

**CITY OF CLEVELAND HEIGHTS
LAW DEPARTMENT**

TO: Charter Review Commission

FROM: Elizabeth Wells Rothenberg, Assistant Law Director

CC: L. James Juliano, Jr., Law Director

DATE: March 1, 2018

RE: Charter Amends and the History of the Charter Review Commission

I. Procedure for Amendments to the City Charter

The City Charter establishes two ways to initiate a charter amendment: (1.) An ordinance passed by five (5) Council members placing a proposed charter amendment on the ballot during a primary, general, or special election; or (2.) An initiative petition. The proposed amendment is incorporated into the Charter, if approved by a majority of the electors who voted on the issue.

Article XIII reads, in full:

Amendments to this Charter may be submitted to the electors of the City by a vote of five members of the Council, and shall be submitted by the Council when a petition signed by not less than ten percent of the total number of electors as shown by those registered at the last general or municipal election, setting forth any such proposed amendment shall have been filed in the manner and form prescribed herein for the submission of ordinances by initiative petition. The amendment shall be submitted to the electors at the next regular primary or general election, if one shall occur not less than sixty (60) days, nor more than one hundred twenty (120) days after its passage or filing; otherwise the Council shall provide for the submission of the amendment at a special election to be called and held within the time aforesaid.

If any such proposed amendment be approved by a majority of the electors voting thereon, it shall become a part of this Charter at the time fixed in the amendment; and if no time is fixed therein, then such amendment shall become a part of this Charter upon its approval by the electors; provided, however,

that in the event that two or more inconsistent amendments on the same subject are submitted at the same election, only the one of such amendments receiving the largest affirmative vote, not less than a majority, shall become a part of this Charter.

City Charter, Art. XIII.

The current edition of the Charter notes amendments from 1972, 1982, 1986, and 2004. The publisher does not know if amendments were made prior to 1972. Without extensive research that we have not conducted, we cannot determine whether there were any amendments prior to 1972.

II. The Charter Review Commission Is Not Mandatory

In 1972, Article XV of the Charter entitled, “Charter Review,” was adopted, along with other charter amendments. Article XV reads in full: “Council shall, at least once during each ten-year period, by ordinance or resolution, determine whether to appoint a Charter Review Commission to review the entire Charter. The first ten-year period shall end December 31, 1982. Thereafter each successive ten-year period shall commence on the date of Council’s ordinance or resolution making such determination.” City Charter, Art. XV.

While the appointment of a Charter Review Commission has been formalized in the City Charter since 1972, nothing in the Charter mandates that a Commission must be convened before Council may place proposed amendments on the ballot. In other words, the Commission is not a mandatory component of amending the Charter. *See* City Charter Art. XIII, Art. XV. For example, in 2004, City Council placed a proposed charter amendment on the ballot without ever convening a Charter Review Commission. *See* Ordinance No. 122-2004; City Charter, Art. IX, Section 11(A). As detailed above, Council action of five (5) members and voter adoption are the only mandated requirements.

Additionally, City Council has total discretion as to whether it wants to accept any recommendations made by the Charter Review Commission and place them on the ballot. For example, Council waited until 1986 to pass an ordinance placing one of the 1982 Commission's recommendations on the ballot. *See* Ordinance No.16-1986. The reason for this delay is unknown.

III. Charter Review Decennial Commissions

A. 1972 Commission

In 1972, Council convened a Charter Review Commission. As discussed above, the charter provision mandating the decennial consideration of a Charter Review Commission was not adopted yet, so the decision to convene a Commission was a product of the 1972 Council, not the Charter.

The 1972 Charter Review Commission was established on March 21, 1972. *See* Resolution No. 12-1972. Nineteen (19) residents were appointed to the Commission. *Id.* The Personnel Committee met several times with the Committee of the Whole to discuss appointments to the Charter Review Commission. *See* March 20, 1972 Council minutes; Resolution No. 12-1972. Neither the establishing Resolution nor Council minutes in the months leading up to its passage specify criteria used to appoint the nineteen (19) residents.

The 1972 Charter Review Commission held an organizational meeting on March 23, 1972. *See* Report and Recommendations of the 1972 Commission at page 2. There were three (3) additional public hearings held by the Commission on April 26, 1972, May 2, 1972, and May 11, 1972. *Id.* There is a summary of the hearings in the 1972 Commission's Report and Recommendations.

Cleveland Heights residents were encouraged to share their views, recommendations, and suggestions to the Charter Review Commission regarding any changes they felt were necessary

to the Charter. *Id.* The views and recommendations of each member of Council; members of the City administration, including the City Manager; private citizens of Cleveland Heights with city government experience; and other members who were considered experts in governmental matters were also solicited during those hearings. *Id.* In addition to the hearings, the public was invited to submit written comments. Individual commission members also gathered information and conducted independent research. *Id.* After these steps were taken, the Commission prepared a Report of Recommendations.

The 1972 Report was made a matter of Council record on July 17, 1972. *See* July 17, 1972 Council minutes. Copies of the Commission’s Report were made available at public libraries and at City Hall.

Council passed legislation to place all of the recommendations of the 1972 Charter Review Commission on the November election ballot. *Compare* 1972 Report & Recommendation *with* Ordinances Nos. 39-1972 through 48-1972 (placing amendments on the ballot). The electorate adopted all of the proposed amendments. *See* 1972 Certificates of Result of Election on Question or Issue. A summary of the amendments adopted in 1972 follow in the Appendix.

B. 1982 Commission

The most recent Charter Review Commission was convened in 1982. *See* Resolution No. 46-1982. On April 5, 1982, Council appointed fifteen (15) members to the 1982 Charter Review Commission. Notably, this was four (4) members fewer than were appointed in 1972. There is no record of how Council determined the number of members to appoint to the Commission or what criteria it used to select the members.

Council provided a “Charge to the Charter Review Commission,” which outlined specific areas that it wanted the Commission to address. *See* 1982 Charge to Charter Review

Commission. Nothing in the Charter contemplates such a charge. Rather, the Charter mandates that once a Commission is convened, they shall review the *entire* Charter. *See* City Charter, Art. XV.

By July 6, 1982, the Charter Review Commission made its final recommendations to Council. *See* July 6, 1982 Council minutes. Unfortunately, the July 6 Council minutes do not detail what recommendations were made by the Charter Review Commission, but ten (10) proposed charter amendments were placed on the 1982 ballot. *See* Ordinance Nos. 103-1982 through 110-1982, Ordinance No. 112-1982. Eight (8) amendments were successful; two (2) were unsuccessful. *See* 1982 Certificates of Result of Election on Question or Issue. A summary of the amendments adopted in 1982 follow in the Appendix.

No Subsequent Commissions

Council decided not to appoint a Charter Review Commission in 1992, 2002, and 2012. Each of those years City Council determined that the current Charter was still serving the City effectively. *See* Resolution Nos. 78-1992, 212-2002, and 186-2012.

Appendix

The Adopted Charter Amendments in 1972:

Article III, *The Council*

- Section 3, "Removal"
- Section 4, "Vacancies"
- Section 7, "Meetings"
- Section 11, "Mayor and Vice-Mayor"

Article IV, *City Manager*

- Section 1, "Appointment"
- Section 2, "Residence Requirements"
- Section 4, "Vice Manager"
- Section 5, "Acting City Manager"

Article V, *Administrative Office and Departments*

- Section 1, "Departments"
- Section 2, "Directors"
- Section 3, "City Manager as Head of Departments"

Article VI, *Municipal Court*

- Section 1, "Establishment"
- Section 2, "Nomination and Election"
- Section 3, "General Provisions"

Article VII, *Nominations and Elections*

- Section 2, "Ballots"
- Section 7, "Voting by a Member of the Armed Forces and His Family"

Article VIII, *Initiative, Referendum and Recall*

- Section 4, "General Provisions"
- Section 5, "Official Publicity"

Article IX, *Finances*

- Section 8, "Bond Issues"
- Section 11, "Limitations on Rate of Taxation for Current Operating Expenses"

Article XI, *City Planning Commission*

- Section 2, "Powers"

Article XII, *Civil Service Commission*

- Section 1, "Establishment"
- Section 2, "Officers and Employees"
- Section 3, "Powers and Procedures"

Article XIII, *Amendments*

Article XV, *Charter Review*

The Adopted Charter Amendments in 1982:

Article III, *The Council*

Section 5, "Salaries"

Section 6, "Appointees"

Article VII, *Nominations and Elections*

Section 3, "Petition for Place on Ballots"

Section 4, "Acceptance"

Section 5, "Who Elected"

Article VIII, *Initiative, Referendum and Recall*

Section 3, "Recall"

Article IX, *Finances*

Section 12, "Auditing Finances"

Article XI, *City Planning Commission*

Section 1, "Establishment"

The Adopted Charter Amendment in 1986:

Article III, *The Council*

Section 3, "Qualifications"

The Adopted Charter Amendment in 2004:

Article IX, *Finances*

Section 11(A), "Limitation on rate of taxation for improvement and maintenance of City-owned parks, recreation and cultural facilities"