

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30754
LANSING, MICHIGAN 48909

BILL SCHUETTE
ATTORNEY GENERAL

August 10, 2016

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

Attention: Elizabeth Clement
Legal Counsel to the Governor

Re: **City of Ann Arbor – Proposed Charter Amendment**

Sections 12.4, 13.1, 13.2, and 13.4 – amend Sections 12.4, 13.2, and 13.4 and provide for a four-year term for the mayor and four-year staggered terms for the council members, with the mayor and council members elected in November 2016 serving a two-year term, council members elected in November 2017 serving a three-year term, and four-year terms commencing with the November 2018 elections

Dear Governor Snyder:

You have referred to us for examination a proposed amendment adopted by resolution of the city council of Ann Arbor.

I have reviewed the proposed amendment in light of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.*, and conclude that the amendment is consistent with the HRCA.

The Attorney General has a separate responsibility to review proposed ballot language for compliance with the requirements of Section 21 of the HRCA. I have examined the ballot language for the proposed amendment, as set forth in the City Council's resolution, and conclude the ballot language is consistent with the requirements of that section.

Regarding the proposed ballot language, this office has received the attached multi-page statement of objections to the ballot language from David Askins of Ann Arbor.

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CITY OF ANN ARBOR
CITY CLERK
REC'D

Mr. Askins states that the ballot language does not meet the requirements of Sec. 21(2) on numerous grounds, including a lack of accuracy and impartiality. Sec. 21(2) provides that the ballot language shall consist of “a true and impartial statement of the purpose of the amendment” in language that “does not create prejudice for or against the amendment.” As stated above, it is my view that the ballot language for this amendment meets these requirements. That is not to say that this language is the only way to present this amendment, but it is language which provides a general overview of the amendment while meeting the section’s limitation of being not more than 100 words in length.

Mr. Askins also states his view that Sec. 21(3) of the HRCA requires that this amendment be divided into three separate proposals — rather than being in the form of a single proposal. Sec. 21(3) states in relevant part:

A proposed charter amendment shall be confined to 1 subject. If the subject of a charter amendment includes more than 1 related proposition, each proposition shall be separately stated to afford an opportunity for an elector to vote for or against each proposition.

In my view, Sec. 21(3) does not require the city to divide up this proposal into multiple proposals. The subject matter of this proposal is having the city’s elected officers go from holding office for two-year terms to four-year terms. The changes presented in the proposal are all directed toward that objective. This approach of including a number of changes to a charter in a single proposal was upheld in *Henry v City of Pontiac*, 363 Mich 302 (1961), where the changes were addressing the administration of the police department and disciplinary control of its police officers.

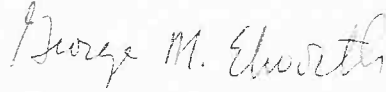
In carrying out the review of proposed ballot language in light of Sec. 21(3), it has been the practice of this office to recognize the authority of a city council to propose multiple changes to a charter in a single proposal (such as having gender-neutral language, switching from elected to appointed clerks and treasurers, eliminating primary elections for elected officers, and establishing district representation for some but not all council members), even though it may be that some voters would not support all of the changes inherent in such a proposal. Conversely, where the components of a proposal have manifestly unrelated components, this office has declined to approve such ballot language.

Also, for your information, it should be noted that on occasion city councils, including the Ann Arbor city council, have taken the approach of dividing up an amendment that could be presented as a single proposal into separate proposals as a matter of discretion in exercising their authority to propose charter amendments for voter approval.

Honorable Richard D. Snyder
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City of Ann Arbor

Finally, I am sending a copy of this letter to Mr. Askins so that he is informed that this office has received and considered his objections sent here last month.

Sincerely,



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

Encs.

cc: Jacqueline Brady, City Clerk (with encs.)
Mary Joan Fales, Senior Assistant City Attorney (with encs.)
Frank Monticello, Division Chief, AG State Operations Division (with encs.)
David Askins (with encs.)

2016-0142041-A



STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

RICK SNYDER
GOVERNOR

BRIAN CALLEY
LT. GOVERNOR

July 15, 2016

Ms. Jacqueline Beaudry, Clerk
City of Ann Arbor
301 E. Huron Street
P.O. Box 8647
Ann Arbor, Michigan 48107

Re: City of Ann Arbor Proposed Charter Amendment

Dear Ms. Beaudry:

On behalf of Governor Snyder I am responding to your letter dated July 12, 2016. I am forwarding your information to the Attorney General's Office for legal review of the proposed amendments to the Charter of the City of Ann Arbor. Our office will respond upon completion of that review and recommendation.

Please contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Cheri Arwood".

Cheri Arwood
Executive Administrator
Legal Division
(517) 241-5630

c: Attorney General's Office, State Operations Division

Dept of Attorney General
JUL 15 2016
State Operations Division
RECEIVED



JUL 14 2016

CITY OF ANN ARBOR, MICHIGAN

City Clerk

301 E Huron Street, P.O. Box 8647, Ann Arbor, Michigan 48107-8647

Phone (734)794-6140 Fax (734)994-8296

www.a2gov.org

City Clerk

July 12, 2016

The Honorable Rick Snyder
Governor of the State of Michigan
George W. Romney Bldg.
P.O. Box 30013
Lansing, MI 48909

Dear Governor Snyder:

Pursuant to statute, a copy of the proposed amendment to the Ann Arbor City Charter is being submitted for your approval. The charter amendment would increase the term of office for each member of Council, including the Mayor, from two to four years.

The proposed charter language is included in the enclosed certified resolution, adopted by the Ann Arbor City Council at its regular session of July 7, 2016. The resolution authorizes the charter amendment proposition to appear on the November 8, 2016 General Election ballot.

Sincerely,

Jacqueline Beaudry
City Clerk

JB/ab
Enclosure

c: Attorney General Bill Schuette
Lawrence Kestenbaum, Washtenaw County Clerk

Ballot Letter.



City of Ann Arbor

301 E. Huron St. Ann
Arbor, MI 48104
<http://a2gov.legistar.com/Calendar.aspx>

Certified Copy

Resolution: R-16-277

File Number: 16-0984

Enactment Number: R-16-277

Resolution to Order Election, Approve Charter Amendment of the Ann Arbor City Charter Section for Election of Mayor and City Council Members Increasing the Term of Office for Each Member of Council, Including the Mayor, From Two To Four Years And Determine The Ballot Language for This Amendment (**7 Votes Required**)

Whereas, Section 21(1) of the Home Rule City Act (HRCA), MCL 117.21(1), authorizes a city council to adopt a resolution proposing to amend the city charter by three-fifths vote of its members-elect and the resolution proposing to amend the city charter must set forth the exact wording of the proposed amendment to be submitted to the city voters for approval at a regular or special election:

Whereas, The resolution must set forth the ballot language for the proposed charter amendment with each proposal being limited to a single subject, and if the subject of a proposal includes more than one related proposition, each proposition shall be separately stated as a ballot proposal to afford an opportunity for a separate vote of the city voters for or against each proposition;

Whereas, Section 21(2) of the HRCA, MCL 117.21(2), requires that the ballot language for the submission to the city voters of each proposed amendment, including any separate statement of purpose, shall be limited to 100 words, exclusive of caption, shall be a fair and impartial statement of the purpose of the amendment, and shall not create prejudice for or against the proposed amendment:

Whereas, Section 12.4 of the City Charter currently reads:

Terms of Office

Section 12.4

- (a) The term of office of each member of the Council, including the Mayor, except as by this section provided, shall be two years. Such term shall commence on the Monday next following the regular City election at which such officers are elected. The term of the members of the Council elected on April 6, 1992 shall terminate on the Monday next following the regular City election held November 2, 1993. The term of the Mayor and members of the Council elected on April 5, 1993 shall commence on the Monday next following their election and shall terminate on the Monday following the regular City election held on November 8, 1994.
- (b) Each appointive officer, except members of City boards and commissions, shall serve at the pleasure of the appointing officer or authority.

- (c) All other officers of the City shall serve for the terms specifically stated in this charter or in the law or ordinance creating the office.
- (d) With the consent of the Council, an officer may continue provisionally, in office, after the expiration of the term of office, until a successor has been elected or appointed and has qualified for and assumed the duties of the office.

Whereas, Section 13.1 of the City Charter currently reads:

Officers to be Elected

Section 13.1

- (a) At the City primary election held in August, 1993, and at the regular City election held in November, 1993, and at each City primary election and regular City election thereafter, one member of the Council shall be nominated and elected from each ward.
- (b) At the City primary election held in August, 1994, and at the regular City election held in November, 1994, and at the City primary election and regular City election held in each even numbered year thereafter, a Mayor shall be nominated and elected from the City at large.

Whereas, Section 13.2 of the City Charter currently reads:

Regular City Elections

Section 13.2.

A regular City election shall be held on April 5, 1993, on November 2, 1993 and in succeeding years on the first Tuesday following the first Monday in November of each year.

Whereas, Section 13.4 of the City Charter currently reads:

Primary Elections

Section 13.4

- (a) A City primary election shall be held on February 15, 1993, on August 3, 1993, and in succeeding years on the first Tuesday following the first Monday in August of each year. If, upon expiration of the time for filing nomination petitions for any elective office, it appears that petitions have been filed for no more than one candidate for the office from each political party nominating candidates therefor, no primary election shall be held with respect to the office. The candidates receiving the highest number of votes of their respective parties at any city primary election shall be declared the nominees for election to the respective offices for which they are candidates. As to any office with respect to which no primary is necessary, persons named in petitions as candidates for election to

the office shall be certified by the Clerk to the Election Commission to be placed upon the ballot for the next subsequent regular election under the party heading set forth in the nomination petitions for the candidates.

- (b) No person who is a sticker candidate for nomination, or whose name is written in on the ballots of any primary election, shall be declared nominated unless that person receives at least fifty votes.

Whereas, Voter turnout in even years is significantly and consistently higher than in odd years;

Whereas, Holding the meaningful election of City Council members on a date when turnout is highest is best for strengthening democratic representation;

Whereas, A majority of cities nationally elect their council members to four-year terms;

Whereas, The change in the length of term for the Mayor and Council will result in election administrative cost savings; and

Whereas, In recent Ann Arbor election history most council members are re-elected to a second term when it is sought;

RESOLVED, That the following amended charter provision be placed on the ballot and submitted to the voters at the next general city election:

Term of Office

Section 12.4

- (a) The term of office of each member of the Council, including the Mayor, except as by this section provided, shall be ~~two~~four years. ~~Terms of office of members of the Council shall be staggered so that one member of Council nominated from each ward shall stand for election every two years. The Mayor shall be nominated and elected from the City at large. Such term shall commence on the Monday next following the regular City election at which such officers are elected. The term of the members of the Mayor and Council elected on November 8, 2016 shall terminate on the Monday next following the regular City election held November 6, 2018. April 6, 1992 shall terminate on the Monday next following the regular City election held November 2, 1993. The term of the Mayor and members of the Council elected on November 7, 2017 April 5, 1993 shall commence on the Monday next following their election and shall terminate on the Monday following the regular City election held on November 8, 1994 November 3, 2020.~~
- (b) Each appointive officer, except members of City boards and commissions, shall serve at the pleasure of the appointing officer or authority.
- (c) All other officers of the City shall serve for the terms specifically stated in this charter

or in the law or ordinance creating the office.

- (d) With the consent of the Council, an officer may continue provisionally, in office, after the expiration of the term of office, until a successor has been elected or appointed and has qualified for and assumed the duties of the office.

RESOLVED, That deletion of the following charter provision be placed on the ballot and submitted to the voters at the next general election:

Officers to be Elected

Section 13.1

- (a) ~~At the City primary election held in August, 1993, and at the regular City election held in November, 1993, and at each City primary election and regular City election held thereafter, one member of the Council shall be nominated and elected from each ward.~~
- (b) ~~At the City primary election held in August, 1994, and at the regular City election held in November, 1994, and at the City primary election and regular City election held in each even-numbered year thereafter, a Mayor shall be nominated and elected from the City at large.~~

RESOLVED, That the following amended charter provision be placed on the ballot and submitted to the voters at the next general city election:

Regular City Elections

~~Section 13.2 A regular City election shall be held on April 5, 1993, on November 2, 1993 and in succeeding years on the first Tuesday following the first Monday in November in 2017, in 2018, and of each every two years thereafter.~~

RESOLVED, That the following amended charter provision be placed on the ballot and submitted to the voters at the next general city election:

Primary Elections

Section 13.4

- (a) A City primary election for the purpose of nominating such officers of the City as this Charter provides shall be held on ~~February 15, 1993, on August 3, 1993, August 8, 2017,~~ and in succeeding years on the first Tuesday following the first Monday in August of each year as provided for in Section 12.4. If, upon expiration of the time for filing nomination petitions for any elective office, it appears that petitions have been filed for no more than one candidate for the office from each political party nominating candidates therefor, no primary election shall be held with respect to the

office. The candidates receiving the highest number of votes of their respective parties at any city primary election shall be declared the nominees for election to the respective offices for which they are candidates. As to any office with respect to which no primary is necessary, persons named in petitions as candidates for election to the office shall be certified by the Clerk to the Election Commission to be placed upon the ballot for the next subsequent regular election under the party heading set forth in the nomination petitions for the candidates.

- (b) No person who is a sticker candidate for nomination, or whose name is written in on the ballots of any primary election, shall be declared nominated unless that person receives at least fifty votes.

RESOLVED, That the proposed charter amendment shall appear on the ballot in the following for, which includes the statement of purpose:

CHARTER AMENDMENT PROPOSAL NO. 2

AMENDMENT TO INCREASE THE TERM OF THE MAYOR TO FOUR YEARS AND COUNCIL MEMBERS FROM TWO TO FOUR-YEAR STAGGERED TERMS

It is proposed Sections 12.4, 13.2 and 13.4 of the Ann Arbor City Charter be amended and Section 13.1 be deleted to provide a four-year term for Mayor and four-year staggered terms for Council members. Currently the Mayor has a two-year term and Council members have two-year staggered terms. If approved by the voters, Mayor and Council members elected November 8, 2016 would serve a two-year term. Council members elected November 7, 2017 would serve a three-year term. Four year terms would commence with 2018 elections.

Shall this proposed amendment to the Ann Arbor City Charter be adopted?

Yes No

RESOLVED, That November 8, 2016, be designated as the day for holding an election on the proposed Charter amendment and the City Clerk is directed to give notice of the election and in a manner prescribed by law and to do all things necessary to submit the Charter amendment to a vote of the electors on the designated day as required by law;

RESOLVED, That the Clerk shall transmit a certified copy of this Resolution to the Governor of the State of Michigan for approval of the proposed amendment and transmit a certified copy of this Resolution to the Attorney General of the State of Michigan for approval of the proposed ballot language for the proposed amendment;

RESOLVED, That the City Clerk is directed to publish the proposed charter amendment in full, together with the existing charter provisions amended as required by law and in accordance with resolution of Council, post the proposed charter amendment in full together with the existing charter provisions to the City's website; and

RESOLVED, That the amendment if adopted, shall take immediate effect.

As Amended by Ann Arbor City Council on July 7, 2016

I, Jacqueline Beaudry, Clerk of the City of Ann Arbor, Michigan, certify that this is a true copy of Resolution R-16-277, passed by the Ann Arbor City Council on 7/7/2016.

Attest: Anissa R Bowden
Anissa R. Bowden, Council
Coordinator

July 11, 2016

Date Certified

On a roll call, the vote was as follows:

Yeas: Councilmembers Briere, Warpehoski, Grand,
Westphal, Ackerman, Smith and Mayor Taylor (7)

Nays: Councilmembers Lumm, Kailasapathy, Eaton and
Krapohl (4)

Abstention: None (0).

Dept of Attorney General

JUL 25 2016

State Operations Division
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July 21, 2016

Frank J. Monticello
Michigan Department of Attorney General
State Operations Division
P.O. Box 30754
Lansing, MI 48909

Dear Mr. Monticello,

Pursuant to your emailed communication to me (kronic.dave@gmail.com) on July 18, 2016, I am directing this communication to the State Operations Division of the Michigan's Attorney General.

Please find enclosed concerns about the proposed ballot language for proposed city charter amendments for the City of Ann Arbor, which was approved by the Ann Arbor City Council at its July 7, 2016 meeting.

I am hopeful that the issues identified can be rectified before ballots are printed for the November 8, 2016 election.

Sincerely,



David Askins
330 Mulholland
Ann Arbor, MI 48103
734.645.2633

Preliminary Statement

This complaint concerns ballot language approved by the Ann Arbor City Council at its July 7, 2016 meeting for an amendment to the Ann Arbor City Charter, adoption of which is now scheduled to be decided by Ann Arbor voters on November 8, 2016. Alleged herewith is a claim that the ballot language approved by the Ann Arbor City Council does not meet the requirements for such language set forth under Michigan's Home Rule City Act. Further it is alleged that the proposition to be submitted to voters is not confined to a single subject as required by Michigan's Home Rule City Act. Finally it is alleged that the defects in the ballot language could easily be rectified in a straightforward way that would not change the issues that the Ann Arbor City Council intended to put in front of voters.

In relevant part, MCL 117.21(2) reads: "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."

However, the ballot language adopted by the Ann Arbor City Council at its July 7, 2016 meeting fails to meet the requirement in MCL 117.21(2) because it fails to be a true and impartial statement of the purpose of the amendment and it creates prejudice for the amendment.

In relevant part, MCL 117.21.(3) reads: "A proposed charter amendment shall be confined to 1 subject. If the subject of a charter amendment includes more than 1 related proposition, each proposition shall be separately stated to afford an opportunity for an elector to vote for or against each proposition."

However, Ann Arbor's proposed City Charter amendment approved for the November 8, 2016 ballot by the City Council at its July 7, 2016 meeting fails to meet the requirement in MCL 117.21(3) because it addresses at least three different subjects, but the separate propositions will not

be separately stated and will not afford an opportunity to an elector to vote for or against each proposition.

Party, Venue and Jurisdiction

Complainant is David Askins, resident and registered elector of the City of Ann Arbor. This complaint is submitted for consideration by the Attorney General of the state of Michigan, because the Attorney General has, at this point in the charter amendment process—as outlined in Michigan's Home Rule City Act—jurisdiction to judge adequacy of the proposed ballot language designating the proposed charter amendment. That jurisdiction is expressed in MCL 117.21(2) as follows: "The text of the statement shall be submitted to the attorney general for approval as to compliance with this requirement before being printed." The Attorney General could at this stage refer the matter back to the Ann Arbor City Council for approval of revised ballot language so that compliance with the requirements in MCL 117.21(2) and MCL 117.21(3) is achieved.

When a dispute arises about proposed ballot language, it is important to identify and resolve that dispute to the satisfaction of interested parties as quickly as possible, so that the parties, voters, and courts are not forced to deal with potential litigation under the tight time constraints for printing ballots. And it is especially important to resolve legal issues surrounding disputed ballot language before the election is held, because Michigan's Supreme Court has, through a clear line of opinions, expressed a desire that adequate time be allowed before an election to provide for direction of election officials to correct errors or to decide against submission of the proposal to voters. For these reasons it is fitting and proper for Complainant to communicate concerns about compliance of ballot language to the Attorney General for consideration and action at this time.

Factual Background

On July 7, 2016 the Ann Arbor City Council approved placement of a ballot question to be decided by voters on November 8, 2016 that, if approved by voters, would alter the length of the term served by the Mayor, would alter the length of the term served by City Council Members, and

would reduce the frequency of regular city elections from annually to every two years, with regular city elections occurring only in even-numbered years.

The resolution to place the questions of altering term length for the Mayor, altering term length for Council Members and reducing the frequency of regular city elections passed on a 7–4 vote. In light of the MCL 117.21(1) requirement that a charter amendment "may be proposed by the legislative body of a city on a 3/5 vote of the members-elect," the seven votes in support of the resolution was the minimum number needed on Ann Arbor's 11-member City Council to place the charter amendment in front of voters. So the City Council itself was clearly split on the merit of placing the issue in front of voters.

What exactly will change and what will remain the same in Ann Arbor's civic life, if the proposed charter amendments are approved by voters?

1. **Change:** The length of term for Mayor will change from two years to four years, if the proposed Ann Arbor City Charter amendments are adopted. Under Ann Arbor's City Charter, the Mayor is also a member of the City Council. But under the Charter, the Mayor is not elected by the City Council from among its members; rather, Ann Arbor's Mayor is voted by electors citywide, separate from the election of Council Members who are voted only by those electors residing in a particular Ward. Under the City Charter, Ann Arbor's Mayor is also equipped with specific powers not enjoyed by other Council Members. Among these is a power to veto action of the City Council, the power to nominate members of various boards and commissions, and sheriff's power in emergencies to prevent disorder, preserve the public peace and health and provide for the safety of persons and property.
2. **Change:** The length of term for Council Members will change from two years to four years, if the proposed Ann Arbor City Charter amendments are adopted.
3. **Change:** The frequency of regular city elections for any purpose will change from every year to every even-numbered year, if the proposed Ann Arbor City Charter amendments are

adopted. Scheduling of regular city elections is accomplished in Section 13.2 of Ann Arbor's City Charter. Term length of Mayor and term length of City Council Members are covered in Section 12.4. Both of these separate and logically distinct Sections of Ann Arbor's City Charter are proposed to be amended.

4. **Same:** A partial overlap in the duration of terms of the two Council Members representing each city Ward will persist, even if the proposed Ann Arbor City Charter amendments are adopted. The partial overlap in the duration of terms is reflected in Ann Arbor's current City Charter through the logical interaction of three Charter provisions: Section 13.1, which prescribes that at every regular city election, "one member of the Council shall be nominated and elected from each ward"; Section 13.2, which provides for regular city elections every year; and Section 12.4, which sets the term length for Council Members at two years. The current Ann Arbor City Charter does not express this partial overlap of terms for Council Members from each Ward through use of the phrase "staggered terms."
5. **Same:** The length of the partial overlap in the duration of terms of the two Council Members representing each city Ward will continue to be equal to one half the length of a term. (For the current two-year terms, the overlap is one year. For the proposed four-year terms the overlap would be two years.)

The ballot language and title approved by the Ann Arbor City Council on July 7, 2016 to designate the proposed City Charter amendments on the November 8, 2016 ballot reads as follows:

AMENDMENT TO INCREASE THE TERM OF THE MAYOR TO FOUR YEARS AND
COUNCIL MEMBERS FROM TWO TO FOUR-YEAR STAGGERED TERMS

It is proposed Sections 12.4, 13.2 and 13.4 of the Ann Arbor City Charter be amended and Section 13.1 be deleted to provide a four-year term for Mayor and four-year staggered terms for Council members. Currently the Mayor has a two-year term and Council members have two-year staggered terms. If approved by the voters, Mayor and Council members elected November 8, 2016 would serve a two-year term. Council members elected November 7, 2017 would serve a three-year term. Four year terms would commence with 2018 elections.

Failure to Comply with MCL 117.21(3): Mayor and Council Member

Under Ann Arbor's current City Charter, the subject of term length for Mayor and the subject of term length for City Council Members are two separate subjects.

In Ann Arbor, Mayor and Council Members are voted by electors citywide or electors in a particular ward, respectively. So the choice of term length for Mayor and the choice of term length for a Council Member under Ann Arbor's City Charter are logically distinct, even if the Mayor is also a Member of the Council. That is, under a city charter like Ann Arbor's there is nothing inherent in the mayorship that requires it logically to have a term length that is identical to the term length of a Council Member.

Further, it is perfectly conceivable in light of the various and considerable powers wielded by Ann Arbor's Mayor that the same voter might have different attitudes about the appropriate term length for Mayor and the appropriate term length for a Council Member. In sum, the question of term length for Mayor and term length for Council Member are two separate propositions.

The proposed ballot question is a violation of MCL 117.21(3), because it does not provide a voter the opportunity to vote for or against the separate propositions.

Failure to Comply with MCL 117.21(3): Term Length and Regular Election Frequency

Scheduling of regular city elections is accomplished in Section 13.2 of Ann Arbor's current City Charter. Term length of Mayor and term length of City Council Members are covered in Section 12.4 of Ann Arbor's current City Charter.

If a choice is made in a City Charter like Ann Arbor's to set term length for Mayor and Council Member at four years, with the terms partially overlapping such that one member of the Council is elected from each Ward every other year, then that does not require by some rule of logic or semantics that regular city elections also be defined to occur only every other year.

On its face, the fact that the subject of regular city elections is covered in a completely different Section of Ann Arbor's City Charter from the subject of term length for Mayor and term length for Council Members is a clear argument that they are two logically separate subjects.

But we consider a possible argument that these two subjects are somehow so intimately intertwined that it would not be reasonable for the same voter to have different attitudes about term length and the frequency of regular city elections. Crucial to that argument is the idea that in odd-numbered years, no Mayor or City Council Member term would end, so no election for those offices would be required, and there could be no possible reason to define regular city elections in the Charter as occurring every year.

That argument ignores the provision in Ann Arbor's City Charter that allows for the enactment of city ordinances through a process initiated by citizens. Specifically, Section 7.10 provides that if sufficient petition signatures are collected, then "...the question of approval of the ordinance shall be submitted to the voters in the next city election which is at least 90 days after the filing of the petitions." If regular city elections are defined as occurring every year, then citizens can assert their right to a referendum on ordinances every year. If regular city elections were defined as occurring only every two years then citizens could assert a right to a referendum on ordinances only every two years.

Now, in response to a citizen initiative pursuant to Section 7.10, the Ann Arbor City Council might choose to exercise its discretion to hold a special election, so that a vote on a citizen-initiated ordinance would not be delayed for more than a year after filing of petitions, even if regular city elections were defined as occurring only every two years. But the City Council would not be required to set such a special election. If the definition of regular city election were maintained in the City Charter as occurring every year, then citizen-initiated ordinances would be required to be considered sooner than they would be if the frequency of regular city elections were reduced to just once every two years.

So a voter who supports four-year terms for Mayor and Council Members could also reasonably support maintaining regular city elections defined in the City Charter as occurring every year. Under the proposed ballot question approved by the Ann Arbor City Council a voter would not be able to vote for or against the two separate propositions on term length and frequency of regular city elections, which is a violation of MCL 117.21(3)

Failure to Comply with MCL 117.21(2): Text—No Mention of Election Schedule

The need to mention the regular city election schedule in the text is supported by the same arguments given in previous paragraphs of this complaint that the schedule of regular city elections should be presented to voters as a separate question. Even if the Attorney General were to conclude that no separate question needed to be presented to voters on the scheduling of regular city elections, surely any true and impartial statement of the purpose of the proposed Charter amendments would need to include some explication of the proposed change to the schedule of regular city elections.

The proposed ballot language does not mention frequency of regular city elections in any form, so it cannot be considered to be a true statement of the purpose of the Charter amendments.

The reduction in frequency of regular city elections is a fact about the proposed Charter amendments that could reasonably cause a voter to reject the amendments. So the omission of any mention of this fact from the ballot language would prejudice voters in favor of the amendments, in violation of MCL 117.21(2).

Failure to Comply with MCL 117.21(2): Text—No Mention of Even-Numbered Years

The omission in the ballot language of any reference to the schedule of regular city elections has as a consequence that the ballot language also contains no explicit mention of the fact that elections for Mayor and Council Members would take place only in even years.

It is debatable whether a voter could make a logical deduction from the phrasing of the proposed ballot language that elections for Mayor and Council Members would take place only in

even-numbered years. But even if a voter could make that deduction, there is nothing about the ballot language that might cause a voter to try to make that deduction. That is, nothing in the ballot language invites a reader to attempt to draw any logical conclusions about the future pattern of Mayoral and Council Member elections.

Yet the background research materials provided and arguments made by Ann Arbor City Council Members who sponsored the July 7, 2016 resolution to place the charter amendment on the ballot leaned heavily on the idea that it would be an improvement to have Mayoral and Council Member elections that took place only in even years. Over and over again the point was stressed by proponents of the resolution that in even-numbered years the voter turnout statistic had historically been higher than in odd-numbered years.

Certainly there is nothing inherent in the adoption of partially overlapping four-year terms for Council Members and Mayor that entails logically that elections for those positions take place in even-numbered years. Indeed, at least one Michigan city has enacted a city charter specifying four-year terms with elections taking place only in odd-numbered years. A possible argument for an odd-year pattern instead of an even-year pattern would be that holding local elections in odd-numbered years would allow voters to focus specifically on issues of particular local significance as contrasted with issues of statewide or nationwide significance. It would help ensure that voters who participated in local elections did so based on a desire to participate specifically in local elections and to inform themselves about local issues, instead of participating in local elections as a mere afterthought or side effect of going to the polls to vote for U.S. President or Governor of Michigan. And given that petition signature thresholds for citizen-initiated referenda are tied to statistics for voter turnout in mayoral elections, a petition signature threshold that is commensurate with local interest in local issues would be more accurately obtained by holding local elections in odd-numbered years. That could theoretically be higher or lower than participation in gubernatorial or presidential year elections.

In sum, a key factor in the decision that is to be made by Ann Arbor voters and on which arguments will be based in the campaign is the fact that Mayoral and Council Member elections are proposed to take place only in even-numbered years. If the ballot language avoids any explicit mention of even-numbered years, leaving this crucial fact to voters to induce (or not) based on other information that is provided, then the language cannot be considered to be true and impartial.

Failure to Comply with MCL 117.21(2): Title—Parallel Construction

The ballot title as proposed is fraught with unclarity, ambiguity and confusion, by any objective standard. Unclear, ambiguous and confusing language cannot reasonably be construed as true and impartial.

The title's description of the increase for the Mayoral term length does not include a "from phrase." The title's description of the increase for Council Member term length includes a "from phrase." So the title displays a jarring lack of parallel construction in describing the increase of Mayor term lengths and Council Member term lengths [emphasis added in bold]:

"Amendment to **increase** the term of the mayor to **four years** and council members **from two to four-year** staggered terms."

Given that it would be straightforward to enforce parallel construction, a reasonable reader is left to wonder if the lack of parallel is significant in some material way. Language that leaves a reasonable reader to wonder cannot be considered true and impartial.

Failure to Comply with MCL 117.21(2): Title—Elided Material

As written, the ballot question title elides material in an apparent attempt to avoid burdening a reader with repetitive phrasing. This is not an unreasonable approach to take, given common conventions for titles and headlines. However, in this particular case, the elision burdens the reader with ambiguity about the nature of the elided phrase. The title, with all of its apparent intended elided material included in bold, would read:

Amendment to increase the term of the mayor to four years and **the term of** council members from **two-year staggered terms** to four-year staggered terms.

If the bolded material is the material readers are supposed to supply mentally, then stylistically readers would expect the cue of an orphaned hyphen after the word "two" (i.e., "from two- to four-year staggered terms"). Missing this standard cue, readers have an extra and unnecessary burden to supply mentally the intended elided material, so as to arrive at the intended meaning.

So if readers are able to mentally supply any elided material at all, then they could easily fail to supply the intended elided material. A reader could reasonably understand the title to be properly interpreted without a first instance of the word "staggered" as follows:

Amendment to increase the term of the mayor to four years and the term of council members from two-**year terms** to four-year staggered terms.

On that understanding, the amendment is about a change from terms that overlap exactly to terms that overlap only partially, i.e, a change from non-staggered terms to staggered terms. However the proposed Charter amendment does not contemplate any change to the overlapping status of Council Member terms.

The elisions in the title, based on syntax that is in any case awkward, can thus easily lead to a misunderstanding of the purpose of the Charter amendments. If the title can easily lead to misunderstanding the purpose of the Charter amendments, it cannot be considered true and impartial.

Failure to Comply with MCL 117.21(2): Title and Text—Problematic "Staggered"

Both the title and ballot language include the phrase "staggered terms." To the extent that this notion of "staggered" terms is even familiar to most voters, it is surely ambiguous as to its exact meaning. For example, terms for U.S. Senators are "staggered" across the 50 states so that the Senate as a body retains some continuity of membership and experience. The manner in which U.S. Senate terms are "staggered" can surely be taken as basic background knowledge for qualified electors in the U.S., even if the ins and outs of local governance might be unfamiliar to most qualified electors. If the terms for Ann Arbor City Council Members were "staggered" in a way that

were analogous to the terms of the U.S. Senate then the "staggering" would be achieved across Wards, not necessarily just internal to a Ward. That introduces an unnecessary ambiguity into the title and the ballot language.

Further, the insertion of the word "staggered" is wholly unnecessary, because nothing about the overlapping status of Mayor or Council Member terms is proposed to change. Use of the word "staggered" in the title and the text could cause a voter erroneously to conclude that the charter amendments somehow involve the overlapping quality of terms.

The "staggered terms" of the U.S. Senate are achieved in the U.S. Constitution without appeal to the word "staggered" or any other similar word. And as noted in previous paragraphs of this complaint, the current Ann Arbor City Charter does not use the word "staggered" yet still lays out clearly and unmistakable how Council Member terms partially overlap internal to each Ward.

So the gratuitous introduction of the word "staggered" adds ambiguity, but no clarity to the ballot language about the proposed Charter amendments. It is accurate to observe that the proposed change to Ann Arbor's City Charter would add the phrase "staggered terms" to the Charter, but this addition is wholly unnecessary.

It would be accurate, albeit misleading, to say: "The proposed change would add 'staggered terms' to the Charter." Unless a listener hears the single quotes, they could easily conclude that the amendment would change terms from perfectly overlapping terms to partially overlapping terms. Of course that's not the intent. The intent is to leave intact the overlapping status for Council Member terms.

When the text and title of ballot language use a word that introduces ambiguity, adds no clarity and refers to an issue that is not even something that it proposed to change, the text and title cannot reasonably be considered true and impartial.

Prayer for Relief

Complainant respectfully requests that the Attorney General find that the proposed Ann Arbor City Charter amendments, approved for the November 8, 2016 ballot by the Ann Arbor City Council on July 7, 2016, amount to three separate propositions warranting three separate questions to be put to voters under MCL 117.21(3). In light of that finding, Complainant requests that the Attorney General refer the matter back to the Ann Arbor City Council so that the Council can take appropriate action before the ballots are printed for the November 8, 2016 election.

If the Attorney General does not agree with Complainant that the proposed Ann Arbor City Charter amendments require three separate ballot questions, then Complainant respectfully requests that the Attorney General find that the proposed ballot language does not meet the standard for true and impartial statement of the proposed City Charter amendments as required under MCL 117.21(2). In light of that finding Complainant requests that the Attorney General refer the matter back to the Ann Arbor City Council so that the Council can take appropriate action before the ballots are printed for the November 8, 2016 election.

Complainant respectfully suggests that the title and ballot language for the intended City Charter amendments could be revised in a way that satisfies 117.21(2) as follows:

AMENDMENT TO INCREASE THE LENGTH OF TERMS OF THE MAYOR AND CITY COUNCIL MEMBERS FROM TWO YEARS TO FOUR YEARS AND TO CHANGE FREQUENCY OF REGULAR CITY ELECTIONS FROM EVERY YEAR TO EVERY EVEN-NUMBERED YEAR

It is proposed Sections 12.4, 13.2 and 13.4 of the Ann Arbor City Charter be amended and Section 13.1 be deleted. If approved by voters, these changes would increase the term length for Mayor and Council Member from two to four years. Mayor and Council Members elected November 8, 2016 would still serve two-year terms. Council Members elected in 2017 would serve three-year terms. Four-year terms would start with 2018 elections. A regular city election would be held only in each following even-numbered year, when one Council Member from each Ward would be elected. (98 words)



JULY 21, 2016