



Bold and Accountable Leadership for Cleveland Heights

Ballot language finalized after lengthy process

On Friday, August 9, 2019, the Cuyahoga County Board of Elections (BOE) published its final draft of the language that will be on the November 5 ballot for the citizens' petition to have an elected mayor:

“Shall various Articles of the Charter of the City of Cleveland Heights be amended to change the form of government from its current elected Council and appointed Manager form, to an elected Mayor and Council form, and to provide for the powers, duties, four-year term, qualifications, and removal process for the office of the Mayor, and to create the position of the City Administrator appointed by the Mayor and subject to Council approval who shall be responsible for assisting the Mayor in overseeing the administrative functions of the City, commencing with the initial election of the Mayor to occur at the regular municipal election occurring in the year 2021; and to eliminate the City Manager position? ___ Yes ___ No”

The language is awaiting approval or further revision by the Ohio Secretary of State. BOE's final determination included a narrative describing the factors that weighed into their language, reproduced below. The Board's action followed a nearly two-month process that began June 17, when Citizens for an Elected Mayor delivered our proposed ballot language to the City along with petitions signed by nearly 4,000 citizens seeking to place the charter amendment on the ballot. A brief chronology of what transpired appears below the BOE comments.

Communication from Board of Elections to CEM and City Council

From: Cory Milne [mailto:cmilne@cuyahogacounty.us]

Sent: Friday, August 09, 2019 12:53 PM

To: Len Friedson; William R. Hanna

Cc: Kahlil Seren; Melissa Yasinow; jmnj44@gmail.com; Anthony W. Perlatti; Brent Lawler

Subject: Final Revised Cleveland Hts Ballot Language

To All Whom it May Concern:

First, we would like to thank everyone for their input. Cleveland Heights should be proud of its civic engagement, both by its elected officials, and its residents. Not many communities can boast such dedication and interest. We thank you for your input in crafting the ballot language, and sharing your stories surrounding this definitive issue. Some minor adjustments have been made from our conversations, and the final draft language is attached. Over the course of discussions between City officials, the petition group, and interested parties from Political Action Committees, and Board of Elections Director Anthony Perlatti, we have determined to go with the language based on the following facts:

- The petition group and the City of Cleveland Heights at one point had competing ballot measures at the same election, which had the potential to confuse voters. Understanding this, the two groups for and against the issues, made a good-faith effort to negotiate ballot language to propose to the city as a suggestion to include in the ordinance that would be passed to submit the questions to the ballot. However, the City dropped its plans to put its own competing charter amendment, and thus reducing confusion and rendering the proposed language moot.

- The Board of Elections, under Ohio law, are responsible for writing and approving ballot language for local questions and issues pursuant to the relevant statutes and Secretary of State rules and guidelines, including the requirement that ballot issues are consistent in format, and content where similar. Further, Sec. of State guidelines specify "Resolutions or Ordinances certified to the board office may include suggested ballot language for the question or issue. Board personnel should verify that the suggested ballot format or language meets the statutory format requirement, as well as the board of elections' ballot format.." Most charter amendment issues come with suggested language that do not comport with aforementioned standards and guidelines, and are therefore rewritten by the BOE with discussion from the cities.
- Currently another issue on the ballot throughout the county is a County Charter Amendment of similar complexity (also attached), which makes it difficult to justify expounding more heavily on one and not the other.

Further, we understand that the stakes are high, and everyone has the best interests of their city, and much has to be done to inform the public about the details in the proposed charter amendment. The Board of Elections intends on fulfilling its duty to that end by providing bilingual (English/Spanish) versions of the Ordinance and petition passed to any voter who requests it during the early voting period, as well as at the polls on election day. The PAC's supporting and opposing the measure are also encouraged to help inform the City's public with their campaign.

We again thank you for your patience, participation, and cooperation.

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Chronology of ballot language development

June 17, 2019: CEM delivers petitions to the Acting Clerk of Council which includes proposed ballot language for consideration by the City Council, as follows:

"Shall various Articles of the Charter of the City of Cleveland Heights be amended, as proposed by initiative petition, to change the form of government from Council/Manager to Mayor/Council, with the direct election of a full-time Mayor, who shall appoint a city administrator with City Council approval?"

June 20, 2019: The BOE issues a form to the city certifying that 3,181 signatures are valid and that the committee members are duly qualified registered electors of the City of Cleveland Heights.

July 1, 2019: First regularly scheduled City Council meeting where Citizens for an Elected Mayor (CEM) anticipates action on the ballot measure by council per the current city charter: *"When there shall have been filed a petition signed by the aforesaid required number of electors proposing an ordinance or other measure, the Clerk shall certify the same to the Council at the next regular meeting, and the Council shall at once read and refer the same to an appropriate committee ..."*

The agenda for this public meeting is silent about any petition. When informed of this omission by a CEM representative prior to the start of the meeting, the Acting Clerk of Council, the Law Director and the City Manager confer in private conference. Thereafter, the Acting Clerk of Council reports to the Council, in a one-sentence statement, that a petition had been BOE-validated and certified by the Acting Clerk of Council.

July 8, 2019: A draft resolution (ordinance #071-2019) to place the citizens' initiative charter amendment onto the November ballot is circulated at the council's regular Committee of the Whole (COW) meeting, with the following ballot language:

"Shall Articles 3, 5, 7, 9, 11, and 12 of the Charter of the City of Cleveland Heights be amended as follows

[INSERT FULL TEXT OF EXHIBIT A, ATTACHED PROPOSED CHARTER AMENDMENT, INCLUDING ALL STRUCK THROUGH TEXT, AS FORMATTED IN PETITION]. ___ Yes ___ No"

During this meeting, it is documented that no council member had received the ballot language proposed by the citizens' initiative committee.

July 9, 2019: CEM contacts the Acting Clerk of Council, noting the events of the July 8 COW meeting and making specific reference to the absence of any condensed ballot language in the draft resolution, and that the committee's proposed ballot language had NOT been distributed to council. The email includes an offer to meet with the Law Director to work out some acceptable condensed language. The Law Director replies at end of day, rejecting any joint discussion and noting: *"The City administration and the Acting Clerk of Council apologize for the oversight in regard to distribution of your June 17 letter, attached, to City Council."*

July 15, 2019: First readings of resolutions for the citizens' initiative charter amendment and the city's fully amended charter are made during council's regularly scheduled meeting.

July 17, 2019: Local media begin reporting on the charter amendments, including articles about a PAC formed to oppose the citizens' initiative that is funded by members of council and of the Charter Review Commission, and that the PAC has received a pledge of up to \$25,000 in matching funds from a Washington, DC-based city manager's advocacy organization

July 22, 2019, Committee of the Whole meeting: Council members receive new versions of proposed language for both initiatives, drafted by a Columbus-based law firm engaged by the city. The material is distributed at the meeting rather than the previous Friday in packets available to the public via the city's website, as is the norm. The proposed ballot language for the citizens' initiative was more than 360 words, and that for the Fully Amended Charter was 120, and were characterized by the outside law firm as complete, clear and fair.

Council members engage in a heated discussion about the language proposals, frequently talking loudly over each other. The council president raps on the table to restore order at one point. There is disagreement as to length and content of the language. When the city manager asks council members to clarify how they want her to work with the law department on a new draft, they are unable to; the council president says she would meet with the manager to discuss the language.

Audio recordings of COW meetings are posted on the city's website regularly, but none is posted of this meeting. CEM is told by the city administration and a council member there were technical difficulties. In response to a CEM members' request to council for written minutes in lieu of a recording, as a way to maintain the spirit of transparency and public access council has established, another council member apologizes for the absence of the recording, writing "It is my understanding that there were not written notes of the meeting and we didn't know about the audio issue until after the meeting had ended," and adding "There should be news articles about the meeting from Tom Jewell. Also, I recall that the meeting was heavily attended and that some individuals took contemporaneous notes."

Following the COW meeting, representatives of CEM and Cleveland Heights Citizens for Good Government (CHCGG) begin talking about jointly crafting language for the ballot initiatives in both resolutions since council had been unable to reach agreement.

July 23, 2019: Representatives of CEM and CHCGG meet in a civil, collaborative process to agree on language for both initiatives that is clear, fair, would properly inform voters, and would be acceptable to both sides. CEM agrees to negotiate based on two assumptions: the two ballot issues would appear side by side on the November ballot

(which, at the time, seemed to be a near-certainty); and that CEM has no other recourse to try to be sure voters would be able to understand what they were voting on when they got to the polls.

The resulting set of language is created in a consensus-driven process, where neither side gets everything it wants, and both sides agree to live with the results. The language is forwarded to the council president on July 25 with a strong recommendation that it not be changed, except for phrases in each that indicates how the proposal got on the ballot (with a recommendation that the phrases be left in both, or stricken from both).

July 29, 2019, Committee of the Whole: The meeting packet includes five versions of language for the Fully Amended Charter, and four versions of language for the citizens' petition. The mayor outlines and council members discuss a process whereby the city, at the full council meeting that evening, will table indefinitely the resolution to place the Fully Amended Charter on the ballot because it lacks the required vote of five council members to proceed. The committee is presented with four versions of ballot language for the citizens' charter amendment:

- A. The language introduced July 8 that incorporated the full redline charter amendment.
- B. The 360-plus word version offered by outside counsel on July 22.
- C. A slightly shortened version of B.
- D. An edited version of the language that had been jointly proposed by CEM and CHCGG.

The council selects "D," with additional revisions.

July 29, 2019, City Council meeting: City Council votes unanimously to "table indefinitely" the City's competing Amended Charter, and approves the resolution for the citizen's initiative to be on the ballot. Some 20 citizens address council during public comments, speaking for up to three minutes each both against and in favor of the initiative.

August 6, 2019: The BOE informs the city and CEM of the ballot language the BOE has crafted:

"Shall various Articles of the charter of the City of Cleveland Heights be amended to eliminate the City Manager position, and to change the form of government from its current elected Council and appointed Manager form, to a directly-elected Mayor and Council form, and to provide for the powers, duties, term, qualifications, and removal process for the office of the Mayor, and to create the position of the City Administrator appointed by the Mayor and subject to Council approval who shall be responsible for assisting the Mayor in overseeing the administrative functions of the City, commencing with the initial election of the Mayor to occur at the regular municipal election occurring in the year 2021?"

CEM and the city offer comments on the language to the BOE.

August 9, 2019: BOE shares its final language with both parties.