



# City of Cleveland Heights

## Charter Review Commission

### Decisions and Rationales

16 August 2018  
Council Chambers  
Cleveland Heights City Hall

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

#### 1. Acceptance of Decisions and Rationales from 2 August 2018.

The Decisions and Rationales 2 August 2018 were accepted unanimously.

#### 2. Next Meeting 30 August 2018

The Commission agreed to meet on Thursday 30 August rather than Thursday 6 September. Staff noted the meeting might have to be at the Community Center rather than Council Chambers. Even if that is so, arrangements will be made to put the meeting on video as usual. All will be notified once the location is confirmed.

#### 3. Discussion of Proposal Regarding Open Government

Discussion of a potential sunshine/open government provision was again taken up, with a revised and substantially shortened draft being circulated by Carla Rautenberg. Points raised and debated, several of which had also been the subject of comment at the previous meeting, included: the importance and wisdom, or not, of having such a provision in the city's fundamental organizational instrument (which would emphasize its central significance) versus leaving it as matter of legislation (which, for better or worse depending on one's underlying view, would make periodic changes less cumbersome); the relative merits of a prescriptive approach versus a statement of aspiration/expectation (referring to the Lakewood charter for an example of the latter); the difficulty of balancing a desire for having something meaningful with a concern over being so specific as to limit flexibility; the fact that Ohio's constitution does not cover the topic, whereas both Ohio statutory law and Cleveland Heights ordinances (pursuant to home rule powers) do

treat the subject, with state and local provisions being in many respects very similar but also having some differences; the existence and extent of practical impact on community knowledge and governmental responsiveness from having a requirement for comprehensive recording, transcription and minutes of meetings of all city bodies; current variations in concept and practice among city bodies regarding preparation of minutes; retention requirements and practices for paper and electronic meeting records; and difficulty in drafting a charter provision that would have sufficient clarity and precision as to minimize inconsistencies, uncertainties and the prospect for legal disputes over compliance (including by reference to certain portions of the specific proposal prompting the evening's discussion).

The Chair suggested that he could meet with Carla Rautenberg to explore the possibility of developing a different proposal that might deal with some of the issues raised and potentially be accepted. In response, questions were raised as to whether there was sufficient interest in a prescriptive open government proposal to warrant such an effort. A motion was suggested as a vehicle to test the answer to that question.

Jim Vail moved to have a prescriptive open government provision in the City Charter. Carla Rautenberg seconded the motion.

**Vote on the Motion:** Yes – 2          No – 8          Abstain – 1

Attention then turned to whether there ought to be a charter provision stating an expectation of open government, possibly to include a requirement for Council to implement the expectation. A motion was suggested to test whether there was support for an expectation provision.

Jim Vail moved to have the substance of section 8.1 of the Lakewood City Charter (which includes reference to open government) adopted, substituting Cleveland Heights for Lakewood in the provision, and adding that Council shall determine from time to time how best to implement open government. Mike Gaynier seconded the motion.

Additional discussion ensued. Various of the points noted above in the earlier discussion were again mentioned and considered, including by way of example: definitional concerns, the potential for disputes over meaning and compliance, questions about remedies for supposed non-conformance, and the potential desirability of specific reference to a role for Council.

**Vote on the Motion:** Yes – 4          No – 4          Abstain – 3

Lacking a majority the motion failed.

#### 4. Discussion of Article IV

The Commission took up discussion of Article IV of the Charter dealing with the City Manager. A version of the current charter with proposed changes marked and comments inserted had been circulated and was used as a foundation for discussion.

-- Section 1. Appointment. Following discussion it was agreed to expand the title to include reference to tenure and removal as well as modify the text to acknowledge explicitly the permissibility of an employment agreement. The terms dealing with post-employment payments and benefits were addressed, while retaining and reconfirming the strictly at-will nature of the employment relationship. Council's power to terminate at any time with or without cause was acknowledged and the need for at least four votes of council members (not just a majority of a quorum) both to hire and to terminate.

-- Section 2. Residence Requirements. It was explained that a ruling by the Ohio Supreme Court had ruled that the state Constitution prohibited making residence in the city a requirement for employment by the city but allowed a requirement of residence in the county or an adjacent county for those whose functions might require response in an emergency. The Commission determined to eliminate the existing (invalid) residency requirement and not to insert the broader, permissible county-oriented requirement. The matter was left to the judgment of Council for consideration among all factors when making an applicable employment decision on the City Manager. With the elimination of the section, subsequent sections of Article IV would be renumbered.

-- Section 3 (now renumbered to -2). Powers and Duties. The Commission considered several proposed changes to this section. Following discussion and clarification of certain aspects of the proposal as well as identification of areas requiring change to accommodate collective bargaining situations, a timing consideration, terminology bearing on presentation of proposed legislation, and editorial issues (subject to attention in later detailed drafting), alterations and additions were accepted. The changes would make the City Manager the City's chief executive and its official head of government, not just its administrator; would explicitly impose duties of direction, supervision and management, not just administration, on the office; and would set out in greater detail a number of expectations of the office, while continuing to make clear that although executive leadership, vision, and planning were expected and delegation was permitted, there was no veto power and Council retained ultimate policy-making authority.

-- Section 4 (now renumbered to -3). Vice Manager. The existing provision provides for a Vice Manager who is appointed by the City Manager without need for approval of Council and whose lone Charter-sourced duty is to “exercise the powers and perform the duties” of the City Manager during the City Manager’s “temporary absence or disability.” The Commission considered the desirability of giving the vice manager regularized, day-to-day responsibilities to assist the City Manager. This would be generally consistent with what is already current practice, but it was thought that explicit recognition in the charter would be a good idea. The inclusion of “City” in the title of the office would likewise be appropriate. It was noted that approval by Council would be required for the appointment. The City Manager would retain discretion over removal.

-- Section 5 (now renumbered to -4). Acting City Manager. Under the current charter, Council may appoint an acting city manager when the office becomes vacant or its occupant is suspended. Following discussion, the Commission determined it would make sense to provide that the Vice City Manager would take the acting position automatically, unless and until the Council were to appoint someone else to the fill that role. Further, that if the Vice City Manager were the Acting City Manager but, for whatever reason, were to be unavailable when action in that capacity was required, then the law director would be authorized to act.

During the discussion of Article IV, the proposition was advanced that, in addition to giving explicit chief executive authority and expectations to the office of City Manager, the actual name of that office be changed to City Executive. Following discussion, it was moved by Vince Reddy and seconded by Patrycja Ajdukiewicz to retain the title City Manager. The motion was adopted by voice vote with one member opposed.

It was then moved by Jack Newman and seconded by Jim Vail to adopt as Article IV, dealing with the City Manager, the several sections, and one elimination of a section, as set forth in the marked document that had served as the foundation for the discussion, subject to the changes of both principle and specifics that had been discussed throughout the meeting, and with the recognition of a need for attention to particulars in the drafting process. The motion was adopted unanimously by voice vote.

## 5. Additional Business

It was noted that the one or more representatives from the Cuyahoga County Board of Elections would attend the Commission meeting on September 20. With that in mind, there will be an agenda item for the next meeting, which will occur on August 30, about assembling questions that can be presented to

those representatives in advance of their appearance before the Commission, and members were requested to give thought to possible questions in advance of August 30 and, if at all possible, send questions in writing to Larry Keller in advance of the meeting, so they can be circulated.

6. Public Comment

There were no public comments.

7. Adjournment

Committee agreed by consent to adjourn.