

***** Per Council discussion and direction at the May 19 Work Session, Amendment D was not included in the proposed ordinance.**

TO: City Council
FROM: Charter Commission
DATE: 11 May 2020

REPORT OF THE 2020 WESTERVILLE CHARTER COMMISSION

At the March 10 joint work session with Council, the Commission presented a list of 33 issues identified for evaluation and analysis, and Council requested to add an additional item.

Attached is a spreadsheet containing those issues as presented, with an additional column of “Commission Disposition.” Where the Commission did not recommend amendment, a brief explanation or suggested alternative action is presented.

Generally, the Commission recommends amendments as follows. Attached separately is suggested charter amendment language grouped as follows:

- A) NOTICE/PUBLICATION:** Amendments to Article III, Sec. 9 and Article III, Sec. 13, to allow for electronic notices, remove antiquated “posting” requirements, and otherwise provide flexibility for modern forms of publication/communication.
- B) CLARIFY/CONFORM CURRENT PRACTICE:** Amendments to Art. III, Section 14 to clarify that certain types of legislative action, generally those of a temporary, informal, or ceremonial action (including motions), is effective immediately.
- C) MOVE COUNCIL START DATE:** Amendments to Article III, Sec. 1 and 3 regarding the start of terms and the organizational meeting.
- ~~D) STATE LAW – CM/ACM RESIDENCY:~~** ~~Amendments to Art. IV, Sec. 1 and Art. IV, Sec. 3 to remove provisions unenforceable under state law. ***~~
- E) STATE LAW – RECALL:** Amend Art X, Sec 2 provisions to utilize elements/procedures from state’s recall statute.
- F) PERSONNEL REVIEW BOARD:** Amend Art. VI, Sec 2 to allow Pers. Rev. Board members to also serve on other boards.

The Commission recommends that all amendments be presented as one ballot initiative, as they collectively represent an effort to update the charter for modern practice and procedures, and to prevent ballot confusion. If any amendments might be more appropriate for separate ballot votes, the Commission saw Amendment C (Term Start/Organizational Meeting) and Amendment E (Recall) as issues that were somewhat unique modifications and changes of practice.

***** Per Council discussion and direction at the May 19 Work Session, Amendment D was not included in the proposed ordinance.**

2020 Westerville Charter Commission
Recommended Amendment A

CURRENT: Article III, Section 9 and Sections 13 (g), and (h) currently require certain notices of meetings and ordinances to be posted, published, or otherwise in “printed” form, and require the Clerk to maintain multiple printed copies and make them available for sale.

ISSUE: In the present era of digital media, physical printing and posting requirements are no longer the best means of public awareness, and compliance with these outdated provisions wastes time and resources that could be allocated towards more effective methods. Electronic notices are more effective at ensuring members of Council actually receive notice, and electronic publication provides the public reasonable access.

After reviewing several peer communities, the Commission recommends the Charter be amended to provide flexible language that allows Council to determine the actual requirements through their by-laws, and removing provisions obligating the Clerk to make printed copies available “for sale.”

PROPOSED AMENDMENT:

ARTICLE III
COUNCIL

SECTION 9. SPECIAL MEETINGS OF COUNCIL.

Special meetings of the Council may be called as provided by its rules, regulations or bylaws, or by resolution or ordinance of the Council. In the absence of any such provision, special meetings may be called by a vote of Council taken at any regular or special meeting thereof or may be called by the Chair, Vice Chair, City Manager or any three members of the Council. The Clerk of Council, or in the Clerk’s absence, incapacity or refusal to act, the City Manager, shall cause notice ~~in writing~~ of each special meeting to be served ~~personally or at the usual place of residence~~ upon each member of the Council and the City Manager in a manner prescribed by Council not less than twelve hours preceding the time for such special meeting. A copy of such notice shall be ~~posted~~ distributed in a manner prescribed by Council at least twelve hours prior to such special meeting but failure to so ~~post or to maintain posting~~ distribute for twelve hours shall not affect the validity of any meeting or any action taken at such meeting. In the event that a special meeting is called by a vote of Council taken at a regular or special meeting from which any member of Council or the City Manager is absent, written notice of such special meeting shall be given each absentee in the manner hereinbefore described. Service of notice of any special

meeting shall be deemed conclusively to have been waived by any member of Council or the City Manager who shall be present at such special meeting.

SECTION 13. LEGISLATIVE PROCEDURE.

* * * * *

(g) Council may by ordinance adopt standard ordinances and codes prepared by any public or private department, board, subdivision or agency on such subjects as fire prevention, building construction, fire hazards, fire, plumbing, electrical construction, refrigeration machinery, piping, boiler construction or the maintenance and operation thereof, heating and ventilating, air conditioning and such other matters as the Council may determine to be appropriate for adoption by reference. The ordinance adopting any such standard ordinance or code shall make reference to the date and source of such standard ordinance or code without reproducing the same at length in the ordinance. In such cases, publication of the standard ordinance or code shall not be required, but ~~at least three copies of such code shall be kept at all times in the office of~~ the Clerk of Council and shall make copies of such available for reference by interested persons ~~and copies of such standard ordinance and code shall be available for sale by said Clerk.~~ If the standard ordinance or code after its adoption by reference by the Council is amended, the Council may adopt the amendment or change by incorporation by reference in an ordinance under the same procedure as is established herein for the adoption of the original standard ordinance or code without the necessity of setting forth in full in the ordinance the provisions either of the amendment or change or of the original ordinance or the standard ordinance or code.

(h) All ordinances and resolutions passed by the Council shall be published in a manner prescribed by Council. As used in this Section "published" shall mean to post copies thereof, or a summary of such adopted legislation, in ~~not less than three of the most public places in the Municipality~~ a manner reasonably accessible by and available to the public, as determined by the Council, for a period of not less than ten days and to take such other actions as provided by Council. Failure to publish as required by this Section shall not invalidate any ordinance or resolution and, in such event, the Clerk of Council may authorize the legislation to be published at a later date.

2020 Westerville Charter Commission
Recommended Amendment B

CURRENT: The Charter currently specifies that except for certain identified types, ordinances and resolutions shall be effective 30 days after passing. (Art. III, Sec. 14).

ISSUE: The Commission recommends amendments to clarify that the current practice and expectations match the Charter. The Commission elected to remain consistent with Westerville's past practices, in lieu of analyzing peer communities' practices.

PROPOSED AMENDMENT:

ARTICLE III
COUNCIL

SECTION 13. LEGISLATIVE PROCEDURE.

(a) All legislative action shall be by ordinance, resolution or motion.

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SECTION 14. EFFECTIVE DATES OF LEGISLATIVE ACTION ORDINANCES AND RESOLUTIONS

~~Each ordinance or resolution~~ Legislative action providing for the appropriation of money, an annual tax levy, improvements petitioned for by the owners of the majority of the front footage or of the area of the property benefitted and to be specially assessed therefor, submission of any question to the electorate or the determination to proceed with an election, motions, legislation of a temporary, informal, or ceremonial nature, and any emergency ordinance or resolution shall take effect, unless a later time be specified therein, upon its passage. No other ordinance or resolution shall go into effect until thirty days following its passage by the Council.

2020 Westerville Charter Commission
Recommended Amendment C

CURRENT: The Charter currently specifies that each Councilmember’s term starts on December 1 after they are elected (Art. III, Sec 1), and that the organizational meeting shall be on the 1st day of December (Art. III, Sec. 3).

ISSUE: Request to move the start date to January, to be consistent with common practice/expectation, to allow additional time in event of a recount or other election issue, and to allow the outgoing Council to vote on the budget in normal course. The Organizational meeting would not be set on a fixed calendar day, but would float to align with the first Council meeting.

The Commission believed these benefits outweighed concerns of extending the “lame duck” session, or risk that several days could lapse between the start of a member’s term and the day they are sworn in at the organizational meeting and Council officers appointed.

PROPOSED AMENDMENT:

ARTICLE III
COUNCIL

SECTION 1. NUMBER AND TERM.

The legislative powers of the Municipality, except as otherwise provided by this Charter and by the Constitution of the State of Ohio, shall be vested in a Council of seven members elected for terms of four years commencing on the first day of the ~~December~~ January next following their election

SECTION 3. ORGANIZATION.

~~On the first day of December in 1973 and~~ At the first meeting of each odd numbered year ~~thereafter~~ the Council shall meet in the Council chamber for the purpose of organization. The Council shall adopt its own rules, regulations and bylaws except as otherwise provided in this Charter.

City	Term Start Date	Organizational Meeting
Gahanna	January 2	January 2 or January 3 if January 2 is a Sunday
Hilliard	January 1	Prior to its regularly scheduled meeting in January
New Albany	January 1	Annually before the first January Meeting
Grove City	January 2	Unclear- no specified date
Upper Arlington	Second Monday in January	After taking office
Worthington	First Monday in January or Tuesday if Monday is a Holiday	First Monday in January or Tuesday if Monday is a Holiday
Grandview	January 1	First regular meeting in January

2020 Westerville Charter Commission

Recommended Amendment E

CURRENT: The Charter currently provides that if a petition to recall a Councilmember is filed, there is no expiration date on signatures, the Director of Finance has only 20 days to review the petition, and Council must set an election date between 30 and 45 days after the Director of Finance has determined the petition is sufficient.

ISSUE: In 2017, the Ohio General Assembly rewrote the statute that provides recall procedures for municipalities who either do not have a charter or defer to the statute as a whole. (R.C. 705.92). Among other provisions, the state procedure has the following provisions:

- All signatures must be obtained within 90 days prior to filing
- The petition form must follow general state law guidelines
- There are no time limits for the Board of Elections to determine sufficiency of the signatures
- Recall elections shall be held at the next primary (March) or general (November) election occurring at least 90 days from the date the Board determines the petition is sufficient

The Commission recommends that some elements of the state law be amended into the City Charter, to utilize the process and resources that are more efficient, common, and neutral. In particular, the Commission recommends the following changes:

- 1) PETITION SIGNATURES AND FORM: The current Charter does not specify that signatures must be gathered within a certain time frame, nor does it specify any form of the petition. The Commission felt that requiring signatures to be recent ensured accuracy, and using existing forms promoted expediency and fairness.
- 2) TIME TO DETERMINE SUFFICIENCY: If a petition is filed with the Director of Finance, the common practice is for the Director to seek the Board of Elections' opinion, which then becomes the basis of the Director's determination. The Commission recommends maintaining a short time frame, but believed that the current Charter's 20-day time limit was not enough time to obtain the Board of Elections' opinion.
- 3) ELECTION DATE: The current Charter requires that a recall election occur within 30-45 days after the petition is determined sufficient. The Commission recommends using the state provisions that recall occur at the next primary (March) or general (November) election. State law does not provide for special (August) election, nor did the Commission recommend adding it. This procedure substantially reduces the City's costs of

conducting an election, encourages voter turnout, and allows time for a campaign.

The Commission recommends retaining several key provisions, such as the 25% threshold and the existing process for replacement. In particular, the Commission had a strong preference for the Charter's clearer and more positive ballot language over the state law's confusing and negative language.

PROPOSED AMENDMENT:

ARTICLE X INITIATIVE, REFERENDUM AND RECALL

SECTION 2. RECALL.

The electors shall have the power to remove from office by a recall election any member of Council of the Municipality in the manner herein provided. If any member shall have served six (6) months, a petition demanding removal may be filed with the Director of Finance who shall note thereon the name and address of the person filing the petition and the date of such filing, and deliver to such person a receipt therefor and attach a copy thereof to said petition. Such petition may be circulated in separate parts, but the separate parts shall be bound together and filed as one instrument. Each part shall contain the name and office of the person whose removal is sought and a statement in not more than two hundred (200) words of the grounds for the removal. Such petition shall be signed by at least that number of electors which equals twenty-five per cent (25%) in number of the electors voting at the last preceding regular Municipal election. A petition is not valid after ninety (90) days from the date of the first signature. The petition shall comply with the general laws of the State, unless otherwise provided by this Charter.

Within ~~twenty (20)~~ thirty (30) days after the day on which such petition shall have been filed, or refiled in response to a determination of insufficiency, the Director of Finance shall determine whether or not it meets the requirements hereof. If the Director of Finance shall find the petition insufficient, the Director of Finance shall promptly certify the particulars in which the petition is defective, deliver a copy of such certificate to the person who filed the petition, and make a record of such delivery. Such person shall be allowed a period of ten (10) days after the day on which such delivery was made in which to make the petition sufficient. If the Director of Finance shall find the petition sufficient, the Director of Finance shall promptly so certify to Council, shall deliver a copy of such certificate to the member whose removal is sought, and shall make a record of such delivery. If such member shall not resign within five (5) days after the day on which such delivery shall have been made, ~~Council shall thereupon fix a day for holding a recall election, not less than thirty (30) days nor more than forty-five (45) days after the date of such delivery, and shall cause notice of such recall election to be published on the same day of each week for two consecutive weeks in a newspaper determined by Council to be of general~~

circulation in the Municipality. an election shall be held at the next primary or general election occurring more than ninety days from the date of the finding of sufficiency of the petition.

At such recall election, this question shall be placed upon the ballot: "Shall (naming the member) be allowed to continue as a member of Council?", with the provision on the ballot for voting affirmatively or negatively, and in the event a majority of the vote is negative such member shall be considered as removed, such office shall be deemed vacant, and such vacancy shall be filled as provided in this Charter. The member removed at such recall election shall not be eligible for appointment to the vacancy created thereby. If the member is not removed at such recall election, no further recall petitions shall be filed against the member for a period of one (1) year following such election.

2020 Westerville Charter Commission
Recommended Amendment **F**

CURRENT: The Charter currently prohibits members of the Personnel Review Board from holding any other public office, appointment, or employment.

ISSUE: The City has several boards of similar purpose to Personnel Review Board and would like the ability to appoint people to simultaneously serve on multiple boards.

PROPOSED AMENDMENT:

ARTICLE VI
MERIT SYSTEM

SECTION 2. PERSONNEL REVIEW BOARD.

There is hereby created a Personnel Review Board which shall consist of three qualified electors of the Municipality ~~not holding other public office, appointment, or employment~~ to be appointed by a majority vote of Council for a term of three years.