

Jack Newman  
For October 25 meeting  
Comments on items in Articles VIII (starting at section 2) and IX through the end.

These are my comments and suggestions on Articles VII (remainder) and IX through XVI. Items in red are stricken. Items in blue are added. Items in dark blue/bracketed are comments and questions.

## ARTICLE VIII INITIATIVE, REFERENDUM AND RECALL

[At the last meeting, we considered Section 1 (Initiative) of this article, and postponed consideration of the remainder of the article until the October 25 meeting. Certain of the points discussed at that earlier meeting also apply to the portions of the article dealing with referendum and recall. The suggested edits below incorporate the applicable items already discussed and decided. In addition, the suggestions reflect, among other things, a continued effort to make all items align better with each other and make them more understandable, as well as to clarify and simplify along the lines of suggestions in previous articles.]

### SECTION VIII-2. REFERENDUM.

~~Any~~The people reserve to themselves the right to subject to 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 there shall have been filed a~~A referendum petition must be signed by registered voters of the City equal in number to not less than fifteen percent of the ~~electors of the City within~~total number of registered voters voting in the most recent regular municipal election. When, no later than thirty days after any ordinance or other measure ~~shall have~~has been passed by ~~the~~ Council, ~~ordering a petition demanding~~ that ~~such~~the ordinance or other measure be submitted to the ~~electors~~registered voters of the City for their approval or rejection has been signed by the required number of registered voters and filed, 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~~. registered voters of the City, and it shall not go into effect unless and until approved by a majority of those voting on ~~the same~~it.

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.

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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 other 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 City~~registered voters voting in the most recent regular municipal election. No petition shall be signed by any registered voter fewer than one hundred eighty (180) days following the commencement of the most recent term of office of the Council member whose removal is sought, and any signatures affixed before that date shall not be counted. No petition may relate to the recall of more than one ~~officer~~Council member.

When ~~there shall have been filed a question~~a petition for recall has been signed by the ~~aforesaid~~required number of ~~electors~~registered voters and filed, the Clerk ~~shall certify the same to the~~of Council ~~shall~~, at the next regular meeting of the Council, certify the petition to the 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 tendered 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~~ \_\_\_\_\_

A vacancy caused by ~~such recall~~ removal of a member of Council shall be filled by the remainder of the Council according to the provisions of Article III of this Charter. ~~If, however, an election is held for the recall of more than three~~ provided that if the removal of four or more members of the Council is the subject of a single election, any vacancy caused by the removal shall be filled by election. In that event, candidates ~~to succeed them for their~~ for the prospective unexpired terms shall be voted upon at the same election and as the removal is presented. 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?]**

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 circulating 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~~ circulator'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.

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~~ a supplement to the 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? Board of Elections? Also, in certain instances, it would seem that a deficient petition could not simply be supplemented – such as if the text of the petition were insufficient to begin with, it would seem necessary to start all over again to get signatures.]

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. One of the suggested changes above 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 final sentence of the current provision is proposed for elimination, because the “basis” for determining sufficiency (voters in the most recent election) is now clearly set out in each of the substantive portions – initiative, referendum, and recall.]

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. Otherwise, I suggest it be eliminated.]

Whenever it becomes the duty of the Council to call an election by reason of the filing of ~~ana~~ 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~~an Charter amendment, an initiated or referred legislative measure, or recall of ~~any~~an 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~~voteers, 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.)

## ARTICLE IX FINANCES

[Discussions with Tanisha Briley and Laurie Sabin (Director of Finance) have revealed that the handling of city finances is governed largely by state law, with substantial portions of the charter simply restating that law. Separately, Section 1 dealing with the budget the budget does not conform to the realities of how the budget process must be, and actually is, handled. Instead the city staff goes about its actual business to get things done, and then takes extra, non-useful actions for the purpose of satisfying charter requirements. Some cities, have a detailed article on finances, along the lines of Cleveland Heights. Others have a short statement, essentially putting matters in the hands of Council, within parameters set by state law. Tanisha and Laurie have been asked to suggest two alternate versions of this article for consideration by the Commission: A re-do of the existing article, with corrections and suggestions, but retaining its essential structure; and a replacement article that would follow the short statement approach. We need these thoughts before we can make meaningful progress on this article, but we do not yet have them, owing to a recent health-related absence of Laurie. We hope that by the time of the October 25 meeting we will at least have an update on where things stand, in order that we can make plans. This explains why there are no proposed changes or comments on the article.]

[Recall that Tom Malone, a former director of finance for the City, suggested both at the public meeting and in his appearance before the Commission that the charter include a millage provision for street rehabilitation and maintenance. Since then, in response to a request that he provide more specificity, he pointed to section 11(A) of this article, dealing with parks/recreation, as a model for what he is suggesting, and said maybe something like seven-tenths (.7) of a mill. The idea would be to allow Council annually to impose an additional property tax directed to streets alone. The parks/rec provision was put in in 2004. So far as I can tell, that was the only item of charter revision that was before the council and the voters in 2004, and so the council/voters could make up their mind solely whether they wanted to permit a tax increase, unencumbered by other considerations., In the current circumstances, to the extent charter changes are put to the voters, any millage provision would be mixed in with them such that the voters would not have a clean opportunity to vote up or down on a tax measure, without affecting the outcome of other changes to the charter as a whole. Assuming the charter millage notion were a good idea, is this the best (or even a proper) way to go about it? (This discussion implicates another consideration that warrants discussion at some point, which is whether we suggest a piecemeal presentation to the voters of multiple portions of the charter to be voted upon

separately (could get pretty complicated given the interdependence of various provisions) or have the charter before the voters as a whole.)]

#### **SECTION IX-1. BUDGET.**

The finances of the City shall always be conducted upon the budget system. The City Manager, with the assistance of the Director of Finance, shall furnish to the Council at such time prior to the first Monday in June of each year (or such other date as may from time to time be fixed by general law for the certifying of the budget of the Municipality, to the Budget Commissioners of the County or other similar officials having charge of taxation matters), as may be required by Council, an annual budget setting forth in itemized form an estimate stating the amount of money needed for the various departments in the Municipality for the succeeding calendar year, which shall be the fiscal year of the Municipality, and for each month thereof. Such annual budget shall set forth specifically such items as may be required by general law or by ordinance of the Council and the Council shall thereupon and within such time as may be prescribed by general law approve or revise such budget and submit the same to the County Budget Commissioners or similar officials. On or before the fifteenth day of November of each year, the City Manager shall submit to the Council an estimate of the expenditures and revenues of the City departments for the ensuing year. This estimate shall be compiled from the detailed information obtained from the several departments, on uniform blanks to be furnished by the City Manager and approved by the Council; and the Director of Finance shall assist the City Manager in the preparation of such information. Such information shall be furnished in detail for each department, and in such form as the City Council may from time to time require; and shall contain the recommendations of the City Manager as to the amounts to be appropriated, with the reasons therefor, in such detail as the Council may require.

#### **SECTION IX-2. APPROPRIATION ORDINANCE.**

Upon receipt of such estimate, the Council shall at once prepare an appropriation ordinance, in such manner as may be provided by general ordinance or resolution, using the City Manager's estimate as a basis, and such appropriations shall not exceed the estimated revenues of the Municipality.

#### **SECTION IX-3. TRANSFER OF FUNDS.**

Upon request of the City Manager, the Council may transfer any part of an unencumbered balance of an appropriation to a purpose or object for which the appropriation for the current year as proved insufficient, or may authorize a transfer of money to be made between items appropriated to the same office or department.

#### **SECTION IX-4. UNENCUMBERED BALANCES.**

At the close of each fiscal year, the unencumbered balance of each appropriation shall revert to the fund from which it was appropriated, and shall be subject to future appropriation. Any accumulated revenue not appropriated as hereinbefore provided, and any balances at any time remaining after the purposes of the appropriation shall have been satisfied or abandoned, may from time to time be appropriated by the Council to such uses as will not conflict with any uses for which such revenues specifically accrue. No money shall be drawn from the treasury of the

City nor shall any obligation for the expenditure of money be incurred, except pursuant to appropriations made by the Council.

#### **SECTION IX-5. PAYMENT OF CLAIMS.**

No warrant for the payment of any claim shall be issued by the Director of Finance until such claim shall have been approved by the director for the department for which the indebtedness was incurred, and by the City Manager. Such officers and their sureties shall be liable to the Municipality for any loss or damage sustained by the Municipality by reason of the corrupt approval of any such claim against the Municipality. Whenever any claim shall be presented to the Director of Finance, he shall have power to require evidence that the amount of the claim is justly due and is in conformity to law and ordinance; and for that purpose he may summon before him any officer, agent or employee of any department of the Municipality, or any other person, and examine him upon oath or affirmation relative thereto.

#### **SECTION IX-6. CERTIFICATION OF FUNDS.**

No contract, agreement, or other obligation involving the expenditure of money, shall be entered into, nor shall any ordinance, resolution or order for the expenditure of money be issued by the Council or be authorized by any officer of the City unless the Director of Finance shall have first certified in writing to the Council, or to the proper officer, as the case may be, that the money required for such contract, agreement, obligation, or expenditure, is in the treasury to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose, which certificate shall be filed and immediately recorded. The sum so certified shall not thereafter be considered unappropriated until the City is discharged from the contract, agreement, or obligation; but the provisions of this section shall not be construed as prohibiting the making of contracts for the furnishing of services or public utilities for a period extending beyond a single fiscal year when such contracts are otherwise authorized by this Charter or by general law.

#### **SECTION IX-7. MONEY IN THE FUNDS.**

All moneys actually in the treasury to the credit of the fund from which they are to be drawn, and all moneys applicable to the payment of the obligation or appropriation involved, that are anticipated to come into the treasury before the maturity of such contract, agreement, or obligation, from taxes, assessments, or license fees, or from sales of services, products, or by-products of any City undertaking, and moneys to be derived from lawfully authorized bonds, sold and in process of delivery, shall, for the purpose of such certificate, be deemed to be in the treasury to the credit of the appropriate fund, and shall be subject to such certification.

#### **SECTION IX-8. BOND ISSUES.**

Except as may be authorized specifically by the laws of the State of Ohio, no bonds or notes of the City shall at any time be issued for current operating expenses or for acquisition of any property, asset or improvement of the estimated life or usefulness of less than five years, but this prohibition shall not be construed as applying to money borrowed in anticipation of the collection of special assessments, or for defraying the expenses of an extraordinary epidemic of disease, or emergency expenses made necessary by sudden casualty which could not reasonably have been foreseen, or for paying final judgments upon non-contractual obligations.

(Amended 11-7-72.)

#### **SECTION IX-9. MATURITIES OF BONDS.**

All bonds shall be serial bonds; and the maturities thereof shall not extend beyond the estimated life of the property, asset, or improvement, as certified to the Council by the Director of Finance, which certificate shall be on file with the Council prior to the passage of any bond ordinance.

**SECTION IX-10. TEMPORARY LOANS.**

In anticipation of the collections of current revenues in any fiscal year, the City may borrow money and issue certificates of indebtedness therefor, signed as municipal bonds are signed, but no such loans shall be made to exceed the amount estimated to be actually received from taxes or other current revenues, for such fiscal year, after deducting all advances. The sum so anticipated shall be deemed appropriated for the payment of such certificates at maturity. The certificates shall not run for a longer period than six months nor bear a greater rate of interest than is permitted under the laws of the State of Ohio, and shall not be sold for less than the par value thereof with accrued interest. (Amended 11-7-72.)

**SECTION IX-11. LIMITATION ON RATE OF TAXATION FOR CURRENT OPERATING EXPENSES.**

The power of the Council without a vote of the people to levy taxes on property assessed and listed for taxation according to value for the purpose of paying the current operating expenses including the purpose of police and fire pensions, which is required to be, or may lawfully be, included in the general levy for the general fund of the City, shall not exceed 8 mills per one dollar (\$1.00) of assessed valuation. (Amended 11-7-72.)

**SECTION IX-11(A). LIMITATION ON RATE OF TAXATION FOR IMPROVEMENT AND MAINTENANCE OF CITY OWNED PARKS, RECREATION AND CULTURAL FACILITIES.**

Notwithstanding the 8 mill limitation on current operating expenses contained in Section 11 of this article, and in addition thereto, Council may levy annually, commencing with a levy on the 2004 tax duplicate for collection in calendar year 2005, a tax not to exceed seven-tenths (.7) of one mill per dollar of all property in the City assessed and listed for taxation for the acquisition, construction, reconstruction, rehabilitation, renovation, improvement, equipping and maintenance of land, facilities, buildings and structures belonging to or operated by the City and used for parks, playgrounds, play fields, rights of way, swimming pools, indoor recreation and community centers, municipal amphitheaters and cultural facilities, and the equipment therefor, and for the debt charges on general obligation bonds and bond anticipation notes issued to pay the cost of the improvements and/or maintenance specified herein. (Added 11-2-04.)

**SECTION IX-12. AUDITING FINANCES.**

Council may engage the services of a private independent public accounting firm for the purpose of auditing the City's finances. Said contractual arrangements shall be for a period deemed proper by Council. This section shall become effective January 1, 1983. (Adopted 11-2-82.)

**ARTICLE X  
FRANCHISES**

[Questions have been raised about whether this article is necessary or even relevant any longer. The law department has been studying the issue and continues to do so, but its early thinking is no, there need be no separate, detailed article devoted to “franchises,” so long as there is a short provision contained in Article III that deals with public utilities and franchises. We had previously thought of eliminating the brief reference to franchises already contained in Article III, on the theory that it would be dealt with in this article X. The suggestion now is to go back to Article III and eliminate this article.]

[The language preliminarily (and subject to change on further consideration) being suggested for consideration for Article III is as follows:

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### Section III-9, Public Utilities and Franchises

#### 1. Public Utilities.

Council may by ordinance grant permission to any person to construct and operate a public utility on, across, under or above any public street or ground within the City. It may prescribe in the ordinance the kind and quality of service or product to be furnished, the rates to be charged for the service or product, and any other terms considered by Council conducive to the public interest. The grant may be amended or renewed in the manner and subject to the provisions established for original grants. The grant, amendment or renewal shall be for a period of time as Council may determine and shall be made subject to the continuing right of Council to provide reasonable regulations for the operation of the utility. Council shall not pass an ordinance making, amending or renewing a utility as an emergency measure.

#### 2. Franchises

Council shall not pass an ordinance or resolution making, amending or renewing a franchise as an emergency measure.]

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[For the moment, I have not eliminated or edited the existing provisions of Article X, but again, the idea would be that if the language set out above were adopted in substance, the entire contents of Article X would be eliminated as unnecessary.]

### **SECTION X-1. GRANTS LIMITED.**

No grant, or renewal thereof, to construct or operate a public utility on, under, or above the streets of the City shall be made by the Council to any person, persons, association, or corporation in violation of any limitation contained in this Charter.

### **SECTION X-2. PERIOD OF GRANTS.**

No such grant shall be made for a longer period than twenty-five years. No such grant shall be renewed earlier than two years prior to its expiration, unless the Council shall, by a vote of at least five of its members, first declare by ordinance its intention of considering a renewal thereof,

which ordinance shall be passed at least thirty days prior to the passage of the ordinance granting such renewal.

### **SECTION X-3. CONSENTS.**

No consent of the owner of property abutting on any highway or public ground shall be required for the construction, extension, maintenance or operation of any public utility by original grant or renewal, unless such public utility is of such a character that its construction or operation is an additional burden upon the rights of the property owners in such highways or public grounds.

### **SECTION X-4. REGULATIONS.**

The Council shall at all times direct the distribution of space in, over, under, or across all streets or public grounds occupied by public utility fixtures. All rights granted for the construction and operation of public utilities shall be subject to the continuing right of the Council to pass reasonable regulations for the operation of such utilities, including the right to require such reconstruction, relocation, or discontinuance of the appliances used by the utilities, in the streets or public grounds, as shall, in the opinion of the Council, be necessary in the public interest.

### **SECTION X-5. GRANTS NOT INCLUDED.**

Revocable permits for laying temporary tracks across or along streets or other public grounds, to connect railroad or railway tracks with any property, shall not be regarded as a grant within the meaning of this Charter, but may be permitted in accordance with such terms or conditions as the Council may by ordinance prescribe.

## **ARTICLE XI CITY PLANNING COMMISSION**

### **SECTION XI-1. ESTABLISHMENT.**

The Council shall establish a City Planning Commission of seven voting members, all of whom shall be residents of the City ~~of Cleveland Heights~~ appointed by the Council and not employed by the City of Cleveland Heights. A vacancy occurring during the term of any voting member of the Commission shall be filled for the unexpired term in the manner authorized for an original appointment. There shall be the following nonvoting members of the Commission: The Chairman of the City Planning and Development Committee of the Council; the City Manager; the Director of the Department of Planning and Development, who shall serve as ex officio secretary of the Commission; and such other persons as the Council shall from time to time appoint by ordinance. The voting members shall serve for a term of six years ~~except, provided that, of the members first appointed, two shall be appointed for a term of two years, and two shall be appointed for a term of four years, and two shall be appointed for a term of six years, beginning January 1, 1955. On or after the effective date of this section, the Council shall appoint a replacement for the position on the Commission previously occupied by the City Manager. The person so appointed shall serve for the remainder of an unexpired six-year term that shall commence on January 1, 1983. This section shall become effective January 1, 1983.~~ except, provided that, of the members first appointed, two shall be appointed for a term of two years, and two shall be appointed for a term of four years, and two shall be appointed for a term of six years, beginning January 1, 1955. On or after the effective date of this section, the Council shall appoint a replacement for the position on the Commission previously occupied by the City Manager. The person so appointed shall serve for the remainder of an unexpired six-year term that shall commence on January 1, 1983. This section shall become effective January 1, 1983. of the Commission in office at the time this provision becomes effective shall continue in office until the expiration of the then existing terms.

(Amended 11-2-82.)

[The change at the end of the paragraph eliminates reference to earlier years that is no longer necessary.]

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**SECTION XI-2. POWERS.**

The ~~City Planning~~ Commission may make recommendations to the Council and City Manager on all matters affecting the physical development of the City, including but not limited to such factors as economic, environmental and social sustainability. In addition the Commission shall perform all other duties and responsibilities provided by ordinance.

(Amended 11-7-72.)

[Richard Wong, Planning Director, suggests strongly that the additional language be included in the charter. He noted that although these kinds of things are already considered on his watch, it would be desirable for the future to have them embedded in the charter. One concern might be that by calling out certain specific considerations, the charter might decrease flexibility and open up argument that the language imposed limitations, but as the clause is drafted, that argument would not be reasonably available.]

**ARTICLE XII  
CIVIL SERVICE COMMISSION**

**SECTION XII-1. ESTABLISHMENT.**

The Civil Service Commission shall consist of three ~~electors~~registered voters of the City not holding other municipal office or employment, to be appointed by the City Manager, which appointment ~~shall be confirmed by the~~is subject to and effective only upon the approval of Council acting by a majority of its members. Each Civil Service Commissioner shall serve for a term of six years ~~and/or~~ until ~~his~~a successor ~~shall have been~~is appointed and ~~qualified~~approved by Council. Any vacancies occurring during the term of any member shall be filled for the unexpired term in the manner authorized for an original appointment.

(Amended 11-7-72.)

[The structure and terms of the Civil Service Commission are somewhat different from the Planning Commission, not just in respect of the numbers and method of appointment. Thus, the CP provision explicitly directs the Council to set up a Commission, while the CSC article does not do so, but instead essentially assumes that there is one. PC members need only be residents of the City, while CSC members must be electors (registered voters under the new terminology). PC members may not be employed by the City, while CSC members cannot be either employed or a holder of any other municipal office. The terms of the PC members are staggered, while the charter makes no such provision for CSC members. And the CSC provision says that members stay in office beyond the usual end of the term if no successor has been appointed and confirmed by that time; there is no cognate provision in the PC article. It's unclear what the reasons might be for the differences – other than perhaps they were drafted by different people at different times. Should the charter be revised to make the two articles congruent?]

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[The proposed changes that have already been inserted are designed to use structure and terminology adopted for similar items earlier in the charter. Before making a final determination on this point, should we have a member of the CS Commission attend one of our meetings for a further discussion of it?]

**SECTION XII-2. ~~OFFICERS~~PRESIDENT AND ~~EMPLOYEES~~SECRETARY.**

The ~~Civil Service~~ Commission shall elect one of its members as President. The City Manager shall appoint a City employee to serve as secretary of ~~such~~the Commission.  
(Amended 11-7-72.)

[The title of this section is proposed for change in order to conform to what is in the text.]

**SECTION XII-3. POWERS AND PROCEDURES.**

~~—The~~Except as otherwise specifically set forth in this Charter, the Council shall provide by ordinance the powers, duties and jurisdiction of the ~~Civil Service~~ Commission, the determination of the positions of employment ~~which~~that shall comprise the classified and unclassified service of the City, the method and procedure for determining merit and fitness for employment and promotion in the classified service, and such other matters relating to classified employment service as the Council may ~~be~~determine are necessary and proper.

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

**SECTION XII-4. COUNCIL COMPENSATION REVIEW.**

In each year immediately preceding the year in which a presidential general election is to be held, the Commission shall conduct a review of compensation for members of Council and, on or before May 1 of that year, file with the Clerk of Council a written report to Council based on that review setting forth the Commission's recommendations for salary and other compensation for members of Council.

[This new proposed segment carries out the earlier decision to have the Civil Service Commission make periodic compensation recommendations for Council members.]

**ARTICLE XIII  
AMENDMENTS**

[Much of the charter amendment process is mandated by the state constitution and is simply repeated in this section, although in somewhat unclear and awkward form attributable in part to awkwardness and fuzziness in the constitution itself. A few edits are suggested to clarify and conform to usage proposed in the Commission's suggestions elsewhere in the charter. But more could be done as part of the drafting process to make it easier to read and understand, if the Commission were to think that worthwhile.]

Amendments to this Charter may be submitted to the ~~electors~~registered voters of the City by the Council acting by a vote of at least five of its members ~~of the Council~~, and ~~shall~~must be submitted by the Council to the registered voters when a petition signed by registered voters of the City equal in number to not less than ten percent of the total number of ~~electors as shown by~~

~~those~~ registered ~~at the last general or~~ voters voting in the most recent regular municipal election, setting forth any such proposed amendment shall have been filed in the manner and form prescribed ~~herein in this charter~~ for the submission of ordinances by initiative petition. The amendment shall be submitted to the ~~electors~~registered voters at the next regular primary or general election, if one shall occur not less than sixty (60) days, ~~nor or~~ more than one hundred twenty (120) days after its passage by Council or the filing of a petition; otherwise the Council shall provide for the submission of the amendment at a special election to be called and held ~~within the time aforesaid~~ not less than sixty (60) days or more than one hundred twenty (120) days after the passage or filing, whichever is applicable.

If ~~any such a~~ proposed amendment ~~be~~is approved by a majority of the ~~electors~~registered voters voting ~~thereon on it~~, it shall become a part of ~~this the~~ Charter at the time fixed in the amendment; and if no time is fixed ~~therein in the amendment~~, then ~~such the~~ amendment shall become a part of ~~this the~~ Charter upon its approval by the ~~electors~~voters; provided, however, that in the event ~~that~~ two or more inconsistent amendments on the same subject are submitted at the same election, only the ~~one of such amendments~~amendment receiving the largest affirmative vote, not less than a majority, shall become a part of ~~this the~~ Charter.

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

## ARTICLE XIV SAVING CLAUSES

[The suggested changes here are to clarify and conform to usage elsewhere in the charter, and also to recognize that the document has been amended.]

### SECTION XIV-1. LAWS CONTINUED IN FORCE.

All general laws of the State ~~which of Ohio that~~ are not in conflict with the provisions of this Charter, as amended, or with any ordinance enacted ~~thereunder~~under it shall apply to the government of the City ~~of Cleveland Heights; and all~~. All ordinances, by-laws, and resolutions in force at the time of the taking effect of ~~this the~~ Charter, as amended, and not inconsistent with its provisions, shall continue in full force and effect according to their terms until amended or repealed.

### SECTION XIV-2. PARTIAL INVALIDITY.

The determination by a court of competent jurisdiction that any section or part of a section of this Charter, as amended, is invalid shall ~~not~~neither invalidate, nor impair the force or effect, ~~of,~~ any other section or part of a section, except to the extent ~~that such the~~ other section or part of a section is dependent for its operation upon the section or part of a section ~~so~~ declared invalid.

### SECTION XIV-3. CONTINUANCE OF PRESENT OFFICIALS.

All persons holding office at the time this Charter, as amended, takes effect shall continue in office; and in the performance of their duties unless and until provision ~~shall have been~~is otherwise made in accordance with ~~this the~~ Charter for the performance or discontinuance of the duties of any such office. When ~~such a~~ provision ~~shall have been~~of that kind is made, the term of any ~~such the~~ officer affected shall expire and the office be deemed abolished. The powers ~~which are~~ conferred and the duties ~~which are~~ imposed upon any officer, commission, board, or department of the City under the laws of the State; or under any City ordinance or contract in

force at the time of the taking effect of this Charter, as amended, shall, if ~~such~~the office, commission, board, or department is abolished by ~~this~~the Charter, ~~be thereafter~~as amended, be exercised and discharged by the officer, commission, board, or department upon whom ~~are imposed~~ corresponding functions, powers, and duties are imposed by this Charter, as amended, or by any ordinance or resolution of the Council ~~thereafter~~subsequently enacted.

#### SECTION XIV-4. CONTINUANCE OF CONTRACTS AND VESTED RIGHTS.

All vested rights of the City shall continue to be vested in the City and shall not in any manner be affected by the adoption of this Charter; as amended, nor shall any right or liability, or pending suit or prosecution, either in behalf of or against the City, be in any manner affected by the adoption of this Charter, as amended, unless ~~herein~~ otherwise expressly provided to the contrary in the Charter, as amended. All contracts entered into by ~~this~~the City or for its benefit ~~prior to~~before the taking effect of this Charter, as amended, shall continue in full force and effect. All public work begun prior to the taking effect of this Charter, as amended, shall be continued and perfected ~~thereunder~~under it. Public improvements for which legislative ~~steps~~steps shall have been taken under laws in force at the time this Charter, as amended, takes effect may be carried to completion in accordance with the provisions of ~~such~~those laws.

### ARTICLE XV CHARTER REVIEW

[There have been suggestions advanced that review of the charter via a commission be mandatory at some specified interval. If there were to be a provision of that kind, to me it would be unnecessary and even unwise to set the term too short. Fundamental governing documents are, in my view, not intended or expected to be altered with frequency or with every change of political wind. Under the current charter, Council can itself propose an amendment at any time, and the same is true for citizens by initiative. Also, Council can appoint a charter review commission at any time, and must consider doing so at an interval no greater than every ten years. This provides multiple opportunities for introduction of any change important enough to be considered. With that in mind, perhaps there could be added a requirement for a commission-led review every, say, twenty years (minimum, in my view; twenty-five or thirty could be more appropriate). The proposed edits are an effort to fit together the two concepts of mandatory charter review every X years, and mandatory consideration of whether to review the charter every ten years.]

[Should the charter say anything about the number of persons who make up a charter review commission?]

Council shall, at least once during ~~each ten-year~~every [twenty] year period, by ordinance or resolution, ~~determine whether to~~ appoint a ~~Charter Review~~ Commission to review the entire Charter. The first ~~ten-year~~twenty year period shall ~~end~~commence on December 31, ~~1982.~~ ~~Thereafter each successive ten-year~~[2019?]. Each ~~new twenty year~~ period shall commence on ~~the date of Council's ordinance or resolution making such determination.~~December 31 of the year in which the takes action on the recommendations of a Commission that has reviewed the

entire Charter. At no greater interval than ten years following action by the Council on the recommendations of the most recent Commission that reviews the entire charter, Council shall, in its discretion, determine whether to appoint a Commission to review the entire Charter.

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

## ARTICLE XVI WHEN CHARTER TAKES EFFECT

[Except for historical purposes, there seems no reason to keep this provision, at least to the extent it is rooted in the early nineteen twenties. Why not call the new thing we are proposing a First Amended Charter (which will require some editorial work throughout the entire document), and change the dates below accordingly. At the very least, shouldn't the charter, as now mended, contain within itself a modern effective date? Because I have no idea how this suggestion might be accepted, I have not undertaken to make any suggested edits, but that task should not be difficult, if there is agreement about making it.]

For the purpose of electing officers and holding and conducting municipal elections, this Charter shall take effect from the time of its approval by the electors of the City; and for all other purposes it shall take effect on the first day of January in the year nineteen hundred and twenty-two.

We, the undersigned members of the Charter Commission of the City of Cleveland Heights, Ohio, elected at the general election held on the second day of November in the year nineteen hundred and twenty, have framed and hereby propose for adoption, at a special election hereby called and to be held on the ninth day of August, nineteen hundred and twenty-one, the foregoing as a Charter for the City of Cleveland Heights, Ohio.

Done in the City of Cleveland Heights, Ohio, this fifteenth day of June, in the year nineteen hundred and twenty-one.

THE CHARTER COMMISSION.

Frank C. Cain, Chairman

Charles E. Adams

Clarence L. Berkey

Alva Bradley

Robert F. Denison

G. H. Gardner

Samuel Gross

G. E. Hartshorn

Mertice G. Laffer (Mrs. W. B.)

Charles A. Niman

John L. Severance

George W. Staiger

Walter G. Stephan

A. H. Throckmorton, Secretary

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

<b>Summary report:</b> <b>Litéra® Change-Pro TDC 10.1.0.200 Document comparison done on</b> <b>10/23/2018 5:16:03 PM</b>	
<b>Style name:</b> JD Color	
<b>Intelligent Table Comparison:</b> Inactive	
<b>Original filename:</b> ChARTER 1.0.docx - full original charter.docx	
<b>Modified filename:</b> Charter 7.0, use for subm..docx	
<b>Changes:</b>	
<u>Add</u>	356
<del>Delete</del>	312
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>668</b>