



City of Cleveland Heights

Charter Review Commission

Decisions and Rationales

1 November 2018
Council Chambers
Cleveland Heights City Hall

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

1. Acceptance of Decisions and Rationales from 25 October

The Decisions and Rationales 25 October 2018 were not available. They will be on the Agenda for the next meeting.

2. Finance Article

Materials bearing on the finance article have not yet become available. The hope is that the data will be available by the next meeting, since they will be an important foundation for addressing the finance article, which will require at least some changes.

3. Civil Service Commission Article

The Committee has tentatively decided to have the Civil Service Commission generate salary recommendations for Council, and it was thought desirable to learn the views of members of the Civil Service Commission on the subject before making a final decision. In line with the decision at the 25 October meeting, an inquiry was circulated to each of the three Committee members seeking written responses promptly and, in any event, in time for the November 15 meeting. No responses had yet been received. As with the finance article, the intent is to take this item up on November 15.

4. Sarah West

Sarah West has not yet responded to the follow-up contact from the Chair on the potential for her to continue on the Commission despite her immediate

scheduling difficulties. This item will remain open, also to be examined again at the next meeting.

5. Emergency Ordinances

The Chair noted that in the initial draft of the full charter, the provision on emergency ordinances will appear in Article III. It will set a definition, continue the requirement for at least five votes to qualify as an emergency, and tighten the requirement for an explanation of reasons for using the emergency process.

6. Franchises and Public Utilities

The Chair noted that the treatment of franchises and public utilities would appear in Article III. As previously determined, the provision would enable Council to deal with them, but would prohibit dealing with them via an emergency ordinance.

With franchises and public utilities treated in Article III, Article X would be vacant, and it was suggested that for drafting purposes, this slot be used for the new, free-standing ethics article that had been previously agreed,

There was no objection to the proposed approach.

7. **Article VIII Section 3**

Referring to the provision on recalls, on which substantive decisions had already been made, it was pointed out that the window within which an election would be required to be held following certification of the petition was 60-120 days in normal circumstances; however, when four or more Council members were sought to be recalled at the same time, the front-end of the window was moved to 120 days, without any movement of the back-end time, which thus remained 120 days, effectively eliminating any window at all. In addressing this odd and unsatisfactory situation, the initial suggestion was made that in a circumstance where the front end became 120 days, the back end would be moved to 150; following discussion it was agreed to move the back end not to 150 days but rather to 180 days, thus in each circumstance having a window of 60 days. During the discussion suggestions were made about potentially limiting the number of persons who could be recalled at any one time and also possibly trying to specify the particular types of elections that could frame the windows, but following an exchange of views it was determined not to pursue either of these notions.

8. Article VIII Section 5

The Chair noted that at the prior meeting the decision had been made that in dealing with direct mail notification to the citizenry of elections on charter amendments or on citizen-initiated matters (initiative, referendum, recall), the mailing would be to places (residences) not persons (registered voters). However, examination of the Ohio Constitution revealed that for a Charter amendment, the direct mail alternative specified that the mailing go to “electors,” meaning registered voters determined as of the most recent general election, meaning the November election, not necessarily the most recent regular municipal election. Accordingly, it would be necessary to change the mailing provision at least for charter amendments, and then either change the citizen-initiated mailing requirement to conform, or allow the “place” approach to remain, which would be permissible under home rule but would introduce the complexity of having two different methods depending upon the circumstances. The determination was to make the mailing provision consistent among the various circumstance, by using the method required by the Constitution for charter amendments and applying it also in the other circumstances.

9. Article XIII

The material circulated by the Chair contained a number of suggested edits to this article, which deals with amendments. The suggestions were essentially for clarification, and made no change of substance. There was discussion of whether the article was needed at all, since the Ohio Constitution itself covered many of the items set out and would pre-empt any inconsistent provision. But particularly because it could not be predicted with confidence how the Constitution might be changed in the future, including by elimination of one or more pertinent terms, it was decided best to continue with a charter provision on amendments.

Mike Gaynier moved to continue with the existing provision, subject to the editorial suggestions in the material that had been circulated. Jim Vail seconded the motion.

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

10. Article XIV

The examination of this Article, which deals with savings provisions, prompted a discussion about how the product of the Commission’s work ought to be seen and characterized (as a series of amendments to an existing charter that remains “the charter,” or as a collection of changes that go

together to make a new instrument titled “first amended charter), and the connected issue of how the product might best be presented to the voters (multiple changes, each voted on independently perhaps article-by-article, or as a single, whole instrument voted on as a unit). Factors mentioned during the discussion included the frequently interlocking nature of the changes to different articles being recommended by the Commission; the potential for voter confusion or overload in having to address and vote on a large number of separate (albeit often related) provisions at the same time rather than a whole charter; and the possibility for the ballot to include a contemporaneous, competing charter proposal (as a whole or in parts, and involving a change in form of government) promoted by an outside group. In the event of a competing charter effort with inconsistent provisions on the same ballot, only the one with the largest number of affirmative votes, not less than a majority, would come into effect.

The Committee recognized that it will be the Council that decides: (i) which, if any, of the recommended Charter changes would be accepted for putting to a vote of the people; and (ii) how the resulting material would be presented to the voters. However, the Committee decided to make its views on that subject known – in particular that the product of its work ought best be regarded, treated and considered as a single, whole instrument referred to as First Amended Charter.

It was moved by Jessica Cohen, with agreed modification by Mike Gaynier, that the product of the Commission’s work be characterized as a First Amended Charter and delivered to Council as being a single, whole instrument that should best be treated as such. Seconded by Carla Rautenberg.

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

11. Sequence of Articles

Discussion emerged as to the interrelationship of Articles XIII (charter amendments), XIV (saving clauses), XV (charter review) and XVI (effective date of the charter), with suggestions being made for possibly eliminating one of them, combining certain of them, or changing their sequence. The determination was made to keep all the provisions as separate articles while reversing the sequence of current Articles XIV and XV (it appearing more logical to have the charter review provision come before the saving clause provision); while keeping Article XIII and XIV where they are, and to accept the language edits consistent with the notion of a whole First Amended Charter; and adding “resolution” to “ordinance” in the second line of the first paragraph of Current Article XIV. This prompted discussion about how the

effective date would be set, given that it could not be known at this point when the changed charter, assuming it were put to a vote and passed, would be in a position to be implemented. Council, however, would be in a position to know that information as it was moving forward with the measure for the ballot. The Committee's conclusion was to set an effective date of January 1 of the year following the successful vote, or alternatively such earlier date as Council might determine.

Jim Vail moved to retain the four articles, with edits as discussed and with the re-sequencing as determined, and to set the effective date as concluded. Jessica Cohen seconded the motion.

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

12. Charter Review

The Committee turned to discussion of the substance of the provision on charter review. Three aspects of the process were identified for consideration: (i) whether review of the entire charter by a commission should be mandated at a particular interval, while also maintaining a provision that would require council, at lesser intervals, to consider having a commission review; (2) whether to specify a number of members that would compose a commission; and (3) whether to specify that commission members must be elected, not appointed.

It was noted that the current charter does not have a provision mandating an actual charter review at any point, but does require council, at no longer an interval than every ten years, to consider and decide whether or not to appoint a commission conduct a full review. This provision was installed in the charter in 1972 upon recommendation of a charter commission; the most recent charter commission review occurred in 1982. It was noted that under the current charter, council can establish a charter review commission whenever it determines to do so (as it has done, off-cycle, with the current commission), and further that charter amendments can be proposed by council without a commission as well as by citizen initiative.

Materials put before the committee by the Chair for discussion would require a full review of the charter by a commission at least once every twenty years, with an obligation of council, at an interval of no more than ten years, to consider whether to have a charter review. After discussion, it was determined to include a clause requiring that a commission be established at least every twenty years for a full review, and that in the interim, council be required to consider every five years whether to conduct a full review via commission.

Jack Newman then moved to provide for a twenty-year mandatory charter review by commission, with Council required to consider review by a commission in the intervening period, at intervals of no more than five years. Patty Ajdukiewicz seconded the motion.

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

13. Absence Of Quorum

Patricia Ajdukiewicz's schedule required her to depart the meeting, after which there was no longer a quorum, limiting the nature of further matters that could be discussed.

14. Scheduling

Jessica Cohen noted she had a prior commitment before the next meeting that would not allow her to attend prior to 7:15 PM. In light of the difficulty of having a quorum at the regular 7:00 PM start, the Committee agreed to start at 7:15 PM on Thursday 15 November. The Facilitator will contact members who have not been attending meetings regularly to urge their attendance.

15. Future Meetings

The Chair noted that the next meeting, 15 November, will be scheduled to cover Finance and possibly Civil Service, as well as examination of drafts of both the revised Charter and the final report, with examination of those drafts scheduled to continue at the meeting of 29 November. The drafts will be circulated in advance of the next meeting and will be delivered to the legal department at the same time for its examination and comment.

Katie Solender has agreed, if the Commission wishes, to consider whether, consistent with the demands of her schedule, she can be available to participate in planning the public meeting contemplated for January 2019. Jessica Cohen volunteered to assist with the planning.

16. Public Comment

There were no public comments.

17. Adjournment

The Committee agreed by consent to adjourn.