

### Background

Qualification requirements for elected municipal officeholders are established in the charter. These provisions vary from office to office, sometimes in ways that may no longer be relevant. While qualifications vary from city to city among Ohio's largest municipalities, several common practices can be gleaned from state law. Staff recommends updates to the qualifications for all city elected offices, providing consistency among offices and reflecting common practices best suited for our city.

### Issue Overview

While general laws of the state establish qualifications for elected office in statutory cities, Ohio's major cities include unique qualification provisions in their charters. Like those cities, the Columbus City Charter establishes qualifications for elected office – qualifications that have remained somewhat static since 1914, with three notable exceptions.

In 1985, Columbus voters approved the removal of the ban on “other [public] employment” for council members.<sup>1</sup> Based on the ordinance placing this before voters, the change was prompted by provisions relating to members of the General Assembly and the desire of council members to serve as teachers at public institutions.

Also in 1985, voters approved the addition of “reserve unit of the Armed Forces of the United States of America” as a permitted public office for the mayor.<sup>2</sup> This provision was added to assure that former-Mayor Dana Rinehart could continue to serve as a US Navy Reserves member – an unfortunate challenge for the mayor when he took office the previous year.<sup>3</sup>

In 1998, voters approved a charter amendment to make all gender-specific references gender-neutral.<sup>4</sup> Adoption of this provision led to amendments in all qualification sections, such as the change from “councilman” to “council member” and removal of the terms “he”, “him”, and “his” from all elected office sections.

Despite these amendments, charter qualifications remain inconsistent among municipal elected offices (see Appendix). For example, only the mayor may serve as a member in the reserves of the US Armed Forces;<sup>5</sup> only council members are subject, as a qualification of office, to the requirement that they have

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<sup>1</sup> Ordinance 1778-85. Charter Revision Proposal No. 5. November 5, 1985. Note that the original wording, “other public office or employment” appears to imply a limitation only on public employment, not employment generally.

<sup>2</sup> Ordinance 1710-85. Charter Revision Proposal No. 1. November 5, 1985.

<sup>3</sup> “5 Charter Amendments on Tuesday’s Ballot.” *Columbus Dispatch*, October 31, 1985; “Election Date Change Among Charter Issues.” *Columbus Dispatch*, November 3, 1985; and “City’s Primary Election to Change.” *Columbus Dispatch*, November 6, 1985.

<sup>4</sup> Ordinance 1825-98. Charter Amendment, Issue 32. November 3, 1998.

<sup>5</sup> Columbus City Charter, Sec. 58.

no interest “...in the profits of emoluments of any contract, job, work or service for the municipality.”<sup>6</sup>; and the city attorney and auditor have neither the authority or prohibition to hold other public office.<sup>7</sup>

General laws of the state provide inadequate guidance. For statutory cities, the qualifications for council largely mirror the Columbus City Charter; yet, state law lacks the same specificity as our charter regarding the mayor and establishes an appointed, rather than elected, city auditor and city law director.<sup>8</sup> References to elected auditors and city attorneys offer no additional guidance.<sup>9</sup>

### Common Practices

We can breakdown the elements of qualifications for elected office into the following categories: residency, elector, other public office, other employment, interest in city contracts, forfeiture of office and special conditions. A review of large Ohio city charters, our charter and general laws of the state reveal a roadmap for common practices that could be applied, in a largely uniform fashion, to all city officeholders.

**Residency.** Most other Ohio cities, as well as general laws of the state, impose a minimum one (1) year residency requirement for elected officials. In this instance, the Ohio Revised Code provides a very compelling argument for this provision.

The purpose of establishing a one-year residency requirement in this section is to recognize that the state has a substantial and compelling interest in encouraging qualified candidacies for ... a city by ensuring that a candidate for such office has every opportunity to become knowledgeable with and concerned about the problems and needs of the area the candidate seeks to represent. In enacting this requirement, the general assembly finds that the one-year period is reasonably related to this purpose, while leaving unimpaired a person's right to travel, to vote, and to be a candidate for public office.<sup>10</sup>

**Elector.** All city charters incorporate the Ohio Constitution’s requirement that elected officials be qualified electors.<sup>11</sup> This should remain a qualification in our charter as well.

**Other Public Office.** Ohio charters and general laws of the state relative to municipalities fail to give clear guidance on the issue of other public office.<sup>12</sup> However, the Ohio Constitution provides good guidance in this regard. It provides that no member of the general assembly may also hold other public

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<sup>6</sup> Columbus City Charter, Sec. 6.

<sup>7</sup> Columbus City Charter, Secs. 66 and 79.

<sup>8</sup> ORC 705.09, .11, 12, and .78

<sup>9</sup> ORC 733.10 and .49. These sections also provide for an elected treasurer and a division of executive authority that does not reflect current practice in the City of Columbus.

<sup>10</sup> See Ohio Revised Code 731.02

<sup>11</sup> Ohio Constitution, Art. V §1 and Art. XV §4.

<sup>12</sup> ORC 102.04 and 2921.43 apply a blanket prohibition on accepting compensation for certain public employment, but does not apply to uncompensated public offices.

office, except officer of a political party, notaries public, or officers of the militia or of the United States armed forces.<sup>13</sup> Such a provision could be applied uniformly for all elected officials in Columbus.

**Other Employment.** Ohio charters and general laws of the state relative to prohibitions on other employment fail to give unambiguous guidance on this issue. Further complicating the matter is that, of Ohio's large cities, only Columbus has an elected auditor and city attorney, and several cities have a city manager form of government, thus limiting potential comparisons. However, our charter's framers intended that the mayor receive no other public compensation to assure a clear focus on the needs of the city. At a minimum, the limitation on public employment by the mayor seems to be an appropriate provision for an administrative official.

**Interest in City Contracts.** While our charter provides a general section barring an officeholder from having a beneficial interest in contracts, it does not mirror the prohibition that council members may "...not be interested in the profits or emoluments of any contract, job, work or service for the municipality."<sup>14</sup> This provision is mirrored in general laws of the state for legislative authorities in statutory cities. As a safeguard for Columbus' citizens, it makes sense to clarify this provision – after all, who know what an emolument is? – and apply it to all elected officials of the city.<sup>15</sup> Of special note, the constitution also states that, "No member of the general assembly shall, during the term for which he was elected, or for one year thereafter, be appointed to any public office under this state, which office was created or the compensation of which was increased, during the term for which he was elected." Our charter does not include such a provision.

**Forfeiture of Office.** Our charter rightly requires an officer to forfeit office if the officer has an unlawful interest in a city contract. However, the council section goes farther, requiring forfeiture of office if a member has a beneficial interest in any contract, job, work or service for the City of Columbus. In addition to applying this standard to all municipal elected officials, citizen may be further protected by extending this penalty to the officials as well.

**Special Conditions.** Two special conditions apply to officeholders in Columbus. For council members, the fact that the council president may become acting mayor would not trigger the "other public office" limitation in the charter. For the city attorney, the charter requires that he or she must be an attorney admitted to practice in Ohio. Both provisions are common-sense additions that are unique to the offices in question.

## Conclusion

Staff suggests that this Commission recommend harmonizing, with limited exceptions, the qualifications for office across all elected officials in the City of Columbus.

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<sup>13</sup> Ohio Constitution, Art. II, §04

<sup>14</sup> Columbus City Charter, Sec. 6.

<sup>15</sup> Alternatively, this prohibition could be added to amended Sec. 227, as part of the city's ethics charter amendment.

Staff further recommends that the following be added to all qualifications:

1. Residency in the city for at least one year and continuing residency during office.
2. Service in the US Armed Forces as a permitted public office.
3. Prohibition on any interest in a contract, job, work or service for the municipality.
4. Forfeiture of office if the officials lacks any qualification.

| CITY       | MAYOR  | COUNCIL  | AUDITOR                        | CITY ATTORNEY                |
|------------|--|--|--------------------------------|------------------------------|
| Cleveland  | §68. The Mayor shall be an elector of the City and shall not hold any other public office or employment...   | §26. Members of the Council shall be residents of the City and have the qualifications of electors therein.  | See Department of Finance      | Appointed, Department of Law |
| Cincinnati | 100-1. The mayor shall be an elector of the city and shall not hold any other public office except that of notary public or member of the state militia. The mayor shall not be interested in any contract with the city and shall not hold employment with the city.  | 101-1. Each member of council shall be an elector of the city and shall not hold any other public office except that of notary public or member of the state militia. A member of council shall not be interested in any contract with the city and shall not hold employment with the city.   | See Department of Finance      | Appointed, Department of Law |
| Akron      | SECTION 52. The Mayor shall be an elector of the city and have the qualifications of a Councilman.   | SECTION 28. All Councilmen shall have resided in the City of Akron for at least one year next preceding their election, and each ward Councilman shall have resided in his ward for at least one year next preceding his election.   | Contracted independent auditor | Appointed, Department of Law |
| Dayton     | See "Council"  | Sec. 6. Candidates for and members of the Commission shall be residents of the city and have the qualifications of electors therein.   | Contracted independent auditor | Appointed, Department of Law |
| Toledo     | Sec. 28. The Mayor and a member of Council at-large shall have the qualifications of an elector of the City and shall have resided in the City of Toledo or in territory subsequently annexed thereto or in the City and annexed territory in any combination continuously for at least one (1) year immediately prior to taking the oath of office. | Sec. 28. The Mayor and a member of Council at-large shall have the qualifications of an elector of the City and shall have resided in the City of Toledo or in territory subsequently annexed thereto or in the City and annexed territory in any combination continuously for at least one (1) year immediately prior to taking the oath of office. | Appointed by Council           | Appointed, Department of Law |
| Youngstown | Section 4. The Mayor shall be an elector and resident of the City for the five years immediately preceding the Mayor's election, and not less than thirty years of age.  | Section 5. A Councilperson shall be an elector of the ward from which the Councilperson is elected and of not less than twenty-one years of age.   | See Department of Finance      | Appointed, Department of Law |

| OFFICE         | RESIDENCY PROVISION  | ELECTOR  | OTHER PUBLIC OFFICE(S) ALLOWED? |               |                           | OTHER EMPLOYMENT ALLOWED? | CONTRACT RESTRICTIONS | CREDENTIALS               |
|----------------|----------------------|--|---------------------------------|---------------|---------------------------|---------------------------|-----------------------|---------------------------|
| Council member | Resident of the city | Qualifications of an elector of the City of Columbus | Notary public                   | State militia |                           | Yes                       | Yes                   | None                      |
| Mayor          | No                   | Qualifications of an elector of the City of Columbus | Notary public                   | State militia | Reserves, US Armed Forces | No                        | No                    | None                      |
| City Attorney  | No                   | Qualifications of an elector of the City of Columbus | No provision                    |               |                           | Yes                       | No                    | Attorney-at-law, Ohio bar |
| City Auditor   | No                   | Qualifications of an elector of the City of Columbus | No provision                    |               |                           | Yes                       | No                    | None                      |