

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30754
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

September 6, 2024

By email only

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

Attention: Christina Grossi
Legal Counsel to the Governor

Re: Ann Arbor Charter Amendment proposed by Initiative Petition

Section 13.17 (new section) – provides for a Fair Elections Fund consisting of appropriations by the city council for campaign expenses of qualifying candidates for mayor and city council when and if state law permits public financing of campaign expenses

Dear Governor Whitmer:

You have requested review of the referenced initiative petition for an amendment to the Ann Arbor city charter for the November ballot. The proposal seeks the establishment and funding by the city council of a city fund out of which payments would be made to qualified city candidates to be used for their campaign expenses when “[s]tate law allows for the public financing of elections under the terms of this section.” Section 13.17(b).

The city clerk has determined that the initiative petition is supported by sufficient valid signatures for submission to the city voters. See Section 25 of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.*, for the signature requirements for charter amendments proposed by an initiative petition.

For your information, attached is a letter, dated August 21, 2024, from attorney Mark Brewer, legal counsel to Citizens for Fiscal Responsibility, regarding the proposed amendment and its ballot language.

Description of the proposed amendment

Section 13.17 (Fair Elections Fund) consists of 6 subsections as follows:

(a) Except as otherwise provided herein, the campaign finance laws of the State shall control all procedures relating to campaign funds in local City elections.

(b) In the event State law allows for the public financing of elections under the terms of this section, the City shall establish a fund and make it available to any candidate for Council or Mayor who qualifies under the terms of this section.

(c) A continuing and non-lapsing Fair Elections Fund is established with an annual allocation of three-tenths of one percent of the City's general fund budget. The Fair Elections Fund will be available to any candidate for Council or Mayor who chooses to participate by:

1. Adhering to lower limit on individual campaign contributions: 25% of amounts set by MCL 169.252 and
2. Receiving campaign contributions from only natural persons or the "individual" MCL 169.211(2) and
3. Documenting small donor contributions \$50 and under in the aggregate that are received from individual eligible voters and taxpayers in the City of Ann Arbor.

(d) The Fair Elections Fund will provide 900% matching funds for documented small donor contributions to individual candidates within ten business days of receiving documentation from a candidate. An individual candidate may receive up to the following total amounts from the Fair Elections Fund:

Council: \$40,000

Mayor: \$90,000

Beginning January 1, 2028 and every 4 years thereafter, the City will adjust the dollar value of small donor contribution and matching limits provided in sections (c)(3) and (d). This adjustment will be commensurate with 2% more than the percentage increase or decrease in the consumer price index for the preceding August compared with the corresponding consumer price index 4 years earlier.

(e) Annual allocation to the Fair Elections Fund may be waived by two thirds (8) vote of Council due to fiscal emergency as defined by a 2% drop in general fund revenue. Approval of a waiver applies to one year, only. At the end of each mayoral election cycle, 75% of all that remains in the Fair Elections Fund will return to the general fund.

(f) If any portion of this section shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the section which can be given effect without the invalid portion or application, provided such remaining portions are not determined by the court to be inoperable, and to this end acts are declared to be severable.
(Emphasis added.)

Discussion of the proposed amendment

By its terms, the amendment is consistent with the state’s campaign finance laws by stating in Section 13.17(b) that “[i]n the event State law allows for the public financing of elections under the terms of this section, the City shall establish a fund and make it available to any candidate for Council or Mayor who qualifies under the terms of this section.” In addition, the proposed amendment deals with a matter involving the administration of the city, which rests within the discretion of a city to include or not include in its charter. Thus, this amendment would be consistent with Section 4-j of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.*, which states that a charter “may . . . provide . . . for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants . . . *subject to the constitution and general laws of this state.*” (Emphasis added.)

However, the amendment requires the city council to appropriate city funds each year, with limited exceptions, to this Fair Election Fund. As such, the proposed amendment would conflict with state law.

Since 1980, the responsibility for appropriations of city funds has been assigned by statute to the city council as the governing body of the city. See Section 16 of the Uniform Budgeting and Accounting Act (UBAA), MCL 141.421 *et seq.* (“Unless another method for adopting a budget is provided by a charter provision in effect on April 1, 1980, the legislative body of each local unit shall pass a general appropriations act for all funds except trust or agency, internal service, enterprise, debt service or capital project funds for which the legislative body may pass a special appropriation act.) This charter amendment’s mandate of a specific annual appropriation to a Fair Election Fund would be contrary to the requirement of Section 16 of the UBAA which assigns to the city council the annual responsibility for appropriation of funds for city government, considering the funds available and its determination of the amount of property taxes to be levied in the city for that year.

Accordingly, it is concluded that the proposed amendment would be contrary to Section 36 of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.*, which states that “[n]o provision of any city charter shall conflict with or contravene the provisions of any general law of the state.”

Honorable Gretchen Whitmer

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Ann Arbor charter amendment – Section 13.17, fair elections fund

September 6, 2024

Based on the foregoing analysis, 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 not consistent with that act.

In the circumstances, as here, of a proposed amendment by initiative petition, it is noted that even if the Governor declines to approve the proposal, Section 22 of the HRCA, nevertheless, requires the proposal to be submitted for voter approval.

The ballot language for the proposed amendment

The Attorney General has a separate responsibility to review the ballot language for compliance with the requirements of Section 21(2) of the HRCA, which mandate that the ballot language be limited to 100 words exclusive of caption, and accurately and impartially describe the proposed amendment. I have examined the ballot language for the proposed amendment set forth in the text of the initiative petition and conclude that the ballot language does not conform to the requirement of accuracy in Section 21 of the HRCA, because it does not inform the voters that the proposed amendment would be contrary to the requirements of state law.

Sincerely,

/s/George M. Elworth

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

GME:bjb

Encs:

1. Correspondence from the Governor's office dated 8-9-2024
2. Letter, dated 8.21.24, to the Governor and the Attorney General from Mark Brewer, legal counsel to Citizens for Fiscal Responsibility, regarding the proposed charter amendment and the ballot language for the proposal

cc with enc. *by email only*:

Jacqueline Beaudry, Ann Arbor City Clerk, jbeaudry@a2gov.org

Matthew Thomas, Ann Arbor City Attorney's office, mthomas@a2gov.org

Mark Brewer, Legal Counsel to Citizens for Fiscal Responsibility,

mbrewer@goodmanacker.com

Kristina Gierhart, Executive Assistant, Governor's Office,

GierhartK1@michigan.gov

Enclosure 1

Correspondence from the Governor's office
dated 8-9-2024



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

August 9, 2024

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

RE: Proposed Charter Amendments via Initiative Petition– City of Ann Arbor

Dear Mr. Elworth,

Enclosed please find proposed charter amendments from the City of Ann Arbor for your legal review.

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

Sincerely,

/s/ Kristina Gierhart

Kristina Gierhart
Executive Assistant for Legal Services
Office of Governor Whitmer
(517) 241-5630

c: Attorney General's Office, State Operations Division



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

August 9, 2024

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

Re: Proposed Charter Amendments via Initiative Petition – City of Ann Arbor

Dear Ms. Beaudry,

On behalf of Governor Whitmer, I am responding to your email and attachments received on August 8, 2024. I am forwarding your information to the Attorney General's Office for legal review of the proposed charter amendments for the City of Ann Arbor. Our office will respond upon completion of that review and recommendation.

Please note that we recommend submission at least 60 days prior to the filing deadline to ensure sufficient time for review and consideration. I've attached here for your records a letter from the Governor's Office of Legal Counsel with additional information on this timeline.

Please contact me if you have any questions or concerns.

Sincerely,

/s/Kristina Gierhart

Kristina Gierhart
Executive Assistant for Legal Services
Office of Governor Whitmer
(517) 241-5630

c: Attorney General's Office, State Operations Division



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

August 30, 2021

VIA EMAIL

Michigan Association of Municipal Clerks
120 N. Washington Square
Suite 110A
Lansing, MI 48933

RE: Charter Amendments and Revisions

Dear Colleagues,

I am writing to request your assistance in notifying municipalities across Michigan of our administration's policy and recommendations regarding charter amendments and revisions.

Under the Home Rule City Act (MCL 117.22) the Governor has the responsibility to review all proposed charter amendments and revisions before any such amendment or revision is presented to the electors. Separately, under Michigan Election Law (MCL 168.646a) municipalities must submit ballot language regarding a proposed charter amendment or revision to the local clerk for certification not later than 4 p.m. on the twelfth Tuesday before the election.

It is a priority of Governor Whitmer's administration to review and respond to proposals by or before this first election filing deadline. It has also been our practice to request the Department of Attorney General review all submissions to our office for compliance with state law. This review takes time and historically guidance has recommended materials be submitted 60 – 90 days prior to the filing deadline to ensure sufficient time to review.

Starting in 2022, our office **will not approve proposed charter amendments or revisions after 4 p.m. on the twelfth Tuesday before the election.** (We will approve changes that fix scrivener's errors for charter amendments and revisions already approved by the deadline.)

We therefore strongly recommend submission of all proposed charter amendments to our office at least **60 days prior** to the filing deadline and strongly recommend submission of all proposed charter revisions to our office at least **90 days prior** to the filing deadline. We are requesting your assistance in notifying municipalities across Michigan of this policy and request.



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

Proposed amendments and revisions can be sent to our office via email at Gretchen.Whitmer@michigan.gov.

While we prefer email submission, we will also accept submissions sent via mail to:

Governor Gretchen Whitmer
ATTN: Legal Division
George W. Romney Building
111 S. Capitol Avenue
Lansing, MI 48933

Please note, the Department of Attorney General has an independent obligation to review proposed ballot language under the Home Rule City Act. The Department of Attorney General will continue using their historical process moving forward. For questions about the Department of Attorney General's process, please contact Assistant Attorney General George Elworth at (517) 335-7573 or ElworthG@michigan.gov.

Thank you for your hard work on behalf of Michiganders and for your continued partnership and commitment to improving the lives of residents. If you have questions on the Governor's process, please feel free to contact Kristina Gierhart, Executive Assistant for the Governor's Office of Legal Counsel, at GierhartK1@michigan.gov.

Sincerely,

Alicia Moon
Deputy Legal Counsel
Office of Governor Whitmer

c: Michigan Municipal League
Michigan Association of County Clerks
Michigan Department of State, Bureau of Elections
Michigan Association of Municipal Attorneys
State Bar of Michigan, Government Law Section
Department of Attorney General, State Operations Division



CITY OF ANN ARBOR, MICHIGAN

301 E. Huron Street, P.O. Box 8647, Ann Arbor, Michigan 48107-8647
Phone (734)794-6140 Fax (734)994-8296 E-Mail: cityclerk@a2gov.org
www.a2gov.org

City Clerk

August 8, 2024

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, copies of two proposed citizen-initiated amendments to the Ann Arbor City Charter are being submitted for your approval. The proposed Charter amendments are:

Amend Sections 13.4, 13.8 and 13.11 to provide for non-partisan candidates for those offices filing nominating petitions and removal of reference to a candidate's party designation on the ballot

Add a new Section 13.17 to provide for a continuing and non-lapsing Fair Elections Fund

The proposed Charter language and ballot questions are included with this letter and were included by the petitioner as part of the petition circulation and filing. The petition signatures and filings were certified by the Ann Arbor City Clerk for inclusion on the November 5, 2024 General Election ballot.

Sincerely,

Jacqueline Beaudry
City Clerk

JB/rr

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

Certification of Validity of Petition to Place Ballot Question before the Electors of the City of Ann Arbor on November 5, 2024

I, Jacqueline Beaudry, City Clerk for the City of Ann Arbor, County of Washtenaw, State of Michigan, certify that:

On July 9, 2024, an initiatory petition for amendment of the Ann Arbor City Charter to add a new Section 13.17 to provide for a continuing and non-lapsing Fair Elections Fund was filed with the Office of the City Clerk by Mr. John Godfrey;

The initial filing included 713 petition sheets and approximately 5725 signatures. An additional supplemental filing on July 29, 2024 included 79 additional petition sheets. On July 9, 2024, the count of registered voters in the City of Ann Arbor was 114,101 voters, requiring 5705 signatures (5% of registered voters);

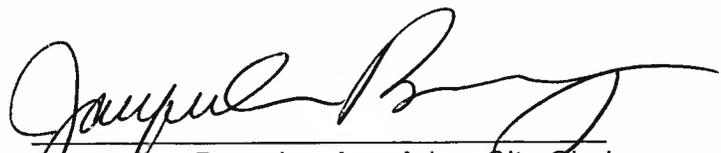
Pursuant to the Home Rule City Act, MCL 117.25 and Michigan Election law, the petition signatures were canvassed and 5843 signatures were determined to be valid and qualified on August 5, 2024;

The petition included the following ballot language:

It is proposed that the City Charter be amended to add Section 13.7 to provide for a continuing and non-lapsing Fair Elections Fund with three-tenths of one percent of the City's general fund, as appropriated by City Council for the purpose of public financing for participating candidates for City Council and Mayor who voluntarily agree to receive contributions in lower amounts and only from natural persons. Shall this proposed amendment to the Ann Arbor City Charter be adopted?

The petition is hereby certified for placement on the November 5, 2024 General Election ballot, having contained a sufficient number of signatures of qualified and registered electors of the City of Ann Arbor, in accordance with the provisions of PA 279 of 1909, as amended.

Date: August 7, 2024


Jacqueline Beaudry, Ann Arbor City Clerk

Fair Elections Fund
SECTION 13.17

- (a) Except as otherwise provided herein, the campaign finance laws of the State shall control all procedures relating to campaign funds in local City elections.
- (b) In the event State law allows for the public financing of elections under the terms of this section, the City shall establish a fund and make it available to any candidate for Council or Mayor who qualifies under the terms of this section.
- (c) A continuing and non-lapsing Fair Elections Fund is established with an annual allocation of three-tenths of one percent of the City's general fund budget. The Fair Elections Fund will be available to any candidate for Council or Mayor who chooses to participate by:
1. Adhering to lower limit on individual campaign contributions: 25% of amounts set by MCL 169.252 and
 2. Receiving campaign contributions from only natural persons or the "individual" MCL 169.211(2) and
 3. Documenting small donor contributions \$50 and under in the aggregate that are received from individual eligible voters and taxpayers in the City of Ann Arbor.
- (d) The Fair Elections Fund will provide 900% matching funds for documented small donor contributions to individual candidates within ten business days of receiving documentation from a candidate. An individual candidate may receive up to the following total amounts from the Fair Elections Fund:
- Council: \$40,000
Mayor: \$90,000
- Beginning January 1, 2028 and every 4 years thereafter, the City will adjust the dollar value of small donor contribution and matching limits provided in sections (c)(3) and (d). This adjustment will be commensurate with 2% more than the percentage increase or decrease in the consumer price index for the preceding August compared with the corresponding consumer price index 4 years earlier.
- (e) Annual allocation to the Fair Elections Fund may be waived by two thirds (8) vote of Council due to fiscal emergency as defined by a 2% drop in general fund revenue. Approval of a waiver applies to one year, only. At the end of each mayoral election cycle, 75% of all that remains in the Fair Elections Fund will return to the general fund.
- (f) If any portion of this section shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the section which can be given effect without the invalid portion or application, provided such remaining

portions are not determined by the court to be inoperable, and to this end acts are declared to be severable.



CITY OF ANN ARBOR, MICHIGAN

301 E. Huron Street, P.O. Box 8647, Ann Arbor, Michigan 48107-8647
Phone (734)794-6140 Fax (734)994-8296 E-Mail: cityclerk@a2gov.org
www.a2gov.org

City Clerk

August 5, 2024

Mr. John Godfrey
2809 Brockman Blvd
Ann Arbor, MI 48104
Via Email: godfreyjna@gmail.com

Dear Mr. Godfrey:

The City Clerk's Office has completed the canvass of your citizen-initiated petition submitted to our office on July 9, 2024, for amendment of the Ann Arbor City Charter to add a new Section 13.17 to provide for a continuing and non-lapsing Fair Elections Fund. The initial filing included 713 petition sheets and approximately 5725 signatures, based on our office's initial estimate. On July 9, 2024, the count of registered voters was 114,101 voters, requiring 5705 signatures (5% of registered voters).

Including your initial filing plus a supplemental filing of an additional 79 petition sheets on July 29, 2024, a total of 6099 signatures were recorded in the Qualified Voter File, after the rejection of 315 duplicate signatures. Of the remaining signatures, 5843 were determined to be valid and qualified. All petition sheets were checked in for the determination to meet the signature requirement.

The petition is hereby certified for placement on the November 5, 2024 General Election ballot, having contained a sufficient number of signatures of qualified and registered electors of the City of Ann Arbor, in accordance with the provisions of PA 279 of 1909, as amended.

Sincerely,

Jacqueline Beaudry
City Clerk
cc: City Election Commission

INSTRUCTIONS ON REVERSE SIDE

LOCAL PROPOSAL PETITION

- Circulator is a paid signature gatherer
- Circulator is a volunteer gatherer

We, the undersigned qualified and registered electors, residents in the City Township Village of Ann Arbor in the County of Washtenaw, State of Michigan, respectively petition for:

It is proposed that the City Charter be amended to add Section 13.17 to provide for a continuing and non-lapsing Fair Elections Fund with three-tenths of one percent of the City's general fund, as appropriated by City Council for the purpose of public financing for participating candidates for Council and Mayor who voluntarily agree to receive contributions in lower amounts and only from natural persons. Shall this proposed amendment to the Ann Arbor City Charter be adopted? For the full text of City Charter Section 13.17 see the reverse side of this petition.
Paid for with regulated funds by Voters Not Money, PO Box 3582, Ann Arbor, MI 48106

If the petition circulator does not comply with all of the requirements of the Michigan election law for petition circulators, any signature obtained by that petition circulator on that petition is invalid and will not be counted.

WARNING - A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

	Signature	Printed Name	Street Address or Rural Route	Zip Code	DATE OF SIGNING		
					Month	Day	Year
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the City or Township listed in the heading of the petition, and the elector was qualified to sign the petition.

If the circulator is not a resident of Michigan, the circulator shall make a cross [X] or check mark [✓] in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

WARNING - A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as a circulator is guilty of a misdemeanor.

CIRCULATOR - Do not sign or date certificate until after circulating petition.

(Signature of Circulator) _____ (Date) _____

(Printed Name of Circulator) _____

(Complete Residence Address [Street and Number or Rural Route]) - [Do not enter a post office box]

(City or Township, State, Zip Code)

(County of Registration, if Registered to Vote, of a Circulator who is not a Resident of Michigan)

NOTICE

This form complies with Michigan election law, MCL 168.488 and 168.544d. Before using this form, you are strongly encouraged to review the provisions of Michigan law which grant you the right to place your proposal on the ballot through a petitioning process to determine if any additional petition formatting requirements are specified. If additional requirements are specified under the governing statutes, this form cannot be used.

READ BEFORE CIRCULATING PETITION

Complete the heading of the petition before circulating it.

- Enter the city, township, or village and county where the petition will be circulated, and indicate whether the jurisdiction listed is a "city," "township," or "village." **Do not list more than one city, township, or village.** (Note: If the petition includes a county proposal, note that this petition sheet can only be circulated within a single city, township or village; it *cannot* be circulated countywide. Use the County Proposal (Countywide) form instead.)
- Enter an appropriate description of your proposal.

Make sure that all signers complete the petition. Ask each signer:

- Whether he or she is registered to vote in the city, township or village listed in the heading.
- To sign and print his or her full name on the petition.
- To enter the street address or rural route where registered to vote. A P.O. Box provided in lieu of a residential address is not acceptable.
- To write the zip code and date of signing.

Complete the circulator's certificate after circulating the petition.

- Sign and print your full name and enter the date of signing. Signatures on the petition which are dated after the date on the circulator's certificate are invalid.
- Enter your complete residence address (street and number or rural route – do not enter a P.O. Box), city or township, and state.
- If you do not reside in Michigan, check the box located in the lower left corner of the petition sheet and enter your county of registration (if you are registered to vote in your home state).

Remember:

- Ask potential signers whether and where they are registered to vote. Voter registration information may be found at Michigan.gov/Vote.
- Review each signer's entry for completeness. If information is omitted, ask the signer to fill in the blank(s).
- Do not leave the petition unattended.

Fair Elections Fund SECTION 13.17.

(a) Except as otherwise provided herein, the campaign finance laws of the State shall control all procedures relating to campaign funds in local City elections.

(b) In the event State law allows for the public financing of elections under the terms of this section, the City shall establish a fund and make it available to any candidate for Council or Mayor who qualifies under the terms of this section.

(c) A continuing and non-lapsing Fair Elections Fund is established with an annual allocation of three-tenths of one percent of the City's general fund budget. The Fair Elections fund will be available to any candidate for Council or Mayor who chooses to participate by:

1. Adhering to a lower limit on individual campaign contributions: 25% of amounts set by MCL 169.252 and
2. Receiving campaign contributions from only natural persons or the "individual" MCL 169.211(2) and
3. Documenting small donor contributions \$50 and under in the aggregate that are received from individual eligible voters and taxpayers in the City of Ann Arbor.

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Council: \$40,000
Mayor: \$90,000

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(e) Annual allocation to the Fair Elections Fund may be waived by two thirds (8) vote of Council due to fiscal emergency as defined by a 2% drop in general fund revenue. Approval of a waiver applies to one year, only. At the end of each mayoral election cycle, 75% of all that remains in the Fair Elections Fund will return to the general fund.

(f) If any portion of this section shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the section which can be given effect without the invalid portion or application, provided such remaining portions are not determined by the court to be inoperable, and to this end acts are declared to be severable.



Enclosure 2

8-21-2024 letter to the Governor and AG
from Mark Brewer, legal counsel for
Citizens for Fiscal Responsibility
(Fair Elections Fund, Section 13.17)

August 21, 2024

**BARRY J. GOODMAN
TIM SULOLLI
JORDAN B. ACKER
***BRADLEY M. PERI
MARK BREWER
AMANDA B. WARNER

VIA EMAIL

RONITA BAHRI
NICOLE M. MCCARTHY
JOSHUA C. MAYOWSKI
ROWAN E. CONYBEARE
DAVID E. GORNEY

**ALSO ADMITTED IN FL
***ALSO ADMITTED IN NY

WWW.GOODMANACKER.COM

Governor Gretchen Whitmer
c/o Kristina Gierhart
Executive Assistant for Legal Services
Office of the Governor
Romney Bldg.
111 S. Capitol Avenue
Lansing, MI 48909

Attorney General Dana Nessel
c/o Assistant Attorney General
George Elworth
Department of Attorney General
G. Mennen Williams Bldg.
525 W. Ottawa Street
P.O. Box 30212
Lansing, MI 48909

Re: Comments on City of Ann Arbor Fair Elections Fund Charter Amendment

Dear Governor Whitmer and Attorney General Nessel:

We are legal counsel to Citizens for Fiscal Responsibility and write with legal comments on both this proposed Charter amendment and the proposed ballot language. While Citizens for Fiscal Responsibility supports the principles of public financing, this amendment and the summary language are deeply flawed. This amendment is a concept, not a concrete, workable public financing program.

THE CHARTER AMENDMENT

Under the Home Rule Cities Act, city charter amendments must be transmitted to the Governor for approval or objections. MCL 117.22. The governor should not give her imprimatur to this amendment.

This proposal is vague, lacks oversight and transparency, has no protections against fraud and abuse of taxpayer funds, has no administrative structure, and exposes the City to unlimited financial liability.

Lack of Oversight and Transparency

There is no oversight or transparency in the proposal whatsoever. Many jurisdictions have boards or commissions to oversee their public financing programs. *See, e.g.,* New Haven Code, § 2-823(b) (creating a seven member Democracy Fund Board); Berkely Code, § 2.12.170 (creating

SOUTHFIELD • MAIN OFFICE

17000 WEST TEN MILE ROAD, SECOND FLOOR • SOUTHFIELD, MICHIGAN 48075 • PHONE 248.483.5000 • FAX 248.483.3131

GRAND RAPIDS

1500 E BELTLINE AVE SE, SUITE 235 • GRAND RAPIDS, MICHIGAN 49506 • PHONE 616.582.7225

a nine member Fair Campaign Practices Commission); Portland Code, § 2.16.130(B) (creating a nine member Portland Elections Commission). There is no such oversight here. In addition, there is no public transparency about the application and funding process at all. Nor is there a requirement of post-election audits to ensure that candidates spent the public funds legally. *See, e.g.*, Mich Admin Code, R 169.46–169.48 (requiring a post-election audit); New Haven Code, § 2-823(d) and (f) (same); Denver Code, § 15-59(a)(5) (same); Evanston Code, § 1-13-5-12(B) (same). This lack of oversight and transparency leaves the Fair Elections Fund open to misuse, abuse, and fraud.

Vulnerability to Misuse, Abuse, and Fraud

There are many examples of the proposal's vulnerability to misuse, abuse, and fraud. We give only a few examples here.

First, because the public funds are available to “any candidate,” a candidate need not demonstrate any minimum level of support from small donors, either in number or amount contributed. Widespread support from small donors as a prerequisite to receiving public funds is a *sine qua non* of a good public financing program. *See, e.g.*, MCL 169.264(1)(a) (requiring that participating gubernatorial candidates receive \$75,000 in qualifying contributions to be eligible); New Haven Code, § 2-827(1) (requiring that participating mayoral candidates receive 200 qualifying contributions to be eligible); Denver Code, § 15-53(a)(2) (requiring that participating mayoral candidates receive 250 qualifying contributions to be eligible, and that all other participating candidates receive 100 qualifying contributions to be eligible); Evanston Code, § 1-13-5-5(A)(3) (requiring that participating mayoral candidates receive 100 qualifying contributions to be eligible). That is absent here and is a significant missed opportunity to use public funds to incentivize the growth of small donor contributions.

Moreover, the “any candidate” threshold, combined with no limit on candidate self-funding and no spending limit, means that the taxpayers will be subsidizing more spending and spending by candidates who can finance their campaigns without public funding. Voluntary spending limits and voluntary limits on self-funding are common features of good public funding programs, but they are not present in this proposal. *See, e.g.*, MCL 169.267(1); New Haven Code, §§ 2-825, 2-826(3); Denver Code, § 15-54(a) and (g); Evanston Code, §§ 1-13-5-7, 1-13-5-8.

The very low “any candidate” threshold for receipt of public funds also opens the door for candidate abuse in uncontested races to receive public funds. The use of public funds to subsidize such a candidate cannot be defended.

Next, there is no requirement that any unused funds be returned to the taxpayers. *See, e.g.*, Mich Admin Code, R 169.46(1); New Haven Code, § 2-830; Denver Code, § 15-54(j); Evanston Code, § 1-13-5-12(C). This means that the taxpayer funds could end up being misused to finance a wide variety of non-election activities, such as attendance at conferences, travel, lodging, meals, etc. *See, e.g.*, MCL 169.209(1); MCL 169.221a(1).

In the category of fraud, the proposal contains no process to verify the accuracy of the documentation filed in order to obtain funds. Candidates *automatically* receive the public funds requested within ten business days of providing documentation. Section 13.17(d). *But see* Mich Admin Code, R 169.44 (requiring eligible candidates to show in their applications “that the amount applied for is necessary to pay qualified campaign expenditures”). That is an invitation for candidates to falsify their documentation, knowing that there is no review of its veracity.

These are just a few examples of how the proposal will lead to misuse, abuse, and fraud.

Lack of Administrative Structure

The proposal is silent on how it is to be administered. Whose responsibility is it? The City Clerk? The City Treasurer? Whom? These programs also require staff to administer them. Who will provide them? How will they be paid? From the Fair Elections Fund or some other source? The absence of structure will lead to disputes over administration—disputes that could be avoided if the proposal’s authors had addressed them.

The Financing Scheme Is Flawed

Finally, there is the flawed financing scheme. While a small revenue stream is identified in Section 13.17(c) and there are caps on funds received by candidates in Section 13.17(d), these have serious flaws.

First, the candidate cap. Is that per election? Per year? Per election cycle? The Fund’s liabilities will vary enormously depending on the answer to those questions.

Second, *there is no cap on the Fund’s payouts*. What if candidate claims exceed the budget allocation? The proposal requires that candidates receive the funds they apply for under Section 13.17(d). Can the City cap its liability? Can the candidates sue to get their funds? If there is a shortage of funds, are candidate funds pro-rated? *See, e.g.*, MCL 169.261(5) (using a pro-rata system when there are insufficient funds); New Haven Code, § 2-829 (same); Evanston Code, § 1-13-5-6(F) (same); Denver Code, § 15-58 (permitting candidates to accept contributions under the limit for candidates not participating in the program when there are insufficient funds).

This poorly thought out and drafted financing scheme is a prescription for fiscal chaos and litigation.

THE BALLOT LANGUAGE

The ballot language must be “true and impartial” without creating prejudice for or against the proposal. MCL 117.21(2). The proposed ballot language fails these standards in several ways and cannot be used. The ballot language is fundamentally flawed in the same ways the proposal is flawed. The ballot language is not remotely “true and impartial” when it hides the serious deficiencies in the proposal.

In order to be “true and impartial” as required by law, the ballot language should be rewritten as follows:

If adopted, the proposed Charter amendment would:

- Impose an open-ended financial obligation on the City to use taxpayer funds to finance any candidate for City office who agrees to contribution limits and has small donors;
- Create a public financing program with no oversight, transparency, or audits;
- Create a public financing program with no limit on candidate spending or self-financing by candidates;
- Allow unused taxpayer funds to be kept by candidates and used for non-election purposes; and
- Allow fraudulent applications for taxpayer funds by candidates.

Shall this proposed amendment be adopted?

CONCLUSION

The proposed charter amendment should not be approved by the Governor because it was badly drafted. The proposed ballot language is not “true and impartial” and must be rewritten as indicated.

Sincerely,

GOODMAN ACKER, P.C.

Mark Brewer

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