city of
CINCINNATI C

202001074

Date: July 31, 2020

To: Vice Mayor Christopher Smitherman

From: Andrew W. Garth, Interim City Solicitor *AWG*

Subject: **Emergency Ordinance – Proportional Representation Charter Amendment**

Transmitted herewith is an emergency ordinance captioned as follows:

TO SUBMIT to the electors of the City of Cincinnati an amendment to the Charter of the City to provide for the election of members of City Council by proportional representation by repealing exiting Sections 5, 5a, 7, 8, 11, and 12 of Article IX of the Charter and enacting new Sections 5, 5a, 7, 8, 11, 12, and 13.

AWG/AEP/(lnk)
Attachment
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City of Cincinnati

An Ordinance No. _____

- 2020

TO SUBMIT to the electors of the City of Cincinnati an amendment to the Charter of the City to provide for the election of members of City Council by proportional representation by repealing exiting Sections 5, 5a, 7, 8, 11, and 12 of Article IX of the Charter and enacting new Sections 5, 5a, 7, 8, 11, 12, and 13.

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio, two-thirds

of the members elected thereto concurring:

Section 1. That there shall be submitted to the vote of the qualified electors of the City of

Cincinnati for their approval or disapproval at the general election to be held November 3, 2020,

an amendment to the Charter of the City of Cincinnati, to provide for the election of members of

City Council by proportional representation by repealing exiting Sections 5, 5a, 7, 8, 11, and 12

of Article IX of the Charter and enacting new Sections 5, 5a, 7, 8, 11, 12, and 13, as follows:

ARTICLE IX, "Nominations and Elections," new Sections enacted:

Section 5. Ballots used in electing members of the council and the mayor shall be without party mark or designation. Each elector shall be entitled to vote for one candidate for mayor and to vote for candidates for the council by ranking the elector's preferred candidates in accordance with the instructions printed on the ballot.

Section 5a. Except for the names of the candidates and date of the election, the ballots for election for the members of the council shall be in form substantially as follows:

Regular Municipal Election

Election for Members of the Council
November _____, _____

Directions to Voters

Rank your choices for Council candidates from first to ninth. Rank your first choice by making a mark in the first column following the name of your first-choice candidate. Rank as many other choices as you have up to nine; that is your second, third, fourth, fifth, sixth, seventh, eighth, and ninth choices by making a mark in the second, third, fourth, fifth, sixth, seventh, eighth, and ninth columns following the names of your second- through ninth-choice candidates.

You may rank fewer than nine candidates. Do not rank more than nine Council candidates. Do not rank the same candidate more than once and do not give the same ranking to more than one candidate.

Your vote will be counted for your first-choice candidate if it can be used to help elect that candidate. If it cannot help elect your first-choice candidate, it will be transferred to the highest of your other candidate choices whom it can help.

You cannot hurt any of those candidates you prefer by marking lower choices for others. The more choices you express, up to nine, the more likely you are to make your ballot count for one of them. But do not feel obliged to express choices for candidates you do not want to help elect.

If you spoil this ballot, return it to the election officer in charge of the ballots and get another from the election officer.

CANDIDATES FOR CITY COUNCIL

Candidate	1st	2nd	3rd	4th	5th	6th	7th	8th	9th

Section 7. Except as otherwise provided in this charter, ballots cast for election of members of the council and mayor shall be counted and the results determined and certified by the election authorities in the manner provided by general election law for non-partisan ballots for municipalities.

Section 8. Votes shall be counted for write-in candidates for members of the council who have complied with the general election law. At least one blank space shall be left on the ballot below the printed names of the candidates. In any such space an elector may write the name of any qualified write-in candidate for member of the council, and votes cast for such person shall be counted as though for candidates whose names are printed on the ballots, provided that the ranking (first, second, third, fourth, fifth, sixth, seventh, eighth, or ninth) is also marked for the write-in candidate, and that no other candidate is given the same rank.

The valid ballots cast in the non-partisan primary election for candidates for mayor shall be counted to determine the total number of votes cast in said primary election. The two candidates receiving the highest number of votes shall be declared eligible for the regular municipal election for mayor in November and shall have their names printed on the ballot for mayor.

The valid ballots cast in the regular municipal election for mayor shall be counted to determine the total number of votes cast for mayor. The candidate or eligible person receiving the highest number of votes cast for mayor shall be declared elected mayor.

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If any two or more persons receive an equal and highest number of votes, one of them shall be chosen as mayor according to the method prescribed by the general election laws of the state of Ohio for deciding tie votes.

Votes shall be counted for write-in candidates for mayor at the primary or regular municipal election who have complied with the general election law.

Section 11. The council shall have power to provide for the use of mechanical, electronic, or other devices for marking, sorting, and counting the ballots and tabulating the results and to modify the form of the ballot, the directions to voters, and the details with respect to the method of marking, sorting, counting, invalidating, transferring, and preserving ballots; provided that no change shall be made which will alter the principles of voting, counting, or tabulating of votes as provided in sections 5a, 7, 8, 11, and 12 of Article IX.

In the event that the council does provide in any election for the use of mechanical, electronic, or other devices for marking, sorting, and counting the ballots and tabulating the results, then such election shall be conducted in accordance with the laws of the State of Ohio, now or hereafter in force, relating to voting and tabulating equipment, to the extent that such laws do not conflict or interfere with the efficient and secure casting, counting, or tabulating of votes as provided in sections 5a, 7, 8, 11, and 12 of Article IX.

Section 12. Ballots cast for the election of the members of the council shall be counted and the results determined by the election authorities, according to the following rules:

(a) So far as may be consistent with the general election laws, every ballot from which the first choice of the voter can be clearly ascertained shall be considered valid.

(b) The election authorities shall determine which ballots are invalid. A ballot shall be set aside as invalid if it does not show clearly which candidate the voter prefers to all others, or if it contains words or marks apparently intended to identify the voter. All ballots including those found invalid by the election authorities shall be set aside and preserved until sixty days after the count is finished and thereafter, upon request of any candidate, until any controversy arising thereon shall have been terminated.

(c) The ballots shall first be sorted and counted according to the first choices of the voters.

(d) The election authorities shall count the valid first choice ballots cast for each candidate and shall then, in the case of each candidate, number the said first choice ballots, as they come, consecutively, (1, 2, 3, 4, etc.). Council may, by ordinance, establish the order in which the precinct packages shall be taken for this purpose. In default of such provision, the election authorities may adopt any convenient order, but the same order shall be followed as to all the candidates. All ballots received by each candidate during the entire course of the counts shall be consecutively numbered so that the last number at all times shall correspond to the total vote of the candidate.

(e) The whole number of valid ballots cast shall be divided by a number greater by one than the number of seats to be filled. The next whole number larger than the resulting quotient is the quota that suffices to elect a member.

(f) All candidates whose valid first choice votes equal or exceed the quota shall then be declared elected.

(g)   All first-choice votes obtained by any candidate in excess of the quota shall be termed the candidate's surplus.

(h)   Any surpluses shall then be transferred, the largest surplus first, then the next largest, and so on, according to the following rules:

In the transfer of the surplus, transferable ballots up to the number of votes in the surplus shall be transferred to the continuing candidates marked on them as the next choice, in accordance with section (m). The omission of any consecutive figure in the designation of choices shall not invalidate the ballot as to subsequent choices; the choices shall be taken in order of the figures used. A designation of the same ranking, other than as the first choice, for more than one candidate shall not invalidate the ballot as to subsequent choices; the single candidate designated with the next highest numerical ranking after the duplicated ranking shall be the next choice taken. The particular ballots to be taken for transfer as the surplus of a candidate shall be obtained according to the following rule:

Subtract the quota required for election to the council from the total first choice votes received by the candidate. The difference is the candidate's surplus. Divide the surplus into the total first choice votes of the candidate. If the result is a whole number, take that number as the basis of selection as directed below. If the result is not a whole number, take the next higher whole number as the basis; for example, if the result of the division is 3.2 the whole number 4 would be taken. Then take for transfer from all the candidate's first choice ballots those numbered with successive multiples of the number taken as the basis of selection; for example, if 4 is the number, the ballots numbered 4, 8, 12, 16, 20, etc., would be taken. If any of the ballots so taken are not transferable to another candidate who does not already have a quota, return it to the credit of the candidate whose surplus is being transferred.

If this procedure does not produce enough transferable ballots to exhaust the surplus, divide the remaining surplus into the total first choice votes of the candidate. If the result is a whole number, take that number as the new basis of selection as previously directed. If the result is not a whole number, take the next lower whole number as the new basis, and repeat the foregoing process, taking multiples of the basis number on remaining ballots until the surplus is exhausted; but whenever this number or its multiple is the number of a ballot already taken, take the next following numbered remaining ballot instead. If any of the ballots so taken are not transferred to another candidate who does not already have a quota, return it to the credit of the candidate whose surplus is being transferred. If this procedure still does not produce enough transferable ballots to exhaust the surplus, determine another basis of selection by dividing the remaining surplus into the total first choice votes of the candidate, and proceed again in the manner last provided in this paragraph, and repeat this procedure as many times as may be necessary to exhaust the surplus. The number one shall be regarded as the next number following the highest number marked on any of the candidate's first choice ballots, for the purposes of this section.

Without limiting the generality of Section 11, if the council provides for the use of mechanical, electronic or other devices as provided in Section 11, it may provide for transfer of surpluses by transferring a fraction, not exceeding one, of each

transferable ballot, the numerator of which fraction is the respective surplus of each candidate and the denominator is the total number of transferable ballots of that candidate.

(i) "Transferable ballots" means ballots from which the next choice of the voter for some continuing candidate can be clearly ascertained.

(j) A "continuing candidate" is a candidate as yet neither elected nor defeated.

(k) The votes standing to the credit of each candidate shall be added and a tabulation of results made whenever a comparison of the votes of the several candidates is necessary to determine the next step in the procedure.

(l) After the transfer of all surpluses (or after the first count if no candidate received a surplus) every candidate who has no votes to his or her credit shall be declared defeated. Then the candidate lowest on the poll as it stands shall be declared defeated and all his or her transferable ballots transferred to continuing candidates, each ballot being transferred to the credit of that continuing candidate next preferred by the voter in accordance with rule (m). The candidate then lowest shall be declared defeated and all his or her transferable ballots transferred the same way. The lowest candidates shall be declared defeated one after another and their transferable ballots transferred to continuing candidates.

(m) Whenever in the transfer of a surplus or of the ballots of a defeated candidate the vote of any candidate becomes equal to the quota, the candidate shall immediately be declared elected and no further transfer to that candidate shall be made.

(n) The election shall be at an end when either of the following occur:

When candidates to the number of seats to be filled have received a quota and have therefore been declared elected. All other candidates then shall be declared defeated.

When the number of continuing candidates is reduced to the number of seats still to be filled, those candidates shall be declared elected whether they have received the full quota, in such event, the ballots of the candidate last declared defeated shall be distributed among the candidates last declared elected up to the amount of their quotas according to the rules in this section 12.

(o) If, when a candidate is to be declared defeated, two or more candidates at the bottom of the poll have the same number of votes, the tied candidate who was credited with the fewest votes at the end of the count next preceding shall be declared defeated. Any further tie shall be decided in the same manner. Except as otherwise provided, any tie shall be resolved in accordance with the general election laws of Ohio.

(p) Any recount of the ballots shall be made by the election authorities in accordance with this section except that the reference to voting precincts may be disregarded. In any recount, every ballot shall be counted in the same way as it was counted in the original counting, unless a mistake is discovered that requires a correction. In such case, any required changes shall be made in the course taken by the ballot. These principles shall apply also to the correction of any error that may be discovered during the original counting.

(q) To permit an independent count of the ballots, the rankings cast shall be made available upon public request.

Section 13. If any provision of Article IX is amended or held unconstitutional or in violation of state law, this shall not affect the validity, force, or effect of any other provision of Article IX.

Section 2. That the form of submission of the proposed amendment to the electors shall be substantially as follows:

CHARTER AMENDMENT A majority vote is necessary for passage.	
YES	Shall the Charter of the City of Cincinnati be amended to provide for the election of members of City Council by proportional representation, by repealing existing Sections 5, 5a, 7, 8, 11, and 12 and enacting new Sections 5, 5a, 7, 8, 11, 12, and 13?
NO	

Section 3. That the Clerk of Council shall give notice of the proposed Charter Amendment in the manner provided by Sections 8 and 9 of Article XVIII of the Ohio Constitution and Section 731.211 (B) of the Ohio Revised Code.

Section 4. That the Clerk of Council is directed to certify and transmit to the Board of Elections of Hamilton County, Ohio, a copy of this ordinance and direct the said Board to submit the proposed Charter amendment to the electors of the City of Cincinnati as provided by law.

Section 5. That the Board of Elections of Hamilton County, Ohio, shall certify to the Council the result of the vote upon said amendment, and if said amendment is approved by a majority of the electors voting thereon, amended Sections 5, 5a, 7, 8, 11, and 12 of Article IX shall become a part of the Charter of the City of Cincinnati in place of existing Sections 5, 5a, 7,

8, 11, and 12, which shall be repealed, and new Section 13 of Article IX shall be enacted and become a part of the Charter of the City of Cincinnati.

Section 6. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate necessity to authorize the Clerk of Council to certify and transmit this ordinance to the Hamilton County Board of Elections at least sixty days prior to the November 3, 2020 general election.

Passed: _____ 2020

_____
John Cranley, Mayor

Attest: _____
Clerk