FINAL RECOMMENDATIONS OF

THE CHARTER REVIEW TASK FORCE

July 8, 2015

cincinnati
charter review
TASK FORCE

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INTRODUCTION

Creation and Composition of the Charter Review Task Force.

The Charter Review Task Force (CRTF) was created by the unanimous vote of City Council on December 13, 2013. A call for volunteers to serve on the task force produced an enthusiastic response. In order to keep proceedings manageable, 25 people were selected to comprise the core group of task force members. Councilman Kevin Flynn initiated the holistic charter review process and, after seeking input from his fellow council members, determined the task force's composition. Members were selected with the intent of representing as many viewpoints and perspectives as possible. Some original members found themselves unable to meet time commitments or, for other reasons, decided to withdraw from completing this more than year-long process. Their positions were filled by committee members who were not already on the task force. The members of the task force are:

Michael D. Morgan and Mark Silbersack, CRTF Co-Chairs.

Matt Alter, Jane Anderson, Jeff Berding, Heather Churah, Ozie Davis, Freeman Durham, Akiva Freeman, Sally Fellerhoff, Jim Goetz, Harold Howard, Matt Jones, Jason Kershner, Ericka King-Betts, Dale Mallory, Pete McLinden, Carolyn Miller, Michael Patton, Mark Quarry, Daniel Rajaiah, Anne Sesler, Byron Stallworth, Vanessa White.

There are also a number of people who provided significant amounts of their time and knowledge to contribute information to the task force process. While these committee members did not cast votes on final recommendations, they were an inherent part of the process:

Hallie Schneider Borellis, Brendon Cull, Pat Foley, Eric Greenberg, Gary Greenberg, Joan Kaup, Sam Lieberman, Alex Linser, Dale Mallory, Dr. Jennifer O'Donnell, Shirley Rosser, Ely Ryder, Rochelle Morton, Amy Searcy, Janaya Trotter, Pete Witte

In addition, Jonathan Vogt must also be acknowledged for his work coordinating the task force and ensuring that it upheld its pledge to conduct an open and transparent process.

CRTF Process.

The task force members met for the first time on May 5, 2014. The group began by reviewing every word and every sentence in the charter, looking for possible obsolescence, language in need of clarification, legal concerns, and provisions raising broad policy debates. Several weeks of meetings produced a list of numerous items to explore, research and discuss. These items ranged from very minor to potential seismic shifts in the core systems of our municipal government.

The task force also adopted a set of values to use in deliberating, engaging the public, seeking input, and making decisions on possible Charter changes. The task force and its committees addressed and applied the following values in making their recommendations:

Values Applicable to Substantive Proposals. In deliberating and making decisions on possible Charter changes, TF members will address and apply the following considerations:

- *Accountability* with respect to policy development and administration.
- *Capacity* to provide basic services and address pressing social & economic needs.
- *Citizen engagement* to improve the quality of City decision-making.
- *Clarification* of responsibilities of those governing the City.
- *Consistency* with constitutional and statutory requirements.
- *Continuity and stability* of City governance.
- *Continuous improvement* of City government and the Charter.
- *Cooperation* with other local government entities in our region.
- *Costs* of governing the City and of implementing Charter amendments.
- *Efficiency and effectiveness* of government operations and programs.
- *Honesty and integrity* in City government.
- *Inclusion and representation* of the diverse elements of our citizenry.
- *Leadership* in addressing problems and moving the City forward.
- *Responsiveness* to citizen concerns.
- *Simplicity* of the Charter's provisions.
- *Transparency* of government decisions and actions.
- *Understandability* and persuasiveness to voters of proposed Charter amendments.

The task force was then organized into six committees to research possible charter changes involving these categories: 1) Obsolete and Ambiguous Language (Mike Morgan and Mark Silbersack, Co-chairs), 2) Balance of Power (Anne Sesler and Byron Stallworth, Co-Chairs), 3) Elections (Jeff Berding, Chair), 4) Fiscal Reform (Mark Quarry, Chair), 5) Labor & Administration (Matt Alter and Jim Goetz, Co-Chairs), and 6) Direct Accountability (Heather Chura and Matt Jones, Co-chairs.)

The Obsolete and Ambiguous Language committee completed its work in the summer of 2014 and issued a series of recommendations. City Council modified these recommendations and voted to place most of them on the ballot in November 2014. Voters overwhelmingly approved these amendments to the charter. This concluded the work of the Obsolete and Ambiguous Language Committee.

Noting significant overlap in issues, the Fiscal Reform committee was merged with the Labor & Administration committee. This left four committees: 1) Balance of Power, 2) Elections, 3) Fiscal Reform/ Labor & Administration, 4) Direct Accountability.

Although the CRTF is not a body that would be subject to the requirements of Ohio's Sunshine Law, one of its initial decisions was to comply voluntarily with all public access and notification requirements that would be applicable to a committee of City Council. All full task force and committee meetings were open to the public, and notices of meetings were published and circulated in advance. All interested persons were invited to attend and participate, and all interested individuals, groups or organizations were invited to contribute research, data, opinions or other information. Fortunately, a number of concerned citizens responded to this call and became active and invaluable members of committees.

The CRTF process was conducted without the expenditure of any public funds. The extent of research and analysis that has been performed by committees is attributable to the extraordinary generosity of task force and committee members.

An absence of any funding source presented challenges. The Cincinnati Research Institute (CRI) is primarily responsible for helping to overcome these challenges. With funding obtained from the Seasongood Foundation, the Haile Foundation and the Wilder Foundation, CRI provided significant additional research, funded public forums, and provided an online calendar and digital library. As a result, all of the minutes of CRTF proceedings as well as all of the reports of the committees can be found at www.mycharterreform.org. CRI research, including "Governing Cincinnati: Considerations and Opportunities," can also be found on the site.

The committees considered all of the original items of possible concern that were identified in the spring and summer of 2014. A number of potential concerns were resolved with minimal research or discussion. Other issues were considered worthy of further public discussion and possible action by council, but not acted upon by the CRTF for a variety of reasons. Some of the more important of these issues are addressed at the end of this report, but most are not. A full analysis of everything considered by the CRTF can be found in the reports from the individual committees. This report does not attempt an exhaustive overview of CRTF's work. It focuses on the recommendations that the CRTF is confident in making at this

moment in time, based upon the information that it was able to compile and the feedback that it has received from the public.

Executive Summary of the Recommendations.

The goal of the CRTF was to seek input, data and opinions from key individuals and the public in general, and to use this information to make recommendations for improvements to Cincinnati's charter. Municipal charter commissions are sometimes created to draft new charters, but that has never been the purpose or the goal of the CRTF, which has acted primarily as a fact-finding body. Its goal has been to compile information that will inform proposed changes, and to report those findings to Council, the Mayor, and the public at large. This distinction is important. The CRTF is not a political body. While it is impossible to separate questions about the balance of power between government branches or election systems from the realm of politics, the CRTF has attempted to avoid making subjective political conclusions. It is not making decisions on behalf of either council or the citizens of Cincinnati. As a result, this report concludes with a discussion about election systems and several other topics that deserve – and require – a *community* conversation that should extend beyond this report.

Recommendations have not been made on some topics because the CRTF has concluded that the options between core forms of government or election systems are not decisions that can be made from objective data. These decisions must be debated on a much larger scale than the CRTF has the resources or the mandate to conduct. Thus, the CRTF does not at this time make any recommendations on such hotly debated issues as whether council members should be elected at large, from districts, or from some combination of at large and district; whether a council-mayor form of government featuring an "executive mayor" should replace the current council-manager hybrid form of government; or similar issues.

The CRTF's present recommendations fall into three categories:

I. We recommend correcting unintended consequences of the 1999 charter amendments that implemented the "stronger mayor" form of government, through proposed changes that are meant to permit the charter to function as was intended in 1999. These changes will correct drafting oversights in the 1999 amendments. There are three of these recommendations:
   a. Eliminate the "pocket veto."
   b. Permit council to conduct executive sessions for limited purposes, including the selection and performance review of the city manager.
   c. Clarify that every member of council should be given the opportunity to participate in the selection of a city manager.

II. We suggest a modification to the current "stronger mayor" form of government to correct a perceived flaw in the present system. We propose that, in addition to the mayor, council should be permitted to initiate removal of the city manager. This is intended to remove any ambiguity that the manager serves both the mayor and council, to provide the manager with greater accountability to council, and to help ensure the manager's autonomy. This proposed amendment makes a small but meaningful readjustment to the balance of power adopted in 1999. There is a dissenting opinion to this recommendation.

III. We propose several legal compliance changes. While some of these may inherently involve a degree of policy change, all are based on a perceived need to correct internal inconsistencies in the charter or to bring the charter into compliance with requirements of Ohio law or the state or U.S. constitution.

DISCUSSION OF THE RECOMMENDATIONS

I. Correcting Unintended Consequences of the 1999 Changes.

A. Eliminate the "Pocket Veto."

Cincinnati became a council-manager government in 1924. The Balance of Power Committee report provides a detailed and well-written summary of what this choice meant in terms of city values and the change in political dynamics of municipal government. In summary, the council-manager form of government was a product of the Progressive Era, a "modern" approach to government that did not exist prior to the early 1900s. Like most cities that adopted council-manager governments, Cincinnati modified some aspects of this model over the following decades, but it remained a council-manager city through the 1990s.

In 1999, advocates for the retention of the council-manager form of government and advocates for an "executive mayor" form of government reached a compromise proposal to create a "stronger mayor" form of government. The result is what the CRI study "Governing Cincinnati: Considerations and Opportunities" determines to be one of just three true hybrid forms of municipal government in the United States,[1] a model of government that combines so many aspects of a mayor-council form of government with a council-manager form of government that it cannot truly be called one or the other.

There is nothing inherently wrong with this "true hybrid" form of government, but it does mean that Cincinnati was entering relatively uncharted waters when voters approved the "stronger mayor" form of government in 1999 and the system went into effect in 2002. This unique, simultaneous blending and separation of branches of government resulted in one unintended consequence, undermining the effective working of the City's legislative branch, its council.

Under the charter, individual council members may propose legislation for consideration by council, and it is standard practice to assign such proposed legislation to one of the several council committees for research and deliberation before bringing it to the full council for a vote. Art. III, Sec. 2 of the charter states that the "mayor shall assign all legislative matters to the appropriate committee for consideration." This mayoral role was carried over from the pre-1999 period when the mayor was a member of council, and it was assumed that the time in which the mayor would have to assign a legislative matter to a committee would be determined as it had been prior to 1999 -- that is, by the Rules of Council. However, the "stronger mayor" form of government separated the mayor from council, making the mayor

[1] CRI research finds: "Only two cities in the United States (Stockton, CA and Kansas City, MO) operate in a similar manner.

effectively a separate branch of government. As a result, the mayor's actions could not be dictated by the Rules of Council.

Although the charter imposes an unequivocal obligation on the mayor to assign legislative matters to council committees, it is silent on the maximum amount of time that the mayor has to make such assignments. This leaves council in an untenable and unintended position of being unable to control its legislative agenda. A mayor may delay assigning a particular legislative matter to any committee for a period of time that is long enough to either make the issue moot or to preclude meaningful council action. Killing possible legislation by refusing to assign it to committee in a timely manner has been dubbed "the pocket veto."

While such a pocket veto violates the clear intent of the charter (i.e., "the mayor shall assign"), there is no good way to force a mayor to assign a matter to committee in a timely manner. Of course, there is a litigation option: when the "pocket veto" is being used, a member of council could file a mandamus action against the mayor in the Hamilton County Court of Common Pleas. Aside from creating a political dispute that would reflect poorly on Cincinnati government in general, this litigation would require taxpayers to cover the cost of both sides of this litigation, and the outcome would be uncertain in advance. No other city in America grants its mayor such a power of prior restraint over public consideration of legislative matters, and the architects of the "stronger mayor" form of government did not intend to create this power in Cincinnati.

The CRTF has found that the legislative intent of the 1999 changes is without question. The intent was that the mayor would be obligated to assign matters to the appropriate committee within the time-frame established by the Rules of Council that were in effect when the "stronger mayor" changes were adopted. That time was fourteen days from when the item was placed on the council calendar.

The CRTF believes that implementing the intent of the 1999 changes by making this simple amendment would greatly improve governmental transparency and accountability to the public with respect to action (or inaction) within the City's government on legislative proposals. Future mayors would not be able to frustrate council legislative initiatives through inordinate delay in assigning matters to council committees and could only prevent council ordinances from becoming effective through the express veto power provided in the 1999 changes.[2]

[2] Art. II, Sec. 6 of the Charter contains the express power of veto.

Therefore, the CRTF makes the following recommendation:

Art III, Sec. 2 should be amended to read:

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 within fourteen days of the matter's placement on the council calendar for purpose of referral. The mayor may propose and introduce legislation for council consideration…..

CRTF further recommends that this amendment to the charter be proposed as a single amendment item, that it be placed on the November 2015 ballot, and that it take immediate effect upon passage.

B. Permit Executive Sessions of Council for Limited Purposes.

The 1999 "stronger mayor" changes assumed the ability of City Council to conduct executive sessions for those limited purposes specified in the Ohio Revised Code (the "Sunshine Law"). This assumption was made because Cincinnati City Council had been conducting executive sessions for decades. The assumption that it could continue to do so was an integral aspect of how the new "stronger mayor" form of government was intended to work.

Art. III, Sec. 2 of the Charter gives the mayor the power to appoint the city manager "upon an affirmative vote of five members of the council following the mayor's recommendation for appointment." While this elevates the role of the mayor in the selection of the city manager – a role that belongs to council in a traditional council-manager form of government – the charter further states that "the mayor shall seek the advice of council, to include the opportunity for council to interview the candidates considered by the mayor."

When the mayor's role in city manager selection was increased in 1999, it was also anticipated that council would continue to play an active and collaborative role in the selection process, and that council and the mayor could do so in executive sessions. It was also believed that council would be able to discuss those limited sensitive matters outlined in state law with the city manager during executive sessions. In short, the ability to conduct executive sessions was a critical component in the balance of power that was envisioned in the 1999 changes.

However, in an unrelated turn of events, the *Cincinnati Enquirer's* parent company filed suit against the City challenging council's right to conduct executive sessions. In *State ex rel.*

Gannett Satellite Network, Inc. v. Cincinnati City Council[3], the *Enquirer* argued that the charter's simple mandate that all "proceedings of the council shall be public" was clear and unequivocal, that the charter contained no exceptions to this requirement, and therefore that council was prohibited from conducting executive sessions for any reason -- even the limited reasons expressly permitted by Ohio's Sunshine Law.

The court agreed with the *Enquirer.* It concluded that the Ohio Supreme Court had held "that the plain language of a city charter is a superior authority that prevails over conflicting rules of council or city ordinances, even rules or ordinances promulgated pursuant to a city charter's authority. It is axiomatic that rules or ordinances cannot change a provision of a charter….."[4] Therefore, Council cannot adopt Rules of Council or pass an ordinance that contradicts the charter requirement that all council proceedings "shall be public."

The court also rejected the City's argument that council could conduct executive sessions because Ohio law expressly permitted it to do so. "The Sunshine Law does provide for executive sessions. But the Sunshine Law does not alter the city charter's mandate that proceedings of council shall be public."[5] The court concluded that "the city council cannot rely on the sunshine law to hold closed executive sessions" if the plain language of the charter prohibits closing a meeting of council. Therefore, Cincinnati's council cannot conduct closed sessions for any of the limited purposes permitted by Ohio's Sunshine Law unless the charter is amended to permit it to do so.

As a direct result of this ruling, the interaction between council and the city manager that the architects of the 1999 charter changes envisioned – and which was a critical component of the negotiated balance of power between the "stronger mayor" and council – was prohibited by the time the 1999 changes went into effect in 2002. The CRTF concludes that it is necessary to amend the charter to permit executive sessions in order for the form of government that was adopted in 1999 to function as it was intended to function.

The CRTF found other compelling reasons to support permitting council to conduct executive sessions, as illustrated in two recent news articles cited in the "Cincinnati Research Institute: Research Regarding Executive Sessions of City Council":

> On January 29, 2015, the *Cincinnati Enquirer* reported that City Manager Black is instituting new security measures in City Hall[6]. These changes, described with specificity by the *Enquirer*, are being made in response to an ongoing

[3] *Gannett Satellite Network, Inc. v. Cincinnati City Council* (Ohio App 1 Dist. 2000) 739 N.E.2d 387, 137 Ohio App.3d 589.
[4] *Id*.
[5] *Id*.
[6] Coolidge, Sharon: "City Hall Steps Up Security After Threats To Cranley." *Cincinnati Enquirer*, Jan. 29, 2015.

assessment of security protocol in the building as well as two specific threats against the mayor that were made earlier in January. While Ohio's Sunshine Law would permit the City Manager to enter executive session with Council to discuss the findings of the security assessment[7], including existing vulnerabilities to personnel, Cincinnati's Charter would require that sensitive discussions about security be conducted in an open session, with minutes of the discussion made available to the public – even if doing so might jeopardize public safety.[8]

On March 29, 2015, The *Cincinnati Enquirer* revealed that the City has been keeping very poor and inconsistent records on roughly $250,000,000 "in incentives granted to business and developers" since 2008.[9] This investigation further notes: "The deals were granted with no guidelines about what is a good deal – and what isn't. And City Council approved many of them almost sight unseen because they were given details at the last minute." Ohio's Sunshine Law would permit City Council to enter executive sessions in order to discuss "confidential information related to….. an applicant for economic development assistance" [ORC 121.22(G)(8)], but Cincinnati's charter precludes Council from discussing development incentives other than in open session. This may provide at least a partial explanation for why, according to the *Enquirer*, members of City Council "aren't told about deals sometimes until the day before they're asked to vote, giving them little time to scrutinize agreements."

Based upon these concerns and others, the task force has agreed to recommend amending the charter to permit council to conduct executive sessions for limited purposes. The task force believes that Cincinnati's council should have the authority to close its meetings when necessary similar to those long exercised by council itself (until 2000), by subordinate bodies within the City, and most other local governments around the State of Ohio (including Hamilton County and other municipalities in the area). The reasons frequently cited in support of the executive session provisions of the Sunshine Law and by other cities within the State which have chosen to amend their charters to follow that law are equally applicable here.

Ohio's "Sunshine Law" requires that "any legislative authority or board, commission, committee, council… or similar decision-making body of any… municipal corporation…" must conduct "public meetings open to the public at all times."[10] This includes the requirement that

[7] ORC 121.22(G)6 provides that executive sessions may be conducted "relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office."
[8] O.R.C. 121.22(G)
[9] Coolidge, Sharon and Tweh, Bowdeya: "City Doesn't Track Return On Incentives." *Cincinnati Enquirer*, March 29, 2015.
[10] ORC 121.22(B)(1)(a) and (C).

"minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection."[11] However, the Legislature has provided exceptions to the requirement that city council meetings be conducted publicly. Upon a majority vote of a quorum present, a city council may enter executive sessions, but only for these finite purposes: [12]

> (1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, official, licensee, or regulated individual, unless the public employee, official, licensee, or regulated individual requests a public hearing…..
>
> (2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest.
>
> (3) Conferences with an attorney for [the City] concerning disputes involving the [City Council] that are the subject of pending or imminent court action;
>
> (4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;
>
> (5) Matters required to be kept confidential by federal law or regulations or state statutes;
>
> (6) Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office;
>
> (7) In the case of a county hospital…..to consider trade secrets, as defined in section 1333.61 of the Revised Code; [Not applicable to a city council.]
>
> (8) To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

[11] ORC 121.22(C).
[12] ORC 121.22(G)(1)-(8)

> (1) The information is directly related to a request for economic development assistance….. or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.
>
> (2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.

Comparison to Other Ohio Cities. An analysis of other Ohio city charters demonstrates that every major city in Ohio with the exception of Cincinnati and Cleveland permit their city councils to conduct executive sessions. Columbus, Dayton, Toledo, Youngstown and Mason are all examples of cities that used to have charter language similar to Cincinnati's requirement that "proceedings of the council shall be public." All of these cities have amended their charters to permit executive sessions.

Statutory cities and townships that do not have their own charters simply follow the requirements for conducting executive sessions that are found in the Ohio Revised Code. Most of the home-rule cities that have amended their charters to permit executive sessions have done so with language similar to what is found in Sec. 8 of the Columbus City Charter:

> "All meetings of the council or committees thereof shall be held in public in accordance with the general laws of Ohio pertaining to the requirements for open meetings of public bodies and the minutes and records thereof shall be maintained as an electronic record that is made available to the public pursuant to the general laws of the state governing public records."[13]

Akron takes a slightly different approach, using its own language to choose and define when its council can conduct executive sessions consistently with Ohio law. The CRTF recommends an approach that is comparable to Akron's rather than simply deferring to Ohio law. The CRTF makes this recommendation in order to place additional limitations on the use of executive sessions, to tailor the exceptions more closely to Cincinnati's existing form of government, and to eliminate superfluous language that could be abused.

Therefore, CRTF recommends amending Art. II, Sec. 5 in order to permit council to enter executive sessions for the following limited purposes:

[13] Full text and analysis of the approach taken by Ohio's ten largest cities can be found in CRI's "Research Regarding Executive Sessions of City Council," available at www.cincinnatiresearchinstitute.org.

(1) To consider the appointment, employment, dismissal, discipline, promotion, demotion, performance, or compensation of the city manager, or the investigation of charges or complaints against the city manager, unless he or she requests a public hearing.

(2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest.

(3) Conferences with an attorney for the City concerning disputes involving the City Council that are the subject of pending or imminent court action;

(4) Matters required to be kept confidential by federal law or regulations or state statutes;

(5) Details relative to the security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters discussed could reasonably be expected to jeopardize the security of the public body or public office;

(6) To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiate with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.

The CRTF believes that creating such an opportunity for council to hold executive sessions will enhance its ability to conduct background research, obtain confidential advice, and discuss (but not make decisions) in such areas as hiring and reviewing the city manager, bidding on property deals, discussing pending litigation, making City Hall safe, and facilitating economic development projects. This ability should increase the efficiency and lower the cost of City operations.

The CRTF further recommends that this amendment be proposed as a single amendment to the charter, to be placed on the November 2015 ballot, and to go into immediate effect upon passage.

C. Clarification That Every Member of Council Be Permitted to Interview City Manager Candidates.

Article III, Sec. 2 states, in part:

> 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.

CRTF finds that it is the clear intent of this language that all members of council have an opportunity to be involved in the process and participate in, or have their own opportunity, to meet with and interview candidates in advance of a vote. In order to remove any unnecessary ambiguity, CRTF recommends adding the words "all members of" to this section in the following manner:

> 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 all members of council to interview the candidates considered by the mayor.

The CRTF further recommends that this amendment be combined with the following proposed amendment to the charter, to be placed on the November 2015 ballot, and to go into effect following the November 2017 election.

II. Permitting Council to Initiate Removal of the City Manager.

As stated in the Balance of Power Committee report, the 1999 charter amendments "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 concluded that in the effort to strike that balance, the 1999 amendments "created a stronger office of the mayor than anticipated, with the mayor having effective control over both branches of municipal government." The committee noted that 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 committee was in agreement that the elimination of the "pocket veto" and enabling council to conduct executive sessions were critical to making the "stronger mayor" form of government that took effect in 2002 function as it was intended. In addition, some members of the committee and a majority of the members of the task force felt that Art. III, Sec. 2 should be modified to permit council, in addition to the mayor, to initiate the removal of the city manager. It is recognized that this proposal would go beyond simply giving the intended effect to one of the 1999 changes, and would indeed impact the balance of power between the mayor and council established in 1999. Nonetheless, the CRTF believes that such an amendment is needed to address a perceived contradiction in the current form of government.

While the 1999 amendments were intended to increase the power of the mayor, they were also intended to retain the benefits of a professional city manager who possesses autonomy and relative independence from day-to-day politics. Art. IX, Sec. 1 requires that the manager be appointed "solely on the basis of his or her executive and administrative qualifications," and makes the manager "the chief executive and administrative officer of the city." Art. IX, Sec. 2 states that "[n]either 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." Additional autonomy is given to the manager by means of an "indefinite term."

Our current form of government also makes clear that the "city manager shall report to the mayor and the council,"[14] and that the "city manager shall be removable at any time at the pleasure of the mayor and the council." Council is intended to participate in the selection of the city manager, and at least five members of council are required to remove the city manager from his or her position.[15]

In summary, the city manager is supposed to serve both the mayor and council, and the manager is provided some assurance of independence and autonomy in managing city staff and departments precisely because the power of the mayor and the council over the manager is split. The current structure is intended to be in a stark contrast to an "executive mayor" form of government, where department heads serve at the pleasure of the mayor, and must therefore be ever-cognizant of the political concerns of the mayor.

[14] Art. IV, Sec. 2
[15] Art. III, Sec. 2

The 1999 amendments sought to retain the independence of the city manager, but gave more power over the manager to the mayor than to council. Art. III, Sec. 2 provides that only "[t]he 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."

Some members of the task force believe that giving the mayor the sole authority to initiate removal of the manager effectively nullifies all of the multiple other provisions of the charter that require the manager to serve both the mayor and council equally, thereby ensuring the professional independence of the manager. It is argued that the city manager can never truly possess the autonomy intended by the charter over the administration of departments and staff if the mayor, and the mayor alone, can initiate his or her removal. By giving this power solely to the mayor, the city manager becomes inherently more beholden to the political agenda of the mayor than to council. In effect, this one charter provision creates a system that is far more similar to an executive mayor form of government than the rest of the charter intends.[16]

To a majority of the CRTF, this is a problem with the current system that requires correction, and the remedy is relatively simple: give the mayor and council equal standing to initiate the termination of the manager. This change is not intended to make it easier to terminate the manager. In fact, the CRTF wants to ensure that it is *not* easy for council to initiate removal of the manager. The catalyst for the recommendation is to ensure greater autonomy of the manager.

Based upon the above rationale, CRTF recommends that Art. III, Sec. 2 be amended to permit council (in addition to the mayor) to initiate removal of the city manager. The CRTF recommends that this change have the following elements:

1. Five members of Council shall have the authority to initiate and recommend to council the removal of the City Manager.

[16] This position receives some support and some caution from the "Governing Cincinnati" research which concludes: "In cities that have adopted hybrid council-manager systems, or replaced the form with the mayor-council form, the city manager may be left in an awkward position. Regardless of the council's role in confirming the appointment or removal recommendation, the manager or chief administrative officer may be perceived as the 'mayor's person,' not as a professional serving as trusted advisor to the entire council. In addition, to the extent the mayor is given appointment and removal authority over key departmental personnel, the manager's/administrator's role as CAO is compromised and staff will likely have divided loyalties and may receive conflicting directives. This situation undermines morale, undercuts efficiency and effectiveness, and may promote cronyism. In this environment it may be difficult to recruit and retain high caliber managerial personnel, which would negatively impact city performance."

2. Such removal shall require an affirmative vote of five members of council and concurrence of the Mayor, OR an affirmative vote of six members in the absence of the Mayor's concurrence.
3. The removal process will not be subject to the committee review rules of council.

CRTF further recommends that this proposed amendment be placed into one ordinance (along with the minor clarification to this same section of the charter above) and placed on the November 2015 ballot, to go into effect following the November 2017 election.

Minority Opinion. There is a dissenting opinion to this recommendation. Members of the task force who advocate for a change to a mayor-council (aka "executive mayor") form of government note that the 1999 decision to grant the mayor the sole authority to initiate the removal of the city manager was an intentional decision to shift power from city council to the office of the mayor. These members argue that the only true solution to problems in the current system of government is to eliminate the position of an autonomous city manager entirely. These members suggest that a city manager can never truly be free of political pressure. Therefore, the authority that is currently exercised by the City Manager should be transferred directly to the office of the Mayor. This more definitive separation of powers between City Council and the office of the Mayor is the most certain and honest means of ensuring that the administrative departments are accountable to voters.

III. Legal Compliance Changes.

The CRTF recommends that all of the changes below be placed on the November 2015 ballot in one ordinance. While they address different aspects of the charter, all have a common purpose of bringing the charter into compliance (or to eliminate the possibility of future non-compliance) with requirements of state law or the Ohio or federal Constitution.

A. Start Date of Council Moved to the First Week of January.

Art. II, Sec. 4 of the charter currently provides that new councils take office on December 1st following the November elections. The Elections Committee determined that there could be insufficient time to comply with all requirements of state election law in the event of a close election. The CRTF also notes that a majority of other Ohio cities choose the first week in January to begin the new term of elected officials. Therefore, CRTF recommends that new council terms should commence during the first week of January rather than December 1.

CRTF further recommends that this change be placed on the ballot to take effect immediately (or prior to the November 2017 election.)

B. Date of Mayoral Primary Moved to Ordinary Spring Primary.

Art. IX, Sec. 1a currently states that "candidates for mayor shall be determined at a nonpartisan primary election to be held on the first Tuesday after the second Monday in September prior to the election." The CRTF recommends moving the mayoral primary from September to the ordinarily scheduled spring primary election. There are three reasons for this recommendation. First, holding a special election in September requires spending tax dollars to conduct an election solely for the purpose of the mayoral primary. Determining the candidates for mayor at a regularly scheduled primary election could reduce the cost of holding a mayoral primary. Secondly, the Elections Committee has determined that it would be impossible to conduct all requisite recounts and fulfill election law contest requirements prior to the November election if there were a particularly close primary election in September. Moving the primary to May would dramatically reduce the possibility that contested primary results could ever prevent the election of mayor in November. Third, it is also felt that voter participation in the mayoral primary would be increased if it is held during the ordinarily scheduled primary election.

CRTF further recommends that this change go into effect immediately after passage in order to be in place for the November 2017 election.

There is a minority opinion on this recommendation. Some members of the task force believe that extending the general election period will result in making it even more expensive to run a mayoral election campaign. They suggest there is a superior way to conduct the mayoral election process called an "instant run-off election." Supporters of the instant run-off election explain that this method solves the problems of the current system without incurring the problems of a spring primary or a regular run-off alternative.

Under this method, there is only one election, at the time of the general election in November, thereby avoiding the extra expenses to the city and the candidates of additional elections, and at the same time assuring the election of a mayor with the support of a majority of the voters, by the most number of voters likely to participate in an election. All the candidates appear on the ballot at the general election in November and the voters rank their support for the candidates in order of preference (1 next to their first choice, 2 next to their second choice, etc.). The ballots are computer scanned and tabulated. All the number-one preferences of the voters are counted. If a candidate receives 50%+1 of the first choice votes, that candidate is declared the winner. If no candidate receives a majority, then the candidate with the fewest first choice votes is eliminated. The ballots of supporters of this defeated candidate are then transferred to whichever of the remaining candidates they marked as their number-two choice. After the transfer, the votes are recounted to see whether any candidate now has a majority of the vote. The process of

eliminating the lowest candidate and transferring his/her votes continues until one candidate receives a majority of the votes and wins the election. In this way, the most number of voters are participating in the selection process, the winning candidate has the support of a majority of the voters, the voters are assured that their vote is not wasted, and the taxpayers have been saved the expenses of a primary or a run-off election.

C. Elimination of References to the "Sinking Fund."

Most references to the "sinking fund" were removed by the November 2014 amendments to the charter. As the Labor & Administration/Fiscal Reform Committee explains: "Individual sinking funds were formerly established for payment of interest and principal on bond debt obligations. Tax law changes ended the attractiveness of separate sinking fund accounts. Payments today are typically made from general funds reserved for debt retirement." Therefore, the CRTF recommends that the phrase "sinking fund" be replaced with the phrase "principal and interest" in two locations in the charter: Art. IV, Sec. 9 and Art. VIII, Sec. 4.

CRTF further recommends that this amendment go into effect immediately upon passage.

D. Replace Unconstitutional Art. V, Sec. 4 with a Constitutional Version.

Art. V, Sec. 4 states:

> No person in the administrative service shall directly or indirectly give, solicit or receive, or in any manner be concerned in giving, soliciting or receiving any assessment, subscription or contribution for any political party or for any candidate. Any violation of this section shall operate to forfeit the office or position held by the person violating the same and shall render any such person ineligible to any municipal office or position for a period of one year.

This section, as written, prohibits city employees from participating in the political process at *any* level, e.g., doing volunteer work for presidential campaigns. As a result, it has been deemed unconstitutional. Therefore, the Labor & Administration/Fiscal Reform Committee looked to the Model City Charter for alternative language. Based upon this language, the CRTF recommends that Art. V, Sec. 4 be replaced with the following:

> No person in the administrative service shall directly or indirectly give, solicit or receive, or in any manner be concerned in giving, soliciting or receiving any assessment, subscription or contribution to be used in a city election or to campaign funds to be used in support of or opposition to any candidate for election to city office or city ballot issue. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinions or to cast a vote nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government. Any

violation of this section shall operate to forfeit the office or position held by the person violating the same and shall render any such person ineligible to any municipal office or position for a period of one year.

CRTF further recommends that this amendment go into effect immediately upon passage.

E. Reference Veteran Preferences to Ohio Revised Code

Art. V, Sec 3 currently states, in part: "…..an examination credit of ten (10) points shall be awarded to disabled veterans." For clarification purposes and to ensure compliance with Ohio law, CRTF recommends that this section be amended to read: "…..an examination credit of ten (10) points shall be awarded to disabled veterans; 'disabled veteran' as used in this section shall be as defined in the Ohio Revised Code."

F. Removal of Additional Obsolete Language

The Obsolete and Ambiguous Language Committee considered removing obsolete language from Art. V., Sec. 3, but based on concerns that some of the language that was perceived to be obsolete could have some readily unapparent significance, the question was referred to the Labor & Administration/ Fiscal Reform Committee. Now, based upon the research of that committee, the CRTF recommends that the following language be deleted from Art. V., Sec. 3 simply because it is obsolete:

> …..World War I, World War II, or during the period beginning May 1, 1949, and lasting so long as the armed forces of the United States are engaged in armed conflict or occupation duty, or the selective service or similar conscriptive acts are in effect in the United States, whichever is the later date….

This deletion will have no substantive effect. It will simply make this section of the charter more readable. The CRTF further recommends that this amendment go into effect immediately upon passage.

FURTHER DISCUSSION

The CRTF discussed a number of macro political issues. Most notably it debated the pros and cons of replacing the current hybrid form of government with a more traditional mayor-council form of government, as well as the pros and cons of different election systems. While these were the most politically charged issues, there were also a number of policy questions raised and debated. Although the CRTF is not asking Council to take action on any of the topics that follow, it does make other forms of recommendations on a number of issues.

A. Core Form of Government

The Balance of Power Committee and the CRTF as a whole had significant and spirited debate over the possibility of adopting a mayor-council or "executive mayor" form of government. The ability to conduct this discussion was frustrated by a completely separate initiative to place an "executive mayor" set of amendments before voters in November 2015. Virtually all of the macro questions regarding the appropriate balance of power between branches and offices of city government hinge, at least in part, on the role of the mayor and city manager. The CRTF felt that it would be problematic to place competing and perhaps conflicting proposals before voters; and members were also reluctant to invest time on debating and forming recommendations that could be rendered moot or be given starkly different implications by a separate amendment.

The CRTF also reached general consensus that while the current system of government is not working as intended, any fundamental change to the core form of government should be driven by large-scale community discussions and public opinion. Research submitted by Cincinnati Research Institute (CRI) finds that "only ten municipalities with populations of at least 100,000 have changed their form of government" since 1995. Six cities changed from council-manager to mayor-council, and two from mayor-council to council-manager. The research suggests that these changes are rare because "few citizens understand the details and nuances involving the roles, responsibilities, and relationships of mayors, council members, and managers." As a result, proponents for a change in core forms of government typically require compelling reasons for the change that can be easily explained and understood. Catalysts can be a dramatic collapse in the city's economy, a fundamental breakdown in city services, or widespread corruption. While the CRTF *does* consider the recommendations contained in Section I of this report to be essential, it notes (thankfully) that none of the typical drivers of core change in government systems is

currently present in Cincinnati. Therefore, the independent research supports the proposition that smaller changes are more apt to be adopted by voters.

However, it is noted that there exists a split of opinion among the CRTF members: some strongly support moving to an "executive mayor" form of government, while others just as strongly support either maintaining our hybrid council-manager structure or returning to a true council-manager form of government. The CRTF believes that the amendments proposed in this report are necessary and appropriate at this time, even though some changes might become moot if a more expansive change in the core system of city government is adopted sometime in the future.

B. Election Systems

A clear majority of the Elections Committee believes that an alternative election system would be preferable to the current 9X system. However, neither that committee nor the task force as a whole was in agreement that any particular system would be preferable to 9X, and there is a diversity of opinions regarding what systems would or would not constitute an improvement. See the report of the Elections Committee for a detailed discussion of the alternatives and their pros and cons.

The CRTF members believe that this issue requires further research and public discussion and debate which are beyond the capacity of the CRTF at the present time. For one example, if the City were to propose a move to election of some or all council members from districts, it would be useful and maybe necessary to draw such districts before asking the public to vote on such a proposal, since many voters would want to know in advance the boundaries of the district their neighborhood would be in. Further, it would be necessary to spell out when and how districts would be redefined in future years to meet policy criteria set forth in the charter as well as constitutional one-man-one-vote requirements. Drawing such district boundaries is a time-consuming task, requires expert assistance, raises partisan political concerns, and can be costly (and, in the event of disagreement, even more costly in the event of litigation challenging the boundaries as drawn).

The CRTF recommends that the City create a new task force dedicated to addressing the issue of election systems, and that it provide that task force with the adequate time and funding to do the background work, polling, conduct adequate civic engagement, and draft an appropriate, non-partisan amendment for future consideration by the electorate.

C. Role of the City Solicitor

The CRTF believes that the City Solicitor is placed in a difficult position under the current charter when asked to provide legal advice to various elected or appointed City officials who may have conflicting interests (e.g., the mayor, council members, and/or city manager). This difficulty is inherent in the Solicitor's position. For example, some members of the task force believe that, at present, council may sometimes not receive independent legal advice because the Solicitor is effectively beholden for his/her job on the manager and therefore indirectly on the mayor, which could influence the Solicitor's objectivity.

The CRTF considered various potential remedies for these problems, such as providing for temporary or permanent separate legal counsel for City Council, but found that it was unable to recommend any such remedy. The CRTF also considered the possibility of direct election of the City Solicitor but concluded that while this would not fully resolve "conflict of interest" concerns, it would fundamentally alter the role of the Solicitor in city government, and could produce a different set of problems.

The CRTF encourages further discussion on this issues but recommends no change in the charter provisions relating to the City Solicitor at the present time.

D. Additional Research on Campaign Finance.

The CRTF is making no recommendation for changes to the campaign finance provisions found in Art. XIII. However, given the recent and dramatic rulings by the U.S. Supreme Court on this topic, it suggests that the City Solicitor undertake a critical review of this Article to ensure that it does not run afoul of U.S. Supreme Court precedents.

In addition, there are other provisions of the Campaign Finance Article XIII in need of further investigation and possible revision. These include the limits on contributions, reporting requirements of contributions and expenditures, and the status of the Cincinnati Elections Commission. With regard to reporting requirements, there should be a determination of the possible need for change should the proposal to move to a spring mayoral primary be adopted.

E. Change to Emergency Ordinance Requirements

City Council routinely passes ordinances with "emergency" status. In addition to permitting the ordinance to go into immediate effect, this also precludes the ordinance from being subject to citizens' referendum power. Research by CRI as well as the Direct Accountability Committee reveals that most of Ohio's large, home-rule cities expressly

permit referendum of emergency ordinances. There was agreement that this topic merits additional consideration, but that additional research is necessary before a final recommendation could be made.

F. Creating a Process for Passing Ordinances Via Initiative.

The CRTF learned that proponents of citizen initiatives had proposed that the Charter might be amended to make easier the process for passing citizen-initiated ordinances. However, the CRTF also understands that any such ordinance would be subject to reversal by Council after adoption, thus undermining the vitality of the initiative process and the willingness of citizens to undertake such a process. The CRTF considered this issue only briefly and decided that additional discussion on the topic is necessary before a final recommendation is developed.

G. Providing for Recall of the Mayor and Council.

The CRTF discussed the topic of recall provisions which could be added to the Charter with respect to the Mayor and Council members. Recall is addressed in the Ohio Revised Code but only applies to municipalities not governed by local charter. The omission of any reference to recall in our Charter results in no ability to recall elected officials in Cincinnati. Indeed, ours is the only major city in Ohio that has no recall procedure (and may be the only one of *any* size in the state.) When City Council was elected for two-year terms, and the Mayor was part of Council, citizens in effect had the ability to "recall" them every two years. Now that there are four-year terms and the Mayor is directly elected, adding a recall provision and procedures to the Charter may be appropriate. There are, however, countervailing arguments. For example, a provision permitting recall for any reason without limit might encourage voters favoring a majority party to recall any minority party or independent Council members elected with less than 50% of the vote in an 9x election (as frequently happens at present) in order to replace that person with a majority party candidate, thus increasing the majority's party's domination. In addition, providing for recall of the Mayor would require drafting complicated procedures for electing a new Mayor to fill out an unexpired term. Nonetheless, the TF believes that the lack of recall provisions in the Charter is a meaningful issue that should be addressed; unfortunately, a full review of the issue was not completed in time to present a recommendation in this report. Further research is recommended.

H. Strengthening the City's Internal Audit Function

The CRTF believes that Internal Audit is an essential function for the City. In 1982, an Internal Audit function was established as part of the City's Administrative Code. In 2004, Article II, Section 15 was added to the Administrative Code by Council to provide more independence to the internal audit division through establishment of an Internal Audit Review Committee. It was reported to the CRTF that, currently, internal audits are performed but that no Internal Audit Review Committee is functioning, which dilutes the independence and effectiveness of the function. The CRTF recommends that Council fully implement the structure which currently exists in the Administrative Code, including a

functioning Internal Audit Review Committee. If the Administrative Code provisions are not fully implemented, a Charter amendment may be warranted in the future.

J. Periodic Review of the Charter

The CRTF discussed the merits of a periodic citizen review of the Charter's contents, such as that done by this task force. Such a review would provide an opportunity for continuous improvement of the clarity, simplicity, and understandability of the Charter, enhance citizen engagement, and assure that City operations remain in conformity with its basic law. To accomplish this result, the CRTF recommends that a provision be added to the Charter which requires its periodic review, within ten years after the previous review, by a citizen group appointed by Council, with recommendations for changes by the group to be reported back to the Council, mayor, and city manager.

Submitted to Cincinnati City Council via Kevin Flynn, Chair of the Rules and Audit Committee, and to the Office of Mayor John Cranley on July 16, 2015.