

Recommended Charter Amendments

1. Appointment to boards and commissions should be standardized to provide for Mayoral appointment subject to Council confirmation. This would be similar to County Charter Section 2.03(2) which states that one of the powers of the County Executive is “(t)o appoint, subject to the confirmation by the Council, and remove County directors and officers and members of boards, agencies, commissions and authorities as are or may hereafter be created by or pursuant to this Charter...” This section further states that “(i)f the Council shall fail to act on the question of such an appointment by the County Executive within sixty days of the date that the County Executive submits such appointment to the Council for its consideration, that appointment shall be deemed confirmed without further action by the Council.” This provision protects against a Council that might simply attempt to ignore an appointment by the Mayor. There are clear benefits to such a system that are exemplified in the actual experience of appointments made using this process. A primary purpose of separated government is intended to ensure that appointments are vetted properly and publicly; this is not what we see when one branch of government has exclusive authority over appointments. However, we have seen robust and public vetting processes when Mayoral appointments are subject to Council confirmation. This is the process that allows for true checks and balances that keep both branches of municipal government honest.
2. Although investigatory power is implied as a function of the power of the Mayor, there should be an explicit investigatory authority granted to the Mayor similar to the City of Lakewood’s Charter Section 3.7 which states “The mayor or anyone appointed by the mayor may, without notice, cause the affairs of any department or the conduct of any officer or employee to be examined or investigated.”
3. Council should be given explicit, appropriately limited subpoena power, subject to an affirmative vote of a supermajority of the Council to compel the attendance of witnesses and production of evidence. This tool should be used responsibly as a last resort and given due respect, therefore this authority should be reserved for a supermajority of Council.
4. The Charter should be amended to correct the signature discrepancy between Article VIII, Section 3 (which requires signatures from 25% of the total number of registered electors in the city – 8,525 signatures) and Article IV, Section 11 (which requires signatures from 25% of the number of electors who voted in the most recent mayoral election – 2,900 signatures) to make recall provisions for Mayor and Council members consistent. I don’t have a specific number for which I am advocating, although there are good examples nearby showing that recall elections should have a relatively high bar to get on the ballot. My primary concern is that the provisions should be consistent.
5. Amend Article VII, Section 3 to remove the prohibition which states “(n)o elector shall sign more nominating petitions for different candidates for a particular office than there are positions to be filled for that office at the election for which the petition is signed.” This prohibition causes more confusion among petition signers, adds unnecessary burden to the Board of Elections, and provides little to no benefit for electors.

6. The Council should be elected in a hybrid (at-large/district) model. My preference, as I explained to the previous Charter Review Commission, is for four district-based Council seats and three at-large Council seats, all elected in separate races as opposed to the current “plurality at large” system. Each of these seats, both district and at-large, should be subject to a primary election aligned with the Mayoral primary election, before the top two candidates are elected in the November election. This approach does not preclude using a ranked choice voting method to determine the results of the primary election before allowing two candidates to advance to a general election; but if there is too much confusion or resistance to ranked choice voting, a primary election in the Council races can achieve some (but not all) of the same goals that we would expect from ranked choice voting.
7. The second paragraph of Article V, Section 1 should be amended to read: “The Mayor and Council shall together determine and prescribe the functions and duties of each department, and may create new departments, combine or abolish existing departments and establish temporary departments for special work, by ordinance introduced by the Mayor and approved by majority vote of the Council.” This will provide for a collaborative approach to the design of the administrative function of the city government. This method mandates the inclusion of the Mayor in structural changes while creating the requirement that Council approve those structural changes. This system of checks and balances (shared authority) should prevent politically motivated structural changes from being made that would reduce operational efficacy.
8. Article III should be amended to provide an explicit power granted to individual Council members to introduce legislation. Much of the internal Council difficulties I’ve observed have stemmed from confusion on Council about members’ ability to introduce legislation. These difficulties are exacerbated by repeated attempts on the part of Council members to restrict other members’ ability to individually introduce legislation. Council acts as a body. Members have virtually no individual authority. Council members should be empowered to make and second motions, vote, and introduce legislation without undue restriction.
9. Article VIII Section 2 should be amended to clarify the term “emergency” in order to eliminate the ongoing confusion between the term in the municipal law context and the term in the colloquial context.

Responses to additional questions

2a. I don’t believe that it is necessary to delete the exemption for inquiry to the requirement that Council deal with the administration exclusively through the Mayor or City Administrator. I also don’t believe that it is optimal to include specific requirements on city employees related to the form of those inquiries or the responses. There are good reasons for flexibility in the form of communication between branches of government and we would do a disservice to the administrative function to remove that flexibility. Over the last two years, there have been several Council members who have been insistent that they are unable to perform their duties without directors being required to take their calls or meet with them in private – as opposed to communicating via email or using the many occasions that directors are available in public meetings to answer questions. Charter changes have been proposed

that would attempt to force a level of intimacy/familiarity/trust in the form of those communications that is impossible to produce through legislation. The types of relationships that Council members are seeking with executive employees actually have to be earned over time (on both sides). The type of culture that I hope we can evolve into can't be forced by a Charter change. The administration is constantly asking Council for permission to do things we think are in the best interest of the city. We are constantly in a position to accede to the demands of Council for information in support of our requests. Council as a body, and Council members as individually elected officials, have a responsibility to demand such information that is necessary to earn their vote on any particular item before them.

2b. The Charter should be modified to share authority and create checks and balances between the executive branch and legislative branch in the establishment of departments. Please see my recommended Charter amendment #7 above.

2c. I don't have a strong opinion on this topic. In speaking with directors, I've heard a split in opinion. At this point I don't believe that a change of this sort is necessary, but could become necessary if there is some future Mayor that seeks to hire unqualified people for directorships. If this change is made, I would hope that it would include some timeframe within which Council would have to decide to either confirm or deny an appointment. *Note that Council also confirms the director of the Department of Planning and Development, not just Law and Finance*

2d. I believe that the method of appointment to boards and commissions should be changed to provide for Mayoral appointment subject to Council confirmation. Please see my recommended Charter amendment #1 above.

2e. I don't believe there are compelling reasons to change the method of filling vacancies on Council. However, providing that an appointed Council member stand for election at the next regular municipal (odd-year) election as opposed to the next regular general election (which could be odd- or even-year) may ease a political burden on appointees. For more context, please see Notes B and F below.

2f. I believe that most of the issues related to the balance of powers between the executive branch and the legislative branch would be solved if Council members had a better understanding of their legislative and budgetary authority and were willing to utilize it more confidently. This is a development that will come with time and experience under our new form of government.

3a. I think that it could be positive to adopt ranked choice voting, but this would not be first on my list of desired changes to our election processes.

3b. The plurality at large system of Council election should change. Please see my recommended Charter amendment #6 above.

3c. I believe that additional ethics requirements should be created for municipal officers, employees, and possibly contractors – over and above the requirements of federal and state law. Additionally, a transition and training process for incoming elected officials would likely be a positive development. It is important to note that in 2022 I facilitated Council's inclusion in the Ohio Municipal League New Council Seminar (offered each year). I also registered the City as a member of the Northeast Ohio City Council Association to make sure that Council members have access to a network of Council members throughout the region that they can work with and learn from. It is up to Council at this point, and individual Council members, to take full advantage of those opportunities. Council creates its own

budget and can provide for whatever training programs it deems useful. I am not convinced that the Charter is the proper place for such rules. Because the government is already empowered by the Charter to provide this by either ordinance or administrative policy, and given that the needs and options for ethics and training may change over time, existing sub-Charter policy may be a better route to create these changes.

3d. I would support a well-crafted nondiscrimination policy statement in the Charter, but I would caution against anything that might enumerate specific classes. As our society evolves and we come to recognize various new ways to create a more inclusive community, I wouldn't want a list provided in the Charter to inhibit our continued progress. Even when a list is clearly non-exhaustive, people who oppose progress attempt to use the list as a way to slow our growth as a society.

3e. As a Council member, I introduced an ordinance based on the ACLU's Freedom Cities campaign to protect the rights of non-citizens. Council chose to pass a "Welcoming City" resolution and go no further. I'm open to language that might fit in a Charter context, but I would advise caution about language that might violate federal law or the U.S. Constitution which place immigration policy in the hands of the federal government.

4a-i. Amending to include gender neutral language and modernized language is a good idea. However, there are changes that seem unnecessary. For instance, replacing "electors" with "registered voters" seems unnecessary and insults the intelligence of Cleveland Heights residents.

4a-ii. I don't think that our bars for initiatives and referenda are too high to allow for direct democratic change. We have seen many examples of successful campaigns to put initiatives on the ballot that required effort but not so much effort that initiatives are exceedingly rare. Recall language in the Charter should be changed to achieve consistency between the provisions for recall for the Mayor and Council offices. Because of the disruption that recall elections can create, and the respect that such a measure should command, the number of signatures to force a recall election should be high enough to avoid repeated, frivolous recall elections. Please see my recommended Charter amendment #4 above.

4a-iii. I don't have a position on this provision specific to timing.

4a-iv. I don't see a need for additional provisions related to finances and budgeting. I believe our system can and does work well under our new system of government.

4b. I don't have any strongly held position on the other changes suggested by the previous Charter Review Commission.

Notes on topics discussed during Charter Review Commission meetings

- A. The Law Director's duty to represent the Administration, Council, the Municipal Corporation, and all officers and employees exercising their duties is already accounted for in Section 125.02 of the Codified Ordinances of Cleveland Heights. Council members have not been restricted in any way from receiving policy/legal assistance from the Law Director or his employees. In fact, administrative initiatives have had to wait for Law Department assistance as a result of Council's and Council members' needs for legal assistance on many occasions.

- B. The requirement that an appointed Council member stand for election at the next general election (no matter the year) was a necessary compromise between the stated position of Councilor Russell that the vacancy should not be filled by appointment at all and should immediately even if it necessitates a special election, and the stated positions of Councilors Ungar and Stein that they were unwilling to approve a change that would force the City to pay for a special election under those circumstances.
- C. Additional, specific requirements for particular information during the budgeting process has not been necessary, due to the already existing checks and balances between the legislative and executive branches. The Mayor presents a recommended budget which requires the approval of Council. Without this approval, the administration is unable to expend funds for the continuing operation of the City government. The Council is already empowered to require the process and information that it needs to justify its approval of any Mayor's recommended budget. Those process and informational needs may change over time and should be flexible enough to account for that.
- D. There are already certain types of legislative action which are prohibited from taking effect immediately as emergency measures.
- E. The Model City Charter is frequently referenced as a resource to which we should look as an example for best practice. Although there are valuable insights to be found in the Model City Charter, it is important to note that it is designed with an explicit and admitted bias toward a system of government that the voters of Cleveland Heights soundly rejected in 2019. The result is that the document is not as useful for the form of government that we chose for Cleveland Heights, a government in which the Council is not the governing body that supervises the administration, but a legislative body that must partner with the executive branch in order for the government to function.
- F. The Charter amendment to impose a time limit on Council's appointment authority to fill a Council vacancy, and, should Council fail to do so, give that authority to the Mayor passed with approximately 85% of the vote. The rationale supporting giving the Mayor the power to make the appointment after the initial time limit was not to spare the Council President the burden/scrutiny of making the appointment. That determination was made with the understanding that if Council becomes deadlocked on an appointment, by definition the Council President is on one side of that deadlock. There is absolutely no incentive for any Council President to seek compromise in the case of an impasse if they will be given unilateral authority to make the appointment once the time limit is reached. Moreover, a Council President whose position is only secured through the consent of a majority of Council's members has an incentive to support the appointment of an individual that they believe is likely or certain to support their continued status as Council President - whether or not that individual is the best candidate for the appointment. The Mayor is not directly affected by the Council leadership determination and as a result has less of a conflict of interest in the appointment process. Additionally, the potential for a Mayoral appointment provides additional motivation for the Council members to seek compromise in good faith instead of seeking to shore up their own authority relative to other members of Council.

- G. The “Inquiry” provision of our Charter is not language that affirms a “right” of individual Council members to demand answers from any administrative staff, it is an exemption from a prohibition on direct Council interaction with administrative staff. This exemption does not impose on administrative staff a proactive duty to take on the task of a research project for the Council member asking the question. It also does not impose a duty on administrative staff to provide policy direction to a Council member in the absence of the perspective of the elected Chief Executive Officer of the City, and policy-making authority of the executive branch (the only position in the Administration with legislative powers). Council, as a body, already has the power to demand information from the administration in exchange for its approval of any particular policy proposal from the administration. As individuals, Council members who don’t completely understand a particular policy proposal (whether introduced by the Mayor or another Council member) can make their vote contingent on receiving information sufficient to justify their support. This Council has utilized this power many times over the last two years when they did not sufficiently understand legislation I’ve introduced enough to feel comfortable voting to approve it. This is the basic nature of the legislative political process. I have been personally available to explain policy proposals and my directors and other staff are frequently available at committee and Council meetings to help Council members understand my proposed legislation. Unfortunately, there are occasions when a Council member may want to speak with a director or assistant director about an issue when it would be more effective and appropriate to speak with the Mayor. The example given by Council President Cuda at a recent CRC meeting related to the fees associated with the Lead Safe legislation provides an informative example: Councilman Cuda asked a question related to whether a certain fee structure was appropriate and this question was answered by the Law Director. It is important to note though, that I wrote the Lead Safe legislation and introduced it as a Council member before I was elected Mayor. The most appropriate person to ask about the rationale behind the policy choices was me, not any of the directors or assistant directors. A political or personal desire to remove the Mayor from the conversation may lead to a desire to speak directly with department directors, but it remains inappropriate to completely bypass the head of the administration in any policy discussion between branches. Additionally, we must recognize that the types of inquiry are important to distinguish. For instance, a Council member may reach out to an assistant director and ask a question like “what can we do about X problem?” This type of question can sometimes be easily answered because the answer can sometimes be a very straightforward direction toward an already existing administrative solution (e.g. “This is the link to the Housing Preservation Office where you can learn about programs for which a resident may be eligible”). In other circumstances this question is a request for an analysis of policy options to make a more systemic change. This type of policy question is posed relatively often, but it is not the role of administrative staff to operate as policy research staff for Council as a whole, much less for individual Council members. Council is already empowered to hire policy staff if they feel that the expansion of Council’s staff is justified. Recently, I had to respond to a question of this nature that was posed to one of my staff members who simply did not have an easy answer for this Council member’s open-ended question and does not have the time or responsibility to brainstorm potential policy changes with a Council member while performing the actual duties of their job. They turned to me for assistance in responding to the Council member. I wanted to empower that Council member to investigate possible best or promising practices in other

jurisdictions in order to determine if there are possible changes we can make in Cleveland Heights and discuss those possibilities with me to open the door to an inter-branch discussion about policy change.

- H. There is a clear misconception about the infamous “Memorandum of Understanding.” In response to my initial request to Council members in January 2022 that when they are reaching out to the department directors, that they copy me so that I can remain informed about what my direct reports are being asked for. When I asked this of Council, there seemed to be some resistance to this request (as indicated by continuing impromptu calls for directors’ time). As I was just starting my relationship building process with directors and working to establish our administrative baselines and priorities, I was informed by some directors that it is disruptive for them to be expected to work toward individual Council members’ legislative priorities (or to help them discover what their priorities should be) while they are working on the core duties of their jobs. I heard longstanding concerns from directors related to Council members crossing these lines even under the City Manager system. I asked the directors to meet with Council leadership to express their concerns and I asked Council leadership to allow the administration some time to form our team (which would have given the Council some time to establish their norms as well). Again, this was met with resistance from some Council members which led Council leadership to approach me with a proposed MOU outlining a structure for inter-branch communication that bypassed the Mayor or City Administrator. It was not my preference to have such a formal arrangement. All I wanted was an opportunity to be informed about what my staff was doing, what they were being asked for, and what information that my staff was providing to Council members. On those occasions when I felt it was needed, I wanted the opportunity to weigh in on the information my staff was providing because I believe that the perspective of the Mayor may occasionally be valuable. I was happy to move away from the formalized arrangement and return to my original request that I simply be copied on communications from Council to my direct reports. Thus far, Council members have taken advantage of that, mostly complying with my request to be included, and my directors have been responding to those communications, while keeping me in the loop so that I am also provided the information that is being provided to Council members.

Date	Meeting	Mayor's Staff and Consultants in attendance
2/5/2024	COW	Williams, Iorio
1/16/2024	COW	Williams, Zamft, Anderson, Knittle
12/18/2023	COW	Williams, Unetic, Bernard
12/4/2023	COW	Unetic
12/4/2023	P&D	Anderson
11/20/2023	COW	Williams, Unetic, Harry, Iorio, Anderson
11/17/2023	MSES	Clinkscale
11/13/2023	COW	Anderson
11/6/2023	COW	Zamft, Unetic, Anderson
10/26/2023	PSH	Toppin, Roesner
10/16/2023	P&D	Zamft, Butler, Anderson, Knittle
10/16/2023	COW	Zamft, Anderson, Unetic
10/16/2023	MSES	Williams
10/2/2023	COW	Bernard
9/18/2023	COW	*Nolde (GPD Group), *Neumeyer (GPD Group); *Greenland (NEORS)
9/18/2023	MSES	Clinkscale
9/15/2023	COW	*Khan (Guidehouse)
9/12/2023	PSH	Britton
9/12/2023	P&D	Zamft, Knittle, Iorio, Anderson
9/5/2023	COW	Unetic, Anderson
9/5/2023	CRR	Thomas
9/5/2023	H&B	Butler
9/5/2023	MSES	Boateng, *Nutter (Nutter Consulting)
8/22/2023	COW	*Khan (Guidehouse)
8/21/2023	COW	Zamft, Anderson
8/7/2023	COW	Unetic, Clinkscale, Bernard, *Greenland (NEORS), *Zaharia (NEORS), *Valentine (Stimson Studio), *Langan (Stimson Studio)
6/20/2023	PSH	Zamft, Butler, Ravanelli, Schmidt
6/20/2023	MSES	Ledbetter
6/5/2023	COW	Unetic, Zamft
5/30/2023	PSH	Prosser, *Temple (Technology Install Partners), Britton, Zamft
5/15/2023	COW	Unetic
5/15/2023	P&D	Zamft
5/1/2023	CRR	Thomas
4/24/2023	Special Council	Unetic, Ledbetter
4/17/2023	COW	Anderson, Unetic, *Khan (Guidehouse)
4/17/2023	P&D	Knittle, Iorio
4/3/2023	H&B	Butler
4/3/2023	COW	Unetic
3/20/2023	COW	Unetic, Anderson
3/20/2023	PSH	Clinkscale
3/6/2023	CRR	Fidanza
2/21/2023	COW	Thomas, Unetic
2/21/2023	PSH	Wagner
2/13/2023	COW	Anderson, Zamft, Unetic
2/6/2023	COW	Clinkscale, Ferrone, *Vander Tuig (Wade Trim)
1/23/2023	Special Council	Zamft
1/17/2023	COW	Zamft, Unetic