

Comments on Articles I-IV
Jessica Cohen

I have read the comments from Jack and Jim. Rather than respond to them here, I will do so in conversation at our upcoming meeting. Instead, I would like to raise the following as considerations for additions/deletions/changes to the contents of the charter articles under discussion.

Article III: The Council

1. I think we should save the conversation about elections of council members until we reach Article VII (in terms of making any changes to a “head to head” system)
2. I strongly suggest that we include the “Vacancies” and “Forfeiture of Office” language from the model charter into Section 4 of Article III and rename the section – Vacancies; Forfeiture of Office; Filling of Vacancies.
3. I also very much like the language in the Model Charter around vacancies. I know that there has been some discussion that there might be some interest in removing the appointment aspect of filling a council vacancy. However, I do think it’s important that the position be filled. I very much like the stipulation in the Model Charter language that calls for the appointment of a new council member within 30 days. I have found in previous iterations of vacancy appointments that the Council has drawn out the process and a special election might well have been more efficient. The timetable laid out by the Model Charter – appointment by council in 30 days and if failure to do so, a special election between 90-120 days from the date of vacancy, to me assures the city residents that the process will happen quickly.
4. I would like to suggest that we do codify a bit more about how the appointment process should work. One vacancy appointment in the last 10 years was run twice for no real publicly disclosed reason and the appointed council member was chosen from the second batch of applicants despite the earlier application process being publicized and formalized. We should consider enumerating the process a bit more, at the very least, to require only one application period.
5. Section 6 – perhaps we should make the EOE section a separate section?
6. Section 10 – perhaps require a declaration of the conflict and/or recusal from discussions/votes on matters related to the conflict?
7. I look forward to the discussion on potentially changing the role/name etc of the Mayor and Vice Mayor.

Article IV: City Manager

1. I believe strongly that the residence requirement should remain. If you are managing the city, you should have to live in the city.
2. I look forward to the discussion about expanding or limiting powers of the city manager.
3. I believe that a state of the city address should be required – given jointly by the City Manager and the Mayor/President of Council
4. Section 3: I would like to see us include a requirement of an annual review by council of the city manager. I also want to suggest that a report on that review be given at the following council meeting.

Considerations for Cleveland Heights City Charter Sections I–IV

Mike Gaynier

July 5, 2018

Article III The Council

Sect. 4 Vacancies: The Model Charter suggests council be limited to 30 days for replacing a member. Our council has generally taken up to six months to fill a vacancy. Three of our seven current council members were appointed to fill vacancies, and since I have lived in Cleveland Heights, no one appointed has been defeated in their first election to office.

Sect. 5 Salaries: The text is good to require public notice 60 days before council election filing dates of any new council proposed salary. I think we need to recommend council act on this in 2019, and that the charter commission provide council new salary levels. The current levels are \$9270 & \$11840, about a 22% premium for the president of council. My suggestion, 15-18K President of Council, 12-15K Councilmember.

Section 6: Change City Manager title to Chief Executive.

Section 8: Should we limit the use of emergency ordinances?

Section 11: Replace “Mayor” and “Vice Mayor” titles with “President of Council” and “Vice President of Council”

Add expectations for council members. Some to consider:

Meeting attendance, including committee meetings.

Public events.

Community interaction. This where we could spell out requirements for special districts, if we go this route.

Active participation in evaluation process of the Chief Executive.

Active participation in city government orientation for new council members, and participation in updates on major new initiatives.

Article IV Appointments

Change City Manager title to Chief Executive and clarify city leadership expectations. Update gender language.

Section 3: What circumstances, other than a temporary vacancy, would warrant the Chief Executive to be the head of any city department?

To: Charter Review Commission
From: Howard Maier
Subject: Charter, Articles I through IV
Date: July 5, 2018

One advantage of writing a memo at the last minute is that I've had a chance to see the previously prepared memos. I offer my compliments to Jack, Jim, Katie, Vince, and Jessica for their good work. Frankly, their work provides a good outline for discussion.

I would like to add something that hasn't been discussed or written to date: a glossary or set of definitions. The charter contains a number of terms that are not necessarily known or understood by the general public or students. These include the following: from Article I – *body politic and corporate, municipality*. From Article II – *elector, malfeasance (misfeasance, nonfeasance), moral turpitude, ex officio, equal opportunity employer, the difference between an ordinance and a resolution, bonds and notes, franchises*. From Article IV – *cause, capital improvements program, capital improvements budget*. These terms are often used, but I think the charter would be improved with precise definitions.

In addition, I expect many other terms could use some explanation as well.

Jack Newman

June 29, 2018

Comments on Articles I-IV, in light of decisions made on June 21 regarding form of government

I found it most productive to express my thinking by inserting some possible edits into the existing charter provisions, and to include related or additional comments and questions in Brackets associated with particular paragraphs. The items in red have been stricken. The items in blue have been added. The items in dark blue/bracketed are comments and questions. The revision dates in parentheses have not been adjusted.

THE CHARTER OF THE CITY OF CLEVELAND HEIGHTS

PREAMBLE

We, the people of the City of Cleveland Heights, in the County of Cuyahoga and the State of Ohio, in order to secure for ourselves the benefits of local self-government under the Constitution of the State of Ohio, do ordain and establish this Charter for the government of the City of Cleveland Heights.

ARTICLE I NAME AND BOUNDARIES

The municipal corporation now existing and known as the City of Cleveland Heights shall continue to be a body politic and corporate under the same name and with the same boundaries, with power and authority to change its boundaries and annex other territory contiguous thereto in the manner authorized by the general laws of Ohio; but no territory shall be detached therefrom nor shall the City be annexed to any other municipality, without the consent of the Council and of a majority of its electors voting on such question.

ARTICLE II POWERS

The City of Cleveland Heights shall have all powers of local self-government now or hereafter granted to municipalities by the Constitution and laws of Ohio, and such further powers as may now or hereafter be granted by the Constitution and laws of Ohio; and all such powers shall be exercised in the manner prescribed by this Charter or, to the extent not inconsistent with this Charter, by ordinances of the Council created ~~hereby~~ By this Charter.

[The proposed edits are clarifying, not substantive.]

[The model charter has clauses requiring liberal construction in favor of the city and authorizing intergovernmental relations. Is either of these provisions necessary, important, or desirable?]

ARTICLE III THE COUNCIL

SECTION III-1. POWERS, NUMBER AND TERM.

~~—The legislative power~~ Except as otherwise allocated, provided or limited by law or this Charter, all powers of the City, ~~except as limited by this Charter, and such additional powers as may be expressly granted by this Charter,~~ shall be vested in a Council of seven members elected at large. The terms of the members of the Council shall begin the first day of January next following their election, and ~~they~~ each shall serve for a term of four years or until ~~their successors are~~ his or her respective successor is chosen and qualified, ~~except that the three members elected at the first election by the lowest votes shall serve for two years only,~~ provided that the terms of members of council in office at the time this provision is adopted shall continue in office until the expiration of their then existing terms.

[It has been suggested that Council sometimes exercises, or may wish to exercise, powers that might be asserted as going beyond pure legislative power. The proposed change would broaden the authority of Council in general, eliminating the need for piecemeal, Charter-based grants of supplemental powers. The edit regarding terms of office is clarifying, not substantive.]

[There has been at least one suggestion for two-year terms and also a suggestion for having terms of whatever length end at the same time, so a complete council could be turned out and replaced at one time. I do not favor either of these suggestions.]

[A suggestion has been made that the council seats each be contested on a head to head basis. I have not yet formulated a view on this topic. If this were to be adopted, it would require a separate designation of each seat, perhaps numerically, and would further require a transitional designation of particular council members to particular seats in order that members serving the first half of their four year term at the time the provision becomes effective not be required to run immediately, after only two years.]

[A suggestion has been made that

[Suggestions have been made that there be term limits. On balance, I do not favor a limit but also do not consider the idea to be a pivotal point one way or the

other, so long as the limit is suitable in length -- such as three full terms, with any contiguous, initial, partial term of longer than two years counting as a full term.] [Suggestions have been made for a post-election assignment of council members to geographic districts created for the purpose of communication. I would very much favor a provision of this kind, my concept being that its purpose would be to provide one recognized channel of citizen connection with local government, but would not be intended to limit either a council member or a citizen in his/her choice of paths of communication. I believe Larry Keller is preparing a discussion draft of what a provision of this sort might look like.]

[I believe, but am not certain, that we decided at the June 21 meeting not to pursue consideration of rank choice voting. At some point, we should make clear what the conclusion on this point.]

SECTION III-2. QUALIFICATIONS.

To serve as a member of the Council, a person shall be a resident and ~~elector~~registered voter of the City of Cleveland Heights at the time for submitting his or her nominating petition to the election authorities as required under the terms of this Charter, and shall continue to reside ~~therein~~in the City of Cleveland Heights during his or her term of office. No person shall be a member of Council who holds any employment with the City of Cleveland Heights, the Cleveland Heights/University Heights School District, or the East Cleveland School District, or who holds any elected public office other than that of precinct committee person or State central committee person.

(Amended 5-6-86.)

[The amendments are clarifying, not substantive. Is there a definitive definition of the standalone term "elector" already in existence somewhere?]

[A suggestion has been made that there be a length-of-residency requirement for a council candidate. A modest period, say no more than 3-4 uninterrupted years immediately prior to the commencement of the term for which the candidate is running could make sense, but I do not consider it critical, since a complete newcomer would probably anticipate a very steep climb and thus wait a while anyway.]

[A suggestion has been made that service on council (and also on any city board or commission) require the person to be current on tax filings. Only as a candidate? During the entire term? On the surface, at least at the time of candidacy, this does not seem to be an unreasonable notion. How difficult would it be to enforce? Especially if required for the full period of service?]

[Suggestions have been made that training be required for new council members, that requirements be set for specific orientation of new council members with each city department, and more generally that ongoing expectations be set, such as (by way of example only) attendance at meetings, participation in the annual evaluation of the city

manager and in community events, handling of committee assignments. Lakewood's recently revised charter (previously circulated by Larry) includes a provision on training, amalgamated with ethics. Charter-based requirements for ongoing member functioning would require, at the very least, extremely careful drafting so as to serve their purpose without creating sources of unnecessary friction. In general, I would be skeptical about the wisdom of having substantial detail on these items in the charter, whose nature is, in my mind, to provide a structure, rather than extensive behavioral detail.]

SECTION III-3. REMOVAL.

The Council shall be the judge of the election and qualifications of its own members. It may expel any member for gross misconduct, or malfeasance in or disqualification for office, or for conviction of a crime involving moral turpitude while in office, or violation of ~~its charter~~this Charter, or persistent failure to abide by the rules of the Council; provided, however, that such expulsion shall not take place without the concurrence of five members nor until the accused member shall have been given a written copy of the charges against him or her and an opportunity to be heard, with not less than ten days' notice of the time and place of hearing. (Amended 11-7-72.)

[Edits are clarifying, not substantive.]

SECTION III-4. VACANCIES.

Any vacancy in the Council, except as otherwise provided in this Charter, shall be filled by appointment by a majority of the remaining members of the Council. Such appointee shall hold office through December 31 following the next regular municipal election taking place more than ~~sixtyone hundred twenty~~ days after such vacancy occurs; provided, however, that the term of a member shall not be lengthened by his or her resignation and subsequent appointment. The term of the person chosen at such election to succeed such appointee for any unexpired term shall begin the first day of January next following ~~his~~the election, and he or she shall serve the remainder of such unexpired term. (Amended 11-7-72.)

[The change from 60 to 120 days comes from the Board of Elections and presumably reflects the practicalities of time needed for handling the electoral process. Other changes are clarifying, not substantive.]

[On the one hand, it does not seem advisable to have lengthy periods without a full council attributable to a vacancy (which, in the absence of appointment power or a special election, could conceivably be as long as 2 ½ years). On the other hand, there have been objections raised to the potential for manipulation of the appointment process, and assertions of unfair incumbency advantage to appointees thereafter seeking election for the first time. Are there procedures suitable for inclusion in the charter that, while continuing to allow for appointment, would ameliorate the stated concerns? If not, perhaps we simply need to place trust in our elected representatives acting collectively.]

SECTION III-5. SALARIES.

Council ~~may~~shall, by ordinance passed biennially in odd numbered years, fix the salaries of ~~the Mayor and~~ all members of the Council for the two-year period commencing on January 1 of the second year following the year ~~that this section shall become effective~~in which the ordinance is passed; provided that any such ordinance ~~must be~~shall be deemed null and void unless adopted at least sixty days prior to the filing date for the regular municipal election to be held in the year of adoption; ~~and provided further that Council may, in the year in which this section shall become effective, pass an ordinance fixing, but not increasing, the salaries of the Mayor and all~~ Salaries for the six members of Council ~~for the two-year period commencing on January 1 of the first year following the year in which this section shall become effective. This section shall become effective January 1, 1983.~~other than the President of Council shall be identical. The salary for the president of Council shall be larger by [20-40?]% than the salary for the other members. On each biennial fixing of salaries, the amounts shall be adjusted by at least the equivalent of the adjustment then being used for adjustment of [technical term for age-based Social Security benefits].

(Amended 11-2-82.)

[Part of the change is clarifying. As to amounts, comments have been made about a need for suitable compensation. I question whether it would be appropriate to insert a starting dollar figure for salaries in a charter. Perhaps a specific recommendation on that subject could be made by the Commission in the report that will accompany transmission of proposed amendments to council.]

SECTION III-6. APPOINTEES.

The Council shall appoint a City Manager.

Unless otherwise provided by ordinance of the Council, the Director of Finance shall serve as ex officio Clerk of the Council, and shall have the duty of keeping Council's records and performing all other duties required of the Clerk of Council by this Charter and by the Council. The Council may also appoint and employ such other officers and employees of its body as it deems necessary, all such officers and employees to hold office at the pleasure of the Council.

[The edit is clarifying. Is there any reason not to continue having the Finance Director also serve as clerk?]

[It is not clear to me what "such other officers and employees of its body" means? Is there a need to clarify this?]

[More broadly, Lakewood's new charter gives the Civil Service Commission a role in setting compensation every four years, subject to acceptance (by affirmation or inaction) or rejection by Council. Should something like this be considered?]

The Council may create and establish any other offices and positions which it may deem necessary in connection with the administration of the City affairs and which are not herein otherwise provided for in this Charter.

[This edit is clarifying.]

Neither the Council nor any of its members or committees shall dictate the appointment of any person to office or employment by the City Manager, nor in any manner interfere with or prevent the City Manager from exercising his or her own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry, the Council and its members shall deal with the administrative service solely through the City Manager and neither the Council nor any member thereof shall give orders to any of the subordinates of the City Manager.

[This edit is clarifying.]

In its employment practices, the City is and shall continue to be an equal opportunity employer. At least once each year, the City Manager shall submit a report to the Council for review concerning the carrying out of this policy. Council shall make this report public.

~~—This section shall become effective January 1, 1983.~~

(Amended 11-2-82.)

[The stricken sentence is no longer pertinent.]

SECTION III-7. MEETINGS.

The Council shall meet for the purpose of organization on the first Monday in January following each regular municipal election. In the event such first Monday is a legal holiday, Council shall meet the following day. Thereafter the Council shall meet at such times and at such public places within the City of Cleveland Heights as may be prescribed by ordinance or resolution. Four members shall constitute a quorum.

(Amended 11-7-72.)

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.

[It seems to me the Commission could use some education on whether the content of this paragraph, other than the first sentence, is of any continuing value. Why put these items in the charter for special treatment in the first place? If there is a reason, does that reason apply to any other items not included.]

[Suggestions have been made about changing the manner of using the “emergency” tag on ordinances. It does seem odd to have seemingly non-emergency laws regularly being characterized as emergencies, but any modifications would need to be structured carefully to stay in compliance with state law on referenda, the technicalities of which I do not yet understand.]

[Suggestions have been made to include provisions that would forbid any non-public council or committee gatherings, and require verbatim oral and written recordings of all such gatherings. Any such change from current practice -- all of which is governed by ordinance and not charter—would in my view require very careful thought. Inability to have at least some non-public sessions would seem an unwise restriction to embed in a charter. Separately, a requirement for verbatim recording of every meeting of a city body would seem potentially logistically strangling and a substantial additional expense.]

[Suggestions have been made about including

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SECTION III-9. FRANCHISES.

No measure making a grant, renewal or extension of a franchise or other special privilege, or regulating a rate to be charged for its service by any public utility, shall ever be passed as an emergency measure.

[It is unclear to me whether this clause has any ongoing significance. I tend to think not, and if that is the case, then it seems it could be eliminated. The commission could use some education on this point.]

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SECTION III-10. INTEREST IN CONTRACTS.

No member of the Council, nor the City Manager, nor any other officer or employee of the City shall be directly or indirectly interested in any contract, job, work, or service with or for the City; nor in the profits or emoluments thereof; nor in the expenditure of any money on the part of the City; and any contract with the City in which any officer or employee is or becomes interested may be declared void by the Council.

[The charter ought to have a modern, free-standing, general ethics provision whose terms would cover anything covered by this clause; this relatively narrow “contracts” clause could then be eliminated. The new Lakewood charter could be used as an example or at least a point of reference.]

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**SECTION III-11. ~~MAYOR~~PRESIDENT OF COUNCIL AND
VICE ~~MAYOR~~PRESIDENT OF COUNCIL.**

The Council shall, at the time of organizing, ~~and every two years thereafter~~ following each regular municipal election, elect one of its members as President, ~~who shall also have the title of Mayor~~, and another as Vice President, ~~who shall also have the title of Vice Mayor~~. In the event

of a vacancy in either ~~the office of Mayor or Vice Mayor,~~ or in the event the Council shall determine by at least four of its members that either the ~~Mayor~~President or Vice ~~Mayor~~President is unable to fulfill the duties of his or her respective office, the Council shall immediately proceed to elect one of its members to serve in such office.

The President, and in his or her absence the Vice President, shall preside at all meetings of the Council and shall have a voice and vote in its proceedings, but no veto. ~~Except as the same are otherwise disposed of or provided for herein, the Mayor, or in the event he is unavailable, the Vice Mayor, shall exercise all powers and discharge all duties imposed upon Mayors of municipalities by the general laws of the State, which are not inconsistent with the provisions of this Charter; but nothing herein provided shall be construed as conferring upon him any administrative or executive functions herein conferred upon other officers.~~

(Amended 11-7-72.)

[The changes in these two paragraphs and in the caption reflect elimination of the title "Mayor."]

[Suggestions have been made that the President of Council be designated for that office by popular vote, such as by being the candidate that receives the most votes in the most recent election or perhaps by designating the office as a head to head seat, regardless whether other seats are head to head or not. For a number of reasons certain of which were the subject of comment at the June 21 meeting, I would not favor this approach, mostly because I fear it would set up a potential for a claim (by someone so motivated) for the President to be an alternate power center to the city manager, thus re-injecting into the system the potential for the kind of confusion, conflict and gridlock that evidence suggests the city might have been experiencing in the not too distant past and against which I believe we should guard.]

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ARTICLE IV CITY MANAGER

SECTION IV-1. APPOINTMENT, TENURE, REMOVAL.

~~—The City Manager shall be appointed by the Council to serve at the will of the Council, a majority of all the members of the Council being required for his appointment, suspension or removal.~~

The Council, acting by a majority of its members, shall select and appoint a City Manager. The City Manager serves at the will of the Council, which, acting by a majority of its members, may remove or suspend the City Manager with or without cause. No employment agreement between the City and the City Manager may limit the Council's authority to suspend or remove the City Manager, but such an agreement may provide for post-employment payments and benefits.

(Amended 11-7-72.)

[This edit is both a clarification and a reflection of existing practice.]

[Suggestions have been made for inclusion of terms covering performance oversight of the City Manager. It is not clear to me exactly what this might be meant to include, or whether any provision might more appropriately belong in the council article. Here again, it would seem unwise to be minutely prescriptive in a charter document, beyond perhaps requiring an annual evaluation (which would not change current practice) and maybe requiring an annual, express, voted conclusion on whether to retain the incumbent or not.]

SECTION IV-2. RESIDENCE REQUIREMENTS.

The City Manager need not be a resident of the City at the time of his or her appointment, but ~~shall reside therein~~ except with the express approval of Council otherwise, must reside in the City during his or her tenure of office.
(Amended 11-7-72.)

[The suggestion has been made that perhaps a city manager not be required to be a city resident. This change, which is drawn from the model charter, would allow that flexibility although only via affirmative action of the Council.]

SECTION IV-3. POWERS AND DUTIES.

The City Manager shall be the chief ~~administrative~~ executive officer of the City and official head of city government, and ~~shall be~~ is responsible to the Council for the ~~proper~~ general direction, supervision and administration of all ~~the affairs of the City and the enforcement of all the laws and ordinances, except as herein otherwise provided; and to that end he shall have authority to appoint and remove all other administrative officers and employees~~ City affairs, except as otherwise provided ~~herein. He shall~~ by federal, state or local law or by this Charter. The more particular powers and duties of the City Manager include but are not limited to the following:

- (a) To represent the City in intergovernmental relationships;
- (b) To represent the City in its relationships with business and residential interests consistent with the City's master plans and strategies adopted from time to time by Council and with the ordinances and policies approved by Council;
- (c) To appoint, promote, suspend, discipline and/or remove all City employees and appointive city officers except as otherwise provided by federal, state or local law or by this Charter. The City Manager may authorize any city officer, subject to the City Manager's direction and supervision, to exercise these powers with respect to subordinates in that officer's department, office, or agency;
- (d) To be the chief conservator of the peace within the City, and to see that all laws and ordinances are enforced;

(e) To develop and submit to Council policy proposals, including from time to time proposals for new or revised master plans and strategies, and provide advice to Council on matters of policy;

(f) To develop, introduce, and recommend ordinances and resolutions for consideration by Council and otherwise make recommendations for actions to be taken by the City;

(g) To prepare and to submit to Council annually, and publish contemporaneously in media of ready availability in the City:

- A proposed operating budget for the upcoming year;

- A proposed capital improvements program and budget containing at least the improvements scheduled for or proposed for the upcoming year and for each of the next succeeding three years;

- A written message accompanying the budget proposals (i) describing the state of the City, including but not limited to its financial condition and its future needs, and identifying any longer term risks the Dith manager believes are reasonably likely to have a material impact on the City's future financial and other well-being; (ii) making recommendations for the establishment and achievement of future City goals and dealing with the risks identified; and (iii) setting forth the initiatives proposed for the year and for the next succeeding three years;

(h) To promote and pursue the vision and plan for the city as determined from time to time by Council in light of and in response to the proposed budgets, the description of condition and needs, the identification of risks, and the proposed goals and initiatives;

(i) To execute on behalf of the City all contracts, conveyances, evidences of indebtedness and other instruments to which the City is a party;

(j) To attend ~~all~~ meetings of ~~the~~ Council; with the right to participate fully in its discussions and bring matters to its attention, but without the right to vote; ~~and he shall on or to veto any measure, and~~ to attend meetings of any committee of the Council when ~~so~~ required by such committee. He shall prepare and submit to the Council the annual budget, after receiving estimates made by the directors of the several departments, and shall perform such other duties as may be prescribed by this Charter or by the ordinances or resolutions of the Council. permitted or requested by that committee and to bring matters to its attention, but without the right to vote on or to veto any measure;

(k) To perform such other duties as may be prescribed by this charter or by ordinances or resolutions of Council not inconsistent with this charter;

(l) To delegate to any other city officer, department head, or supervisor, subject to direction of, supervision of, and ultimate responsibility by the City Manager, the authority to exercise any of the City Manager's powers and duties.

[Suggestions have been made that perhaps the city manager's powers should be expanded; or alternatively that they should be reduced. The changes in this long section would not necessarily alter the powers either way, but they would clarify and expand the dignity and expectations of the office.]

SECTION IV-4. VICE CITY MANAGER.

There shall be a Vice City Manager who shall be selected and appointed by the City Manager on the basis of executive and administrative training and experience determined the City Manager to be appropriate to fulfill the responsibilities of the office, and whose appointment shall be subject to, and effective only upon, approval by Council acting by a majority of its members. The Vice City Manager shall report to, be responsible to, and serve at the will of the City Manager, and may be suspended or removed by the City Manager without the approval of Council.

(Amended 11-7-72.)

The Vice City Manager shall ~~appoint a qualified City administrative officer as Vice Manager to~~ assist the City Manager in the operation of the City Manager's office and the execution of the City Manager's powers and duties, subject to the direction of, the supervision of, and ultimate responsibility by the City Manager. During any temporary absence, suspension or disability of the City Manager, the Vice City Manager shall have and exercise the powers and perform the duties of the City Manager ~~during his temporary absence or disability. The City Manager shall certify such appointment in writing to the Council.~~

[The changes and expansion (to two paragraphs) would enhance the authority and the expectations of the Vice City Manager beyond just stepping in for an absent city manager (as in the current charter), instead providing for an explicit, regularized, broad, day-to-day role. To a certain extent, it might represent actual current practice, but something very clear and explicit still seems warranted, especially given the additional requirements placed on, and consequent assistance needed by, the City Manager.]

SECTION IV-4. ACTING CITY MANAGER

Upon a vacancy the office of the City Manager, the Vice City Manager shall serve as Acting City manager unless and until another City Manager is appointed and qualified, or Council appoints a separate person to be Acting City Manager. The Council may suspend or remove an Acting City Manager from that office at any time.

(Amended 11-7-72.)

[This change is consistent with and reflects the enhancements in the position of Vice City Manager.]

Carla Rautenberg

**Re: Articles I through V, 7/5/18
(Includes Proposed NEW Article IV)**

General Note:

I tend to agree with Jack Newman that a City Charter generally is not the place to micro-manage systems and processes.

Where I would differ is in stating any requirements related to transparency and accountability to the electorate. With regard to these, I hope we can agree to be very specific indeed.

Re: Jack's and others comments on term limits:

When elections work properly, the election itself serves as a term limit. I oppose the artificial imposition of term limits because they can arbitrarily terminate the service of public servants who are doing an excellent job and in whom the people continue to have confidence. A term limit says "Our electoral processes are so corrupt that we cannot trust the people to exercise their democratic will." I don't think that is the case in Cleveland Heights. For our city, I think term limits are not only not needed, but they could prove counter-productive.

SECTION III-4. VACANCIES.

Proposed CHANGE:

Should a Council vacancy occur for any reason, that position shall remain vacant until the people can elect a replacement at the next regularly scheduled election, when candidates will run for the unexpired term of the vacated seat.

I propose this change because:

1. For various perfectly legitimate reasons, vacancies on Council occur relatively frequently; in the past, sometimes incumbents have run for re-election even when they knew there was a very strong possibility or even probability that they would not complete their full terms; it is possible that they have been encouraged by their colleagues to do so in order to enable Council to hand-pick their successors.
2. An individual appointed by Council to a vacant seat then runs in the next election with the advantages of incumbency: name recognition, a track record, and so forth.
3. I observed Council operate as a body of six for quite a while after Jeff Coryell vacated his seat and before they selected Mike Ungar. They got along fine.
4. Since there are elections every May and November, this would provide ample opportunities for the people to elect a replacement.

PROPOSED NEW ARTICLE IV (Current Article IV would become Article V)

ARTICLE IV: GOVERNMENT IN THE SUNSHINE

Cleveland Heights municipal government shall meet and exceed the requirements of the Ohio Sunshine Laws, as enumerated in the manual published annually by the Ohio Attorney General.

SECTION 1: PUBLIC RECORDS

Records defined: Any document, device or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office or public body of the City which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the City, is a "record" within the meaning of this chapter. (ORC 149.40)

Availability of public records: As used in this section, "public record" means any record required to be kept by the City, except records pertaining to physical or psychiatric examinations, adoption, probation, parole proceedings or other criminal proceedings, and records the release of which is prohibited by State or Federal law. (ORC 149.42)

All public records shall be open at all reasonable times for inspection. Upon request, the City Manager or an individual designated by the City Manager shall make public records available promptly to the requestor. Such records will be extended without charge to Cleveland Heights residents, who have already paid for their creation. To non-residents, public records will be made promptly at cost.

SECTION II: PUBLIC MEETINGS

All City Council meetings and Council Committee meetings, including Committee of the Whole meetings, shall be open to the public, video-recorded, and transcribed so as to be text-searchable, except for Executive Sessions as outlined in SECTION III. Video recordings and transcriptions shall be posted on the City's web site no later than 24 hours after each meeting.

The meetings of all commissions, boards, and citizens advisory committees of Council, and all other public bodies of the City, shall be open to the public, recorded and transcribed as above, except for any Executive Sessions.

Unless otherwise provided in this Charter, all meetings of Council, boards and commissions, and other public bodies of the City shall be held at the Cleveland Heights City Hall, or at other public buildings or properties within the City.

SECTION III: EXECUTIVE SESSIONS

The Council, Council committees, commissions, boards, citizen advisory committees of Council, and other public bodies of the City may meet in executive session for all or a portion of any meeting for the consideration of any of the matters enumerated below. No vote of any kind may be taken of the members of a public body during an executive session of such body.

Executive sessions may be announced and entered into under the following circumstances and for the following reasons only:

(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion or compensation of any public employee or public official, the investigation of charges or complaints against a public employee, official, licensee or contractee of the City or one who seeks to be an employee, licensee or contractee of the City.

(2) To consider the terms of purchase or lease of real or personal property for public purposes, or the terms of sale or lease of City owned real or personal property.

(3) To discuss with an attorney for the public body, claims or disputes involving the public body that are the subject of pending court action, or in the judgment of such attorney, appear likely to be the subject of a future court action or claim.

(4) Preparing for, conducting or reviewing negotiations or bargaining sessions with public employees or their representatives concerning such employees' compensation or other terms and conditions of their employment.

(5) Meetings required to be kept confidential by applicable Federal, State or local law or regulations.

(6) Discussions of security arrangements in existence, or plans for future security arrangements, dealing with the public safety, where such discussions might reveal information that could be used for the purpose of committing crimes or avoiding detection or prosecution for violations of the law.

(7) To consider the proposed terms of a contract between the City and a contractee or proposed contractee of the City, where the discussions of the terms or proposed terms of such contract in the judgment of an attorney for the City, might give an unfair competition advantage to such contractee, or be a detriment to the position of the City in securing contract terms.

(8) Where Council or a board or commission of the public body, is sitting to decide an issue or matter in a quasi-judicial proceeding, but only after all of the evidence to come before such body has been heard.

SECTION IV: PUBLIC NOTICE OF MEETINGS

(1) Regular Meetings. The time and place of all regular meetings of Council, Council committees, commissions, boards, citizen advisory committees of Council, and other similar public bodies of the City shall be noted in a calendar of monthly meetings. The monthly calendar shall be made public as follows:

(a.) Posted on the City's web site, at City Hall and at the following public libraries prior to the first day of the month in which such meetings will be held:

Cleveland Heights-University Heights Public Library
2345 Lee Road

Cleveland Heights-University Heights Public Library
2800 Noble Road

Cleveland Heights-University Heights Public Library
1925 Coventry Road

East Cleveland Public Library - Caledonia Branch
960 Caledonia Road; or

(b.) Amendments to the monthly calendar shall be posted on the City's web site and at the City Hall not less than forty-eight (48) hours prior to any meeting added to the calendar, except in the case of emergency meetings.

(2) Special Meetings. Notice of the time, place and purpose of special meetings of Council, Council committees, commissions, boards, citizen advisory committees of Council, and other similar public bodies of the City shall be given at least forty-eight (48) hours before such a meeting is to be held. Such notice shall be posted at the locations listed in subsection (1)(a.) hereof. In addition, notification of any special meetings of public bodies of the City shall be given to any news media requesting such notification forty-eight (48) hours prior to the time of the meeting. This notification shall include the time, place and purpose of the special meeting.

(3) Emergency Meetings. In the event of an emergency meeting, notice of such emergency meeting shall be communicated to the news media that have requested notification of the time, place and purpose of the emergency meeting and the time and place of such meeting shall be posted on the City web site and at City Hall as soon as the time for the emergency meeting is set.

ARTICLE V: CITY MANAGER

I consider the following to be essential:

SECTION V-2. RESIDENCE REQUIREMENTS.

The City Manager need not be a resident of the City at the time of appointment, but **shall** reside therein during his or her tenure of office.

ARTICLE VI: ADMINISTRATIVE OFFICERS AND DEPARTMENTS

Proposed changes underlined:

SECTION V-2. DIRECTORS.

There shall be a director of each department who shall have the supervision and control thereof, and who shall be appointed by, and shall be immediately responsible to the City Manager for the administration of his department. The City Manager's appointment or removal of the Director of Law, Director of Finance, Director of Planning and Director of Public Safety (Chief of Police) shall be effective only upon the approval of a majority of the members of Council. The City Manager may remove the director of any department other than the aforementioned four without the approval of Council.

The Director of Law shall be an attorney at law duly admitted to practice in the State of Ohio, and shall have been engaged in active practice of law continuously for a period of five years next preceding his appointment. The Director of Finance shall also have the title of City Auditor. Nothing herein shall be construed as preventing the same person from being director of more than one department.

Proposed change underlined:

SECTION VI-3. CITY MANAGER AS HEAD OF DEPARTMENTS.

Excepting the Departments of Law, Finance, Planning, and Public Safety, the City Manager may be the director of each and every department of the City government unless otherwise provided by the Council.

Everyone,

I apologize for not submitting this commentary in a timely way. It has taken me a while to get my thoughts together and partly organized. I have cut out the blabber.

Cities and how they form and evolve is a subject that has interested me since I read an encyclopedia entry about Levittown, L.I., when I was a teenager. This persistent interest has affected how I have thought about Cleveland Heights during the 22 years I have known about the place.

I moved to Cleveland Heights in 1996 at age 40 to become the city's zoning administrator, a position I held for nine years. It was hard to decide whether to leave the place where I was living previously, because I was happy there, but I had become fascinated by Cleveland Heights and many Cleveland neighborhoods and eventually decided to make the move.

I could see that Cleveland Heights was not a freestanding city in that it didn't have an economy substantial enough for it to support itself. It was not a central place and had to draw sustenance from outside its boundaries. It was an extension of Cleveland, but, despite its intentional lack of centrality, it had regional significance. I also observed that Cleveland Heights was economically tied to University Circle more closely than any other place, including any part of Cleveland itself.

I say the city's lack of centrality is intentional because it has been thought of, in some people's minds, as an escape or refuge from the teeming mother city. This shows up in some of the city's land-use regulations, most notably its outright ban on manufacturing. It has never become the secluded enclave some hoped it would. (Luckily.)

When I got here, Cleveland Heights was set apart from the other urban parts of Greater Cleveland by its relatively prosperous and somewhat pedestrian-friendly commercial districts, regional entertainment draws like the Cedar Lee Theatre, Cain Park, and Dobama, a successful urban school district, and its longstanding efforts to maintain a racially diverse population and solid housing stock. Though the city was not without problems then, it had advantages, including a \$7 million-dollar rainy-day fund that it could use if hard times were to hit, as they were about to.

Cleveland's commercial districts, by comparison, were threadbare at the time. I loved the then-beatdown Shaker Square, and I imagined what Tremont and Ohio City could become if things fell into place. I was attracted to Little Italy too, but it seemed to be controlled by an invisible hand that kept it in the past. Dillard's was still open in the Higbee Building, but it was on its way out, and downtown's renaissance was yet to materialize.

I was naïve about many things when I arrived here. I was impressed by Cleveland Heights' efforts to maintain integration, for example, but it took me a while to see how much work remained—and remains—to be done regarding race relations and understanding. Everyone was—and is—genuinely welcome, but white people were—and are—favored. This is not exclusive to Cleveland Heights, of course.

There was a lot of good development in Cleveland Heights during the time I worked for the city. Many of the townhouse developments that are now established parts of the city's fabric were built then, and most are aging well. Severance had its first repositioning and rebuild then and is now ready for its next.

It's easy to cite the things that have gone wrong in Cleveland Heights since the onslaught of the foreclosure crisis, but, partly because they weren't accompanied by problems, things that have gone right have not always been noticed. Severance provides an example.

Severance, as most people know, was built on the grounds of an estate and opened around 1960. For its time, it was innovative or at least state of the art, and it was carefully planned. Retail uses were restricted to the area inside Severance Circle, and land uses permitted in the perimeter were limited and explicitly enumerated. A 100-foot buffer that separates Severance from neighboring residential properties on Crest and Severn roads has been violated only by the post office, when it relocated from Lee Road.

When the retail portion of Severance was rebuilt sometime around 2000, Severance Circle became a city street, and a sidewalk was added on one side. Though the retail center, which still contains some important tenants, is again in a troubled state, many of the properties on the perimeter are doing well. No seemingly endless ring of vacancy, disrepair, and abandonment ever emerged around the ailing mall like the one that developed around Randall Park after its collapse.

For the record, I think Severance needs to be rethought in its entirety, but we should remember it is still a functioning neighborhood of which the retail core is only a part. I know, of course, that an ailing core can negatively affect the perimeter and beyond. Most of Severance's historic structures, including the modernist Austin Companies complex, have been lost, but there are still some important remnants, and few people are aware that a patch of public parkland exists in the Severance perimeter.

The residential development that took place in Cleveland Heights before the foreclosure crisis was also notable. Even though the crisis was underway by the time the 2010 census was taken, Cleveland Heights had more housing units in 2010 than it did in 2000, and the units that were built in the 2000s were, from a design perspective, among the best in Greater Cleveland. The rainy-day fund, along with staff cuts and other cost-saving measures, got the city through the financial challenges that accompanied the Great Recession.

I am not suggesting there are no problems with our city government. My departure from City Hall came about partly because my relationship with one city government official had become difficult for me. I wasn't actively searching for a way out of city government, but, when an opportunity appeared, I left. I do believe, though, that some of the strengths that Cleveland Heights now has—and it has many—are the result of local government actions.

The current narrative is that Cleveland Heights is losing a lot of what has made it a great place. Students who once lived in the Heights are now just as likely to live at the bottom of the hill or downtown. Musicians who once would have lived up here have decamped for the west side. Young professionals prefer Gordon Square, etc., over Cleveland Heights neighborhoods they once might have considered, and on and on.

I at least partly agree with the narrative, though I think it may be overstated. I don't think it's necessarily bad, however, that things once associated mostly with Cleveland Heights are now also taking root elsewhere in the region—in a growing number of Cleveland neighborhoods and in other inner-ring suburbs like Lakewood and Shaker Heights. Cities always export things that are desired elsewhere. What we have not really succeeded at is replacing what we have lost.

I also agree with a sentiment prevalent among charter review commission members that there is no clear voice of the city, and I can also see how this could be attributed to our form of government. I think it is more about how we have deployed our government rather than its form, and, for defensible reasons I won't get into, I think it has been partly intentional. I know we have finished discussion of this topic for now, but we will continue to think about it.

We talk about how we have one of only two council-manager governments in Cuyahoga County, but there are local examples of nearby council-manager governments that are effective. The City of Kent, in Portage County, switched from a strong-mayor government in 1977, and Dave Ruller, who has been the city manager since 2005, is very much the voice and promoter of the city. During his term, downtown Kent has nearly doubled in size, and the city and Kent State University have worked together to their common advantage.

I support changing the role of our city manager from chief administrator to chief executive. Another interesting idea to consider, also taken from Kent, would be having the council president be a non-

voting member except in the case of a tie. I am also open to the sometimes-misleading title of mayor being removed from the city council president.

I know there has been talk of needing checks and balances, but we are only a small city, not a state or country. There are only 44,000 of us, the approximate equivalent of two Cleveland wards. We should work things out by consensus.

There are some things that are good for the regional conurbation overall and its employment centers, but which put Cleveland Heights and other primarily residential municipalities at a disadvantage. What I am thinking about mainly here is Ohio's unusual city-level income tax. The income tax is under-appreciated and has saved Cleveland from financial disaster, but it is tough on Cleveland Heights residents who work in other cities. More employment opportunities in Cleveland Heights, even if the workers lived elsewhere, could help to address this difficulty. There are other disadvantages for us to work around. For example, we are not directly served by the freeway system or the Cleveland Metroparks and have only limited public transportation service.

Cleveland Heights citizens have a reputation for being engaged, and while I think many are engaged in some worthwhile pursuit or another, I don't think many have been engaged with city government. That is changing, and we have recent examples of citizens successfully remonstrating, such as in the case of the city's plan to privatize its water service.

One of the potential problems with the council-manager form of government is the possibility of a city manager working outside most people's range of awareness and becoming entrenched. That can happen, but it can also be avoided, especially if people are paying attention.

When I worked for the city, I thought our slogan should be "Setting the Standard for Greater Cleveland." It sounded good and was partly true. It would be something for us to aspire to.

Thank you.

Vince

Considerations for Cleveland Heights City Charter Sections I–IV

Katherine Solender

July 5, 2018

ARTICLE II: POWERS

1. Should our charter specifically state our form of government (as some charters do), as a separate article or perhaps as part of this one (call it “Form of Government and Powers”)?

ARTICLE III: COUNCIL

1. Sec. 1 – How can we include language regarding expectations for leadership and accountability?
2. For discussion: term limits? Continue staggered terms for members of Council?
3. Sec. 2 – Regarding qualifications for council, should there be a stated period of residency?
4. Sec. 4 – For discussion: how to deal with council vacancies. (Model Charter Sec. 2.06 is useful here, including the language about forfeiture of office.)
5. Sec. 5 – For discussion: the mechanism for establishing (and increasing) council salaries.
6. Sec. 6 – For discussion: whether any changes are needed regarding Council appointments.
7. Sec. 7 – For discussion: compliance with the Ohio Open Records and Open Meetings Acts. Include a stated exemption for executive sessions?
8. Sec. 8 – We should consider clarifying stipulations for passage of ordinances and resolutions (Lakewood Charter Sec. 2.8), including the use of emergency legislation (Oberlin Charter Sec. X).
9. Sec. 9 – I need help here.
10. Sec. 10/contracts – fold into a general ethics/conflict of interest provision that also calls for respectful, civil conduct for Council and all city officials?
11. Sec. 11 – For discussion: replace “Mayor” and “Vice Mayor” with “President of Council” and “Vice President of Council.” Also, consider defining the powers and duties of the President (as in the Model City Charter, Sec. 2.03a).
12. Continue discussion regarding “communication districts”

ARTICLE IV: CITY MANAGER

1. Sec. 2 – Residency requirement should remain.
2. Sec. 3 – Should stipulate that the City Manager is the chief executive
3. Powers and duties/expectations should be clarified and expanded (review Jack Newman’s suggestions).
4. Add a provision regarding performance review.
5. Sec. 4 - For discussion: expectations for the Vice City Manager position.
6. Consider adding language, where appropriate, regarding removal of the City Manager? (For example, Kent Charter, Article VI, Sec. 2.)

Thoughts on Articles I-IV

Jim Vail

Article I – No Comments

Article II - Powers

Section 1. The City of Cleveland Heights shall have all powers possible for a city to have under the constitution and laws of the State of Ohio as fully and completely as though they were specially enumerated in this charter. (Model Charter)

Section 2. The City may participate by contract or otherwise with any governmental entity of the State of Ohio, or any other state, or the United States in the performance of any activity which one or more of such entities has the authority to undertake. (Model Charter)

Article III

- Section 1 - Provide for staggered terms.
- Section 2 – Eligibility. Only registered voters of the city shall be eligible to hold the office of council member.
- Section 4 – Consider limiting the term of a replacement council member to the year in which she or he is appointed, but that would probably require a special election. (our current charter is consistent with the model charter).
- Section 5 – Should salary changes be accomplished by legislation or charter?
- Section 6 – Refer to the position as City Executive.
- Section 11 – Delete references to Mayor and Vice-ayor and substitute President of Council and Vice President of Council; provide for 6 or 7 Communication Districts that might be based roughly on elementary school districts. We may not want to have the President of Council serve in this capacity. We may want to consider 3 Communication Districts, with 2 council members per District. Members should be assigned at the first meeting of each calendar year and should be rotated annually.
- I would like to discuss the presentation and adoption of ordinances, including emergency ordinances, v/v the model charter.

Article IV

- I would eliminate the residency requirement.
- I would consider changing the title to City Executive.
- Responsibilities and Authority – generally like Jack’s proposal.