



Labor, Administration and Fiscal Reform Committee

Final Report

May 21, 2015

Committee Members

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Report Contents

Introduction	Page 2
Meeting Dates of the Committee	Page 2
Committee Recommendations for Assigned Issues	
A. Issues repealed by the November, 2014 charter amendment ..	Page 3
B. Issues with no recommended change to the charter	Page 3
C. Issues with minor wording recommendations	Page 7
D. Issues with significant changes recommended	Page 8
E. Issues with recommended final review by the Task Force	Page 8
F. Issues requiring additional research/discussion	Page 10

Introduction

The Labor, Administration and Fiscal Reform Committee was established by the Cincinnati Charter Review Task Force to review and research issues identified for consideration and to determine if updates to the Charter should be recommended. The Committee met on several occasions to accomplish that objective. This report presents to the Task Force the recommendations of the Committee as they pertain to each of those identified issues.

Meeting Dates of the Committee

- August 28, 2014
- September 4, 2014
- September 18, 2014
- October 2, 2014
- October 16, 2014
- February 24, 2015
- April 30, 2015
- May 7, 2015
- May 21, 2015

A. Issues repealed by the November, 2014 Charter Amendment

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| <u>Art. IV Sec. 7</u> | Is this section relating to a director of public utilities still relevant? |
| <u>Art. VII Sec. 12</u> | What is the continued relevance of the "sinking fund"? |
| <u>Art. VII Sec. 13</u> | Is the board of rapid transit commissioners of any continued relevance? |

No further action required.

B. Issues considered with no recommended change to the Charter

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| 1. | <u>Art. II Sec. 5a</u> | Council aides are 'unclassified' employees. Would a better definition of their roles, rights and compensation produce a more transparent and equitable system? |
| 2. | <u>Art. III Sec. 2</u> | Should the role, rights, status and obligations of aides be better defined? |

The Committee decided this was not a significant issue and council members should have flexibility to staff their office as they choose. No change recommended.

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| 3. | <u>Art. II Sec. 4 and Art. III Sec. 1</u> | Should the City establish its own form of compensation that is not linked to County compensation? |
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The compensation schedule is based on the population of the county. It hasn't been updated by the Ohio General Assembly since 2000. The Committee discussed the link between County Commissioners' compensation and the compensation of council and the Mayor and whether or not it made sense to consider/recommend an alternative compensation structure.

Article 2 Section 4 reads, in part, "Each member of council shall receive, subject to the provisions of Section 4a herein, annual compensation in an amount equal to three-fourths of the annual compensation payable to the county commissioners of Hamilton County, Ohio, as it existed on Mar 1, 2005. Such compensation shall be payable semi-monthly."

Article II Section 4a reads, in part, "Council shall not receive any increase in compensation, which is from time to time adopted by the Ohio General Assembly for the county commissioners of Hamilton County, Ohio, and of which percentage increase council receives an amount equal to three-fourths of the percentage increase, unless such increase is individually ratified by a two-thirds vote of the member of council."

Article III Section 1 reads, in part, "The Mayor shall receive annual compensation in an amount equal to twice the compensation payable to a member of council as provided in Article II, Section 4. Such compensation shall be payable semi-monthly."

This matter was categorized as a (4) "minor substantive change." The Committee did not identify the rationale for using 3/4 of the County Commissioners' compensation for council and twice that for the Mayor. It was assumed that this is based on the proportion of the city population compared to the county. Cities employ a variety of methods to determine the salary of the Mayor and Council. Some have salary setting committees or commissions that do research and provide recommendations to council at set intervals and council votes on those recommendations. Others can and do vote on their own salaries and pay raises with varying degrees of public input. Controls typically exist to prevent self-serving behavior like controlling the effective date of raises, how often the issue can be considered, term staggering, etc... The other issue that seems to generate

controversy is part-time vs. full time status and the role it plays in setting salaries, particularly when making comparisons to other local governments.

Reference Ohio Revised Code:

<http://codes.ohio.gov/orc/325.10>

<http://codes.ohio.gov/orc/325.18>

The Committee noted that the existing Charter process for establishing Council Member and Mayoral compensation appears to be working without significant issue. Visibility exists in that Council must ratify any increase to compensation and any such ratified increase does not take effect until the following Council term and cannot be adopted retroactively. The Committee therefore recommends no change to the referenced Charter sections.

4. Art. IV Sec. 1 & 2 There are no minimum qualifications for the City Manager specified in the Charter.

The Committee noted that there is visibility and opportunity for sufficient review of potential candidates, including their qualifications, by council prior to approval of a City Manager. No change recommended.

5. Art. IV Sec. 3 What positions (e.g. City Manager, Department Heads) should be subject to residency requirements, if any?

The Committee noted that some residency issues are addressed by ORC and that residency requirements are better addressed by Ordinance rather than Charter provision. No change recommended.

6. Art. VII Sec. 11 Should the role of the public clinics be specified in the Charter?

Though the Committee agreed that the public clinics are a key benefit to city residents, adding provisions for the clinics in the Charter would eliminate the flexibility the City has today to consider the economic viability of providing this service. No change recommended.

7. Art. VII Sec. 1&14 Should Parks and Recreations be combined?

8. Art. VII Sec. 11 Could the Board of Health be merged with County Board of Health?

9. Not in Charter Should the Charter include a guarantee of collective bargaining rights in the charter (if endangered at State or federal level.)

10. Not in Charter Should the Charter define and require a structurally balanced budget?

The Committee discussed each of the above issues and determined that each are very significant issues individually which should not be included in the scope of the TF recommendations. No change recommended.

11. Art. IV Sec. 9 Restriction on using revenue "for no other purpose" is open to broad interpretation.
12. Art. IV Sec. 9 Do all matters affecting Water Works belong in the Charter or should they be governed by ordinance?
13. Art. V Sec.5&6 Should the Charter specify that both chiefs need to be licensed/certified by the State of Ohio?
14. Art. VII Portland has a board that oversees streetcar functions. We had a rapid transit commission. Could be a regional transit commission.
15. Art. VII Sec. 1 "parkways" originally connected the parks. The term still has specific legal meaning, but does it make sense?

The Committee discussed each of the above issues and agreed that they did not reach a level of significance nor represent an area of concern to support a Charter change. There was agreement that administrative functions should not be dictated by the Charter. No change recommended.

16. Art. IV Sec. 5 Is it necessary (or advisable) for the Solicitor to replicate criminal prosecutorial duties of the Hamilton County D.A.?

The Committee discussed this issue and agreed that maintaining the Solicitor's role in prosecutorial matters related to the city is preferred. No change recommended.

17. Art. II Sec. 7 Are there administrative boards in the charter that should be defined by ordinance or Admin. Code or vice versa? (Fresh look of all boards for consistent policy)
18. Art. VII Term limits, periods, numbers of people on boards and commissions, is all inconsistent. Examine the entire board structure, and why.
19. Art. VII Sec. 1 Should the commissions be larger, should they have shorter terms, and should there be terms limits?
20. Art. VII Sec. 11 Health Department employees report to the Board of Health, not the city manager. Designed that way, may still be a good idea, explore admin. Redundancy.
21. Art. VII Sec. 2-10 Should the Planning Commission be eliminated and a Planning Department guaranteed in the Charter?

Discussion

Article VII of the Charter of the City of Cincinnati provides for the Board of Park Commissioners (Sec. 1); the Planning Commission (Sec. 2-10); the Board of Health (Sec. 11); and the Public Recreation Commission (Sec. 14). These are the only boards and commissions specifically provided for in the Charter which deal with city service functions. There are numerous additional boards and commissions which have been set up by City Council ordinances who advise city government and whose structure is outlined in the City's Administrative Code.

[Note: Section 12 (Board of Trustees of Sinking Fund) and Section 13 (Board of Rapid Transit Commissioners) of Article VII were repealed in November 2014.]

The origins of the four Charter boards and commissions long predate the adoption of the council-manager form of government in Cincinnati. Each grew out of grass-roots citizen initiatives to address perceived needs which were not being met adequately by city government. The leadership of dedicated citizens was key to the early success of these efforts.

When the 1926 Charter was adopted, the Board of Park Commissioners, the City Planning Commission, the Board of Health, and the Public Recreation Commission were maintained with specific provisions which would assure their continued independence from direct control of city government. Although the term “independent” does not appear in the Charter in reference to these boards and commissions, they are commonly labelled as such because they have a distinct existence outside the normal city administration/council relationship of the other city departments. The budgets of these boards and commissions are approved by Council through the normal budget process but the boards and commissions control appropriation and expenditures of funds within their budgets.

Each of the Boards and Commissions is outlined in the Charter as to the appointment process for its members, length and term of service, and powers and duties. These details vary from one to the other but have remained essentially the same since the adoption of the 1926 Charter. A 1971 Charter amendment reduced the term of office for members of the Board of Health from ten years to the current three years and increased the number of members of the board from five to the current nine members. A 1991 Charter amendment increased the number of Park Board Commissioners from three to the current five members. The Mayor, with the advice and consent of Council, appoints most of the members of these boards and commissions, with the exception of a few provisions for specific representation (from other boards or from the administration) provided in the Charter. All but the Planning Commission appoint their own directors and hire their own employees.

References:

Charter of the City of Cincinnati

Model City Charter, Eighth Edition, Second Printing 2011; publication of the National Civic League.

“Independent Boards and Commissions in the City of Cincinnati,” League of Women Voters of the Cincinnati Area, March 1990

Comments:

The Model City Charter does not recommend administration by a board or commission, preferring to provide that the city manager appoint, direct, and supervise all the officers who administer city departments. This keeps clear the lines of responsibility and authority over the administration of city services.

However, the existence of independent boards and commissions in the Cincinnati City Charter does reflect historical tradition and concerns about these particular services and ways of dealing with them. There does not seem to be clear direction that would indicate that these boards and commissions should be dropped from the Charter. Each has its strong constituency and supporters. Nor does there seem to be any need to standardize the membership or functioning of the boards and commissions. Each board and commission has developed over time and is working to serve an important function in our government. An added bonus is that these boards and commissions seem to attract citizen volunteer involvement in impressive proportions.

Article II, Sec. 7, should be retained as it gives city council and the administration the flexibility to change administrative functions in city government through changes in the Administrative Code without having to change provisions in the Charter.

The Committee recommends no change to any of the referenced sections.

22. <u>Art. VIII Sec. 4</u> Place cap or limitations on bonds in the charter, or make them require public vote. If it's a good idea, what type of processes could be used?
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The City primarily utilizes dedicated property tax proceeds to support debt service payments on general obligation bonds and notes. Section 133.05 of the ORC provides for limits on indebtedness of the City in that it states that the principal amount of both voted and unvoted debt of the City may not exceed 10.5% of the assessed valuation of property within the City, and that the principal amount of unvoted debt may not exceed 5.5% of the City’s assessed valuation. The City’s current property tax millage for debt requirements is 6.5 mills. The City is well within the unvoted statutory debt limitation. The Committee recommends no changes to this section.

23. Art. VIII Sec. 6a Is the section too broad? What does it include?

Section 6a provides to Council the authority to levy other taxes as allowed under ORC in addition to those taxes identified in Sections 3, 4 and 5 of Article VIII. The levy of other such taxes would be by ordinance and subject to the provisions in Sections 6b and 6c if applicable. The Committee did not consider the provisions to be too broad and therefore recommends no change to this section.

24. Art. VIII Sec. 6b The 3% limitation seems to be confusing, added after it appears that the items cannot be taxed at all.

The Committee noted that the wording may, at first reading, appear to be contradictory but in actuality is not. Research indicated that when placed on the ballot opponents claimed the wording was difficult to understand but was approved by the voters. The Committee recommends no change to this section.

C. Issues with recommended minor wording changes to Charter

1. Art. IV Sec. 9
2. Art. VIII Sec. 4 What is the continued relevance of the “sinking fund”?

The Committee noted that Charter provisions for and most references to a sinking fund were removed by amendment in November, 2014. 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. The Committee recommends that the term “sinking fund” be replaced in each referenced section to read “principle and interest”.

3. Art. V Sec. 3 Veteran preference in Civil Service exams. Can some obsolete language (e.g., about prior wars) be eliminated?
4. Art. V Sec. 3 Is there a state/federal meaning for "disabled veteran" and do we want to define the term to clarify its use in this section?

- a) **The Committee noted that the Charter is not consistent with and is less generous than state law pertaining to preference given to veterans when taking civil service exams. The Committee recommends that the Charter be amended to:**
- b) **Insert a new sentence in the first paragraph of this section, prior to the existing second sentence, that would state that the City of Cincinnati shall conform to and provide, at a minimum, the veteran preferences provided for by the Ohio State Civil Service Code.**
- c) **Remove wording in the existing second sentence of the first paragraph of this section beginning with “including World War I” and ending with “whichever is the later date”**
- d) **Add a sentence to follow the existing second sentence of this section to read “Disabled veteran, as defined in the Ohio Revised Code, shall mean a veteran who is entitled to, or who but for the receipt of military retirement pay would be entitled to compensation, under any law administered by the department of veterans affairs.**

5. Art. VIII Sec. 6c The current city income tax rate is 2.1%, but the numbers in this section only add up to 2.0%. The .1% infrastructure tax passed in 1988 is not reflected in the Charter.

The wording of this section could be “cleaned-up”. The 2.1% is comprised of 1.55% for General Fund operating purposes, 0.3% for public transit, 0.15% for permanent capital improvements and 0.1% for maintenance of the City’s infrastructure. The 0.1% infrastructure tax is not included in the Charter as it was placed on the ballot by Cincinnati City Council and approved by Cincinnati voters at the May 3rd Primary Election in 1988 as an "Ordinance of Council" providing for the additional 0.1% earnings tax rather than as a Charter Amendment.

6. Art. VIII Does language all reference state code, etc.? Needs clarification.

The Solicitor should develop language that clarifies that the tax laws references in this section are from the ORC, or that updates the references to the appropriate laws applicable today.

D. [Issues with recommended significant changes](#)

1. Art. V Sec. 4 Political contribution prohibition. Is this still enforceable?

The City Solicitor has indicated this provision is unenforceable given court challenges. The current wording oversteps the City’s authority to establish campaign rules for City elections. The Committee noted that the Model City Charter (8th Edition) offers wording that may resolve this issue. The following wording recommendation should be further reviewed by the Solicitor to ensure its enforceability.

The Committee recommends that the following wording be added to the end of the first sentence of section 4:

...contribution for any political party, any **committee, or any candidate **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.****

E. [Issues recommended for final review by the entire Task Force](#)

1. Art. V Sec. 3 Prohibition against fees is a historic remnant. Removing it could produce revenue that would offset the cost of exams (and other cities do it.)

The Committee discussed, at length, the pros and cons of removing this prohibition as outlined. The Committee was not in full agreement on a recommendation and defers to the Task Force.

Pros: The City should have the flexibility to charge for the exam should it become an economic necessity to do so. Offsetting all or a portion of the cost to administer the test could allow the City to offer the test more frequently and provide a larger pool from which vacancies could be filled on a timelier basis.

Cons: Charging a fee could limit candidates in that many may not be able to afford to take the exam. Removing the prohibition could potentially become a politically charged issue that may draw a lot of negative attention to any proposed Charter amendments.

2. <u>Art. VIII Sec. 6b</u> Should the prohibition against taxing in 6b above 3% be removed? (ORC specifically permits it, Sec. 6b is an express limitation on 6a.)

The Charter Amendment (Article VIII Sec. 6b) was passed in Nov 1988 to limit the admissions tax to 3%. The amendment prohibits City Council from passing an ordinance to increase that tax. The only way that the current ticket tax could be raised would be for citizens to propose a ballot initiative or for City Council to, by a two-thirds majority, place the issue on the ballot for a vote.

The issue came to a head during the stadium tax debate in 1987-88. City Council attempted to raise the ticket tax by 1.25% in order to fulfill its funding commitments to the Public Schools, but ultimately came up short of a two-thirds majority during the vote in Council. In order to assure that City Council on its own couldn't raise the ticket tax, a group representing the Bengals and other local entertainment enterprises paid to collect the necessary signatures to place on the Nov 1988 ballot the Charter Amendment to prohibit the ticket tax from being raised without an affirmative vote by a majority of Cincinnati's voters.

City Council passed the original ticket tax ordinance in 1958 (as allowed by the ORC) and the tax went into effect in 1959. The ordinance established "a tax of three percent on the amount paid for admission to any public performance for profit at any place in the City of Cincinnati." The law excluded the first \$1.05 of a ticket's cost from the taxation, and it exempted religious, educational, charitable, and non-profit arts organizations from paying the tax (from the Wilder Report, October 1998; "A review of the proposed charter amendment to prohibit city council from increasing the entertainment ticket tax").

The Committee discussed the pros and cons of removing the 3% cap on this tax. The Committee was not in full agreement on a recommendation and defers to the Task Force.

Pros: The 3% tax rate has been in place since 1959. This Charter provision makes it significantly difficult to collect tax revenue that would be available under state law. Much of the additional revenue generated by an increase would come from admissions/ticket purchasers from outside the City. Many other cities impose significantly higher admission/entertainment tax rates including: Indianapolis 10%, Cleveland 8%, and Pittsburgh 10%. Allowing for an increase in the current tax rate would help provide revenue needed by the City to support economic growth.

Cons: To recommend what is essentially a repeal of this Section would be a significant issue that many may see as being beyond the scope of "Charter review". It would be a very politically charged issue that should, if recommended, be a standalone amendment so that it does not impact other less controversial recommendations of this Task Force.

F. Issues requiring additional study/discussion

1. Art. V How much of Article V has been superseded by the ORC and is unnecessary?

The Committee noted that the ORC contains significant legislation pertaining to Civil Service in the State of Ohio and that the City's Charter may not be consistent with all ORC provisions. Note that the Committee has, in this report, recommended wording changes to Article V Section 3 that addresses some inconsistency. The Committee recommends that further study be conducted to determine where ORC may supersede any existing Charter provisions and to recommend wording, where needed, to ensure conformity in the Charter.

2. Art. V Sec. 2 The HR director of the city serves as the secretary -- system lacks independent oversight.
Art. V Sec. 2 Is it appropriate to replace the words "personnel officer" with another title?

Additional discussion necessary. Issue is that the City's HR Director is present in Executive Sessions of the Civil Service Board (as secretary), which could be a significant conflict of interest when issues pertaining to the City as the employer are in question.

3. Art. VIII Sec.3, 3a, 3b Are these provisions for tax levies to support UC still needed?

Requires input from the City Solicitor. It appears references to taxes related to UC should be deleted.

4. Art. VIII Sec. 5 Is Sept. 15 still appropriate date with new fiscal year.

September 15 was the date when the fiscal year began on January 1. This date should probably change to April 15 based on the current July 1 fiscal year start.