

Jack Newman
For October 4 meeting
Comments in items in Article V and VIII

These are my comments and suggestions on Articles V and VIII. Items in red are stricken. Items in blue are added. Items in dark blue/bracketed are comments and questions.

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, acting by vote of at least 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 in name or function to those established by the current charter. Might it make sense to eliminate all specific references to particular departments, leaving to Council the entire creation, organization, re-organization and abolition of departments? Or alternatively, might it be appropriate to reduce to a minimum (e.g., finance, law, public safety, public works) 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 to leave other departments to creation by Council? Relatedly, if certain departments are identified in the charter, should they be subject to elimination by Council, which seems to be the situation under the current charter, or should that require a charter amendment? At the very least, the charter should be amended to remove the Health Department, which does not exist, and possibly to change names to conform to the current names (although that might be tilting at windmills, since names could change in the future just as in the past and are, in any event, much less important than function.)]

[The edit currently reflected is for consistency.]

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 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 at least 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. But why should not all directors require confirmation by council? For example, the Director of Public Service (or “Public Works,” as it is currently called) is a pretty important position, whose function faces the residents every day.]

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 forbidden territory for the City Manager?]

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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 VIII INITIATIVE, REFERENDUM AND RECALL

[Initiative, referendum and recall may each be instituted by simple reference to state law, as in Shaker Heights, or may be detailed in the city charter under home rule, as in Cleveland Heights. The suggestions here are based on the assumption that the desire is to continue with the full text approach.]

The major substantive items are the percentages of signatures to be used in determining adequacy of petitions, and identification of the base population against which the percentages are to be applied. The suggestions below retain, in brackets for discussion, the current percentages and change the base population language to make clear that it is not registered voters but rather persons who voted in the most recent municipal election. That is not a required definition for the base, but it seems a sensible approach; any effort to increase or decrease the number of signatures required can be dealt with by changing the percentages.

Generally speaking, the article as it currently stands is hard to read, presenting as it does three similarly rooted (i.e., all voter initiated) concepts but with a hash of differing words and structures, almost as if separate people wrote each part (and none of whom had been centrally involved in writing Article VII – Nominations and Elections). The suggestions are a first effort to make the items align better with each other and render them more understandable, as well as to clarify and simplify along the lines of suggestions in previous articles.]

SECTION VIII-1. INITIATIVE.

The people reserve ~~unto~~ themselves the right to propose, by initiative petition, any legislative measure, including the repeal of ordinances adopted by the Council, approved by referendum vote, or initiated by the people. ~~Such~~An initiative petition must ~~contain the signatures of~~be signed by registered voters of the City equal in number to not less than [ten] percent of the ~~electors of the City~~total number of registered voters voting at the last regular municipal election.

[Ten percent (which is the current percentage) of voters in the recent election is the same as the hurdle for amendment to the Charter. The Charter amendment hurdle is set by the Constitution, and so cannot be changed. The hurdle for a legislative initiative seemingly should not be higher than the standard for a Charter amendment initiative; hence the proposed retention of the 10% standard. Actually the current Charter can be (and in my dissenting view, should be) read as setting all registered voters as the population standard, but the City's legal department has previously accepted recent voters as the population standard, and so my suggestions would make no change in what is actually being treated as acceptable, just a clarification of language to conform to practice.]

When there shall have been filed a petition signed by the ~~aforestated~~ required number of ~~electors~~registered voters proposing an ordinance or other measure, the Clerk of Council shall certify the ~~same~~petition to the Council at the next regular meeting, ~~and~~ of the Council; the Council shall ~~at once~~ read and refer the same to an appropriate committee, of Council which may

be the committee of the whole; provision may ~~be made for public hearings, in the discretion of the committee to which the petition is referred, be made for a public hearing~~ upon the proposed legislation before the committee ~~to which it is referred~~; thereafter the committee shall report the proposed measure to the Council with its recommendations ~~thereon~~ not later than [the second regular meeting of the Council] following that at which the proposed measure was ~~submitted~~ certified to the Council by the Clerk.

[With Council typically meeting every two weeks, this provision allows the committee to whom the initiative is referred only about 28 days to consider it. This seems like a very short time, especially if the committee were to want to hold a public hearing, which is not necessary but acknowledged as possible. Should the time period be longer? Whether longer or not, should the time period be measured by a specific number of days, rather than a number of regular Council meetings, as is the case with the allowed time for consideration by Council itself, in the next paragraph?]

Upon receiving the proposed measure from the committee, the Council shall ~~at once proceed to~~ consider ~~the same~~ it and ~~shall~~ take final action ~~thereon within~~ on it not later than thirty days from the date of ~~such~~ the committee's report to Council. If the Council rejects the proposed measure, or passes it in a form different from that set forth in the petition, the committee of ~~the~~ petitioners may require that it be submitted to a vote of the electors registered voters in its original form, ~~or that it be submitted to a vote of the electors with any proposed change, addition or amendment which was presented in writing, either at a public hearing before the committee to which such proposed measure was referred, or during the consideration thereof by the Council, and shall certify such fact to the Clerk within~~ provided that the intent to require submission in original form must be filed in writing by the committee of petitioners with the Clerk no later than ten days after the final action on ~~such~~ the proposed measure by the Council, ~~who;~~ the Clerk shall forthwith certify the ~~same~~ committee's filing to the Council, which shall ~~call an election~~ provide for submitting it to a vote of the registered voters.

[This paragraph introduces a bit of an ambiguity, in that it refers to two different committees: (i) the previously noted committee of Council that has considered the petition and (ii) a "committee of petitioners," which has not previously been mentioned and is not defined here. The committee of petitioners is, however, identified later in Section 4 of the article (which applies to all three types of petitions treated in the article) and so it seems tolerable to ignore the temporary ambiguity introduced here. Also, the current charter allows the committee of petitioners to amend the proposed legislation in response to changes suggested at the public hearing or in the course of consideration by Council, and to insist that the changed version then be put to a vote of the populace. By definition, this revised proposal will not have been adopted by the Council, and it will not have been backed by voters, who signed up in support of a proposal that was different, potentially substantially different. For that reason, the suggestion eliminates the clause that authorizes changes.]

[Should there be a date set for the permissible commencement of signature gathering, to avoid potential staleness of signatures?]

No measure initiated by the people and adopted by popular vote shall be repealed by the Council, or so amended by it as to destroy the effectiveness ~~thereof~~of the measure, within two years after it takes effect.

SECTION VIII-2. REFERENDUM.

Any ordinance or other measure passed by the Council shall be subject to referendum, except as ~~hereinafter otherwise~~ provided in this Section 2.. No ordinance or other measure shall go into effect until thirty days after it ~~shall have~~has been passed by the Council, except as ~~hereinafter otherwise~~ provided; but in this Section 2, provided that nothing ~~herein~~-contained in this Section 2 shall prevent the City, after the passage of any ordinance or other measure, from proceeding at once to give any notice or make any tender or publication required by ~~such a~~the measure, by this Charter, by general law, or by ~~general~~-ordinance.

~~When~~A referendum petition must be signed by registered voters of the City equal in number to not less than [fifteen] percent of the total number of registered voters voting in the last regular municipal election. When, no later than thirty days after any ordinance or other measure has been passed by the Council, there shall have been filed a petition signed by ~~not less than fifteen percent of the electors of the City within thirty days after any ordinance or other measure shall have been passed by the Council, ordering that such~~the required number of registered voters, demanding that the ordinance or other measure be submitted to the ~~electors~~registered voters of the City for their approval or rejection, the Clerk of Council shall, at the next regular meeting of the Council, certify ~~such~~the petition to the Council. ~~The~~Upon receipt of the certified petition, the Council shall ~~thereupon proceed to~~-reconsider ~~such~~the ordinance or other measure. If upon ~~such~~ reconsideration the ordinance or other measure ~~be~~is not entirely repealed, the Council shall provide for submitting it to a vote of the ~~electors as herein elsewhere provided. No such ordinance or measure~~registered voters, and it shall not go into effect unless and until approved by a majority of those voting on ~~the same~~it.

[The 15% hurdle is the same as in the current charter; also, as with initiative, the change to voters in the recent municipal election is intended to clarify and conform to actual practice.]

Whenever the Council is by general law or ~~provisions of general ordinances~~ordinance required to pass more than one ordinance or other measure to complete the legislation necessary to make and pay for any public improvement, the provisions of this ~~section~~Section 2 shall apply only to the first ordinance or other measure required to be passed and not to any subsequent ordinances or other measures relating ~~thereto~~to the first ordinance.

Whenever the ~~electors shall~~registered voters have authorized the issuance of bonds, subsequent ordinances or other measures relating to the issuance of ~~such~~the bonds shall not be subject to the provisions of this ~~section~~Section 2.

Ordinances or other measures providing for appropriations for the current expenses of the City, or for street improvements petitioned for by the owners of a majority of the ~~feet~~-front feet of the property benefited and to be specially assessed for the cost ~~thereof~~of the improvements as provided by general law or ~~general~~-ordinance, and emergency ordinances or measures necessary

for the immediate preservation of the public peace, health or safety of the City, shall go into immediate effect and shall not be subject to the provisions of this ~~section~~Section 2.

~~— Such emergency ordinances or measures must upon an aye or nay vote receive the vote of five members of the Council, and the reasons for such necessity shall be set forth in one section of the ordinance or other measure.~~

An ordinance or other measure can qualify as an emergency ordinance or measure only upon receiving the affirmative vote of at least five members of the Council, and only if particularized reasons for the necessity are separately set forth in a section of the ordinance or other measure.

SECTION VIII-3. RECALL.

(a) The people reserve ~~unto~~to themselves the right ~~to, by~~ recall ~~and~~petition, to remove from office any member of the Council. ~~The procedure to effect such recall or removal shall be as follows:~~

A petition ~~demanding that the question of~~for removal of ~~such officer be submitted to the electors shall~~a Council member must contain ~~a concise~~the name of the person sought to be removed and a concise statement setting forth the basis for ~~the recall~~removal and ~~shall~~must be signed by ~~at least~~registered voters of the City equal in number to not less than [twenty-five] percent of the electors of the Cityregistered voters voting in the last regular municipal election. No petition may relate to the recall of more than one ~~officer~~Council member.

[25% is the current number. The change to “voters” is in line with, and done for the same reasons as, the change as to initiative and referendum.]

When there shall have been filed a ~~question~~petition signed by the ~~aforsaid~~ required number of ~~electors~~registered voters, the Clerk shall certify the ~~same~~petition to the Council at the next regular meeting of Council and shall furnish a copy ~~thereof~~of the petition to the member of the Council whose removal is ~~so~~ sought, ~~and the Council shall call an election upon the question of such removal as herein elsewhere provided, unless.~~ Unless within no more than five days after ~~such~~ certification of the petition to Council the member of ~~the~~ Council ~~shall have~~ tenders his or her written resignation to the Clerk, the Council shall provide for submitting the question of removal to a vote of the registered voters.

(b) If a majority of the votes cast at ~~such~~the election on the question of removal ~~of any member of Council~~ are affirmative, the person whose removal is sought shall ~~thereupon~~ be deemed removed from office upon the certification of the official canvass of ~~that~~the election to the Council, and ~~a~~the vacancy caused by ~~such recall~~the removal shall be filled by the remainder of the Council according to the provisions of Article ~~III~~III of this Charter.

~~If, however, an election is held for~~ the ~~recall~~removal of four or more ~~than three~~ members of the Council is the subject of a single election, candidates ~~to succeed them for their~~for the prospective unexpired terms shall be voted upon at the same election ~~and; the candidates~~ shall be nominated by petitions ~~dated and verified in the manner required for~~similar in form to petitions presenting names of candidates for regular municipal elections ~~and similar in form to such,~~ dated and verified in the manner required for those petitions, and filed with the election authorities at least ~~ninety~~no later than (90) days ~~prior to such~~before the recall election, but no ~~such~~ nominating

petition shall be signed or circulated until ~~such~~the recall petition has been certified to the Council, and any signatures ~~ante-dating such time~~affixed before that certification shall not be counted.

[Is there a need to spell out that the largest vote getter among the replacement candidates gets the nod if only one person is recalled, and so on down the line? It seems not.]

If a majority of the votes cast on the question of removal of any member of the Council are in the negative, the person whose removal is sought shall be allowed by the Council ~~his~~the reasonable expenses incident to ~~such~~the election. ~~This section shall become effective January 1, 2017.~~

~~(Amended 11-8-16.)~~

SECTION VIII-4. GENERAL PROVISIONS.

Any initiative or referendum or recall petition, ~~or one for a recall~~, may be presented in separate parts. Each part of ~~any~~an initiative petition ~~shall~~must contain a full and correct copy of the title and text of the proposed ordinance or other measure, ~~and each.~~ Each part of ~~any~~a referendum petition ~~shall~~must contain the number and the full and correct copy of the title of the ordinance or other measure sought to be referred, but need not contain the full text of ~~such~~the ordinance or other measure. Each part of a recall petition must contain the name of the member of Council sought to be removed and the statement of basis for removal.

[The current charter does not state anything about the contents of the individual parts of the recall petition.]

Each ~~signer of~~registered voter signing a petition shall ~~be a registered voter of the City and shall sign his name in ink and shall place on the petition his name and~~add to the signature his or her place of residence by~~with~~ street and number and date of signing. All signatures shall be made with ink. Each part of ~~any~~such~~a~~ petition shall contain ~~the affidavit~~a signed statement of the person soliciting the signatures to the ~~same, which affidavit shall contain a statement of the petition, made under penalty of election falsification, stating the~~ number of signers of ~~such~~the part ~~of such petition~~ and ~~shall state~~ that to the best of the ~~affiant's~~solicitor's knowledge and belief each of the signatures contained on ~~such~~the part is the genuine signature of the person whose name it ~~purports to be, and that he believes such persons are~~appears to be, each signer is a registered ~~electors~~voter of the City, and ~~that they each~~ signed ~~such~~the petition with the knowledge of ~~the~~its contents ~~thereof.~~ Each part of ~~such~~a petition shall also have printed ~~thereon~~on it the names and addresses of at least five persons who are registered ~~electors~~voters of the City, who shall be officially regarded as filing the petition and shall constitute a committee of the petitioners for ~~the purpose herein elsewhere named~~purposes of this Article VIII.

[Here is where the committee of petitioners is identified. Also, note that for candidate petitions, the term "circulator" is used; here it is "person soliciting." Should we conform the terms?]

All ~~such~~ petitions shall be filed with the Clerk of the Council and all parts of ~~any such a~~ petition shall be assembled by the Clerk as one instrument.

~~—Within~~ No later than ten days after the filing of a petition, the Clerk shall ~~ascertain~~ determine whether the ~~same~~ petition is signed by the required number of ~~qualified electors~~ registered voters. Upon the completion of his examination, the Clerk shall endorse upon the petition a certificate of the result ~~thereof~~.

If the ~~Clerk's~~ certificate shows that the petition is insufficient ~~he, the Clerk~~ shall ~~at once~~ promptly notify each member of the committee of the petitioners ~~herein elsewhere provided for~~, and the petition may be amended at any time within fifteen days from the date of the Clerk's certificate of examination by filing with the Clerk an additional petition in one or more parts in the same manner as provided for the original petition. In the event ~~that it shall be~~ it is determined by judicial proceedings that the certificate of the Clerk to the effect that the petition is sufficient is erroneous, a similar period of ~~time~~ fifteen days shall be granted for ~~additional petitions~~ amending the petition in the same manner after the final judicial determination ~~of such question~~.

[The “amendment” contemplated seems to be just an addition of signatures? Should this be stated more clearly? Should the Clerk be empowered to decide other deficiencies, such as, for example, if the complete text of a proposed legislative initiative is not present, or there is no statement of reasons on a recall petition? If it is not the Clerk, then who decides this – Council?]

Upon amendment by the filing of ~~any such an~~ additional ~~petitions~~ petition, the Clerk shall ~~within, no later than~~ ten days ~~thereafter~~ after the filing, examine the petition as ~~thus~~ amended and ~~attach thereto his~~ endorse upon it a certificate of the result, ~~and the petition shall thereafter be treated in the same manner as it would have been treated after the original certification of examination, which shall constitute a final determination~~. The final determination of the insufficiency of a petition shall not prevent the filing of a new petition for the same purpose. ~~—The sufficiency of the number of signers to any initiative, referendum or recall petition, shall be determined on the basis of the number of registered voters at the last general election for municipal officers.~~

[The current charter has the concept of “final determination of insufficiency,” but does not say when that is deemed to occur. The suggested change would make the determination final after the second attempt fails. There seems no substantial harm in having this bright line provision, since the paragraph also preserves the right to file a completely new petition]

The filing of an initiative, referendum or recall petition by the Clerk with the Council within the times ~~herein elsewhere~~ provided shall be computed from the date of the attaching of the final certificate of the Clerk to such petition.

[It is unclear to me what this is supposed to mean -- that is, how it is supposed to apply as a measurement in the context of the earlier provisions. If that can be figured out, then I suggest, at a minimum, there should be editorial work to make it readily understandable.]

Whenever it becomes the duty of the Council to call an election by reason of the filing of an petition for initiative or referendum ~~petition or one for~~ recall, the Council shall ~~call an~~ set the election for ~~the submission of such question, or recall, at~~ the next regular primary or general election occurring not less than sixty (60) days ~~nor more than one hundred twenty (120) days thereafter. If no such regular primary or general election is to be held within such time, the Council shall provide for calling a special election not less than sixty (60) days nor more than one hundred twenty (120) days thereafter. In either event, the Council shall certify its action to the Director of Elections. Provided~~ after the duty arises; provided, however, that if the recall of four or more ~~than three (3)~~ members of ~~the~~ Council is sought by petition in a single election, the period of sixty (60) days ~~hereinbefore provided~~ shall be changed to one hundred twenty (120) days. The Council shall certify its action to the election authorities.

[The current charter allows the invocation of a special election. Given the expense of that process, I suggest that only a primary or a general election should be available for initiative, referendum or recall. Hence the proposed elimination of reference to a special election.]

When any legislative measure resulting from any initiative or referendum petition is approved by a majority of the electors voting ~~thereon, such legislative~~ on it, the measure shall become effective at the time fixed ~~therein~~ in the measure, and if no time is fixed ~~therein, then such legislative~~ in it, the measure shall become effective upon ~~its approval by the electors~~ the certification of the official canvass of the election to the Council; provided, however, that in the event ~~that~~ two or more inconsistent legislative measures on the same subject are submitted at the same election, only the one receiving the largest affirmative vote, not less than a majority of those voting, shall become effective. ~~This section shall become effective January 1, 2017. (Amended 11-8-16.)~~

SECTION VIII-5. OFFICIAL PUBLICITY.

Not less than thirty (30) days ~~prior to the~~ before an election at which any Charter amendment, an initiated or referred legislative measure, or recall of any elective official is to be submitted to the ~~electors~~ registered voters, the Clerk of Council shall either:

- (a) Print and mail to each registered ~~elector~~ voter of the City an official publicity pamphlet, or
- (b) ~~Publicize~~ Present official publicity ~~in a newspaper published and generally circulated in the City, or if no such newspaper is published in the City, then~~ in a newspaper of general circulation within the City. ~~Such~~ The publication shall be made once a week for not less than two consecutive weeks with the first publication being at least thirty (30) days prior to ~~such~~ the election.

~~Such~~ The publicity pamphlet or publication shall contain a full text of the Charter amendment, initiated or referred ordinance, or recall petition, with their respective ballot titles, together with any explanation or argument for or against ~~such~~ the measure or recall ~~which that~~ may have been filed with the Clerk of Council, ~~as hereinafter provided~~. The validity of any Charter amendment, or initiated or referred legislative measure, approved by the ~~electors~~ voters, and the result of any recall election, shall not be questioned because of technical or non-consequential errors or irregularities in ~~such mailing, distribution~~ or publication.

[Should there be a designation of other means of publicity, general enough that changes in methods of communication do not require repeated changes? Perhaps reference to the website?]

SECTION VII -6. STATEMENTS IN SUPPORT AND OPPOSITION.

[In the current charter, the following paragraphs are contained under section 5 - official publicity, but they do not reasonably fit that category. Hence the new section heading.]

Not less than fifty (50) days before ~~any such~~the election, the committee designated in the petition; as a result of which ~~said~~the election is called, may submit to the Clerk of Council an explanation or argument supporting the position taken by the signers of ~~such~~the petition. ~~If~~ In the event a Charter amendment is proposed by the Council, a committee of three members of ~~the~~ Council to be appointed by the ~~Mayor~~President of Council shall prepare ~~such~~an explanation or argument in support.

In the event of an initiated Charter amendment, an initiated ordinance, ~~which Council has failed to pass,~~ or ~~of~~ a referred ordinance, ~~the Mayor shall appoint~~ a committee of three members of ~~the~~ Council to be appointed by the President of Council shall prepare an answer to the explanation or argument submitted by the committee of ~~the~~ petitioners. In the ~~case~~event of a recall ~~election~~selection, the ~~official~~Council member whose recall is sought may prepare an answer to the argument of the committee of the petitioners. ~~Where~~If a Charter amendment is proposed either by the Council or by initiative, any civic body or committee of citizens may prepare and submit an answer to the explanation or argument in favor of ~~such~~the amendment. ~~Any such answer shall be prepared and~~ All answers must be filed with the Clerk not less than forty (40) days ~~prior to any such~~before the applicable election. ~~All explanations~~

~~or arguments~~ An explanation or argument for or against any Charter amendment, legislative measure or recall ~~shall~~must be signed by the persons authorized to submit ~~the same~~it. No ~~such~~ explanation or argument shall exceed three hundred (300) words in length unless the person or persons submitting ~~the same shall~~it also, at the same time ~~deposit,~~ deposits with the Clerk of Council a sum of money sufficient to cover the proportionate cost of printing ~~such~~the excess. ~~Arguments~~ All explanations and arguments in favor of or against any Charter amendment, legislative measure or ~~election, recall, once~~ filed with the Clerk, shall at all times be open to the inspection of anyone interested ~~therein~~them.

~~(Amended 11-7-72.)~~