



# Research Regarding Executive Sessions of City Council

## April 2015

### Executive Session Research

Cincinnati City Council is prohibited from conducting “executive sessions” or any closed meetings. The Direct Accountability Committee of the Charter Review Task Force has been asked to examine and make recommendations regarding executive sessions, to wit: What are the advantages and disadvantages of permitting City Council to conduct executive sessions? The following research has been conducted by the Cincinnati Research Institute in order to assist and inform this discussion. The approach has been to examine the policies of other major Ohio cities in comparison to Cincinnati.

### Defining the Issue

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.” O.R.C. Sec. 121.22B(1)(a) and C. This includes the requirement that “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.” O.R.C. Sec. 121.22(C).

There are exceptions to the requirement that all council meetings must be conducted publicly and that minutes from the meetings must be made available for public inspection. Upon a majority vote of a quorum present, a city council may enter executive sessions for the limited and finite purposes listed in Ohio Revised Code Sec. 121.22(G)(1)-(8):

- (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:

(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.

Although this state statute would permit Cincinnati's City Council to conduct executive sessions for the limited purposes described above, the city's charter establishes a different

standard. Section 5, Article II of the Charter of the City of Cincinnati states, “The proceedings of the council shall be public.”

In *State ex rel. Gannett Satellite Network, Inc. v. Cincinnati City Council* (Ohio App 1 Dist. 2000) 739 N.E.2d 387, 137 Ohio App.3d 589, the *Cincinnati Enquirer’s* parent company argued that the charter’s simple mandate that all “proceedings of the council shall be public” is clear and unequivocal. The charter contains no exceptions to this requirement. Therefore, Cincinnati City Council is prohibited from conducting executive sessions for any reason -- even the limited reasons expressly permitted by Ohio’s Sunshine Law. The court agreed.

The “Ohio Supreme Court has 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.....” *Id.* Therefore, Council cannot adopt Rules of Council or pass an ordinance that contradicts the absolute requirement that all council proceedings “shall be public.”

The court also rejected the argument that Council could conduct executive sessions because Ohio law expressly permits 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.” *Id.* 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 any closed meeting of council. In order for Cincinnati City Council to conduct closed sessions for the limited purposes permitted by Ohio’s Sunshine Law, it is necessary for Cincinnati to amend its charter to make executive sessions possible.

### **Comparison to Other Ohio Cities**

An analysis of other Ohio city charters demonstrates that every major city in Ohio with the exceptions of Cincinnati and Cleveland permit their city councils to conduct executive sessions.

**Columbus.** Sec. 8 of the Columbus City Charter states, in part:

“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.”

**Dayton.** Sec. 39 of the Dayton City Charter states, in part:

“All meetings of the Commission shall be open to the public in accordance with the Ohio Sunshine Law presently codified in Ohio R.C. § 121.22. The Commission

shall determine its own rules and order of business and shall keep a journal of its proceedings.”

**Toledo.** Sec. 32 of the Toledo City Charter states, in part:

“All meetings of the Council or committees thereof shall be conducted in accordance with the open public meeting laws of the State of Ohio. The Clerk of Council shall make all minutes and records of all meetings of Council accessible to any citizen at reasonable times.”

**Akron.** Sec. 33 of the Akron City Charter states in part: “Meetings of the council or committee thereof shall be public except as otherwise permitted by this charter. Any citizen shall have access to the minutes and records of the public meetings at all reasonable times.” Sec 141 provides further elaboration:

Meetings of any Council, board, commission, committee, agency, or similar body heretofore or hereafter created either by this Charter or by action of Council of the City of Akron are hereby declared to be public meetings open to the public at all times; such public bodies may hold closed, executive sessions only to consider:

1. Appointment, employment, dismissal, discipline, promotion, demotion or compensation of a public employee or official;
2. Purchase or sale of property if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose private interests are adverse to the City's;
3. Conference with an attorney for the public body concerning pending or imminent court action involving the public body;
4. Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees;
5. Matters required to be kept confidential by federal law or rule or state statutes;
6. Security arrangements where disclosure of matters discussed might reveal information that could be used to commit or avoid prosecution for a violation of the law.

Akron’s charter further specifies that any “resolution, rule, regulation, decision or formal action adopted at any meeting not open to the public, and not permitted under the above exceptions, is void.”

**Youngstown.** Sec. 7 of the Youngstown City Charter states, in part: “All meetings of the Council or committees thereof shall be public unless an executive session is held for one of the

reasons set forth in Ohio Revised Code 121.22(G) and any citizen shall have access to the minutes and records at all reasonable times.”

**Cleveland.** Sec. 28 of the Cleveland City Charter as last amended on November 9, 1931 states, in part: “All meetings of the Council or committees thereof shall be public and any citizen shall have access to the minutes and records thereof at all reasonable times.” Patricia J. Britt, Cleveland’s Clerk of Council, verifies that Cleveland’s City Council does not and cannot conduct executive sessions.

**Parma, Canton and Lorain.** All three of these cities are statutory cities, meaning that they do not have charters and defer to Ohio law. As a result, all three can conduct executive sessions pursuant to Ohio Revised Code 121.22.

## **Analysis**

Cincinnati and Cleveland stand alone among Ohio’s ten largest cities in their complete prohibition against executive sessions. All of the Ohio cities discussed above that have municipal charters follow one of two approaches to permitting executive sessions. 1) The most common approach is to defer to Ohio law generally or to refer specifically to O.R.C. Sec. 121.22. 2) Akron takes the modestly different approach of summarizing the exceptions found in Sec. 121.22(G)(1)-(8) within its charter. Substantively, this could require Akron voters to adopt any change to Ohio’s Sunshine Law, whereas state legislative changes would automatically affect the rules for conducting executive sessions in cities that simply defer to state law. Akron’s approach has the advantage of providing its citizens with the option to accept or reject a potential enlargement of the power of executive sessions. Conversely, it has the practical disadvantage of requiring a charter amendment to reflect state-level changes. By effectively summarizing Ohio law rather than deferring to it, it is possible that some provision of Sec. 33 of Akron’s charter could be interpreted to create a standard that is distinguishable from some of the provisions found in O.R.C. Sec. 121.22.

In *State ex rel. Inskeep v. Staten* (Ohio 1995) 656 N.E.2d 345, 74 Ohio St.3d 1445, the City of Mason faced a challenge to its charter that was virtually identical to the challenge made to Cincinnati’s charter. Mason’s charter stated that “[a]ll meetings of the Council shall be open to the public” and did not provide any exceptions. The Ohio Supreme Court ruled that Mason could not enact an ordinance providing for executive sessions that contradicted this language in its charter. In response, Mason amended its charter in 1996. The current Sec. 3.08 of Mason’s City Charter states, in part: “All meetings of the Council shall be open to the public, except, that the Council may by a majority vote of the members present enter into an executive session

only for those purposes permitted by the general laws of the State of Ohio.” This is effectively the same approach taken by Columbus, Dayton, Toledo and Youngstown.

Several of Ohio’s largest cities have followed a path similar to Mason’s, choosing to modify charters that once had language similar to Cincinnati’s charter in order to permit executive sessions. Columbus found the inability to conduct executive session an impediment to effective government and amended its charter accordingly.<sup>1</sup> Youngstown’s Clerk of Council was unaware when the change was made in that city, but states that city officials generally concur that the ability to conduct executive sessions for limited purposes is critical to the effective and efficient operation of city council in that city.<sup>2</sup> Former City Manager of Dayton, Timothy Riordan, advises that similar concerns caused Dayton to amend its charter to permit executive sessions.<sup>3</sup> Clerks of Council in Cleveland, Youngstown and Columbus all state that while they do not possess specific percentages, it is their understanding that the overwhelming majority of Ohio’s smaller cities permit their governing bodies to conduct executive sessions for the limited purposes enumerated in Ohio’s Sunshine Law.

Cleveland City Council does not conduct executive sessions and Clerk of Council Patricia J. Britt, who has served as Clerk since 2008 and who was also a member of Cleveland’s City Council between 1995 and 2008, states that to her knowledge this has never been an issue in Cleveland.<sup>4</sup> All meetings of council must be open to the public, and meetings and their topics are addressed accordingly. The section of Cleveland’s charter that requires all meetings of council to be open to the public has not been amended since 1931.

Cincinnati amended Art. 11, Sec. 5 of its Charter in 1999 as part of the “stronger mayor” amendments that shifted some of the balance of power in the charter. When these changes were made, it was generally believed that no amendment to the language requiring council meetings to be public was necessary in order to conduct executive sessions.<sup>5</sup> The framers of the amendment assumed that executive sessions were permissible for all of the reasons set forth by the Solicitor’s Office in *State ex rel. Gannett*. In fact, the ability to conduct executive sessions specifically for the purpose of employee performance review was one of the critical components in the balance of power agreed upon in 1999; and the court’s decision in *Gannett* fundamentally altered the ability of municipal government to function in the manner envisioned by some of the proponents of the 1999 changes.<sup>6</sup> Former Dayton City Manager Timothy Riordan confirms that Dayton conducts performance reviews of its City Manager in

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<sup>1</sup> Interview on February 17, 2015 with Columbus City Clerk, Andrea Blevins.

<sup>2</sup> Interview on February 18, 2015 with Youngstown Clerk of Council, Valnecia Y Marrow.

<sup>3</sup> Interview with Timothy Riordan on April 21, 2015.

<sup>4</sup> Interview on February 17, 2015 with Cleveland Clerk of Council, Patricia J. Britt.

<sup>5</sup> Interview with Jerry Newfarmer on Dec. 8, 2014.

<sup>6</sup> Interviews with Jerry Newfarmer and Jeff Berding on Dec. 8, 2014.

executive sessions and notes that cities that lack the ability to conduct sensitive personnel review in closed sessions simply choose not to conduct them.<sup>7</sup>

Some of the practical ramifications of City Council's inability to conduct executive sessions are demonstrated in two recent news articles. On January 29, 2015, the *Cincinnati Enquirer* reported that City Manager Black is instituting new security measures in City Hall<sup>8</sup>. These changes, described with specificity by the *Enquirer*, are being made in response to an ongoing 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<sup>9</sup>, 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.

On March 29, 2015, The *Cincinnati Enquirer* revealed that the City has been keeping very poor and inconsistent records regarding roughly \$250,000,000 “in incentives granted to business and developers” since 2008.<sup>10</sup> 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,”<sup>11</sup> 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.”

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<sup>7</sup> Interview with Timothy Riordan on April 21, 2015.

<sup>8</sup> Coolidge, Sharon: “City Hall Steps Up Security After Threats To Cranley.” *Cincinnati Enquirer*, Jan. 29, 2015.

<sup>9</sup> 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.”

<sup>10</sup> Coolidge, Sharon and Tweh, Bowdeya: “City Doesn't Track Return On Incentives.” *Cincinnati Enquirer*, March 29, 2015.

<sup>11</sup> ORC 121.22(G)(8).

## **Conclusions.**

If Cincinnati were to amend its charter to permit council to conduct executive sessions for the limited purposes permitted under O.R.C. 121.22, the change would be consistent with the practice of a clear majority of Ohio cities, and would be consistent with a statewide trend.

Transparency is the intended goal of requiring that all of the business of Council be conducted in public session. However, in the absence of a process for scrutinizing personnel job performance in a manner that provides some discretion and dignity to the employees, Cincinnati appears to simply avoid having these discussions at all; and the inability to vet development incentive deals with some assurance of confidentiality may be causing or contributing to why these deals appear to be receiving virtually no substantive oversight by City Council.



## APPENDIX

### O.R.C. 121.22 Public meetings - exceptions.

(A) This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

(B) As used in this section:

(1) "Public body" means any of the following:

(a) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution;

(b) Any committee or subcommittee of a body described in division (B)(1)(a) of this section;

(c) A court of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district pursuant to section 6115.10 of the Revised Code, if applicable, or for any other matter related to such a district other than litigation involving the district. As used in division (B)(1)(c) of this section, "court of jurisdiction" has the same meaning as "court" in section 6115.01 of the Revised Code.

(2) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members.

(3) "Regulated individual" means either of the following:

(a) A student in a state or local public educational institution;

(b) A person who is, voluntarily or involuntarily, an inmate, patient, or resident of a state or local institution because of criminal behavior, mental illness or retardation, disease, disability, age, or other condition requiring custodial care.

(4) "Public office" has the same meaning as in section 149.011 of the Revised Code.

(C) All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting.

The 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. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

(D) This section does not apply to any of the following:

- (1) A grand jury;
- (2) An audit conference conducted by the auditor of state or independent certified public accountants with officials of the public office that is the subject of the audit;
- (3) The adult parole authority when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine parole or pardon;
- (4) The organized crime investigations commission established under section 177.01 of the Revised Code;
- (5) Meetings of a child fatality review board established under section 307.621 of the Revised Code and meetings conducted pursuant to sections 5153.171 to 5153.173 of the Revised Code;
- (6) The state medical board when determining whether to suspend a certificate without a prior hearing pursuant to division (G) of either section 4730.25 or 4731.22 of the Revised Code;
- (7) The board of nursing when determining whether to suspend a license or certificate without a prior hearing pursuant to division (B) of section 4723.281 of the Revised Code;
- (8) The state board of pharmacy when determining whether to suspend a license without a prior hearing pursuant to division (D) of section 4729.16 of the Revised Code;
- (9) The state chiropractic board when determining whether to suspend a license without a hearing pursuant to section 4734.37 of the Revised Code;
- (10) The executive committee of the emergency response commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce Chapter 3750. of the Revised Code;
- (11) The board of directors of the nonprofit corporation formed under section 187.01 of the Revised Code or any committee thereof, and the board of directors of any subsidiary of that corporation or a committee thereof;
- (12) An audit conference conducted by the audit staff of the department of job and family services with officials of the public office that is the subject of that audit under section 5101.37 of the Revised Code;
- (13) The occupational therapy section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license or limited permit without a hearing pursuant to division (D) of section 4755.11 of the Revised Code;

(14) The physical therapy section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license without a hearing pursuant to division (E) of section 4755.47 of the Revised Code;

(15) The athletic trainers section of the occupational therapy, physical therapy, and athletic trainers board when determining whether to suspend a license without a hearing pursuant to division (D) of section 4755.64 of the Revised Code.

(E) The controlling board, the tax credit authority, or the minority development financing advisory board, when meeting to consider granting assistance pursuant to Chapter 122. or 166. of the Revised Code, in order to protect the interest of the applicant or the possible investment of public funds, by unanimous vote of all board or authority members present, may close the meeting during consideration of the following information confidentially received by the authority or board from the applicant:

(1) Marketing plans;

(2) Specific business strategy;

(3) Production techniques and trade secrets;

(4) Financial projections;

(5) Personal financial statements of the applicant or members of the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.

The vote by the authority or board to accept or reject the application, as well as all proceedings of the authority or board not subject to this division, shall be open to the public and governed by this section.

(F) Every public body, by rule, shall establish a reasonable method whereby any person may determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. A public body shall not hold a special meeting unless it gives at least twenty-four hours' advance notice to the news media that have requested notification, except in the event of an emergency requiring immediate official action. In the event of an emergency, the member or members calling the meeting shall notify the news media that have requested notification immediately of the time, place, and purpose of the meeting.

The rule shall provide that any person, upon request and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed. Provisions for advance notification may include, but are not limited to, mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person.

(G) Except as provided in divisions (G)(8) and (J) of this section, the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:

(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. Except as otherwise provided by law, no public body shall hold an executive session for the discipline of an elected official for conduct related to the performance of the elected official's official duties or for the elected official's removal from office. If a public body holds an executive session pursuant to division (G)(1) of this section, the motion and vote to hold that executive session shall state which one or more of the approved purposes listed in division (G)(1) of this section are the purposes for which the executive session is to be held, but need not include the name of any person to be considered at the meeting.

(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. No member of a public body shall use division (G)(2) of this section as a subterfuge for providing covert information to prospective buyers or sellers. A purchase or sale of public property is void if the seller or buyer of the public property has received covert information from a member of a public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.

If the minutes of the public body show that all meetings and deliberations of the public body have been conducted in compliance with this section, any instrument executed by the public body purporting to convey, lease, or otherwise dispose of any right, title, or interest in any public property shall be conclusively presumed to have been executed in compliance with this section insofar as title or other interest of any bona fide purchasers, lessees, or transferees of the property is concerned.

(3) Conferences with an attorney for the public body concerning disputes involving the public body 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 operated pursuant to Chapter 339. of the Revised Code, a joint township hospital operated pursuant to Chapter 513. of the Revised Code, or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, to consider trade secrets, as defined in section 1333.61 of the Revised Code;

(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:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, 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.

If a public body holds an executive session to consider any of the matters listed in divisions (G)(2) to (8) of this section, the motion and vote to hold that executive session shall state which one or more of the approved matters listed in those divisions are to be considered at the executive session.

A public body specified in division (B)(1)(c) of this section shall not hold an executive session when meeting for the purposes specified in that division.

(H) A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section. A resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted the resolution, rule, or formal action violated division (F) of this section.

(I) (1) Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

(2) (a) If the court of common pleas issues an injunction pursuant to division (I)(1) of this section, the court shall order the public body that it enjoins to pay a civil forfeiture of five hundred dollars to the party that sought the injunction and shall award to that party all court costs and, subject to reduction as described in division (I)(2) of this section, reasonable attorney's fees. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate this section;

(ii) That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

(b) If the court of common pleas does not issue an injunction pursuant to division (I)(1) of this section and the court determines at that time that the bringing of the action was frivolous conduct, as defined in

division (A) of section 2323.51 of the Revised Code, the court shall award to the public body all court costs and reasonable attorney's fees, as determined by the court.

(3) Irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed upon proof of a violation or threatened violation of this section.

(4) A member of a public body who knowingly violates an injunction issued pursuant to division (I)(1) of this section may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the attorney general.

(J) (1) Pursuant to division (C) of section 5901.09 of the Revised Code, a veterans service commission shall hold an executive session for one or more of the following purposes unless an applicant requests a public hearing:

(a) Interviewing an applicant for financial assistance under sections 5901.01 to 5901.15 of the Revised Code;

(b) Discussing applications, statements, and other documents described in division (B) of section 5901.09 of the Revised Code;

(c) Reviewing matters relating to an applicant's request for financial assistance under sections 5901.01 to 5901.15 of the Revised Code.

(2) A veterans service commission shall not exclude an applicant for, recipient of, or former recipient of financial assistance under sections 5901.01 to 5901.15 of the Revised Code, and shall not exclude representatives selected by the applicant, recipient, or former recipient, from a meeting that the commission conducts as an executive session that pertains to the applicant's, recipient's, or former recipient's application for financial assistance.

(3) A veterans service commission shall vote on the grant or denial of financial assistance under sections 5901.01 to 5901.15 of the Revised Code only in an open meeting of the commission. The minutes of the meeting shall indicate the name, address, and occupation of the applicant, whether the assistance was granted or denied, the amount of the assistance if assistance is granted, and the votes for and against the granting of assistance.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No. 129, SB 314, §1, eff. 9/28/2012.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Amended by 129th General Assembly File No. 1, HB 1, §1, eff. 2/18/2011.

Effective Date: 05-15-2002; 04-27-2005; 2007 HB194 02-12-2008

***Excerpts from State ex rel. Gannett Satellite Information Network, Inc. d.b.a. The Cincinnati Enquirer v. Cincinnati City Council (Ohio App 1<sup>st</sup> Dist. 2000) 739 N.E.2d 387, 137 Ohio App.3d 589.***

The facts are not in dispute, and the only issue is whether the Charter of the City of Cincinnati allows the city council to meet in “executive sessions” that are closed to the public.

This is not a case about freedom of the press or open-meeting laws in general. Many governing bodies properly hold closed executive sessions, and the Ohio legislature has determined that executive sessions are permissible in certain situations. But closed sessions are permitted only if the governing document of the public body itself so allows.

Section 5, Article II of the Charter of the City of Cincinnati states, “The proceedings of the council shall be public.” The Enquirer argues that this section of the charter, which does not mention any exception for executive sessions, mandates that all council meetings be open to the public. In response, the city points to another provision of the charter that states that “meetings [of the city council] shall be held \* \* \* in accordance with a rule adopted by the council which may be amended at any time.”<sup>2</sup> The city then refers to Rule 2.1 of the Rules of Council, which the city claims authorizes executive sessions. Rule 2.1 provides, “All meetings of the council and standing committees shall be open to the public; however, the council and its committees may at any meeting hold an executive session closed to the public pursuant to the law of Ohio and as provided in these rules.” The city also points to Ohio's Sunshine Law, which permits executive sessions in some circumstances.<sup>3</sup>.....

### **A Rule Cannot Change the Charter**

Regarding the city's reference to Rule 2.1 of the Rules of Council, the Ohio Supreme Court has 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, just as legislation by Congress cannot abrogate a provision of the Constitution.

In *State ex rel. Inskip v. Staten*, the Ohio Supreme Court analyzed the Mason City Charter, which, like Cincinnati's city charter, provided that “[a]ll meetings of the Council shall be open to the public” and did not provide for executive sessions. The court held that the plain language of the charter providing for open meetings prevailed over an ordinance that permitted certain “special meetings” to be held in private: “The charter manifestly requires open meetings and prohibits executive sessions. To the extent that [the ordinance] conflicts with the foregoing charter provisions, it is ineffective.” .....

### **The Sunshine Law**

The remaining major issue is the effect that the Ohio Sunshine Law has on this case. 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. Generally, in matters of local self-government, provisions of a municipal charter will prevail over parallel state law that expressly conflicts with the charter.<sup>6</sup>.....

In other words, the city council cannot rely on the sunshine law to hold closed executive sessions. Rather, the city council must abide by the city charter. Unless the charter is amended to provide for closed executive sessions, all proceedings of the council must be public. We hold that the trial court erred in denying the Enquirer's petition for a writ of mandamus.....

The city claims that “proceedings” occur only when council exercises “legislative power,” i.e., when it votes. We will not twist words in such a sophistic manner. Accepting this argument would allow the

council to always meet behind closed doors, decide what to pass, then come out and vote. Not only is this argument feckless, it is pernicious.

### **Excerpts from CHARTER OF THE CITY OF COLUMBUS**

#### **Sec. 8. - Meetings of council.**

At 5 o'clock p.m., on the first Monday in January, following a regular municipal election, the council shall meet at the usual place for holding meetings. If the first Monday in January is a legal holiday, then the meeting shall be held on the following day. Thereafter the council shall meet at such times as may be prescribed by ordinance or resolution; provided that at least fifty regular meetings shall be held in each year. The mayor, the president of the council, or any three members thereof may call special or emergency meetings of the council as provided for by general laws of the state. 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.

*(Amended 11-3-98; Ord. No. 1143-2010, § 1, 7-19-2010; Ord. No. 1749-2014, 7-21-2014)*

### **Excerpts from the CHARTER OF THE CITY OF DAYTON**

#### **Sec. 39. - Meetings of the Commission.**

For the purpose of allowing newly-elected and qualified Commissioners to assume the duties of their office, the Commission shall meet on the first Monday in January following a regular municipal election, or the next day if the first Monday in January following a regular municipal election is a legal holiday. The Commission shall meet at a place and time announced during the last Commission meeting of the previous year. Thereafter the Commissioners shall meet at such times as may be prescribed by ordinance or resolution, except that they shall not meet less than once each week. Should a scheduled meeting of the Commission lack a quorum, the meeting may be cancelled by a majority of the Commission providing written notification to the Clerk of their unavailability. A cancelled meeting shall not constitute an absence from a meeting by a Commissioner and shall not require authorization from the Commission.

The Mayor, any two members of the Commission, or the City Manager, may call special meetings of the Commission upon at least 24 hours' written notice to each member of the Commission, served personally on each member or left at his usual place of residence. All meetings of the Commission shall be open to the public in accordance with the Ohio Sunshine Law presently codified in Ohio R.C. § 121.22. The Commission shall determine its own rules and order of business and shall keep a journal of its proceedings.

*(Amendment adopted by voters 11-20-89; amendment adopted by voters 11-4-08; amendment adopted by voters 5-4-10)*



## **Excerpts from the CHARTER OF THE CITY OF AKRON**

### **SECTION 33. - MEETINGS OF COUNCIL.**

The Council shall meet at such times as may be prescribed by ordinance or resolution. The Mayor, the President of Council, or any two members thereof, may call special meetings of the council upon at least twelve hours' written notice to each member of the Council, served personally on each member or left at his usual place of residence. Any such notice shall state the subjects to be considered.

Meetings of the council or committee thereof shall be public except as otherwise permitted by this charter. Any citizen shall have access to the minutes and records of the public meetings at all reasonable times.

To promote public participation in the meetings of Council and its committees, Council shall enact legislation to permit members of the public to address Council at Council and committee meetings. The legislation shall provide that public speaking shall be in accordance with the rules of Council and the time permitted may be extended upon vote by a majority of Council. Council may impose reasonable limits on speaking and may restrict speakers to matters within Council's authority. The provisions of this amendment shall supersede any other provisions of the Charter related to the same subject matter. Council shall enact this legislation by March 1, 2012.

*(V 97 p 487; Approved by voters Sept. 12, 1967; Amendment adopted by electorate 11-7-00; Amendment adopted by electorate 11-8-11)*

### **SECTION 34. - PROCEDURE OF COUNCIL.**

The Council shall act only by ordinance or resolution. The affirmative vote of the majority of the members of the Council shall be necessary to adopt any ordinance or resolution. The vote upon the passage of all ordinances and resolutions shall be taken by "Yeas" and "Nays" and entered into the record. 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 the title; except that general appropriation ordinances may contain the various subjects and accounts for which moneys are to be appropriated and a consent agenda consisting of any number of ordinances or resolutions may be voted upon, provided that any Councilmember or the Mayor may remove an item therefrom. The enacting clause of all ordinances passed by the Council shall be: "BE IT ENACTED BY THE COUNCIL OF THE CITY OF AKRON." The enacting clause of all ordinances submitted by initiative shall be: "BE IT ENACTED BY THE PEOPLE OF THE CITY OF AKRON." No ordinance, unless it be declared an emergency measure, shall be passed until it has been read on three (3) separate days or the requirement of reading on three (3) separate days has been dispensed with by a vote of two-thirds of the members of Council.

When considering an ordinance or resolution changing the use area, and/or height classification of any zoning district, or any building line, or granting a conditional use in any zoning district, Council shall not act until it has held a public hearing on such legislation. Council shall give public notice not less than fifteen (15) days before the date of the required hearing. The Clerk shall provide notice of such public hearing by first class mail to owners and residents of property within, contiguous to, and directly across the street from property involved in the ordinance, and by publication in a newspaper of general circulation in the city.

*(Amendment adopted by electorate 11-4-80; Amendment adopted by electorate 11-6-90)*

**SECTION 141. - PUBLIC MEETINGS AND RECORDS; NOTICE OF MEETINGS.**

Meetings of any Council, board, commission, committee, agency, or similar body heretofore or hereafter created either by this Charter or by action of Council of the City of Akron are hereby declared to be public meetings open to the public at all times; such public bodies may hold closed, executive sessions only to consider:

1. Appointment, employment, dismissal, discipline, promotion, demotion or compensation of a public employee or official;
2. Purchase or sale of property if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose private interests are adverse to the City's;
3. Conference with an attorney for the public body concerning pending or imminent court action involving the public body;
4. Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees;
5. Matters required to be kept confidential by federal law or rule or state statutes;
6. Security arrangements where disclosure of matters discussed might reveal information that could be used to commit or avoid prosecution for a violation of the law.

Any resolution, rule, regulation, decision or formal action adopted at any meeting not open to the public, and not permitted under the above exceptions, is void.

Council shall provide by ordinance for the implementation of this section, for public notice of meetings of boards, commissions, committees and agencies, and for public inspection of minutes and records required by law to be kept by boards, commissions, committees, agencies and officials. Council may provide penalties for the violation of this section and any ordinance adopted pursuant to this section.

*(V 95 p 105; Approved by voters Nov. 8, 1966) (Amendment approved by electorate 11-6-90; Amendment adopted by electorate 11-7-00)*

**Excerpts from the CHARTER OF THE CITY OF CLEVELAND**

**§ 28 Meetings of Council**

At seven o'clock p.m., on the first Monday in January following a regular Municipal election, the Council shall meet at the usual place for holding meetings, at which time the newly-elected members of the Council shall assume the duties of their offices. Thereafter the Council shall meet at such times as

may be prescribed by ordinance or resolution. The Mayor, the President of the Council, or any five members thereof may call special meetings of the Council upon at least twelve (12) hours' written notice to each member of the Council, served personally on each member or left at the usual place of residence of such member. Any such notice shall state the subjects to be considered at the meeting and no other subjects shall be there considered. All meetings of the Council or committees thereof shall be public and any citizen shall have access to the minutes and records thereof at all reasonable times.

*(Effective November 9, 1931)*

### **Excerpts from the CHARTER OF THE CITY OF TOLEDO**

#### **Section 32. Meetings of Council.**

At five-thirty o'clock p.m. on the first business day of January following a regular City election, the Council shall meet at the usual place for holding meetings, at which time the newly elected Council members and the Mayor shall assume the duties of their respective offices. Thereafter, the Council shall meet at such times as may be prescribed by ordinance or resolution. The President of Council, or any seven (7) members thereof may call special meetings upon at least twenty-four (24) hours written notice to each member and the Mayor, served personally on each or left at such member's usual place of residence. Such notice shall state the subjects to be considered at the meeting, and no other subject shall be then considered.

All meetings of the Council or committees thereof shall be conducted in accordance with the open public meeting laws of the State of Ohio. The Clerk of Council shall make all minutes and records of all meetings of Council accessible to any citizen at reasonable times.

*(Amended by electors 11-3-92)*

### **Exerpts from THE CHARTER OF THE CITY OF YOUNGSTOWN**

#### **Section 7.**

At eight o'clock P. M. on the first Monday in January, following a regular municipal election, the Council shall meet at the usual place for holding meetings, at which time the newly elected Councilpersons shall assume the duties of their office. Thereafter the Council shall meet at such times as may be prescribed by ordinance or resolution. The Mayor, the President of the Council, or any three members thereof, may call special meetings of the Council upon at least twelve hours' written notice to each member of the Council, served personally on each member or left at the Councilperson's usual place of residence. Such notice shall state the subjects to be considered at the meeting and no other subjects shall be then considered unless all members of Council are present. All meetings of the Council or committees thereof shall be public unless an executive session is held for one of the reasons set forth in Ohio Revised Code 121.22(G) and any citizen shall have access to the minutes and records at all reasonable times.

*(Amended November 4, 2003)*

## **CHARTER OF THE CITY OF MASON**

### **SECTION 3.08 COUNCIL MEETINGS.**

No less than one (1) regular meeting of the Council shall be held each month. Four (4) members of the Council shall constitute a quorum for the transaction of business at any meeting of the Council but a lesser number may adjourn the meeting from time to time and compel, by a majority vote of the members present, the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The Clerk of Council shall keep a record of the Council's proceedings in a journal or other record as determined by Council in which the vote on any ordinance, resolution or other measure shall be recorded. All meetings of the Council shall be open to the public, except, that the Council may by a majority vote of the members present enter into an executive session only for those purposes permitted by the general laws of the State of Ohio. Each journal and other records of the Council shall be open to the public at all reasonable times. Regular meetings shall be held at such times and places as shall be determined by Council.

*(Amended 3-19-1996)*