

April 20, 2020

Dear Commission Members:

Please let this serve as a follow up to our discussions at the 4/8 meeting.

- 1) I was asked to follow up on the rationale for the proposed revisions to Sec. 6.05 of the Charter. I was mistaken as to the source of the proposal. It was communicated to me by Mayor Gottschalk but it was actually initiated by Councilperson Elaine Gaither. Ms. Gaither's reasoning was that the councilpersons for Wards 2, 3, 4 and 5 are elected in the off years from the elections for Mayor, Council-at-Large and Ward 1. This means the Ward 2-5 councilpersons can run for an at-large position or Mayor without risking their Ward seats, should they lose which is a distinct advantage over the persons sitting in Ward 1 or at-large. The proposal is intended to level the playing field.
- 2) I was also asked to investigate whether Oakwood can depart from state law requiring three readings of ordinances prior to passage. Oakwood, like other municipalities, is entitled to depart from state law in exercising its powers of local self-government but may not do so in the exercise of its police powers or on matters of statewide concern. There is nothing definitive as to whether the procedure for passage of legislation is a matter of local self-government on one hand or the exercise of police powers or a matter of statewide concern on the other. However, courts have held in other contexts that ordinances that have effects beyond Oakwood's borders are not matters of local self-government. In my view, eliminating the need for three readings to pass an ordinance raises far more complications than it resolves as a practical matter. Eliminating the three reading requirement would require a detailed review of each proposed ordinance to determine whether it has effects completely confined to Oakwood's borders (a matter that is frequently unclear from a legal perspective) and would therefore be eligible for passage on one reading. Invalidation of an ordinance because a court later disagrees with the exercise of legal judgment in a vague area of the law can have very serious consequences. In any event, I would estimate 90% of the legislation in Oakwood passes as an emergency measure or by suspension of rules on one vote and those few matters that require three readings can be accomplished via special meetings on consecutive days if necessary. In short, it is my recommendation that Oakwood continue to follow state law on the procedure for passing ordinances.

Thank you.

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