



City of Cleveland Heights Charter Review Commission

Decisions and Rationales

19 July 2018
Council Chambers
Cleveland Heights City Hall

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

1. Acceptance of Decisions and Rationales from 5 July 2018.

Moved and seconded to accept the Decisions and Rationales 5 July 2018.
Accepted unanimously.

2. Discussion of Head-to-Head Elections

The issue of Council Election was resumed. The Facilitator shared that he has researched a convenience sample of about 30 cities that used the name commission for their councils. The choice of the sample came from hypothesizing that many of these may have had the commission form of government and under that form had candidates for the commission run for specific seats. (As an aside, it was shared that Portland, Oregon, still has the commission form of government and that candidates for the commission run for specific seats.) One city in the sample had head-to-head elections for a council in a council-manager system – Oregon City. (As an aside, Oregon City is the oldest municipality west of the Rocky Mountains and terminus of the Oregon Trail.) Council seats in Oregon City are numbered and candidates file for specific seats. No other city in the sample had head-to-head elections nor did any of the about 20 local municipalities that the Facilitator examined.

The discussion noted that a head-to-head system would allow targeting of particular individual council members for defeat, but also that, especially given the emergence of social media, individuals who are deemed unfit or who take unpopular or out-of-the-city-mainstream positions can be targeted and defeated under the current system, thus achieving a similar result without requiring a change to a new system for which there is virtually no precedent from which to draw experienced-based lessons.

There being only limited comment supporting a change, a determination was made to maintain the current system of choosing members of council according to the top vote getters overall until all seats up for election in the particular electoral period are filled.

3. Motion not to put council communication district proposal in the Charter, but to consider it later for possible inclusion, or not, in a separate commission report.

Moved by Jessica Cohen, seconded by Sara West

There had been discussion in previous sessions of a proposal to include a post-election communication district provision in the Charter, and a discussion draft of such a provision had been prepared and circulated by the Facilitator. Following limited further discussion, the question was called.

Motion adopted by unanimous voice vote.

4. Motion to eliminate from the Charter the provision excluding school district employees from eligibility to serve on council

Moved by Jessica Cohen, seconded by Mike Gaynier

It was reported that the recollection of Jack Boyle, who had been involved in the charter change that put the exclusion of school employees in the Charter, was that the provision represented a compromise between excluding all public employees (as in the then existing charter) and excluding none. He also offered the opinion that there was no need for the exclusion, since council members, including those affiliated with local school systems, could recuse themselves on any issues that involved a conflict of interest. It was noted that although at least two charters in other local cities had a school district employee exclusion, many did not. Other possible exclusions – such as for persons in public fiduciary positions elsewhere and for county employees – were raised and discussed but ultimately not pursued.

Motion adopted by unanimous voice vote.

5. Motion to fill Council vacancies by election

Moved by Carla Rautenberg, seconded by Patrycja Ajdukiewicz

The Law Department noted, based on information provided by the county board of elections, that an election for a council vacancy could be held at any time, including in primary, special and general elections in even numbered

years as well as odd numbered years. The City would be charged \$76,000 for a special election in which the only issue on the ballot was filling a council vacancy. In all other elections, including special elections that included other issues, the cost attributable to the council vacancy election would be less, substantially less when it is a part of a primary or a general election, each of which occurs every year in March or May (primary) and November (general).

Arguments for election as the method for filling a vacancy included the democratic character of the process, which involves direct accountability to the citizenry from the outset as contrasted to an appointment by Council; a concern over the advantage of incumbency and name recognition conferred by appointment on a person who had not earned that status via election, and the effect this might have on others willing to run in the ensuing election for the seat; an observed history of adequate functioning while the filling of a vacated seat was awaited; the frequency of elections, so as to avoid having a seat empty for too long a time. There was also concern, based on past observation, about the potential for manipulation of the appointment process.

Observations made in favor of the appointment process included concern over the potential for a vacancy lasting as long as 9 or 10 months, given how the election calendar might work in relation to the date the vacancy occurs; the prospect that a candidate for the vacancy might have to mount two campaigns in quick succession, including the first one on very short notice, and the effect this might have on the size and quality of the candidate pool; the potential for a deadlock during the multi-month period of a six member council, and the prospect of having to operate with an even smaller council if two or more vacancies were to overlap; the fact that an appointment is made by officials who are themselves elected and in that respect could be considered democratic and having accountability; the breadth and apparent intensity of the process that, at least most recently, was conducted openly and attracted a large number of qualified aspirants many of whom might not have been willing or able to mount a campaign at the time, as evidenced by the small number of candidates who run in normal elections. The potential for manipulation could be addressed by creating a time limit for Council to act, the default then being a requirement for an election. It was further noted that given the time needed to prepare for an election, from getting a petition to assembling the resources, careful charter language would be needed to make it all work effectively if the appointment process were to be eliminated in favor of a vacancy election.

Vote on the Motion: Yes – 5 No – 5 Abstain - 1

It was agreed that the issue be considered unresolved and requiring further attention. There ensued discussion about possible additional information that could better inform a decision when the topic was again taken up. The

principal unknowns on which further inquiry would be required appeared to be legal and practical timing for having a sensible election process in the context of needing to fill a council vacancy. Some mention was made of a compromise in the form of having an appointment for the unexpired term but then prohibiting the appointee from running in the next election to avoid the effect of incumbency; following brief discussion, it was determined not to pursue the idea.

Motion to table by Jim Vail, seconded by Craig Cobb. The issue of electing a replacement for a council vacancy was unanimously tabled.

6. Discussion of Article III-7

No issues were noted for this Article.

7. Discussion of Article III-8

There was an extended discussion of the likely original purpose of the paragraph, its current relevance, the interplay between the concept of “general ordinance” (which did not appear to have a recognized meaning) and the specific list of potential ordinances set out, and the requirement for a supermajority vote to alter or repeal an ordinance on the list. There was comment on whether a more extensive listing of counsel expectations might be in order, and also whether the charter should be seen as a method for educating citizens on the nature of the government. It was determined that, subject to certain drafting considerations, including changing the word “journal” to “record,” there would be no changes to the paragraph.

8. Discussion of a provision requiring annual evaluation of the City Manager

Jessica Cohen moved that the Charter include a provision requiring the Council to conduct an annual evaluation of the City Manager and upon its conclusion notify the public that it had occurred. Patrycja Ajdukiewicz seconded the motion. Discussion followed on a number of aspects, including the wisdom of creating a charter provision on the topic (according to City staff, as a matter of practice, there is already an annual evaluation led by the Administrative Services Committee but undertaken by the Committee of the Whole in executive session by consensus, although with no related public notice; the evaluation document itself is a public record that may be obtained upon request); the content of a public notice; and the prospective placement of such a provision in the charter (which was treated as separate from whether to have a requirement, and postponed for later consideration or to be part of the drafting process).

The proposition was refined to provide that the public notice consists of a public statement at the meeting of Council following conclusion of the evaluation that the evaluation had been performed by Council.

Vote on the Motion: Yes - 10 No - 0 Abstain - 1

9. State of the city address.

A suggestion had been made to consider requiring an annual state of the city address. The determination was to postpone this issue for consideration at a later meeting.

10. Discussion of Updated Plan and Schedule

The updated plan and more particularized schedule was noted for comment and there were no objections or additional observations. It was suggested that, in advance of the August 2 meeting, members should look at the remaining provisions of Article III and Article IV, send to the Facilitator questions believed to require research, and be ready to discuss the contents of those provisions, and also (again) the issue of filling Council vacancies) on August 2.

Discussion was had about whether, especially in light of the Labor Day holiday in early September, consideration should be given to moving the September 6 meeting forward to August 30. Certain members had schedule conflicts on September 6 and thus favored August 30, and others did not object. The Chair will check with those not at the current meeting, with the notion that a determination can be made on August 2.

11. Additional Business

There was no additional business.

12. Public Comment

Michael Bennett expressed appreciation for the meeting, expressing the view that the Commission had engaged in good discussion and has made important, tough decisions, although some key ones has not been in line with his wishes. He noted that vacant offices in some charters around the country were filled by election in other cities. He perceived this as an accountability issue, saying he hoped the concept of accountability would be applied to consideration of the vacancy topic moving forward and on other upcoming issues, since in his view the status quo is not working. Garry Kanter noted that the Commission had talked about issues and decided some incorrectly in his view. He commented on the interpretation of the word “may,” based on his litigation experience. He

expressed the view that emergency legislation is undesirable and commented, with an example, that in his view the appointment process for Council vacancies has been abused.

13. Adjournment

Committee agreed by consent to adjourn after the last public comment.