

Cuyahoga County
Charter Review Commission
Final Report



2012-2013

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Charter Review Commission

Prologue

In November, 2009, the voters of Cuyahoga County overwhelmingly voted in favor of adopting a new charter form of government. In fact, a majority of the voters in all 57 municipalities supported the new charter, which established a County Executive and a County Council to replace the three-commissioner form of government. Thereby, Cuyahoga County instituted a three-branch, checks-and-balance governmental structure—executive, legislative and judicial—like the federal, state and most municipal governments. This Charter government took effect January 1, 2011, following the election of the new County Executive and County Council in 2010.

In preparation for this original drafting, the citizens committee involved in promoting this change in our governmental structure met with a wide variety of interested groups—political, ethnic, racial, business, labor, non-profits, foundations, etc.—to enlist their thoughts, comments, concerns, and recommendations on how to make the new county government more responsive, effective, inclusive and cooperative.

The citizens committee knew it wouldn't be a perfect document, and that it could not cover or anticipate every detail involved in the formation of the structure of this new government. Hence, they included in the Charter the requirement for the establishment of a Charter Review Commission after two years, to be formed in late 2012, to recommend changes to be submitted to the voters at the end of 2013. The reasoning was that the test of the effectiveness of the new Charter was how well the County Executive, the County Council and county staff were operating under it—where did their actual experiences reveal needs for fine-tuning or for significant changes? Subsequent charter review commissions will be appointed five years later, and every ten years thereafter, to perform a similar assessment.

The Commission

In accordance with Section 12.09 of the Charter, County Executive Edward FitzGerald appointed a nine-member Charter Review Commission (CRC) in September, 2012. The members of the Commission are:

Bruce H. Akers, Mayor (retired), City of Pepper Pike; Co-Chair, Charter Citizens Committee

Mylayna Albright, Vice President for External Affairs, AT&T

Kenneth Callahan, Judge (retired); Partner, Buckley King

Nancy Dietrich, civic activist; former Cleveland Heights Councilwoman

Miesha Wilson Headen, Auditor; Richmond Heights Council-at-Large; Professor of Business, Cuyahoga Community College

Patrick M. McLaughlin, Founding Partner, McLaughlin Law; former United States Attorney, Northern District of Ohio

Shawn M. Riley, Managing Partner-Cleveland office, McDonald, Hopkins; Mayor, Village of Gates Mills

David Russell, State Vice President, OAPSE/AFSCME (Local 4)

William Tarter, Jr., President, Cleveland Young Professional Senate

The County Executive appointed James P. Boyle as Clerk of the Commission. The Commission held its organizational meeting on November 5, 2012, at which time County Executive FitzGerald administered the oath of office to all the CRC members. The members then elected Akers as Chairman, and Russell as Vice Chair.

Meetings

The Commission has held 26 meetings, plus four community meetings. The dates of these meetings are listed in Appendix A.

Persons Appearing Before CRC

Out of courtesy and respect, the CRC extended its first invitations to the County Executive and the eleven members of the County Council. The CRC met with the County Executive and nine of the members of Council to solicit their views and recommendations regarding any changes in the Charter. (To clarify, the two Council members who did not meet with the CRC deferred to their other colleagues, saying that their concerns were addressed by those who met with us.) Then, over these eight months, more than 40 public officials and interested citizens also met with the CRC, some on more than one occasion. The list of those appearing before the CRC is attached hereto as Appendix B.

Issues/Topics

The following issues/topics were raised by those appearing before the Commission:

- Inspector General (by Charter vs. by Ordinance)
- Clerk of Courts (who should appoint)

- Human Resource Commission (clarify role)
- Justice System Audit (implementation of audit)
- Sheriff (appointed vs. elected)
- Law Director/Prosecutor (clarification of roles)
- Prosecutor (appointed vs. elected)
- Political affiliation language throughout the Charter (retain vs. remove)
- Interim appointments (time limit without confirmation)
- Executive succession (designating a successor)
- Executive residency (minimum requirements)
- Executive vacancy (time limits)
- Council vacancy (time limits)
- 30-day time for confirmation of Executive appointments (grant more time)
- Council action requiring Executive approval (eliminate unnecessary requirements)
- Effect of redistricting on Council eligibility (clarify tenure when district boundaries change)
- Board of Revision (clarify Board vs. hearing panels)
- Treasurer/Fiscal Officer (should one report to the other)
- Public Defender (does the role need more clarity)
- Campaign Finance (should Council enact such legislation)
- Emerging/Underrepresented demographics in appointments (should be addressed)
- Retire/rehire prohibitions (eliminate so-called “double dipping”)
- Open primaries (in place of current electoral process)
- Term limitations (for Executive and Council)
- Various regional boards/commissions being placed under the Executive (expanding responsibilities of the Executive and Council)
- Indigent defense (clarifying the County’s role)
- Council appointment of the internal auditor
- Appointment/term of the Charter Review Commission (clarification for future CRC’s)
- County Council (electing some or all members at-large)
- Establishing a type of attorney general position which would incorporate all the law enforcement positions—Prosecutor, Law Director, Sheriff. The position would be appointed by the Executive and confirmed by Council
- Proportional voting

Public Defender and Indigent Defense

Charter Section 12.09 states that the “initial Charter Review Commission shall include in its deliberations consideration of changes in this Charter for the purpose of providing more effective representation of indigent defendants, for adequate funding and support for the operation of the office of the County public defender, and for the appropriate method for selection of the County public defender.”

The current charter does not establish an office of the public defender. Rather, the current public defender is appointed by the County Public Defenders Commission established pursuant to state law in Ohio Revised Code Sections 120.13 and 120.14. The drafters of the Charter wanted the initial CRC to re-examine whether the County’s public defender office should continue operating under the state-wide system in the Ohio Revised Code, or whether the office should be specified as a Charter position subject to the County’s home-rule authority.

The CRC engaged in extensive consideration and review of the Office of the County Public Defender. The CRC received testimony on this issue from several sources, including Chief Public Defender Robert Tobik. It has been determined that the CRC will not recommend any changes to the Charter on these matters.

Issues/Topics Deferred

The Commission was open to and welcomed any issues/topics brought before it. By the same token, the Commission felt that its report and recommendations would be more impactful if it concentrated on those issues that were raised by multiple parties or that were identified as operational or functional problems. The Commission was also concerned that submitting too many issues to the voters in November could have the consequence of causing defeat---due to voter confusion---of the more important issues which require voter approval for needed change.

Accordingly, the Commission elected to render no recommendations on the following issues at this time, leaving those and others for future charter review commissions to consider:

- Treasurer being placed under the Fiscal Officer
- Term limitations for Executive and Council
- Retire/rehire prohibitions (so called “double dipping”)
- Open primary elections
- Various boards and commissions being placed under the Executive
- Implementation of at-large Council districts
- Appointment of the Internal Auditor by the Council
- Proportional voting

Issues with Modifications

On three issues in which there are considerable variances of opinion, the Commission elected to make some changes, but not a total change, as some had advocated:

- a) Sheriff: the Commission recommends leaving this official as an appointed position, but with some form of Council concurrence when the Executive wishes to remove the Sheriff;
- b) Clerk of Courts: the Commission recommends retaining current Charter language providing that the Clerk shall be appointed by the Executive, but specifying that the Executive shall seek input from the presiding judges before making an appointment;
- c) Law Director/Prosecutor: on the issue of which office handles civil court proceedings, the Commission recommends continuation of the existing obligation that the Cuyahoga County Prosecutor's Office represent the County in civil court proceedings.

Recommendations

As required by the Charter and the Rules and Procedures, the Commission is making fifteen recommended amendments to the Charter. Additionally, six Minority Reports are submitted on various issues as permitted by Rule 6D. The Minority Reports are attached hereto as Appendix C.

The Commission hereby recommends the following changes in the Charter to be sent to the voters for their consideration in this November's election:

CHARTER REVIEW COMMISSION: PROPOSED AMENDMENTS

Additions to current Charter language are bolded, deletions are struck-through.

AMENDMENT 1.

PROPOSED CHANGES TO EXECUTIVE APPOINTMENT AUTHORITY:

- **SIXTY DAYS FOR CONFIRMATION OF EXECUTIVE APPOINTEES**
- **APPOINTMENT OF EMERGING OR UNDERREPRESENTED DEMOGRAPHICS**
- **INTERIM APPOINTMENTS**

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-0]

CURRENT LANGUAGE

SECTION 2.03 POWERS AND DUTIES

(2) To appoint, subject to the confirmation by the Council, and remove County directors and officers and members of boards, agencies, commissions and authorities as are or may hereafter be created by or pursuant to this Charter, and such officers and members of boards, agencies commissions and authorities as are provided by general law to be appointed by boards of county commissioners. If the Council shall fail to act on the question of such an appointment by the County Executive within thirty days of the date that the County Executive submits such appointment to the Council for its consideration, that appointment shall be deemed confirmed without further action by the Council. The County Executive and the Council shall use good faith efforts to reflect the diversity of the people of the County in appointing such officers and members.

PROPOSED LANGUAGE

SECTION 2.03 POWERS AND DUTIES

(2) To appoint, subject to the confirmation by the Council, and remove County directors and officers and members of boards, agencies, commissions and authorities as are or may hereafter be created by or pursuant to this Charter, and such officers and members of boards, agencies commissions and authorities as are provided by general law to be appointed by boards of county commissioners. If the Council shall fail to act on the question of such an appointment by the County Executive within ~~thirty~~**sixty** days of the date that the County Executive submits such appointment to the Council for its consideration, that appointment shall be deemed confirmed without further action by the Council. **Subject to any applicable qualifications or requirements for officers and members of each board, agency, commission or authority**, the County Executive and the Council shall use good faith efforts to ~~reflect the diversity of people of the County~~ **consider emerging and underrepresented demographics** in appointing such

officers and members.

(2)(A) The County Executive may appoint interim officers to serve as any departmental director, as Inspector General, or in any position outlined in Article V of this Charter without confirmation by the Council for a period not to exceed 120 days. An interim appointment may continue beyond 120 days by extension or reappointment or another person may be successively appointed to the same position on an interim basis only if confirmed by the Council prior to the expiration of the initial interim appointment.

Rationale: This proposal incorporates three separate amendments. The first, would extend the time for Council confirmation of Executive appointments. The CRC heard from numerous Councilmembers and Executive staff members who stated that the time frame was too short. The Council has regularly scheduled meetings only twice in most months and it is imperative that the Council members have adequate time to meet, vet and vote on the nominee.

The second amendment incorporates inclusive language that will result in the membership of its various Boards and Commissions being reflective of appropriate demographic sectors, while still maintaining the mandate that qualified, competent individuals serve on these bodies.

The final proposal will allow the County Executive to appoint interim Department Heads when a vacancy occurs. This provision will allow the continuous operation of the Department while mandating that the Interim Officer may serve only for a set period of time, 120 days. This provision will only apply to departmental positions, the Inspector General and the specific positions detailed in Article V of the Charter. The positions and the duties that are fulfilled necessitate a smooth, but temporary, transition when a vacancy occurs.

AMENDMENT 2.

CAMPAIGN FINANCE

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-0]

CURRENT LANGUAGE

(NONE)

PROPOSED LANGUAGE

SECTION 3.09 POWERS AND DUTIES OF THE COUNCIL

The legislative power of the County, including the power to introduce, enact and amend ordinances and resolutions relating to all matters within the legislative power of the County, is vested in the Council. All powers **and duties** of the Council shall be exercised by ordinance or resolution and shall include, but not be limited to, the following:

(13) To enact campaign finance laws governing the election of any County officers and officials including, without limitation, campaign finance limits and donor disclosure requirements.

Rationale: The CRC conducted numerous discussions about the need for campaign finance regulations. It was observed that the State of Ohio and the City of Cleveland have enacted some form of campaign contribution limitations. The CRC determined that any mandate to enact campaign contribution limitations should be enacted by Ordinance, rather than by specific charter language. The CRC noted that it would be difficult to change contribution limits, either increasing or decreasing, if spelled out in the Charter rather than in an Ordinance. To balance the need for flexibility with the desire that contribution limits be addressed, the CRC is proposing that the Charter be amended to impose a duty on the Council to enact appropriate legislation. This proposal also amends the “powers” of the Council to “powers and duties” to clarify the authority of the Council and its obligations.

AMENDMENT 3.

CLERK OF COURTS

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-1]

CURRENT LANGUAGE

SECTION 5.01 APPOINTMENT; CONFIRMATION BY COUNCIL

Each of the officers provided for in this Article V shall be appointed by the County Executive, subject to confirmation by Council, and shall serve at the pleasure of the County Executive.

PROPOSED LANGUAGE

SECTION 5.01 APPOINTMENT; CONFIRMATION BY COUNCIL

Each of the officers provided for in this Article V shall be appointed by the County Executive, subject to confirmation by Council, and shall serve at the pleasure of the County Executive. **The County Executive shall solicit the advice of the Administrative Judges of the courts served by the Clerk of Courts for his or her consideration in making the appointment of the Clerk of Courts.**

Rationale: The Clerk of Courts and its staff, provide essential services for the Court of Common Pleas, the 8th District Court of Appeals, and the Domestic Relations Division of the Court of Common Pleas. The charter does not mandate any participation by these courts in the selection of the Clerk of Courts. This proposal incorporates the requirement that the County Executive solicit advice from the Administrative Judges of the affected Courts, prior to submitting any nomination to the Council for confirmation. This proposal will allow participation from the Courts while the accountability for the selection, and the operation of the office of the Clerk, resides with the County Executive.

AMENDMENT 4.

BOARD OF REVISION

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-0]

CURRENT LANGUAGE

SECTION 6.02 BOARD OF REVISION

There shall be one or more Boards of Revision, each consisting of three electors of the County. Two members of each board, who shall not be of the same political party, shall be appointed by the Council, and one member shall be appointed by the County Executive, each for a term of three years. Each Board of Revision shall exercise all duties of a county board of revision as prescribed by general law. The Council may provide for compensation for members of a Board of Revision.

PROPOSED LANGUAGE

SECTION 6.02 BOARD OF REVISION

~~There shall be one or more Boards of Revision, each consisting of three electors of the County. Two members of each board, who shall not be of the same political party, shall be appointed by the Council, and one member shall be appointed by the County Executive, each for a term of three years. Each Board of Revision shall exercise all duties of a county board of revision as prescribed by general law. The Council may provide for compensation for members of a Board of Revision.~~

- (1) The County shall have a single Board of Revision, consisting of three members, which shall perform all powers and duties of county boards of revision under general law and such other powers and duties not inconsistent therewith as provided herein or by ordinance. As of the effective date of this provision, the Board shall consist of the County Executive, one appointee of the Council President, and, at the choice of the County Executive, either the Fiscal Officer or Treasurer.**
 - a. At the choice of the Council President, the Council President's appointee may either be a member of Council or any other elector of the County. The term of the Council President's first appointee shall be from the effective date of this provision until January 4, 2016. The term of subsequent appointees shall be for a period of two years commencing on the fifth day of January and every two years thereafter.**
 - b. If a vacancy occurs in the Council President's appointee position, the Council President shall appoint a new member to complete the unexpired term.**

- c. The Council President's appointee shall not belong to the same political party as the County Executive at the time of the appointment.**
- (2) The Board shall elect a chairperson, a secretary, and other officers as it deems appropriate at its organizational meetings.**
 - (3) The Board shall have the power to set the hearing schedule for matters before it, and to make and amend its own internal operating rules, procedures, and regulations.**
 - (4) The Board may employ administrative staff, including an administrator, as it deems necessary, to assist it in the performance of its powers and duties. All employees of the Board shall be unclassified employees.**
 - (5) The Board shall employ or otherwise engage individuals to serve on one or more three-member hearing panels to hear complaints as to the value of real property and to perform other duties assigned to them by the Board. The individuals serving on hearing panels shall be electors of the County; shall serve at the pleasure of the Board; and shall abide by the Board's hearing schedule, rules, procedures, and regulations in performing their duties.**
 - (6) The Board shall establish merit qualifications for the individuals serving on hearing panels as it deems necessary for them to perform their duties. In establishing the merit qualifications, the Board shall strive to employ or otherwise engage highly qualified individuals to elevate the citizens' trust in the system.**
 - (7) The Board may not itself hear complaints related to the valuation of real property, and no member of the Board may serve on any of the hearing panels. The decisions of the hearing panels relating to real property valuation complaints shall constitute the final decisions of the Board and shall not be subject to further review by the Board itself.**
 - (8) No member of the Board or any of the hearing panels may have any *ex parte* communications with any party, elected officials, county employees, or any other person regarding the merits of a pending matter before the panel. The Board shall enact and publish additional rules, procedures, or regulations to ensure that the system is administered fairly, including rules, procedures, or regulations governing conflicts of interest.**

(9) The Board may utilize any boards of revision or hearing panels in existence as of the effective date of this provision as hearing panels to avoid any interruption of services.

Rationale: It became clear that the charter language regarding the Board of Revision (“BOR”) had some inconsistencies and needed stronger language to define the role of the BOR and the Hearing Panels that actually decide the cases that come the board. This proposal delineates the membership on the statutory BOR and clarifies that the statutory BOR will handle the administration of the Board and its operations. This proposal also clarifies the employment status of the members of the Hearing Panels.

AMENDMENT 5.

ACTIONS OF COUNCIL NOT REQUIRING EXECUTIVE APPROVAL

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-0]

CURRENT LANGUAGE

SECTION 3.10(5) ADOPTION BY COUNCIL

(5) Adoption by Council. No action of the Council shall be valid or binding unless adopted by an affirmative vote of at least a majority of the members of the Council. Each ordinance shall be signed by the presiding officer and promptly presented by the Clerk of Council to the County Executive for approval or disapproval.

PROPOSED LANGUAGE

SECTION 3.10(5) ADOPTION BY COUNCIL

(5) Adoption by Council. No action of the Council shall be valid or binding unless adopted by an affirmative vote of at least a majority of the members of Council. Each **adopted** ordinance or resolution shall be signed by the presiding officer and promptly presented by the Clerk of Council to the County Executive for approval or disapproval. **Notwithstanding the foregoing, the following actions shall be finally approved or disapproved upon action by Council, without presentation to the County Executive for approval or disapproval:**

- (a) Adoption or amendment of the rules and order of business of the Council;**
- (b) Adoption of the schedule of Council meetings, creation of committees, and other actions relating to the internal operations of the Council;**
- (c) Adopting an organizational structure for the Council office, consistent with the County's operating budget;**
- (d) Hiring and setting compensation for employees of the Council office, consistent with the County's operating budget;**
- (e) Approval of contracts or amendments to contracts not to exceed \$100,000 for services for the Council office, consistent with the County's operating budget;**
- (f) Confirmation of appointments recommended by the County Executive;**
- (g) Making of appointments designated in this Charter to be made by Council;**

(h) Adoption of resolutions to require the attendance of any County employee or officer at Council meetings;

(i) Adoption of resolutions to compel the attendance of witnesses, issue subpoenas, or refer matters to the Prosecuting Attorney in accordance with Article 3, Section 12;

(j) Submission of proposed amendments to this Charter to the electors of Cuyahoga County.

Rationale: The Charter currently mandates that all actions of the Council be approved by the County Executive, including matters that only impact the Council. For example, the hiring of council staff, the setting of staff compensation and the scheduling of the Council meetings only involve the Council and its operations. This proposal recognizes the separate nature of the branches of our county government by detailing specific actions that will not require any action by the County Executive to become effective.

AMENDMENT 6.

AGENCY OF THE INSPECTOR GENERAL

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-0]

CURRENT LANGUAGE

(NONE)

PROPOSED LANGUAGE

SECTION 14.01 AGENCY OF INSPECTOR GENERAL

The County's Agency of Inspector General shall serve as the County's chief ethics officer and shall have all powers and duties to investigate fraud, corruption, waste, abuse, misfeasance, malfeasance, and nonfeasance, including the power and duties to investigate all county contracts, without interruption from any other public official or employee. The Inspector General shall have the independent power to issue subpoenas and to conduct sworn examinations and depositions as necessary for the Agency to conduct its functions. The Inspector General shall appoint a Deputy Inspector General who shall serve at the pleasure of the Inspector General.

14.01(1) Initial Term, Appointment, Term, and Removal of the Inspector General

(a) The initial term of the incumbent Inspector General shall continue until June 30, 2016, and the incumbent Inspector General shall have the right to continue to serve as the County's first Inspector General without any further action needed until June 30, 2016. Effective July 1, 2016, the Inspector General shall be appointed by the County Executive, subject to confirmation by County Council. The term of the Inspector General shall be five years commencing on July 1, 2016, with subsequent terms commencing every five years on the first day of July.

(b) In the case of a vacancy in the position of Inspector General, the Executive shall appoint a successor Inspector General, subject to confirmation of Council, to fill the remaining term of the Inspector General. Notwithstanding any other provision in the Charter to the contrary, the Deputy Inspector General shall serve as the Acting Inspector General during any vacancy, and the Executive may not appoint an interim Inspector General.

(c) The Inspector General may be removed from office for inefficiency, neglect of duty, or malfeasance in office after notice and public hearing before the Council, provided that at least two-thirds of the Council and the County Executive concur. Either the County Executive or the Council may initiate the process to remove the Inspector General.

14.01(2) Contracting with other Entities

The County shall have the right to contract on behalf of the Agency of Inspector General to have the Agency of Inspector General provide similar services to any other governmental funded entities, county hospitals, agencies, authorities, municipalities, districts, or political subdivisions.

14.01(3) Confidential Investigatory Files.

Without regard to how such documents are received by the Agency, all documents prepared or received by the Agency of the Inspector General, including, but not limited to, all complaints, tips, hotline messages, and any other filings and submittals received by the Agency shall be considered part of the Inspector General confidential investigatory files. Such records shall be exempt from disclosure until the matter is concluded and the investigation is closed by the Inspector General and any other investigatory agencies with jurisdiction over the matter. In the event such records are publicly disclosed, the Inspector General shall take measures to protect the privacy of complainants and witnesses to the extent permitted by law.

14.01(4) Agency of Inspector General's Budget, Facilities, Furniture, Equipment, and Software.

(a) The County Council shall appropriate funds for the Agency of Inspector General sufficient for the Agency to exercise its powers and duties as established herein. The budget of the Agency of Inspector General shall be based on a fixed formula established by county ordinance in order to ensure that the Agency can function without political interference. If the County Council fails to appropriate the necessary funds for the Agency to carry out its functions as provided herein, the Agency shall have the right to institute legal action in court to compel the County to appropriate the necessary funds for its operations.

(b) The County shall provide the Agency of Inspector General with appropriately located office space and sufficient physical facilities, including office furniture, equipment, and software commensurate with other County departments of similar size and needs.

14.01(5) Limitations on the Agency of Inspector General

(a) The Inspector General shall not interfere with any ongoing criminal, administrative, civil, or such other investigation or prosecution in the performance of his/her duties.

(b) The Inspector General shall manage the Agency and conduct all investigations in a manner that protects the constitutional and civil rights of any person who is the subject of an investigation as well as the constitutional and civil rights of any potential witnesses.

Rationale: In the wake of the county corruption investigation, it became clear that Cuyahoga County required additional enforcement capabilities to address actions by County employees and to respond to allegations about the county workforce and its operations. The County has enacted a comprehensive Ordinance that created the first county IG's Office in the State of Ohio. The operation of the IG's office has been extremely productive. To insure its continuation, this proposal establishes the IG's Office in the Charter and provides for its funding, structure, its operations, and authority.

AMENDMENT 7.

REDISTRICTING AND THE COUNCIL RESIDENCY REQUIREMENT

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-0]

CURRENT LANGUAGE

SECTION 3.03 RESIDENCY REQUIREMENT

A Council candidate shall have been an elector of the County for at least two years immediately prior to filing of a declaration of candidacy or appointment to fill a vacancy and shall also have been a resident of the district he or she wishes to serve for at least thirty days immediately prior to filing of candidacy or appointment to fill a vacancy. Once elected or appointed, Council members shall reside within the County, and members elected from districts shall reside within their respective districts, during the tenure of their terms.

PROPOSED LANGUAGE

SECTION 3.03 RESIDENCY REQUIREMENT

A Council candidate shall have been an elector of the County for at least two years immediately prior to filing of a declaration of candidacy or appointment to fill a vacancy and shall also have been a resident of the district he or she wishes to serve for at least thirty days immediately prior to filing of candidacy or appointment to fill a vacancy. Once elected or appointed, Council members shall reside within **their respective districts during the tenure of their terms; however, a Council member shall not be disqualified from serving the full term to which the member has been elected due to redistricting.** ~~the County, and members elected from districts shall reside within their respective districts, during the tenure of their terms.~~

Rationale: This proposal cleans up issues that could arise after a decennial redistricting process that could result in a duly elected member of the Council being in the middle of his/her term but no longer residing in the district from which the Councilmember was elected. This language allows the elected member to remain as a Council member, in good standing, in the event his/her residence is placed in another district after the new districts are drawn.

AMENDMENT 8.

EXECUTIVE RESIDENCY REQUIREMENT

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-0]

CURRENT LANGUAGE

SECTION 2.01 COUNTY EXECUTIVE

The County Executive shall be the chief executive officer of the County. The County Executive shall first be elected at the 2010 general election and shall hold office for a term of four years commencing on the first day of January 2011. Any candidate for election as County Executive shall be an elector of the County at the time of filing of the declaration of candidacy, shall be nominated and elected in the manner provided for county officers by general law and this Charter and during the entire term of office shall remain an elector of the County. The County Executive shall not, except as authorized by the Council, hold or accept other employment or public office.

PROPOSED LANGUAGE

SECTION 2.01 COUNTY EXECUTIVE

The County Executive shall be the chief executive officer of the County. The County Executive shall first be elected at the 2010 general election and shall hold office for a term of four years commencing on the first day of January 2011. Any candidate for election as County Executive shall **have been an** elector of the County **for at least two years immediately prior to the time** of filing of the declaration of candidacy, shall be nominated and elected in the manner provided for county officers by general law and this Charter and during the entire term of office shall remain an elector of the County. The County Executive shall not, except as authorized by the Council, hold or accept other employment or public office.

Rationale: While the Charter mandates a two year residency requirement for Council candidates prior to election, the Charter provided no such residency requirement for the County Executive. The CRC believes that it is essential to have a County Executive with knowledge of the County and a stake in its future. This proposal mandates that all candidates for County Executive must reside in Cuyahoga County for at least two years immediately prior to filing. This time frame is consistent with that which is imposed on Council candidates.

AMENDMENT 9.

ALLOCATION OF LEGAL DUTIES BETWEEN THE COUNTY PROSECUTOR AND THE DIRECTOR OF LAW

[Amendment as formally adopted by the C.R.C. on 6/15/2013 by a vote of 5-3]

CURRENT LANGUAGE

SECTION 4.01 PROSECUTING ATTORNEY: ELECTION, DUTIES AND QUALIFICATIONS

The Prosecuting Attorney shall be elected, and the duties of that office, and the compensation therefor, including provision for the employment of outside counsel, shall continue to be determined in the manner provided by general law.

SECTION 5.06 DIRECTOR OF LAW: POWERS, DUTIES AND QUALIFICATIONS

The Director of Law shall be the legal advisor to and representative of the County Executive and County Council. The Director of Law shall be an attorney at law in good standing in the State of Ohio and shall have had at least five years' experience in advising or representing political subdivisions in Ohio.

PROPOSED LANGUAGE

SECTION 5.06 DIRECTOR OF LAW: POWERS, DUTIES AND QUALIFICATIONS

Except as provided below, the Director of Law shall be the legal advisor to and representative of the County Executive, County Council, **and all County departments, offices, agencies, and other authorities responsible to the Council and the County Executive**. The Director of Law shall be an attorney at law in good standing in the State of Ohio and shall have had at least five years' experience in advising or representing political subdivisions in Ohio. **The Director of law shall,**

- (i) Give written opinions as to the law when specifically requested to do so by the Council or the County Executive,**
- (ii) Represent the County, the County Executive and the Council in administrative proceedings and labor negotiations,**
- (iii) Act as counsel for the County, the County Executive and/or the Council, except upon the initiation of any court proceeding instituted by or against the County of Cuyahoga, the Council, the County Executive, or any of the other entities listed in this section, and**
- (iv) Perform any other duties assigned by the Council or County Executive.**

The Director of law shall be responsible for the employment of outside counsel in the performance of his or her duties.

SECTION 4.01 PROSECUTING ATTORNEY: ELECTION, DUTIES AND QUALIFICATIONS

The Prosecuting Attorney shall be elected, and, **subject to the provisions of Section 5.06 of this Charter**, the duties of that office, and the compensation therefor, including provision for the employment of outside counsel, shall continue to be determined in the manner provided by general law.

Rationale: The Charter created the position of Director of Law and maintained the elected position of County Prosecutor. To clarify responsibilities and to avoid duplication of services, this proposal delineates the obligations and duties of both offices in providing competent legal advice and representation to the County, the Executive, the Council and the County's various Boards and Commissions.

AMENDMENT 10.

APPOINTMENT AND TERM OF CHARTER REVIEW COMMISSION

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-0]

CURRENT LANGUAGE

SECTION 12.09 CHARTER REVIEW COMMISSION

Commencing in September 2012, in September 2017, and at intervals of ten years thereafter, the County Executive, with the confirmation of the Council, shall appoint a Charter Review Commission consisting of nine electors of the County, no more than five of whom may be of the same political party, and no more than two of whom may be an officer or employee of the County. Appointment to the Charter Review Commission shall be for a term of one year. Members of the Charter Review Commission shall serve without pay and shall serve on no more than three consecutive Charter Review Commissions, unless such service is within a ten-year period. The Council shall establish rules and procedures for the operation of the Charter Review Commission and the County Executive shall provide the Commission necessary staff services.

PROPOSED LANGUAGE

SECTION 12.09 CHARTER REVIEW COMMISSION

Commencing in ~~September~~ 2012, in ~~September~~ 2017, and at intervals of ten years thereafter, the County Executive, with the confirmation of the Council, shall **before the first day of July** appoint a Charter Review Commission consisting of nine electors of the County, no more than five of whom may be of the same political party, and no more than two of whom may be an officer or employee of the County. Appointment to the Charter Review Commission shall be for a term of one year **commencing on the first day of September in the year in which the appointment is made.** Members of the Charter Review Commission shall serve without pay and shall serve on no more than three consecutive Charter Review Commissions, unless such service is within a ten-year period. The Council shall establish rules and procedures for the operation of the Charter Review Commission and the County Executive shall provide the Commission necessary staff services.

Rationale: The CRC certifies that the duties of reviewing the Charter, hearing testimony from interested parties and recommending amendments to the Charter is a lengthy and time-consuming process. This proposal allows future CRCs to get an early start on the process and clarifies the time that future CRCs will remain in existence.

AMENDMENT 11.

PROPOSED CHANGES TO EXECUTIVE VACANCY:

- **EXECUTIVE SUCCESSION**
- **VACANCY; LENGTH OF APPOINTMENT**

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-0]

CURRENT LANGUAGE

SECTION 2.04 VACANCY

In the event the office of the County Executive becomes vacant by reason of death, resignation, removal from office, failure to remain an elector of the County or for any other reason, the President of Council shall succeed to the office of County Executive on an interim basis. If a vacancy occurs in the first or second year of a four-year term, the interim succession shall be for a period until the next countywide general election, at which time the position shall be filled for the remainder of the principal term. If a vacancy occurs in the third or fourth year of a four-year term, the interim succession shall extend until the next countywide general election, at which time the position shall be filled for the next four year term. The interim succession of the President of Council to the office of County Executive as provided herein shall create a vacancy in the membership of County Council and in the position of President of Council. Upon the occurrence of a vacancy in the position of President of Council, the Vice-President of Council shall assume the position of President, and the Council shall elect a member to serve as Vice-President. The Council seat vacated by the former Council president shall be filled in the manner described herein.

PROPOSED LANGUAGE

SECTION 2.04 VACANCY

The County Executive shall designate, subject to confirmation by the Council, one officer appointed under Article V of this Charter to succeed as County Executive on an interim basis in the event the office of the County Executive becomes vacant prior to the expiration of his or her term by reason of death, resignation, removal from office, failure to remain an elector of the County or for any other reason. The officer so designated shall meet all the qualifications for the position of County Executive provided in Section 2.01 of this Charter. In the event the office of the County Executive becomes vacant by reason of death, resignation, removal from office, failure to remain an elector of the County or for any other reason, In the event no designee of the County Executive, qualified under Section 2.01 of this Charter, has been confirmed prior to the office of the County Executive becoming vacant, the President of Council shall succeed to the office of County Executive on an interim basis. If a vacancy occurs more than thirty (30) days prior to the filing deadline for the primary for the

countywide general election held during the second year of a four-year term, the interim succession shall be for a period until the end of the calendar year following that same countywide general election, at which election the position shall be filled for the remainder of the unexpired term. Otherwise, the interim succession shall extend for the remainder of the four-year term. ~~in the first or second year of a four-year term, the interim succession shall be for a period until the next countywide general election, at which time the position shall be filled for the remainder of the principal term. If a vacancy occurs in the third or fourth year of a four-year term, the interim succession shall extend until the next countywide general election, at which time the position shall be filled for the next four-year term.~~ The interim succession of the President of Council to the office of County Executive as provided herein shall create a vacancy in the membership of County Council and in the position of President of Council. Upon the occurrence of a vacancy in the position of President of Council, the Vice-President of Council shall assume the position of President, and the Council shall elect a member to serve as Vice-President. The Council seat vacated by the former ~~Council president~~ **President of Council** shall be filled ~~in the manner described herein~~ **as provided for in Article 3, Section 5 or 6, as applicable.**

Rationale: In the event of a vacancy in the office of the County Executive, pursuant to Charter Section 2.04, the President of Council succeeds to office. This transition not only creates a vacancy in the leadership of the Council but also has the potential to create a significant shift in the County operations and its staffing. In an effort to allow a smooth transition, this proposal permits the Executive to nominate an officer of the Executive staff to serve as the Interim Executive until the next permissible election. The successor would have to be confirmed by Council as the designated successor and would allow the county's operations to continue with as little disruption as possible until the next election could take place.

AMENDMENT 12.

COUNCIL VACANCIES; LENGTH OF APPOINTMENT

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-0]

CURRENT LANGUAGE

SECTION 3.07 VACANCIES; LENGTH OF APPOINTMENT

If a vacancy occurs in the first or second year of a four-year term, the interim appointment shall be for a period until the next countywide general election, at which time the position shall be filled for the remainder of the unexpired term. If a vacancy occurs in the third or fourth year of a four-year term, the interim appointment shall extend until the next countywide general election, at which time the position shall be filled for the next four-year term.

PROPOSED LANGUAGE

SECTION 3.07 VACANCIES; LENGTH OF APPOINTMENT

~~If a vacancy occurs in the first or second year of a four-year term, the interim appointment shall be for a period until the next countywide general election, at which time the position shall be filled for the remainder of the unexpired term. If a vacancy occurs in the third or fourth year of a four-year term, the interim appointment shall extend until the next countywide general election, at which time the position shall be filled for the next four-year term.~~ **at least thirty (30) days prior to the filing deadline for the primary for the countywide general election held during the second year of a four-year term, the interim appointment shall be for a period until the end of the calendar year following that same countywide general election, at which election the position shall be filled for the remainder of the unexpired term. Otherwise, the interim appointment shall extend for the remainder of the four-year term.**

Rationale: This proposal clarifies the language for the timing of an election following the filling of a vacancy on the Council. The language allows enough time for a successor to be named and incorporates time limitations for the Board of Elections to have candidates qualify for the appropriate ballot. The Commission sought to clarify the process so that vacancies are filled while still recognizing that successor candidates must still be approved by the electors.

AMENDMENT 13.

BIENNIAL JUSTICE SYSTEM AUDIT

[Amendment as formally adopted by the C.R.C. on 6/22/2013 by a vote of 7-1]

CURRENT LANGUAGE

(NONE)

PROPOSED LANGUAGE

SECTION 11.05 PERFORMANCE AUDIT OF CUYAHOGA COUNTY'S JUSTICE SYSTEM

The Cuyahoga County Executive shall, no later than February 1, 2014, and every five years thereafter, appoint an independent organization or university with nationally recognized expertise in the area of the administration of justice to conduct a performance audit of the County's justice system. The performance audit will recommend best practices that would improve the justice system's efficiency, effectiveness and fairness. The organization selected shall be subject to the approval of the Council.

Rationale: In establishing a new form of County government, the Charter has attempted to incorporate the implementation of performance assessment and evaluation for its operations. Currently, the county has numerous operations that are involved in the Justice System, including the Clerk of Courts, the Judiciary, the Sheriff's Department and the Prosecutor's Office. This proposal advocates the institution of regular assessment of the County's operations involving the Justice System in an effort to achieve efficiency and effective delivery of services. The proposal calls for the assessment to be performed independently and sets time frames for the initial and subsequent audits to be performed.

AMENDMENT 14.

COUNTY SHERIFF – TERM OF APPOINTMENT AND REMOVAL

[Amendment as formally adopted by the C.R.C. on 6/18/2013 by a vote of 6-0]

CURRENT LANGUAGE

SECTION 5.01 APPOINTMENT; CONFIRMATION BY COUNCIL

Each of the officers provided for in this Article V shall be appointed by the County Executive subject to confirmation by Council, and shall serve at the pleasure of the County Executive.

SECTION 5.08 SHERIFF: POWERS, DUTIES AND QUALIFICATIONS.

All powers and duties now or hereafter vested in or imposed upon county sheriffs by general law shall be carried out by the appointed Sheriff. The Sheriff shall possess and continue to maintain the qualifications provided by general law for the office of county sheriff and in addition shall have had at least five years' experience in law enforcement or in correctional facilities management.

PROPOSED LANGUAGE

SECTION 5.01 APPOINTMENT; CONFIRMATION BY COUNCIL

Each of the officers provided for in this Article V shall be appointed by the County Executive subject to confirmation by Council, and shall serve at the pleasure of the County Executive **unless otherwise specified herein.**

SECTION 5.08 SHERIFF: POWERS, DUTIES AND QUALIFICATIONS.

All powers and duties now or hereafter vested in or imposed upon county sheriffs by general law shall be carried out by the appointed Sheriff. The Sheriff shall possess and continue to maintain the qualifications provided by general law for the office of county sheriff and in addition shall have had at least five years' experience in law enforcement or in correctional facilities management. **The Sheriff shall be appointed for a term of four years commencing on January 1, 2016. The Sheriff may only be removed from office by the County Executive prior to the expiration of his or her term subject to the approval of at least two-thirds of the Council.**

Rationale: The Charter eliminated the election of the County Sheriff and made this position an appointee of the County Executive, subject to Council confirmation. The Commission recognized that it was not advisable to have the Sheriff be an elected officeholder but acknowledged that the independence of the position was essential. This proposal adds to the independence of the Sheriff by providing a staggered term of office of four years, rather than

serving at the will of the appointing authority. Additionally, this proposal would amend the manner in which the Sheriff may be discharged by including language mandating that 2/3 of the Council must consent to the removal of the Sheriff prior to the expiration of his/her term.

AMENDMENT 15.

PERSONNEL REVIEW COMMISSION

[Amendment as formally adopted by the C.R.C. on 6/22/2013 by a vote of 8-0]

PROPOSED LANGUAGE

SECTION 9.01 ~~HUMAN RESOURCE COMMISSION~~ PERSONNEL REVIEW COMMISSION

There shall be a Personnel Review Commission. The County Executive, subject to confirmation by the Council, shall appoint the members of **the Personnel Review Commission** ~~a Human Resources Commission~~, consisting of three electors of the County having experience in personnel matters or personnel administration and who are supportive of equal opportunity considerations. No more than two of the three members of the **Personnel Review Commission** ~~Human Resources Commission~~ shall be members of the same political party. **The Personnel Review Commission is authorized to employ persons in the service of the County.** The **Personnel Review Commission** ~~Human Resources Commission~~ shall be responsible for administering, for and in cooperation with the officers, agencies, boards and commissions of the County, an efficient and economical system for the employment of persons in the public service of the County according to merit and fitness. The County's human resources policies and systems, including ethics policies for County employees, shall be established by ordinance and shall be administered in such manner as will eliminate unnecessary expense and duplication of effort, while ensuring that persons will be employed in the public service without discrimination on the basis of race, color, religion, sex, national origin, sexual orientation, disability, age or ancestry. **The Personnel Review Commission shall submit a recommendation regarding any ordinance concerning County personnel policies prior to passage by County Council. In the event the Personnel Review Commission does not endorse an ordinance, the Personnel Review Commission may provide a Statement of Non-Endorsement to the County Council.**

The term of office of each member of the **Personnel Review Commission** ~~Human Resources Commission~~ shall be six years. The terms shall be staggered so that no term expires within less than two years of the expiration of any other term. The County Executive shall fill a vacancy occurring for an unexpired term in the same manner as a regular appointment.

Of the terms of office for the initial appointees, one shall be appointed for a term of six years, one shall be appointed for a term of four years and one shall be appointed for a term of two years. The County Executive shall nominate the initial appointees to the **Personnel Review Commission** ~~Human Resources Commission~~ not later than March 1, 2011 and thereafter within thirty days after the occurrence of a vacancy.

No member of the **Personnel Review Commission** ~~Human Resources Commission~~ shall hold any other public office or public employment with the County. The Council shall establish a per

diem compensation for the members of the **Personnel Review Commission** ~~Human Resources Commission~~.

The County Executive may remove any member of the **Personnel Review Commission** ~~Human Resources Commission~~ for inefficiency, neglect of duty or malfeasance in office after notice and public hearing before the Council, provided that ~~eight~~ **two-thirds of the** members of the Council concur.

SECTION 9.02 AUTHORITY OF **PERSONNEL REVIEW COMMISSION** ~~HUMAN RESOURCES COMMISSION~~.

The **Personnel Review Commission** ~~Human Resources Commission~~ shall have:

(1) Responsibility for the resolution or disposition of all personnel matters, with authority to appoint hearing officers to hear all employee appeals previously under the jurisdiction of the State Personnel Board of Review, **including those of classified employees who work for the County Executive, Prosecuting Attorney, County Planning Commission, and the County Public Defender;**

(2) Responsibility for administration of ~~countywide~~ compliance with federal and state laws regarding personnel matters **within the County Executive's organization and departments** ~~which the County is the reporting unit and for maintenance of records required by such laws;~~

(3) **For the County Executive's organization and departments,** authority to ensure:

- Pay equity for like positions;
- Standardization of benefits;
- Approval of qualifications;
- Consistent discipline;
- Training of management in personnel practices;
- Training of employees in job functions;
- Training for total quality management;
- Consistent administration of performance management system;
- Coordination of recruitment;
- Compliance with ethics resolutions or ordinances as passed by the Council;

(4) **Responsibility for creation of rules and policies related to the Personnel Review Commission's authority set forth in this Charter;**

(45) Such other functions as may be deemed necessary by the Council for the **Personnel Review Commission** ~~Human Resources Commission~~ to carry out its mission and purpose.

SECTION 9.03 CLASSIFICATION

The **Personnel Review Commission** ~~Human Resources Commission~~ shall administer a clear, countywide classification and salary administration system for technical, specialist, administrative and clerical functions with a limited number of broad pay ranges within each classification. The classification system shall include the employees of the offices listed in Article V of this Charter, as well as those of the County Executive and County Council except those employees in positions designated as unclassified by general law. The classification system shall, to the extent permitted by the Ohio Constitution, include the **classified** employees of all offices, officers, agencies, departments, boards, commissions or other public bodies, other than separate political subdivisions, that are supported in whole or in part from taxes levied, or other financial assistance provided, by the County.

SECTION 9.04 APPOINTING AUTHORITIES

The County Executive and the officers, offices, agencies, departments, boards and commissions and other public bodies, who under this Charter or under general law are authorized to employ persons in the service of the County, shall be appointing authorities. Persons interested in employment with the County shall make application to the Department of Human Resources. No appointing authority shall appoint a person to fill a vacancy in the classified service who does not meet the qualifications for that position approved by the **Personnel Review Commission** ~~Human Resources Commission~~. All Appointing Authorities shall strive in making appointments in both the classified and the unclassified service to ensure that the diversity of the population of the County is reflected in the persons who are employed by the County.

SECTION 9.05 DEPARTMENT OF HUMAN RESOURCES

There shall be a Department of Human Resources, which shall, **as part of its duties**, ~~serve under the direction of and~~ perform such functions on behalf of the **Personnel Review Commission** ~~Human Resources Commission~~ as the Commission shall **delegate** ~~prescribe~~. **The Department of Human Resources shall provide regular reports to the Personnel Review Commission regarding the Department's performance of such delegated functions in accordance with timeframes established by the Personnel Review Commission.**

SECTION 9.06 DIRECTOR OF HUMAN RESOURCES: POWERS, DUTIES AND QUALIFICATIONS

The Director of Human Resources shall be appointed by the Executive to manage County employment matters including hiring, firing, discipline, layoffs, training, benefits, time and attendance, HR compliance, and drafting policies and procedures. The Director shall be responsible for offering support to the law department on all labor and employment matters. The Director of Human Resources shall have a minimum of five years of experience advising or working in the public sector, experience in employment related matters, management experience or related relevant experience.

SECTION 2.03 POWERS AND DUTIES

(12) To conduct collective bargaining ~~regarding wages and compensatory benefits~~ with any recognized employee bargaining unit ~~in conjunction with the Human Resources Commission,~~ **and, administer uniform personnel procedures for all County employees, and to provide quarterly reports to the Personnel Review Commission regarding the County's collective bargaining strategies and approved contracts.**

Rationale: The Charter incorporated a monumental shift in the manner in which Cuyahoga County performs its Human Resource duties. Previously, each elected office had its own Human Resource Department and there was no consistency in the hiring, firing, discipline or performance assessment of the county's workforce. Charter Section 9 includes numerous provisions that have helped unify the county's human resource performance and review. These proposals help clarify the role that the Human Resource Commission (HRC) plays and the interrelationship with the County Administration and the various other county entities. Additionally, in an effort to eliminate the confusion that often arises between the HRC and the County's Human Resource Department, this proposal seeks to change the name of the HRC to the "Personnel Review Commission" to reflect the actual duties performed and to avoid confusion with similarly sounding names.

Appendix A

As required by Ordinance No. 02012-003, the Charter Review Commission held regular meetings to discuss proposed changes to the County Charter. All meetings were open to the public and the Agenda, Minutes and audio recordings of all meetings were posted on the County's website. These meetings were held on:

- Monday, November 5, 2012;
- Wednesday, November 21, 2012;
- Wednesday, December 12, 2012;
- Saturday, January 5, 2013;
- Wednesday, January 9, 2013;
- Saturday, January 12, 2013;
- Wednesday, January 16, 2013;
- Wednesday, January 23, 2013;
- Thursday, January 24, 2013;
- Wednesday, January 30, 2013;
- Saturday, February 2, 2013;
- Wednesday, February 20, 2013;
- Wednesday, February 27, 2013;
- Wednesday, April 3, 2013;
- Saturday, April 6, 2013;
- Thursday, April 11, 2013;
- Wednesday, May 1, 2013;
- Wednesday, May 8, 2013;
- Saturday, May 11, 2013;
- Wednesday, May 22, 2013;
- Saturday, June 1, 2013;
- Saturday, June 8, 2013;
- Saturday, June 15, 2013;
- Wednesday, June 18, 2013;
- Saturday, June 22, 2013; and,
- Wednesday, June 26, 2013.

In addition, the Commission conducted four public meetings to inform interested citizens of the issues before the Commission, and to solicit any comments and recommendations. The meetings were held:

- 1) April 17 (west) Westlake Recreation Center, Westlake;
- 2) April 18 (downtown) Tri-C Metro Campus, Cleveland;
- 3) April 20 (east) Tri-C Eastern Campus/Corporate College, Warrensville Heights;
- 4) April 22 (south) Brecksville Community Center, Brecksville.

Appendix B

Persons Appearing Before CRC:

- Judge Ronald Adrine, Presiding Judge, Cleveland Municipal Court
- Harriet Applegate, AFL/CIO Director
- Francis X. Bova, Cuyahoga Sheriff
- Nailah K. Byrd, Cuyahoga County Inspector General
- C. Ellen Connally, Cuyahoga County Council President
- Yvonne Conwell, Cuyahoga County Councilwoman
- Sara DeCaro, HRC Counsel
- Edward FitzGerald, Cuyahoga County Executive
- Robert Frost, Chairman, Republican Party of Cuyahoga County
- Judge Nancy Fuerst, Presiding Judge, Cuyahoga County Court of Common Pleas
- Michael J. Gallagher, Cuyahoga County Councilman
- Chuck Germana, Cuyahoga County Councilman
- David Greenspan, Cuyahoga County Councilman
- Sister Joanne Gross, Senior Policy Advisor, Cuyahoga County Council
- Elise Hara, Director, Cuyahoga County Human Resources Department
- Penny Jeffrey, League of Women Voters
- Judge Larry Jones, Eighth District Court of Appeals
- Rebecca Kopcienski, Administrator, Human Resource Commission
- Eugene Kramer, attorney; drafter of County Charter
- David Kutik, attorney; Jones Day
- David Lambert, Assistant Prosecuting Attorney, Cuyahoga County
- Majeed G. Makhlof, Cuyahoga County Director of Law
- Judge Richard Markus (retired)
- Lynda Mayer, League of Women Voters
- Timothy McGinty, Cuyahoga County Prosecuting Attorney
- Dale Miller, Cuyahoga County Councilman
- Joseph Nanni, Chief of Staff, Cuyahoga County Council
- Judge Diane Palos, Presiding Judge, Cuyahoga County Domestic Relations Court
- Katherine Palmer, Human Resource Commissioner
- Greg Popovich, Court Administrator, Cuyahoga County Court of Common Pleas
- Nial Raaen, National Center for State Courts
- Bob Reid, former Cuyahoga County Sheriff
- Andrea Rocco, Cuyahoga County Clerk of Courts
- Julian Rogers, Cuyahoga County Councilman

- Jack Schron, Cuyahoga County Councilman
- Angela Simmons, Human Resource Commissioner
- Sunny M. Simon, Cuyahoga County Councilwoman
- Wade Steen, Cuyahoga County Fiscal Officer
- Judge Melody Stewart, Presiding Judge Eighth District Court of Appeals
- Homer Taft, attorney, civic activist
- Robert Tobik, Chief Cuyahoga County Public Defender
- Seth Wamelink, Next Generation Council
- Robert Wolff, Human Resource Commissioner
- Martin Zanotti, former Mayor, City of Parma Heights; Co-Chair, Charter Citizens Committee

Appendix C

Minority Report by Kenneth Callahan, joined by Miesha Wilson Headen (This Minority Report Relates to Proposed Amendment 3)

Appointment of the County Clerk of Courts

The minority submits that the Clerk should be selected from a vote of the Administrative Judges of the three affected Courts, or that the position should revert to an elected office. The Commission was presented information by a number of members of the Bench and Bar that Ohio Revised Code Chapter 2303, titled “Clerk of Court of Common Pleas”, governs the various essential duties of the Clerk to the Court of Common Pleas, the 8th District Court of Appeals and the Domestic Relations Division of the Court of Common Pleas. The Clerk effectuates the judgments and orders that issue from these Courts in significant volume. Most importantly, RC 2303.26 states: “The clerk of the court of common pleas shall exercise the powers conferred upon him by statute and by the common law; **and in the performance of his duties he shall be under the direction of the court.**” (emphasis added). The minority submits that law, practice and common sense make the Clerk a judicial branch position, governed by Article IV of the Ohio Constitution. In proposing that the Clerk be appointed by, and serve at the pleasure of, the County Executive, the majority delivers an essential component of an independent judiciary to the control and direction of the Executive branch. This proposal creates the possibility of causing inefficiencies and political conflict, and is unique in the State of Ohio and in the United States among Courts of General Jurisdiction.

**Minority Report –By Bruce H. Akers, joined by Nancy Dietrich and William Tarter, Jr.
Duties of the Law Director and Prosecuting Attorney**

My colleagues and I submit this minority report to propose that Cuyahoga County Charter Sections 4.01 and 5.06 be amended to make the Director of Law responsible to act as counsel in any proceeding, including all civil litigation, on behalf of Cuyahoga County. We believe the majority's proposal, Proposed Amendment 9, fails to address structural concerns within our County Charter, which result in administrative inefficiencies.

As Cuyahoga County's first Charter Review Commission, it is our duty to evaluate whether the framework envisioned in the Charter has been effectively implemented. The Charter currently states that the "Director of Law shall be the legal advisor to *and representative of* the County Executive and County Council." This language unambiguously empowers the Director of Law to represent both the executive and legislative branches of Cuyahoga County without any explicit limitation. Eugene Kramer and Martin Zanotti, both of whom were principal architects of the original Charter, each stated before this Commission that the framers of the Charter intended to empower the Director of Law to represent the County in civil litigation.

Requiring the Prosecutor to represent the County in all civil litigation also creates an unnecessary duplication of efforts, whereby the Department of Law provides legal advice and support to County authorities up until the point of litigation, after which the matter must be referred to the Civil Division of the Prosecutor's office for representation in court. This system stifles effective representation by prohibiting attorneys in the Law Department, who are familiar with the underlying facts of the case and the wishes of their client, from advocating on behalf of the County in court. Proponents of the status quo have claimed that attorneys in the Civil Division offer special expertise in litigation, but this Commission has been presented no tangible evidence verifying such claims.

A fundamental tenet of our legal system is the right to select one's own legal counsel. The Director of Law is appointed by the County Executive and confirmed by Council. The Charter established this appointment process, as well as a system of checks and balances, to ensure all Article V officers are held accountable in the performance of their duties. The Civil Division of the Prosecutor's office, in contrast, reports directly to the Prosecuting Attorney, who remains a separately elected official, and who does not serve at the pleasure of either the County Executive or County Council. County clients dissatisfied with the Prosecutor's legal representation in court are restricted from retaining alternative counsel and have no formal recourse (short of a claim of legal malpractice) to hold the Prosecutor accountable for any failure to adequately represent the County. Empowering the Director of Law to litigate on behalf of County authorities will improve accountability within the system.

Our Charter must be written to withstand the test of time. The Charter purposefully establishes two County-wide elected offices: the County Executive and Prosecuting Attorney, both of which carry substantial power and responsibility. It is highly foreseeable that future occupants of these two offices will have managerial, political, or legal disputes that will implicate substantial conflicts of interest. This Charter Review Commission concluded that the independently elected Prosecutor should act as the primary institutional check on the Executive. It would therefore be unethical and impractical to mandate the Prosecutor represent the County Executive in court. Empowering the Director of Law to litigate on behalf of the County, and delineating which clients each office represents, relieves this inherent conflict.

**Minority Report by William Tarter, Jr.
Seconded by Chairman Bruce Akers and Nancy Dietrich
(A vote to reject this submitted proposal was approved by the CRC 5-3)**

Campaign Contribution Limits

Lack of charter language pertaining to campaign finance allows anyone to donate any amount he/she wants directly to a candidate. In fact, that is exactly what happened in 2010 when one county candidate received \$400,000 from a single individual. Campaign contribution limits serve as one effective means to prevent corruption of elected officials and ensure a level playing field.

The Campaign Finance transition workgroup, chaired by Prosecutor Mason, initially proposed limits of \$750 per donor per candidate (while also prohibiting the donation of money from county employees to existing county officials, among other recommendations). A majority of CRC members did not support the \$750 limit, or a proposed \$1500 increased limit. The final proposal, to match donation limits to those of the state, was a compromise and would allow for some campaign finance language to be in the charter, while still not being prohibitive to fundraising. Aligning with state limits, which allow for inflation-related adjustment, avoids the problem of specifying monetary amounts, which could change with inflation. With due respect to all parties, the current proposed language from CRC, which makes the establishment of campaign donation limits a duty of County Council, asks the very people most affected by the outcome (and thus, with a direct conflict of interest) to propose the solution.

This proposal was not without precedent. A Plain Dealer story in 2009 quotes former Parma Heights Mayor and charter framer Martin Zanotti on the subject: "We missed it," saying that lack of campaign finance restriction in the charter was an oversight and could be changed later.

Incorporating the proposed state campaign finance limits into the charter, a proposal supported by members of both political parties, would have sent a strong message about the importance of the topic to the new government. Additionally, it would have brought the county government into alignment with other levels of government, which also have campaign contribution limits.

**Minority Report by William Tarter, Jr.
Seconded by Mayor Riley**

Retire/Rehire (a.k.a. Double-Dipping)

Two proposals:

- 1) Would bar county employees from retiring and being rehired (as is the case under County Executive FitzGerald in everyday practice)
- 2) To allow for employees to retire and be rehired, but they would have to donate half of their salary to the new county Education fund

The practice of Retire/Rehire, also known as “Double-dipping,” has no place in government. While legal, it limits job opportunities for new individuals to become employed and begin contributing to the pension system, it limits promotion, as well as limits monies paid to the state pension funds as a result of the local governments/organizations matching contributions, thus lowering benefits for everyone. With unemployment levels already high, it is important that those who have earned their pension should enjoy it and continue to serve their community in another capacity, while still allowing for individuals to begin their career in public service and help to ensure the financial health of the pension system. By adding the language about the practice of “retire/rehire,” we would have sent a strong message to county voters and to the rest of the state that this new government is truly about accessibility and opportunity.

**Minority Report by William Tarter, Jr.
Seconded by Nancy Dietrich**

Nonpartisan Primary

According to the proposals, a non-partisan primary, with a run-off between the top two vote-getters regardless of party affiliation, would result in a general election which provides a choice between the two candidates who are actually the most popular with the most voters in their district, regardless of political affiliation. Both the primary and the general election would become more meaningful, encouraging greater voter participation. Original submission and support for this concept was expressed to the CRC by the League of Women Voters and citizens Homer Taft and William McLaughlin.

**Minority Report by William Tarter, Jr.
Seconded by Nancy Dietrich**

Filling Vacant County Council Seats

According to Charter Section 3.05, in the event of a vacancy on Council, the charter states that the precinct committee members choose the replacement.

Appointment by party precinct committee members limits the choice to an individual who is supported by a partisan group. While precinct committee officials are very important to the nomination and election process, in choosing the appointee to fill a vacant seat, they may or may not necessarily represent the will of the majority of all voters in the district. This limits the voice of those individuals who vote in the General Election who may be in a minority party, as well those voters who may not affiliate with any political party.

While the ideal option is to hold a Special Election for the Council district, we believe that vacancies should be filled in the same manner as provided in Charter Section 3.06, regardless of the political party affiliation of the vacating member. This way, the process is consistent and all members of the voting public of that district can have direct input with County Council on the appointment.