

Proposals and Thoughts for Articles V - VII

The first section are Thoughts for Discussion of Articles V – VII. The second section, starting on page 15, are actual provisions from the Model City Charter and the current Lakewood City Charter for suggested ethics sections.

Thoughts

Carla Rautenberg

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

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?

I look forward to hearing the results of your research and will base the proposals I put forward at the next meeting on your responses. Thank you!

Mike Gaynier

Items I would like to discuss in Articles V-VII

Article V, Section 2: I would like to discuss why the City Manager needs approval of council for appointing certain directors, but does not require council's approval to remove them.

Article V, Section 3: I would like to discuss the reasons for allowing the City Manager to also serve as the director of some city departments.

Jessica Cohen

Regarding Article VII, I am interested in a discussion about the percentage of signatures needed to get a candidate on the ballot. Would reducing that number encourage a greater number of candidates? I also wonder if Section 7 of this article is necessary. I believe it's important, but just wondering if it is redundant given that I presume this is governed by state or federal law.

In Article VIII, section 3b, I am not necessarily in favor of the provision that has the City reimbursing a council member the election expenses he/she spent on the recall vote that did not succeed. I'm interested in hearing others' thoughts on this.

Jack Newman

Comments on the remaining items in Articles III-IV, and on Articles V-VII

In a note dated June 29 that was circulated by Larry Keller prior to the July 5 meeting, I proposed possible edits to Articles I-IV of the Charter, with related or additional comments and questions in brackets associated with particular paragraphs. What appears below is a copy of pertinent portions of that earlier note with some updating edits, but now beginning with section 8 of Article III, the earlier items having already been discussed and disposed of (except for III-4 on filling council vacancies, as to which the substance of alternatives seems pretty clear and lack only a final decision) and extending to cover new material in Articles V-VII. Some edits are for clarification and syntax. The items in red have been stricken. The items in blue have been added. The items in dark blue/bracketed are comments and questions.

SECTION III-8. GENERAL PROVISIONS.

The Council shall determine its own rules and order of business, provide for special meetings and keep a ~~journal~~record of its proceedings. The Council may by ~~general ordinance provide for~~ legislative procedure; the form and method of enactment of ordinances; a simplified procedure for levying assessments; the method and manner of giving public notice of passage of ordinances or resolutions of

a general or permanent nature; the advertisement and sale of bonds and notes; and the advertisement and awarding of public contracts. ~~Such general ordinances~~Ordinances of the type listed immediately above, when once adopted, shall not be repealed or amended except by vote of five members of the Council or by the people.

[Although the decision has been made to retain this paragraph as-is with respect to substance, there was lingering uncertainty about the meaning and scope of the term “general ordinance,” including how that term should be understood in relation to the list of particulars that follows the colon. Resolution of this uncertainty would at the very least affect potential clarifying editorial changes. I believe we can expect commentary on this issue from counsel at the 8/2 meeting. The proposed changes now reflected in the paragraph would accommodate the view that the list of specific types of ordinances are the only ordinances that, under the paragraph, would require 5 votes to amend or repeal. Also, in line with the discussion at the most recent meeting, “journal” has been changed to “record.”]

[Suggestions have been made about changing the manner of using the “emergency” tag on ordinances, a topic that might fit for consideration here. The concept of “emergency” is a product of the interplay of the Ohio Constitution on referenda and certain implementing Ohio statutes, the result of which makes it necessary to characterize something as necessary for preservation of “public peace, health, or safety” in order to have it go into immediate effect. Although it does seem odd to have seemingly non-emergency laws regularly (or at least frequently) being characterized as emergencies, there are often good reasons why the process must be used or is at least vastly preferable. Overall, it seems to me that this is something that probably cannot be handled effectively in a charter but rather should be left to the discretion of Council.]

[Suggestions have been made to include provisions in the charter on open meetings and public records. I question whether, as a matter of sound process, provisions of this nature are appropriate for inclusion in a charter. Ohio law on the topics is statutory, not constitutional, and there are city ordinances on both meetings (which is subject to home rule, except to the extent particular aspects are not covered by ordinance, in which case the default is to state law) and public records (which is not subject to home rule but rather governed by state law for minimum requirements). If it is thought that the existing city law is not sufficient, then in my view the solution ought to be getting the law changed, not legislating via charter. It would seem particularly unwise to embed in a charter a preclusion of all non-public sessions of city bodies on general matters. Separately, a requirement for verbatim video recording and

transcription of every meeting of a city body would seem potentially logistically strangling and a substantial additional effort and expense without identifiable, practical benefit; here again it seems better to leave the matter in the hands of elected representatives, who can respond with flexible discretion to changing needs, demands and technological developments.]

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SECTION III-9. FRANCHISES.

No measure making a grant, renewal or extension of a franchise or other special privilege, or regulating a rate to be charged for its service by any public utility, shall ever be passed as an emergency measure.

[Article X deals in detail with franchises, and this provision would appear better considered in the context of that article, and if it remains in the charter, should be moved to that article. As to substance, the whole franchise notion seems to me targeted at street railways, which was an issue in the 1920s but is no longer an issue. However, the actual language of the franchise paragraphs also encompasses public utilities, and this has continuing relevance. Thus, it seems clear we cannot just discard the concept as an anachronism, but instead must consider on the merits whether to retain provisions on the subject in the charter. As to the aspect covered by III-9 – forbidding use of the emergency process – on a preliminary basis, there seems no reason to change what is in the charter now, but it also would not appear to be a major issue.]

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SECTION III-10. INTEREST IN CONTRACTS.

No member of the Council, nor the City Manager, nor any other officer or employee of the City shall be directly or indirectly interested in any contract, job, work, or service with or for the City; nor in the profits or emoluments thereof; nor in the expenditure of any money on the part of the City; and any contract with the City in which any officer or employee is or becomes interested may be declared void by the Council.

[The charter ought to have a modern, free-standing, general ethics precision whose terms would cover anything covered by this clause and much more. This relatively narrow “contracts” clause could then be eliminated. The new Lakewood charter (which is prescriptive) and the Model Charter (which is more general and enabling) can potentially be used as points of reference.]

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SECTION III-11. ~~MAYOR~~PRESIDENT OF COUNCIL AND VICE ~~MAYOR~~PRESIDENT OF COUNCIL.

The Council shall, at the time of organizing, ~~and every two years thereafter~~ following each regular municipal election, elect one of its members as President;

~~who shall also have the title of Mayor,~~ and another as Vice President, ~~who shall also have the title of Vice Mayor.~~ In the event of a vacancy in either ~~the office of Mayor or Vice Mayor,~~ or in the event the Council ~~shall determine by~~ determines by a vote of at least four of its members that either the ~~Mayor~~ President or ~~the~~ Vice ~~Mayor~~ President is unable to fulfill the duties of his or her respective office, the Council shall immediately proceed to elect one of its members to serve in ~~such~~ that office.

The President, and in ~~his~~ the President's absence the Vice President, shall preside at all meetings of the Council and shall have a voice and vote in its proceedings, but no veto. ~~Except as the same are otherwise disposed of or provided for herein, the Mayor, or in the event he is unavailable, the Vice Mayor, shall exercise all powers and discharge all duties imposed upon Mayors of municipalities by the general laws of the State, which are not inconsistent with the provisions of this Charter; but nothing herein provided shall be construed as conferring upon him any administrative or executive functions herein conferred upon other officers.~~
(Amended 11-7-72.)

[The changes in these two paragraphs and in the caption reflect elimination of the title “Mayor.”]

[Suggestions have been made that the President of Council be designated for that office by popular vote, such as by being the candidate that receives the most votes in the most recent election or perhaps by designating the office as a head-to-head seat, even though other seats are not head-to-head. For a number of reasons, certain of which have been the subject of comment in previous meetings, I would not favor this approach, mostly because I fear it would set up a potential for a claim (by someone so motivated) for the President to be an alternative power center to the city manager, thus re-injecting into the system the potential for the kind of confusion, conflict and gridlock that evidence suggests the city might have been experiencing in the not too distant past and against which we should guard.]

ARTICLE IV CITY MANAGER

[Solely in order to avoid confusion, the proposed edits here and elsewhere continue to use the term City Manager, but I believe it would be very desirable to change the title to “City Executive” There should be no need for a corresponding change in the title of the governmental system.]

SECTION IV-1. APPOINTMENT, TENURE, REMOVAL.

~~—The City Manager shall be appointed by the Council to serve at the will of the Council, a majority of all the members of the Council being required for his appointment, suspension or removal.
(Amended 11-7-72.)~~

The Council, acting by a majority of its members, shall select and appoint a City Manager. The City Manager serves at the will of the Council, which, acting by a majority of its members, may remove or suspend the City Manager with or without cause. No employment agreement between the City and the City Manager may limit the Council's authority to suspend or remove the City Manager, but the agreement may provide for post-employment payments and benefits.

~~SECTION IV-2. RESIDENCE REQUIREMENTS.~~

~~—The City Manager need not be a resident of the City at the time of his appointment, but shall reside therein during his tenure of office.
(Amended 11-7-72.)~~

[The revised paragraph is both a clarification and a reflection of existing practice.]

[According to the Ohio Supreme Court, a city may not, as to employees, impose a requirement for residence in the city. The most the city can do is require residence in the county or an adjacent county for persons needing to respond in an emergency. Under the circumstances, I would favor having no residency requirement in the charter. Discretion should be left with Council to evaluate all pertinent factors in the process of hiring the city manager.]

~~SECTION IV-32. POWERS AND DUTIES.~~

The City Manager ~~shall be~~is the chief ~~administrative~~executive officer of the City and official head of City government, and ~~shall be~~is responsible to the Council for the ~~proper~~general direction, supervision, management and administration of all ~~the City~~ affairs ~~of the City~~ and the enforcement of all the laws and ordinances, except as ~~herein~~ otherwise provided; ~~and to that end he shall have authority to appoint and remove all other administrative officers and employees, except as otherwise provided herein. He shall attend all meetings of the Council, by federal, state or local law or by this Charter. The more particular powers and duties of the City Manager include but are not limited to the following:~~

- (a) To represent the City in intergovernmental relationships;
- (b) T represent the City in its relationships with business and residential interests consistent with the City's master plans and strategies adopted from

time to time by Council and with the ordinances and policies approved by Council;

(c) To appoint, promote, suspend, discipline and/or remove all City employees and appointive City officers except as otherwise provided by federal, state or local law or by this Charter. The City Manager may authorize any City officer, subject to the City Manager's direction and supervision, to exercise these powers with respect to subordinates in that officer's department, office, or agency.

(d) To be the chief conservator of the peace within the City, and to see that all laws and ordinances are enforced;

(e) To develop and submit to Council policy proposals, including from time to time proposals for new or revised master plans and strategies, and to provide advice to Council on matters of policy;

(f) To develop, introduce and recommend ordinances and resolutions for consideration by Council and otherwise make recommendations for actions to be taken by the City;

(g) To prepare and to submit to Council annually, and publish contemporaneously in media of ready availability to City residents:

- A proposed operating budget for the upcoming year;

- A proposed capital improvements program and budget containing at least the improvements scheduled for or proposed for the upcoming year and for each of the next succeeding three years;

- A written message accompanying the budget proposals that (i) describes the state of the City, including but not limited to its financial condition and its future needs, and identifies any longer term risks the City Manager believes are reasonably likely to have a material impact on the City's future financial status and/or other aspects of its well-being; (ii) makes recommendations for the establishment and achievement of future City goals and deals with the risks identified; and (iii) sets forth the initiatives proposed for the year and for the next succeeding three years;

(h) To promote and pursue the vision and plan for the City as determined from time to time by Council in light of and in response to the proposed budgets, the description of condition and needs, the identification of risks, and the proposed goals and initiatives;

(i) To execute on behalf of the City all contracts, conveyances, evidences of indebtedness and other instruments to which the City is a party;

(j) To attend meetings of Council, with the right to participate fully in its discussions and bring matters to its attention, but without the right to vote; and he shall on or to veto any measure, and to attend meetings of any committee of the Council when so required by such committee. He shall prepare and submit to the Council the annual budget, after receiving estimates made by the directors of the several departments, and shall perform such other duties as may be prescribed by this Charter or by the ordinances or resolutions of the Council, permitted or requested by that committee and to bring matters to the committee's attention but without the right to vote on or to veto any measure;

(k) To perform such other duties as may be prescribed by this Charter or by ordinances or resolutions of Council not inconsistent with this Charter;

(l) To delegate to any other City officer, department head, or supervisor, subject to direction of, supervision of, and ultimate responsibility of the City Manager, the authority to exercise any of the City Manager's powers and duties.

[Suggestions have been made that perhaps the city manager's powers should be expanded, or alternatively that they should be reduced. The changes in this long section would not necessarily alter the powers either way, but they would clarify and expand the dignity and expectations of the office, by referring to "chief executive" and by providing a detailed recitation of duties and expectations.]

SECTION IV-43. VICE CITY MANAGER.

There shall be a Vice City Manager who is selected and appointed by the City Manager on the basis of executive and administrative training and experience determined by the City Manager to be appropriate to fulfill the responsibilities of the office, and whose appointment is subject to , and effective only upon, approval by Council acting by a majority of its members. The Vice City Manager reports to, is responsible to, and serves at the will of the City Manager, and may be suspended or removed by the City Manager without the approval of Council.

The Vice City Manager shall appoint a qualified City administrative officer as Vice Manager to exercise assists the City Manager in the operation of the City Manager's office and the execution of the City Manager's powers and duties, subject to the direction of, supervision of, and ultimate responsibility of the City Manager.

During any temporary absence, suspension or disability of the City Manager, the Vice City Manager has and exercises the powers and ~~perform~~ performs the duties of the City Manager ~~during his temporary absence or disability. The City Manager shall certify such appointment in writing to the Council.~~
(Amended 11-7-72.)

[The changes and expansion (to two paragraphs) would enhance the authority and the expectations of the Vice City manager beyond just stepping in for an absent city manager (as in the current charter), instead providing for an explicit, regularized, broad, day-to-day role. To a certain extent, it might represent actual current practice, but something very clear and explicit still seems warranted, especially given the additional requirements placed on, and consequent assistance needed by, the City Manager]

SECTION IV-~~5~~4. ACTING CITY MANAGER.

~~—If the Council suspends the City Manager or there is~~ Upon a vacancy in the office of the City Manager, the ~~Council may appoint an~~ Vice City Manager serves as Acting City Manager ~~to serve until such suspension ceases or~~ until another City Manager is appointed and qualified, ~~or Council appoints a separate person to be~~ Acting City Manager. The Council may suspend or remove an Acting City Manager from that office at any time.
(Amended 11-7-72.)

[This change is consistent with and reflects the enhancements in the position of Vice City Manager.]

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, by vote of 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 to those established by the current charter. It might make sense to reduce to a minimum (e.g., finance, law, public safety) 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 not subject to elimination by Council), and to leave others to the creation, organization, re-organization and abolition by Council.]

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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 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.]

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?]

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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 the subject of a Charter-based exclusion?]

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. Before any are seriously considered, it seems there ought to be a discussion (via interview or perhaps even testimony) of the current judge and if possible (because the current judge is new) the immediately preceding judge.]

ARTICLE VII

NOMINATIONS AND ELECTIONS

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 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 commented that Ohio law permits “derivatives” of names, and that the Board has never followed a policy requiring full names. Under the circumstances, does it make any sense to retain this requirement? Has the city even followed it, or tried to follow it, in practice?]

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.

(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 election of ~~municipal officers~~members of Council.

(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~~person 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~~For any person that does so, ~~his~~that person's signatures on all petitions ~~which~~that postdate his or her signing the permissible number of petitions shall be invalid. All signatures shall be made with ink.

[The Board of Elections has commented 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 probably ought to be changed to conform to the Board's practice.]

(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.

(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 to the day of ~~such~~the election. ~~This section shall become effective January 1, 2017.~~
~~—(Amended 11-8-16.)~~

[The Board of Elections has asked what the rationale is for the 180 day limitation. 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 should be made.]

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~~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.)~~

SECTION VII-5. WHO ELECTED.

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 (72nd) day 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.)~~

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](#).

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.)~~

Model City Charter Ethics Provisions

High-lighted section from Jack Newman

One of the most important reasons for requiring a petitioners' committee is to provide a mechanism for withdrawing an initiative, referendum, or recall petition if those originating the proceedings change their minds or feel that action of the council satisfies the need which prompted the petition.

(g) Initiative ordinances approved by the electorate become effective, just as is the case with an ordinance passed by council, in thirty days or at whatever later date is specified.

Article VII GENERAL PROVISIONS

Introduction.

All communities should have fully developed provisions dealing with the ethical expectations essential to responsible government. Ethics provisions foster public trust in the integrity of city government and serve as a check on improper or abusive behavior by city officials and employees. Communities should also have a comprehensive campaign finance code requiring, at the least, disclosure of sources of money used in the campaign for city office. The amount of money flowing into local races continues to grow and must be regulated to help avoid the public perception of corruption.

Section 7.01. Conflicts of Interest; Board of Ethics.

Model Charter

(a) Conflicts of Interest. The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance, the terms of which shall include, but not be limited to: acting in an official capacity on matters in which the official has a private financial interest clearly separate from that of the general public; the acceptance of gifts and other things of value; acting in a private capacity on matters dealt with as a public official; the use of confidential information; and appearances by city officials before other city agencies on behalf of private interests. This ordinance shall include a statement of purpose and shall provide for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual and regulatory matters and, insofar as permissible under state law, shall provide for fines and imprisonment for violations.

(b) Board of Ethics. The city council shall, by ordinance, establish an independent board of ethics to administer and enforce the conflict of interest and financial disclosure ordinances. No member of the board may hold elective or appointed office under the city or any other government or hold any political party office. Insofar as possible under state law, the city council shall authorize the board to issue binding advisory opinions, conduct investigations on its own initiative and on referral or complaint from officials or citizens, subpoena witnesses and documents, refer cases for prosecution, impose administrative fines, and to hire independent counsel. The city council shall appropriate sufficient funds to the board of ethics to enable it to perform the duties assigned to it and to provide annual training and education of city officials and employees, including candidates for public office, regarding the ethics code.

Commentary.

Many states have conflict of interest and financial disclosure laws which include local officials as well as state officials. Cities in these states may wish to modify this section accordingly by either eliminating duplication with state law or providing for local filing of state forms to provide local access to the information.

Instead of providing essentially statutory language, this section mandates council passage of ordinances covering certain basic subjects and which provide for a specific mechanism to administer and enforce the law. This permits amendment as may be required without a referendum, which would be necessary if the charter covered the subject in detail. This provision shows that the charter is serious about the need for dealing with ethics problems but at the same time leaves it to the city council to adopt the formulation most appropriate for the specific situation. It makes a provision for a Board of Ethics but leaves details on the board's composition and procedure to the council.

Other provisions councils could adopt, but not listed in the *Model*, relate to acting in an official capacity over any campaign donor who contributes \$_____ or more to the official's campaign; the hiring of relatives; acting in an official capacity on matters affecting a prior employer within a designated time period after leaving the employer; accepting outside employment while in office; and accepting employment with an employer over whom the official or employee acted in an official capacity, within a designated time period after leaving office. Westminster, Colorado, pioneered the conflict of interest approach to limiting campaign contributions, via charter amendment, and other cities have expressed interest in following its example either by charter or ordinance. A substantial number of cities restrict hiring of relatives and prior, outside, and subsequent employment arrangements.

Section 7.02. Prohibitions.

(a) Activities Prohibited.

- (1) No person shall be appointed to or removed from, or in any way favored or discriminated against with respect to any city position or appointive city administrative office because of race, gender, age, sexual orientation, disability, religion, country of origin, or political affiliation.
- (2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this charter or the rules and regulations made there under, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.
- (3) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.

- (3) No person who seeks appointment or promotion with respect to any city position or appointive city administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment, promotion or proposed promotion.
- (4) No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose to be used in conjunction with any city election from any city officer or city employee.
- (5) No city officer or city employee shall knowingly or willfully make, solicit or receive any contribution to the campaign funds of any political party or committee to be used in a city election or to campaign funds to be used in support of or opposition to any candidate for election to city office or city ballot issue. Further, no city employee shall knowingly or willfully participate in any aspect of any political campaign on behalf of or opposition to any candidate for city office. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinions or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government.

(b) Penalties. Any person convicted of a violation of this section shall be ineligible for a period of five years following such conviction to hold any city office or position and, if an officer or employee of the city, shall immediately forfeit his or her office or position. The city council shall establish by ordinance such further penalties as it may deem appropriate.

Commentary.

The activities prohibited by this section are antithetical to the maintenance of a sound, permanent municipal service. The prohibition against discrimination states basic municipal policy which applies to all personnel relationships. Prohibiting fraud or attempted fraud and bribery in connection with appointments and promotions by charter provision stresses the importance of maintaining the integrity of the public service. Prohibitions against political solicitation and participation in political campaigns afford protection for the employee as well as the integrity of the system. State law of general application may be sufficiently comprehensive to cover the activities prohibited by this section. If so, the charter need not contain these provisions except to give confirmation of public acceptance of these policies.

Section 7.03. Campaign Finance.

(a) Disclosure. The city council shall enact ordinances to protect the ability of city residents to be informed of the financing used in support of, or against, campaigns for locally elected office. The terms of such ordinances shall include, but not be limited to, requirements upon candidates and candidate committees to report in a timely manner to the appropriate city

Lakewood City Charter

Ethics Provisions

High-lighted section from Jack Newman

(a) In January of 2024 and each 10th year thereafter, nine registered voters of the city shall be appointed as members of a charter review commission. Five members of the commission shall be appointed by council and four members shall be appointed by the mayor. Members of the commission shall not hold any other office or position of employment with the city. The commission shall review the charter and within six months after the appointment of its members may recommend to council, by a two-thirds vote of all the members of the commission, revisions and amendments to this charter. Council may submit any proposed amendments recommended by the commission to a vote of the people in the manner provided under this charter and the state Constitution. Amendments shall be in the form provided by council. (b) Amendments to this charter may be submitted to the registered voters of the city by a two-thirds vote of all councilmembers and, upon petitions signed by 10 percent of the registered voters of the city proposing an amendment, shall be submitted to the voters by council. The submission of a proposed amendment to the registered voters shall be governed by the requirements of Article XVIII, Sections 8 and 9 of the Constitution of the state of Ohio as to the submission of the question of choosing a charter commission; and notice of the proposed amendment may be mailed to the registered voters as provided by the Constitution or notice may be given pursuant to ordinances adopted by council. If any amendment is approved by a majority of those voting on the amendment, it shall become a part of the charter of the city, except that if two or more inconsistent amendments on the same subject are submitted at the same election and each is approved, only the amendment receiving the largest affirmative vote shall become a part of the charter. A copy of the charter or any amendment shall be certified to the secretary of state within 30 days after its adoption by the registered voters.

**ARTICLE EIGHT.
ETHICS AND TRAINING**

8.1 ETHICS

Lakewood

(a) Expectations of Government. The citizens of Lakewood rightfully expect their government of elected and appointed officials, and their employees, to behave legally and ethically following principles of open government. All officials will treat each other with respect and together work to make Lakewood a desirable place to live. The citizens also rightfully expect honesty, respect and fair treatment by all involved in governance. City officials have a responsibility to educate, monitor and support all employees and city representatives in this mission.

(b) Oath of Office. Every elected or appointed officeholder of the city shall, before entering upon the duties of his or her office, take and subscribe to an oath or affirmation, to be filed and kept in the office of the clerk of council, that he or she will in all respects faithfully discharge the duties of his or her office.

(c) Public Ethics. The city shall be governed by the following ethical obligations:

(1) The mayor, councilmembers, director of law and director of finance owe a fiduciary duty to the city. As such, these officials, and the city employees under their supervision, shall be held to the highest ethical standards in all public matters. In the interest of preserving the public trust, these officials shall avoid any perceived conflict of interest or any action likely to give the appearance of impropriety in the execution of their public duties.

(2) Upon taking office, the mayor shall insure that policies governing the ethics of city employees in the execution of their job duties are in place, that these policies are consistent with the ethical requirements of general law, and that these policies are communicated in writing to all city employees.

Nothing in this section shall be construed to prevent council from enacting by ordinance or resolution any rules or policies governing ethics of city employees.

(3) No city official or employee, through any improper use of that person's official position with the city, may affect the hiring of any person, letting of any contract or any other action by the city that may result in that official or employee, or any of the official or employee's immediate family members or close business associates, securing anything of value.

Nothing in this section shall be construed to prohibit a city official or employee from serving as an employment, personal or credit reference for any person.

(4) Any person who has been found guilty by a court of competent jurisdiction of any felony violation of the general law relating to bribery, theft in office, having an unlawful interest in a public contract, soliciting or accepting improper compensation, perjury relating to any official duty, or corrupt practices relating to state or federal elections, shall be ineligible to

hold office as mayor, member of council, director of law or director of finance.

If, while in office, the mayor, any member of council, the director of law or the director of finance is found guilty by a court of competent jurisdiction of any felony violation of the general law relating to bribery, theft in office, having an unlawful interest in a public contract, soliciting or accepting improper compensation, perjury relating to any official duty, or corrupt practices relating to state or federal elections, that person shall, upon the finality of the conviction, immediately forfeit the office held.

The terms used in this section shall be interpreted consistent with their use in the general law. Nothing in this section shall be construed to prohibit council from enacting additional prohibitions or penalties relating to public ethics.

8.2 TRAINING FOR COUNCIL AND MAYOR

The city is committed to the best practices of municipal governance, innovation and administration, including those related to ethics, finances, budgeting, safety forces, infrastructure, human resources, planning and development, and current issues facing Lakewood. To achieve these goals, councilmembers and the mayor shall complete training on the best practices of municipal governance and administration. Training sessions are to be provided for by the city, as determined by council, within three months of a person's election or appointment to the position of councilmember or mayor.

Training shall consist of four contact hours of instruction for new councilmembers and 16 contact hours of instruction for a new mayor. Councilmembers who have previously served on council and any mayor who has previously held the office of mayor of the city are exempt from the requirements of this section.

When training is completed, the clerk of council shall provide each officer with a certificate of completion. The certificate shall be signed by the person designated by council to verify the completion of the training. The signed certificate shall be filed with the clerk of council prior to the expiration of the three-month period of time for the completion of training.

ARTICLE NINE. ELECTIONS, INITIATIVE, REFERENDUM, RECALL