

July 18, 2014

Memo to: Mayor and Council
From: Jane Lumm
Subject: Eligibility Requirements for Elected City Offices and for Paid and Unpaid Appointed City Offices and Proposed Ballot Questions – Updated Memorandum Regarding Revised Ballot Questions and Statements of Purpose
cc: City Administrator Powers, City Clerk Beaudry, City Attorney Postema, and Senior Asst. City Attorney Fales

As a follow-up to the recent federal court ruling on the City Charter eligibility requirements for elective office, I am providing a proposed “Resolution to Place a Proposition to Amend the Ann Arbor City Charter Section Governing Eligibility for City Office on the November 4, 2014 General Election Ballot” for your consideration. I have requested the resolution be placed on the July 21st agenda for your review and comments, but would have no issue with postponing to the August 7th council agenda, if it’s determined at Monday’s meeting to be the preferred council direction. I want to give you and everyone an adequate heads-up and the needed time to evaluate this charter amendment proposal. In the interim, I also welcome your guidance, comments and suggestions. If it’s the will of council to place a ballot proposal before voters to address the eligibility requirement question, the council deadline for approving a November 4th ballot proposal is August 7th – Council must approve ballot language by 8/7/14 to meet the City Clerk’s 8/12 deadline to submit the proposed ballot language to the County Clerk and Attorney General. Bottom-line, no council action is required at this time, but I thought it important to provide you with sufficient time to review and receive your and public comments.

As noted in the resolution, Section 12.2 of the City Charter (Eligibility for City Office – General Qualifications) currently reads: “Except as otherwise provided in this charter, a person is eligible to hold a City office if the person has been a registered elector of the City, or of territory annexed to the City or both, and, in the case of a Council Member, a resident of the ward from which elected, for at least one year immediately preceding election or appointment. This requirement may be waived as to appointive officers by resolution concurred in by not less than seven members of the Council.”

The May 20th federal court decision ruled that the City Charter voter registration and residency eligibility requirements are not enforceable. As a result, the Council must take action to either place on the ballot a re-enactment of the current Charter requirements or establish new requirements. The resolution before you is a revision of the prior 7/7/14 draft resolution that was provided you, and presents two charter amendment ballot questions to establish legally enforceable eligibility requirements for elected city offices and for paid (i.e., public employees) and unpaid appointed board and commission offices. Charter Amendment 1 proposes eligibility requirements for elected city offices as follows:

- For city council: A person is eligible to hold a City office if the person is a registered elector in the ward they intend to represent at the time they file petitions/paperwork required to place their name on the ballot.
- For Mayor: A person is eligible to hold a city office if the person is a registered elector of the City at the time they file petitions/paperwork required to place their name on the ballot.

The City Clerk can certify an individual's voter registration and, therefore, whether an individual is a registered elector at any given point in time. Duration of residency is more difficult to confirm or validate, and, in as much as voter registration indicates one's place of residence, certifying that the candidate for elective office is a registered voter in the appropriate geographic area the candidate seeks to represent would fulfill both the residency and voter registration eligibility requirement.

As proposed Amendment 1 reduces the current one year residency requirement to a requirement that Mayoral candidates reside in the city and council candidates reside in the appropriate ward at the time they file to run for office. The voter registration/residency length of time requirement is obviously the fundamental question that is before us. Alternatively, you may prefer to legislatively re-enact the existing one year residency requirement or propose longer voter registration and residency requirements than what is offered in the council resolution that is before you. Again, my intent is to address the need to establish some legally enforceable eligibility requirements and to formally initiate the council and community conversation about the appropriate eligibility requirements. Personally, I do not think a one year ward/city residency requirement is particularly onerous (but any longer doesn't seem appropriate to me), but want to provide all of you an opportunity to weigh-in on this length of time voter registration/residency requirement question. I would be comfortable with the proposal as drafted here or up to a one year requirement.

To more clearly address the eligibility requirements stipulated in Section 12.2 for paid and unpaid appointed officers, it is recommended the City separate this question from the eligibility question for elected officers of the City. To accomplish this, the resolution before you presents a separate charter amendment ballot Q (i.e., Charter Amendment 2) to establish eligibility requirements for paid and unpaid appointive offices. Appointive offices are defined in section 12.1 of the City Charter as paid city employees (e.g., City Administrator, City Attorney, Assessor, Treasurer, Police Chief, Clerk, et. al.) and "persons appointed to other offices or to boards and commissions." As stated in the resolution, Section 2 of Act 212 of 1999 established residency requirements for public employees, and Section 2(4) of Act 212 exempts unpaid appointed officials from the residency requirements of the Act and allows eligibility to be established pursuant to the City Charter or ordinance.

As proposed, Charter Amendment 2 establishes a residency requirement for unpaid appointed board and commission officials, consistent with the current City Charter requirement, and acknowledges that residency requirements for public employees are controlled by State law.