

## Research Questions for 16 August 2018 Meeting

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*1. Alternative Draft for Filling Council Vacancy*

#### **Article III-4 [3.04]**

(A) Any vacancy in the Council shall be filled by appointment made by Council acting by a majority of its members in office at the time of the appointment. Council shall make the appointment by the conclusion of the third regular meeting following the vacancy. Council shall develop a process for making the appointment and include the process in the rules of Council.

(B) If Council does not fill the vacancy as provided in Section A above, the vacancy shall be filled by election at the next primary or general election occurring at least [180] days after the failure of Council to appoint a replacement.

(C) A person appointed to fill the vacancy shall hold office until the expiration of the unexpired term or [7] days after the next primary or general election occurring more than [180] days after the vacancy occurs. The term of the person chosen at the election shall begin [7] days after the election and extend for the remainder of the unexpired term.

(D) When a timely appointment is not made, or the vacancy is initially filled by election, the term of the person chosen by election shall begin [7] days following the election and shall extend for the remainder of the unexpired term.

Alternative draft uses a different time frame for council action – number of regular council meetings – and a different format. Each action of council or other action in the process is in a separate sub-section. Finally, an alternative number system is also included, implementing the system used in the Model City Charter. All is for discussion purposes and should be considered along with the draft by Jack Newman.

#### *2. Potential Authority of President of Council*

## *Ceremonial and Other Authority*

### Ceremonial Powers

#### A. Dayton City Charter – Article III

##### Sec. 36. - Mayor.

*... The Mayor shall be recognized as the official head of the city by the courts for the purpose of serving official head of the city by the courts for the purpose of serving civil process; by the Governor for purposes of the military law; and for all ceremonial purposes. ...*

(Italics added; one of the better definitions of ceremonial powers in Council-Manager form of government; if some or all of these powers are desired the mayor would be replaced with president of council.)

B. May want to permit President of Council to represent city on intergovernmental bodies. Both the City Manager and Council President could have the authority to serve, permitting a strategic choice of what official to represent the city on a specific intergovernmental body. Provisions for both offices would use “may” represent the city on intergovernmental bodies.

#### C. General Statutory Authority for Mayors

##### **3101.08 Who may solemnize marriages.**

An ordained or licensed minister of any religious society or congregation within this state who is licensed to solemnize marriages, a judge of a county court in accordance with section [1907.18](#) of the Revised Code, a judge of a municipal court in accordance with section [1901.14](#) of the Revised Code, a probate judge in accordance with section [2101.27](#) of the Revised Code, the mayor of a municipal corporation in any county in which such municipal corporation wholly or partly lies, the superintendent of the state school for the deaf, or any religious society in conformity with the rules of its church, may join together as husband and wife any persons who are not prohibited by law from being joined in marriage.

ORC 3.08 Governor can sign complaint against Mayor for removal (recall) without any elector signatures

ORC 118.05 Financial Planning and Supervision Commissions – Mayor and presiding officer of the legislative body

ORC 124.40 Appointment of members of Civil Service Commission and suspension of fire and police chief

ORC 149.39 Records Commission Chief executive is chair

ORC 176.01(E) Housing Advisory Boards – Mayor appoint board members

ORC 1905.01 & 20 Mayor’s Court

ORC 2901.01(11)(c) Mayor is a law enforcement officer as a chief conservator of the peace

ORC 3735.27 appointments to agencies such as CMHA; section refers to chief executive officer

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### 3. Council Action on Administrative Appointments

#### A. Council-Manager cities

1. City Manager appoints with confirmation of Council Directors of Public Service, Public Safety – Manager serves of Director of Public Safety 5.03(b) -, Law, Finance, Parks and Recreation, and Community and Economic Development. Brunswick 5.01
2. City Manager makes all appointments unless otherwise stated in Charter but subject to Council approval as required by charter or ordinance. Mentor 4.02(1) Removal by City Manager of all appointees though Civil Service may limit authority. Mentor 4.02 (2) Council appoints and removes law director. Mentor 5.05
3. Departments of Finance, Law, Safety and Service. Huron 5.01 All appointments of Directors approved by Council. 5.02
4. City Manager head of department/division unless appoints another person. Hudson 8.01 Fire and Police chiefs as well as Director of EMS appointed with council approval. 8.02 City Solicitor (Law Director) appointed by City Manager with Council approval. 8.03

#### B. Council-Mayor Governments

1. Mayor appoints all Directors with Council approval. Lakewood 3.4
2. Mayor appoints all Directors and other employees not otherwise appointed under Civil Service. University Heights Article 5 Section 3 C
3. Mayor makes all appointments unless otherwise specified by charter. Shaker Heights Article IV-3 C.
4. *A Department of Law, a Department of Finance, a Department of Public Safety and a Department of Service are hereby established by this Charter and the Council shall provide by ordinance for the organization thereof. The head of each department shall be a director appointed by the Mayor who shall serve at the pleasure of the Mayor. However, the appointment of the Director of Law shall be for a term concurrent with that for which the Mayor is elected for the full term beginning January 1, 2016. The newly elected (or re-elected) Mayor shall nominate a Law Director by January 1 of the full term commencing and Council shall confirm or reject the Mayor's appointment no later than January 31st of the year of the appointment. Failure of Council to confirm or reject the appointee by*

*January 31st of the appointment year shall result in automatic confirmation of the Mayor's appointee. South Euclid Article V Section 1*

5. Mayor makes all appointments and appointees serve at his or her pleasure. Euclid. Article V Section 1

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#### 4. *Types of Ethics Provisions*

##### A. Expectations of Government and Specific Requirements/Prohibitions

###### 1. Lakewood City Charter

- 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. 8.1(a) Can add to this provision that, "Council shall implement these expectations by rules and regulations in the Administrative Code."*
- 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. 8.1(b) Council to create the oath or oaths or to designate who should create the oaths. This is not stated in the provision but is implied by its inclusion in the Charter.*
- 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.*

The specifics of the Lakewood Ethics provision were taken from general law by a member of the 2014 Charter Review Commission who is a municipal law attorney. Not certain why these specific provisions were selected. As he noted to the Commission the provisions are hortatory as there are no enforcement provisions for many of the requirements though presumably council could add penalties as the provision empowers council to add to the provisions.

## B. Creation of a Board to flesh out and enforce ethics

### 1. Model City Charter

#### **Section 7.01. Conflicts of Interest; Board of Ethics.**

- (a) Conflicts of Interest.** The use of public office for private gain is prohibited. The city council shall implement this prohibition by ordinance. Regulations to this end 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 provide for reasonable public disclosure of finances by officials with major decision-making authority over monetary expenditures and contractual 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, 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.

## **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, handicap, 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 thereunder, 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.
- (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 employee.
- (5) No 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.

Some of the issues is choosing among these two types is how important enforcement is valued and how additions to ethic provisions should be done. One of the functions boards and commissions fill is to provide entry points for those who want to get involved in governing the community. By applying to be a member of a board or commission, a citizen can enter community politics in an appointive process rather than election. The cost of boards and commissions can be minimized as members are not paid high salaries and staff can serve more than one board or commission.

##### *5. Cleveland Heights Municipal Court*

On Wednesday 15 August, the Chair and Facilitator met with J. J. Costello, Judge of the Cleveland Heights Municipal Court. The purpose of the meeting was two-fold; to ascertain if the Judge felt any changes needed to be made in the Article on the municipal court and his reaction to the proposed provision on an annual report. He shared that the duties and authority of the Court are spelled out thoroughly in state statutes. He had examined a convenience sample of charters and all were similar to the Cleveland Heights court provisions, putting the court under state law. He saw no need for additional provisions. He felt the election provisions of the charter were sufficient for electing judges and had no issues with the provisions. In terms of the annual report, he stated the court reports to the Council annually. As he was newly elected last year, his first report was less than he plans to do in the future. He mentioned the report of the Shaker Heights Court as along the lines of annual reports he plans. He saw no need for a charter provision on annual reports. His report is available online as the Court has its own page on the city website.

The Municipal Court page on the city website can be reached at, <http://clevelandheightscourt.com/>. The annual report is at, <http://clevelandheightscourt.com/annualReports.php>. It can be accessed off the Court Information menu item.

The Annual Report of the Shaker Heights Municipal Court can be accessed at, <http://www.shakerheightscourt.org/general/report.asp>.