

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30754
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

August 15, 2018

Honorable Richard D. Snyder
Governor, State of Michigan
The George Romney Building
Lansing, MI 48909

Attention: Travis Weber
Legal Counsel to the Governor

Re: **City of Ann Arbor – Proposed Charter Amendment by Initiative
Petition**

Section 1.4 – provides that the City-owned public land bounded by Fifth Ave, and William, Division and Liberty Streets shall be retained in public ownership, in perpetuity, and developed as an urban park and civic center commons, known as the “Center of the City”

Dear Governor Snyder:

You have referred to this office for review two resolutions of the Ann Arbor city council for the submission to the city voters of the referenced amendment as proposed by a voter-initiated petition for an urban park and city center commons.

As explained in detail hereafter in the first half of this letter, this office concludes that the proposed amendment is consistent with the requirements of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.*, and that Section 22 of the HRCA requires its submission to the voters, even if you decline to approve it.

The second half of this letter addresses the separate role in Section 21(2) of the HRCA for the Attorney General’s review of the wording of a ballot proposal for a proposed amendment and concludes that the wording of this proposal as stated by city council resolution using the wording of the initiative petition is consistent with the requirements for such proposals in Section 21(2). It is also noted that the city council has added an “explanatory caption” regarding this proposed amendment.

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OFFICE OF THE ATTORNEY GENERAL
CITY OF ANN ARBOR
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Two resolutions of the city council setting forth the proposed amendment, ballot proposal and explanatory caption

The first resolution, Resolution R-18-247, adopted on June 18, 2018, includes the following information and determinations:

- 1) This citizen-initiated petition for the proposed charter amendment was filed with the city clerk on April 23, 2018;
- 2) The city clerk has canvassed the petition and certified the sufficiency of the number of signatures of the petition;
- 3) The proposed charter amendment shall be submitted to the voters at the election to be held on November 6, 2018;
- 4) The ballot language for the proposed amendment as excerpted from the petition on a word-for-word basis consists of two parts — the first being a caption in all capital letters with the words "CHARTER AMENDMENT" being added by the city council at the beginning of this caption. The second part is a sentence in the form of a question.
- 5) The "form in which the proposed charter amendment question shall appear on the ballot is hereby determined to be as written on the initiatory petition":

CHARTER AMENDMENT FOR THE CITY-OWNED PUBLIC LAND BOUNDED BY FIFTH AVENUE, AND WILLIAM, DIVISION AND LIBERTY STREETS TO BE DESIGNATED, IN PERPETUITY, AS AN URBAN PARK AND CIVIC CENTER COMMONS TO BE KNOWN AS THE "CENTER OF THE CITY," BY AMENDING THE ANN ARBOR CITY CHARTER ADDING A NEW SECTION 1.4 TO CHAPTER 1 OF THE CHARTER.

Shall the City-owned public land bounded by Fifth Ave, and William, Division and Liberty Streets be retained in public ownership, in perpetuity, and developed as an urban park and civic center commons, known as the "Center of the City" by adding a new section for the purpose as explained above?

The second resolution, Resolution R-18-277, adopted on July 2, 2018, includes the following determinations:

- 1) An explanatory caption shall be added to the ballot language which was adopted previously in Resolution R-18-247 as quoted above.

2) The explanatory caption as added by the city council shall state:

The following information has been provided by the Ann Arbor City Council regarding the proposed charter amendment:

A buyer has agreed to purchase the surface and air rights above the Library Lane Garage to build a mixed-use development including retail, office space, a hotel, residential units, and a 12,000 square-foot public plaza. If closing is completed, the purchase price will be \$10,000,000. Fifty percent (50%) of the net proceeds will go into the City of Ann Arbor's Affordable Housing Fund. The other fifty percent (50%) of net proceeds will go towards paying off the debt incurred in the 2018 purchase of the Y-Lot. The Charter Amendment does not provide funds for affordable housing or debt repayment.

The contemplated mixed-use building on top of the Library Lane Garage is estimated to generate \$2,300,000 per year in property taxes with \$536,000 per year going directly to the City.

In 2013, the Parks Advisory Commission (PAC) evaluated the use of City land for downtown parks. The PAC-adopted report states: "Existing downtown parks are not currently utilized to their potential. Given the limits of current parks funding, the development of new parks should not be approved without an identified funding source for capital development, ongoing maintenance, and programming."

The Charter Amendment does not provide a funding source for the development, maintenance, or programming of a park and commons.

Conclusion regarding the legality of the proposed amendment

I have reviewed the proposed amendment considering the HRCA, 1909 PA 279, MCL 117.1 *et seq.*, and conclude that the amendment is consistent with that act.

It should be noted that Section 22 of the HRCA requires that all proposed amendments submitted by otherwise-qualified initiative petition shall be submitted to the city's voters for approval, even if the Governor has declined to approve the charter amendment.

Review of the ballot proposal for the proposed amendment

As is customary in these letters to you regarding proposed charter amendments, I now turn to the responsibility for Attorney General review regarding the "purpose of the proposed charter amendment or question" which is provided for in Section 21(2) of the HRCA as follows:

The purpose of the proposed charter amendment or question shall be designated on the ballot in not more than 100 words, *exclusive of caption*, that shall consist of a true and impartial statement of the purpose of the amendment or question in language that does not create prejudice for or against the amendment or question. The text of the statement shall be submitted to the attorney general for approval as to compliance with this requirement before being printed.
(Emphasis added.)

After reviewing the ballot language adopted by the city council, which is drawn from the initiative petition with the addition of the words "CHARTER AMENDMENT" in the caption set forth in Resolution R-18-247 quoted above, I conclude that such language is consistent with the requirements of Section 21(2) of the HRCA for accuracy, impartiality, and having not more than 100 words, exclusive of caption.

In addition, the ballot proposal is confined to a single subject and does not include related propositions that are to be proposed separately for vote as required by Section 21(3) of the HRCA, MCL 117.21(3).

Explanatory Caption added by the city council

As to the "explanatory caption" added by the city council by resolution R-18-277, as quoted above, Section 21(2) of the HRCA expressly authorizes a caption in circumstances where the initiative petition has provided the "form in which a proposed charter amendment or question shall appear on the ballot":

The form in which a proposed charter amendment or question shall appear on the ballot, unless provided for in the initiatory petition, shall be determined by resolution of the legislative body, and *if provided for by the initiatory petition, the legislative body may add an explanatory caption*.
(Emphasis added.)

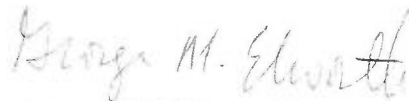
Accordingly, a city council may add an explanatory caption if the petition itself includes the text of the charter amendment proposal to be submitted to the

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voters. Such was the case here, giving the city council the option, which it has exercised, of adding an explanatory caption. However, in contrast with the provision in Section 21(2) of the HRCA for review by the Attorney General of the "[t]he purpose of the proposed charter amendment or question . . . before the ballots are printed", there is no corresponding provision for review by the Attorney General of an explanatory caption. Accordingly, this office has not reviewed this explanatory caption and expresses no conclusion regarding its compliance with Section 21(2).

Finally, for your information, there is a controversy in this city over this explanatory caption. I am enclosing copies of two letters each to the Attorney General from attorneys Mark Kriger and Thomas F. Wieder opposing the placement on the ballot of this explanatory caption. Also enclosed is a copy of a letter to the Attorney General from Ann Arbor city attorney Stephen Postema setting out an analysis in support of the explanatory caption's inclusion on the ballot for this proposed amendment.

Sincerely,



George M. Elworth
Assistant Attorney General
State Operations Division
(517) 373-1162

GME:bb

Encs.: Proposed charter amendment; 5 letters from attorneys

cc: Jacqueline Beaudry, City Clerk (with encs.)
Stephen Postema, City Attorney (with encs.)
Mark Kriger, Attorney (with encs.)
Thomas F. Wieder, Attorney (with encs.)

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