

Jack Newman
For August 30 meeting
Comments in items in Article V-VII

A note circulated by Larry Keller prior to the August 16 meeting contained comments from me on certain portions of the charter. Some of those items have now been handled. What appears below is a copy of the portion of that note covering Articles V-VII, with some additional changes and observations not in the earlier one. Items in red are stricken. Items in blue are added. Items in dark blue/bracketed are comments and questions.

ARTICLE V ADMINISTRATIVE OFFICERS AND DEPARTMENTS

SECTION V-1. DEPARTMENTS.

The following administrative departments are hereby established: (1) Department of Law; (2) Department of Finance; (3) Department of Planning; (4) Department of Public Safety; (5) Department of Public Service; and (6) Department of Public Health.

The Council shall determine and prescribe the functions and duties of each department, and, acting by vote of at least five of its members, may create new departments, combine or abolish existing departments and establish temporary departments for special work.

~~(Amended 11-7-72.)~~

[The departments currently in existence do not fully conform in name or function to those established by the current charter. Might it make sense to eliminate all specific references to particular departments, leaving to Council the entire creation, organization, re-organization and abolition of departments? Or alternatively, might it be appropriate to reduce to a minimum (e.g., finance, law, public safety, public works) the number and identity of departments named in the charter, based on those that are the very basic necessities of municipal existence and thus can be expected always to be present in recognizable form, and to leave other departments to creation by Council? Relatedly, if certain departments are identified in the charter, should they be subject to elimination by Council, which seems to be the situation under the current charter, or should that require a charter amendment? At the very least, the charter should be amended to remove the Health Department, which does not exist, and possibly to change names to conform to the current names (although that might be tilting at windmills, since names could change in the future just as in the past and are, in any event, much less important than function.)]

[The edit currently reflected is for consistency.]

SECTION V-2. DIRECTORS.

There shall be a director of each department who ~~shall have~~has the supervision and control ~~thereof~~of the department, and who ~~shall be~~is appointed by, and ~~shall be~~is immediately responsible to, the City Manager for the administration of ~~his~~the department. The City Manager's appointment of the Director of Law, Director of Finance and Director of

Planning ~~shall be~~ is subject to and effective only upon the approval of Council acting by a majority of ~~the its~~ members of Council. The City Manager may remove the director of any department without the approval of Council.

[It seems sensible that at least the directors of Charter-created departments be required to be confirmed by Council. If that is the approach taken, then the contents of this paragraph will depend on which departments remain as charter-created in the preceding paragraph. But why should not all directors require confirmation by council? For example, the Director of Public Service (or “Public Works,” as it is currently called) is a pretty important position, whose function faces the residents every day.]

The Director of Law shall be an attorney at law duly admitted to practice in the State of Ohio, and shall have been engaged in active practice of law continuously for a period of five years next preceding his appointment. The Director of Finance shall also have the title of City Auditor. Nothing herein shall be construed as preventing the same person from being director of more than one department.

~~(Amended 11-7-72.)~~

[It is unclear to me what the significance is of the title “auditor.” Does the presence of this title play any practical role in the functioning of the city at present?]

SECTION V-3. CITY MANAGER AS HEAD OF DEPARTMENTS.

Excepting the Departments of Law, Finance and Planning, the City Manager may be the director of each and every department of the City government unless otherwise provided by the Council.

~~(Amended 11-7-72.)~~

[One can see that the need for a degree of independence would mean the City Manager should not be head of either Law or Finance, but why should Planning (or, for that matter, any other department) also be forbidden territory for the City Manager?]

SECTION V-4. SALARIES AND BONDS.

The Council shall fix by ordinance the salary, rate, or amount of compensation of all officers and employees of the City, except as otherwise provided in this Charter. The Council may require any officer or employee to give a bond for the faithful performance of his or her duties, in such an amount as it may determine, and it may provide that the premium therefor shall be paid by the City.

ARTICLE VI MUNICIPAL COURT

SECTION VI-1. ESTABLISHMENT.

The Cleveland Heights Municipal Court has been created and is in existence pursuant to the laws of the State of Ohio.

~~(Amended 11-7-72.)~~

SECTION VI-2. NOMINATION AND ELECTION.

The provisions of Article VII of this Charter shall govern the nomination and election of the Judge of the Cleveland Heights Municipal Court.

~~(Amended 11-7-72.)~~

SECTION VI-3. GENERAL PROVISIONS.

Except as otherwise specifically provided herein the Cleveland Heights Municipal Court shall be governed by the laws, rules and regulations of the State of Ohio.

~~(Amended 11-7-72.)~~

[Nothing in the record to date would indicate any changes are necessary or advisable in this article. The current judge, Hon. James Costello, has commented in interview (by Newman and L. Keller) that he sees no need for amendments or additions.]

ARTICLE VII NOMINATIONS AND ELECTIONS

[Any conclusions reached as to the contents of this article, whether to change or keep as-is, should be regarded as subject to being revisited upon hearing from the Board of Elections, targeted for September 20.]

SECTION VII-1. TIME OF HOLDING ELECTIONS.

The regular municipal election shall be held on the first Tuesday after the first Monday in November in the odd numbered years. Any matter which, by the terms of this Charter, may be submitted to the electors of the City at any special election, may be submitted at the time of a primary election or of a general election.

SECTION VII-2. BALLOTS.

The ballots used in all elections provided for in this Charter shall be paper ballots or mechanical or other devices for voting not inconsistent with the general election laws of the State of Ohio.

The ballots used in all elections provided for in this Charter shall be without party marks or designations. The names of all candidates for any office shall be placed upon the same ballot and the names shall be rotated in the manner provided by the laws of the State of Ohio.

The full names, or derivatives of full names sufficient for identification, of all candidates shall be printed on the ballots. If two or more candidates for the same office have the same surname or surnames so similar as to be likely to cause confusion, their residence addresses shall be printed with their names on the ballot.

~~(Amended 11-7-72.)~~

[As to full names on ballots, the Board of Elections has already commented informally that Ohio law does not forbid “derivatives” of names, and that the Board has never followed a policy requiring full names. Under the circumstances, it does not make sense to retain this requirement. Has the city even followed it, or tried to follow it, in practice? The suggested change would address the situation.]

SECTION VII-3. PETITION FOR PLACES ON BALLOTS.

The name of any ~~elector~~ registered voter of the City shall be printed upon the ballot if there is filed with the election authorities prescribed by general law a petition in accordance with the following requirements:

(a) ~~Such~~ The petition shall state the name and place of residence of the person whose name is presented for a place upon the ballot and the name of the office for which ~~he~~ the person is a candidate. The nomination of each candidate shall be made by separate petition.

[Proposed changes are for consistency and readability.]

(b) ~~Such~~ The petition shall be signed by ~~electors~~ registered voters of the ~~Municipality~~ City equal in number to not less than two percent of the total number of registered voters voting at the last regular municipal election ~~of municipal officers~~.

[Proposed changes are for consistency and readability.]

(c) Each ~~elector~~ person signing a petition shall add to his or her signature, his or her place of residence, with street and number, and date of signing. ~~No 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. If he does so, his signatures on all petitions which postdate his signing the permissible number of petitions shall be invalid.~~ All signatures shall be made with ink.

[The Board of Elections has commented informally that the invalidation of excess signatures based on date signed is hard for the Board to administer, and that the Board generally proceeds based on the order in which petitions are filed, not dates of the signatures. If this clause is retained in any form, it should be changed to conform to the Board's practice. But why retain it? Is there a reason under state law or some other law why a person is forbidden from, for example, signing a petition for each of five prospective Council candidates, even though only three seats are up? Is there a policy reason, or a practical one? The suggested change would eliminate the restriction.]

(d) The signature of ~~all petitioners~~ persons signing a petition need not all be appended to one paper, but to each separate paper there shall be attached a signed statement of the circulator ~~thereof~~ of the paper, made under penalty of election falsification, stating the number of signers ~~thereto~~ of the paper, that each person signed in the circulator's presence on the date mentioned, and that the signature is that of the person whose name it appears to be.

[Proposed changes are for consistency and readability.]

(e) ~~Such~~The petition shall not be signed by any ~~electors~~persons more than one hundred eighty (180) days prior to the day of ~~such~~the applicable election, and ~~such~~the petition shall be filed with the election authorities prescribed by general law not less than ninety (90) days ~~previous~~prior to the day of ~~such~~the election. ~~This section shall become effective January 1, 2017.~~
~~—(Amended 11-8-16.)~~

[Proposed changes are for consistency and readability. Also, the Board of Elections has asked informally what the rationale is for the 180 day maximum. To me it seems pretty obvious -- to be sure the signatures (with addresses) are reasonably fresh. In my view, this is a sound reason, and no change to that limitation should be made. However, we should discuss with the Board of Elections whether the 90 days is a required minimum; if there is a lesser number that meets both legal and practical tests, then why should the city require a longer period?]

SECTION VII-4. ACCEPTANCE.

Any person whose name has been submitted for candidacy by ~~any such~~ petition shall file an acceptance of ~~such~~ candidacy with the election authorities not later than eighty-five (85) days ~~previous to said~~prior to the applicable election; otherwise, the name of that person shall not appear on the ballot. The signature of a candidate upon a declaration of candidacy contained as part of ~~petitions~~a petition filed with the election authorities, in accordance with law, shall constitute compliance with the requirements of this section. ~~This section shall become effective January 1, 2017.~~
~~(Amended 11-8-16.)~~

[Proposed changes are for consistency and readability. Also, if there is a change to shorten the minimum time for submission of a petition, the 85-day period will likely need to be adjusted downward as well.]

SECTION VII-5. ~~WHO ELECTED~~WRITE-IN CANDIDATES.

The voter may write on the ballot the name of any candidate who has properly filed a declaration as a write in candidate with the election authorities ~~on or before the seventy-second~~not later than seventy-two (72~~nd~~) ~~day~~days before the election, and that vote shall be counted. ~~Such~~The declaration shall state the name of the candidate, his or her place of residence, and the office for which he or she desires to run. A write in candidate shall be ~~an elector~~a registered voter of the City at the time his or her declaration as ~~such~~ a candidate is filed with the election authorities. ~~This section shall become effective January 1, 2017.~~
~~(Amended 11-8-16.)~~

[This section appears to deal with write-in candidates only. The current title does not fit. Proposed changes in the text are for consistency and readability.]

SECTION VII-6. CONDUCT OF ELECTIONS AND CANVASS OF VOTES.

All elections shall be conducted and the results canvassed and certified by the election authorities prescribed by general election laws, and all other election matters ~~relating to elections not herein~~for which no specific provision is made in this Charter or by ordinance of the

Council ~~specifically provided for~~ shall be determined by the general election laws of ~~the~~ State Ohio.

[Proposed changes are for consistency and readability.]

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**SECTION VII-7. VOTING BY A MEMBER OF THE ARMED FORCES
AND ~~HIS~~ FAMILY.**

A member of the Armed Forces of the United States or a member of his or her family shall be entitled to vote in accordance with and pursuant to the procedures of the general election laws of ~~the State of~~ Ohio.

~~(Amended 11-7-72.)~~

[Proposed changes are for consistency and readability. More broadly, is this provision necessary? It seems clearly to be encompassed by the immediately preceding Section VII-6. On the other hand, does it do any harm? And if not, then given the subject matter, should it just be left alone?]

Summary report: Litéra® Change-Pro TDC 10.1.0.200 Document comparison done on 8/22/2018 4:45:09 PM	
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Intelligent Table Comparison: Inactive	
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Modified filename: 5.0.docx	
Changes:	
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Delete	59
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	132