violence law, which extended protections to "a person living as a spouse." *See, e.g., State v. Burk*, Cuyahoga County Court of Common Pleas, Case No. CR-05-462510. This avoidable debacle wasn't resolved until 2007, when the Ohio Supreme Court in *Ohio v. Carswell* ruled that the Ohio Marriage Amendment did not invalidate the state's domestic violence statute. Likewise, in 2005, the City of Cleveland Heights had to, and did, defend its domestic partnership registry from claims of unconstitutionality.

Although I understand that there is a difference between a ballot initiative to the Ohio Constitution versus the City Charter, I do not believe that Cleveland Heights is immune from the pitfalls of ballot initiatives, particularly one (or several) that would rewrite entire swathes of the Charter and change the very structure of our government. For all of the foregoing reasons, I supported the creation of this Commission to honestly and impartially review every aspect of our Charter through the lens of what is in the best interest of Cleveland Heights.

In general, I believe that our current system of government works quite well, and that many of the problems that exist are not based upon governmental structure, but the temperament, character, competence, and judgment of officeholders. I have faith that this body, which was unanimously approved by Council, shall review the Charter comprehensively, independent of the wishes of individual members of Council (myself included); take the time that this Commission feels is necessary to thoroughly study all issues, and; fully weigh the potential consequences of major changes to the Charter before advocating for them.

4. What parts of the current structure of the City government are: (a) serving the City well; (b) not serving the City well?

I believe that the current structure of our City government—a Council-Manager form of government, with Council comprised of at-large Councilmembers—serves the City well. To the extent that there are problems within the City, as there are in all municipalities, I believe that they are primarily caused by the officeholder, not the governmental structure. I do not believe that East Cleveland's problems went away when it changed from a Council-Manager to a Strong Mayor form of government, nor do I believe that all of Euclid's problems will go away if it becomes a Council-Manager form of government as its Charter Review Commission had recommended.

As to the Council-Manager form, I believe that a City Manager is an asset that executes the policy set forth by Council, while protecting day-to-day operations from petty and partisan politics. For example, personnel decisions are made by an apolitical professional who serves solely at the pleasure of Council. Individuals are not hired, punished, or fired based upon personal connections, grudges, or patronage, but upon individual conduct and merit. Neither I nor any other member of Council has the authority to overturn or directly influence employment matters based upon our personal interests, and I believe that this current practice benefits our City. Also, I believe that high profile examples from nearby Strong Mayor systems—such as Cleveland's recent hiring of Lance Mason, a disbarred judge who beat his wife—highlight the importance of an impartial and apolitical arbiter enforcing our City's procedures.

Likewise, I believe that a Council-Manager form of government forces the building of consensus on Council, and guarantees execution once that consensus is achieved. In a Council-Manager form of government, the City Manager is forced to obey the direction of Council. If the City Manager does not do so, then they are fired. This reality creates a built-in incentive for Council to set forth policy goals and to see them achieved as quickly as possible. Likewise, if the policy is faulty, voters can directly hold Council accountable as the responsible parties. In contrast, in a Strong-Mayor system, a strong mayor is empowered to ignore the will of council, even if that will is unanimous. For example, University Heights Council agreed to simple beautification projects for the University Heights border of the Cedar-Taylor business district and appropriated the requisite funds. The previous University Heights mayor, however, repeatedly refused to execute this program. This unique type of problem does not exist with our current form of government.

To improve upon our current system, I would recommend that this Commission consider adding language to our Charter clarifying the roles and responsibilities of Council, particularly its leadership. Additionally, as I stated previously, I believe that removing the titles of “Mayor” and “Vice Mayor,” and instead using only Council President and Council Vice President, may be useful in reinforcing the roles and expectations of Council leadership.

As for our at-large system, I believe that at-large representation benefits the whole of the community. There is no NIMBY-ism in a Council decision. A policy goal is either in the best interest of the entire City, or it is not. Additionally, our current system encourages all Councilmembers to devote their time to neighborhoods that would benefit from additional attention. Challenges in specific neighborhoods exist in both ward and at-large systems. However, the at-large system makes it in the best interest of individual Councilmembers to address all of the City’s challenges, while the ward system encourages myopia and turns the provision of funds and services into a zero-sum scenario.

Additionally, I believe that the at-large system protects residents from the pettiness of internal politics. If a councilmember is disfavored by their colleagues, the at-large system protects the residents in that specific councilmember’s ward from the loss of funds and services, or other actions that could be made in retaliation. For example, it is not hard to imagine that a strong mayor would deny funding to a ward-based councilmember with whom he or she disagrees. Likewise, there are many real-life examples of these problems in our own backyard. Recently, former Cleveland City Councilman TJ Dow (Ward 7) tried to move over \$700,000 from his ward’s coffers to a non-neighboring ward as one of his final official acts, in an effort to spite his successor. If former Councilman Dow had been successful, then his former constituents, his ward, would be punished due to pettiness and internal politics.

Finally, I do not believe that residents, in any governmental structure, identify their interests along arbitrary and shifting ward/district lines. They view themselves as members of a City, not of a district with boundaries that can be, and often are, gerrymandered or redrawn.

I care about my City as a whole, and our current system of at-large elections, which is used in many other successful municipalities, incentivizes those values. It protects against NIMBY-ism and retaliation, and it can encourage greater attention on areas and neighborhoods that need it. I do not believe it’s in the best interest of Cleveland Heights to disincentivize caring about and addressing the challenges of our City as a whole.