



City of Cleveland Heights

Charter Review Commission

Decisions and Rationales

4 October 2018
Council Chambers
Cleveland Heights City Hall

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

1. Quorum reached at 7:23 PM.
2. Acceptance of Decisions and Rationales from 20 September 2018.

The Decisions and Rationales 20 September 2018 were accepted by acclamation.

3. **Article V Section 1**

It was noted that there are currently six administrative departments specifically established in the charter. One of those departments no longer exists (Health) and two others have been established by Council (Community Services and Parks/Recreation). There was discussion on whether to identify some or all departments specifically in the charter or simply authorize Council to create departments; and if identified in the charter, then whether to use functions or actual names. It was agreed that the provision should list, by correct name, all current departments.

It was noted that the current provision authorized Council, by vote of at least 5 of its members, to create, modify or terminate departments, but that there was some ambiguity as to whether this authority was meant to extend to all departments including those specifically created by the charter or only to those created separately by council. Legal staff noted that this authority had been interpreted in practice as extending to all departments. Legal staff also suggested that for purposes of establishing a traceable record, it might be sensible to consider requiring that Council action of this kind be taken only by codified ordinance.

Jim Vail moved that the seven existing departments be identified in the charter by their current names; that council's authority, by a vote of 5 of its members, to create, modify or terminate departments or their functions, be confirmed as extending to all departments; and that Council action of that kind be taken only by codified ordinance. Carla Rautenberg seconded the motion.

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

4. **Article V Section 2**

The charter currently provides that directors of all departments are appointed by the city manager, with the appointment of the directors of law, finance, and planning being subject to approval by Council. Consideration was given to whether the approval requirement should be retained as is, should be eliminated, or should be expanded to include all directors of departments. It was noted that CEOs of not-for-profits operations and school superintendents typically make all administrative appointments in their organizations without separate confirmation by the respective boards. It was observed, on the other hand, that the analogy was not perfect and that a requirement for Council confirmation should be seen as both signifying and promoting the expectation that the city manager and Council would work together on governing.

Jessica Cohen moved that the appointments of all directors be required to be confirmed by the Council. Carla Rautenberg seconded the motion.

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

It was noted that the provision did not currently require a super majority vote for confirmation and permitted removal of a director without Council approval, and that the motion had not addressed either of these items. It was agreed to retain these elements as is.

5. **Requirements for the Office of Director**

Discussion then moved to the second paragraph of Section 2 which, among other things, sets certain qualifications for a law director but not for any other department head. Consideration was given to whether there should be stated qualifications for some or all other department heads. Following discussion, it was decided not to insert a change in this regard and that any specific qualifications thought to be required for a position would best be handled as part of the hiring process rather than as a charter provision.

Consideration was given to changing the reference to the role of the finance director as also being the city auditor, but it was determined not to make a change.

As to the law director, it was observed that the current requirement for continuous active practice of law for five years immediately preceding the appointment could eliminate from consideration otherwise well qualified persons who had had a break in service such as for maternity leave. Likewise requiring admission to the Ohio bar for five years could disqualify lawyers with substantial relevant experience in another state but who had only recently moved to Ohio. The determination was made that, in better alignment with the approach to other department heads, in which qualifications were left to the hiring process, the only charter requirement for the head of the department of law would be membership in the Ohio bar.

Implementing this determination, Jim Vail moved to eliminate the language beginning with the word “and” in the first sentence of the paragraph describing the requirements for law director. Mike Gaynier seconded the motion.

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

6. *Article V Section 3*

This section permits the City Manager to head any department but those of law, finance and planning. With only limited discussion, the Committee agreed to retain the exclusion of law and finance, noting the value of independent advice in these areas. There was somewhat more discussion as to the planning function, but it was ultimately agreed that for the same reason --that is, the desirability of having a separate, independent, professional perspective – this exclusion should be retained. There was also discussion whether the exclusion should be extended to cover the department of public safety, but it was determined that no change was required or desirable, specific note being taken of the usefulness of having the fire and police chiefs having a direct line of communication to the city manager.

Vince Reddy moved to retain Section 3 as is. Jessica Cohen seconded the motion.

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

7. Article V Section 4

The Committee had a discussion concerning the portion of this provision that authorizes Council to require city personnel to give a “bond for the faithful performance of ...duties.” Legal staff noted that bonds may be required in some circumstances by state law. The Committee saw value in Council having discretion on bonding and agreed there would be no change of substance in this provision either as to bonding or as to the general provisions for setting compensation.

Jim Vail moved to retain current provision. Mike Gaynier seconded the motion.

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

8. Article VIII

It was noted that the three substantive topics – initiative, referendum and recall – deal with similar processes in that all are citizen driven, but the three are not congruent in how they are structured and thus changes could be warranted in that regard, as well as for simplification and clarification as suggested in material circulated in advance of the meeting.

In each instance, the main issues appear to be setting the percentages that would define (i) the number of signatures required on a petition to commence each respective process and (ii) the base number to which the percentages would apply. The current percentages, per charter, are 10% for legislative initiative, 15% for referendum and 25% for recall. It was noted that these percentages are generally in line with what appears in the charters of other local communities, and there was general agreement to retain them. In particular as to the legislative initiative process, it was noted that the state constitution sets a figure of 10% for a charter amendment initiative (a figure that cannot be changed by charter), and that it would not make good sense for the charter to set a higher hurdle for a legislative initiative.

As to the base figure against which the percentage would be applied, there was agreement that this should be set as the number of persons who voted in the most recent regular municipal election, and not as all registered voters. This approach would be a readily determinable number, and would be consistent with the approach in Article VII dealing with nominating petitions for candidates. The current charter language, which refers to “electors” as the base, has caused practical concerns and accompanying interpretational uncertainties that the new language would eliminate.

Discussion ensued on the pros and cons of whether the charter should contain provisions (not in the current charter) (i) setting a minimum time in office that must pass following an election before a recall campaign could be mounted against the victor, or (ii) limiting the ability to sign a recall petition to those who had voted in the election to which the recall relates. It was noted that some other communities did impose a minimum time limit, with six months seeming to be the norm, although the City of Cleveland was currently considering a one year period. It was also suggested that the period could be enforced by invalidating any and all signatures that had been affixed on petitions before the expiration of the period. With particular reference to the potential for something egregious to occur immediately following election that might be argued to justify an immediate recall effort, it was observed that that Section 3 of Article III permits Council to remove a member at any time on the basis of certain behaviors, and also that under the proposed new standalone ethics article, a conviction of certain crimes would lead to immediate forfeit of office. On balance, the Commission agreed on requiring a minimum time in office before a recall program could be started, setting the time at six months, and using invalidation of early signatures as the enforcement mechanism.

Discussion then turned to certain procedural and timing aspects of the segment on initiative petitions, which were reviewed and discussed in detail. As to the times established once a petition had been submitted, the determination was that although certain designated periods might seem quite short, the practical circumstances (in which the Council would be aware of the petition well in advance of the triggering of formal time periods) and the absence of apparent timing difficulties in the relatively rare circumstances when initiatives had been pursued in the past supported the notion that the current time periods were satisfactory and should not be changed.

A question was raised about whether the current process, which would allow the committee of petitioners to authorize changes to the proposed initiative between the original collection of signatures on a petition and the placement of the initiative on the ballot, should be changed so as to forbid all changes and instead require that, in the event of desired changes, there be a full re-circulation for signatures. Following discussion, it was determined to continue permission in the committee of petitioners to allow changes, but only so long as the changes do not work a substantive alteration in the proposal as had been originally circulated for signatures.

A question was also raised as to whether there should be a date set in advance of the targeted election on the initiative for the permissible commencement of signature gathering, with any earlier signatures held invalid, the idea being to reduce potential staleness of signatures, such as with signatories having moved following signing the petition but before its submission. The

Committee did not regard the stated reason as raising any meaningful concern so as to warrant the change, and so the suggested provision will not be included. The situation would likely affect, at most, only a few signatures under circumstances in which standard practice is in any event to secure many more signatures than are technically required, and further there is nothing to suggest a limitation of this sort applies to charter amendment initiatives, which (as previously noted) should not be rendered easier to achieve than legislative initiatives.

It was agreed to use the term “circulator” consistently in the charter when referring to a person collecting signatures on a petition, regardless of the nature of the petition.

Jack Newman moved to proceed with the drafting of Article VIII in a line with the agreements reached during the meeting concerning percentages for each of the types of electoral issues and all other matters, with the recognition that certain additional particulars of Sections 2 through the end of the article will be taken up at the next meeting.. Jim Vail seconded the motion.

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

9. Discussion of Workplan and Meeting Dates

A proposed revised work plan, with suggested dates and matters to be covered on each date, had been circulated in advance the meeting. Following discussion, it was determined to revise the proposal such that meetings of the Committee of the Whole would occur on 25 October, 1, 15 and 29 November, and 13 December, with two meeting to be held in January, currently targeted for the 10th and possibly 27th, but with recognition that the timing of these may need to be adjusted and also a third meeting might be necessary depending upon the nature and amount of feedback from the planned public meeting. The day of the projected final meeting of the Committee of the Whole would be planned to include, and noticed as including, a follow-on formal meeting of the Commission.

A question was raised, and there was brief discussion, as to whether a final report was needed. It was decided to address this at the next meeting.

10. Future Attendance

Jim Vail will miss the meeting of 13 December.

11. Future Business and Notice of Meetings

There was no additional business.

12. Public Comment

There were no public comments.

13. Adjournment

The Committee agreed by consent to adjourn.