CITY OF XENIA BALLOT ITEM 22
PROPOSED AMENDMENTS TO THE XENIA CITY CHARTER

AMENDMENT #1: § 4.01(G) and § 5.01(B) – Regarding the Sale of Real Property.

§ 4.01 POWERS OF COUNCIL.

(G) Real Property.

(1) The power to acquire title to, or interests in, real property, whether such property is acquired by the exercise of the power of eminent domain, purchase, gift, lease, devise, bequest, in trust or otherwise.

(2) The power to sell, convey, lease, or grant the use of real property owned by the City, or any rights therein, shall also be vested in the Council. Such sale, conveyance, lease or grant of use shall be made only upon a determination by Council, by resolution, that such property is not needed for any municipal purpose or, in those cases in which real estate is offered only for lease or use for a term, that it will not be needed for municipal purposes during the term of the proposed lease or use or that such proposed lease or use will not interfere with the property's use for municipal purposes. Any sale, conveyance, or lease shall be made only by negotiation, informal competition, or formal bidding, as prescribed by Council in the resolution authorizing the method of sale, conveyance, lease, or grant. The sale, conveyance, lease or grant of use of real property owned by the City, or any rights therein, shall be effective only upon the **passage of a resolution** ~~adoption of an ordinance~~ by Council, approved by the affirmative vote of at least four (4) members of the Council. **Said resolution shall be subject to a public hearing, which shall be held not earlier than seven (7) days following publication of the notice of such hearing.**

§ 5.01 ORDINANCES, RESOLUTIONS, AND MOTIONS.

(B) Action Requiring an Ordinance. The following legislative actions of the City Council shall be by ordinance:

(1) Adopting or amending ~~of~~ an administrative code to establish, alter, or abolish any City department, office, board, commission, or other agency;
(2) Establishing any offense and the imposition or provision of imposition of any penalty for such offense;
(3) Levying of taxes, except when such action may be taken by resolution under the Ohio Revised Code;
(4) Granting, renewing, or extending a franchise;
(5) Regulating the rate charged for its services by a public utility;
(6) Authorizing the borrowing of money or appropriations for the expenditure of public funds;
(7) ~~Authorizing the purchase, conveyance or lease of real property or any title or interest therein;~~
~~(8)~~ Regulating land use and development;
(8) ~~(9)~~ Exercise the police powers granted the City by Article XVIII of the Constitution of the State of Ohio; or
(9) ~~(10)~~ Amending or repealing any ordinance previously adopted.

RATIONALE: In 2022, the voters approved § 4.01(G) of the Charter, which established the process governing the acquisition or sale of City-owned property. For the sale of City-owned real property, a process was established whereby the sale, conveyance, lease, or grant of use of real property requires approval by City Council, by ordinance, upon the affirmative vote of at least four (4) members of City Council. At the time this recommended amendment was made and then approved by the voters, the County was not naming the City as a party in tax delinquencies foreclosure cases.

That changed in 2023, when the County Prosecutor's Office began handling tax foreclosures in-house and including the City as a party in those cases. Since then, the City has acquired many tax-foreclosed properties through forfeiture and then sold them through the Home Preservation Program to return those properties to productive use. This process revealed that requiring Council to approve property sales by ordinance was not the most efficient or effective method, because at least 60 days elapse between the introduction of an ordinance and its effective date.

Thus, the Commission recommends amending § 4.01(G) to allow Council to approve the sale of City-owned property by resolution rather than by ordinance, because resolutions have an immediate effective date. The Commission recommends retaining the requirement that at least four (4) members of Council vote affirmatively to approve the resolution authorizing the sale and continuing to require a public hearing on the potential sale of City-owned land. With the proposed amendment to § 4.01(G), § 5.01(B) [Action Requiring an Ordinance] must also be amended to remove subdivision (7) and renumber the three subdivisions that follow.

AMENDMENT #2: § 4.05(A) – Regarding Council Salaries.

§ 4.05 COMPENSATION AND EXPENSES.

(A) Council **Salaries** ~~members~~.

(1) Beginning January 1, 2027, the members of City Council, including the Mayor, shall receive monthly compensation equal to the minimum earnable salary required under the Ohio Public Employees Retirement System to qualify for a full month's service credit ~~The Council may determine the salaries of its members by ordinance, but no ordinance adjusting such salaries shall become effective until the date of the commencement of the terms of the members of Council, including the Mayor, elected at the next regular municipal election. Any ordinance adjusting the salaries of Council members, including the Mayor, shall be adopted by June 1. Such ordinance may set the salaries for Council, including the Mayor, per year of each year of the Council members' and Mayor's terms, but no salary adjustment shall exceed three percent (3%) per year~~.

(2) Thereafter, the monthly compensation payable to the members of City Council, including the Mayor, shall automatically adjust as of January 1st of each year to equal the then yearly minimum earnable monthly salary required under the Ohio Public Employees Retirement System to qualify for a full month's service credit.

(3) The compensation provided under this division (A) shall be paid by the Finance Director on the same schedule as City employees are paid.

RATIONALE: In 2021, the Charter Review Commission did not recommend any changes to the provisions regarding Council members' salaries but did recommend that the issue be revisited during the 2025-2026 Charter review. The Commission did so and devoted significant attention to the topic. It found that Xenia

City Council members are paid less than their counterparts in many nearby communities, despite the substantial time commitment the position requires. Council members currently earn less than $500 per month.

Surrounding Communities: Yearly Council Salaries

	Yearly Salary	Population	Median Income
Centerville	$13,441	27,375	$85,492
Kettering	$12,000	56,631	$57,822
Miamisburg	$10,640	20,423	$82,900
Beavercreek	$10,800	48,712	$110,088
Urbana	$9,500	11,224	$68,003
Springboro	$9,100	19,900	$119,659
Lebanon	$9,000	22,553	$83,685
Fairborn	$8,808.84	35,370	$61,751
Yellow Springs	$8,800	3,782	$85,982
Franklin	$8,000	11,793	$58,587
Huber Heights	$8,100	43,663	$79,131
West Carrollton	$6,000	12,816	$61,619
Xenia	**$5,256.02 and $4,954.30**	**26,372**	**$56,029**
Bellbrook	$4,500	7,640	$111,513

Under the current Charter, Council may set its own salaries by ordinance, but annual increases are capped at 3%. Because Council sets its own pay, Ohio ethics law also prevents any approved increase from taking effect during a member's current term. As a result, Council members are paid different salaries depending on when they were elected. In practice, this creates a two-tier salary structure, with four members earning one amount and three earning another.

After reviewing other city charters and the statutory process used to set township trustees' salaries, the Commission concluded that Council raises should no longer depend on Council's discretion. Instead, raises should occur automatically under a fixed, objective standard. The Commission therefore recommends amending the Charter to tie Council salaries to the Ohio Public Employees Retirement System (OPERS) minimum monthly salary required to earn a full month of service credit. This change would remove Council's discretion over its own pay, place all Council members on the same salary schedule, and allow them to earn OPERS service credit in a system to which they already contribute but from which they currently receive no benefit.

Historically, increases in the OPERS minimum monthly salary have tracked pay increases approved by the Ohio General Assembly for township trustees. The monthly minimum is set at the level needed for township trustees to receive a full month of service credit. The Commission believes Xenia City Council members should be able to qualify for that same credit. In 2027, the OPERS minimum monthly salary is projected to be $809.31, or $9,711.72 annually.

AMENDMENT #3: § 9.04(C) – Correction.

§ 9.04 OPERATING BUDGET AND CAPITAL IMPROVEMENT PLAN.

(C) Action by City Council.

(1) On or before November 1st, the City Manager shall either publish the estimated Operating Budget and Capital Improvement Plan on the City's website or shall publish, in one or more newspapers of general circulation within the City, that said documents are available for public inspection.

(2) At its first regular meeting in November, Council shall schedule and hold a time for public comment on the estimated Operating Budget and Capital Improvement Plan as presented.

(3) Within thirty (30) days of presentation of the Operating Budget and the Capital Improvement Plan to Council, the Council may approve the proposed estimated Operating Budget and Capital Improvement Plan, by **procedural** ~~administrative~~ motion, or may amend the proposed Operating Budget and/or the Capital Improvement Plan by adding or increasing programs or amounts or by deleting or decreasing any programs or amounts, except expenditures required by law for debt service, provided that no amendment shall increase the authorized expenditures to an amount greater than total estimated income. If the Council takes no action within thirty (30) days, the proposed Operating Budget and the Capital Improvement Plan shall be deemed approved as presented.

RATIONALE: This amendment is a simple correction. In 2022, the voters approved § 5.06, which established "procedural motions." The phrase "administrative motion" in this section needs to be amended to reflect that voter-approved amendment made in 2022.

AMENDMENT #4: Article XI – Regarding Elections for City Office.

ARTICLE XI – ELECTIONS **FOR CITY OFFICE.**

§ 11.01 RULES FOR ELECTIONS.

(A) Time and Submission. Regular Municipal elections shall be held on the first Tuesday after the first Monday in November in each odd-numbered year. **All candidates for the office(s) of City Council, including the Mayor, shall be nominated by petition, and all petitions and ballots shall be without party mark or designation. No primary election shall be held for the office of City Council member, including the Mayor**~~, except as hereinafter provided. Any matter which by the terms of this Charter may be submitted to the electors of the City at any special election may be submitted at any regular Municipal election~~.

(B) **Election of City Council Members. All elections for the office(s) of City Council Member, including the Mayor, shall be at-large elections.**

(C) Nonpartisan Ballots. All officers to be elected under this Charter shall be elected upon one (1) ballot without any party designation of any kind.

(D) ~~C.~~ Determinations. The Council shall be the judge of the qualification**s** and election of its own members, subject to the requirements and limits of this Charter.

§ 11.02 **PROCEDURES FOR PLACEMENT** ~~PETITION FOR PLACE~~ ON BALLOT.

(A) Nominating Petitions. Candidates for **the office(s) of City** Council and Mayor shall be nominated **exclusively** ~~only~~ by petition **in the manner provided by this Charter**. **Nominating petitions shall be governed by the following rules:** ~~The name of any elector of the City shall be printed and signed upon a petition which is to be filed with the Greene County Board of Elections.~~

(1) **Each nominating petition** ~~Such petitions~~ shall state the name **of the candidate, the office for which the candidate is nominated, whether such nomination is for a full term or an unexpired term and the ending date of such unexpired term, and a statement that the signers of such petition certify that, in their opinion, the candidate is well qualified to perform the duties of the office to which the candidate is nominated** ~~and place of residence of each person whose name is presented for a place upon the ballot, and that he or she is a candidate for Council or Mayor for the City of Xenia~~.

(2) ~~(4)~~ Signatures of all the petitioners shall be on forms approved by the Greene County Board of Elections.

(B) Signatures.

(1) ~~(2)~~ **A nominating petition** ~~Such petitions~~ shall be signed by **at least** seventy-five (75) **qualified electors of the City. Only electors qualified to vote on the candidacy which is the subject of the petition shall sign the petition, and each signer shall be a registered elector of the City. The facts of qualification shall be determined as of the date the petition is filed.**

(2) ~~(3)~~ **Signatures shall be affixed in ink, and each signer may also print the signer's name and** ~~An elector signing a petition shall add to his or her signature his or her~~ place of residence, with the street number, and the date of signing. **The address given upon the petition shall be the address that appears in the registration records of the Board of Elections.** ~~An elector may subscribe to one (1) nominating petition for each of the offices to be filled, and no more. All signatures shall be made in ink.~~

(3) If a petition contains the signature of an elector two or more times, only the first signature shall be counted.

(4) ~~(5)~~ No petition shall be signed by any elector more than one hundred twenty (120) **calendar** days prior to the day of the election, and such petition shall be filed with the Board of Elections not less than ninety (90) **calendar** days previous to the date of such election, except as hereinafter provided.

(5) No person shall sign a name other than the person's own on any petition, and no person may authorize another to sign for the person, except when such person is a registered voter who, by reason of disability is unable to physically sign the person's name and the other person signing on the voter's behalf is doing so pursuant to a valid power of attorney for disabled voters on file with the Board of Elections.

(C) Statement of Candidacy.

(1) ~~(6)~~ Any person whose name has been submitted for nomination by ~~any such~~ petition shall **indicate** ~~file~~ **the person's** ~~his or her~~ acceptance of such nomination **by signing the statement of candidacy on the nominating petition before the nominating petition is circulated. No**

nominating petition shall be filed with or **accepted by** the Board of Elections **if the statement of candidacy is unsigned** ~~at the time of filing of his or her petition, except as hereinafter provided; otherwise, his or her name shall not appear upon the ballot~~.

(2) Such statement shall be signed in ink by the candidate and shall contain a declaration made under penalty of election falsification that the candidate desires to be a candidate for the office named and that the candidate is an elector qualified to vote for the office the candidate seeks, and that the candidate otherwise meets all qualifications for the office the candidate seeks.

(3) If the petition consists of more than one separate petition paper, the statement of candidacy needs to be signed by the named candidate on only one such separate petition, but all petition papers shall be filed together.

~~(7) Write-in candidates shall be permitted for the office of Council member in accordance with Ohio election laws.~~

(D) Filing the Petition with the Board of Elections. The nominating petition and statement of candidacy shall be filed with the Board of Elections for placement of the person's name on the ballot as a candidate for office at the next regular municipal election. The Board of Elections shall process the nominating petition in accordance with Ohio Revised Code § 3513.263, as it may be amended from time to time, or any successor provision thereto.

§ 11.03 PROTESTS.

(A) Protests. Written protests against nominating petitions that are filed in accordance with this Article may be filed with the Board of Elections by any qualified elector eligible to vote for the candidate whose nominating petition the elector objects to.

(B) Deadline. Such protest shall be filed no later than seventy-four (74) calendar days before the election at which the candidate's name would otherwise appear on the ballot.

(C) Action by the Board of Elections. The Board of Elections shall process the written protest in accordance with Ohio Revised Code § 3513.263, as it may be amended from time to time, or any successor provision thereto.

§ 11.04 **SUBMISSION TO THE ELECTORS.** ~~GENERAL INITIATIVE AND REFERENDUM LAWS TO APPLY.~~

(A) Placement on Ballot. The Board of Elections shall place the names of all candidates who are certified by it on the ballot for the municipal office for which each candidate seeks election. Ballots used by the Board of Elections shall comply with the relevant provisions of the Ohio Revised Code. ~~The Constitution and the general laws of Ohio shall govern the procedure for initiative and referendum.~~

(B) Elections. The office of Mayor and the office of City Council member shall appear separately on the ballot. The candidate receiving the highest number of votes for Mayor shall be declared elected to the office of Mayor. The candidate(s) receiving the highest number of votes for Council member for the number of office(s) up for election shall be declared elected to the office(s) of Council member.

~~No ordinance or resolution adopted by an electoral vote can be repealed or amended within one (1) year after its adoption except by an electoral vote; however, an ordinance or resolution to repeal or amend any such ordinance or resolution may be submitted to an electoral vote at any regular election, or at any special~~

~~Municipal election called for some other purpose, provided that notice of the intention to do so be published by the Council not more than sixty (60) days nor less than thirty (30) days prior to such election, in the manner required for the publication of ordinances and resolutions. If an amendment is so proposed, such notice shall contain the proposed amendment in full. Such submission shall be in the same manner, and the notice shall have the same effect, as in cases of ordinances or resolutions submitted to an election by popular petition.~~

§ 11.05 ~~11.03~~ **APPLICATION OF** GENERAL ELECTION LAWS ~~TO APPLY~~.

(A) Nominating Process and Selection of Municipal Officials. The processes and methods for the nomination of candidates for the offices of Mayor and City Council, and the method of electing such municipal officials, shall be as provided in this Charter. Should this Charter be silent as to any such matter, the provisions of election laws of the State of Ohio shall apply.

(B) Administration of Elections. All municipal elections for the offices of Mayor and City Council shall be conducted, and the results canvassed and certified, by the Board of Elections in accordance with the laws of the State of Ohio, as amended from time to time and including any successor provisions thereto, except where this Charter provides otherwise.
~~All elections shall be conducted and the results canvassed and certified by the election authorities prescribed by the general election laws, except as otherwise provided by this Charter, or by ordinance or resolution of the Council hereafter elected.~~

§ 11.06 CANDIDACY FOR CITY OFFICE.

(A) Requirements. No person shall be eligible for the office of member of City Council or Mayor unless the person meets the eligibility requirements of § 4.02(B) of this Charter. Eligibility shall be determined at the time the person files their nominating petition.

(B) Restrictions. No official (other than the Mayor and members of Council) or employee of the City shall continue in the person's appointment or employment after being certified as a candidate for election to any City office. Except for the Mayor and members of City Council, no official or employee of the City shall engage in the political campaigns of any candidates for any City office.

§ 11.07 ~~11.05 GENERAL~~ **RECALL** ~~**LAWS TO APPLY**~~**.**

(A) Right of Recall. The qualified electors of the City shall have the power to remove from office by a recall election, in the manner herein provided, any elected or appointed member of City Council or the Mayor if that person has served at least six (6) months of the person's term.

(B) Recall Petition.

(1) A recall petition may be circulated in separate parts, but the separate parts shall be bound together and filed as one instrument. Each part shall contain the name and office of the person whose removal is sought and a statement not to exceed five hundred (500) words of the grounds for the removal. No petition shall name more than one person to be recalled.

(2) A recall petition shall be signed by at least that number of electors from the City which equals fifteen percent (15%) of the number of the electors voting at the last preceding regular municipal election for Council Members and/or Mayor within the City.

(3) No petition shall be valid after ninety (90) calendar days from the date of the first signature.

(C) Filing the Recall Petition. The recall petition, demanding the removal of the person named in the petition from the office named in the petition, and demanding an election for a successor to the person sought to be removed, shall be filed with the Board of Elections. The Board shall examine all the signatures on the petition to determine whether the petition contains the required number of valid signatures.

(D) Recall Election.

(1) If the elective officer named in the recall petition does not resign his or her office within five (5) calendar days of the Board of Elections determining that the petition is sufficient, the Board of Elections shall schedule a recall election at the next primary or general election occurring more than ninety (90) calendar days from the date of the Board's finding that the petition is sufficient.

(2) The nomination of candidates to succeed the elective officer sought to be removed shall be made by filing with the Board of Elections, at least thirty (30) calendar days before the scheduled election, a petition that meets the requirements of § 11.02 of this Charter.

(3) The Board of Elections shall publish notice and make all arrangements for holding the election, which shall be conducted and the result thereof returned and declared in the same manner as are the results of regular municipal elections.

(E) Ballots.

(1) At the recall election, with respect to each elective officer whose removal is sought, the ballots shall submit the question in the following form: "Shall [naming the officer] be allowed to continue as [naming the office]?" and with the provision on the ballot for voting affirmatively or negatively ("For the recall of [name of person]" or "Against the recall of [name of person]"), with a square placed immediately to the left of each proposition in which the electors may vote for either proposition.

(2) Under each question shall be placed the names of the candidates to fill the vacancy. The name of the elective officer whose removal is sought shall not appear on the ballot as a candidate to succeed the officer's self.

(F) Election Results.

(1) In the event that a majority of the votes cast for the recall of the named person are affirmative, such officer shall be considered as removed. The elected successor shall hold office during the unexpired term of the recalled person.

(2) If there were no candidates named to replace the recalled officer, the vacant office shall be filled as provided in § 4.06 of this Charter; provided, however, that a person removed by recall shall not be eligible for appointment to any vacancy created thereby.

(3) If the officer is not removed at such recall election, no further recall petitions shall be filed against the person for a period of one (1) year.

~~The provisions of Chapter 705. of the Revised Code of Ohio, and any subsequent version of that statute, shall govern the procedure for recall of elected officials of the City.~~

RATIONALE: Under Article XVIII of the Ohio Constitution, municipalities can adopt charters and govern their own local affairs, including setting procedures for municipal elections, so long as those provisions do not conflict with the general laws of the State. Therefore, as allowed under the Ohio Constitution, the Commission recommends that the City establish, by Charter, its own processes and procedures for elections to City office. Under the Commission's proposed amendments, the process for having a candidate's name placed on the ballot for Council member or Mayor will be controlled by the Charter, while the election and tallying of votes will continue to be controlled by the Board of Elections. The Commission recommends the following amendments:

- Add language to § 11.01 further clarifying that City elections shall remain at-large, rather than wards, a matter upon which the current Charter is silent. Keep the requirement that all City elections be nonpartisan and clarify no primaries shall be held for any City office.
- Expand the language in § 11.02 regarding requirements for nominating petitions and keep the number of required signatures at 75 (just adding language to include current processes).
- Incorporate in § 11.03 the State process to allow any Xenia citizen to file a protest against a nominating petition.
- Add language in § 11.04 addressing how candidates for City office are to be presented to the voters, and clarify that the candidates receiving the highest number of votes is to be declared elected (just adding language to Charter to include current process).
- Add § 11.05 to clarify when the general election laws of the state apply, and when City Charter supersedes state law.
- Add § 11.06 regarding eligibility requirements and restrictions on eligibility for all candidates for City office; clarify that eligibility is to be determined at the time of the filing of a nominating petition. Add language that prohibits City officials (except for those currently serving as Mayor or Councilmember) and City employees from remaining in office or employment if the official or employee is running for election to a City office. Add language that prohibits any City employee from engaging in the campaign of any candidate for City office.

The most important change to Article XI is the addition of § 11.07, which adds language specifically outlining the citizens' right to recall a sitting member of Council (including the Mayor). In the recent Ohio Supreme Court case of *Maumee v. Lucas County Board of Elections*, the Court held that the recall provisions set forth in the Ohio Revised Code do not automatically apply to charter cities. The Court's holding means that if a city's charter does not include a specific recall mechanism (just referring to the Ohio Revised Code process is not enough), the citizens of that city have no right of recall. The Commission believes the right to recall an elected official is a right of every citizen and therefore recommends adding a section to this Article to outline the process for citizens to exercise this right. Without this amendment, under *Maumee v. Lucas County Board of Elections*, Xenia citizens may not currently have the right of recall.

Thus, the Commission is recommending adding a recall process to the City's Charter. The proposed amendment largely follows Ohio Revised Code § 705.92, with the following exceptions:

- State law allows a recall petition to be filed at any time, even if the official has served only one day. The Commission recommends requiring an official to serve at least six (6) months before a recall petition may be filed. It also recommends extending recall to Council members, including the Mayor, who are appointed by Council to fill a vacancy.
- Under State law, the general statement required on the recall petition setting forth the reasons for recall is limited to 200 words. The Commission recommends expanding this limit to allow a 500-word statement.
- State law does not address what happens if no candidate files to appear on the recall ballot to replace the official who is subject to recall. The Commission therefore recommends providing that, if no candidate files to appear on the ballot to fill the vacancy created by a successful recall, Council will fill

the vacancy in accordance with City Charter. The Commission also recommends adding language that in no case may Council reappoint the recalled official.

- Lastly, the Commission recommends adding a limitation that if a recall election is held and the official is not recalled, no new recall petition may be filed against that same official for one (1) year.

AMENDMENT #5: Article XII – Regarding Initiative & Referendum Petitions.

ARTICLE XII – **INITIATIVE AND REFERENDUM.** ~~UTILITY REGULATION; FRANCHISES~~

§ 12.01 **GENERAL AUTHORITY; INITIATIVE AND REFERENDUM.** ~~UTILITY REGULATION~~

(A) Initiative. The qualified voters of the City shall have the power to propose ordinances providing for the exercise of any powers of government granted by the State Constitution or delegated to the City by the Ohio General Assembly to the Council and, if the Council fails to adopt an ordinance so proposed without any change in substance, to proceed to present such ordinance to the qualified voters of the City by initiative petition for adoption or rejection.

(B) Referendum. The qualified electors of the City shall have power to require reconsideration by the Council of any adopted ordinance or legislative measure and, if the Council fails to repeal an ordinance so reconsidered, to approve or reject it at an election.

~~All grants shall be subject to the right of the City, whether in terms reserved or not, to control, regulate, in, over, under or across all streets, alleys or public places occupied by any such public utility, and the Council may cause to be reconstructed, relocated or discontinued any such structure or fixture, and the Council may pass all regulatory ordinances effecting such utilities which may be required in the interests of public health, safety, or accommodation.~~

§ 12.02 **INITIATIVE PETITIONS.** ~~FRANCHISES~~

(A) Commencement of Proceedings; Petitioners' Committee. Any five (5) qualified electors may commence initiative proceedings by filing with the City Clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and by filing with the Clerk a certified copy of the proposed ordinance. The copy shall be considered certified if there is attached thereto a written statement attesting that it is a true and exact reproduction of the original proposed ordinance, setting out in full the text of the proposed ordinance, including its title.

~~Restrictions. No grant to exercise a franchise in the City of Xenia shall be exclusive and no such grant shall be renewed earlier than two (2) years prior to its expiration. No franchise or public utility shall be assignable without the consent of the Council by ordinance or resolution first advertised, and any attempted assignment without such ordinance or resolution shall be void and of no effect.~~

(B) Referral to Council. Within fourteen (14) calendar days after the affidavit of the petitioners' committee and the proposed initiative ordinance is filed, if the City Clerk finds the subject matter of the proposed initiative ordinance is a proper exercise of legislative action by ordinance, the City Clerk shall refer the proposed ordinance to City Council. Within thirty (30) calendar days of presentation of the proposed ordinance to Council by the City Clerk for consideration, the Council may adopt such proposed ordinance, or may amend such proposed ordinance, provided that such amendment has been approved by a majority of the members of the petitioners' committee. Upon adoption of the

proposed ordinance as submitted or as amended, no further action shall be taken by the petitioners' committee.

~~Extension to Annexed Property. In the grant of any franchise or right to exercise any public utility within the City, the extension of the same to any territory annexed to the City shall, without being expressed therein, be a part of the right which may be enforced by appropriate proceedings.~~

(C) Initiative Petition. If the Council fails to adopt the proposed ordinance, the petitioners' committee may proceed with an initiative petition on the proposed ordinance. The petitioners' committee shall notify the City Clerk, in writing, of its intent to proceed with an initiative petition within ten (10) calendar days of Council's refusal to adopt the proposed ordinance. All initiative petitions shall be subject to the requirements set forth in § 12.04 of this Charter.

~~Right of Purchase. All grants of the right to exercise a franchise made by the Council shall reserve to the City the right to purchase or lease all property of the utility used, for the operation of the utility at a price either fixed in the ordinance or resolution making the grant, or to be fixed in the manner provided by such ordinance or resolution, which price shall in no event include any value for the grant. Nothing in such ordinance or resolution shall prevent the City from acquiring such property by condemnation proceedings or in any other lawful mode, which rights shall be in addition to those reserved in the ordinance making such grant. Upon the acquisition of such property by purchase, condemnation, or otherwise, all grants shall at once terminate.~~

(D) Filing the Petition with the Clerk; Affidavit of Circulator. The initiative petition on the proposed ordinance shall be filed with the City Clerk within sixty (60) calendar days of the date the petitioners' committee filed notice with the Clerk of its intent to proceed with an initiative petition. The petition shall be filed with the City Clerk and shall have attached to it when filed, an affidavit executed by the circulator thereof stating that he or she personally circulated the paper; the number of signatures thereon; that all the signatures were affixed in his or her presence; that he or she believes them to be the genuine signatures of the persons whose names they purport to be; and that each signer had an opportunity before signing to read the full text of the ordinance proposed for initiative.

~~Extension, Connection and Utilization of City Utilities. The extension, connection and utilization of City utilities to tributary areas shall be permitted and the City Council shall establish a schedule of fees for use of and connection to City utilities. The extension, connection and use of City utilities shall only apply to utilities with sufficient capacity.~~

(E) Signatures. Within ten (10) calendar days of the filing of the petition with the City Clerk, the Clerk shall transmit the petition to the Board of Elections. The Board shall examine all the signatures on the petition to determine the number of electors of the City who signed the petition. The Board shall return the petition to the City Clerk within ten (10) calendar days after receiving it, together with a statement attesting to the number of such electors who signed the petition.

(F) Clerk's Determination of Validity and Sufficiency. Within ten (10) calendar days of receiving the statement from the Board of Elections as to the number of signatures on the petition, the City Clerk shall determine the sufficiency and validity of the petition and whether it meets the requirements of this Charter, and whether the subject matter of the proposed initiative ordinance falls within the scope of the City's authority to act by ordinance. If the Clerk finds the petition or proposed ordinance to be invalid or insufficient, the Clerk shall prepare a written statement of the deficiencies or invalidity of the initiative petition and shall submit the written statement to the Board of Elections and shall send a copy of such statement to the petitioner's committee. No further action shall be taken on an invalid or insufficient initiative petition.

(G) Filing the Petition with the Board of Elections. If the City Clerk determines the initiative petition is sufficient and valid, the Clerk shall transmit the Clerk's certification and a certified copy of the text of the proposed ordinance to the Board of Elections, who shall submit the proposed ordinance for the approval or rejection by the electors of the City in accordance with this Charter.

§ 12.03 REFERENDUM PETITIONS.

(A) Matters Subject to Referendum. Any ordinance or other measure of legislative action passed by Council is subject to referendum, except for the following:

(1) When Council is required to pass more than one ordinance or other measure to complete the legislation necessary to pay for a public improvement, only the first ordinance or other measure required to be passed is subject to referendum and not any subsequent ordinances or other measures relating thereto;

(2) Ordinances or other measures to provide for appropriations for the City's current expenses or for the borrowing of money or incurring debt;

(3) Ordinances or other measures regarding improvements that have been petitioned for, in accordance with the procedures set forth in Ohio Revised Code § 727.06 by owners of a majority of the feet frontage of the property benefited and to be specially assessed for the cost thereof; and

(4) Emergency ordinances passed in accordance with § 5.03 or § 5.04 of this Charter.

(B) Commencement of Proceedings; Petitioners' Committee. Any five (5) qualified electors may commence referendum proceedings by filing with the City Clerk an affidavit stating they will constitute the petitioners' committee and be responsible for circulating the petition and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the committee are to be sent, and by filing with the Clerk a certified copy of the ordinance proposed for referral to the electors. The copy shall be considered certified if there is attached thereto a written statement attesting that it is a true and exact reproduction of the original ordinance, setting out in full the text of the cited ordinance, including its title. The petitioners' committee affidavit shall be filed with the City Clerk within ten (10) calendar days of publication of the ordinance upon which referendum is sought. Failure to file said affidavit within the required ten (10) calendar days shall render invalid any further steps taken with respect to a referendum.

(C) Referendum Petition. All referendum petitions shall be subject to the requirements set forth in § 12.04 of this Charter.

(D) Filing the Petition with the Clerk, Affidavit of Circulator. The referendum petition shall be filed with the City Clerk within thirty (30) calendar days of the date the ordinance that is the subject of the petition was adopted by City Council. The petition shall be filed with the City Clerk and shall have attached to it when filed, an affidavit executed by the circulator thereof stating that he or she personally circulated the paper; the number of signatures thereon; that all the signatures were affixed in his or her presence; that he or she believes them to be the genuine signatures of the persons whose names they purport to be; and that each signer had an opportunity before signing to read the full text of the ordinance or issue sought to be reconsidered by referendum.

(E) Signatures. Within ten (10) calendar days of the filing of the petition with the City Clerk, the Clerk shall transmit the petition to the Board of Elections. The Board shall examine all the signatures on the petition to determine the number of electors of the City who signed the petition. The Board

shall return the petition to the City Clerk within ten (10) calendar days after receiving it, together with a statement attesting to the number of such electors who signed the petition.

(F) Clerk's Determination of Validity and Sufficiency. Within twenty-one (21) calendar days of receiving the statement from the Board of Elections as to the number of signatures on the petition, the City Clerk shall determine the sufficiency and validity of the referendum petition and whether it meets the requirements of this Charter. If the Clerk finds the petition to be invalid or insufficient, the Clerk shall prepare a written statement of the deficiencies or invalidity of the petition and shall submit the written statement to the Board of Elections and shall send a copy of such statement to the petitioners' committee. No further action shall be taken on an invalid or insufficient referendum petition.

(G) Filing the Petition with the Board of Elections. If the City Clerk determines the referendum petition is sufficient and valid, the Clerk shall transmit the Clerk's certification as to the sufficiency and validity of the petition and a certified copy of the ordinance to the Board of Elections.

(H) Subsequent Action by Council. At any time after a referendum petition is filed with the City Clerk but at least sixty (60) calendar days prior to the date of the election scheduled on the petition, Council may repeal the ordinance proposed for referendum. In such event, the City Clerk shall notify the Board of Elections and such ordinance or measure shall not be submitted to a vote of the electors.

(I) Effect of Referendum; Suspension of Effect of Ordinance. When an affidavit by persons constituting the petitioners' committee is filed pursuant to § 12.03(B) of this Charter, upon the filing of a proper referendum petition with the City Clerk, the ordinance or other measure sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate upon a final determination by the Board of Elections that the referendum petition is insufficient or invalid, upon Council's repeal of the ordinance or measure proposed for referendum, or upon the petitioners' committee withdrawing the petition.

§ 12.04 PROCEDURES APPLICABLE TO INITIATIVE AND REFERENDUM PETITIONS.

(A) Petitions.

(1) The initiative or referendum petition circulated by the petitioners' committee shall contain at the top of each page of the petition, the following words, which shall be printed in red: *Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter is liable to prosecution*.

(2) The initiative or referendum petition may be in separate parts, but shall be assembled as one instrument for filing, and all papers of the petition shall be uniform in size and style. Initiative petitions shall contain or have attached to it, throughout its circulation, the full text of the ordinance, including its title, that is proposed for adoption by initiative. Referendum petitions shall contain the number and a full and correct copy of the title and text of the ordinance proposed for approval by referendum.

(3) Initiative and referendum petitions must be signed by at least ten percent (10%) of the number of electors who voted for governor at the most recent general election in the City for the office of governor.

(4) Except as otherwise provided in this Article, the initiative or referendum petition shall meet the requirements of Ohio Revised Code § 3501.38. The circulator's statement required on the petition shall be notarized.

(5) No alterations, corrections or additions may be made to a petition after it has been filed with the City Clerk.

(B) Signatures.

(1) Only electors qualified to vote on the issue which is the subject of the petition shall sign a petition. Each signer must be a registered elector of the City. The fact of qualification of each elector who signed the petition shall be determined as of the date the petition is filed with the City Clerk.

(2) In determining the validity of any petition, all signatures which are found to be irregular shall be rejected, but no petition shall be declared invalid in its entirety when one or more signatures are found to be invalid except when the number of valid signatures is found to be less than the total number of signatures required under this Charter.

(C) Circulator's Sworn Statement. The circulator of an initiative or referendum petition shall, within five (5) calendar days of filing the petition with the City Clerk, also file with the City Clerk a notarized, itemized statement, made under penalty of election falsification, showing in detail:

(1) All moneys or things of value paid, given or promised for circulating the petition;

(2) Full names and addresses of all persons to whom such payments or promises were made;

(3) Full names and addresses of all persons who contributed anything of value to be used in circulating the petition; and

(4) Time spent and salaries earned while circulating or soliciting signatures by persons who were soliciting signatures or circulating the petition as a part of their regular job duties.

Such Statement shall remain open to public inspection for one (1) year.

(D) Withdrawal of Petitions. An initiative or referendum petition may be withdrawn by the petitioners' committee at any time prior to sixty (60) calendar days before the scheduled election by filing with the Board of Elections a written request for withdrawal signed by a majority of the members of the petitioners' committee. Upon the filing of such request, the petition shall have no further force or effect, and all proceedings thereon shall be terminated. The Board of Elections shall notify the City Clerk of the withdrawal of the petition within ten (10) calendar days.

§ 12.05 SUBMISSION TO ELECTORS.

(A) Initiative Petition.

(1) If the City Clerk has certified the sufficiency and validity of the initiative petition to the Board of Elections, then the Board of Elections shall submit the proposed ordinance for the approval or rejection by the electors at the next primary or general election occurring at least ninety (90) calendar days after the City Clerk submits the petition to the Board.

(2) At such primary or general election, this question shall be placed upon the ballot: "Shall an ordinance providing [a brief summary of the proposed ordinance shall be inserted here] be adopted?", with the provision on the ballot for voting affirmatively or negatively.

(B) Referendum Petition.

(1) If the City Clerk has certified the sufficiency and validity of the referendum petition to the Board of Elections, then the Board of Elections shall submit the ordinance for the approval or rejection of the electors at the next subsequent election, whether general or primary, occurring at least ninety (90) calendar days after the City Clerk submits the petition to the Board.

(2) At such primary or general election, the question shall be placed upon the ballot: "Shall Ordinance [number] be approved?", with the provision on the ballot for voting affirmatively or negatively.

(C) Submission to Electors. The vote of the electors on a proposed or referred ordinance or measure shall be held not less than ninety (90) calendar days and not later than one (1) year from the date of the certification of the initiative or referendum petition to the Board of Elections. If no regular or primary election is to be held within the period prescribed in this subsection, the Council may provide for a special election; otherwise, the vote shall be held at the same time as such regular election.

(D) Conduct of Elections. Elections on ordinances or legislative measures referred to the electors under the initiative and referendum procedures set forth in this Charter shall be conducted, and the results canvassed and certified, by the Board of Elections of Greene County in accordance with the election laws of the State of Ohio.

§ 12.06 RESULTS OF ELECTION; EFFECTIVE DATE.

(A) Initiative. If a majority of the votes cast on an ordinance proposed by initiative petition are in the affirmative, the ordinance shall be considered adopted five (5) calendar days after the Board of Elections certifies the official vote thereon. Such ordinances shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, whether submitted by initiative petition or by Council pursuant to § 12.07 of this Charter, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

(B) Referendum. If a majority of the votes cast on an ordinance submitted by referendum petition are in the affirmative, the ordinance shall be deemed approved and shall be effective in accordance with § 5.02 of this Charter. If a majority of the votes cast are in the negative, the ordinance shall be deemed repealed and shall not take effect. If a majority of the qualified electors voting on a referred ordinance or other measure vote for it, it shall become effective five (5) calendar days after the Board of Elections certifies the official vote thereon, and no publication of such ordinance or resolution shall be required.

§ 12.07 SUBMITTAL OF ORDINANCE TO THE ELECTORS BY COUNCIL.

(A) Submittal to Electorate. By a vote of five (5) members of the Council, any pending ordinance may be submitted to the electors of the City at a general, primary or special election. The action of submittal provided for in this section shall be taken by resolution and shall go into immediate effect. Such resolution shall be passed not less than seventy-five (75) calendar days prior to the date of the primary or general election at which such ordinance is to be submitted. In the event that such ordinance is to be submitted for approval at a special election, the Council shall, in the resolution for submittal, fix a date for such special election at a date not less than seventy-five (75) calendar days after the date of passage of the resolution, and the City Clerk shall cause notice of the special election

to be published once a week for two (2) consecutive weeks in a newspaper determined by Council to be of general circulation in the City.

(B) Certification to Board of Elections. The City Clerk shall certify to the appropriate Board of Elections that an election is to be held submitting such ordinance to a vote of the electors at the date fixed by Council as hereinbefore provided. The City Clerk shall also certify a copy of the ordinance to be voted upon to the appropriate Board of Elections.

(C) Form of Ballot. At such primary, general or special election, this question shall be placed upon the ballot: "Shall an ordinance providing [a brief summary of the proposed ordinance shall be inserted here] be adopted?", with the provision on the ballot for voting affirmatively or negatively. If a majority of the votes cast are in the affirmative, the ordinance shall be considered adopted five (5) calendar days after the Board of Elections certifies the official vote thereon. Such ordinances shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council.

(D) Conflicting Ordinances. If conflicting ordinances are approved at the same election, whether submitted by initiative petition or by Council pursuant to this section, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

§ 12.08 APPLICATION OF STATE LAW.

In accordance with Ohio Revised Code § 731.41, as it may be amended from time to time or any successor provision, the processes and methods for the submittal of initiative petitions and referendum petitions to the City electorate shall be as provided in this Charter, to the exclusion of Ohio Revised Code Sections 731.28 – 731.41. Should this Charter be silent on any such matter, the applicable provisions of Ohio Revised Code Chapter 731 shall apply.

RATIONALE: The Ohio Constitution grants Xenia citizens the power to both propose ordinances by initiative petition or to repeal ordinances already enacted through referendum. Therefore, the Commission recommends adding Article XII to outline the processes by which Xenia citizens may exercise both rights. The Commission also recommends adding language to allow Council to refer any proposed ordinance before it to the electors for a vote. This proposed new language will replace the current, obsolete Article XII provisions regarding utility franchises.

- Add § 12.01 to clarify the differences between an initiative petition and a referendum.
- Add § 12.02 to outline the process for initiative petitions, including the establishment of a petitioners' committee, the requirement the proposed initiative be considered by City Council, and the right to proceed with collecting signatures to place the petition on the ballot should Council decline to adopt it.
- Add § 12.03 to outline the process for referendum petitions, including the establishment of a petitioners' committee, and adding language to specifically set out what matters may legally be subject to a referendum petition.
- Add § 12.04 to outline the specific procedures for both initiative and referendum petitions. Require the petition be signed by at least 10% of the number of electors who voted for governor in the most recent general election for governor – this follows the state law requirement of 10% for initiative petitions but sets a lower requirement for referendum petitions than state law, which is currently 35%.
- Add § 12.05 to outline the process for submission of an initiative petition or referendum petition to the voters.
    - Add § 12.06 to establish when an ordinance passed by initiative petition takes effect and when an ordinance is considered repealed if a referendum petition passes.
- Add §12.07 to add a local process whereby City Council can refer a proposed ordinance directly to the voters for Xenia citizens to decide whether the legislation should be enacted.

AMENDMENT #6: Article XIII – Regarding Prohibited Employment Practices.

§ 13.01 **PROHIBITED** ACTIVITIES ~~PROHIBITED~~; PENALTIES.

(A) **Prohibited** Activities ~~Prohibited~~. **The City Council shall provide, by ordinance, for the enforcement of the following provisions:**

(1) No person shall ~~be~~ appoint~~ed to~~ or remove~~d from~~, or in any way favor~~ed~~ or discriminate~~d~~ against, **any applicant or candidate for** ~~with respect to~~ any City position or appointive City administrative office because of race, **color, religion, sex, military status, national origin, disability,** ~~gender,~~ age, ~~handicap, religion, country of origin,~~ **ancestry,** or political affiliation.

(2) No person shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification or appointment under the provisions of this Charter or the rules and regulations made thereunder, or in any manner commit or attempt to commit any fraud preventing the impartial execution of such provisions, rules and regulations.

(3) No person who seeks appointment or promotion with respect to any City position or appointive City administrative office shall directly or indirectly give, render or pay any money, service or other valuable thing to any person for or in connection with his or her test, appointment, proposed appointment or proposed promotion.

(4) No person shall knowingly or willfully solicit or assist in soliciting any assessment, subscription or contribution for any political party or political purpose to be used in conjunction with any City election from any City employee.

(5) No City employee shall knowingly or willfully make, solicit or receive any contribution to the campaign fund of any political party or committee to be used in a City election or to campaign funds to be used in support of or opposition to any candidate for election to City office. This section shall not be construed to limit any person's right to exercise rights as a citizen to express opinions or to cast a vote, nor shall it be construed to prohibit any person from active participation in political campaigns at any other level of government.

(B) Penalties. Any person **found guilty** ~~convicted~~ of a violation of **any provision of the City's Criminal Code enacted by Council to enforce** this section shall be ineligible for a period of five (5) years following such **finding of guilt** ~~conviction~~ to hold any City office or **employment** ~~position~~ and, if an officer or employee of the City **at the time of such violation**, shall immediately forfeit his or her office or **employment upon such finding of guilt** ~~position~~. The City Council **may also** ~~shall~~ establish, by **criminal code** ~~ordinance~~, such further penalties as it **deems** ~~may deem~~ appropriate.

RATIONALE: The Commission believes the current prohibitions listed in this section of the Charter should remain; however, subdivision (1) should be updated to mirror the language contained in Ohio Revised Code § 4112.02, which prohibits unlawful discrimination in employment practices.

Regarding division (B), it is not possible for a person to be convicted of a violation of this section of the Charter unless an enforcement mechanism is provided. Therefore, the Commission recommends language be added to require Council, by ordinance, to provide for enforcement. Lastly, the Commission recommends adding language that if found guilty of any provision of the City's Criminal Code that Council adopts for the enforcement of this section, a person is ineligible to hold City office or employment for a period of five years following such a guilty finding and such person shall immediately forfeit his or her office or employment.