

Charter Overview and Summary

Dr. Lawrence F. Keller
Facilitator

Version 2



Prepared for the Cleveland Heights Charter Review Commission
December 2017

This overview of the current Charter starts with noting the context and nature of the review followed by a brief note on what makes a good charter. After these introductory sections, the current Charter is examined Article by Article, with some sections of an Article noted if these are significant. The Articles are reviewed in numerical order.

Context of the Current Charter Commission

Under the **Cleveland Heights City Charter** the City Council may create a Charter Review Commission. **Article XV** states:

Council shall, at least once during each ten-year period, by ordinance or resolution, determine whether to appoint a Charter Review Commission to review the entire Charter. The first ten-year period shall end December 31, 1982. Thereafter each successive ten-year period shall commence on the date of Council's ordinance or resolution making such determination.

(Amended 11-7-72.)

Article XVIII of the **Ohio Constitution** empowers a city council to propose amendments to the city charter. The **Constitution** also permits registered voters, called electors in the **Constitution**, to submit proposed amendments to a city charter to by a petition process, technically an Initiative. *Section 9* of the **Article** states:

AMENDMENTS TO CHARTER; REFERENDUM. §9 Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments may be mailed to the electors as hereinbefore provided for copies of a proposed charter, or pursuant to laws passed by the General Assembly, notice of proposed amendments may be given by newspaper advertising. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote. (1912, am. 1970)

The **Ohio Constitution**, as noted above, requires any proposed amendment to be voted on before taking effect.

The Council passed a resolution, number 43-2017, on 1 May 2017, stating its intention to create a charter review commission to examine all of the charter. The Resolution specifically charged the Commission to look at the form of government and determine if the form should be changed. The Resolution required the Commission to answer three questions about the form of government.

1. What is the problem the Commission is trying to solve by considering a change to the Cleveland Heights' current form of government?
2. How will a change in the form of government affect the balance the Commission seeks on issues of representation, policy leadership, and administrative efficiency?
3. What are the consequences of changing the governance of Cleveland Heights?

Prior to the Resolution, the Committee on Administrative Services of the City Council issued a memo calling for a review of the charter, listing the recommendations that were inserted in the Resolution. The Resolution and the Memo are in appendices to this document.

The Council then decided to hire a Facilitator for the process. Dr. Larry Keller, Associate Professor Emeritus, Cleveland State University, was selected as the Facilitator. His brief Resume is in an appendix to this document.

As part of the process, the Commission staff, Dr. Larry Keller, facilitated a public three hour session with the Charter Review Commission at the Cleveland Heights Community Center. Under the Charter, the City Council plays a key role as they determine which if any of the recommendations of a charter commission will be presented to the voters. The presentation that Dr. Keller offered at that meeting is available on both the Cleveland Heights city website and on YouTube. On the website home page is an icon for the Charter Review Commission. Selecting the icon goes to all the information on the Commission, including all videos of meetings. On YouTube, the video is available under the title of Cleveland Heights Charter Review Commission.

Nature of Charter Review

Charter review is a process whereby a group of citizens evaluate the current charter in light of the needs and issues facing the city. A Commission is tasked with ascertaining if the charter is sufficient for meeting the needs and issues; and recommending necessary changes if the charter is deemed insufficient. The city needs the most effective government possible and the search for the most effective government is the core of charter review.

This sounds like, and indeed is, a daunting task. However, the Commission is provided with resources to do that task well. Both staff and city officials will provide whatever information is needed. This allows the Commission to focus on the big picture while the staff and city officials, particularly the Law Director, insure all meets the demands of Ohio Law. The **Model City Charter (MCC)** has also been provided to each member. The **MCC** not only delineates the necessary provisions for a charter, it has excellent commentary about options for each provision and the reasons for selecting the particular provision in its stated form. Selected other material may also be provided as needed and desired by the Commission.

The Commission should process the information and deliberate on its meaning to

determine in their judgment what is best for Cleveland Heights. Deliberation requires discussion within the Commission and with relevant others about the issues. All members have lived in the city and participated in its affairs. They are a most appropriate group to determine how the city should be governed to meet the challenges of the future. Under the **Ohio Constitution**, as noted above, councils can suggest charter amendments at any time. However, councils often lack the time to comprehensively evaluate the charter and how well it fits the city to deal with its challenges. This is the reason why a commission is selected so that the review can be comprehensive and in depth. The report of the commission can provide the necessary information to council to ascertain what needs changing, why it needs to be changed and how it can be changed. In addition, as the commission is composed of citizens, the review allows citizen input into the charter review process.

The Nature of a Good Charter

Under Ohio home rule, a city charter is functionally a constitution for municipal governance. Government is the structure for governance, the processes by which a city determines what is valuable. This is the essence of politics. Politics is a process, in the words of David Easton, whereby a community “authoritatively determines what is valuable.” The need is to create a government and the processes that will make the best decisions about what is valuable, taking into account the challenges facing the city. Moreover, all must be stated in a charter ideally with the following characteristics:

- 1. express how citizens want their community to be governed;*
- 2. Focus more on ends and key processes than specific goals and detailed means;*
- 3. insure that all aspects of the government are consistent with how the citizens want their government organized;*
- 4. grant sufficient authority to public officials to fulfill the obligations they are assigned by the Charter and by general state statutes;*
- 5. explicitly note the responsibilities of each public office and how all such offices relate;*
- 6. embody a consistent set of ethics for how citizens and public officials are to interact in governing the community;*
- 7. state broad policy and administrative guidelines while avoiding management and policy details that need to be updated often by elected and appointed officials;*
- 8. provide any details that facilitate citizens participating fully in governing even if state statutes (ORC) are quoted, such as the particulars of city elections;*
- 9. meet legal requirements, especially decisions of the Ohio Supreme Court, even if this*

results in provisions that are difficult to read and are expressed in more detail than is otherwise desirable; and, lastly,

10. read as clearly as is possible in light of the other criteria, so as to produce a document that is coherent to all citizens, elected and appointed public officials. This includes gender and other neutral language for all provisions.

No charter will be perfect but if the above principles guide its development, the resulting charter can be both elegant and useful.

Administrative Code and Codes

A charter, like a constitution, should not contain policies and details that need to be changed periodically. These necessary details are usually found in codes with charters requiring the creation and updating of codes. For example, in the current city **Charter** Council is required to create rules for the conduct of the legislative process. The provision requires council to detail how they will decide selected critical decisions, such as assessments. In addition, the provision requires a supra-majority of council to modify. Note citizens can change those ordinances by an Initiative and Referendum (I&R) process found in *Section 1 of Article VIII*.

SECTION III-8. GENERAL PROVISIONS.

The Council shall determine its own rules and order of business, provide for special meetings and keep a journal of its proceedings. The Council may by general ordinance provide: for legislative procedure; the form and method of enactment of ordinances; a simplified procedure for levying assessments; the method and manner of giving public notice of passage of ordinances or resolutions of a general or permanent nature; the advertisement and sale of bonds and notes; and the advertisement and awarding of public contracts. Such general ordinances, when once adopted, shall not be repealed or amended except by vote of five members of the Council or by the people.

Cities typically have two types of Codes. The **Administrative Code** contains details on how government is conducted. This often contains the rules of council for example. A second type of code deals with the details of particular policies, such as a **Building Code**. The second type of code contains the permanent policies of all ordinances that have been adopted on the specific topic.

The lesson for a charter review commission is to make sure the general requirements and processes for codes are effective. The specifics of any code should not be part of the charter.

Cleveland Heights City Charter

Each **Article** of the **Cleveland Heights City Charter** will be analyzed in terms of its purpose, its provisions and any issues or options that relate to that provision. It should be kept in mind that charter review commissions can be creative, exercising their own insights and purposes that can improve how their community is governed. As all songs are yet to be written, all good provisions of charters are yet to be discovered. Thinking about how you want the community governed should guide your review and not be bound by what others have done or what others recommend. As one of my favorite shows states, “Boldly go ...” though I would caution, as many episodes of the show clearly demonstrate, about being too sanguine about unexplored country.

Preamble, Articles I and II

Purpose

Preambles state the overall perspective that guided the writing of the charter. In Ohio, the emphasis is on garnering all the benefits of home rule, the ability to govern the city as the citizens see fit rather than necessarily have to follow state law. Cities can decide to follow state law as it may provide a desirable process as well as save the city both money and problems. Elections, for example, usually follow state law as otherwise a city can incur added expenses with little benefit attempting to conduct its own elections.

The first two Articles are what attorneys call boilerplate, that is, typical content expressed in a generally accepted manner but which is important legally. The words are intended for courts, expressing the geography of the city, conditions required for any change in the geography and what was legally desired in creating the charter. These provisions guide legal interpretation of its provisions.

Issues

The Commission may want to review how the articles and sections of the charter are specified. The **Model City Charter (MCC)** has a charter numbering system that simplifies referring to specific items in a charter. This system was adopted in the last Lakewood Charter Review with the revised **Charter** adopted in the last municipal election. See the **MCC**. The Lakewood City Charter can be found at, [Lakewood Third Amended Charter](#)

No apparent issues with current provisions. If time permits, and any have interest, the wording may be reviewed to make it read better.

Article III

Purpose

This article creates and empowers the legislative body of the city, the City Council. The legislature is important in American political philosophy as they are the representatives of the people. The provision for the legislative body should be the first main provision of a charter. In the national **Constitution**, Congress is created and empowered in **Article I**. Thus, only legislative bodies can create law and must approve any expenditures of government. Executives and administrators can represent the interests of the people but are not, and can not be, the official representatives of the people.

This article details the structure and authority of the law making body of the city, the city council. Most importantly, it also details the process by which law is made. Municipalities promulgate ordinances not statutes as they are not a constitutionally created body. However, ordinances in a home rule city are functionally statutes as they may displace any state law to the contrary. Thus, the process should be workable, visible in its formal operation and understandable by citizens. Moreover, means of access to the process for citizens should be apparent.

Qualifications for the office of member of council should be appropriate and fully stated. Filling of vacancies and other necessary processes for maintaining a council should be clearly stated and cover all possible contingencies. Note covering all contingencies does not necessitate detailing all possibilities. Rather, contingencies not specifically covered require a general process by which they are to be handled. Thus, a general provision can state, "All other reasons for a vacancy shall be covered by rules of council." Trying to specifically state all contingencies can leave a body powerless in a unique circumstance.

Issues

As the council is the representative and law making body, all kinds of political issues lurk in this article. Political means the mechanisms by which a community decides what is important. Thus, the Commission should ascertain if the nature of the current council is appropriate, such as size, qualifications, at-large election of all members, etc. Some specific issues are also important.

The first meeting of council focuses on electing officers, particularly the President of Council. One could argue it would be better for council to have the first meeting deal with the issues facing the city; perhaps a retreat that deals with the nature of a council and the issues facing the city. Similarly, one could see a requirement for a newly elected member to obtain some amount of training, perhaps with the provision that failure to obtain such training would require vacating the seat. Requiring training means the city would have to pay for it and it would be a benefit to a person who volunteered to discharge meaningful public service to the community. In any event, providing training to new members and having the first meeting focus on what the council faces rather than

electing officers can help to avoid the worst kind of personal politics at the start of a council. An example of such politics was the actions of the county council in selecting its officers.

Enactment of ordinances is a critical process. It may be instructive to compare the process in the **Model City Charter (MCC)** in *Section 2.13*. The requirement of three readings comes from the history of the English Parliament and is designed to inhibit the adoption of law in a fit of emotion. Unfortunately, it has had side effects, such as reading titles of pending ordinances in council meetings which can confuse citizens and worse, suspending the rules so the ordinance can take immediate effect. The latter is often done as an emergency ordinance. The **MCC** has some interesting suggestions about emergency ordinances, such as limiting them to ninety (90) days. See **MCC 2.14**. Passing ordinances as emergency ordinances when there is no real emergency just to get around some procedural requirements can erode the credibility of a council. However, policy reasons may dictate using emergency ordinances to have an ordinance take effect immediately. Changing the requirements may be more effective than using a “creative process” that is not actually the case. Note that *Section 9* deals with emergency ordinances. If a referendum is possible, then an ordinance may not take immediate effect.

Article III Section 10 deals with ethics. The Commission may want to think about putting all such provisions in an article on ethics. The **MCC** devotes the major part of an article, **Article VII, Sections 7.01 and 7.02**, to ethics. The provisions create a Board to oversee ethics and list specific prohibitions.

Finally, the sections in this article often have specific numbers of votes required for a specific action. These can vary with little indication that the variation is strategic or directly related to the action. The Commission should determine which actions are needed and to the extent possible, make all requirements similar and easy to calculate. Distinctions such as the vote being related to the total number of members or those present for a vote need to be carefully examined, changed as needed and clearly stated in the charter. For the most part, the current Charter seems to be consistent in this.

Both **Articles III and IV** depend in large part on the form of government. They are core features of how a city is governed and the Commission should be satisfied that they are able to empower our government to meet its current and future challenges.

Article IV

Purpose

This article details the appointment and authority of the City Manager. The City Manager is the chief executive of the city. The authority granted to the office is important for the conduct of government. Citizens often do not understand this office and the charter should clearly express the nature of the office and the qualifications necessary to the City Manager.

Issues

Though it is not stated in charters, the Council-Manager form of government has no separation of powers. The Council is empowered as the policy making body in all respects, including the hiring and firing of the chief executive, the City Manager. Thus, city councils in the Council-Manager form have very different duties, and are more empowered, than councils in a Council-Mayor form. The latter form of government has separation of powers and therefore the council in that system must check and balance the mayor as well as be the law making body. These differences demand some orientation and training for council members. The training ideally both equips members of council to explain the system to citizens and to exercise more effectively the extensive grant of power.

Often, the Council-Manager system is touted on the basis of the expertise of the City Manager. Indeed, by having the Council select the executive, the office can be filled with someone who has relevant background and experience to deal with current issues facing the city as determined by the Council. Expertise is not just technical expertise in a particular area or areas, but also experience in governing a city. For example, Cincinnati in the 1950's selected a city manager who had been a city manager in eight (8) other cities. This was a great help to the council in dealing with the problems and issues facing the city.

For specific provisions on and about the City Manager, consult **Article III** of the **MCC**. Be sure to look at the commentary as it provides detail on all aspects of the office.

Articles V

Purpose

This articles creates departments of government as well as empower Council to create additional departments. Note the creation of additional departments or the abolition or modification of an existing department requires a supra-majority of Council, that is, five votes.

Issues

The main issue is whether to specify any departments in the charter. Perhaps the only departments necessary to create in the charter are law and finance. Law is important as home rule raises legal issues each time council makes policy. The ability of a city to create its own law can be limited by a general law passed by legislature pursuant to **Article XVIII** of the **Ohio Constitution** as well as by decisions of the Ohio courts. As the Law Director works with the council, his or her input is critical.

If any departments are listed, care must be taken to be sure such departments actually exist and their formal names.

Similarly, finances are important. Most charters, like the current **Cleveland Heights City Charter**, have a provision on finance. Thus, stating the authority and qualifications of a finance director may be important. In a Council-Manager form of government, the city manager appoints all administrators. As the manager is a professional, any finance directors who are thus appointed are typically professional. Council can make certain this is the case as it can fire the city manager if appointments are not up to professional standards.

Article VI

Purpose

This provision deals with the Cleveland Heights Municipal Court. All is put under state law.

Issues

Any issue or issues for this **Article** should reflect the input of the current Judge. The Facilitator will interview all current officials in the city, including the current Judge as well as his predecessor, and obtain their views on the sufficiency of current charter provisions and any suggestions for changes, deletions or additions.

Article VII

Purpose

This article details elections. For most purposes, the article adopts state law to regulate elections.

Issues

The need in the case of charter provisions that adopt state law is to make sure that any details stated in the provisions are in compliance with state law. Note that the **Ohio Constitution** places municipal elections in odd numbered years. **Article XVII §1**.

Article VIII

Purpose

This article provides for the initiative, referendum and recall. These were reforms instituted during the Progressive Era, around the turn of the 20th century. They provided means for bypassing the governing bodies which were often corrupt and could stop any reforms. Recall provides a mechanism for removing elected officials.

Issues

The first decision is whether to retain these three processes. If the Commission agrees to retain them then the issues are the details, such as the signature requirements of petitions for each of the processes, any legal terms used in the provisions and the details of the election at which they are decided. Policy-wise, the process for initiation of an ordinance should have less or equal requirements for amending the Charter. Amending the charter should be a major process as amendments affect the basic governance.

Once decisions are made on retention and details about the percent of registered voters needed on a petition for each process, the other details may best be checked with the Board of Elections. Dates, etc., should match the requirements of the Board of Elections. This can be done by creating a sub-committee of the Committee of the Whole to work with the Board of Elections on the specific requirements. Alternatively, the Facilitator can also talk with the Board or be involved as desired.

Article IX

Purpose

This article provides for the procedures and requirements of city finance. Some provisions have details for specific policies, such as the financing of recreation.

Issues

Any revision of this **Article** should reflect the views of the City Council, the City Manager and the Finance Director. The Facilitator will interview all current city officials as well as previous city officials for their views on this and all other aspects of the **City Charter**.

Article X

Purpose

This article provides for franchises and controls how they are to be granted. Franchises were very important in cities around the turn of the twentieth century as many services such as transportation were provided by a franchise, a contract with the city. Many were corrupt bargains and so many charters had specific requirements as to both process and substance.

Issues

These provisions can be quite detailed and as they deal with ongoing policy matters, may need to be changed periodically. This is best done by empowering the council to make such policies. In the last Lakewood charter review, the provision on franchises was recommended to become an ordinance if the voters adopted the revised charter. As the revised charter was adopted, the franchise article became an ordinance.

Some of the activities and requirements around city contracts can be provisions of an ethics section or article. As noted earlier, the **MCC** in **Article VII** has some useful provisions on ethics.

Article XI

Purpose

This article creates and empowers the City Planning Commission. The membership of the Commission is detailed as are appointment processes. Authority is granted over the physical development of the city.

Issues

Any revision of this Article may require the views of members of Council and pertinent administrators. All of these will be interviewed by the Facilitator. All interviews will be written into report form for the Commission. All such reports will be public documents and available through the Commission page on the website.

In addition, some other authority may be considered for the Commission. For example, environmental considerations may be mandated for the Commission. Also, concern for sustainability may be desirable. The authority can be shaped as desired by the Commission.

Article XII

Purpose

This article creates and empowers the Civil Service Commission. This is a required and desirable provision for municipal government as the quality of employees is directly related to the quality of city services. The article grants considerable flexibility in the civil service by empowering council and the city manager to deal with human resource management. The council has authority by ordinance to classify positions and the city manager has the appointment authority.

Issues

There are no apparent issues with this provision. It should be noted that the International City/County Management Association (ICMA), the professional body for city managers and city management, has the most complete and stringent Code of Ethics of all associations. The Association also enforces the provisions forcefully. This helps keep civil service in Council-Manager systems professional.

On a personal note, I have received the highest quality of assistance by city staff that I have ever received in working with any other city. Cleveland Heights by far has the most professional staff with which I have worked.

Article XIII

Purpose

This article deals with how the charter is amended. The provision restates the **Ohio Constitution** provisions on amending city charters. **Article XVIII Section 9**. This is an example of where it is desirable to insert state law into a charter so that citizens are informed about such an important topic as amending a city charter. As a charter can be amended by citizens themselves in an initiative process, a restatement of the law is desirable.

Issues

As the content cannot be altered, the only issue is the language of the article. The language should be appraised in terms of how understandable is it to the average citizen. Thus, the Commission could propose edits to improve citizen understanding of the provision.

Articles XIV, XV and XVI

Purpose

Articles XIV and **XVI** are technical in nature. The latter one is not necessary and has only historical importance. These details are normally in the final article of a charter and often titled as “General Provisions.”

Article XV deals with charter review. The provision grants Council discretion whether to create a charter commission every ten years. Council used this provision to create the current Commission. It should be noted Council could use such a body at any time to help them exercise its power of amending a charter under the **Ohio Constitution**.

Issues

Articles XIV and **XVI** are best consolidated in a General Provision article at the end of the charter. As the content is mostly technical placing it at the end makes the charter more readable for citizens.

Charter review, **Article XV**, has several issues. A charter review provision could specify the details of review, such as the size of a charter review commission, its authority, etc. Many charter review commissions have 7 to 9 members appointed by council, if in a Council-Manager system, or appointed by a mayor and council in a Council-Mayor system. Some charter commissions can place recommendations directly on the ballot. Most grant council discretionary authority over what recommendations are placed on the ballot.

It may make sense to place all commissions – planning, civil service and charter review – in an article on commissions. Such an article could include provisions for any desired boards or commissions, such as a building commission or zoning board.

Conclusion and Some Thoughts

This overview is not comprehensive nor is it intended to be. Rather it is a living form to which all members of the Commission should add as they proceed to read and analyze the Charter. Moreover, the focus is at the “big picture” level. This is an appropriate level for determining the fate of existing provisions and the desirability of new ones. However, the actual writing of provisions does demand close attention to detail. Both staff and city officials can help with such a task as many details are an integral part of a provision and must be carefully crafted.

Some provisions are affected by form of government but the majority of the issues highlighted in this overview and perhaps by previous bodies dealing with the charter exist under any form of government. Thus, most of the work will involve the general working of government.

In all work, keep in mind what will improve how the citizens govern and are governed. The city is dealing with serious issues and will be for the foreseeable future. You are a body charged with improving its ability to deal successfully with the problems and help provide all citizens with the ability to “pursue happiness” for their families and themselves. Let's get to work!

Version 2