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Date: September 2, 2015
To: Mayor, Members of Council, City Manager
From: Paula Boggs Muething, City Solicitor *PBM*
Subject: Relative Powers of Mayor, City Council, and City Manager

This memorandum is in response to a request for a legal opinion from Councilmember Simpson and the Mayor, dated May 21, 2015. This request was related to the City budget and legislative process, specifically to identify and analyze the relative duties and powers of the Mayor, City Council, and City Manager under the Cincinnati Charter.

I. Background

The City of Cincinnati enacted the City Charter pursuant to Article XVIII of the Ohio Constitution in 1926. It instituted a council-manager form of government, which has evolved over several Charter amendments. The most radical Charter amendment occurred in 1999 (effective 2001); these amendments strengthened the office of the Mayor, with relative impacts on both roles and powers of the Manager and Council. This amendment was known at the time as Issue IV.

Prior to the 1999 Charter amendments the Mayor was not afforded independent authority but was a member of City Council, attaining the position by obtaining the most votes in the Council elections. This emphasis on obtaining the most votes was criticized as providing a disincentive to coalition building in favor of a comprehensive legislative agenda and preventing individual Council members from supporting the proposals of other members.¹ Under this Charter, the office of the City Manager did not provide the kind of directly-accountable leader that some sought because the City Manager was unelected and served at the pleasure of an often-shifting Council majority.

A group called Build Cincinnati worked throughout the summer of 1998 to meet with the community to propose reforms. Initially, Build Cincinnati proposed an executive mayor who would be the head of the executive and administrative functions of the City and exercise veto power. However, the executive mayor proposal did not have the support of many other civic groups, and Build Cincinnati and these groups met in early 1999 to reach a compromise measure that became Issue IV.

¹ William K. Woods and Edward Lee Burdell, "Preparing Citizens for the May 4th Election: A Guide to the Proposed City Charter Amendment" April 1999, p. 10 (hereinafter "League of Women Voters Voter Guide").

A. Issue IV Overview

Issue IV retained the council-manager form of government, but enlarged the importance and power of the Mayor. A key member of Build Cincinnati described Issue IV as follows:

Along with the mandate from the voters, the Mayor will have a critical role in the hiring and firing of the City Manager, the ability to veto Council legislation, and the ability to appoint Council committee chairs. The Mayor will have the clout and the authority to lead the City; the voters will gain the power to hold the Mayor accountable.²

The primary elements of Issue IV were (1) direct election of the mayor; (2) retaining the professional management of the City Manager; (3) providing the mayor with administrative and legislative powers; and (4) empowering the Mayor as the public face of the City. Issue IV proponents viewed the proposed changes as necessary to ensuring that the mayor was the political and policy leader for the City and directly accountable to the voters.³ The following chart provides an overview of the amended provisions contained within Issue IV.

	Changed Provision	Former Provision
Election	Direct election of Mayor, with a non-partisan primary and head-to-head general election; Council of nine members separately elected.	Top vote getter of 9 Council candidates becomes Mayor
Term	4 years	2 years
Role at Council Meetings	Presides at Council meetings, but not a member of Council; can call special meetings of Council	Presides over Council meetings and votes; the mayor alone cannot call special meetings of Council
Salary	Mayor receives double the Council salary	Same for all members of Council, including Mayor
Mayoral Succession	Vice Mayor becomes Mayor, election for unexpired term in some circumstances	Council chooses Mayor from its members for rest of term
Term Limits⁴	Mayor: two 4 year terms; Council: four 2 year terms	Four 2 year terms for all

² *Id.* at 11, quoting Pat Dewine.

³ *Id.* at 10-11.

⁴ Amended in 2013 to provide for 2 consecutive 4 year terms.

Role of Vice Mayor	Appointed solely by Mayor from members of Council; fills in when Mayor absent but cannot exercise veto, appointment, or removal powers	Appointed by Council; fills in when Mayor absent
Legislation	Mayor may propose, introduce and veto legislation but does not have a vote on the Council. Council may propose, introduce, vote, and override veto of legislation with 6 votes.	Council and Mayor propose, introduce and vote on legislation.
Legislative Assignment	Mayor assigns all legislative matters to the appropriate committee	Clerk of Council assigns legislative matters to appropriate committee
Veto and override	Mayor may veto; Council can override with 2/3 vote	No veto
Official head of the City	Mayor is recognized as the official head and representative of the City for all purposes except as provided otherwise	Mayor is the ceremonial head of the City
Committees and Committee Chairs	Council forms committees. Mayor appoints and removes committee chairs without Council consent	Council forms committees and chooses chairs
City Manager	Only Mayor may appoint City Manager subject to Council approval. Only Mayor may initiate removal of City Manager with Council approval	Appointed and removed by a majority vote of Council
Budget	Mayor reviews and transmits budget estimate prepared by City Manager and submit to Council, with comments, within 15 days of receipt	City Manager prepares and submits the budget estimate to Council
City Manager Reports To	Mayor and Council	Council, including Mayor

Many of the proposed changes were vigorously debated,⁵ however, all groups agreed that Issue IV would result in a significant increase in mayoral powers. Proponents of Issue IV asserted that passage would empower the voters by allowing them to directly elect a Mayor and would “establish a system of government that fosters leadership and accountability.”⁶ Changes such as the Mayor’s ability to appoint committee chairs, refer legislation to committees, and veto legislation would provide incentives for the mayor and the council to come together on specific legislative agendas.⁷ The provisions related to the hiring and firing of the City Manager would incentivize cooperation and collaboration between the Mayor and the City Manager.⁸ And, finally, establishing the mayor as the official head and representative of the City clearly identifies the mayor as the policy and political leader of the municipal corporation.⁹

Upon passage of Issue IV, the changes to the Charter became effective in 2001.¹⁰

II. Statutory Construction

As the Ohio Supreme Court stated in *State v. Cress*, “[i]n construing a statute, it is the duty of the court to give effect to the words used in a statute, not to insert words not used.”¹¹ When confronted with a question regarding charter construction, terms that are defined within the document are given the prescribed meaning but undefined language must be construed according to the ordinary and common usage.¹² In construing the open meetings provision of the City Charter, the First District similarly held that, where the language of the Charter is clear and unambiguous, “the charter means what it says.”¹³

In the case of charter amendments, a court will examine the provision as it existed prior to amendment and analyze the amended provision by giving effect to each word.¹⁴ A court must assume that each word was added for a specific purpose, and is not superfluous, and the court must give effect to the words used in order to ascertain the legislative intent.¹⁵ Thus, the starting point is the plain language of the enactment. If the plain language is clear and unambiguous, then a court simply applies the language

⁵ Howard Wilkinson, *Issue 4 Divides Interest Groups*, Cincinnati Enquirer, May 3, 1999.

⁶ League of Women Voters Voting Guide, p.11.

⁷ Howard Wilkinson, *Issue 4: The Good and the Bad*, Cincinnati Enquirer, April 27, 1999.

⁸ *Id.*

⁹ *Id.*; League of Women Voters Voting Guide, p.11.

¹⁰ Howard Wilkinson, *Cincinnati Voters Opt for Strong Mayor*, Cincinnati Enquirer, May 5, 1999.

¹¹ 112 Ohio St. 3d 72, 77 (2006)(citing *State v. S.R.*, 63 Ohio St. 3d 590, 595 (1992) and *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St. 3d 50, paragraph three of the syllabus (1988)).

¹² *State ex rel. Moore v. Malone*, 96 Ohio St. 3d 417, 421 (2002).

¹³ *State ex rel. Gannett Satellite Info. Network, Inc. v. Cincinnati City Council*, 137 Ohio App. 3d 589, 592-593 (1st Dist. 2000).

¹⁴ *Columbus-Suburban Coach Lines, Inc. v. Public Utilities Commission*, 20 Ohio St. 2d 125, 126-127 (1969).

¹⁵ *Id.*

without interpretation or construction.¹⁶ If the language is unclear or ambiguous, then a court considers, *inter alia*, where the language appears and the text surrounding the provision in question, construing the provision *in pari materia*, and considers the enacting legislation to ascertain the legislative intent.¹⁷

Thus, in analyzing provisions or phrases in the City Charter, where the words are otherwise undefined, a court will use the plain and ordinary meaning of the words to inform its interpretation. Where the same word occurs in different sections of the Charter it will generally be understood in the same sense when applied to the same subject-matter. The meaning of a word or phrase may also be ascertained by the accompanying text. Every word, phrase, clause, and sentence is presumed to have meaning and none will be regarded as superfluous, void, or insignificant. Where general provisions are followed by particular provisions, the general provisions are limited and restricted by the particular provisions.

III. Duties and Powers of Mayor, City Council, and City Manager

The duties and powers of the Mayor, City Council, and the City Manager, respectively, are set forth as follows. The amendments in Issue IV predominantly expanded mayoral powers. Each of the mayoral powers set forth as “exclusive powers of the mayor” was a direct result of the Issue IV Charter amendments. While the text delineating the exclusive powers of the Council and the City Manager was not necessarily amended as a result of the passage of Issue IV, those powers and duties were nevertheless altered as a result of and consistent with the expansion in mayoral powers, construing the Charter as a whole and *in pari materia*. Thus, all such powers and duties must be considered relative to the new powers granted exclusively to the Mayor. The result, as set forth in the following, is a system that combines a set of powers exclusive to the Mayor, Council, and Manager with a set of powers that are shared as between the Mayor and Council and Mayor and Manager.

A. Exclusive Powers of the Mayor

Pursuant to Article III, Sections 2-3, the Mayor is the official head and representative of the City for all purposes except as otherwise provided by the Charter. Prior to Issue IV, the Mayor was recognized as the official head of the City, “[F]or all ceremonial purposes, by the courts for the purpose of serving civil process, and by the governor for military purposes.” This language remains in the Charter; thus, the powers granted are in addition to those previously authorized. Determining the scope of this new power then requires looking to the Charter for any provisions that would expressly limit or define its effect. There is no express provision in the Charter otherwise

¹⁶ See *Bosher v. Euclid Income Tax Bd. of Rev.*, 99 Ohio St. 3d 330 (2003); *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St. 3d 50 (1988).

¹⁷ *State ex rel. Commt. for Proposed Ordinance to Repeal Ordinance No. 146-02 v. Lakewood*, 100 Ohio St. 3d 252 (2003).

designating an official spokesperson or external relations and affairs manager, and no implicit grant of such authority. Further, publications cited in this opinion make clear that the intent of this provision was to identify one clear leader, a “person in charge”, as the political and policy leader of the City.¹⁸ The clearest limitation on this power is the designation of the City Manager as the chief administrative and executive officer; this provision expressly limits the “official head and representative” authority. For example, the Mayor is not empowered to hire and fire employees in the administrative service, to conduct the day to day operations of the City government, to execute contracts or otherwise bind the City. However, the “chief administrative and executive officer” language pre-existed the enactment of Issue IV and, accordingly, the power and authority previously vested in the office of the City Manager by virtue of that provision is also limited consistent with the text of the newly enacted language.

In order to give effect to this new language, and construing the provisions of the Charter *in pari materia*, one can then surmise that the intent of this Charter amendment was to provide the Mayor with the authority to act as the singular voice for the municipal corporation and to be the representative for the City for external purposes. The statutory interpretation that leads to this conclusion is further supported by the practical consideration that multiple voices seemingly representing the City in, for example, a delicate political negotiation or media interaction, would conflict with the stated intent of identifying the “person in charge” at the City.¹⁹

The Mayor is also required to give the State of the City address. The Mayor alone may exercise the veto power and initiate the appointment or removal of the City Manager. In addition, all legislative matters must be assigned by the Mayor to the appropriate committee for consideration (an issue discussed in greater detail in a prior Solicitor’s opinion, which is attached hereto) and the Mayor has the exclusive authority to appoint and remove the Vice-Mayor and the heads of the Council committees.

B. Exclusive Powers of the Council

Article II, Section 1 vests all legislative powers in the Council, subject to the limits set by the Charter itself and the Constitution of the State of Ohio. Members of Council alone may vote on ordinances, resolutions, and motions. The legislative authority includes the appropriation of money/funds for specific purposes, including setting conditions on the expenditure of funds. Council also has the express authority to override any Mayoral veto with a 2/3 vote in favor of the vetoed legislation. In addition, Council is authorized to form committees and establish rules for the conduct of Council business; to designate successors to vacant Council offices; select the President Pro Tem; appoint the Clerk of Council and subordinate employees and legislative aides; and dispense with the rule requiring three readings of legislation.

¹⁸ See League of Women Voters Voting Guide, p.11; Howard Wilkinson, *Issue 4: The Good and the Bad*, Cincinnati Enquirer, April 27, 1999.

¹⁹ *Id.*

C. Exclusive Powers of the City Manager

Pursuant to Article IV, Section 1, the City Manager is the chief executive and administrative officer of the City. The City Manager exercises all other executive and administrative powers conferred by the laws of the state upon any municipal official, except as otherwise provided in the Charter. Only the City Manager may bind the City through contracts, and the City Manager has considerable discretion in the execution of those contracts. Additionally, the City Manager has the hiring and firing authority over the City Administration, with limited exceptions.²⁰ The Charter expressly provides that neither the mayor nor the members of the council shall interfere in any way with the appointment or removal of any of the officers and employees in the administrative service.

D. Shared Powers: Council & Mayor

As a result of the passage of Issue IV, the Council and the Mayor share some legislative powers. For example, both Council members and the Mayor are expressly authorized to call special sessions of Council and to propose legislation. The Charter provides instances where the Mayor can take action with the Council's consent. For example, the Mayor has the authority to recommend appointments to the various boards and commissions of the City but the Council must approve the selection. Also, in times of emergency, the Mayor is authorized to take command of the police, maintain order, and enforce the law, but only with the consent of the Council.

Of note, and somewhat unique to Cincinnati, is (1) the respective roles of the Council and the Mayor as legislation moves through committees to Council, and (2) involvement in the appointment and removal of the City Manager. These two items are discussed in further detail below.

1. Committee Process

City Council has the authority to organize itself and conduct business as it deems appropriate. This includes the formation of committees, defining the jurisdiction of those committees, and deciding upon which committees a Councilmember will serve. The Mayor, however, can appoint and remove the committee chairs without the advice and consent of Council. The Mayor refers legislative matters to the appropriate committees.

The appointment and removal of committee chairs allows the Mayor to shape the City's policy and legislative agendas. This influence is enhanced by the Mayor's authority to refer legislation to "the appropriate committee." The referral power allows the Mayor to determine which committee, and therefore which Council members, have the ability to

²⁰ The City Manager does not have this authority over the independent boards and commissions, legislative service, mayoral service, and the solicitor's assistants.

discuss and vote on items before they are approved for placement on the full Council calendar. Additionally, while the Charter does not require the Mayor to assign legislation to a committee within a specific time, concern has often been expressed that the Mayor could exercise a “pocket veto” by refusing to assign a legislative matter to a committee. To be clear, the Charter does not provide for a “pocket veto” of legislation. The Charter and the law of Ohio assumes and requires faithful execution of the duties of the office by all individuals acting in positions set forth therein. A more robust analysis of this issue is included in the attached opinion.

2. Hiring and Firing of the City Manager

Both the Mayor and City Council influence the hiring and firing of the City Manager, thereby exerting influence over the actions of the City Manager. The Mayor appoints the City Manager subject to approval by at least 5 members of Council. The Mayor must seek the advice of Council prior to a vote on the Manager’s appointment, which includes the opportunity for members to interview the candidates considered by the Mayor. If Council does not approve the Mayor’s candidate, the Mayor may submit another recommendation to Council or institute another search. Additionally, the Manager may be removed at any time at the pleasure of the Mayor and Council. However, the Mayor alone may initiate and recommend to Council the removal of the Manager, but any removal must be approved by a majority of Council.

The Mayor exercises significant, ongoing control over the Manager because the Mayor has the sole authority to select the candidates for City Manager that Council can approve and is the only person who may initiate the removal of the Manager. While this allows the Mayor to recommend only Manager candidates who will assist the Mayor with the implementation of the Mayor’s long-term agenda, it also results in the Mayor exercising some degree of control over the administrative offices of the City, and more so than is typical in a traditional council-manager form of government.

E. Shared Powers: Mayor and City Manager

The Mayor and City Manager share control over the budget that is presented to the Council and some control over the police force.

1. Budget Estimate

The City Manager prepares a budget estimate that the Manager sends to the Mayor. The Mayor must transmit the budget estimate to Council within fifteen days of his receipt and may include a letter commenting on the budget. The Mayor’s comments on the budget may provide an indication of the Mayor’s preferences, including items that may be vetoed. Effectively, the budget Council receives reflects the joint agenda of the Manager and the Mayor. There is nothing in the Charter that prohibits the Manager and the Mayor from working together to develop a budget that is mutually agreeable.

2. Control of Police Force

The Manager is the chief conservator of the peace and appoints the Police Chief, Executive Assistant Chief, and Assistant Police Chiefs. The Mayor, however, can take command of the police to maintain order and enforce the law in time of public danger or emergency with the consent of Council. During any declared time of public danger or emergency, the Mayor may, with the consent of Council, take command of the police, maintain order and enforce the law. (Article III, Sec. 2) This provision predates Issue IV.

Pursuant to Article XVIII of the City's Administrative Code, the Mayor is authorized during such periods to exercise any power or authority granted to mayors, administrative heads of cities or police chiefs by the laws of the state of Ohio.

IV. Conclusion

The Cincinnati City Charter, as amended in 1999, sets forth a unique system of government under which the City retains some of the hallmarks of a council-manager form of government while also granting the Mayor power and influence over both the executive and legislative functions of the City. This form of governance is distinct from the traditional council-manager form of government and the traditional executive mayor form of government. Thus, in determining the relationships between the various offices of the City, it is essential to consider the Charter itself, the express and implied powers granted through this document, and the way in which Charter amendments have altered those express and implied powers throughout the City's history. While this legal opinion has provided an overview of abstract legal principles, the true relationship between the various provisions and offices requires a fact specific analysis. The Solicitor's office will provide legal analysis as situations so require.

If you have any questions regarding this matter, please contact me at (513)352-3320 or at paula.boggsmuething@cincinnati-oh.gov.