



MINUTES
CUYAHOGA COUNTY CHARTER REVIEW COMMISSION
WEDNESDAY, MAY 16, 2018
CUYAHOGA COUNTY ADMINISTRATIVE HEADQUARTERS
COMMITTEE ROOM A – 4TH FLOOR 4:00 PM

1. CALL TO ORDER / ROLL CALL 4:10pm

Commission Members: **Chairperson Ronald B. Adrine**, Diane Downing (by phone), Susan A. Drucker, Michael W. King, Thomas P. Perciak, Claire Rosacco, Victor A. Ruiz, Davida Russell (by phone), and Vice Chairman Dennis G. Kennedy.

Chairperson Ronald B. Adrine: declared a quorum was established.

2. DISCUSSION: Review proposal/presentation

Councilman Dale Miller

Proposal – Inspector General

Chairperson Adrine: Take up the proposal to modify the language of the charter to include information and provisions as it relates to the Inspector General position which exist but not has been included into the charter in the past. Speaking in favor of the proposal is councilman Dale Miller.

Councilman Miller: Honorable Judge Adrine and Members of the Charter Review Commission:

The amendment that I am proposing would add a new Article XV to the Cuyahoga County Charter on the Agency of Inspector General, as presented in Appendix 1. This language has a long history, stretching back at least six years. It was discussed prior to the first Charter Review Commission. A version was proposed by the first Charter Review Commission. There was further discussion on Council after the first Charter Review Commission. The current version builds on this prior work and includes input from Inspector General Mark Griffin, the League of Women Voters, and Executive Armond Budish and his administration.

There are three main reasons for including language on Inspector General in the County Charter.

1. The **first** is to give the Agency greater permanence and stability than could be achieved simply by ordinance.
2. **Second**, having the Inspector General as a Charter agency raises its stature and makes a statement about our commitment to the highest ethical standards.
3. **Third**, an Inspector General provision with the right language helps ensure that the Inspector General has the authority and powers to do its work effectively.

Having discussed the general rationale for including language on the Agency of Inspector General in the County Charter, I will focus the remainder of my presentation on the specific provisions.

Subsection 1: Powers and Duties. The Inspector General shall serve as the County's chief ethics officer and shall direct the Agency of Inspector General. The County Executive and the County Council shall appropriate funding for the Agency's operations, fairly allocated through the regular budget process based on available resources. The Council may, by ordinance further delineate the powers and duties of the Agency of Inspector General, consistent with this Article XV.

Subsection 1 establishes the Agency of Inspector General and the Inspector General, provides for fair funding allocation through the budget process, and enables the County Council to further delineate the Agency's powers and duties, consistent with the amendment. The fair allocation provision is designed to prevent a future Council from starving the Agency of Inspector General out of existence or hampering its operations through the budget process without going so far as to create a dedicated funding source, which I do not believe can be permanently aligned with the amount of resources needed. I did not find any other local government that had a charter provision creating a dedicated funding source for its Inspector General. Broward County, Florida authorized but did not mandate imposition of a fee of 0.25% of the cost of every contract to fund the Agency and also authorized Council to supplement the fee with additional general funds as needed.

Subsection 2: Jurisdiction. To the maximum extent permitted under the Constitution of the State of Ohio and this Charter, the authority of the Agency of Inspector General to investigate possible ethical violations in the conduct of County business shall extend to any employee, official, or appointee of the County and any person or entity doing business with the County. The exact boundaries of County government under home rule charters are still being worked out. This jurisdiction section is designed to give the Inspector General the broadest possible range permitted by law and constitution.

Subsection 3: Qualification. The Inspector General shall have at least five years' experience as an inspector general, certified public accountant, auditor, licensed attorney, law enforcement officer, or other investigative officer involving supervisory or managerial experience.

This section differs from the ordinance, which requires ten years of experience. We originally tracked the ordinance but received input that the requirement for ten years might unreasonably restrict the applicant pool and a more flexible provision would be better.

Subsection 4: Appointment and Term. The Inspector General shall be appointed by the County Executive, subject to confirmation by Council, for a term of four years. The term of the incumbent Inspector General shall expire on December 31, 2020. Each subsequent Inspector General shall be appointed or reappointed for a term commencing on January 1, 2021, and every four years thereafter. Reappointments shall be subject to Council confirmation.

This section also differs slightly from the ordinance, which creates a 5-year term. The 5-year term would rotate over time as to when it ends in relationship to the County Executive's term. We felt that it would be better for the Inspector General's term to end in the middle of the County Executive's term on a consistent basis.

Subsection 5: Removal. The Inspector General may be removed from office only for cause by resolution receiving the affirmative vote of at least eight members of the Council. The Council shall not vote on the question of the removal of the Inspector General until the Council has provided the Inspector General the opportunity to be heard and to present his or her case for retention in office. The removal provision is designed to prevent removal for political reasons by requiring that removal only be for cause and be approved by eight members of Council. The concept for requiring the opportunity for the Inspector General to be heard prior to vote on removal came from the League of Women Voters. The exact language mirrors the current Charter provision on the Internal Auditor.

Subsection 6: Vacancy. In the event of a vacancy prior to the expiration of the Inspector General's term, the County Executive shall appoint a successor to complete the unexpired term, subject to confirmation by Council. In the event a vacancy occurs less than two years prior to the expiration of the Inspector General's four-year term, the County Executive may appoint an Inspector General to complete the unexpired term and serve a subsequent four-year term, subject to confirmation by Council. The vacancy process mirrors the regular appointment process. When a vacancy occurs in the last half of a term, the Executive is given the option to appoint for the remaining term plus an additional full term, subject to Council confirmation. We felt that it would be difficult to obtain a quality candidate for a position in which less than two years is assured.

Subsection 7: Access to County Information. The Inspector General shall have the right to obtain full and unrestricted access to all records, reports, plans, projections, matters, contracts, memoranda, correspondence, and any other materials, including electronic data, of Cuyahoga County, relevant to any inquiry or investigation undertaken pursuant to this Article XV, except as may be legally limited, such as through attorney-client privilege or provisions of the Health Insurance Portability and Accountability Act (HIPAA).

This section was recommended by Inspector General Mark Griffin to help insure access to information relevant to investigations by the Inspector General. Note that the two legal exceptions provided are exemplary, rather than exclusive, recognizing that there may be other legal limits on access to information.

Subsection 8. Subpoena Power. The Inspector General shall have authority to subpoena witnesses, administer oaths or affirmations, take testimony and compel the production of such books, papers, records and documents, including electronic data as is deemed to be relevant to any inquiry or investigation undertaken pursuant to this Article XV.

While there has been some discussion as to whether the Inspector General should be given subpoena power, there is ample precedent for its inclusion. Three of the four localities which have detailed Inspector General language in their charters expressly provide for subpoena power. In Cuyahoga County

government, County Council, the Internal Auditor, and the Consumer Affairs Department all have subpoena power, granted by charter or by ordinance. I believe this provision is necessary to the strong and effective operation of the Agency of Inspector General.

County Executive Armond Budish very recently reviewed the draft language and made two recommendations. The first was that funding for the Inspector General be done by the Executive and Council through the regular budget process. This suggestion was incorporated into the draft that you have. He also suggested that investigations by the Inspector General including any subpoenas be exempt from being public records until the investigation is completed and the report is filed. Noting that exemption from public record is a complex and frequently litigated area of law and that we strongly desire not to have charter language overturned, I recommended that we deal with this aspect by Ordinance.

The updated version proposed here contains the essential framework for a strong and effective Agency of Inspector General without getting into details that may be left to ordinance. Cuyahoga County's Inspector General has now operated successfully for seven years, and I believe Council is ready to propose an Inspector General Charter amendment to the voters. This specific language is the result of much collaboration, and I believe that it would be approved for the ballot if recommended by your Commission. I respectfully present it for your consideration.

Commission members asked questions of Councilman Dale Miller regarding the Inspector General, which he answered accordingly.

Chairperson Ronald B. Adrine, called for the next person to speak.

3. DISCUSSION: Review proposal/presentation

Lynda Mayer – League of Women Voters

Proposal – Inspector General

Lynda Mayer – County Government Chair for the League of Women Voters

We do believe that dedicated funding is necessary and an appropriate way to get it is to attach a small fee to the contractors who are identified as okay to do business with this county.

INSPECTOR GENERAL PROPOSAL – League of Women Voters

I. Charter language:

- a) There is no current charter language.
- b. Draft proposed charter language: We propose language closely paralleling that drafted by Councilman Dale Miller, although we would like to see it abridged to the essentials, leaving the expansion of its main points to Council legislation. We believe the language of a new Article XV should contain all of the following essentials:
 - 1) IG = chief ethics officer;
 - 2) sufficient, secure or dedicated funding;
 - 3) wide jurisdiction as allowed by general law;
 - 4) at least 5 years of relevant legal & investigative experience;
 - 5) independent appointment and confirmation process;
 - 6) fixed term of office (non-concurrent with that of the County Executive)
 - 7) removal by Council super-majority only for cause and after hearing;

- 8) guaranteed access to county information; and
- 9) power to investigate complaints or initiate investigations, including subpoena power.

These points are all made in the submission by Councilman Dale Miller, and we would only suggest that they be couched in broad language mandating that legislation spell out the details.

c. Draft rationale: The Charter must assure that high ethical standards established by Cuyahoga County will continue to have an effective and independent enforcement mechanism.

II. Research supporting the rationale.

- a) In our one-year (2009) study of ethics laws and their enforcement in 15 similar counties across the country, we found variations in both the mechanisms chosen and the effectiveness of those mechanisms. Only one county as of 2009, Broward County FL, had an Inspector General, although the new position was at that time experiencing trouble getting up and running. Most other counties had an ethics board which hired a chief ethics officer. (We preferred that method at the time.) Allegheny County advised us that we should make sure our chief ethics officer had sufficient investigative tools, because he said he had been limited to reacting to complaints. In Duvall County FL, we recall, the council imposed major funding cuts to its ethics enforcement program, thus reducing its ability to do the job. Milwaukee County in Wisconsin was memorable because it had a unique mechanism for the independent appointment of its chief ethics officer (very similar to the way the CEO of the Cleveland Metropolitan School District is hired). However, all the counties we surveyed had a customized Code of Ethics AND an enforcement mechanism. Our County Code also contains both, although only the former is mandated in the charter. The latter, our version of an ethics office, is not mentioned in our charter and is therefore subject to the vicissitudes of future county politics, personalities or budget restraints.

That is why we urge the CRC to recommend that Council submit to the voters in November a provision guaranteeing the independent office of Inspector General.

Chairperson Ronald B. Adrine asked if there were any questions from the commission for Lynda Mayer regarding the Inspector General. There were no questions.

Councilman Dale Miller asked if he could add something.
Permission was granted by Chairperson Adrine.

Councilman Dale Miller:

I would just like to make everybody aware the earlier version of our draft amendment said the Inspector General shall have the power to investigate complaints. But we independently came to the same conclusion that the Inspector General should be able to investigate complaints and also should be able to initiate investigations, so we change the language to simply read. The Inspector General shall have the authority to investigate possible ethical violations...it doesn't say whether that started as a result of a complaint or whether it started as a result of something that the Inspector General office became aware of on it's on.

Chairperson Ronald B. Adrine called the current Inspector to come forward

Mark Griffin – Inspector General Cuyahoga County, addressed the Commission regarding the proposal to modify the language of the charter to include information and provisions as it relates to the Inspector General.

I want to thank Councilman Miller for his just outstanding hard work not just for this year but for the last 6 years to put this together. I also want to thank CE Budish for his efforts as well to put together a proposal that I think is very strong. Strong support from the Executive and County Council that although they may have their differences County Executive and Council. One of the things I have been very grace to deal with I have strong support from the County Council and the Executive. They are together I wanting to root out any corruption and to get the truth to make our county work more efficiently. I find that 99% of the employees are outstanding and they do a great job. My job is to find the 1% and to protect the county and the tax payers. When we think of a charter it is not just for today but for the future. In my mind the most important parts of my job have to do with information and effectiveness. So, article 7 (Access to County Information) and 8 (Subpoena Power) I believe are the most important.

Commission members asked questions of Mark Griffin regarding the Inspector General, subpoenas, council, tweaks that could be made and tweaks he would like to see, etc., which he answered accordingly.

4. PUBLIC INPUT: There is no one signed up for public input.

Chairperson Ronald B. Adrine and Commission members discussed the issue of Executive and County Council Succession, elections, the cost of special elections, general elections, etc. Another meeting date will be set up to discuss this item further.

Chairperson Ronald B. Adrine: called on County Executive Armond Budish who gave his view on the item of Inspector General.

County Executive Armond Budish: I think it's working well by statue. Primary changes are those that were pointed out by inspector Griffin which is access to county information and subpoena power and I think council can do this by ordinance than by putting it into a charter amendment. Whether it's by ordinance or charter I do believe that there should be a provision that subpoenas are not public records until after the investigation is closed. Subpoenas should be confidential. That would be a strong suggestion I would make.

Chairperson Ronald B. Adrine: Any questions for the Executive? None

Chairperson Ronald B. Adrine: Time is running out. We will have to get the report to Council by July. Discussed what the next steps will be in order to get the rest of the items completed.

Motion made by the honorable Susan A. Drucker on the minutes for April 4, 2018, seconded by Claire Rosacco. Motion carried.

5. ADJOURNMENT - Chairperson Ronald B. Adrine adjourn the meeting. Next Meeting: June 6, 2018, 4:00 PM