



City of Cleveland Heights

Charter Review Commission

Decisions and Rationales - Revised

5 July 2018
Council Chambers
Cleveland Heights City Hall

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

1. Acceptance of Decisions and Rationales from 21 June 2018.

Moved and seconded to accept the Decisions and Rationales 21 June 2018.
Accepted unanimously.

2. Resignation of Allosious Snodgrass

The resignation of Allosious Snodgrass from the Commission was noted. He had been the Vice Chair of the Commission. The City Council is not going to appoint another member to the Commission to replace him.

The Chair called for nominations for Vice Chair. Jim Vail moved that Jessica Cohen be nominated. Vince Reddy seconded the nomination. No other nominations were offered. The Commission unanimously elected Jessica Cohen to be Vice Chair.

3. Meaning of certain Charter terms.

The use of technical and legal terms in the charter was noted as potentially warranting definitions. The Commission set an objective of making the revised charter clear and easy for citizens to read and understand, to the extent reasonably practical. This will be kept in mind during the drafting process, and may involve such things as adjusting provisions to avoid technical/legal language or otherwise unclear wording.; using elliptical definitions, that is, immediately following the first use of term it would be defined in a dependent clause; and perhaps a glossary.

4. Motion that Cleveland Heights Charter be gender neutral

Moved by Jessica Cohen, seconded by Carla Rautenberg

Implementation would include effective handling of pronouns as well as employing structures that do not raise gender considerations, again to be addressed on a detailed basis as part of the drafting process.

Vote on the Motion: Yes – 9 No – 0 Abstain - 0

5. Discussion of the Preamble

Attention was called to the U. S. Constitution as a possible addition to provision. The decision was to retain the Preamble as is, since the main purpose if the provision is to emphasize home rule, which relates only to the Ohio Constitution.

6. Discussion of Article I

The provision includes technical/legal terms such as “body politic and corporate,” which had been specifically mentioned in the earlier discussion of the desire for clarity and the possible approaches to achieving that clarity. At the same time, no substantive comments had been raised in writing or were raised in the meeting. The decision was to make no substantive changes. In view of the reference in the provision to city boundaries, interest was expressed in ascertaining whether there is an official boundary map of the city and where such a map might be found, topics into which the Facilitator agreed to inquire in advance of the next meeting.

7. Discussion of Article II

It was noted that some minor, clarifying changes has been suggested for this article. In addition, there were suggestions to identify expressly the title of the city’s form of government and to consider inclusion of certain provisions from the comparable article in the Model City Charter. The decision was to include a statement about the form of government but make no other substantive changes.

8. Discussion of Article III

A suggestion was made for a change in the language describing the powers of the Council. In the present charter, Council is granted legislative authority but has been argued to have exercised, or may wish to exercise, power that

might be asserted as going beyond legislative authority. The recommendation reads, “Except as otherwise allocated, provided or limited by law or this Charter, all powers of the City shall be vested in a Council of seven members elected at large.” The Law Director, in answering a question about the provision, offered the view that the new language would be preferable to the current Charter provision. This language will be included in a new draft.

Discussion then turned to issues of election of councilmembers, terms, desirability of contesting for specific seats on council and term limits. The consensus was for four year terms and staggered elections as currently provided, with no term limits. The Facilitator will research the issue of whether electing members for specific seats (colloquially, head-to-head) in at large council elections can be found in other charters, with the potential for inviting someone experienced in such a system to meet with the Commission or alternatively having the Facilitator conduct an interview and report back.

The Committee turned to the subject of post-election communication districts. Preliminary comments centered around whether a provision of this nature belonged in a charter at all, and if so how broad or narrow it should be. It was decided to postpone further discussion until the next meeting. In the interim, Katie Solender will look into preparing a short provision on community communication expectations of council members. A suggestion was offered to have a provision of this type, if any were to be adopted, be part of Article III-8 General Provisions.

9. Discussion of Article III-2

As to qualifications for council members, possible requirements for length of residency, tax filing status, and mandatory training/orientation were considered and rejected as being unnecessary or inappropriate for inclusion in this portion of the Charter or in a charter at all, but possibly could be considered for later portions of the Charter or for inclusion in the report that will accompany the Commission’s transmission to Council. A question was raised about the necessity and appropriateness of excluding school district employees from council eligibility as the current Charter does. The possibility of occasional, arguable conflicts of interest was identified but not seen as an obviously satisfactory explanation or justification for ineligibility. No determination was made on this item. In advance of the next meeting, the Facilitator will look into when and why the exclusion appeared in the charter and also whether similar provisions are found in other charters.

10. Discussion of Article III-3

The Committee had no substantive concern with the current provision governing removal of council members.

11. Discussion of Article III-4

Certain experiences with council's role in filling council vacancies were raised, particularly with reference to the resulting incumbency and its impact on an ensuing election. Some expressed a preference for filling vacancies only via election rather than via council appointment, even on an interim basis. Other concerns were the length of time Council had taken for filling some vacancies and certain procedures that had been used. Sentiment was expressed on the desirability of learning how other charters handle the issue. It was also decided that before a suitably informed decision could be made, more information was needed on time periods involved, both practically and legally, in holding an election to fill a vacancy, while avoiding the need for a special election. Carla Rautenberg will contact legal counsel about making contact with Board of Elections to secure information on the issue. Board staff have volunteered to, and may at some later point be invited to, speak with the Committee on electoral issues. Because of the need for more data to support a suitably informed decision, decision on handling the vacancy situation was deferred.

12. Discussion of Article III-5

As to setting salaries for members of Council (which some thought may not have been suitably adjusted over time), ideas for change included implementing a periodic mandatory minimum cost of living increase and requiring, as opposed to merely permitting (as in the current charter), Council to address the salary issue every two years. The political difficulty of having Council members set, and thus be responsible for raising, their own salaries was acknowledged. The Facilitator suggested that consideration be given to having the Civil Service Commission address Council salaries as is done in Lakewood, where any adjustment recommended by that Commission becomes effective unless the council affirmatively rejects it. The determination was made to change the current method of salary setting in favor of a Lakewood-type approach.

13. Discussion of Article III-6

As to the appointment power of Council, the only portion of the existing charter that gave rise to questions was the reference to "appoint and employ such other officers and employees of its body," the coverage and intent of that

clause seeming uncertain. The Law Director noted, by way of example, that Council could hire legal counsel if it felt the Law Department could not represent it sufficiently in a particular legal controversy. The Facilitator noted he had been hired by Council. A determination was made to consult the Model City Charter for insight it might provide. Except for possible clarifications, including to the “of its body” clause, there would be no changes of substance to this section.

14. Drafting of Suggested Provisions

Alternative approaches to drafting were considered and it was determined that at least for the present, the Facilitator would undertake primary drafting responsibility, to which he agreed.

15. Additional Business

There was no additional business.

16. Public Comment

Deborah Van Kleef advocated that, in order to gain first-hand experience with operations of the Council Committee of the Whole, Commission members attend meetings of that Committee or at least listen to the audio recording of the meeting, recently available. She was critical of the idea of post-election communication districts, seeing them as poor substitutes (“Band-Aids”) for wards, with the assigned member not actually tied to the geographical area by residence or history, and further believing they would create confusion among of residents, particularly if district assignments were to be rotated. She expressed thanks for what she characterized as the hard work of the Commission. Bill Espenschied expressed agreement with the comments of Ms. Van Kleef and went on to say that he favored keeping the charter largely as is, but with the addition of an elected person who would have no voting power other than to break ties on council (and could also step in to fill a council vacancy), but who would provide oversight and reporting on such things as compliance and efficiency of government and perhaps assist in matters between council and the city executive, the stated thought being that this would help bring local government closer to the voters. Garry Kanter said he thought the meeting had been effective with a good discussion, although “not perfect.” He cautioned that any inquiry into best practices should be alert to whether the practices are in existence because they benefit a political party, with particular reference to the filling of Council vacancies. He perceived greater concern with employees of the land bank serving on Council than employees of the school district, since land bank personnel who are also Council members could affect how the city approached the purchase and

disposal of land bank property, and he cited a particular circumstance as supporting his view. He queried whether the Commission would be looking into ordinances, some of which he sees as raising issues also being discussed in connection with the charter. He was critical of the handling of public records requests by the city law department, and he noted, citing personal experience, the strength of the home rule concept as a foundation for the Commission's evaluation of views that may be expressed by the Board of Elections.

17. Adjournment

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