

MEMORANDUM

Date: March 11, 2015
To: Cincinnati Charter Review Task Force
From: Balance of Power Subcommittee
Re: Report Findings

Introduction

The Charter Review Task Force (“Task Force”) created a Balance of Power Subcommittee (“Subcommittee”) to study the following sections of the Charter of the City of Cincinnati (listed in Table 1.A) and determine if they should be updated.

The Subcommittee members include:

Jane Anderson	Alex Linser	Daniel Rajaiah
Jeff Berding	Carolyn Miller	Anne Sesler
Joan Kaup	Dr. Jennifer O’Donnell	Byron Stallworth
Sam Lieberman	Mark Quarry	

The Subcommittee also extends its thanks to University of Cincinnati Law Student Abby Benston who assisted in the preparation of this memorandum.

The Subcommittee met on the following dates:

- o August 6, 2014
- o August 21, 2014
- o September 10, 2014
- o September 17, 2014
- o October 1, 2014
- o October 15, 2014
- o October 29, 2014
- o November 12, 2014
- o November 24, 2014
- o December 8, 2014

The Subcommittee assigned each section to a small group to conduct research to recommend if the language should be changed. After initial research, Subcommittee members determined that how the city handles each issue addressed in the charter article depends on the city’s form of government.

As the Subcommittee was not charged with recommending a form of government, this report includes options on how charter articles should be updated depending on the form of government.

Table 1.A – Charter Topics Assigned to Balance of Power Subcommittee

Memo Section	Charter Citation	Category Type *	Topic at Issue, as identified by the Charter Review Task Force
I.	Art. IV Sec. 3	3	What are the duties and role of the City Manager?
II.	Art. IV Sec. 1 and 2	5	What is the removal process of the City Manager?
III.	Art. III Sec. 1-2	5	What is the recruitment, hiring process of the City Manager and designating the Interim City Manager?
IV.	Art. IV Sec. 10	5	Is the power of the manager to remove the City Solicitor, Finance, Utilities, and Water Directors consistent with the goal of independent and professional management?
V.	Art III and IV Sec. 2 and 3	5	What is the optimal process for creating the budget?
VI.	Art. III Sec. 2	1, 2, and 5	What is the role of the Mayor in Emergencies?
VII.	Art. III Sec. 2	1 and 2	What is the ceremonial role of the Mayor?
VIII	Art. VII Sec. 1	3	What is the process for making appointments to Boards and Commissions?
IX	Art. II Sec. 6	5	When and how should the Mayor have the right to veto legislation?
X.	Art. III Sec. 2	5	How to set the agenda for City Council (the “Pocket Veto”).
XI.	Art III Sec. 2	5	What is the proper role of the Mayor in Council meetings and functions?
XII.	Art. III Sec. 3	5	What is the Role of the Vice Mayor?
XIII.	Art. II Sec. 5a	4	What is the role of, and the process for selecting and changing the President Pro Tem?
XIV.	Art. IV Sec. 2	5	What is Council’s Proper Oversight Role of City Administration?
XV	Art. II Sec. 4	5	How is compensation set for Council and the Mayor?

***Category Type:**

- 1) Obsolete
- 2) Possibly obsolete or superseded, but not requiring discussion
- 3) Confusing – may or may not require substantive policy decisions to clarify
- 4) Minor substantive changes
- 5) Major policy questions
- 6) Matters that may belong in the charter that are not currently in it.

In researching alternatives to current charter provisions, the committee referenced the charters of peer cities identified by the Cincinnati Regional Chamber through Agenda360 and Vision 2015, with additional peer cities identified by the subcommittee members.

These peer cities are:

1. Phoenix, AZ (Council-Manager)
2. San Jose, CA (Council-Manager)
3. Indianapolis, IN (Mayor-Council)
4. Austin, TX (Council-Manager)
5. Columbus, OH (Mayor-Council)
6. Charlotte, NC (Council-Manager)
7. Denver, CO (Mayor-Council)
8. Portland, OR (Commission)
9. Louisville, KY (Mayor-Council/ Consolidated City-County Government)
10. Oklahoma City, OK (Council-Manager)
11. Nashville, TN (Mayor-Council/ Consolidated City-County Government)
12. Kansas City, MO (Council-Manager)
13. Cleveland, OH (Mayor-Council)
14. Raleigh, NC (Council-Manager)
15. Minneapolis, MN (Mayor-Council)
16. St. Louis, MO (Mayor-Council)
17. Pittsburgh, PA (Mayor-Council)

The form of government is a reflection of values.

Any discussion of the balance of power in municipal government requires an understanding of the prevailing models for local government structures. The two leading forms employed by peer cities are the Council-Manager government and Mayor-Council government. In their purest forms, each of the two represents a commitment to a different ideal. The Council-Manager form is the manifestation of the desire for independent and professional city management, with the belief that the administration should be managed by professionals, as free from the influence of political partisanship as possible, and who will maintain the continuity of the post regardless of political changes. The Mayor-Council form of government focuses on democratic accountability and oversight through voter approval of the direction of the mayor's team of administrators. There are many variations on both prevailing forms, providing a spectrum of choices, each of which strike a different balance between the competing ideals. Summaries of defining characteristics of the two prevailing models and the current form employed by the city of Cincinnati follow:

a. Council-Manager

In the Council-Manager system, the executive power of the municipal government is vested in the City Manager. The Manager oversees all administrative functions of the city. In

that role, the Manager is tasked with executing the municipal ordinances passed by council, which functions as the legislative body. In that sense, a Council-Manager city functions similarly to a corporation, with the City Manager analogous to the CEO, and the council as the board of directors.

In a Council-Manager system, the Mayor is a member of council and has no executive powers. The mayor typically is the presiding officer of the council and functions as the ceremonial head of the city. The mayor does not have any more power than any other member of council.

The Council-Manager form of government strives to achieve professional management. The City Manager is typically accredited by the International City/County Management Association (ICMA). The city manager is appointed by council and not elected, which proponents argue frees the City Manager from political pressures and allows for a focus on long term, as opposed to short term, solutions.

The Council-Manager system rose to prominence in reaction to corruption in municipalities where political cronyism and bureaucratic corruption led to dysfunction.

b. Mayor-Council

The hallmark of the Mayor-Council form of government is an elected top executive official, the Mayor. In this form of government, the elected Mayor is the top administrative official of the city and has no legislative powers. All officials in the administrative service serve at the pleasure of the Mayor.

The council holds the legislative power, and functions separately from the office of the mayor. The council typically selects a presiding officer from amongst its membership.

Where the Council-Manager system achieves oversight through adherence to professional standards, the Mayor-Council system relies on direct electoral accountability to voters. Proponents argue that the top executive official is more responsive to the desires of residents as a result of this direct accountability.

c. “The Cincinnati Model”

Cincinnati originally converted to a Council-Manager form of government by a 1924 revision to the charter, brought about in response to the rampant corruption of the Republican “Boss Cox” political machine. The current incarnation of Cincinnati’s Council-Manager government took effect in 2002. The reform effort then focused on strengthening the powers of the Mayor to increase direct electoral accountability over the city’s top elected official, while still maintaining the non-political professional management that is the hallmark of a Council-Manager. The committee membership argues that in the effort to strike that balance, the 2002 reform created a stronger office of the mayor than anticipated, with the mayor having effective control over both branches of municipal government. There are many options available to address that ranging from sweeping changes to the city’s form of government to making only minor changes to rectify the imbalance resulting from the existing charter.

The Cincinnati Charter Review Task Force instructed this subcommittee to research the provisions of the charter relating to the balance of power between the Council, City Manager, and Mayor. There are several minor corrections that the subcommittee has identified to reverse overcorrections resulting from the 2002 move to a “stronger Mayor.” If more significant reforms are proposed, it will be the job of the task force to ascertain (through public input) what the values of our community are, and to develop reform proposals that strike the appropriate balance between direct electoral accountability and non-political professional management.

The committee has identified three areas where improvement to the charter should be a priority, regardless of whether or not the task force decides to propose more significant changes to the overall form of government. These are the need for executive sessions of council, the so-called “pocket veto” (see Section X), and the hiring/firing process relating to the city manager (see sections I, II, III). This report memorandum does not discuss executive session because that topic was assigned to another committee. However, the lack of executive session was identified by the committee as a balance of power issue, since it affects council’s ability to effectively oversee the office of the City Manager.

The sections below summarize the subcommittee’s research regarding specific charter provisions identified by the Task Force and include a discussion of the current charter provisions, solutions in peer cities, and analysis of the specific issue under a pure Council-Manager system and a pure Mayor-Council system. The final proposal need not reflect a strict adherence to one model or the other, but could employ some of the many variations discussed below.

I. Duties and Role of the City Manager

a. Current Charter provision at issue:

Art. IV § 3	<p>It shall be the duty of the City Manager to act as chief conservator of the peace within the city; to supervise the administration of the affairs of the city, except as otherwise specifically provided in this charter; to see that the ordinances of the city and the laws of the state are enforced; to make all appointments and removals in the administrative and executive service except as otherwise provided in this charter; to make such recommendation to the Mayor and to the council concerning the affairs of the city as may to him or her seem desirable; to keep the Mayor and the council advised of the financial condition and future needs of the city; to prepare and submit to the Mayor the annual budget estimate for the Mayor's review and comment prior to its submission to the council; to prepare and submit to the Mayor and to the council such reports as may be required by each and to perform such other duties as may be prescribed by this charter or required of him or her by ordinance or resolution of the council.</p> <p>The City Manager shall have the powers conferred by law upon boards of control. Except as otherwise provided in this charter, all other executive and</p>
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	administrative powers conferred by the laws of the state upon any municipal official shall be exercised by the City Manager or persons designated by him or her.
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b. Discussion:

Even though it has modified its charter to create a “stronger” Mayor, Cincinnati is still a Council-Manager city, and as such the Manager is the highest executive official in the city government, tasked with executing and enforcing the laws passed by Council. Some argue that certain provisions relating to the hiring and firing of the City Manager have limited the independence of the office and granted undue control over the executive branch to the office of the Mayor. Those issues are discussed in more detail in the subsequent sections.

II. Process for Removing the City Manager

a. Current Charter provision at issue:

Art. IV § 1	“...The City Manager shall be appointed for an indefinite term, as hereinafter provided...”
Art. IV § 2	The City Manager shall report to the Mayor and the council. Neither the Mayor, the council, nor any of its committees or members, shall interfere in any way with the appointment or removal of any of the officers and employees in the administrative service. Except for the purpose of inquiry; the Mayor, the council and its members shall deal with that part of the administrative service for which the City Manager is responsible, solely through the City Manager.

b. Alternatives:

City	City Manager Term Length
Phoenix, AZ	Indefinite term.
San Jose, CA	Indefinite term.
Indianapolis, IN	Indefinite term.
Austin, TX	Indefinite term.
Columbus, OH	
Charlotte, NC	During the same tenure as the council that appointed the manager.
Denver, CO	
Portland, OR	
Louisville, KY	One year.
Oklahoma City, OK	City Manager shall serve during the pleasure of the Council.
Nashville, TN	
Kansas City, MO	City Manager shall serve during the pleasure of the Council.
Cleveland, OH	
Raleigh, NC	The City Manager shall be appointed for an indefinite term, as long as

	he is on good terms with City Council.
Minneapolis, MN	The City Coordinator holds their position as long as they are good standing with the executive committee.
St. Louis, MO	
Pittsburgh, PA	

c. Discussion:

Termination of City Manager

Little to no information was available about the termination process for most of the peer cities with regard to termination of the City Manager, and apparently it is not codified in those charters. In a majority of the Council- Manager cities the City Manager is appointed to an indefinite term but that is not always the case. The City Manager in Charlotte, for instance, is only appointed for the term of council, and each council gets the opportunity to reappoint or a hire a different City Manager.

In a Mayor-Council form of government, the top executive typically serves at the pleasure of the Mayor, or as in the case of Minneapolis, under the supervision of an executive committee and the term then is defined by the term of the administration or entity who appoints the position.

III. Review of the process for recruiting, hiring and removing the City Manager and appointing an Interim City Manager

a. Current Charter provision at issue:

Art. IV § 1	<p>The Mayor, as provided in Article III of this charter, shall appoint a City Manager who shall be the chief executive and administrative officer of the city. The City Manager shall be appointed solely on the basis of his or her executive and administrative qualifications and need not, when appointed, be a resident of the city or state. Neither the Mayor, nor a member of council shall be appointed as City Manager. The City Manager shall be appointed for an indefinite term, as hereinafter provided. The City Manager shall be removable at any time at the pleasure of the Mayor and the council as provided in Article III. If removed at any time after the City Manager has served six months, he or she may demand written charges and the right to be heard thereon at a public meeting of the council prior to the date on which his or her final removal shall take effect, but pending and during such hearing, the Mayor, subject to the approval of council, may suspend him or her from office. The action of the Mayor and the council in suspending or removing the City Manager shall be final, it being the intention of this charter to vest all authority and fix all responsibility for any such suspension or removal in the Mayor and the council.</p> <p>The council may authorize the designation of some other officer of the city to perform the duties of the City Manager during the City Manager's absence or disability. The City Manager shall receive such compensation and related</p>
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	benefits as are determined by the council.
Art. III § 2	<p>The Mayor shall appoint the City Manager upon an affirmative vote of five members of the council following the Mayor's recommendation for appointment. Prior to the vote, the Mayor shall seek the advice of council, to include the opportunity for council to interview the candidates considered by the Mayor. Should the council not approve the recommendation of the Mayor, the Mayor may submit another recommendation or institute a new search.</p> <p>The Mayor, with the advice of council, shall have the authority to initiate and recommend to the council the removal of the City Manager, provided that such removal shall require an affirmative vote of five members of the council. A temporary appointment to the position of City Manager that may be required by reason of a vacancy in the office shall be submitted by the Mayor to the council for its approval prior to the appointment.</p>

b. Alternatives:

City	Principal Model Followed	Removing the City Manager
Phoenix, AZ	Council-Mgr	The Council shall enact local legislation, adopt budgets, determine policies, and appoint the City Manager, who shall execute the laws and administer the government of the City.
San Jose, CA	Council-Mgr	The Mayor nominates a City Manager. Council votes and picks the compensation for the City Manager.
Indianapolis, IN	Mayor-Cncl	Appointed by the Mayor.
Austin, TX	Council-Mgr	The City Manager is hired on by the recommendation of the Mayor.
Columbus, OH	Mayor-Cncl	
Charlotte, NC	Council-Mgr	Council appoints a City Manager and votes on it, Mayor cannot veto this.
Denver, CO	Mayor-Cncl	
Portland, OR	Commission	
Louisville, KY	Mayor-Cncl	
Oklahoma City, OK	Council-Mgr	City Council appoints the City Manager.
Nashville, TN	Mayor-Cncl	
Kansas City, MO	Council-Mgr	The Mayor and Council shall jointly conduct a search or recruitment for a City Manager upon terms agreed upon by the Mayor and Council. Upon completion of this process the Mayor shall be responsible for submitting a resolution to the Council for the appointment of a City Manager. If an appointment is not approved, the Mayor may submit

		another person for consideration, or may ask that a search or recruitment process begin anew.
Cleveland, OH	Mayor-Cncl	Any member of Council may submit a petition with the officer to be removed and the grounds or removal. Then a petition with signatures of 20% of the voting body the officer is in charge of on that sheet. The person is then notified and has five days to resign. If they do not, then a recall election is scheduled. There is no City Manager type of role, and the Mayor is elected by the city.
Raleigh, NC	Mayor-Cncl	The Council shall appoint a City Manager to be in charge of the city government. The manager shall be appointed on Merit only. He shall hold office indefinitely and salary is fixed by council. As he is appointed by council, council reserves the right to remove him at any time they see fit.
Minneapolis, MN	Mayor-Cncl	The executive committee shall appoint the City Coordinator and then City Council and the Mayor will approve of the selection. The Coordinator will report to the executive committee, and they will supervise him.
St. Louis, MO	Mayor-Cncl	
Pittsburgh, PA	Mayor-Cncl	

c. Discussion:

Hiring and Recruiting

In the peer city Council-Manager forms of government there are two scenarios for selecting the City Manager. In one scenario, the Mayor nominates and council votes to approve (see San Jose, Austin, with a slight variation on that theme in Kansas City). In the other scenario, the council nominates the final candidate and appoints (see Phoenix, Oklahoma City, and Raleigh).

The Kansas City model, as a Council-Manager form of government, selects their City Manager after the Mayor and council jointly agree to conduct a search, from which the Mayor then makes a recommendation to council for approval.

Mayor-Council forms of government often do not utilize a voted-upon City Manager; however Minneapolis (a Mayor-Council form of government) chooses their top city administrator utilizing an executive committee that makes a recommendation to the Mayor and council who then approves the candidate.

In Cincinnati, the Mayor picks all of the potential candidates from a pool of professional City Manager candidates. This has traditionally been through a nation-wide search, but that is not specified in the charter. The city council has commented upon candidates, but ultimately, the Mayor chooses who is offered to council for approval and council votes for or against approval.

However, if the council does not approve of a given candidate, the charter specifically states that the Mayor can restart the process and bring another candidate. It does not make clear that the Mayor can hire a candidate that council did not approve.

In Cincinnati, there is some conflicting language in the charter about who identifies and appoints an Interim City Manager. Most recently, a candidate for Interim City Manager was recommended to City Council by the Mayor, as is indicated in Article 3 paragraph 2 of the charter, but in Article IV, paragraph 1 it states it is the Council who will authorize some other office to serve in the absence of the City Manager. This could be referring to a very brief window of time and/or a very narrow set of circumstances (both the Mayor and the City Manager are unavailable at the same time), regardless, Charter is not clear.

IV. Is the Power of the Manager to Remove the Solicitor, Finance, Utilities, and Water Directors Consistent with the Goal of Independent and Professional Management?

a. Current Charter provision at issue:

Art. IV § 10	“The city solicitor, director of finance, director of public utilities, and superintendent of the water works shall be subject to removal by the City Manager.”
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Under the current charter, the City Manager can remove four major directors – the city solicitor, the director of finance, the director of public utilities, and the superintendent. This provision seems to grant wide latitude of discretion not only to the City Manager, but also to the Mayor because the Manager serves solely at the pleasure of the Mayor.

b. Alternatives:

System	Changes Necessary to Implement This System in Cincinnati
Council-Manager	No Change
Stronger-Mayor Hybrid	No Change
Mayor-Council	The elected Mayor is given near total administrative authority as the chief executive officer of the City. The Mayor has the power to appoint and dismiss department heads without council approval. The system could require City Council to approve the appointment of a Chief Operating or Administrative Officer.

Under the Council-Manager and the Stronger-Mayor Hybrid systems, the City Manager has formal authority over department heads. However, under the current Stronger-Mayor Hybrid, some question the independence of department heads given they report to a Manager who is dependent on the Mayor for their job security. While the Mayor may choose department heads, the Manager is publicly responsible. In a Mayor-Council system, the power to appoint department heads would be held by the Mayor, who would then be accountable to Council and the public for their job performance.

c. Discussion:

We also believe that the assignment of department head personnel should be based on designated criteria identified in the job description and based upon the specific expertise and professional training directly related to the scope of the projects being managed. The Manager or Mayor could then make the hires based on job description and the qualifications of the applicants. What is important in any system is transparency on who is ultimately responsible for performance so voters can hold the executive accountable

We note that the office of the solicitor is different from the other city departments because of the attorney-client relationship between the solicitor and council. The role of the solicitor must be clear, and if the solicitor is the council’s attorney, council should have some input in hiring that official.

V. What is the optimal process for creating the budget?

a. Current Charter provision at issue:

Art. III § 2	“... The Mayor shall transmit to the council the annual budget estimate prepared by the City Manager. The transmittal shall occur within 15 days after receipt from the City Manager and may include a letter commenting on the proposed budget...”
Art. IV § 3	“[City Manager] to prepare and submit to the Mayor the annual budget estimate for the Mayor's review and comment prior to its submission to the council...”

b. Alternatives:

City	Budget Creation Method
Phoenix, AZ	On or before the third Tuesday in June of each year, the City Manager shall prepare, or cause to be prepared, a careful estimate, in writing, of the amounts of money, specifying in detail the objects thereof, required for the business and conduct of the affairs of the City during the next ensuing fiscal year, stating in detail the amount required to meet all expenditures necessary for City purposes including interest and sinking funds for outstanding indebtedness, if there is any. The Council shall meet at its usual place of holding meetings on or before June 30 of each year and make a budget of the estimated amounts required to pay the expenses of and to conduct the City government for the ensuing fiscal year.

San Jose, CA	The City Manager serves as the chief administrator. The City Manager prepares and submits the annual budget.
Indianapolis, IN	The City Controller handles the city's finances and writes the annual budget.
Austin, TX	The City Manager submits budget and then a vote takes place.
Columbus, OH	The Mayor prepares and submits the budget/estimate.
Charlotte, NC	
Denver, CO	Mayor is responsible for the annual city and county budget estimate. The budget must be approved by city council and can be changed by a majority vote of council.
Portland, OR	The Commissioner of Finance and Administration is in charge. This position is designated to supervise the preparation of the budget document. Preliminary budget estimates of expenditures for the departments and bureaus for the ensuing year shall be prepared and submitted by the department heads as directed by the Commissioner of Finance and Administration.
Louisville, KY	Mayor shall submit an annual budget.
Oklahoma City, OK	The City Manager shall submit an annual budget to the Council at least 30 days prior to the commencement of each fiscal year. Biennially, the City Manager shall submit a five-year capital improvement plan to the Council.
Nashville, TN	Annual operating budget is prepared by Director of Finances. Then it is reviewed and revised by Mayor. Finally it is amended by Council after public hearing.
Kansas City, MO	City Manager shall prepare annual budget, Mayor submits to council, council reviews, revises and adopts annual budget.
Cleveland, OH	The Mayor sends an estimate to council between November and February 1 for the upcoming fiscal year to start in January. Council then makes an appropriation ordinance that has the opportunity to be debated by city citizens. It is then published in the newspaper and will not be voted on until 15 days after its publication.
Raleigh, NC	

Minneapolis, MN	The Mayor submits a proposed budget to council no later than August 15th. The Office of the Budget, under the City Coordinator, will assist the Mayor with the budget's creation. The budget will then be approved by council, Council has the opportunity to make changes and add taxes to the budget.
St. Louis, MO	The Budget Department creates the budget for the City. The Board of Aldermen edits, and then eventually approves the budget.
Pittsburgh, PA	The Mayor prepares the budget and then conducts public hearings, whose times are published in the papers 10 before their occurrence. It is then presented to the council who approves the budget.

c. Discussion:

In each peer jurisdiction, the passage of the budget is ultimately the responsibility of the council. In Mayor-Council forms of government, the Mayor presents the budget directly to council for changes/edits and approval. In all but one Council-Manager form of government, the City Manager presents the budget directly to council for changes/edits and approval. Kansas City has a system much like Cincinnati where the City Manager presents a budget to the Mayor, who can make edits prior to the City Manager presenting a budget to council for their changes/edits and approval.

In a pure Council-Manager system, the City Manager would present the final budget to the council without first presenting it for input to the Mayor. In this system the City Manager should theoretically be exercising independent professional judgment. This allows for all members of council, including the council member identified as Mayor to comment on the budget.

In our current form of government, the Mayor has significant input prior to the City Manager presenting the budget to council.

VI. What is the Role of the Mayor during Emergencies?

This section summarizes the Mayor's role during times of emergency. The authors found alternatives to Cincinnati's present system in the charters of the following four cities:

1. Boulder, CO
2. Las Vegas, NV
3. Phoenix, AZ
4. San Jose, CA

The authors then analyzed how the Mayor's authority evolves during times of emergency in each city's charter. The research indicated that many city charters do not include a similar provision.

a. Current Charter provision at issue:

Art. III § 2	“In time of public danger or emergency, the Mayor may, with the consent of the council, take command of the police, maintain order and enforce the law.”
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This provision outlines the current role of the Mayor in emergencies. The language is a remnant, and has not been invoked in recent times. Similar provisions can be found in a number of Council-Manager cities. The intent has apparently been to assure that in the case of an emergency, an elected official is in charge. Later on, this official can be held directly accountable to the people for what transpires during the emergency.

b. Alternatives:

Peer City	Charter Provision	Excerpt
Boulder, CO	Art. II § 15	“The Mayor shall be recognized as the official head of the city for ceremonial purposes, by the courts for serving civil process, and by the governor for military purposes. [The same language is in the paragraph preceding the paragraph in question in the Cincinnati Charter.] In time of emergency, the Mayor shall, if the council so orders, take command of the police and maintain and enforce the laws, temporarily superseding the City Manager in police affairs.”
Las Vegas, NV	Art. III § 3.010(2)	“The Mayor... shall take all proper measures for the preservation of the public peace and order and the suppression of riots, tumults and all forms of public disturbances, for which purpose he may request assistance from the Sheriff of the Las Vegas Metropolitan Police Department. If the local law enforcement forces are inadequate, he may call upon the Governor for military aid in the manner provided by law.”
Phoenix, AZ	Ch. V § 4(A)	“Authority during emergency. The Mayor shall govern the city during times of great emergency and shall make proclamations necessary arising out of that emergency. Any violation of proclamations made pursuant to this authority shall be a misdemeanor.”
San Jose, CA	Art. II § 203	“Continuity of Government in Event of Disaster. In order to provide for continuity of City government during an emergency resulting from war, enemy-caused calamity or other disasters of whatever nature, and in order to otherwise handle any such emergency, the Council is hereby empowered, anything elsewhere in this charter to the contrary notwithstanding to:...” [The charter goes on to list a series of authorizations

		that would supervise the actions of those who would otherwise be in charge in non-emergency situations.]
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The latter two Council-Manager cities are from the list of peer cities used by the Subcommittee for comparison in other contexts. It should be noted that other Council-Manager peer cities' charters make no mention of emergency powers, including Austin, TX; Oklahoma City, OK; and Kansas City, MO.

c. Discussion:

According to the current charter language "In time of public danger or emergency, the Mayor may, with the consent of the council, take command of the police, maintain order and enforce the law." This wording has been in the Cincinnati Charter for a long time. Similar provisions can be found in a number of Council-Manager cities. The intent apparently has been to assure that in the case of an emergency, an elected official (or officials) is in charge so that he/she/they can be held directly accountable to the people at a later date for what transpires during the emergency. The assumption where included has usually involved the more "classic" relationships of Council-Manager systems – a Mayor, however selected, (e.g., by the other members of the council, automatically the top vote getter among those elected to council, or directly elected), is a member of the council and the leader of the council and together with the rest of the council is responsible for the appointment of the City Manager. In normal times, the City Manager would be considered the supervisor of the police department, just as he/she is with the other city departments.

The Mayor-Council cities generally make no mention of emergency powers for the Mayor over the police or otherwise. In that form of government the Mayor, as ongoing chief executive officer for the city would be automatically expected to be in charge.

In our current "Stronger Mayor" system the City Manager would be considered the supervisor of the police department, just as the City Manager is the supervisor of all city departments. The very broad language in the current city charter could permit the Mayor to take over Cincinnati's police department by claiming a state of emergency, but the check on that power is that to do so; the Mayor must persuade a majority of Council to declare the emergency. *One shortcoming of the current language is that there is not a clear mechanism to end the state of emergency.*

Not all Council-Manager charters include wording about granting the Mayor special authority during times of emergency. As stated above, the Council-Manager form of government would already have identified the manager as the supervisor of all city departments.

Since some concerns have been expressed about the powers of the Mayor in our current "stronger Mayor" system (really a hybrid of Council-Manager and Mayor-Council systems), a decision about keeping this provision or modifying it or eliminating it altogether should perhaps be made after other more significant balance of power decisions are made.

VII. Ceremonial Roles of the Mayor

a. Current Charter provision at issue:

Art. III § 2	<p>The Mayor shall be recognized as the official head and representative of the city for all purposes, except as provided otherwise in this charter.</p> <p>....</p> <p>The Mayor shall perform such other duties as may be prescribed by this charter or as may be imposed by council, consistent with the office. The Mayor shall be recognized as the official head of the city for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the governor for military purposes.</p>
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b. Discussion:

A declaration that the Mayor is the ceremonial head of the city is not a remnant of a bygone era. In a Council-Manager form of government, the City Manager is technically the top executive official in the government, which makes it necessary to clarify that the elected Mayor is the ceremonial head of the city. There will always be a need for someone to cut ribbons and hand out keys to the city, and the importance of that duty for the city’s highest elected official should not be underestimated.

VIII. The Appointment Power of Mayor is Ambiguous in Terms of how it relates to Consent of Council.

a. Current Charter provision at issue:

Art. III § 2	<p>The Mayor shall appoint his or her assistants in the unclassified service and shall fix their salaries. Such assistants shall serve at the pleasure of the Mayor and shall constitute the mayoral service. <i>All other appointments to be made by the Mayor shall be made with the advice and consent of the council except as otherwise provided in this charter.</i></p>
Art. VII § 1	<p>The board of park commissioners shall consist of five members. The members now serving shall continue in office until the expiration of their terms. On January 15, 1992, the Mayor shall appoint one member to serve for a term ending January 1, 1998, and one member to serve for a term ending January 1, 2000. Thereafter as the term of each member expires the Mayor shall appoint one member to serve for a term of six years until a successor is appointed and</p>

	<p>qualified, and shall fill all vacancies in the board for unexpired terms. The board shall appoint its employees. The board shall have the control and management of the parks and parkways of the city and may adopt and enforce regulations as to the proper use and protection of park property, and provide penalties for the violation of such regulations. Such regulations shall not take effect until copies thereof are filed with the city solicitor and with the clerk of council. Property under the control of the board shall not be transferred, or used for any but park purposes except with the consent of the board. The board shall have all other powers conferred upon boards of park commissioners by general law but council may modify such laws and may designate boulevards, streets and highways in the parks and parkways as part of the public street and road system of the city and give to the City Manager supervision over the construction, repair and maintenance thereof. Such action shall be by ordinance which, unless it is approved by the board of park commissioners, shall require a vote of three-fourths of the members elected to the council.</p>
<p>Art. VII § 1</p>	<p>The city planning commission shall consist of seven members. One member shall be the city manager or a person duly designated by the city manager who may at any time serve as alternate member for the city manager; one shall be a member of council selected by it; and five shall be electors of the city of Cincinnati appointed by the mayor.</p> <p>As the term of each appointed member expires, the mayor shall appoint a successor for a term of five years. All vacancies in the commission for unexpired terms of appointed members shall be filled by the mayor.</p> <p>Each member of the commission shall serve for the term of appointment and until a successor is appointed and qualified. All members of the commission shall serve as such without compensation.</p>
<p>Art. VII § 11</p>	<p>The board of health shall consist of nine members, who shall serve for a term of three years each. Not more than four of these members shall be professional providers of health services. The remaining members shall represent consumers of health services and citizens at large. No person shall be appointed as a member of the board for more than two consecutive full terms. For purposes of this provision, service for more than eighteen months shall be considered a full term. The members now serving shall continue in office until the appointment and qualification of a new board under the provisions of this section, at which time their present terms shall cease and determine.</p> <p>Subsequent to the effective date of this section, the mayor shall appoint three of the members now serving to new terms of one year each, and the other two members to two-year terms. The mayor shall also appoint one additional person to a two-year term, and three additional persons to three-year terms. Thereafter, as the term of each member expires, the mayor shall appoint one person to serve for a term of three years and until his successor is appointed and qualified, and shall fill all vacancies on the board for unexpired terms.</p>

Art. VII § 14	There shall be a public recreation commission consisting with one member of the board of education appointed by said board, one member of the board of park commissioners appointed by said board, and three citizens appointed by the mayor, to serve without compensation. The term of office of said members and the powers and duties of said commission shall be fixed by ordinance of the council, but all funds obtained from levies for recreational purposes, appropriated by other public bodies, or donated for such purposes to the city of Cincinnati or the public recreation commission, shall be expended by said commission.
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b. Discussion:

The Mayor’s power to appoint individuals to boards and commissions is subject to the “advice and consent of council,” unless the charter provides differently for a specific type of appointment. “Advice and consent” is a common phrase found in many foundational documents, including the U.S. Constitution.¹ The prevailing interpretation in U.S. government bodies is that the term “advice and consent” refers to confirmation of appointees after nomination. In the first U.S. congress, there was significant debate about whether the “advice and consent” required the executive to consult the legislature before making a nomination or whether the term merely required confirmation post hoc. President Washington took the view that pre-nomination consultation was permissible but not required, and that the provision only required post-nomination legislative confirmation.² Since that time, Washington’s interpretation has been the prevailing interpretation of the term in the United States and the term appears in many state constitutions and municipal charters.

Currently, the nomination process operates just as the provisions excerpted above state. Council oversight over the Mayor’s appointment power is an important check and balance, and therefore we do not recommend any change to this provision regardless of whether the Task Force chooses to recommend a Council-Manager or Mayor-Council form of government.

IX. When and how should the Mayor have the right to Veto Legislation?

a. Current Charter provision at issue:

Art. II § 6	“If the Mayor does not approve the legislation, the Mayor may veto the legislation and return it to the council within four days after passage with a notation of the veto on the legislation. The vetoed legislation shall be placed on the agenda of the council at its next regularly scheduled meeting. Legislation vetoed by the Mayor and returned to the council may not be amended.
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¹ See U.S. Const., Art. II, §2 requiring the President to obtain the “advice and consent” of the senate in appointing federal officials and ratifying treaties.

² See <http://www.senate.gov/artandhistory/history/common/briefing/Nominations.htm>

	<p>Upon motion passed by five members of the council, the council may reconsider the vetoed legislation. If six members of the council vote affirmatively to override the veto and enact the legislation, it becomes law notwithstanding the Mayoral veto. It shall be effective according to its terms upon the affirmative vote and, if otherwise subject to referendum, the time for referendum on the legislation shall begin to run again from that date. Unless the council overrides the veto of the Mayor at or before the second regularly scheduled meeting of the council following passage of the legislation, the legislation shall not take effect. Legislation enacted by the council over the veto of the Mayor shall not be vetoed a second time. An ordinance placing on the ballot a charter amendment initiated by petition shall not be subject to a Mayoral veto.</p> <p>If the Mayor neither approves nor vetoes the legislation, the legislation shall be effective according to its terms the fifth day following its passage. The effective date shall be noted on the original copy of the legislation by the clerk of council.”</p>
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City council passes legislation in the form of municipal ordinances. Currently the council also employs motions to express the will of council and direct the administration. The solicitor has advised that motions, which are not signed into law by the Mayor, are not legislation, and not subject to Mayoral veto. However the Mayor and City Manager are not legally compelled to comply with a motion.

Once city council votes upon an ordinance, the Mayor has the opportunity to veto that ordinance. If the Mayor decides to exercise the ability to veto, then the ordinance will be placed on the agenda for the legislature to reexamine. Once the ordinance is brought to city council a second time, the council has the opportunity to override the Mayor’s veto with the affirmative vote of six members.

If the Mayor fails to act upon the ordinance, it will automatically become a law after five days.

b. Alternatives:

City	Mayoral Veto System
Phoenix, AZ	No Mayoral veto.
San Jose, CA	No Mayoral veto.
Indianapolis, IN	Yes.
Austin, TX	No Mayoral veto.
Columbus, OH	Yes.
Charlotte, NC	Yes. Vetoes can be overridden by 2/3 majority of city council.
Denver, CO	The Mayor may veto any ordinance. If the Mayor disapproves, the ordinance shall be returned to the Council within five days with the Mayor's objections in writing. Then, if nine of the thirteen members vote to pass the same over the Mayor's veto, it becomes a law.
Portland, OR	No Mayoral veto.

Louisville, KY	The Mayor may veto any ordinance. If the Mayor disapproves, the ordinance shall be returned to the Council within 10 days with the Mayor's objections in writing. Council can override the Mayor's veto by the affirmative vote of one more than a majority of the membership.
Oklahoma City, OK	No Mayoral veto.
Nashville, TN	The Mayor may veto any resolution or ordinance within 10 days. The Council can override the veto by 2/3 vote of council members.
Kansas City, MO	The Mayor may veto any ordinance or resolution. The Mayor must return emergency ordinances or resolutions within 5 days, all other ordinances within 7 days.
Cleveland, OH	The Mayor has 10 days to either sign, resubmit with objections, or pocket veto legislation. If the Mayor submits with objections or pocket vetoes the legislation, the Council then has one week to reconsider the item. If 2/3 of active council members vote to pass the legislation, the veto is overridden.
Raleigh, NC	The Mayor has a vote on council. Council is made up of 8 members plus the Mayor. If there is a tie then the Mayor does not get an additional vote. The Mayor does not have the power to veto.
Minneapolis, MN	Anything vetoed by the Mayor shall be placed before the council un-amended at the next meeting. Two thirds vote is required to overthrow the veto.
St. Louis, MO	The Mayor has a right to veto any ordinance passed by the board of aldermen that he disapproves of, but this action must occur with 10-20 days or the bill is approved. It can then be overridden by the aldermen by a two-thirds vote.
Pittsburgh, PA	The Mayor has ten days to either sign and approve or veto and resubmit to council. If the Mayor does not act within this window, the legislation is approved.

c. Discussion:

Eight of the peer cities follow some variation of Council/Commission-Manager forms of government (not including Cincinnati). Only two of those eight cities (Charlotte and Kansas City) allow the Mayor to veto an ordinance. In systems where the Mayor is a voting member of council, it would not make sense to give one member of council (the Mayor) that additional power.

All Mayor-Council forms of government allow a veto. In the Mayor-Council form, the Mayor holds more political power, and is often the head of the executive branch. This means that it is necessary for the Mayor to be able to veto to maintain our system of checks and balances at the local level. Each jurisdiction that allows a veto also gives the legislative branch an opportunity to overturn the Mayoral veto with a super-majority (usually 2/3 of members). This allows the legislative branch to check the executive branch's power to veto. Usually, once a legislative branch passes the vetoed ordinance with a super-majority, the Mayor can no longer veto the bill and it becomes an effective law.

X. How to set the Agenda for City Council (Pocket Veto)

a. Current Charter provision at issue:

Art. III § 2	<p>“The Mayor shall preside over all meetings of the council but shall not have a vote on the council. The Mayor may call a special meeting of the council. ... The Mayor shall assign all legislative matters to the appropriate committee for consideration. The Mayor may propose and introduce legislation for council consideration.” ...</p>
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Currently, the power to assign matters to legislative committee is vested in the Mayor. This power gives the Mayor substantial control over council’s legislative agenda since the Mayor has the exclusive authority to decide which legislative proposals come before council and which do not. The provision gives rise to the so-called “pocket veto” where the Mayor can prevent proposed legislation from passing by delaying assignment to committee, which is significant, because unlike the Mayoral veto permitted by Charter Art. II, § 6, a pocket veto cannot be overridden by council. Even though the language in the charter provides that the Mayor “shall” assign “all” matters to committee, in an unforeseen interpretation, many observers, including the city Law Department, have read the provision such that no action is required within any specified period of time.

b. Alternatives:

Peer City	Charter Provision	Excerpt
Columbus	§65	“Neither the Mayor nor the director of any department, nor the city attorney, shall have a vote in the council, but the Mayor shall have the right to introduce ordinances and to take part in the discussion of all matters coming before the council;”
Columbus	§19	“Each proposed ordinance or resolution shall be introduced in written or printed form, and shall not contain more than one subject which shall be clearly stated in a title; but general appropriation ordinances may contain the various subjects and accounts for which moneys are to be appropriated. The enacting clause of all ordinances passed by the council shall be, ‘Be it ordained by the council of the city of Columbus.’ The enacting clause of all ordinances submitted by the initiative shall be, ‘Be it ordained by the people of the city of Columbus.’”
Austin	Art. II, §13	“The council shall by ordinance determine its

		own rules and order of business. A majority of the whole council shall constitute a quorum, and no action of the council shall be of any force or effect unless it is adopted by the favorable votes of a majority of the whole council. Minutes of all meetings of the council shall be taken and recorded, and such minutes shall constitute a public record.”
Denver	Den. Mun. Code § 13-11	<p>Sec. 13-11. Bills for ordinances.</p> <p>(a)<i>Filing of bills.</i> “All bills for ordinances shall be filed in the council office in their entirety, unless otherwise authorized by the president of council, no later than 12:00 noon on the Thursday preceding the meeting of the council at which such bills shall be introduced; or, if Thursday is a legal holiday, then such bills shall be so filed no later than 12:00 noon on the Wednesday preceding such meeting of the council.</p> <p>(b)<i>Late filings.</i> Bills for ordinances may be introduced as late filings, provided that a unanimous vote of the council present at a meeting of the council approves a suspension of the rules of council procedure to permit introduction of such bills.</p> <p>(c)<i>Introduction of bills.</i> Subject to the provisions of subsections (a) and (b), bills for ordinances may be introduced by any council member, and any such bill for an ordinance shall, when introduced, have the name of the council member introducing it plainly written thereon. Bills for ordinances shall be numbered from the first of January in each year in the order of their introduction.</p> <p>(d)<i>Printing bills.</i> Before the final consideration of any bill for an ordinance, or before the same shall have been put upon its final passage, it shall be the right of a majority of the council members to require such bill to be printed and copies thereof to be distributed among the members of the council.”</p>
Indianapolis	§151-63	<p>Sec. 151-63. Procedures for introduction of proposals.</p> <p>“(a)Councilors or other persons authorized by law may initiate proposals for introduction by submitting such proposals to the clerk for review</p>

		<p>by the general counsel as to form and legality. If such person is not a councilor, the person shall indicate the councilor who has agreed to sponsor the proposal.</p> <p>(b) If such proposal is approved by the general counsel and was submitted by noon on the fifth business day prior to the date the preliminary agenda is to become available to the public pursuant to section 151-95(2)(b)3., the proposal shall be entered on the agenda of that meeting for introduction.</p> <p>(c) The deadline established by subsection (b) may be waived only by the president of the council.”</p>
Indianapolis	§151-74	<p>Sec. 151-74. Introduction of proposals. “Proposals shall be introduced and presented to the city-county council only in the following manner: Under the proper item of business, the clerk shall read the proposal, stating only the number, reciting the title and stating the name of the person initiating the proposal. After each proposal is introduced, the president shall state the committee to which the proposal is referred or, if the proposal has been previously referred to a committee, the committee to which the referral was made. If, by law, a public hearing before the entire council is required, the public hearing shall be at the next regular meeting unless the president shall state another date for the public hearing. If the proposal is for a rezoning ordinance, the approval of which by the metropolitan development commission has been certified to the clerk, the president shall inquire if any member moves that the proposal be set for public hearing before the entire city-county council; and if no such motion is adopted, the proposal shall be deemed adopted.”</p>
Minneapolis	Minneapolis, Mun. Code, App. A, Art. IX, §1	<p>“An ordinance may be introduced only by a Council Member who, at a previous meeting or session, shall have given notice thereof; or by any committee when the subject matter of the ordinance shall have been first referred to the committee at a previous meeting or session of the City Council. A Council Member need not be present at the meeting to offer a notice of intent to introduce. Upon introduction, the presiding</p>

		<p>officer shall refer the proposed ordinance to the appropriate committee having jurisdiction over the subject matter. Where required by law, or deemed necessary by the City Council, the committee to whom an ordinance is referred shall conduct a public hearing on said ordinance. The public hearing may be conducted concurrently with the regular committee meeting to which the ordinance is referred. Upon introduction and referral of an ordinance to the appropriate committee, the chair of that committee may at that time announce the time and place of the public hearing to be held on the ordinance.”</p>
Minneapolis	Minneapolis, Mun. Code, App. A, Art. IX, §1	<p>Section 4. Consideration of Committee Business. “Each committee shall consider matters referred by the City Council at its next regular meeting. A committee may also take up and consider proposals which arise within its jurisdiction or upon matters which may be directed to its attention by City officials or departments. Any matter referred or directed to a committee, or any matter which is taken up by the committee within its own jurisdiction, shall remain in the committee until its report is made, unless the City Council has directed that the committee report by a date certain.”</p>
Raleigh	Art. II, §2.6	<p>Sec. 2.6 Adoption of Rules of Procedure; Meetings Open To Public. “The City Council may from time to time establish rules for its proceedings as may be deemed necessary and proper. All legislative sessions of the City Council shall be open to the public, and the City Council shall not by executive session or otherwise vote on any question in private session. A full and accurate journal of the proceedings shall be kept and shall be open to the inspection of any qualified registered voter of the City.”</p>
Raleigh	General Code Part 1, Ch. 1, Art. C, §1-1037	<p>Sec. 1-1037. Matters Referred To Committee. “When matters are placed before the City Council, the Mayor or, in his absence, such other presiding officer shall have the power to refer them to an appropriate committee. If two (2) or more members of the Council object to any referral, the Mayor or other presiding officer shall</p>

		place the question to a vote. The issue for decision will be: "Shall the matter be referred to the indicated committee?" If the issue passes with five (5) votes, the matter shall be thus referred. If the issue fails to receive (5) votes, the matter shall remain before the Council. The matter shall remain before the Council until, by five (5) votes of the Council, the matter is referred or otherwise disposed of."
St. Louis	Art. IV, §8	Section 8 Rules of Procedure; Punitive Powers; Attendance of Witnesses; Journal; Publication of Proceedings. "Said board may determine the rules of its proceedings, subject to this charter;"

Few of the peer cities examined give the Mayor as much control over the legislative agenda as the Cincinnati charter does. There are traditionally three main approaches to setting the legislative agenda:

1. The presiding officer (Mayor/President of Council) is responsible for referring matters to committee (Cincinnati, Indianapolis).
2. The charter does not define how to set council's agenda, but instead empowers the council to adopt its own rules of procedure (Austin, St. Louis, and Raleigh).
3. Any member of council may introduce legislation, and the presiding officer is required to refer the matter to committee by a date certain. Council committees are also empowered to take up matters within their jurisdiction and refer them to the full council (Minneapolis).

***One alternative not employed by any city examined would be a provision allowing the presiding officer to assign matters to committee, but also containing a council override by which a majority of council could force the presiding officer to assign a matter to a committee.

c. Discussion:

How to set council's agenda is far from an arcane procedural debate; it has a direct impact on what legislation is considered and ultimately passed or denied by council. Cincinnati is in a very small minority in that it has unintentionally adopted language that has been interpreted to permit the so-called "pocket-veto" in its charter, giving the Mayor complete control over council's legislative agenda without possibility of override by council. Of the cities examined, only the Indianapolis charter contains similar language. Raleigh has language in its municipal code that could give rise to a pocket veto, but because that is a municipal ordinance, it can be modified by a majority vote of the council. Minneapolis has legislated to avoid pocket vetoes by empowering council committees to take up any matter within their jurisdictions on their own accord.

Most cities give council the authority to set its own rules of procedure, which means that any procedures relating to setting the legislative agenda are not codified in the charter. Instead, the rules for setting the agenda take the form of municipal ordinances that can be modified by a simple majority of the council. Legally, the charter supersedes a municipal ordinance when the two conflict.

In cities with a Council-Manager form of government, the Mayor, who is the presiding officer on council is responsible for setting council’s agenda. In Mayor-Council cities, the Mayor is not involved and the council president is responsible for the agenda.

The pocket veto is an extraordinary power, and under the current prevailing interpretation of the Cincinnati charter, the pocket veto is subject to extreme abuse. The committee should propose either adding a provision for council to override a pocket veto, requiring the presiding officer to assign matters to committee within a specified time period, or removing the language from the charter altogether, and empower council to set its own rules of procedure by municipal ordinance as a legislative body separate from the executive body.

XI. What is the proper role of the Mayor in Council meetings and functions?

a. Current Charter provision at issue:

Art. III § 2	“The Mayor shall preside over all meetings of the council but shall not have a vote on the council. The Mayor may call a special meeting of the council. The Mayor shall exercise the veto power as provided in Article II. The Mayor shall appoint and may remove the Vice-Mayor and the chair of all committees of the council without the advice and consent of the council. The Mayor shall assign all legislative matters to the appropriate committee for consideration. The Mayor may propose and introduce legislation for council consideration...”
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Even though the Mayor cannot vote, the Mayor still holds a great deal of power over the council. The Mayor can preside over meetings, appoint members to committees, introduce legislation, set the agenda, and call a special meeting.

b. Alternatives:

City	Principal Model Followed	Preside Over Meetings	Vote	Appoint Members to Committees	Introduce Legislation	Set Agenda	Call Special Meetings
Phoenix, AZ	Cncl-Mgr	X	X		X		X
San Jose, CA	Cncl-Mgr	X	X		X	X	
Indianapolis, IN	Mayor-Cncl				X		
Austin, TX	Cncl-Mgr	X	X				
Columbus, OH	Mayor-Cncl	X			X		
Charlotte, NC	Cncl-Mgr	X					
Denver, CO	Mayor-Cncl						X
Portland, OR	Commission	X	X	X	X		

Louisville, KY	Mayor-Cncl	X					X
Oklahoma City, OK	Cncl-Mgr	X	X		X		
Nashville, TN	Mayor-Cncl						X
Kansas City, MO	Cncl-Mgr	X		X			
Cleveland, OH	Mayor-Cncl				X		
Raleigh, NC	Mayor-Cncl	X	X				
Minneapolis, MN	Mayor-Cncl						X
St. Louis, MO	Mayor-Cncl				X		
Pittsburgh, PA	Mayor-Cncl				X		

Most cities do not allow Mayors to appoint members to committees, nor set agendas. However it seems very common to allow a Mayor to preside over meetings as well as introduce legislation.

c. Discussion:

The table above demonstrates that the role of the Mayor during council meetings varies both between Council-Manager and Mayor-Council forms of government, as well as within each of those categories.

The Mayor-Council form of government does not allow the Mayor to preside over council meetings. This may be due to the fact that the Mayor has more political power in this form. It would be undesirable to have a powerful member of the executive branch preside over meetings of the legislative branch. However, in all Council-Manager forms of government the Mayor presides over the council meetings. In this system, the Mayor serves more as a figurehead than a wielder of executive power, so the executive role of the Mayor becomes much less pronounced.

Only 6 of 17 Mayors in the peer group get a vote on council and none of those six emerge from the Mayor-Council form of government. In the Mayor-Council form of government, the Mayor holds a vast amount of executive authority. Allowing the Mayor to vote on issues before the legislative branch would impede upon the legislative branch's power. In the Mayor-Council system, the Mayor exercises an executive check on legislation through a veto. In systems where the Mayor's authority is less pronounced, there is less danger in giving the Mayor a vote.

It is also exceedingly rare to have the Mayor appoint members of council to council committees, occurring in just two of the peer jurisdictions that were reviewed.

A majority of Mayors, in either form of government, are able to introduce legislation to the council for consideration. This act does not assert any unfair influence over the legislative branch, it merely presents an idea that they are free to review and act upon after discussion.

XII. Role of the Vice Mayor

a. Current Charter provision at issue:

Art. III § 3	<p>“At the first meeting in December of the council after its election, the Mayor shall select a Vice-Mayor from among the members of the council to serve for a term of four years, subject to removal by the Mayor. The Vice-Mayor shall have the powers and perform the duties of the Mayor during the Mayor's absence or disability. When presiding at council, the Vice-Mayor shall vote on legislative matters coming before the council and perform the ministerial duties relating to legislation passed, but shall not exercise the Mayor's power of veto, appointment or removal. No additional compensation shall attach to the office of Vice-Mayor.</p> <p>In the event of the death, removal or resignation of the Mayor, the Vice-Mayor shall succeed to the office of Mayor in accordance with this section. The Vice-Mayor's vacancy on council shall be filled in accordance with Article II, Section 4b of this charter and a new Vice-Mayor shall be selected by the Mayor from the members of the council.</p> <p>Should the death, removal or resignation of the Mayor occur prior to June 1 of the second calendar year following the regular municipal election for the choice of Mayor, the Vice-Mayor shall hold the office of Mayor until December 1 of that year and until a successor is elected and qualified to fill the unexpired term. An election to fill the unexpired term of Mayor will be held on the date of the regular municipal election held during the second calendar year following the regular municipal election for Mayor. Nominations and election of the Mayor to the unexpired term shall be governed by the provisions of Article IX of the charter for the election of the Mayor.</p> <p>Should the death, removal or resignation of the Mayor occur on or after June 1 of the second calendar year following the regular municipal election for the choice of Mayor, the Vice-Mayor shall succeed to the office of Mayor for the remainder of the unexpired term of the Mayor.”</p>
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Currently, appointment and removal of the Vice Mayor rests solely in the power of the Mayor. The Vice Mayor serves as the presiding officer over council when the Mayor is unavailable, but the Vice Mayor does not have veto power. The Vice Mayor also succeeds the Mayor in the event of death, withdrawal, or removal from office.

b. Alternatives:

Peer City	Charter Provision	Excerpt
Columbus	N/A	No Vice Mayor

Cleveland	N/A	No Vice Mayor
Austin	Article 2, Section 10	“The councilmember elected to and occupying the place designated "Mayor" shall be the Mayor of the City of Austin. At its first meeting following each regular election of councilmembers, the council shall, by election, designate one of its number as Mayor pro tem, who shall serve in such capacity during the pleasure of the council. The Mayor shall preside at all meetings of the council and shall be recognized as head of the city government for all ceremonial purposes, for the purpose of receiving service of civil process, and for military purposes, but he or she shall have no regular administrative duties. The Mayor, as a member of the council, shall be entitled to vote upon all matters considered by the council, but shall have no veto power. The Mayor pro tem shall act as Mayor during the absence or disability of the Mayor, and shall have power to perform every act the Mayor could perform if present.”
Charlotte	Ch. 3, §§3.23-3.24	Sec. 3.23. Quorum; Procedure; Voting. “... In the absence of the Mayor, the Mayor Pro Tempore shall preside and, when so presiding, shall have the right to vote upon all questions, but shall have no additional vote in case of a tie, and shall not have veto power; Sec. 3.24. Powers and duties of Mayor. ...In the absence or incapacity of the Mayor, all his duties, powers, and obligations shall be vested in the Mayor Pro Tempore.”
Denver	Title I, Part 1, §2.1.2	“The Mayor shall designate a member of the cabinet, as the term is defined in Section 2.2.10, to be the Deputy Mayor. The designation shall be filed with the City Clerk. The designation shall be valid for one (1) year unless a vacancy in the office occurs, in which case the Mayor shall appoint another member of the cabinet to be the Deputy Mayor. The Deputy Mayor shall serve at the pleasure of the Mayor. Whenever the Mayor is unable, from any cause, to perform the duties of the office, then the officer of the City and County of Denver who is highest on the following list and who is not unable from any cause to discharge the duties of Mayor shall be the acting Mayor: Deputy Mayor, President of the

		Council.”
Minneapolis	Ch. 3, §2(a)-(b).	<p>“At the first meeting of the City Council in January of each year after a general municipal election they shall proceed to elect by ballot from their members a President and Vice-President.</p> <p><i>(b) Succession—Mayor and Council President—Duties and Succession.</i></p> <p>If the Mayor is unable for any reason to discharge his or her required duties, a member of the City Council shall serve as Acting Mayor. The line of succession for Acting Mayor shall be the Council President, Council Vice-President, and then as determined by resolution of the City Council. Acts performed by the Acting Mayor shall have the same force and validity as if performed by the Mayor.</p> <p>In case the President is absent from any meeting of the City Council, the Vice-President shall discharge the duties of such President and act in the President’s place. In case the Vice-President also is absent from the same meeting of the City Council, the City Council shall select a Chair pro tem in accordance with Robert’s Rules of Order.”</p>
Pittsburgh	Art. 2, §207	<p>Deputy Mayor</p> <p>“The Mayor may appoint a non-elected major administrative unit head to act as deputy Mayor while the Mayor is necessarily absent from the City or temporarily disabled. The Mayor shall file a notice of the appointment in the office of council. The deputy Mayor shall have all the powers and discharge all the duties of the Mayor during the Mayor’s absence or temporary disability except the power of appointment or removal. The deputy Mayor shall serve without additional compensation and post bond with the controller in an amount approved by council.”</p>
Raleigh	Art. V, §5.1	<p>“In the absence or incapacity of the Mayor, all of his duties, powers and obligations shall be vested in the Mayor pro tempore.”</p>
St. Louis	Art. VII, §3	No Vice Mayor – President of Board of Alderman fills in in Mayor’s absence.

Several cities do not have an analogous official to the Cincinnati Vice Mayor (Columbus, Cleveland, Minneapolis). Generally, the role of the Vice Mayor (or closest analogous position) falls into one of two categories, split along the lines of the form of municipal government employed by the city:

1. Council elects the Vice Mayor, or more commonly “Mayor Pro Tem,” who serves as the presiding officer over council and the ceremonial head of the city when the Mayor is unavailable. This approach is common in Council-Manager cities (Austin, Charlotte, and Raleigh).
2. The Mayor appoints the Vice Mayor, or more commonly “Deputy Mayor,” who serves at the pleasure of the Mayor as an administrative officer. The deputy Mayor fulfills all of the duties of the Mayor in the Mayor’s absence. This approach is common in Mayor-Council cities.

c. Discussion:

Cincinnati is unusual as a Council-Manager city where the Mayor appoints the Vice Mayor, who serves at the pleasure of the Mayor. That approach to appointment is common in Mayor-Council cities, where the Deputy Mayor is an administrative official.

However, whether it goes by the name “Vice Mayor,” “Deputy Mayor,” or “Mayor Pro Tem,” the duties of the office are generally the same: to provide a line of succession for the powers of the Mayor in the case of the Mayor’s unavailability. The specific duties of a Vice Mayor are defined by the form of government employed by the city (which also defines the role of the Mayor).

Currently in Cincinnati, in addition to the succession line and the ceremonial role, the appointment of the Vice Mayor is an important political tool for the Mayor to use for building coalitions in effecting a legislative agenda.

XIII. Selection of, Changing and Function of the President Pro Tem

a. Current Charter provision at issue:

Art. II § 5a	<p>“The council shall organize itself and conduct its business as it deems appropriate, including the formation of committees for the efficient conduct of the business of the council. At the first meeting in December following a regular municipal election for the choice of members of council, the council shall select from among its members a President Pro Tem who shall preside at council meetings when both the Mayor and Vice-Mayor are absent or disabled and during any period during which there is a vacancy in both the office of Mayor and Vice-Mayor. The President Pro Tem shall serve a term of four years. When presiding at council, the President Pro Tem shall vote on legislative matters coming before the council and perform the ministerial duties relating to legislation passed, but shall not exercise the Mayor's power of veto, appointment or removal.”</p> <p>...</p>
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The President Pro Tem serves the function of presiding over council meetings when both the Mayor and Vice Mayor are unavailable due to absence, disability, or vacancy. The President Pro Tem is not invested with any of Mayoral powers of veto, appointment, or removal. There is currently no means to remove the President Pro Tem. Council selects a new President Pro Tem at the beginning of its four-year term.

b. Alternatives:

Research has not revealed an example of a municipality with a charter provision providing for removal of President Pro Tem. However, the Subcommittee has developed the following possible solutions:

2. The President Pro Tem can be removed by a 2/3 vote of council at any time.
3. The charter can incorporate procedure to replace the President Pro Tem (currently there is none), and if the council-member occupying that position is removed for office for any reason through the normal procedure for removing a council-member, then the President Pro Tem will be reelected by the sitting council at the time of the re-election.

c. Discussion:

Most of the charters examined do not contain provisions in their charters to remove the President Pro Tem.³ The position is of relatively small importance because its duties are ministerial and only employed on the occasion that two other officers are unavailable. Given that, and because the office is selected by the members of council (and not elected by the public), a detailed impeachment process seems unnecessary. If a provision to allow for removal will be included, it should follow the convention of requiring a 2/3 vote (option 1) to remove a presiding officer.⁴ Removal of a presiding officer should be an uncommon remedy and a simple majority vote is not appropriate.

Vesting the power of removing the President Pro Tem in the Mayor would align the process with that of removal of the Vice Mayor. However, the Vice Mayor is appointed by the Mayor, whereas the President Pro Tem is selected by council. The body that selects the officer should retain the power to remove the officer. Otherwise, the Mayor would effectively control appointment of the President Pro Tem.

Currently, the charter requires council to elect the President Pro Tem at its first meeting in January following the general election. Council is not empowered to elect a President Pro Tem at any other time. Adding a provision to replace a President Pro Tem would rectify the potential problem wherein the President Pro Tem resigns, dies, or is removed from office before the expiration of her council term without a procedure in place for council to replace the officer. There does not need to be a special provision to remove the President Pro Tem due to the relative

³ See, e.g., Cleveland Charter, Ch. 5, §30; Columbus Charter §10.

⁴ See generally Roberts Rules of Order Newly Revised, Chapter XX.

insignificance of the position. Instead, the typical procedures for removing council members should suffice.

XIV. What is Council’s Proper Oversight Role of City Administration?

a. Current Charter provision at issue:

Art. IV § 2	“The City Manager shall report to the Mayor and the council. Neither the Mayor, the council, nor any of its committees or members shall interfere in any way with the appointment or removal of any of the officers and employees in the administrative service. Except for the purpose of inquiry; the Mayor, the council and its members shall deal with that part of the administrative service for which the City Manager is responsible, solely through the City Manager.”
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Presently, the City Manager holds direct authority over administrative functions, such as the hiring and removal of administrative employees. If the council wishes to give input regarding administrative services, they can only do so by consulting the City Manager.

b. Alternatives:

System	Changes Necessary to Implement This System in Cincinnati
Council-Manager	No Change
Stronger-Mayor Hybrid (Cincinnati Model)	The Mayor selects the City Manager to present to the council for their endorsement before hiring is completed. The City Manager reports directly to the Mayor. Neither the Mayor, the council nor any of its committees or members shall interfere in any way with the appointment or removal of any of the officers and employees in the administrative service. Except for the purpose of inquiry; the Mayor, the council and its members shall deal with that part of the administrative service for which the City Manager is responsible, solely through the City Manager.
Mayor-Council	The Mayor appoints the City Manager, and the City Manager reports directly to the Mayor. The elected Mayor is given almost total administrative authority as well as a clear, wide range of political independence. The Mayor has the power to appoint and dismiss department heads without council approval and little, or no, public input. In this system, the strong-Mayor prepares and administers the city budget, although that budget often must be approved by the council.

The current charter addresses the council’s oversight role as a Council-Mayor system would. If the city were to move toward a Strong-Mayor or Stronger-Mayor Hybrid system, the charter language should be updated.

c. Discussion:

The Stronger Mayor Hybrid system currently in place presents issues because the City Manager has to report to both the city council and the Mayor. This provision essentially forces the City Manager to answer to ten different bosses – the Mayor and nine council members. These bosses may find themselves in conflict, and their interests may not always align. In reality now, however, the hiring and firing discretion is that of the Mayor, so while the City Manager technically reports to Council, the manager is more beholden to the Mayor.

The current Charter language approximates a Council-Manager form of government but the reality of the Mayor having effective discretion to hire and fire the City Manager presents conflicts as was just mentioned. Under a pure Council-Manager form of government the City Manager would report only to the Council and the administrative functions of government would report only to the City Manager.

As was mentioned in a prior section, there are a number of options for hiring and removing the City Manager in a Council-Manager form of government that do not give the office of the Mayor sole discretion which has created the current conflict.

Under a Council-Mayor form of government the Mayor is the executive of the administrative functions of government and has the sole discretion to hire and remove a chief operating officer and all other administrative positions. The Council’s oversight role of the administration in a Council-Mayor form of government is only through the legislative function of passing ordinances and finalizing a budget.

XV. How is Compensation set for Council and for the Mayor?

This section explores how city council is compensated. The authors used comparisons between Cincinnati and a group of peer cities that were determined to be similar by the Cincinnati USA Regional Chamber, Vision 2015 Report.

a. Current Charter provision at issue:

Art. II § 4	“Each member of council shall receive, subject to the provisions of Section 4a herein, annual compensation in an amount equal to three-fourths (¾) of the annual compensation payable to the county commissioners of Hamilton County, Ohio, as it existed on March 1, 2005. Such compensation shall be payable semi-monthly.”
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Under the charter, each council member is paid three-fourths of a county commissioner’s yearly salary. The Mayor is paid twice the compensation of a member of council (see Charter Art. III, §1). This compensation is paid out on a semi-monthly basis.

b. Alternatives:

City	Compensation Structure
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Phoenix, AZ	The Citizens' Commission on Salaries for Elected City Officials, as set up by the charter, votes on pay recommendations. Mayor receives an annual salary of \$88,000 and each of the council members get paid \$61,600 a year. They have not received a pay increase since 2005.
San Jose, CA	<p>The Council Salary Setting Commission has five members. Each member of the commission serves a four year term. Pursuant to City Charter Section 407, the City Council Salary Setting (CSS) Commission meets from January through April in odd-numbered years to recommend a salary for the Mayor and the city council Members. The commission makes its recommendation to the city council and the council may adopt the recommended salaries, or lesser amounts, but the council cannot adopt salaries higher than those recommended by the commission.</p> <p>The current annual salary for a City Council Member is \$81,000 and the Mayor's salary is \$114,000. Council and Mayor with the power of referendum adopt the recommendations of the commission regarding salaries.</p>
Indianapolis, IN	The Mayor's annual salary is \$95,000. Each member of the Council makes 12% of the Mayor's salary plus \$112 dollars for every council meeting that they attend, and \$62 for every committee meeting that they attend.
Austin, TX	Ordinance 20061116-081. This ordinance grants future raises to the Mayor and council members "...equal to the base percentage amount established for 'meets expectations' compensation adjustments for non-Civil Service employees."
Columbus, OH	The Mayor's salary is \$152,000. The council members' salary is about \$50,000.
Charlotte, NC	The salary of the Mayor and each Council member shall be in such amounts as established by the Council from time to time. The annual salary for the Mayor is \$23,052 with an expense allowance of \$10,000 and an auto allowance of \$4,800. The annual salary for Council members is \$17,860 with an expense allowance of \$5,800 and an auto allowance of \$4,000.
Denver, CO	The current salary, in place since July 16, 2013, is \$80,753 for 12 members and \$90,428 for the Council President. The Mayor's salary is \$155,211. Under city law, the outgoing council sets the salary increases for the incoming officers.
Portland, OR	The Mayor's total compensation is \$136,489.66. The Commission's total compensation varies, around \$120,000.
Louisville, KY	Council Members' salary shall be eighty percent (80%) of that amount that is permitted for county commissioners on July 14, 2000 in KY.
Oklahoma City, OK	The salary is \$12,000.00 per annum, payable monthly and no more; plus \$20.00 for each meeting at which a quorum is present, the total amount received for any month not to exceed \$100.00.
Nashville, TN	The Mayor's annual salary is \$136,000. Members of the Metro Council

	make \$15,000 annually.
Kansas City, MO	Salaries are established by the Council, and not to be changed during terms. The salaries must be identical for all Council Members.
Cleveland, OH	The Council votes to affix a salary for the incoming council. The Council may vote to have a higher salary for their President. If a council member is absent from a regularly scheduled meeting, a 2/3rds vote will decrease their annual salary by 2%. Missing 10 consecutive meetings results in an open council seat.
Raleigh, NC	Compensation is discussed "from time to time" by the council and voted on accordingly. The council is also in charge of the Mayor's salary.
Minneapolis, MN	The Council shall never pass a deficit budget. They work in association with the Chief Financial Officer to affix appropriate salaries to all those working for the City. They vote on the passing of the budget which includes wages. Council salary is currently \$82,362.
St. Louis, MO	The Aldermen receive a set salary. Changes or increases to this salary can be made by the Civil Service Commission. The president of Council's salary is slightly higher than the rest of the members. Alderman receive \$37,000 while the president receives \$80,000.
Pittsburgh, PA	The Council may vote on their own salary however, the meeting in which this business is conducted must be a public one. This meeting will also have its details published in the paper. The Mayor's salary is \$108,131. The Council's salary is \$63,505.

The salaries for council members in peer cities range from \$12,000 in Oklahoma City (8 council members) to \$120,000 in Portland, Oregon (4 council members). There is no overarching theme to how salaries are set, though a plurality of cities have council set their own salary.

c. Discussion:

A number of differing salary setting methods are employed by cities and municipalities, but four methods were prevalent in peer cities: Citizen's Commissions, outgoing councils, current city councils, and basing salaries off other public employees.

In some cities, a Citizen's Commission sets salary. Phoenix, San Jose, and St. Louis all have adopted some version of this system. Having an impartial commission of citizens decide the salaries for council members could certainly add to the accountability if appointed in a transparent and multi-partisan manner. The idea would be that citizens would not be personally affected by salary changes, and therefore would be able to assess the amount of salary that the city council deserves, more fairly than the individual directly benefiting from the evaluation.

In other cities, the outgoing council sets salary for the incoming council. Denver was the only peer city to use this particular method. Similarly to using Citizen's Commissions, the outgoing city council will not be personally affected by the salary decision since they would be leaving office before the new salary were to become effective. This system could be limiting – the opportunity to change salaries would only arise at election time. Furthermore, many council

members are likely to get re-elected, which means they would ultimately end up voting on their future salary.

In many cities, the city council sets their own salary. Charlotte, Kansas City, Cleveland, Raleigh, Minneapolis, and Pittsburgh all allow the city council to set its own salary. Current city council members would be in the best position to know what their efforts are worth. However, this method creates endless opportunities for abuse. A city council could continue to raise their salary unchecked if the council had the power to set its own salary or conversely never raise their salary for fear of political repercussions.

Very few cities set their salaries as a percentage of the county officers' annual salary. Both Cincinnati and Louisville employ this method. The fairness of this method is probably dependent on which employee the council's salary is modeled after. However, the language in Cincinnati's current charter creates a consistent method of determining salary that cannot be affected by personal whims.

Whether the salary of council members reflects a full or part-time commitment is a value judgment based on what the community's expectations for the roles council members are, and that question is inherently tied to what type of government is employed by the city. Some members of our committee also raised concerns that decreasing the salary too much would restrict the office to only those members of the community who could afford to take the job.