



# City of Cleveland Heights

## Charter Review Commission

### Decisions and Rationales Revised

30 August 2018  
Council Chambers  
Cleveland Heights City Hall

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

1. Meeting started at 7:40 p.m. when an eighth member arrived and completed a quorum.
2. Acceptance of Decisions and Rationales from 16 August 2018.

The Decisions and Rationales 16 August 2018 were accepted by acclamation.

3. Resume Discussion of Filling Council Vacancy

The Committee had before it a proposal drafted by the Chair and Facilitator for filling vacancies on Council. The proposal was intended to implement in detail the decision previously made that a vacancy in Council be filled through appointment by Council with details to be worked out in drafting, while having in mind concerns expressed over the handling of the appointment process in the past. The draft provided that Council would develop a process for appointing the replacement and would set out the process in the Rules of Council; that Council would have sixty days from occurrence of the vacancy make the appointment; and that if Council did not do so within that time period, the vacancy would be filled by election at the next primary or general election occurring at least [200] days after the vacancy had occurred. Further, if the vacancy were filled by appointment, the term of the replacement would be for the remainder of the term unless a primary or general election was scheduled before the completion of the term and more than [200] days after occurrence of the vacancy. In the latter case, the term would end seven days after the election. By contrast, a person who filled a vacancy by election would serve out the full term regardless of any scheduled election prior to the end of the term.

There was substantial discussion about the length of time for an election process, especially when that process did not begin until after expiration of the sixty day appointment period; possible alternatives such as appointment by president of council or by the municipal judge; renewal of the notion, previously discussed, that election rather than appointment should be the preferred route, given the incumbency advantage usually seen as attaching to an appointee; and the notion that appointment by Council as the primary method, with an election as the backup could encourage timely Council appointive action. It was noted that pegging the term of a replacement to a number of days after election was not a good idea, but rather it should be pegged to the first regular Council meeting following certification of the election results. Further, it was generally agreed that specifics of timing be held open subject to adjustment following the upcoming meeting with representatives of the Board of Elections, whose information and opinions were seen as important factors to consider.

Katie Solender moved to have the draft proposal, as amended relating to the commencement of an elected replacement term, accepted, and subject to adjustment of timing as necessary. Sarah West seconded the motion.

**Vote on the Motion:** Yes – 8                      No – 0                      Abstain - 0

#### 4. Discussion of Revised Open Government Proposal

A proposal from the Chair to add an open government provision to the current Article III-8 was discussed. He felt the draft, in giving Council discretion, would overcome the problems, as he saw them, with both a prescriptive and a purely aspirational approach. The provision would permit, but not require, Council, by ordinance, to interpret and apply notions of open government for the City. Once adopted, any repeal of, or other change to, such an ordinance would require an affirmative vote of five Council members. Giving the Council this central, discretionary, interpretive role would allow the same level of public input as the normal legislative process, while eliminating any foundation for disputes over whether particular action or inaction by Council met or did not meet an otherwise undefined notion of “open government.”

Discussion points included whether it was desirable or not to refer to the concept of open government in the charter; what if anything would be achieved by doing so; whether, if done at all, there might be a better way to do it; and that existing ordinances already treated certain aspects of what might be considered within “open government.”

Katie Solender moved to adopt the revised open government provision as an addition to Article III-8. Jessica Cohen seconded the motion.

**Vote on the Motion:** Yes – 7                      No – 1                      Abstain – 0

#### 5. Resume Discussion of Ethics Provision

Discussion resumed on inclusion of an ethics provision. It was noted initially that the decision had already been made to have a separate article devoted to ethics. What remained was to determine overall approach and then particulars as appropriate. The examples advanced as possible bases for discussion were the Lakewood prescriptive approach (which sets out particularized ethical obligations) and the enabling approach of the Model City Charter (which relies more on implementing legislation and a board or commission for details and enforcement). The sense of the Committee was that the Lakewood approach was preferable as a foundation, and so discussion proceeded by reference to the Lakewood charter provision.

Points of discussion included the importance of clarity in obligations and specificity of triggers for consequences; treatment of the clauses referring to “open government” and “highest ethical standards” (decision not to include); existence and breadth of coverage of fiduciary duties (decision to include coverage not just of directors of law and finance but rather of all department directors in addition to City Manager, Vice City Manager and members of Council); locus of overall responsibility for ethical conduct of City employees (decision that City Manager is to see that proper policies exist and are communicated); the ability of Council to involve itself in further defining and handling ethical issues (decision not to specify how this must or can occur); the need (or not) for reference in the charter to an oath of office (decision the Chair and Facilitator will investigate further, in light of possible state requirements, and then handle in the drafting process); and the need, in the drafting process, for language changes to accommodate the Lakewood article to Cleveland Heights and its City Manager form of government.

Motion by Jessica Cohen to adopt the proposed article as changed in line with the discussion, and with additional editing in the drafting to fit the particulars of the city. Motion seconded by Katie Solender.

**Vote on the Motion:** Yes – 8                      No – 0                      Abstain – 0

It was recognized that, as with all other provisions of the anticipated draft of charter changes, this new article would again be available for review to see whether all items discussed have been faithfully incorporated.

## 6. Resume Discussion of Ceremonial-type Powers

A proposal had been circulated before the meeting dealing with service of process, military liaison and other unspecified “ceremonial” powers,” to be placed with the President of Council in the section currently numbered III-11, but which would become III-9 upon renumbering in light of previous decisions. Upon discussion it was determined that the service of process and military items should reside with the City Manager; that purely “ceremonial” powers (which were, in any event, not understood with precision but could include such things as involvement in community celebrations and similar events) would lie on a non-exclusive basis with the City Manager and Council; and that drafting should proceed accordingly.

Jim Vail moved to adopt the proposed provision, taking into account the changes agreed during the discussion. Jessica Cohen seconded the motion.

**Vote on the Motion:** Yes - 8                      No - 0                      Abstain - 0

## 7. Questions for Board of Elections

A draft of proposed questions to be put to the Board of Elections representatives who will attend the next meeting, Thursday 20 September, had been circulated in advance of the meeting. There were suggestions for at last two additional questions dealing with percentages of signatures required for inclusion on the ballot and the necessity for use of the arguably confusing term “canvass” to refer to determining election results.

Members were encouraged to should send any additional questions for the Board to the Facilitator by the Monday, 17 September, before the next meeting. The questions will be compiled by the Facilitator and sent to the Board by Liz Rothenberg.

## 8. Discussion of Article VI

The most recent Annual Report of the Municipal Court had been circulated by the Facilitator in advance of the meeting, along with a report of an interview of the current judge conducted by the Chair and the Facilitator. The judge reported no problems with, or suggestions for changes to, the current charter provisions, and noted that many of his duties were specified by state law. The Report was his first and was therefore a learning experience; his intent is to prepare a more expansive Report in the future, with more narrative. No member of the Committee raised any concerns or questions with the provisions of the current Article.

Katie Solender moved to retain the current Article VI. Sarah West seconded the motion.

**Vote on the Motion:** Yes – 8      No – 0      Abstain – 0

9. Additional Business

In light of other activity at City Hall on the evening of Thursday, 18 October that would interfere with a meeting of the Commission, it was agreed (subject to further adjustment if unexpected circumstances were to intervene) to move the meeting otherwise scheduled for that day to Thursday, 25 October. The Facilitator will call all Commission members who missed this meeting about the date change to check on availability, as well as to ensure as much attendance as possible.

10. Public Comment

There were no public comments.

11. Adjournment

The Committee agreed by consent to adjourn.