

**Discussion of Article IX Charter Issues  
July 29, 2014**

**I. CURRENT CHARTER PROVISIONS REGARDING REMOVAL FROM OFFICE.**

- A. **Section 2.21.** Removal of Mayoral Appointees. Mayoral appointees may be removed by 5 members of Council or by the Mayor with the concurrence of 4 members of Council.
- B. **Section 3.15.** Council Removal of a Council Member. Council may remove a member of Council as provided in 9.32.
- C. **Section 9.31.** Mayoral Removal for Cause. Mayor shall immediately remove any Officer or employee for violation of 9.2 (conflicts of interest/nepotism), gross misconduct, malfeasance, non-feasance, conviction of a felony or a crime involving moral turpitude.
- D. **Section 9.32. (Paragraph 1).** Council Removal (failure to meet residential requirements). Council may remove any member of Council or Officer or employee whose successor is appointed by Council (Council Clerk, Commission/Board representatives of Council) who fails to comply with the residential qualifications stated in the Charter.
- E. **Section 9.32 (Para. 2).** Council Removal without cause. Council may remove any member of Council or any Officer or employee whose successor is appointed by Council (Council Clerk, Commission/Board representatives of Council) (subject to exception for Civil Service under 9.4).
- F. **Section 9.32 (Para. 3).** Council Removal with Cause. Council shall immediately remove any Officer or employee for violation of 9.2 (conflicts of interest/nepotism), gross misconduct, malfeasance, non-feasance, conviction of a felony or a crime involving moral turpitude. [Note: not limited to Officers/employees for whom Council appoints a successor.]
- G. **Section 9.34.** Council Removal of Mayoral Appointees. Provides a procedure for the Council to take action that the Mayor does not take under Section 9.31 after Council has requested that the Mayor take action.
- H. **Section 9.43.** Police/Fire Chief Removal. Police/Fire Chiefs may be removed by Mayor plus 2/3 of Council.
- I. **Section 9.44/5.62.** Classified Civil Service Removal per Civil Service Commission. Civil Service classified employees are subject to removal by guidelines of Civil Service Commission.
- J. **Section 9.33.** Finality of Removals. This Section provides that removals are final if done in compliance with Section 9.3/9.4.
- K. **Section 8.23.** Recall by Electors. This provision provides procedures for recall of elected Officers of the City. The recall petition requires number of signatures to initiate a recall is equal to 25% of the City's electors (rather than 10% under Ohio law).

**II. SCOPE OF APPLICATION OF CHARTER TO CITY EMPLOYEES, OFFICERS and VOLUNTEERS.**

- A. **Section 9.1.** Officers of the City include the Mayor, Council members, Chairs and Members of all City Boards, Commissions etc. Note, includes volunteers as no compensation is payable to Board/Commission Members (unless exception is made by Council) under Section 5.7.
- B. **Section 9.42.** All Board/Commission members are considered unclassified civil service personnel.

**III. CURRENT CHARTER PROVISIONS REGARDING CONFLICT OF INTEREST.**

- A. **Section 9.21 (Paragraph 1).** No Officer or Employee may have any financial interest, either directly or indirectly, in any City contract or City expenditure, except their lawful compensation and reimbursements.
- B. **Section 9.21 (Para. 2).** No Officer or employee shall hold other elective office or employment incompatible with their duties.
- C. **Section 9.21 (Para. 3).** No Officer or employee shall accept or receive a gratuity, directly or indirectly, from anyone having or having had business dealings with the City (Note broad implication of “having had”).
- D. **Section 9.1.** Extends foregoing to all Officers, including volunteer Board/Commission Chairs and members.

**IV. CURRENT CHARTER PROVISIONS REGARDING NEPOTISM.**

- A. **Section 9.22 (Paragraph 1).** No member of the immediate family [undefined] of any officer of the City may be employed by the City in any noncivil service employment [Note: all City employment is civil service, either classified or unclassified].

**V. RECOMMENDED REVISIONS TO ARTICLE IX AND RELATED PROVISIONS.**

**A. Law Director**

- 1. Asked if Article IX should be removed in its entirety due to existence of Ohio Ethics Commission, Ohio laws, removal provisions in Section 2.21 and Section 8.23 for recall? Mr. Lobe also noted the absence of similar provisions in other Charters.
- 2. If the Commission does not delete Article IX, Mr. Lobe recommended:
  - a. Remove outdated terms “Bureau” and “Agency” from Section 9.1.
  - b. Define “immediate family”, “gross misconduct”, “malfeasance”, “non-feasance” and “moral turpitude”.
  - c. Consider appropriateness of nepotism policy in the Charter vs. a City ordinance.
  - d. Review use of “noncivil service employment” in 9.22 as there is no such thing.
  - e. Consider appropriateness of creation of due process for elected officials facing removal (he noted that an appointee under 9.34 is given a clear process while this is not included for elected officials).
- 3. Suggested recall signature requirement be reduced from 25% to 10% to be consistent with Ohio law.

**B. Mayor’s Office**

- 1. Questioned need for Article IX. Requested consideration be given of delegation of Article IX issues related to Conflicts of Interest, Nepotism and Vendor Conflict of Interest to the Mayor for creation of a policy followed by a recommendation to Council for legislation.
- 2. Modify Section 9.1 to include only elected officials, Clerk of Council and heads of administrative departments (excluding board and commission volunteers), this would remove these volunteers from the scope of Charter based nepotism and conflict of interest requirements. Potential policies or legislation could include or exclude board and commission volunteers. Ohio law would apply.
- 3. Move 9.1, 9.21 (Para. 2) and 9.22 (Para. 3) to Article I.
- 4. Remove 9.3 and rely on 2.21 provided that Section 2.21 (or other provisions of the Charter) provided that definitions for necessary terms, such as “malfeasance”, “misfeasance” and necessary due process provisions are included.
- 5. Move 9.4 to 2.21.

**C. Ms. Kowall’s Comments**

1. Provide notice of standards for compliance to covered Officers and employees.
2. Due process to protect rights of challenged Officer/employee needs to be considered (unless relying upon Ohio Ethics Commission / Prosecutor enforcement), however, while considering due process, remember that procedures create rights and that if such procedures are not properly followed, litigation and invalidation of proceedings can result.
3. Noted severe remedies for potential “innocent violations”.
4. Stressed need to clarify many overly broad, inconsistent, vague and ambiguous provisions.
5. Consider other remedies/progressive remedies. Voidable contracts?
6. Noted (with Mr. Lobe) that strict “no relatives” policies are unenforceable.

## **VI. DISCUSSION TOPICS.**

### **A. Overview Discussion of Current Charter Provisions. The Commission should consider:**

1. The existing Charter represents values decisions by past Charter Commissions, as approved by the voters of the City of Willoughby Hills.
2. Current Charter provisions do not offer flexibility (in some cases there is no recourse but the “death penalty”). There are severe remedies for potential “innocent violations”.
3. Many provisions were created before the State of Ohio had an Ethics Commission and/or certain now-existing State ethics laws (criminal laws).
4. Our Law Director and a County Prosecutor (although not speaking officially on behalf of the Prosecutor’s Office) believe that many provisions are out dated. Additionally, many parts of Article IX are considered vague, inconsistent or ambiguous.
5. Many important terms are not defined.
6. While there are State standards, should Willoughby Hills demand more of its Officers?

### **B. Discussion of Removal from Office Provisions:**

1. Is it in the best interest of the City and our residents to take the process of removing a City official away from the control of our elected officials and giving it to the State (Ethics Commission) or the Prosecutor? Note: these bodies already have proper jurisdiction and can act as they see fit under applicable law.
2. Should the Commission remove Article IX and defer to Ohio law enforcement only?
3. Should the Commission take an approach similar to other cities as discussed yesterday and put in place removal provisions (with some moderate due process procedures) for the Mayor and Council appointees? (See examples from 7.28 meeting from Wickliffe/Kirtland).
4. Should we maintain Article IX and Section 2.21 but provide better definitions and procedures, perhaps using Section 9.34 as a model?
5. Should volunteers be given the same protections as employed city Officers?
6. Review and Discussion of Specific Provisions.

### **C. Discussion of Scope of Charter to Volunteers:**

1. Should the Charter hold volunteers to the same standards regarding nepotism and conflict of interest as elected officials, so long as all are bound by Ohio law?
2. Should this be addressed by a City policy or legislation rather than the Charter?
3. Review and Discussion of Specific Provisions.

### **D. Discussion of Conflict of Interest Policy:**

1. Should this be addressed by a City policy or legislation rather than the Charter?

2. If in the Charter, should there be a procedure to have a conflict approved? For example, a City Councilwoman is a partner in a large insurance brokerage. That brokerage (through representatives other than the Councilwoman) responds to a City RFP with a bid to provide the City's health insurance policy. When comparing the Councilwoman's firm's bid against other bids, the Mayor determines that the Councilwoman's firm's bid is the best and lowest bid. If the Councilwoman recuses herself from discussions, fully discloses her ownership interest in the firm and otherwise complies with any applicable Ohio law, should the City be able to accept the bid?
3. What are indirect financial interests?
4. Should "gratuities" be better defined or Ohio law standards applied?
5. Is the prohibition on past gratuities appropriate?
6. Review and Discussion of Specific Provisions.

**E. Discussion of Nepotism Policy:**

1. Should this be addressed by a City policy or legislation rather than the Charter?
2. Should the Charter define immediate family or use a specific Ohio law?
3. Should there be a provision to address family members of the Civil Service Commission applying for classified positions?
4. Note: the law is changing and "no relatives" policies may not be legal.
5. Review and Discussion of Specific Provisions.