

Research, Questions and Comments

Requested Research on topics as well as comments on some proposals are included in this document. Responses follow the questions. Questions and other material are ordered by date received.

Questions

1. Can you provide us with "best practices" or common approaches by other charter cities re transparency?

A preliminary look at selected cities suggests that most charter cities follow state law on meetings and state law on records is a general law binding on all cities. Often, the state law is the default as no charter provisions address transparency in terms of open meetings and records. Specific provisions may be in codified ordinances, in what is called the administrative code as in Cleveland Heights. This was shared in an earlier message but is repeated here given the proposal by Rautenberg. Liz Rothenberg stated as I quoted in a previous message:

Liz shared where you can find useful information on open government in Ohio. The message is below and has a very useful link.

There is a very nice summary about legal requirements for minutes under Ohio law in the Attorney General's sunshine manual (which is text searchable).

<https://www.ohioattorneygeneral.gov/yellowbook>.

FYI, home rule does NOT apply to the Ohio Public Records Act, only to the Ohio Open Meetings law so you don't have to consider public records at all. State law controls.

Also you may be interested to know that Ohio Open Meetings law controls where local laws are silent on Open Meetings issues. For example, CH executive session topics apply under Home Rule, but CH follows state laws about executive session procedures where CH laws do not discuss procedure.

I am somewhat wary of "best practices" as guides. Useful to know what others do or have done, and why, but I am reminded that if our founding fathers had consulted best practices in light of nearly universal failure of large republics historically and the success of monarchies for the most successful European powers, we would have adopted a monarchical form of government. In contrast, Madison thought about how to create a republic that addressed issues that had plagued republics in the past so that the resulting government was creative and provided desired governance. The

lesson is to focus on how citizens want their community governed and create provisions to provide the desired governance.

2. Can you please look into the following?

Re: Article V, Sections 2 and 3:

I am considering proposing that by Charter, the Director of Public Safety be the Chief of Police, appointed by the City Manager with the approval of Council. In this case, the Fire Chief would of course report to the Director of Public Safety (and the Fire Chief would be appointed by the Director of Public Safety with the approval of the City Manager).

Do any other Council/Manager cities do it this way? If the City Manager is always the Safety Director, I will not bother proposing it. And I don't want to suggest having a new, separate position of Safety Director because BUDGETS.

----- Answers

A person is unlikely to be appointed to two positions that would have the person supervise him or herself. If a police chief accepted the position of Safety Director, he or she may be requested to resign as police chief. Hard to imagine a fire chief serving under a safety director who also runs the police. Under most charters that were examined the city manager could be police chief though that seems unlikely in most cases.

Cleveland Heights permits the City Manager to be Director of Public Safety as well as Director of other department except for Law, Finance and Planning. Section V-3 The Directors of those three departments need Council approval for appointment. All Directors serve at the pleasure of the City Manager. Section V-2. Under provisions of the Cleveland Heights Administrative Code, Section 131.02(a), the City Manager is the Safety Director.

Brunswick has the City Manager be the Director of Public Safety. 5.03. City Manager appoints the Police and Fire Chiefs with Council approval. They serve at his or her pleasure. 5.01 City Manager can also head other departments with the consent of the Council. 5.01

Mentor has the City Manager as Department Director, even two or more departments, unless otherwise determined by ordinance. 5.01 Police and Fire Chiefs appoint all personnel in the departments with the advice and consent of the City Manager. 5.02

Huron City Charter creates four departments – Finance, Law, Safety and Service – with other departments created with the consultation of the City Manager. 5.01 Each department has a full-time or part-time director appointed by the City Manager with Council approval. A Director may head one or more departments as well as the City Manager serving as Director with the approval of Council. 5.02

A city manager may have specific skills that could be useful in a specific department, such as economic development. By permitting a city manager to head a department, he or she could utilize the specific skills at the departmental level. Also, permitting a city manager to head departments generally can help in any transition in departmental leadership as well as help deal with budget constraints.

3. Re: Article VI - Municipal Court

I want to propose a new Section 3: ANNUAL REPORT -- something like this:

"The Cleveland Heights Municipal Court shall publish an Annual Report summarizing the numbers and types of cases heard, a break-down of the revenues remitted to the City, and such other details as will enlighten the Cleveland Heights City Council and the general public about the Court's operations."

The ORC currently requires an Annual Report (which since 2013 has been posted on the CH Muni Court web site) , but as far as I can see the requirement is limited to reporting certain remittances.

Do you see any problem with asking for a little more, as above? I'd like to see it in the Charter partly just to let the public know it's there -- and also to ask for a little more comprehensive report.

Then the current Section 3 would become Section 4: General Provisions

----- Answers

According to legal experts the Municipal Court can be regulated by a home rule charter. Thus, requiring a more detailed annual report by the court is an issue that a charter review can address.

The following is budget details about the revenue from the court.

The Court Special Revenue Funds are the Municipal Court Clerk Computerization Fund, which is restricted to court computer-related expenses and the Municipal Court Special Projects Fund, which is restricted to expenses for court identified projects.

Criminal and traffic fines are posted to the General Fund.

Criminal/Traffic moving violation court costs are split between the General Fund and the Special Revenue Funds. \$45 goes to the General Fund, \$10 goes to the Municipal Court Clerk Computerization Fund and \$6 goes to the Municipal Court Special Projects Fund.

Criminal/Traffic non-moving violation court costs are split between the General Fund and the Special Revenue Funds. \$59 goes to the General Fund, \$6 goes to the Municipal Court Clerk Computerization Fund and \$10 goes to the Municipal Court Special Projects Fund.

Civil/Small Claims court costs are split between the General Fund and the Special Revenue Funds. \$88 goes to the General Fund, \$6 goes to the Municipal Court Clerk Computerization Fund and \$10 goes to the Municipal Court Special Projects Fund.

The Court also collects DUI Housing, DUI Arresting Agency, and DUI Indigent fines. These funds are restricted to expenditures which promote education about driving while intoxicated and expenditures for alcohol and other drug addiction treatment programs for those who are unable to pay for attendance.

4. Article VII, Section 3 (c)

I would like to propose that we delete the following:

"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."

Is there any legal reason this cannot be deleted?

----- Answers

Unless there is a specific law on this, it seems a policy which the Commission can address. I will ask Liz about this.

5. Does the city have an org chart? can we get it before the Thursday meeting?

----- Answers

If I recall correctly, Garry Kanter distributed an organization chart to the Commission. The organizational chart for the city is on the main page of the website after the entry, municipal court.

<https://www.clevelandheights.com/DocumentCenter/View/788/City-Organizational-Chart-PDF?bidId=>

6. Does any charter have language in it that prevents a city manager (or mayor actually) from hiring someone with which they have a relationship? Meaning, is there some sort of standard anti-nepotism language? Or at least requiring a disclosure of a relationship (for instance if the city manager and the hire are personal friends?)

----- Answers

Appointments for most positions are controlled by the Civil Service Commission, Administrative Code or union contract. See Chapter 139 of the Administrative Code. Classified employees are in positions created and administered by the Civil Service Commission. Unclassified employees' positions are under the appointing authority for the position. Union contracts supersede these categories as they are part of general law not amenable to home rule.

Some charters have ethics provisions that address the “how” of appointments. See 8.1(c)(3) of the Lakewood City Charter and 7.02 of the Model City Charter. These may also be in the Administrative Code of a city as most ethics charter provisions permit council to add other provisions by ordinance.

In addition, city managers must abide by a very strong Code of Ethics. The Code is administered by the International City/County Management Association (ICMA) which adjudicates violations of the Code. A city manager “convicted” of violating the Code is basically unemployable professionally. The Code with guidelines is inserted below.



ICMA Code of Ethics with Guidelines

The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in June 2018. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in June 2018.

The mission of ICMA is to advance professional local government through leadership, management, innovation, and ethics. To further this mission, certain

principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

Tenet 1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.

Tenet 2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.

GUIDELINE

Advice to Officials of Other Local Governments. When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.

Tenet 3. Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.

GUIDELINES

Public Confidence. Members should conduct themselves so as to maintain public confidence in their position and profession, the integrity of their local government, and in their responsibility to uphold the public trust.

Influence. Members should conduct their professional and personal affairs in a manner that demonstrates that they cannot be improperly influenced in the performance of their official duties.

Length of Service. For chief administrative/executive officers appointed by a governing body or elected official, a minimum of two years is considered necessary to render a professional service to the local government. In limited circumstances, it may be in the best interests of the local government and the member to separate before serving two years. Some examples include refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or significant personal issues. It is the responsibility of an applicant for a position to understand conditions of employment, including expectations of service. Not understanding the terms of employment prior to accepting does not justify premature separation. For all members a short tenure should be the exception rather than a recurring experience, and members are expected to honor all conditions of employment with the organization.

Appointment Commitment. Members who accept an appointment to a position should report to that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time. However, once a member has accepted a formal offer of employment, that commitment is considered binding unless the employer makes fundamental changes in the negotiated terms of employment.

Credentials. A member's resume for employment or application for ICMA's Voluntary Credentialing Program shall completely and accurately reflect the member's education, work experience, and personal history. Omissions and inaccuracies must be avoided.

Professional Respect. Members seeking a position should show professional respect for persons formerly holding the position, successors holding the position, or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity.

Reporting Ethics Violations. When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report possible violations to ICMA. In reporting the possible violation, members may choose to go on record as the complainant or report the matter on a confidential basis.

Confidentiality. Members shall not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

Seeking Employment. Members should not seek employment for a position that has an incumbent who has not announced his or her separation or been officially informed by the appointive entity that his or her services are to be terminated. Members should not initiate contact with representatives of the appointive entity. Members contacted by representatives of the appointive entity body regarding prospective interest in the position should decline to have a conversation until the incumbent's separation from employment is publicly known.

Relationships in the Workplace. Members should not engage in an intimate or romantic relationship with any elected official or board appointee, employee they report to, one they appoint and/or supervise, either directly or indirectly, within the organization.

This guideline does not restrict personal friendships, professional mentoring, or social interactions with employees, elected officials and Board appointees.

Tenet 4. Serve the best interests of the people.

GUIDELINES

Impacts of Decisions. Members should inform their governing body of the anticipated effects of a decision on people in their jurisdictions, especially if specific groups may be disproportionately harmed or helped.

Inclusion. To ensure that all the people within their jurisdiction have the ability to actively engage with their local government, members should strive to eliminate barriers to public involvement in decisions, program, and services.

Tenet 5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.

GUIDELINE

Conflicting Roles. Members who serve multiple roles – working as both city attorney and city manager for the same community, for example – should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

Tenet 6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.

Tenet 7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

GUIDELINES

Elections of the Governing Body. Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not participate in an election campaign on behalf of or in opposition to candidates for the governing body.

Elections of Elected Executives. Members shall not participate in the election campaign of any candidate for mayor or elected county executive.

Running for Office. Members shall not run for elected office or become involved in political activities related to running for elected office, or accept appointment to an

elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

Elections. Members share with their fellow citizens the right and responsibility to vote. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

Elections relating to the Form of Government. Members may assist in preparing and presenting materials that explain the form of government to the public prior to a form of government election. If assistance is required by another community, members may respond.

Presentation of Issues. Members may assist their governing body in the presentation of issues involved in referenda such as bond issues, annexations, and other matters that affect the government entity's operations and/or fiscal capacity.

Personal Advocacy of Issues. Members share with their fellow citizens the right and responsibility to voice their opinion on public issues. Members may advocate for issues of personal interest only when doing so does not conflict with the performance of their official duties.

Tenet 8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

GUIDELINES

Self-Assessment. Each member should assess his or her professional skills and abilities on a periodic basis.

Professional Development. Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

Tenet 9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

Tenet 10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

GUIDELINE

Information Sharing. The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

Tenet 11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

GUIDELINE

Equal Opportunity. All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

Tenet 12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

GUIDELINES

Gifts. Members shall not directly or indirectly solicit, accept or receive any gift if it could reasonably be perceived or inferred that the gift was intended to influence them in the performance of their official duties; or if the gift was intended to serve as a reward for any official action on their part.

The term "Gift" includes but is not limited to services, travel, meals, gift cards, tickets, or other entertainment or hospitality. Gifts of money or loans from persons other than the local government jurisdiction pursuant to normal employment practices are not acceptable.

Members should not accept any gift that could undermine public confidence. De minimus gifts may be accepted in circumstances that support the execution of the member's official duties or serve a legitimate public purpose. In those cases, the member should determine a modest maximum dollar value based on guidance from the governing body or any applicable state or local law.

The guideline is not intended to apply to normal social practices, not associated with the member's official duties, where gifts are exchanged among friends, associates and relatives.

Investments in Conflict with Official Duties. Members should refrain from any investment activity which would compromise the impartial and objective performance of their duties. Members should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict of interest, in fact or appearance, with their official duties.

In the case of real estate, the use of confidential information and knowledge to further a member's personal interest is not permitted. Purchases and sales which might be interpreted as speculation for quick profit should be avoided (see the guideline on "Confidential Information"). Because personal investments may appear to influence official actions and decisions, or create the appearance of impropriety, members should disclose or dispose of such investments prior to accepting a position in a local government. Should the conflict of interest arise during employment, the member should make full disclosure and/or recuse themselves prior to any official action by the governing body that may affect such investments.

This guideline is not intended to prohibit a member from having or acquiring an interest in or deriving a benefit from any investment when the interest or benefit is due to ownership by the member or the member's family of a de minimus percentage of a corporation traded on a recognized stock exchange even though the corporation or its subsidiaries may do business with the local government.

Personal Relationships. In any instance where there is a conflict of interest, appearance of a conflict of interest, or personal financial gain of a member by virtue of a relationship with any individual, spouse/partner, group, agency, vendor or other entity, the member shall disclose the relationship to the organization. For example, if the member has a relative that works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members shall not disclose to others, or use to advance their personal interest, intellectual property, confidential information, or information that is not yet public knowledge, that has been acquired by them in the course of their official duties.

Information that may be in the public domain or accessible by means of an open records request, is not confidential.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, marketing materials, social media, or other documents, whether the member is compensated or not for the member's support. Members may, however, provide verbal professional references as part of the due diligence phase of competitive process or in response to a direct inquiry.

Members may agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.

7. On Article VIII, Section 1 at the end does not allow any citizen led measure be repealed or changed by Council within two years after it takes effect. Is this waiting period common? Is two years common?

----- Answers

No. Time limits on council repeal of an ordinance adopted through an initiative process varies. The time limit is a policy issue for charter review, that is, the commission can determine how important a citizen initiative is and thus establish a time limit for council action. The Lakewood City Charter states in 9.2:

(m) Publication, Amendment or Repeal. Ordinances or resolutions adopted as provided in this section [initiative section] shall be published and may be amended or repealed by council as in the case of other ordinances and resolutions.