

CLIENT MEMORANDUM
-- PRIVILEGED & CONFIDENTIAL --

To: Vermilion Charter Review Commission

From: Kenneth S. Stumphauzer, Law Director
Benjamin Grant Chojnacki

Date: March 29, 2021

RE: **Charter Amendments to Strengthen the Separation of Powers between the Mayor and Council**

Issue Presented

How can the City Charter be amended to strengthen the separation of powers between the Mayor and Council?

Short Answer

The Charter may be amended to strengthen the separation of powers between the Mayor and Council by adding additional language to Article III of the Charter to make it clear that the Council's powers are legislative only and that Council does not have a role in the executive and administrative affairs of the City.

Analysis

Section III-1 of the Charter states in part that "[t]he legislative powers of the Municipality ... shall be vested in a Council of seven members" Courts that have addressed the issue have defined legislative power as action taken enacting a law, ordinance, or regulation. *See e.g., C.R. Green, L.P. v. Mayfield Heights*, 2005-Ohio-6359, ¶ 8 (citation omitted). In that regard, Charter Section III-9 provides that:

The Council may by ordinance make provision for:

- (a) The time and place of regular meetings of the Council;
- (b) The method of calling special meetings of the Council;

- (c) The form and method of enactment of its ordinances and adoption of its resolutions except that no ordinance or resolution of a general or permanent nature or granting a franchise, creating a right, involving the expenditure of money or the levying of a tax, or for the purchase, lease, sale or transfer of property shall be passed unless it has been read in full on three different days unless the requirement for such reading be dispensed with by the affirmative vote of two-thirds of the members of Council;
- (d) The method of giving public notice of the enactment of its ordinances and adoption of its resolutions and of any other of its acts or proceedings which it deems proper to publish;
- (e) The procedure for making public improvements and levying assessments, including the procedure for combining two or more public improvements, and the levying of assessments therefor, in one proceeding if the Council finds that it will be economical and practical to undertake such improvements jointly;
- (f) The advertising and awarding of contracts;
- (g) Such other general regulations as the Council may deem necessary.

In contrast, Section IV-4 of the Charter designates the Mayor as the “chief executive officer of the Municipality” and is given the power to, among other things, “supervise the administration of the Municipality's affairs,” “exercise control over all departments and divisions,” “execute on behalf of the Municipality all contracts, conveyances, evidences of indebtedness and all other instruments to which the Municipality is a party,” and “[s]ubject to the provisions of the civil service regulations and the provisions of this Charter ... [has] have the power to appoint, promote, discipline, transfer, reduce or remove any officer or employee of the Municipality except those required by this Charter to be elected, and those whose terms of office may be affixed by this Charter.”

Based on the above provisions, the Charter already expressly delineates the powers and respective roles of the Council and Mayor with respect to the administration of the City's affairs. That said, the Charter could be amended to strengthen the separation of powers between the Council and the Mayor. The following proposed amendments to the Charter will strengthen the separation of powers as defined in the Charter.

SECTION III-1. **Legislative Authority**, Number and Term.

The legislative powers of the Municipality, except as otherwise provided by this Charter and the Constitution of the State of Ohio, shall be vested in a Council of seven members. **Council shall perform no executive or administrative functions except those functions expressly provided for in this Charter and except for the confirmation of certain appointments made by the Mayor.**

~~elected for terms of two years commencing on the first day of January next following their election.¹~~

The inclusion of this language will make clear that Council does not have any executive or administrative powers, which are specifically and expressly reserved to the Mayor by the Charter. The language strengthens the separation of powers already provided for in the Charter, and again, makes clear that Council only has a legislative role in the administration of the City's affairs. As such, the following additional amendment may be presented to the Charter Review Commission for consideration:

SECTION III-9. General Ordinances.

The Council may by ordinance make provision for:

(f) The advertising and awarding of contracts, **after Council has exercised its authority to award a contract and has made appropriations necessary for the performance of the same, Council shall take no further action thereon, unless such action involves the appropriation of additional funds necessary for the performance of said contract;**

This amendment to the Charter will make clear that Council has no further role in the administration of contracts between the City and third parties once Council has awarded the contract and made the necessary appropriation.

Finally, the Charter can be amended to articulate specific responsibilities of the 'Administrative Clerk of Boards and Commissions:'

SECTION IV-6 Administrative Clerk of Boards and Commissions.

The Administrative Clerk of Boards and Commissions shall keep an accurate and complete journal of the proceedings of the various Boards and Commissions established by this Charter and the City's Codified Ordinances and shall perform such other duties as those Boards or Commissions may require. The Administrative Clerk of Boards and Commissions shall be appointed and may be removed by the Mayor. This administrative position shall exist independent of, and without supervision or oversight from the Clerk of Council; provided, however, that if the Mayor and Council agree, the Administrative Clerk of Boards and Commissions may also separately serve the City as the Clerk of Council.

¹ Note: This is where the language for staggering Council terms would be inserted if that amendment is recommended by Charter Review Commission.

Creating this separate position will ensure a separation of powers between the legislative (Council) and the executive, administrative, and quasi-judicial functions of the City.

Conclusion

The proposed amendments to Article III of the Charter clearly define Council's role in the administration of the City as legislative only. The proposed language prevents the Council from assuming any executive or administrative duties reserved to the Mayor by the Charter, prevents Council from making appointments within the City, except those of its own body, and prevents Council from taking any action on contract after Council has awarded such contract and made the necessary appropriation for such contract.