

ORDINANCE NO.

Introduced by *Pitts* Councilman  
 Seconded by *Glenn* Councilman  
 Form Approved *Atty L G* Director of Law

PUBLICATION: I hereby certify that Ord. No. \_\_\_\_\_ was published  
 in a summary manner according to law in the Lima News on \_\_\_\_\_

\_\_\_\_\_  
 Sally Clemans, Clerk

**AN ORDINANCE AUTHORIZING AND DIRECTING THE SUBMISSION OF A PROPOSED CHARTER AMENDMENT TO THE ELECTORS OF THE CITY OF LIMA, OHIO, TO AMEND THE CIVIL SERVICE SECTIONS OF THE CITY OF LIMA CHARTER BY AMENDING SECTIONS 87 THROUGH 90, 91, 92, AND 93 THROUGH 97, AND REPEALING SECTIONS 90.1, 92.1, AND 98 THROUGH 100; AND DECLARING AN EMERGENCY**

VOTE	1ST		2ND		3RD	
	Y	N	Y	N	Y	N
MAGNUS	✓					
McLEAN	✓					
LEWIS	✓					
TEBBEN	✓					
PITTS	✓					
GLENN	✓					
TOWNSEND	✓					
ADAMS	✓					
NIXON	✓					
TOTAL	9	0				

**WHEREAS**, this ordinance constitutes an emergency measure providing for the efficient operation of municipal government and for the immediate preservation of the public peace, property, health, or safety, in that it must be timely certified to the election authorities, and that it must be formally presented to the public with sufficient time to allow for full and fair discussion of the issue, in order for the question to appear at the general election to be held on November 3, 2009; **Now, Therefore,**

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LIMA, OHIO, TWO-THIRDS OF THE MEMBERS ELECTED THERETO CONCURRING:**

**Section 1.** Council hereby authorizes and directs the submission of a proposed Charter amendment to the electors of the City of Lima at the general election to be held at the usual places of voting in said City on Tuesday, November 3, 2009, to amend the Civil Service provisions of Charter of the City of Lima, Ohio, by amending sections 87 through 90, 91, 92, and 93 through 97, and repealing sections 90.1, 92.1, and 98 through 100, as follows:

Proposed Charter Sections as Amended or Repealed	
SECTION 87.	CIVIL SERVICE BOARD GENERALLY.
<p>The Civil Service Board shall consist of three electors of the City. The term of each member of the Board in office at the time of adoption of the amendment to this section shall continue until that member's term expires, or until that member's successor is appointed.</p>	

**Proposed Charter Sections as Amended or Repealed**

Thereafter, the position of the member previously appointed by the Judge of the Municipal Court shall be appointed by City Council. The position of the member previously appointed by City Council shall be appointed by City Council. In the event that City Council fails to make either such appointment within ninety (90) after the expiration of a member's term or the occurrence of a vacancy, the Mayor shall make such appointment.

The position of the member previously appointed by the Mayor shall be appointed by the Mayor. In the event that the Mayor fails to make such appointment within ninety (90) after the expiration of a member's term or the occurrence of a vacancy, City Council shall make such appointment.

Each such member shall serve three (3) years, or until that member's successor is appointed by the respective appointing authority.

Should a vacancy during term occur, the respective appointing authority shall appoint a new member to complete the term of the vacating member.

The respective appointing authority may make a temporary substitution appointment in the event that any member is unable to participate in any hearing involving a classified employee.

Members of the Board may be removed only by City Council, by a two-thirds vote of all the members of Council, at any time, regardless of who appointed the member.

No member of the Board shall hold any other public office or public employment, temporary or permanent, except as a notary public or as a member of the State or the Federal military service; and no member of the Board shall be a candidate for any elective public office.

**SECTION 88. OFFICERS OF THE BOARD; ANNUAL REPORT.**

The Board shall designate one of its members as President. City Council shall appoint a secretary and such other officers and employees as may be provided for by ordinance. The salary of the secretary and such other officers and employees shall be determined by City Council.

The Board shall make a report to the Mayor and to City Council annually on or before the 1<sup>st</sup> day of March of each year, showing for the previous calendar year its actions, its rules in force, and any recommendations to improve the city's civil service provisions.

**Proposed Charter Sections as Amended or Repealed**

**SECTION 89. CLASSIFICATION.**

The civil service of the City is hereby divided into the unclassified and classified service.

- (1) The unclassified service shall include:
  - (a) All officers elected by the people.
  - (b) The members of all appointed boards, commissions and advisory boards.
  - (c) All heads of departments and deputies with exception of Police and Fire Departments.
  - (d) The secretary of the Mayor.
  - (e) The Clerk of the Council.
  - (f) The employees of the Department of Law.
  - (g) Deputy City Auditor.
  - (h) The attorneys of the Public Defender's Office.
- (2) The classified service shall comprise all other positions not specially listed in the unclassified service.
- (3) Any department head or deputy selected from the classified service shall be eligible, for a period of 2 years from the date of such selection, for reinstatement to the person's previous classified civil service position (or an equivalent position as determined by the Board) if the position is open.

**SECTION 90. RULES GENERALLY.**

The Board shall adopt, amend, and enforce rules for the classified service, shall keep minutes of its proceedings, and records of its examinations, and shall make investigations concerning the enforcement and effect of the civil service provisions and the rules thereunder, provided, however, that all rules adopted or amended by the Board shall be first approved by City Council. Copies of the rules shall be available to all employees in the classified service and to the public. The rules shall include, but not be limited to, provisions for:

- (a) the classification, standardization, and general uniformity of salaries and payroll period of all positions in the classified service;
- (b) open competitive examinations to test the merit and relative fitness of applicants for such positions, when determined practicable by the Board;
- (c) public notice in a newspaper of general circulation in the City of Lima at least once a week for two consecutive weeks in advance of the time and place of all competitive examinations;
- (d) the rejection of candidates and/or eligibles who fail to meet the minimum qualifications of the position as determined by the job specifications, or who have attempted deception or fraud in connection with any examination;
- (e) the establishment and maintenance of re-employment lists, eligibility lists, and

**Proposed Charter Sections as Amended or Repealed**

- for temporary employment without examination with the approval of the Board in the absence of an eligible list;
- (f) promotion, so far as practicable, based on competitive examination and records of efficiency, character, conduct and seniority;
- (g) suspension, discharge or reduction in rank, grade, and/or compensation, for purposes of discipline;
- (h) investigating and keeping a record of the efficiency of officers and employees in the classified service, and for requiring markings and records relative thereto from appointing officers.
- (i) a period of probation before an original appointment or promotion is made permanent, during which period a probationer whose services have not been satisfactory may be discharged or reduced;
- (j) the layoff or reduction in rank or compensation of employees because of a shortage of funds or work, or a material change in duties or organization.
- (k) political activity on the part of or with respect to persons in the classified service adopted in accordance with section 94 of this charter

**SECTION 90.1. PAYROLL PERIOD FOR EMPLOYEES; RULES IMPLEMENTING REQUIREMENTS. Repealed.**

**SECTION 91. PAYROLL.**

It shall be unlawful for the City Auditor or other officer to pay any salary or compensation for service to any person holding a position in the classified service unless the person has been appointed or employed in accordance with the civil service provisions of this Charter and of the rules established thereunder. Any sums paid contrary to the provisions of this section may be recovered from any officer paying or authorizing the payment thereof and from sureties on any official bond.

**SECTION 92. INVESTIGATIONS; POWERS OF BOARD.**

In any investigation conducted by the Board it shall have the power to subpoena and require the attendance of witnesses and the production of books and papers pertinent to the investigation and to administer oaths to such witnesses.

**SECTION 92.1. LAYOFFS. Repealed.**

**Proposed Charter Sections as Amended or Repealed**

**SECTION 93. POLITICAL TESTS AND POLITICAL PATRONAGE PROHIBITED IN CLASSIFIED SERVICE PERSONNEL DECISIONS**

Except as may be otherwise required or permitted by Section 94 of this Charter (or Civil Service Rule adopted thereto) or by state or federal law, no person in the classified service and no person seeking admission to the classified service shall be appointed, refused appointment, suspended, reduced, laid off, discharged, promoted, demoted, or in any other way favored or discriminated against because of any political opinion, political affiliation or lack of political affiliation, political activity or lack of political activity, or making or failing to make an assessment, subscription, contribution, or payment to any political party, candidate for public office, campaign committee, ballot issue campaign, or political action committee.

**SECTION 94. PROHIBITED POLITICAL ACTIVITY INVOLVING THE CLASSIFIED SERVICE**

As used in this Section, "person" means an individual, corporation, business trust, estate, trust, partnership, association, organization, partner, agent, employee, unincorporated business, unincorporated organization, committee, or group, and includes but is not limited to persons in the classified service, persons in the unclassified service, public employees, public officials, government offices, government departments, government agencies, private citizens, political parties, candidates for public office, ballot issue campaigns, campaign committees, political action committees, and all staff, volunteers, and employees of political parties, candidates for public office, ballot issue campaigns, campaign committees, and political action committees.

No person shall knowingly violate any state or federal law or any rule adopted by the civil service board and approved by council in accordance with this section and section 90 of this charter which prohibits or regulates political activity on the part of or with respect to persons in the classified service.

No person shall knowingly solicit or participate or assist with soliciting by any means, whether directly or indirectly, any assessment, subscription, contribution, or payment from any person in the classified service to or for any political party, candidate for public office, ballot issue campaign, campaign committee, or any political action committee; provided, however, that the civil service board may adopt and submit to city council for approval rules which permit persons other than public employees of public officials who hold supervisory or elected positions in the city of lima to solicit or participate or assist with soliciting by means permitted by such rules such assessments, subscriptions, contributions, or payments from persons in the classified service to or for such ballot issues as defined and permitted by such rules.

### Proposed Charter Sections as Amended or Repealed

In accordance with section 90 of this charter the civil service board shall adopt and submit to city council for approval rules which shall include, but not be limited to, provisions with respect to:

- (A) members of the classified service soliciting political contributions;
- (B) members of the classified service becoming candidates for or holding elective office;
- (C) members of the classified service circulating and signing candidate or ballot issue petitions;
- (D) members of the classified service being members of or serving as officers of political organizations;
- (E) members of the classified service expressing political opinions while on duty;
- (F) members of the classified service displaying campaign buttons or stickers on their clothing or personal items while on duty as public employees.

The Civil Service Board shall adopt no rule prohibiting members of the classified service from voting as they please; from, when not on duty as a public employee, expressing freely their political opinions; from requesting and voting the primary election ballot of a political party; from serving as a precinct poll worker or election official under the supervision of a county board of elections; from attending political meetings and rallies; from displaying political signs at their residences or other real property; from displaying political bumper stickers on their personal vehicles; from displaying, when not on duty as a public employee, campaign buttons or stickers on their clothing or personal items; or from making a contribution to any political party, candidate for public office, ballot issue campaign, campaign committee, or political action committee.

#### SECTION 95. SALARIES OF MEMBERS OF BOARD.

The salaries of the members of the Board shall be determined by the Council, and a sufficient sum shall be appropriated each year to carry out the civil service provisions of this Charter.

#### SECTION 96. PENALTY FOR VIOLATION OF CIVIL SERVICE PROVISIONS.

Any person who knowingly violates any of the civil service provisions of this Charter, or the civil service rules of the Civil Service Board, or fails to comply with a subpoena issued pursuant to Charter Section 92, shall be guilty of a misdemeanor of the 3<sup>rd</sup> degree, and upon

**Proposed Charter Sections as Amended or Repealed**

conviction thereof shall be punished therefore as established in the laws of the State of Ohio for a misdemeanor of the 3<sup>rd</sup> degree. Council may by ordinance establish a procedure for the issuance of any such subpoena, and Council may by ordinance also establish a penalty greater than what is set forth in this section.

**SECTION 97. EFFECTIVE DATE; PRESENT CIVIL SERVICE CHARTER PROVISIONS.**

If approved by a majority of the voters of the City of Lima at the November 2009 election, these amendments to the Civil Service provisions of the Charter shall take effect on the date of certification of the election results by the Board of Elections, except for the amendments to Section 90, which shall not take effect until such time as Council passes an ordinance approving Civil Service Rules to effectuate the provisions of Section 90. Until then the previously existing Section 90 and Civil Service Board Rules shall be in effect.

**SECTION 98. SALARIES OF MEMBERS OF BOARD.**

**Repealed**

**SECTION 99. PENALTY FOR VIOLATION OF CIVIL SERVICE PROVISIONS.**

**Repealed**

**SECTION 100. POWER OF REMOVAL AND SUSPENSION; NOTICE, HEARING, ETC.**

**Repealed**

**Section 2.** The foregoing proposed amendment to the Charter, upon receiving at least a majority of the "yes" votes cast thereon at the November 3, 2009, general election, shall become effective immediately upon certification of the election results by the Board of Elections of Allen County, Ohio, except as set forth in Charter Section 97.

**Section 3.** That the ballot submitting the question of the adoption of the aforesaid amendment shall read as follows:

PROPOSED CIVIL SERVICE CHARTER AMENDMENTS  
CITY OF LIMA

A majority "yes" vote is necessary for passage.

Shall the Civil Service provisions of the Charter of the City of Lima, Ohio, be amended by amending sections 87 through 90, 91, 92, and 93 through 97, and repealing sections 90.1, 92.1, and 98 through 100? These amendments: allow City Council to select 2 members of the Civil Service Board and the Mayor to select 1 member; change the date of the Civil Service Board annual report to March 1; classify the employees of the Law Department and the attorneys of the Public Defender's Office as unclassified employees; consolidate certain existing Charter requirements for Civil Service Rules; grant authority to the Civil Service Board to establish certain rules to be approved by Council and set forth specific requirements for the Civil Service Rules; prohibit political patronage and certain political activities; make various other non-substantive language and technical amendments; and repeal certain sections which would duplicate or be inconsistent with these proposed amendments.

YES \_\_\_\_\_

NO \_\_\_\_\_

**Section 4.** The Clerk of this Council is hereby authorized and directed promptly to forward a certified copy of this ordinance to the Board of Elections of Allen County.

**Section 5.** The Board of Elections of Allen County shall cause an appropriate notice to be duly given of the election to be held on November 3, 2009, on the foregoing amendment to the Charter of this City and otherwise to provide for such election in the manner provided by the general laws of the State of Ohio.

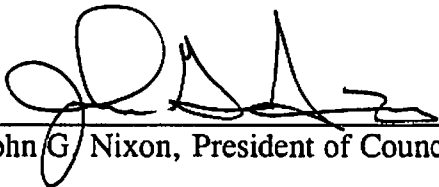
**Section 6.** The Clerk of this Council is hereby authorized and directed to cause the full text of such proposed amendment to the Charter to be published once a week for two consecutive weeks in a newspaper published in the City of Lima, with the first publication to be made at least fifteen days prior to the general election to be held on November 3, 2009, as provided in Article XVIII, Section 9 of the Constitution of the State of Ohio, Section 731.211 of the Ohio Revised Code, and Section 129 of the Charter of the City of Lima.

**Section 7.** Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the adoption of this ordinance were taken in an open meeting and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public and in compliance with the law.

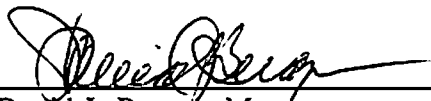
**Section 8.** The Clerk of Council is authorized and directed to cause publication of this Ordinance to be made in a summary manner as provided by the City Charter.

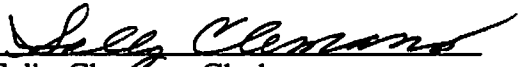
**Section 9.** For the reasons set forth in the preamble hereto which is made a part hereof, this Ordinance is hereby determined to be an emergency measure and shall take effect and be in force forthwith provided that it receives the affirmative vote of two-thirds of the members elected to Council; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed: July 27, 2009.

  
\_\_\_\_\_  
John G. Nixon, President of Council

Approved: July 27, 2009.

  
\_\_\_\_\_  
David J. Berger, Mayor

Attest:   
\_\_\_\_\_  
Sally Clemons, Clerk