

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30754
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

August 4, 2021

By email only

Honorable Gretchen Whitmer
Governor, State of Michigan
The George Romney Building
Lansing, MI 48909

Attention: Mark Totten
Legal Counsel to the Governor

Re: City of Ann Arbor – Proposed Charter Amendment

Section 14.3 (d) – requires the City to award contracts for supplies, materials, or public improvements, to the bidder that is deemed the best value to the City rather than the lowest responsible bidder

Dear Governor Whitmer:

You have referred to this office the referenced and attached charter amendment adopted by resolution of the Ann Arbor city council at its meeting held on July 20, 2021.

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 proposed 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

Honorable Gretchen Whitmer
Page 2
City of Ann Arbor
August 4, 2021

council's resolution and conclude that the ballot language conforms to the requirements of Section 21 of the HRCA.

Sincerely,

/s/George M. Elworth

George M. Elworth
Assistant Attorney General
State Operations Division
(517) 335-7573

GME:bb
Enc.

cc: Jacqueline Beaudry, City Clerk, by email only: JBeaudry@a2gov.org
Matthew Thomas, Assistant City Attorney, by email only: MThomas@a2gov.org
Kristina Gierhart, Executive Assistant, Governor's Office, by email only

2021-0324916-A



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

July 27, 2021

George Elworth
Attorney General's Office
State Operations Division
G. Mennen Williams Building
Second Floor

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

Dear Mr. Elworth,

Enclosed please find a proposed charter amendment from the City of Ann Arbor for your Legal review.

I have included a copy of my cover letter to the Ann Arbor City Clerk for your files. Please let me know if our office may provide you with any further information.

Sincerely,

A handwritten signature in black ink that reads "Rachel Teegardin".

Rachel Teegardin
Executive Assistant to
Mark Totten, Chief Legal Counsel
Office of Governor- Gretchen Whitmer
(517) 285-9138

c: Attorney General's Office, State Operations Division



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

July 27, 2021

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

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

Dear Ms. Beaudry,

On behalf of Governor Whitmer I am responding to your email and attached letter dated July 26, 2021. I am forwarding your information to the Attorney General's Office for legal review of the proposed Charter Amendment for 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 that reads "Rachel Teegardin".

Rachel Teegardin
Executive Assistant to
Mark Totten, Chief Legal Counsel
Office of Governor- Gretchen Whitmer
(517) 285-9138

c: Attorney General's Office, State Operations Division



City Clerk

CITY OF ANN ARBOR, MICHIGAN

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

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

www.a2gov.org

July 26, 2021

The Honorable Gretchen Whitmer
Governor of the State of Michigan
ATTN: Legal Division
George W. Romney Bldg.
P.O. Box 30013
Lansing, MI 48909-7513

Dear Governor Whitmer:

Pursuant to statute, a copy of the proposed amendment to the Ann Arbor City Charter is being submitted for your approval. The proposed charter amendment would be for each contract for public improvements or for supplies or materials shall be granted to the bidder that provides the best value to the City, after reasonable opportunity for competitive bidding.

The proposed charter language is included in the enclosed certified resolution, adopted by the Ann Arbor City Council at its regular session of July 20, 2021. The resolution authorizes the charter amendment proposition to appear on the November 2, 2021 General Election Ballot.

Sincerely,

Jacqueline Beaudry
City Clerk

JB/rw

c: Attorney General Dana Nessel, Washtenaw County Clerk Lawrence Kestenbaum

Ballot Letter.



City of Ann Arbor

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

Certified Copy

Resolution: R-21-275

File Number: 21-1319

Enactment Number: R-21-275

Resolution to Order Election and to Determine Ballot Question for Amendment to Section 14.3 of the City Charter Related to Best Value Purchasing **(7 Votes Required)**

Whereas, The City recognizes the need to ensure that work performed on City contracts, including public improvements, is performed by responsible and qualified firms that have the capacity, experience, personnel, and qualifications to perform such contracts timely, reliably, and with the necessary skill;

Whereas, Section 14.3 of the City Charter, entitled "Limitations on Contractual Power," subsection d provides:

Except as provided by ordinance authorized by Section 14.2 of this chapter, each contract for public improvements or for supplies or materials shall be let to the lowest responsible bidder after reasonable opportunity for competitive bidding. All bids shall be opened in public by the City Administrator, or if the City Administrator is absent or incapacitated, by the City Clerk. The Council may reject any or all bids if deemed advisable. If all bids are rejected, or if no bids are received, the Council may obtain new bids or authorize the City Administrator to negotiate in the open market for a contract at a reasonable price, or to purchase in the open market, or to have the work performed by city employees;

Whereas, Such subsection requires that the purchases outlined therein be let to the lowest responsible bidder, which prevents award of contracts based on consideration and weighing of factors that impact the contract's overall value to the City;

Whereas, the National Institute of Governmental Purchasing (NIGP) encourages the use of best value when selecting sources; and

Whereas, If the City was able to consider which bid provides the overall best value, the City could consider factors that impact value beyond simply price such as: 1) the qualifications of management personnel assigned to the contract; 2) references from individuals or entities that the bidder has performed work for in the past; 3) the size, complexity, and success of past similar projects the bidder has performed; 4) whether the bidder participates in a bona fide apprenticeship program, which can impact the quality of work its employees provide; 5) the adequacy of benefits the bidder provides to its employees, which can impact employee morale and overall performance on the contract; and 6) the bidder's past violations of state, federal or local employee protection laws;

RESOLVED, That the following amendment to Section 14.3 subsection d of the City Charter be placed on the ballot and submitted to the voters at the next general city election:

(d) Except as provided by ordinance authorized by Section 14.2 of this chapter,

each contract for public improvements or for supplies or materials shall be let to the ~~lowest responsible bidder~~ bidder that provides the best value to the City, after reasonable opportunity for competitive bidding. All bids shall be opened in public by the City Administrator, or if the City Administrator is absent or incapacitated, by the City Clerk. The Council may reject any or all bids if deemed advisable. If all bids are rejected, or if no bids are received, the Council may obtain new bids or authorize the City Administrator to negotiate in the open market for a contract at a reasonable price, or to purchase in the open market, or to have the work performed by city employees;

RESOLVED, That November 2, 2021 is designated as the day for holding an election on the proposed Charter amendment;

RESOLVED, That the City Clerk shall transmit a copy of the proposed amendment to the Attorney General and the Governor of Michigan and shall perform all other acts required by law for holding the election;

RESOLVED, That the following question shall appear on the ballot in the following form:

ANN ARBOR CITY CHARTER AMENDMENT RELATED TO BEST VALUE PURCHASING

Shall Section 14.3 subsection d of the Charter be amended to require the City to award contracts for supplies, materials, or public improvements, to the bidder that is deemed the best value to the City rather than the lowest responsible bidder?

Yes No

RESOLVED, That the proposed Charter amendment and proposed ballot question shall be published in full in the Washtenaw County Legal News;

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, and to post the proposed Charter amendment in full together with the existing Charter provisions to the City’s website; and

RESOLVED, That if the amendment is adopted, it shall take effect on January 1, 2022.

Sponsored by: Councilmembers Eyer, Radina, Briggs, Nelson, Song, Griswold and Mayor Taylor

I, Jacqueline Beaudry, Clerk of the City of Ann Arbor, Michigan, certify that this is a true copy of Resolution R-21-275, passed by the Ann Arbor City Council on 7/20/2021.

At a regular session of the Ann Arbor City Council held on July 20, 2021, the foregoing resolution was moved by Councilmember Eyer, seconded by Councilmember Radina, that this Resolution R-21-275 be approved.

The vote was as follows:

AYES: Councilmembers Disch, Griswold, Song, Grand, Radina, Eyer, Nelson, Briggs, Ramlawi and Mayor Taylor, 10:

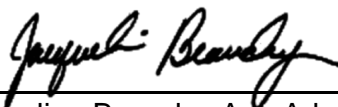
NAYS: Councilmember Hayner, 1;

ABSENT: 0.

The resolution was declared adopted.

I hereby certify that the foregoing resolution was adopted by the Council of the City of Ann Arbor, Michigan, at its regular session of July 20, 2021.

July 23, 2021



Jacqueline Beaudry, Ann Arbor City Clerk

