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TO: The Honorable Detroit City Council

FROM: David D. Whitaker, Director 
Legislative Policy Division Staff

DATE: February 11, 2021

RE: **Timeline for Submission of Charter Adoption Ballot Question to City Clerk**

Council Member Scott Benson asked the Legislative Policy Division (LPD) to provide City Council with a report outlining the timeline for submission of the proposed charter for voter approval. There was discussion at City Council's formal session on Tuesday, February 9, 2021 of the possibility that the charter adoption question could be on the general election ballot in November 2021. However, as LPD outlines below, the August 3, 2021 primary election is the Charter Commission's last opportunity to put the proposed charter before Detroit voters.

On August 7, 2018, the citizens of Detroit voted in the affirmative on Proposal R, to revise the 2012 Charter of the City of Detroit, by a vote of 33,272 to 33,088. The nine-member 2018 Charter Revision Commission (the Commission) was elected at the general election on November 6, 2018, and was sworn in at its first meeting on November 20, 2018.

The revision question was placed on the ballot pursuant to the requirement of section 9-403 of the 2012 City Charter, "The question of whether there shall be a general revision of the City Charter shall be submitted to the voters of the City of Detroit at the gubernatorial primary of 2018." However, the process is controlled by The Home Rule City Act, Act 279 of 1909, specifically section MCL 117.18. The third paragraph of the section indicates that the proposed

revised charter can be submitted to the voters for approval up to three times:

If the charter is rejected 3 times, or if no revised charter is adopted during 3 years following the adoption of the proposition to revise, then the charter revision commission shall terminate and cease to exist.

Although Detroit voters have not yet been presented with the opportunity to vote to adopt or reject a proposed revised charter, the Charter Revision Commission “shall terminate and cease to exist” on August 6, 2021 – three years from the “adoption of the proposition to revise.” As a result, the Commission will not have the opportunity to revise and resubmit a proposed charter to the voters after the upcoming August 2021 primary election if the electorate considers and rejects a proposed revised charter at that election.

The Michigan Home Rule City Act requires that an amendment or revision to a city charter, “before its submission to the electors . . . shall be transmitted to the governor of the state” for approval. MCL 117.22. The established process is that the Attorney General reviews the document and advises the Governor with respect to a recommendation for approval. The Commission has been advised by the Attorney General’s office to allow at least 90 days for review and comment. See, 2018 Detroit Charter Revision Commission Flight Plan Timeline, attached. The Attorney General may object to specific provisions in the proposed charter, requiring further revision before approval by the Governor. See, for example, the attached July 29, 2011, letter from Assistant Attorney General George M. Elworth, who reviewed the proposed 2012 Charter.

As noted, the next general election in the City is the August 3, 2021 primary election. State law governs local election law, including issues of timing. MCL 168.646a(2) provides, if a city ballot question is to be voted on at a regular election, the ballot wording must be certified to the proper local clerk by 4 p.m. on the twelfth Tuesday before the election (*i.e.*, 84 days). It further states, that “if the wording is certified to a clerk other than the county clerk, the clerk shall certify the ballot wording to the county clerk at least 82 days before the election.” *Id.* The Commission’s Timeline indicates the ballot question must be submitted to the City Clerk by **May 14, 2021**. However, the schedule of *2021 City Election Dates* posted by the Michigan Secretary of State indicates, “ballot wording of proposals qualified to appear on primary election ballot certified to city clerk (168.646a)” is due by 4 p.m., **May 11, 2021** – 12 weeks, or 84 days. If the City’s Election Commission is also required to review and approve the wording of the ballot question, additional time will be required.

The Charter Commission has indicated its intent to send the proposed Charter to the Attorney General by February 27, 2021.

Should the Council have further questions in this regard, LPD will respond.

Attachments

**2018 DETROIT CHARTER REVISION COMMISSION
FLIGHT PLAN TIMELINE
Adopted as of December 10, 2019
Updated as of April 24, 2020**

Adopted Timeline	
Activity	August 3, 2021
<p>Undertake activities to produce a "Discussion Draft" of Charter Revisions.</p> <p>The Commission will need to:</p> <ul style="list-style-type: none"> Review all revision recommendations - (Commissioner, Government, Citizen, Staff, Etc.) <ul style="list-style-type: none"> Subcommittee process will need to be identified and agreed upon Allow for policy and legal research to be conducted regarding all proposed revision recommendations Allow for consultation with government stakeholders on implications of all proposed revision recommendations Review and discuss research and policy implications related to all proposed revision recommendations Commission will need to discuss for purposes of adopting or disposing of all proposed revision recommendations Allow for drafting language and further discussion regarding all adopted proposed revisions 	<p>December 2019 - September 8, 2020</p> <ul style="list-style-type: none"> July 31, 2020 – last date for City departments and the Detroit community to submit new proposed changes to the Charter (does not impact providing feedback on issues already presented) September 8, 2020 - Commission will send all final approved charter revisions to General Counsel for drafting. (General counsel has indicated that he needs 45 days in order to create a "Discussion Draft" of the proposed revisions)
Charter Convention (Proposed Date)	TBD
Public Hearings to discuss the "Discussion Draft" of the Charter	<p>October 24, 2020 - General counsel will present the "Discussion Draft" to the full commission. Thereafter, the Commission will hold a series of meetings to obtain input and potentially revise the "Discussion Draft".</p> <p>January 24, 2021 - Final draft of proposed Charter revisions to be adopted by the Commission</p>

Activity	Adopted Timeline
<p>Attorney General Review Period</p> <ul style="list-style-type: none"> Per Attorney General, allow at least 90 days for review and comment 	<p>February 1, 2021 - Commission will submit final draft of proposed charter revisions to the Governor (Attorney General)</p>
<p>Campaign Development Phase</p>	<p>February 9, 2021 - April 24, 2021 - while waiting on AG feedback, the Commission develop and vote on a comprehensive campaign plan.</p>
<p>Review Attorney General Comments</p> <ul style="list-style-type: none"> Staff recommendation is to allow for at least three (3) weeks to consider Attorney General Comments, if applicable 	<p>April 30, 2021 - AG comments expected to be received by this date.</p> <ul style="list-style-type: none"> May 11, 2021 - AG comments to be shared with the public at first COIW meeting June 8, 2021 - Commission to vote on Final draft of the Charter revisions
<p>Submission deadline for Ballot Question to City Clerk (at least 82 days prior to General Election)</p>	<p>May 14, 2021</p>
<p>Campaign Phase</p>	<p>June 8, 2021 - Campaign phase begins immediately after receipt of Commission approval of the final draft</p>
<p>General Election Date</p>	<p>August 3, 2021</p>
<p>If ballot proposal is unsuccessful a subsequent ballot proposal may be submitted on:</p>	<p>There is insufficient time to resubmit a ballot proposal because the next general election occurs after the end of the Commission's term (August 7, 2021)</p>

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE
ATTORNEY GENERAL

P.O. Box 30754
LANSING, MICHIGAN 48909

July 29, 2011

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

Attention: Michael F. Gadola
Legal Counsel to the Governor

Dear Governor Snyder:

Re: City of Detroit – proposed charter revision

You have referred to this office for examination this proposed charter revision adopted by resolution of the Detroit Charter Commission at its meeting held on May 28, 2011 as certified by the Detroit City Clerk on June 17, 2011.

We have examined the proposed charter in light of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.* and conclude that the charter is consistent with the HRCA except as to its sections which conflict with state law as described in this letter.

There are five sections of the charter which provide that city officials are to hold two city positions where one of those positions is subordinate to or supervised by the other. Except when permitted by a specific statute, the holding of a position in local government that is supervised by, or subordinate to, another position held by the same person is contrary to the requirements of the Incompatible Public Offices Act (IPOA), MCL 15.181 *et seq.* OAG, 2009 – 2010, No 7256, p __ (December 21, 2010) and OAG, 1991 – 1992, No 6711, p 128 (February 14, 1992). The sections are as follows:

- 1) Section 3-104 provides that the City Clerk's appointment of the Director and Deputy Director of the Department of Elections is subject to the approval of the City Election Commission of which the Clerk is a member per Section 3-102. While MCL 168.25 contemplates that a city clerk will generally be a member of the city election commission, we are not aware of any statutory authority for a city election commission to approve or reject personnel decisions of the city clerk which are specifically authorized by MCL 168.29 in the hiring of assistants for the carrying out of the clerk's election responsibilities.

- 2) Section 9-102 provides for a city council member to be a member of a citizen advisory council for the district that this city council member represents. However, as a member of a citizen advisory council, this city council member is subordinate to the authority of the city council in Section 9-103 to prescribe by ordinance for the exercise of its powers and duties and to dissolve a citizen advisory council upon the filing of a petition for such dissolution by the district's voters.
- 3) Section 9-401 provides that the City Council may either sit as the board of review or appoint at least seven members to a board of review to hear and determine appeals from property tax assessments. If the city council sits as the board of review, the city council members would be subordinating themselves to their own authority to displace themselves as the board of review by appointing at least seven members to a board of review.
- 4) Section 9-701 requires certain city officials to supervise themselves by designating them to be members of the risk management council. This council evaluates the "effectiveness of safety, liability, and risk reduction" in all city agencies, including the agency to which each is assigned. Section 9-702.
- 5) Section 11-103 provides for the mayor, city treasurer, and a member of the city council to be members of two pension boards. As a member of a pension board, the city council member is subordinate to and supervised by the city council, since the council member is appointed by the city council and is subject to removal by the city council per Section 2-107(C). The Mayor and the Treasurer are subject to supervision by each pension board to ensure that the city makes timely payment of pension contributions owed to the pension board under the applicable pension plan. However, to the extent that pension board membership for city pension plans are provided for in existing collective bargaining agreements, it may be that the implementation of any charter changes to pension board membership will be subject to collective bargaining procedures required by the Public Employment Relations Act, MCL 423.201 *et seq.* This contingency is described in passing in *Senior Accountants, Analysts & Appraisers Ass'n v City of Detroit*, 218 Mich App 263, 269 (1996). The charter provision proposal at issue in that case included the addition of a second retiree as a pension board member in the 1996 Detroit charter revision.

Other sections have provisions that are contrary to state law requirements as follows:

- 1) Subsections (a) and (b) of Section 2-106.2(1) are contrary to MCL 15.328 in regulating government contracts between the city and an officer or employee of the city in light of this statute's stated intention that MCL 15.321 *et seq* is the sole law with respect to conflict of interest regarding such government contracts between a local unit of government and an officer or employee of that unit.

- 2) The constraints in Section 7.5-316 (funding for the Inspector General) and Section 8-214 (proportional funding for oversight agencies) which require the city council to follow certain allocation formulas in its determination of the appropriations in the city's annual budget are contrary to the authority of the city council to determine, in its discretion, the annual budget appropriations for the city's expenditures. MCL 141.436.
- 3) The current term of a member of the Board of Police Commissioners may not be modified in Section 7-802 to expire on January 1, 2014, due to requirement of Section 5(d) of the HRCA that a charter provision may not extend or shorten the term of a city official holding an office for a fixed term.
- 4) Since Section 3(k) of the HRCA requires that each ordinance must be published prior to being operative, subsection 3 of Section 4-118 should state that where an ordinance specifies a certain date to become effective, it shall become effective on that date if already published or upon publication thereafter if not yet published.
- 5) To the extent that appointed members of the Board of Police Commissioners receive compensation for serving in that capacity as authorized by Section 7-802 if provided for by ordinance, the requirement at the end of the first paragraph of that section that they must be city residents is unenforceable. See MCL 15.601 *et seq.*
- 6) Section 7-1202 does not acknowledge that in certain instances involving landlord-tenant leases, liens for delinquent utility charges may not be authorized by law. See, for example, MCL 123.165 and OAG 1987-1988, No 6416, p 9 (January 9, 1987).
- 7) Conditioning access of city officers and city employees to legal advice and legal representation only upon permission granted by the city corporation counsel in Section 7.5-201 is contrary to the right to attorney representation set forth in Const 1963, art I, §§ 13 and 20.
- 8) The requirements for appeal of special assessments set forth in subsections (b) and (c) of Section 8-605 are inconsistent with the applicable requirements for appeal set forth in MCL 205.735a.
- 9) Sections 2-105(A)(21) and (22) and 2-106.3 regulating lobbyists are contrary to the limitation on lobbyist regulation set forth at MCL 4.425 which provides that no city or other unit of local government shall adopt a resolution or ordinance with provisions that are more restrictive than those set forth in the Michigan Lobbyists, Lobbying Agents, and Lobbying Activities Act, MCL 4.411 *et seq.*, which regulates lobbying activities involving state government. While that act delineates certain specified persons who are regulated as lobbyists, Section 2-

Hon. Richard D. Snyder

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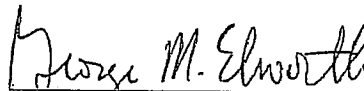
July 29, 2011

105(A)(22) appears to define "lobbyist" as including most, if not all, city residents by including, for example, any person who has "interests that could be substantially affected by the performance of a Public Servant's official duties." Each such person is required under Section 2-106.3 to register as a lobbyist with the city, pay a fee to the city, and file a report of lobbying activities if he or she communicates with a city official or a city employee "for the purpose of influencing legislation or executive action." Section 2-106(A)(21).

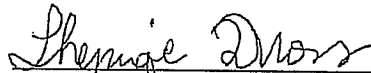
- 10) Section 3-112, which provides for a program of city funding for candidates for election to city office, is contrary to Section 57 of the Michigan Campaign Finance Act, MCL 169.257. *Michigan Education Ass'n v Secretary of State, Michigan Supreme Court*, No. 137451, 2011 Mich. LEXIS 1176 (2011).

Finally, enclosed as Attachment No. 1 is a list of sections that appear to have typographical errors, omissions, or inconsistencies with other provisions of the charter.

Very truly yours,



George M. Elworth
Assistant Attorney General
Finance Division



Shenique Moss
Assistant Attorney General
Finance Division

Encs.

c w/o enclosures except Attachment No. 1

Jenice C. Mitchell Ford, Chair, Detroit Charter Revision Commission
Janice M. Winfrey, City Clerk
Gregory Hicks, Executive Director, Detroit Charter Revision Commission
Lamont Satchel, General Counsel, Detroit Charter Revision Commission

Attachment No. 1

The following sections appear to have typographical errors, omissions or inconsistencies with other provisions of the charter:

Section 1-104 ("continues" rather than "continue"),

Sections 2-105(A)(13) and 3-107 (the listing of elective officers in these sections do not include the elected members of any community advisory council that is established by the City Council under Section 9-102),

Section 2-106.1(2)(f) (the absence of "city" as an adjective modifying "contract" and "transaction"),

Section 2-106.1(2)(g) ("in return for" rather than "by" or the equivalent),

Sections 2-106.9(5), 3-103, 4-120, 4-303, 5-106, 6-408, 7-804(3), 7-812, 7-1103, 7.5-104, 7.5-309, 7.5-405, 9-201, and 9-402 ("Article 6, Chapter 5" rather than "Article 6, Chapter 4"),

Section 3-102 – heading and text ("Elections Commission" rather than "Election Commission"),

Section 3-109 ("Board of Police Commissioner" rather than "Board of Police Commissioners"),

Section 4-103 – second paragraph ("an unanimous vote" rather than "a unanimous vote"),

Section 4-111 ("City Council shall confirm" rather than "is subject to confirmation by the City Council"),

Section 4-115(1) – second paragraph ("or division" rather than "division"),

Section 4-118 – first sentence ("approval by the mayor" rather than language which recognizes that ordinances may be adopted by the council in the absence of the mayor's approval where the council votes to override a mayoral veto or the mayor does not exercise the veto power),

Section 6-203 ("Planning Director" rather than "Planning and Development Director"),

Section 6-405 – second sentence of second paragraph ("to a three (3) year term" rather than a 2 year term for the member of the Civil Service Commission appointed jointly by the Mayor and the Council beginning February 15th of every even numbered year),

Section 7-102 – first sentence of the third paragraph (“six departments created by Article 6” rather than “five departments created by Article 6”),

Section 7-102 – fourth paragraph (accuracy of statement “except as to departments created under Chapters 3, 9, 10, 11, 15, and 16 of this Article” given that this Article 7 has only 13 chapters),

Section 7-704 (“prohibited” rather than “protected” or the equivalent),

Section 7-804(2) (“to complete for” rather than “to complete” or the equivalent),

Section 7-805 - second sentence of the second paragraph (this sentence which states that the Chief of Police serves at the pleasure of the Mayor is identical to the final sentence of the first paragraph of this section),

Section 7-807(3) – final paragraph (“payor” rather than “pay or”),

Sections 7-807(3) – final paragraph and Section 7-809 – final paragraph (unclear as to whether the concurrence of only four board members is intended as stated for specified determinations in these sections given that Section 7-802 provides for this board to have eleven members),

Section 7-903 (unclear how only one term expires annually for the members of this seven-member Public Lighting Commission given that the term of each member is five years),

Section 7-1002 (unclear if it is intended that the advisory commission for the Recreation Department is to have appointed representatives from not fewer than eight districts, given that the section also requires that seven representatives be appointed, one each, from the city’s seven non at-large districts,

Section 7-5-410 (“any report or communication within the scope” - is not clear in the following statement – “Any letter to the Ombudsperson from a person in a place of detention, penal or otherwise, under the control of any report or communication within the scope of an agency shall immediately be forwarded, unopened to the Ombudsperson.”),

Section 9-103 – twice in the third paragraph (“district or area” rather than “district”), and

Section 9-304(1)(C) – the phrase “manner provided by law” seems misplaced in this provision which provides that a franchise may be repealed for “[f]ailure to comply with any regulation imposed under the authority of this Charter; manner provided by law.”