

REPORT OF THE UNIVERSITY HEIGHTS CHARTER REVIEW COMMISSION

The Charter Review Commission of the City of University Heights, Ohio was created by the action of the City Council in Ordinance No. 2008-45, initially adopted on September 2, 2008. The ordinance was vetoed by the Mayor on September 4, 2008 and the veto was overridden by City Council on September 15, 2008.

Under the ordinance, eleven residents were selected to serve on the Commission; the Mayor appointed one member, each council person except Councilman Bernardo selected one member, and Council as a whole selected four additional members of the Commission. The Commission held its first meeting on October 16, 2008. Shortly thereafter, one of the members, Debra C.S. Fink, announced that she was moving from the City, and she was replaced by Robert McClintock.

In the course of the Commission's meetings, presentations were received from the Mayor, members of Council, heads of departments and the fire and police chiefs. In addition, presentations were received from Dr. Lawrence Keller and Dr. Thomas Bier, both of the Levin College of Urban Affairs of Cleveland State University. At each meeting, members of the community were invited to ask questions, offer suggestions and otherwise participate in the process. All meetings of the Commission were in public and electronic communications among the members of the Commission have been archived by the Clerk of Council. Minutes of the Commission meetings have been posted on the City's website and were otherwise made available to residents. We believe that the process has had total transparency.

Some Articles have been left unchanged; others have slight changes to correct typographical errors or to provide consistency. And, there are proposed changes which would modify the way in which the functions of our City are administered. Each change was voted upon by members of the Commission and received the required majority vote to approve the language. There were differing opinions among the members of the Commission as to the different provisions and a minority report is annexed to this report.

Three options were generally under consideration by the Commission, to wit: (a) to adopt a "City Manager" form of government; (b) to adopt a "hybrid" form of government, by maintaining the office of an elected Mayor and creating the position of "City Administrator"; or (c) to make no substantive changes in the manner in which our City

operates. As a result of the information obtained, as well as independent research, a significant majority of the members of the Commission reached the conclusion that adopting the “hybrid” approach would be in the best interests of our City and that a City Administrator or “chief operating officer” would provide needed professionalism, allow accountability, provide flexibility, solidify the concept of “checks and balances” and improve the overall operation of our City’s government.

The Commission recommends that the voters of University Heights approve the proposed changes, which are more fully explained in the following materials. Changes, corrections and/or new material are underlined.

PREAMBLE

The only change in the Preamble is the replacement of the word “insure” with “ensure”. The Charter Review Commissions believes that this simply corrects an earlier typographical error. The corrected Preamble would read as follows.

We, the people of the City of University Heights, Ohio, grateful to Almighty God for our freedom, to secure its blessings, to provide a municipal government that shall be efficient and beneficial, to ensure the full measure of self-government granted to us by the Constitution and Laws of the State of Ohio, and to promote our common peace, safety and welfare, do ordain and establish this Charter.

ARTICLE 1. POWERS

No changes have been recommended to Article 1.

ARTICLE 2. NOMINATION, ELECTIONS, QUALIFICATIONS AND REMOVAL OFFICERS

No changes have been recommended to Article 2.

ARTICLE 3. COUNCIL

Sections 1, 3, 4, 6 and 7 of Article 3 would remain unchanged.

Section 2 deals with the organization of Council. The Commission felt that this section was unclear as to the specific process by which standing council committees were

determined. In addition, the charter did not provide for any time in which those council members who were new would be able to settle into the position as councilpersons, before the various committees were set. Some of the testimony that the Commission heard indicated that a short orientation period, to allow new councilpersons to become acquainted with government and the requirements of the various committees, would be advisable. This section would read as follows:

SECTION 2. Organization. At the first Council meeting in January, but not later than the 7th day of January in the year 1958, and by January 31st of each year thereafter the Council shall meet in the Council Chamber and organize. At such organization meeting the Council shall elect by a majority vote one of its Council members to be Vice-Mayor, and organize itself into such standing committees as it deems necessary and appropriate for the proper conduct of its legislative oversight. The committees shall include, but shall not be limited to a Finance Committee and Public Safety Committee. The Vice Mayor shall determine the membership composition and chairman of each committee. Each committee shall remain in force and each chairman shall serve until the next organization meeting unless he shall cease in the meantime to be a Councilman. (11-5-1957)

The language of Section 5 was added mainly to clarify the procedure for holding executive session meetings in order to satisfy Ohio's "Sunshine Law". The Revised Code requires that, with limited exceptions, all government meetings must be open to the public, and also applies to meetings held by committees of council as well. The amended section as prepared by the Department of Law, would read as follows:

SECTION 5. Procedure. A majority of the members elected to the Council shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and compel the attendance of absent members. The Council shall keep a journal of its proceedings.

All regular and special meetings of Council and Council committees shall be publicly announced and shall be open to the public in accordance with the provisions of the Ohio "Sunshine Law" as it may be amended from time to time, presently codified at Section 121.22 of the Ohio Revised Code. Council may hold an executive session at any regular or special meeting of Council, upon the majority roll call vote of

a quorum of Council, for the sole purpose of the consideration of any matter specified in Ohio Revised Code Section 121.22, as it may be amended from time to time.

The Council shall, by ordinance, make provision for the following:

- a. The time and place of regular meetings, providing for at least two regular meetings in each calendar month excepting the months of July and August;
- b. The manner of calling special meetings;
- c. The enforcement of attendance at its meetings and punishment of disorderly conduct thereat;
- d. The form and method of enacting ordinances and resolutions, but no ordinance or resolution except general appropriation ordinances shall contain more than one subject which shall be clearly stated in the title; and general appropriation ordinances shall be confined to the subject of appropriations;
- e. The manner of giving public notice of the enactment of ordinances and of any other of its acts or proceedings which it deems proper to publish;
- f. The reduction of unpaid installments and the return of paid installments of assessments levied in larger amounts than necessary to pay for public improvements, to the extent that such reductions and returns are authorized by the general law of Ohio;
- g. The procedure for making public improvements and for levying assessments, provided that two or more public improvements, including the levying of assessments therefore, may be combined in one proceeding if the Council finds that it will be economical and practical to undertake said improvements jointly;
- h. The advertising and awarding of contracts;
- i. The employment of expert consultants to advise and assist the city officials and employees with respect to municipal problems and such other general regulations as the Council may deem necessary;
- j. The printing, publishing and distribution of financial reports and such other reports of general interest as the Council shall determine, at City expense, providing that such reports shall be factual only and do not express an opinion or promote any person,

position, group of persons, or any idea, theory or viewpoint of a political or controversial nature.

ARTICLE 4. INITIATIVE, REFERENDUM AND RECALL

No substantive changes have been recommended to Article 4; however, it appears that there was an earlier typographical error in Section 2 of Article 4; and the word “faxed” was accidentally used, rather than the intended word, “fixed”. The corrected section would read as follows.

SECTION 2. Referendum. The electors shall have the power to approve or reject at the polls any ordinance or resolution passed by the Council, except as hereinafter provided. Within thirty (30) days after the final passage by the Council of an ordinance or resolution, a petition signed by at least ten percent (10%) of the registered electors of the City may be filed with the Clerk of the Council, requesting that such ordinance or resolution be either repealed or submitted to a vote of the electors. If said petition is signed by twenty percent (20%) or more of such registered electors, the date of the election may be fixed therein, not less than ninety (90) days from the time of filing thereof. When such petition is filed, the Clerk shall first ascertain the sufficiency of the petition, and if found sufficient, the Council shall thereupon, within thirty (30) days of the filing of such petition, reconsider such ordinance or resolution. If upon such reconsideration the ordinance or resolution is not repealed, the Council shall provide for submitting it to a vote of the electors on the date so fixed, or at the first general election in any year occurring more than ninety (90) days from the filing of such petition, if no date be so fixed. No such ordinance or resolution shall go into effect until approved by a majority of those voting thereon. When the Council by law or under provisions of general ordinances, is required to pass more than one ordinance or resolution necessary to make and pay for any public improvement, the referendum provisions shall apply only to the first ordinance or resolution required to be passed and not to any subsequent ordinances or resolutions relating thereto. Ordinances providing for the annual tax levy or for improvements petitioned by the owners of a majority of the feet front of the property benefitted and to be specially assessed therefor, and appropriation ordinances limited to the subject of appropriations shall not be subject to referendum, but all other ordinances, including emergency ordinances, shall be subject to referendum., except that emergency ordinances shall go into effect at the time indicated therein. If, when submitted to a vote of the electors, an emergency measure be not approved by a majority of those voting thereon, it shall be considered repealed as regards any further action thereunder; but such measure shall be deemed sufficient authority for payment, in accordance with the ordinance, of any expense incurred previous to the referendum vote thereon. Ordinances submitted to the Council by initiative petition and passed by the Council

either with or without change, but not required to be submitted to a vote of the electors, shall be subject to referendum in the same manner as other ordinances.

ARTICLE 5. THE MAYOR

The Commission recommends the adoption of a “hybrid” form of government consisting of an elected Mayor and an appointed City Administrator. Under this proposal, the Mayor retains administrative responsibilities and occupies a critical position for the functioning of government. By position and duty, the Mayor remains accountable to the electorate.

In the proposed Section 5, the Mayor’s position is not specified as being either full-time or part-time. This is consistent with the current definition of the position of Mayor, which is to say that *no change* has been made to this aspect of the Charter. The Commission believes that this provision, by omitting any reference to either full-time or part-time, allows the elected Mayor to shape the scope and duties of the office of Mayor while working side-by-side with an Administrator, and maintains a flexible definition of the position of Mayor consistent with the current Charter. As is the case in the current Charter, compensation for the Mayor’s position will be determined by Council.

Section 1. Executive and Administrative Powers

This section has been revised to read as follows:

The Mayor shall have executive and administrative powers to the extent provided for by this Charter or by ordinance.

The language of this new section indicates that the Mayor will continue to have executive and administrative powers. Those powers are established in the Charter. This section has been changed to provide consistency with other sections of the Charter which vest certain executive and administrative powers with the Administrator.

Section 2. Term.

The Commission recommends no change to Section 2. The Mayor’s term in office will continue to be a term of four (4) years.

Section 3. Vacancy.

The Commission recommends no change to Section 3. The Vice Mayor (who is a member of Council) will be acting Mayor in the event that the Mayor is unable to

perform his or her duties. The Vice Mayor may become Mayor in certain circumstances such as the death, resignation or removal of the Mayor from office.

Section 4. General Powers and Duties.

Section 4, subsection (a) relating to judicial powers remains unchanged. The Mayor shall continue to have judicial powers granted to Mayors of cities under Ohio law.

Section 4, subsection (b) has been modified and will state as follows:

Legislative. The Mayor shall preside at all meetings of the Council and shall have the right to introduce ordinances and resolutions, and to take part in the discussion of all matters coming before Council, but shall have no vote at meetings of Council.

Subsection (b) is significant in that it indicates that the Mayor will continue to preside over Council meetings. Accordingly, the Mayor will continue to prepare the agenda at Council meetings, and will continue to have a voice at these meetings. Presiding over Council meetings is not merely symbolic, but rather is a reflection of the Commission's intent that the Mayor continue to be a guiding voice in University Heights politics, and continue to have the opportunity to promote a legislative agenda. To that end, the Mayor is specifically given the power and right to introduce legislation for consideration by Council. Finally, by presiding at all Council meetings, the Mayor will continue to have the ability to utilize the "bully pulpit" for purposes of offering opinion and counsel as to any matter before Council.

This subsection (b) is very similar to the current charter, only it removes language from the section that deals with the right of department heads to have a seat at Council meetings and places it in the section dealing with the duties of department heads. Throughout the review process, the Commission found provisions in the current Charter that seemed slightly out-of-place, and feels the Charter can be better organized by separating the discussion of powers and duties of the different positions in municipal government. The Commission believes that as a result of this more precise and accurate organization, the City's organizational structure will be clearer to officials and citizens alike.

Section 4, subsection ©) has been modified and will state as follows:

Executive. The Mayor shall be the chief conservator of the peace within the City and shall see that the Charter, and all laws, ordinances, and resolutions of the City are faithfully observed and enforced. The Mayor

shall jointly or apart from the City Administrator recommend to Council such measures as deemed necessary or expedient to ensure the betterment and advancement of the City. The Mayor shall have the power to approve or disapprove ordinances as provided within Article 3 Section 7 of this Charter.

This section should be read to emphasize the independence of the Mayor from the City Administrator. The Mayor may recommend matters to Council for the betterment of the Council, and is in no way bound by the opinions or actions of the Administrator in this regard. Thus, the Mayor has total political independence from the Administrator. This political independence benefits both the Mayor and the Administrator. On the one hand, the Mayor will not be impeded by a separate political agenda of an Administrator, while on the other hand, the Administrator can manage city government without the compulsion to make decisions for purposes of satisfying a voting block. This dichotomy preserves the ability of the Mayor to pursue a political agenda at the same time that it allows the Administrator to make decisions based on what is in the best interests of the community (and not based on how best to get re-elected).

This subsection differs significantly from the current Charter in that the *direct* supervision and control over departments and divisions has been removed from the Mayor. In addition, the Mayor no longer prepares an annual estimate of receipts and expenditures (this will be done by the Administrator), but the Mayor does remain responsible to keep the Council fully advised as to financial matters. In this manner, a check and balance has been added to the structure of City government as it relates to the City's finances and financial condition.

Critically, this provision also preserves the Mayor's veto power. Accordingly, the Mayor, by use of the veto power, remains the sole official in University Heights government who can mandate super-majority approval (i.e. 5 out of 7 Council members) for passage of any legislation.

The remaining aspects of the provision are nearly identical to that in the current Charter.

Section 4, subsection (d) has been modified and will state as follows:

Customary. The Mayor's office shall be separate and distinct from City Council and shall be afforded only such privileges, resources, and budget as provided for by this Charter or ordinances including the following.

1. The Mayor shall be the recognized head of the City government for all ceremonial and dignitary purposes, and by the state and federal governments for purposes of military law and by the courts for the purpose of serving civil processes.
2. The Mayor shall be responsible for matters related to communications and public relations expressly to provide and encourage cooperation and collaboration with other governments, elected officials, agencies, and authorities, which aim is intended to advance the interest of the city and its citizens. The Mayor shall be empowered to respond to and work to resolve matters of inquiry and complaint from citizens and the public at-large.
3. The Mayor shall recommend the appointment of and/or removal of the City Administrator to Council for its consent and approval in the manner provided in this Charter.
4. The Mayor shall supervise the City Administrator's day-to-day administration of the City's affairs but shall have no direct authority over administering the day-to-day affairs of the City, nor any direct oversight responsibility or authority over any city employee including chiefs, directors, and commissioners who shall be responsible to the City Administrator.
5. The Mayor shall convene the City Administrator and Law Director, on a quarterly basis to review and assess the City's plans, finances, and performance outcomes. The review meeting may include the chiefs, directors, and other staff, as the Mayor shall deem appropriate.
6. The Mayor shall nominate the members of citizen advisory boards, commissions, except as otherwise provided in this Charter, and taskforces, including Council liaisons, whose appointment shall be subject to Council's consent and approval in accordance with this Charter and ordinances.
7. The Mayor shall execute on behalf of the City upon formal action of Council all contracts, conveyances, evidences of indebtedness, and all other instruments to which the City is a party.
8. The Mayor shall have such other powers and responsibilities including such emergency powers as provided by ordinance not in conflict with this Charter or the laws of the State of Ohio.

The intent of this Section is to ensure that the position of Mayor remains an office of influence and consequence in the framework of government in University Heights. Accordingly, the Mayor is authorized to utilize the political prestige of the office to

communicate with other governments, elected officials, agencies and authorities. Presumably, the Mayor can promote his or her political agenda in this manner (in addition to any other manner).

The Mayor will recommend appointment of the City Administrator and may also recommend removal. These powers establish the Mayor as the political executive of the City. The Mayor also has supervisory authority over the Administrator. This supervisory power is designed to promote accountability as well as a working relationship between the political and administrative heads of City government. With respect to removal (as addressed later in this Report), the Mayor's recommendation for removal of the Administrator triggers a provision that allows for such removal based on a 4-3 simple majority vote of Council. (Council may remove by a 5-2 super-majority vote without recommendation by the Mayor). Thus, the Mayor's supervisory powers are of consequence, and not merely "window dressing." The very real possibility exists that if the Mayor is not satisfied with the manner in which the Administrator performs his or her duties, the Administrator could face political difficulties including the possibility of removal. This potential tension is intended by the Commission and will, in the Commission's judgment, lead to greater accountability and efficiency, and will serve as yet another check and balance.

The Mayor will be obligated to meet on a quarterly basis with the Administrator and the Law Director to review the City's plans, finances and performance outcomes. This provision is designed (i) to ensure communication between the Mayor and Administrator and (ii) to create opportunities for assessment of performance, efficiency and outcome. The Mayor is given the responsibility to convene such meetings and to decide which officials are to be present.

The Mayor will continue to have the power to make appointments to boards, commissions and taskforces, which power is consistent with the right enjoyed by the Mayor under the current Charter. These appointments may be utilized by the Mayor to promote his or her priorities for the City under and during the Mayor's administration.

The Mayor shall continue to be the ceremonial head of government and shall continue to execute all contracts, conveyances and evidences of indebtedness on behalf of the City. These responsibilities are exactly the same as those expressed in the current Charter.

Finally, the Mayor is specifically given the responsibility of receiving and handling resident inquiries, concerns, complaints and disputes. During the Commission's review process, several residents expressed their preference that the elected Mayor remain both available and accountable to residents with respect to handling of individual resident concerns. Residents also noted the value to the fabric of community of the Mayor's traditional role as "mediator" for resident disputes or disagreements. The Commission agrees that the Mayor ought to be available and accountable to residents in this manner. As a result, the Commission has expressed the intent through the Charter that the Mayor continue to fulfill these vital roles on behalf of University Heights residents and serve as a direct link between residents and their municipal government.

ARTICLE 5.1. THE CITY ADMINISTRATOR

This Article is new and is intended to insert a full time, highly trained and experienced professional into the City's current form of government. Fundamentally, this individual will be the Chief Operating Officer of the City and responsible for managing the City's day-to-day affairs. The City Administrator will be required to report to both the Mayor and Council and be accountable to both the Mayor and Council. Most importantly, the City Administrator will be recommended by the Mayor and appointed and compensated by a majority vote of Council. The City Administrator will serve as a bridge between the Mayor and Council and will be charged with and dedicated to the efficient administration and supervision of the City's needs rather than be concerned with maintaining popularity for future election. Adding administrative assistance through a City Administrator who serves both elected officials and the public will bring distinctive value and enrich the delivery of services to our community.

The Commission would like the citizens of our City to know that the recommendation to insert a professional into the City's current form of government was not taken lightly. The Commission heard expansive testimony from the Mayor, members of City Council and all of the City's Department Directors. The Commission heard testimony from two experts from Cleveland State University's Levin College of Urban Affairs, Ohio's only College of Urban Affairs and ranked among the top schools of urban affairs in the United States. The College is ranked second in the graduate specialty of city management and urban policy in U.S. News and World Report's 1998, 2002, 2005 and 2008 editions of "America's Best Graduate Schools."

Dr. Tom Bier, former director and current Executive in Residence for the Center of Housing Research and Policy at the Levin College of Urban Affairs, discussed housing policy issues, real estate trends and factors that affect communities like University Heights. The Commission felt that Dr. Bier's testimony was compelling because of the housing issues currently confronting our City and how our City is structured to deal with such issues. It became clear that our current City government is not well equipped to effectively meet head-on issues like aging housing stock, housing foreclosures and declining home values.

Dr. Larry Keller, Associate Professor Emeritus, Public Administration Program at the Levin College of Urban Affairs, provided educational materials regarding municipal law, forms of municipal government and understanding and developing city charters. Dr. Bier and Dr. Keller provided two differing perspectives on issues like regionalism and potential city mergers. That said, they agreed on the idea that cities today, must do business differently in order to survive and prosper. Dr. Keller recommended that the commissioners consider moving to a more professional government. He noted that doing so won't solve all of the City's problems but it is a necessary change needed to address the complex challenges that cities like University Heights are facing. When asked about the idea of making changes to the City's charter and the costs associated with hiring a professional, Dr. Keller mentioned that the best way to institute a change in the form of government would be to overlap such changes with the end of a mayoral term, thereby minimizing the transitional costs.

In order to fully understand how city charters are constructed, how different forms of government are organized and how changes can impact a community, the commissioners conducted extensive independent research. The Commission reviewed other city charters and referenced the Eighth Edition of the National Civic League's "Model City Charter." The Commission studied the positive and negative aspects of many different forms of government. The Commission considered, among others, the "Strong Mayor" (which is University Heights' current form of government), "Weak Mayor" and the "Mayor-Council-City Manager" forms of government.

After considerable discussion and debate, the vast majority of the Commission voted to insert a level of professional management into the City's current form of government. Out of respect for how the government of University Heights has been

managed in the past, the Commission is proposing a hybrid “Mayor-Council-City Administrator,” form of government. By inserting a professional (City Administrator) into the current form of government, the Mayor will not have as much power, in terms of the City’s day-to-day affairs, as they had in the past. That said, the Mayor will be far from powerless. In conjunction with the other changes that the Commission is proposing, by inserting this new article (Article 5.1) into the City’s charter, we are crafting a document that will promote a more balanced working relationship between an elected Mayor, an elected City Council and an appointed City Administrator. All in all, the vast majority of the commissioners believe that we are responsibly addressing the City’s needs by providing the framework for a city government that is more efficient, provides much needed checks and balances and has the flexibility to allow elected officials and appointed city employees to provide services that are in the short and long-term interests of the City and it’s residents.

The new recommended article can be found below.

ARTICLE 5.1. THE CITY ADMINISTRATOR.

Section 1. Appointment of City Administrator.

The Commission, as a whole, strongly favors providing the Mayor with the responsibility of recommending the City Administrator for Council’s approval. Basically, the future Mayors will have the power to present a qualified individual, who they believe they can work with and can manage the City’s affairs effectively.

SECTION 1. Appointment of City Administrator. The Mayor shall recommend, and the Council shall, by a majority vote, appoint and fix the salary of the City Administrator. The City Administrator shall be chosen on the basis of executive and administrative qualifications measured by educational background and training, and successful prior experience in public administration, city management, or other relevant and related fields. Neither the Mayor nor any member of Council shall be eligible for appointment as City Administrator during the term for which they have been elected or for one (1) year after leaving office.

In the interest of accountability as well as for the provision of necessary checks and balances, we recommend that both the Mayor and Council be empowered to review the City Administrator’s performance. Paragraph two reads as follows:

The Mayor and Council shall make periodic reviews and evaluations of the City Administrator’s performance, not less than annually.

Section 2. Duties of the City Administrator.

The Commission believes that it is very important to clearly state the roles and responsibilities of the City Administrator. We recommend that the City Administrator be given the authority to manage the City's day-to-day affairs. The City Administrator will be supervised by the Mayor and required to provide reports to both the Mayor and Council. Section 2, would read as follows:

SECTION 2. Duties of the City Administrator. The City Administrator shall oversee and/or perform all such duties that are central to the overall management, administration, and functioning of the City, and shall exercise control over all departments and divisions except those reserved to Council or other employees by this Charter. The City Administrator shall be responsible to Council through the Mayor for the proper administration of all affairs of the City.

In effect, Sections 2, subsections (a), (b), (c) and (d) state that the City Administrator will be required to manage the City's day-to-day operations, report to both the Mayor and Council, provide input when needed from the Mayor and Council and for practical purposes, promote the City's best interests. With respect to residents who expressed concern that the City will not be managed by elected officials, we defined the City Administrator's roles and responsibilities in such a way that this person shall be held directly accountable to elected officials. The vast majority of commissioners believe that our City has changed drastically since the last charter review was conducted. The issues that our City is dealing with today and in the future, will require a trained professional with a skill set that is designed specifically, to deal with those issues. The roles and responsibilities described below provide a structure that allows for clear lines of communication, creates sound governance and provides for efficient and effective service delivery. Section 2, subsections (a), (b), (c) and (d) read as follows:

- a. Administrative role. The City Administrator shall direct all aspects of planning, administration, and day-to-day operations, and shall develop plans, set goals and priorities, and take steps necessary to ensure such plans, goals, and priorities are accomplished.
- b. Accountability. The City Administrator shall ensure proper, faithful, and harmonious execution, administration, and performance of all matters concerning the City, and shall report on a current basis all appropriate impending matters to the Mayor and Council.

c. Ex officio duties. The City Administrator shall serve as an ex officio member of Council and all boards and commissions appointed by the Mayor or Council, and shall have the right to participate in all such deliberations by voice, but without vote, and shall attend all meetings of Council unless excused.

d. Representation of the City. The City Administrator may serve on committees and task forces, and represent the City at meetings, other such functions and agencies, commissions, and official bodies; and take such action deemed necessary to effectively promote the City's interests.

Section 2, subsection (e) Directors.

There was substantial discussion among members of the Commission on the question of who should be responsible for recommending and appointing open director level positions. Presently, Article 5, Section 4 ©) of the current Charter presently states that the Mayor appoints all officers and employees of the City, except employees of the Council, judges, Clerk of Council and Law Director and their assistants. All employees appointed by the Mayor may be promoted, transferred, reduced or removed, solely by the Mayor.

The vast majority of the members of the Commission believe that the Charter should provide for more checks and balances in the appointment of Department Directors and division heads, which are very important positions within the City's administration. In the proposed section below, the City Administrator recommends candidates to the Mayor. If the Mayor rejects any candidate, the City Administrator can refer that candidate to Council and will be appointed with a majority vote of Council. Given that the Mayor recommends the City Administrator to Council, the City Administrator recommends director level and division head candidates to the Mayor and Council can approve candidates rejected by the Mayor, with a majority vote (assuming that the City Administrator and Mayor do not agree on the candidate), we believe that we have incorporated the necessary checks and balances to allow for effective management of the City's day-to-day affairs. Section 2, subsection (e) reads as follows:

e. Directors and Division Heads. For open director level or division head positions, except those otherwise specified by this Charter, the City Administrator shall recommend candidates to hire and/or nominate for approval by the Mayor. In the event that the City Administrator cannot find a candidate acceptable to the Mayor, the City Administrator may refer any candidate rejected by the Mayor to Council and that candidate will be hired if approved by a majority vote of Council. All directors or division

heads hired or appointed by the City Administrator except those whose terms of office are fixed by this Charter or by law, may be removed by the City Administrator subject however, to the Civil Service provisions of this Charter, if any.

Section 2, subsection (f) Evaluation.

While conducting our interviews and hearing testimony from the current Mayor, Council and Department Directors, we found that no formal or written performance objectives or goals were established for employees and that there were no formal or written annual reviews of employees' performance. The Commission viewed this lack of organization and accountability as inefficient. By creating an organizational structure where employees have measurable goals, defined responsibilities and understand that their performance will be evaluated, our residents can be assured that their tax dollars are going to good use. Section 2, subsection (f) Evaluation, reads as follows:

f. Evaluation. The City Administrator shall establish performance objectives and evaluate all City employees on an annual basis including division heads, commissioners, directors, and chiefs either directly or by delegation; implement discipline procedures; and hear and rule upon appeals to disciplinary actions.

Section 2, subsection (g) Budget.

Given that we propose to place the responsibility of managing the City's day-to-day affairs in the hands of the City Administrator, the Commission believes that it is appropriate to require the City Administrator to develop and prepare the annual budget in the form of an annual financial plan, to the Mayor and Council. By denoting that the City Administrator shall collaborate with the "appropriate staff," we are providing the City Administrator with the latitude to work with the Finance Director and anyone else within the City's Administration, in order to present a budget that is as accurate as possible. Section 2, subsection (g) reads as follows:

g. Budget. The City Administrator shall direct, oversee, and collaborate with appropriate staff to develop the annual estimate of revenues and expenditures and proposed budget for the City along with all appropriation ordinances in order to provide a complete annual financial plan to the Mayor and Council for adoption.

Section 2, subsection (h) Quarterly report.

Among others, the most important principles that the Commission is promoting in proposing changes to the Charter, are accountability as well as checks and balances. By requiring that the City Administrator present a quarterly, comprehensive report to both the Mayor and Council regarding the state of affairs of the City, the Commission believes accountability as well as checks and balances regarding the City Administrators' performance, will be clearly established.

- h. Quarterly report. The City Administrator shall be accountable to make a comprehensive report and recommendations to the Mayor and Council on at least a quarterly basis concerning the state of fiscal, operational, administrative, and general health and affairs of the city.

Section 3. Absence or Disability of the City Administrator.

This section is self explanatory. Most importantly, the Mayor shall designate a qualified individual as Acting City Administrator in the event of absence, disability or vacancy. This Section places significant responsibility in the hands of the Mayor for filling the vacancy.

SECTION 3. Absence or Disability of the City Administrator. During the absence, disability or vacancy of the City Administrator, the Mayor shall designate a properly qualified person as Acting City Administrator. No Acting City Administrator shall serve more than one hundred twenty (120) days without Council approval.

Section 4. Removal from Office.

Section 4 is designed to provide elected officials with the ability to hold the City Administrator directly responsible for the performance of their duties and responsibilities. With regard to the removal of the City Administrator from their appointed position, the Commission, as a whole, favors a provision that allows for the Mayor or Council to initiate the process for removal of the City Administrator.

Basically, in Section 4, if the Mayor recommends removal of the City Administrator, he would need a majority vote of Council. If removal of the City Administrator is not recommended by the Mayor and the Council elects to remove the City Administrator, the removal process would begin upon the vote of at least five (5) members of Council. By defining who can initiate the process and outlining the votes needed within Council to initiate the removal process, checks and balances are clearly

established. The Commission believes that by establishing a clearly defined process for removal of the City Administrator by elected officials, our citizens will have a clear voice in the management of our City.

SECTION 4. Removal from Office. The removal of the City Administrator shall be upon a vote of the Council at any Council Meeting. Such vote shall be effective to initiate the removal process (as described herein) if it meets either of the following criteria: (a) a vote with four members of Council voting in favor of such action if the action is first recommended and presented to Council by the Mayor; or (b) if the action is not recommended and presented to Council by the Mayor, upon the vote of at least five members of Council. Once the removal of the City Administrator has been affirmatively voted upon as set forth above, the removal process shall be as follows.

Section 4, subsections (a), (b), (c) and (d) Removal from Office.

Subsections (a), (b), (c) and (d) define the process, once Council has voted to remove the City Administrator from their appointed position. Generally, these sub sections provide for advanced (30 days) written notice through the Clerk of Council, of such action, including the provision of a hearing date. The City Administrator can accept the hearing by notifying the Clerk of Council, in writing within seven (7) days of receipt of the written notice. Once Council has notified the City Administrator of its intentions, Council can suspend the City Administrator from the position, with pay, until the removal is effective. Section 4, subsections (a), (b), (c), and (d) read as follows:

- a. The City Administrator shall be furnished a written notice of at least thirty-days before a proposed vote on the matter, delivered through the Clerk of Council, stating Council's intention to consider his removal, which notice shall contain a hearing date fixing the time and date for a hearing where the City Administrator may appear and be heard with or without counsel.
- b. The City Administrator may, in the City Administrator's sole discretion, within seven days after receipt of the notice of Council's intent to remove him, by written notification to the Clerk of Council, accept a hearing before Council to take place on the date and at the location specified in Council's written notice.
- c. The City Administrator may, in Council's sole discretion, be suspended from duty after having received written notice of consideration of intended removal, but his compensation shall continue until removal is effective by resolution of the Council.

d. The Council shall use its sole discretion in removing the City Administrator, and its action shall be final and shall not depend upon any particular showing or degree of proof presented at the hearing, the sole purpose of which is to allow the City Administrator to present his grounds of opposition to removal prior to such action.

ARTICLE 6. ADMINISTRATIVE OFFICERS AND DEPARTMENTS

In general, the changes to Article 6 are structural and represent the inclusion of the recommended appointment of a City Administrator. The existing Article 6 is limited to one section of general provisions followed by descriptive paragraphs for each Department. The CRC determined each of the referenced Departments required its own section to reflect a unified structural format with the other Articles of the Charter. In addition, breaking out each Department into its own section allows for easier reference.

The CRC repeatedly debated the content of the Section 1. An initial substantive recommendation was new language reserving the position of public safety director for the City Administrator only in the event the position is retained by Council and not held by the new Mayor or an as of yet undetermined individual. The reason for this initial language was the recommended duties of the City Administrator include hiring all of the directors. Therefore, he or she would be directly responsible for filling the position if it were vacant.

The meaning of this new language was never intended to eliminate a scenario wherein the new Mayor also holds the position of Director of Safety. This was a misconception that did not reflect the intentions of the CRC. To the contrary, the majority of the CRC felt this language was entirely flexible and allows for at least three different scenarios to occur in the future, including but not limited to the following:

- (1) Council reassigns or redefines the position entirely;
- (2) The new Mayor requests and is given the additional responsibilities of the position; or
- (3) Another qualified individual applies and is hired for the position.

The CRC also recognized the new Mayor may choose to request a dual role not currently considered in the current Charter. For example, a new Mayor may want to be more involved in, accept more responsibility, or even create a specific department

dealing with economic development. Automatically reserving the position of Director of Public Safety for the Mayor would then impede on those as of yet undetermined desires.

However, after additional discussion, the CRC reached a final decision to eliminate the new language. Its inclusion in the final recommendation ultimately caused confusion. In order to avoid further misconceptions of intent, and avoid potential problems with the flexibility desired by the CRC as it relates to assignment of Department head positions, the sentence reserving the Director of Public Safety for the recommended City Administrator was removed. Ultimately, the existing language reflects the CRC's rational and allows for the same results in the future as was intended by the new confusing language.

Therefore, the content of Section 1 remains unchanged and reads as follows:

SECTION 1. General Provisions. A Department of Law, a Department of Finance, a Department of Public Safety, and a Department of Public Service and Properties are hereby established by this Charter, and the Council shall provide by ordinance for the organization thereof. The Council may establish by ordinance new departments or divisions thereof. With the exception of the Law and Finance Departments, the Council may combine or abolish existing departments and divisions as it may deem necessary and may authorize one person to be the head of two or more departments or divisions.

No changes were made to Section 2 other than adding a section heading and language acknowledging the ongoing and historical role of the Director of Law.

SECTION 2. Department of Law. The Director of Law shall be in charge of the Department of Law, to be appointed by the Council to serve at the pleasure thereof. The Director of Law shall be duly admitted to the practice of law in Ohio. He shall be the city solicitor and shall perform all duties required by ordinance and the duties which are imposed upon city solicitors by the general law of Ohio.

No substantive changes were made to Section 3 besides adding a section heading and language acknowledging the ongoing and historical role of the Director of Finance, as well as the recommended inclusion of the City Administrator. Minor grammatical changes were made to the second paragraph to accentuate the Director of Finance's role as City treasurer.

SECTION 3. Department of Finance. The Director of Finance shall be in charge of the Department of Finance, and shall be the fiscal officer and Treasurer of the City. He shall keep all the financial records and accounts of the City and an accurate account of all taxes and assessments, all assets and liabilities, all appropriations made by the Council, and all receipts and disbursements by the City. All payrolls, bills and other claims are subject to his examination and approval. He shall issue warrants and/or checks for expenditures for which appropriations have been duly made and shall sign checks as Council shall require. He shall assist the Mayor, City Administrator and Council in the preparation of estimates, budgets and appropriations, and shall perform all the duties required by this Charter or by ordinance of Council.

The Director of Finance, as the Treasurer of the City, shall be the collector and custodian of all monies of the City. He shall keep and preserve them in such manner and in such places as the Council shall determine. He shall receive and disburse all other public money coming into his hands in pursuance of such regulations as may be prescribed by the authorities having lawful control over such funds.

The language of Section 4 was expanded to reflect the organizational make up of the Department of Safety. The rationale for breaking out this particular section was to specifically address the hierarchy of positions undefined for this Department in the current Charter. There was public comment offered after consideration of this section asserting the Division of Police and Fire were informally recognized as their own departments. This may have been due to the outgoing Mayor's dual role as Director of Public Safety; however, after additional consideration the CRC recommends the codification of this department structure.

SECTION 4. Department of Public Safety. The Director of Public Safety shall be in charge of the Department of Public Safety, and shall direct the following divisions thereof:

- a. Division of Police
- b. Division of Fire
- c. Division of Building and Inspections
- d. Division of Engineering

Section 5 was also added to address the integral role of the Department of Public Service and Properties. The inclusion of this new section was based upon the testimony

of Dr. Tom Bier regarding the status of housing issues affecting the City and necessity for ongoing oversight of our City's housing.

SECTION 5. Department of Public Service and Properties.
The Director of Public Service shall be in charge of the Department of Service and Properties. He shall perform such duties as are imposed upon him by ordinance.

ARTICLE 6.1. MAYOR AND MEMBERS OF COUNCIL:
RELATIONSHIP TO CITY EMPLOYEES

This Article is new. The Commission felt that, with the addition of the City Administrator, it was necessary to introduce an article to more clearly explain the relationship that the City Administrator would have with the Mayor, and with Council.

The first three sections exist to clarify that the City Administrator charged with running the day to day operations of the City. The Commission felt that it was necessary to introduce this position so as not to compromise the effectiveness of the City Administrator. It was believed that if the Mayor or Council were allowed to interfere, the City Administrator would not be seen as an authority figure, and would be unable to be an effective leader.

SECTION 1. Non-interference. Except as provided in Section 4 of this Article, the Mayor and each member of the Council shall deal with City employees through the City Administrator.

SECTION 2. Neither the Mayor nor any member of Council shall dictate or interfere with the appointment, direction, duties or supervision of any employee subordinate to the City Administrator, including the Police and Fire Chiefs.

SECTION 3. Neither the Mayor nor any member of Council shall in any manner give orders or directions, or otherwise prevent or interfere with the exercise of judgment in the performance of an employee's responsibilities which the City Administrator oversees.

Section 4 was introduced to allow flexibility in the structure of City government. Historically, the positions of Mayor and Safety Director were held by two different persons. For most of the last 32 years, the Mayor had also held the position of Safety Director. This allowed the Mayor to receive "full time pay" for holding two "part time" positions. Some of the Commissioners were concerned that if the Mayor could not hold the position of Safety Director [or other director as determined by Council], the Mayor

would only be paid a “part time salary”, which might possibly lead to ineffectiveness on the part of the Mayor, as, for example if the Mayor had to attend to other responsibilities, such as holding a full time job. During our discussions, there was some concern that this would be seen as reducing the Mayor’s pay. On the other hand, the majority of the Commission agreed, in essence that Council had to approve of the Mayor as the Safety Director, and that compensation was to be left to the Council for its determination.

There was an extensive discussion as to whether the Charter should establish the position of the Mayor as a “full time position”. Because of the difficulty in defining the term “full-time”, and after researching charters of other communities, it was decided that the matter of hours and compensation of the Mayor be left to Council. Therefore, Section 4 of this Article simply waives the “non-interference provisions” to allow the Mayor to serve as a director of any department. By inserting this provision, the Commission hoped to give the Mayor, Council, and the City Administrator sufficient flexibility and freedom to find innovative ways to best fulfill the needs of the City.

SECTION 4. In the event that the Mayor is designated by Council or by the City Administrator to serve as a director of any department, the foregoing provisions shall be inapplicable to the extent that they limit the Mayor’s performance of the duties of such director.

ARTICLE 7. COMMISSIONS AND BOARDS

The current Commission was of the opinion that provision should be made for periodic review of the Charter and adopted language which would require Council to provide for such review within seven years after the proposed amendments would become effective, and at subsequent intervals of seven to fifteen years. Section 1 creates the future Charter Review Commissions, but it is the specific intent of this Commission that the form of the future Commissions be determined by the Council then in office.

In addition, there is a new “anti-nepotism provision” which was adopted by the Commission in order to avoid any *appearance of impropriety* and specifically prohibits the appointment of relatives of elected officials to any board or commission. Section 1 would read as follows:

SECTION 1. General Provisions. A City Planning Commission, Civil Service Commission, Board of Zoning Appeals, and Charter Review Commission are hereby established by this Charter. The Council may establish by ordinance such other commissions or boards as it may deem

necessary for the proper administration or trusteeship of any public fund, or for any proper municipal purpose. A member of any commission or board established by this Charter or by the Council conformably to this section shall be deemed an officer of this City within the meaning of this Charter. No person shall be appointed to any commission or board of the City who is related by blood or marriage to the Mayor or any member of Council.

There are no proposed changes to Section 2, dealing with the City Planning Commission.

Section 3 governs the Civil Service Commission. The Charter Review Commission recommends that this provision be changed to so as to grant Council “advise and consent” authority over the Mayor’s recommendations. The Mayor would recommend candidates to Council for seats on the Civil Service Commission and Council would then be required to approve the nominee by majority vote. Likewise, removal of a Commission member may be recommended by the Mayor for specific reasons spelled out in the section, but removal would be effective only after a majority vote of Council. The affected Commissioner would also be entitled to a hearing before Council

At the request of the present Civil Service Commission, and after discussion with the Chiefs of the Fire and Police departments, we propose expanding the various eligibility lists for new hires in those departments from three candidates to ten candidates. There would be no change in the number of candidates on the promotion lists. This change is in conformity with Ohio law and regulations and has no economic impact.

The Civil Service Commission is presently required to report to the Mayor, or Council upon request. The final paragraph of Section 3 would add the City Administrator to those receiving such reports and requires that a copy of the annual report be provided to Council.

Section 3 would read as follows:

SECTION 3. Civil Service Commission. The Civil Service Commission shall consist of three electors of the City not holding other municipal office to be recommended by the Mayor subject to consent and approval of a majority of Council to serve for terms of six years, except that the first appointments shall be for six, four and two years, respectively. At the time of any appointment not more than two members of the Commission shall be members of the same political party. A vacancy occurring during the term of any member of the Commission shall be filled for the unexpired term in the manner authorized for an original appointment. A member of the Civil Service Commission may be removed by the Mayor

subject to consent and approval of a majority of Council for neglect of duty, incapacity, incompetency, or malfeasance in office, but only after opportunity has been given for a public hearing before the Council to be held at least ten (10) days after written charges have been made and notice thereof been given to the accused member. Such member shall be heard in person or by counsel; and such removal shall be final.

The Civil Service of the City is hereby divided into the unclassified and classified service.

1. The unclassified service shall include:
 - (a). All officers elected by the people.
 - (b) All directors, heads and chiefs of departments and divisions and their assistants.
 - (c) The Clerk of Council and Assistant Clerk.
 - (d) The City Engineer and Assistant Engineer.
 - (e) The members of all boards and commissions appointed by the Mayor or Council.
 - (f) All employees in the Department of Public Service and Properties.
 - (g) Any temporary or part-time office or any, position requiring qualifications of an expert.
2. The classified service shall comprise all positions not specifically included by this section in the unclassified service.

The Civil Service Commission shall make necessary rules for the appointment, promotion, transfer, lay-off, reinstatement, suspension and removal of persons in the classified service. In the case of hiring and in the case of promotion, the Commission shall make necessary rules with regard to eligibility lists and with regard to certification of the number and the names of candidates from eligibility lists and with regard to the process of selection and appointment of those certified. Before any such rules or amendments thereof shall become effective, they shall be published in writing and an opportunity given for a public hearing thereon to be held after reasonable notice thereof has been given by the Commission.

The Commission shall provide rules for the procedure of the Commission, for standardization and classification of positions, for competitive and noncompetitive tests, for qualifications in meeting reasonable

requirements as to age, sex, physical condition and moral character, for investigating and keeping a record of the efficiency of the personnel in the classified service and for requiring reports relative thereto from appointing authority, for such other rules as may be necessary and proper for the enforcement of the merit system and for appeals from the action of appointing authority in the case of transfer, reduction or removal and the action of the Commission on any such appeal shall be final.

When a position in the competitive classified service is to be filled by appointment as a new hire, the appointing authority upon making that determination shall notify the Civil Service Commission of that fact and the Commission shall certify to such authority the names and addresses of the ten (10) candidates standing highest on the eligibility list for the class or grade to which such position belongs. The appointing authority shall appoint any one of the ten (10) persons certified to him, to such position. A candidate who has been considered for appointment at least three times may be decertified by the Commission without further cause and shall thereafter be removed and be ineligible from further consideration by the appointing authority until recertification of eligibility on a subsequent list.

When a position in the competitive classified service is to be filled by promotion, the appointing authority upon making that determination shall notify the Civil Service Commission of that fact and the Commission shall certify to such authority the names and addresses of the three (3) candidates standing highest on the eligibility list for the class or grade to which such position belongs. The appointing authority shall appoint any one of the three (3) persons certified to him, to such position. A candidate who has been considered for promotion at least three times may be decertified by the Commission without further cause and shall thereafter be removed and be ineligible from further consideration by the appointing authority until recertification of eligibility on a subsequent list.

The Commission shall report its proceedings to the Mayor, City Administrator, or Council upon request, and shall make a report to the Mayor and City Administrator at the beginning of each fiscal year.

All persons who have been continuously employed in the service of the municipality in the same or similar position, herein included in the classified service for at least thirty days preceding the adoption of this Charter shall retain their positions until discharged, reduced, promoted, or transferred in accordance with the provisions of this Charter.

There are no proposed changes to Section 4 relating to the Board of Zoning Appeals.

As noted above, Section 5 establishes a Charter Review Commission, and would read as follows:

SECTION 5. Charter Review Commission. A Charter Review Commission shall be convened the first Monday in November within

seven years after this section becomes effective, and at intervals of no less than seven (7) years or more than fifteen (15) years thereafter.

ARTICLE 8. MISCELLANEOUS PROVISIONS

No changes have been recommended to Article 8.

[See Dissent on following pages]

Respectfully submitted.

May 12, 2009

HARVEY S. MORRISON, Chairman

MEMBERS OF THE COMMISSION:

HARVEY S. MORRISON, Chairman
LUKE F. McCONVILLE, Vice-Chairman
JASON PATRICK FERRANTE, Secretary
RODERICK H. ADAMS, JR.
F. MICHAEL BOYLE
SIMON A. CARROLL
ROBERT McCLINTOCK
PAUL M. MILLER
SUSAN DIETZ PARDEE
JOSEPH M. SHAFRAN
MARK N. WISEMAN

5/12/2009

TO: CRC Members
FROM: Paul Miller
RE: Final Report – Dissenting Opinion

I agree with only the preamble, the anti-nepotism amendment and all grammatical and spelling corrections.

On 5/19/09, and all subsequent public forums, I will present my written dissenting opinion.

Paul Miller
Member
Charter Review Commission
City of University Heights

Minority Report

In 1941, 68 years ago, the first Charter Review Commission met and voted for a strong mayoral position.

In 1979, 38 years later, the second Charter Review Commission met and voted for a strong mayoral position.

At this time, it is important that you now understand how this Commission came into being. In 2008, a vote of six to one of Council members voted in favor of having a Charter Review Commission. The Commission would be comprised of one member appointed by the Mayor. The remaining ten members would come from each Council person and three would come from the majority vote of the Council members. The make-up of the Committee would be overwhelmingly composed of Council appointees. Even before the Committee's first meeting there were a number of Commission members who were leaning towards either a City Administrator or a City Manager form of government. This was like a juror already deciding this verdict before the trial started. The end result is you are now being asked to accept this radical change of government.

I say No!

I say no because no one has demonstrated to me that there is a reason to change.

I have come to this conclusion because I have asked myself these questions.

1. Is University Heights floundering?

No

2. Do we have a balanced budget?

Yes

3. Are we in fiscal emergency?

No

4. Do we have a home foreclosure crisis?

No

5. Do we have a dedicated, strong and capable Council?

Yes

6. Do our Fire and Police Departments do an excellent job?

Yes

7. Are our streets crumbling and decaying?

No

8. Our Law Director, Ken Fisher, who represents multiple cities with different forms of government was asked his opinion and he said:

No

9. Does our form of government, which we have had for 68 years, work?

Yes

10. Would it continue to work in the future?

Yes

During the eight months the Charter Commission has met I have heard repeatedly three major concerns voiced.

Number one, the City needs a professional administrator.

A. We are a city with only 1.9 sq. miles with a population of 14,000. With a longevity of 68 years, that is a very strong indicator that our form of government has met our needs perfectly.

B. The City administrative position is appointed, not elected.

C. That person would be beholding to Council and not to the voters at large.

Number Two, The lack of accountability and structure.

A. Our Mayor interacts with department heads only. That's what I call accountability. The structure of our city is the same as a majority of cities and towns in Ohio. I think our present form of government has accountability and structure.

Number Three, lack of economic development expertise

A. There is only one parcel of land with a possible potential.

B. Our city is comprised of overwhelmingly single family homes.

C. Council, in their wisdom, could hire a part or full time person, by ordinance, if they felt that this position was warranted.

Every Mayor since our incorporation has been a strong leader and we have benefitted by it. Our present Mayor Rothschild, although technically a part-time Mayor, has performed as a full time Mayor. That is what we need. My recommendation is for a full time Mayor with an assistant that would be directed by the Mayor. Our present form of government has the checks and balances needed to function effectively. A strong Mayor with an independent Council has worked for 68 years.

In conclusion, this is a defining moment in our history. Does University Heights continue with a strong Mayor form of government or change to a weak Mayor? My vote is to keep our form of government and vote No on the proposed revised charter.

Paul Miller

Charter Review Commission Member