



City of Cleveland Heights Charter Review Commission

Decisions and Rationales

2 August 2018
Council Chambers
Cleveland Heights City Hall

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

1. Acceptance of Decisions and Rationales from 19 July 2018.

Moved and seconded to accept the Decisions and Rationales 19 July 2018.
Accepted unanimously.

2. Comments/Advice from Board of Elections

The proposed approach on electoral process issues is to collect all pertinent questions in upcoming sessions of the Commission and present them in a single meeting with the Board of Elections. The meeting could involve representatives from the Board attending a meeting of the Commission or a small group from the Commission meeting with Board representatives at the Board's offices. Commission counsel will inquire about the availability of Board representatives to attend the 20 September meeting of the Commission.

3. Discussion of Article III-4 Renewed

The Commission took up discussion of the previously tabled item: the approach to filling council vacancies. Many of the points that had been raised and discussed at the meeting of 19 July and recorded in the Decisions and Rationales for that meeting were again reviewed. Items of discussion included the timing for submitting nominating petitions, both per the current charter (90 days in advance of the election) and per requirement and/or advice of the Board of Elections (not yet definitive on this point); the time in advance of election reasonably required to attract a field of candidates and allow a meaningful campaign; the length of time a vacancy would (at a minimum) or could (at a maximum) potentially go unfilled if the process were via election

rather than appointment; concerns over transparency and the potential for manipulation in an appointment process, and related suggestions for putting time restrictions and/or other requirements on the process to address these concerns; the effect an extended vacancy (or vacancies, if more than one were to occur at the same time or for overlapping periods) may have (or not have) on the functioning of council during that period, including the ability to assure a quorum or to act effectively on significant issues; recent changes to the appointment process currently in use, and the extent to which the process has become more transparent and participatory, although not involving a direct election but instead appointive action by others who had themselves been elected; and the desirability as a matter of democratic process of having the vacancy filled in the first instance by direct election, particularly given other determinations the Commission has already made.

Jim Vail moved to retain an appointment process for filling a council vacancy with details on overall process to be decided later. Craig Cobb seconded the motion.

Vote on the Motion: Yes – 7 No – 5 Abstain - 0

4. Schedule of Upcoming Meetings

Following brief discussion supplementing the discussion at the meeting of 2 August, it was decided by consensus to move the meeting currently set for Thursday 6 September forward to Thursday 30 August; the next meeting following that will be Thursday 20 September.

5. Discussion of Article III-8 Resumed

It was suggested that the current wording of the provision makes it difficult to understand. A determination was made by consensus to adjust the language so as to make clear that the reference to “general ordinance” (which has no independent, self-contained meaning in this context) refers only to the topics currently specified in the list that follows within the paragraph as requiring a super majority vote of council (or a successful initiative) to amend or repeal.

6. Discussion of Emergency Ordinances

Concerns have been raised over what appeared to some as a too-frequent and unnecessary, or at least insufficiently explained, attachment of the term “emergency” by Council to ordinances in order to allow them to become immediately effective, in light of requirements in the Ohio Constitution and related state law. Discussion included treatments of the issue in the Oberlin city charter, the Model City Charter, and both the charter and the

administrative code of Cleveland Heights. Consideration was given to whether it was sensible to attempt additional treatment of the subject in a revised charter, in light of practical considerations raised. It was determined by consensus not to proceed with an effort at a more detailed, prescriptive treatment of the emergency ordinance issue via charter, but rather to attempt via structure and drafting to make existing charter provisions touching on the subject clearer and more visible, and with the aim of having the use of the “emergency” process better understood and appreciated.

7. Discussion of Proposal Regarding Public Records/Open Meetings

A proposal was presented by Carla Rautenberg for a charter provision that would deal with public records and open meetings. It was noted that provisions for public records are covered by a general state law to which home rule does not apply, thus precluding alterations via charter. Given this circumstance, the first segment of the proposal, which would have dealt with public records, was set aside. As to open meetings, it was noted that the subject is not addressed in the Ohio Constitution; is addressed in Ohio statutes, but subject to home rule; and in the exercise of its home rule powers, has been covered by Cleveland Heights through ordinance found in the administrative code. The charter proposal currently before the Commission is largely repetitive of the existing ordinance, but with (i) the addition of requirements for minutes, video recording and related transcription (with prompt public posting in each instance) of all meetings not only of Council, but of all Council committees and other city boards, commissions and citizens advisory groups; (ii) the elimination of authorization for four retreat-type executive sessions annually of Council and other city boards/commissions/groups; and (iii) a longer public notice required for adjustments to the regular meeting calendar and for special meetings. In this context and in response to an inquiry, it was noted that records retention requirements are a matter of state law; that the city maintains meeting minutes permanently and currently archives videos of council meetings via small hard drive. Comments and views were exchanged on the desirability, or not, of treating the open meetings issue as a charter item. Points were advanced that inclusion would speak to the importance of the issue and would discourage changes; that typically the topic is not addressed by charter but instead by ordinance (as currently in Cleveland Heights); and that at least as presented, a charter provision would be overly, and thus undesirably, prescriptive and impair flexibility. Suggestions were offered for, and there was discussion concerning, possibly including a more general, aspirational statement regarding the expectation of open government or transparency (the Lakewood charter being noted as a possible reference), potentially accompanied by a requirement for supermajority council action for any change to ordinances on the subject. Before a vote was taken, conclusions reached, or

discussion completed, Carla Rautenberg proposed that, having in mind the contents of the evening's discussion, she works on a new, shorter draft of the proposal for consideration at the next meeting. The Committee concurred by consensus.

8. State of the city address.

Reference was again made to including a provision for an annual state of the city address. It was agreed to consider that topic (including by whom an address might be made) in the context of the article on the city manager, upcoming for discussion.

9. Discussion of Article III-9

It was noted that the concept of dealing with “franchises” in a charter may seem out of date, at least from a terminology standpoint, but that this provision (and the later, more complete provision on franchises in Article X) includes reference to public utilities, which is definitely of continuing relevance. Accordingly, it is necessary to consider the franchise provisions on the merits under the rubric of the Commission's charge to consider in the first instance whether there is a problem that appears to need fixing via charter. The recently concluded dealings concerning the water delivery system and the current consideration of a possible broadband program were mentioned as examples that could fall within contemplation of the existing provision. It was agreed by consensus to look at this particular provision as part of considering franchises generally under Article X.

10. Discussion of Article III-10

It was observed that this provision dealt with certain particulars of ethical conduct. It was suggested that there might more appropriately be a new, separate, standalone, comprehensive article devoted generally to ethics designed to handle concerns dealt with in this paragraph as well as in any ethics-related provisions or clauses found elsewhere in the current charter. Speaking generally, the new ethics provision could take one of two overall structural approaches: (i) A prescriptive approach, with a statement of expectations accompanied by a series specific requirements and prohibitions; Article 8.1 of the Lakewood City Charter is an example; (ii) An enabling approach, which has certain specifics but contemplates action by the council via ordinance to flesh out further details on designated subjects; Article VII, specifically 7.01/02, of the Model City Charter is an example of this. Either approach might or might not include an enforcement mechanism, such as via a specially created board or commission, exemplified in the Model City Charter. It was agreed by consensus that the Commission would first proceed to

consider whether there should be a separate ethics provision along the lines described above, and then if that were to pass, to consider at the next meeting which of the two structural approaches should be the foundation for drafting.

Patrycja Ajdukiewicz moved that there be a separate article dealing with ethics, as described. Jim Vail seconded the motion. The motion was adopted unanimously by voice vote.

11. Discussion of Article III-11

There was discussion about eliminating the title Mayor and Vice-Mayor, which currently attach to the President of Council and Vice-President of Council, respectively. The discussion centered around the potential for confusion in the nature of the office of mayor and the desire to eliminate any such confusion, as well as whether elimination of the titles would, or would not, adversely affect the city in its dealings with other municipalities or within groups of city executives. It was noted that all other cities in Cuyahoga County had an office of mayor, including Bedford, which has a city manager system with a weak, elected mayor. Mentor, which is nearby in Lake County, has a city manager system in which the President of Council used to carry the additional title Mayor but no longer does, the charter having been changed several years ago to eliminate that title. The Facilitator noted and read a portion of the Mentor charter, in which the ceremonial powers often granted to a mayor had been retained in the president of council following removal of the title of mayor. There was discussion as to how ceremonial-type powers can and should be distributed in the event the title Mayor were to be eliminated in Cleveland Heights, but no decision was reached, it being agreed that the topic could best be taken up in connection with the upcoming discussion of Article IV; rather, the present point of decision is just whether to eliminate the titles of Mayor and Vice Mayor.

Patrycja Ajdukiewicz moved that the titles of Mayor and Vice -Mayor be removed from Article III-11. Vince Reddy seconded the motion. The motion was adopted by voice vote with one abstention.

12. Additional Business

There was no additional business.

13. Public Comment

There were no public comments.

14. Adjournment

Committee agreed by consent to adjourn.