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**TO:** The Honorable Detroit City Council

**FROM:** David Whitaker, Director   
Legislative Policy Division Staff

**DATE:** May 6, 2021

**RE:** **SUBMISSION OF BALLOT QUESTION TO ADOPT PROPOSED  
REVISED CHARTER**

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The City Council Legislative Policy Division (LPD) was asked to address whether the proposed revised City Charter, which was returned to the Charter Revision Commission by the Governor without her approval, can be placed on the August 2021 primary ballot.

The authority to adopt and amend a city charter derives from the Constitution of Michigan of 1963, Article VII, Section 22. Michigan's Home Rule City Act (HRCA), Act 279 of 1909, dictates the **process** by which a city may amend or revise its charter. Section 22 of the HRCA, MCL 117.22, requires that the elected charter revision commission submit its proposed draft charter to the governor prior to submitting it to the electors, as follows:

Sec. 22.

Every amendment to a city charter whether passed pursuant to the provisions of this act or heretofore granted or passed by the state legislature for the government of such city, before its submission to the electors, and every charter before the final adjournment of the commission, shall be transmitted to the governor of the state. If he shall approve it, he shall sign it; if not, he shall return the charter to the commission and the amendment to the legislative body of the city, with his objections thereto, which shall be spread at large on the journal of the body receiving them, and if it be an amendment proposed by the legislative body, such body shall re-consider it, and if 2/3 of the members-elect agree to pass it, it shall

be submitted to the electors. If it be an amendment proposed by initiatory petition, it shall be submitted to the electors notwithstanding such objections.

Under cover of a letter dated March 5, 2021, the Detroit Charter Revision Commission (DCRC) submitted the City of Detroit Proposed 2021 Revised Charter to the Governor for review, and on April 30, 2021, the Governor returned the draft to the Commission, concluding “I cannot approve the Proposed 2021 Revised Charter at this time.” Referencing the Attorney General’s legal review, the Governor specifically cited “substantial and extensive legal deficiencies” as well as serious concern that “proposed revisions [could] cause a financial crisis . . . requiring the FRC [Financial Review Commission] to regain full oversight over the city’s and school district’s finances.”

The Governor, therefore, has clearly rejected the proposed Charter in its current form. The plain language of the state statute makes submission of the draft to the Governor mandatory. Whether the Governor’s approval of the document before it can be submitted to the electors is a matter of disagreement, as the language of the statute is not clear.

The City’s Corporation Counsel correctly cites recognized and established rules of statutory construction – a legal concept that includes the goal of giving effect to the intent of the Legislature from the plain language of the statute. Section 22 notes that there are three methods for modifying a city charter – by means of initiatory petition, submission of the local legislative body, or by commission revision; Section 22 further provides alternatives for submission of the ballot question to the voters despite the Governor’s failure to approve the first two; however, there is no alternative to approval by the Governor for a draft charter prepared by a revision commission. This omission by the Legislature of a workaround is significant, but its ultimate significance is the source of disagreement.

Assistant Attorney General (AG) George M. Elworth, the author of the legal review of the draft charter at issue, is a highly experienced member of the AG staff, with longterm expertise in reviewing charter amendments and revisions.<sup>1</sup> In fact, he reviewed the current Detroit City Charter when it was submitted in 2011. Mr. Elworth expressed a contrary opinion to Corporation Counsel’s. At page 4 of his April 30, 2021 letter to Governor Whitmer, he states as follows:

Section 22 goes on to provide that the Governor reviews the charter and either approves the Charter and notifies the Charter commission by signing it or, as is customary in my experience, by notifying the charter commission by letter that the Governor approves the charter for submission to the city’s voters for their approval. However, if the Governor does not approve the charter, the Governor notifies the charter commission of the Governor’s objections. At that point, a

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<sup>1</sup> Mr. Elworth’s biography accompanying his various text contributions to materials published by the Michigan Municipal League, the Institute for Continuing Legal Education, etc., indicates he has been a member of the Michigan Attorney General’s staff since 1974: “George M. Elworth works on legal issues at the intersection of state and local government. As a member of the attorney general’s staff in the State Operations Division, he reviews proposed city and village charters, charter amendments, and the ballot language for such proposals. He has been an assistant attorney general since 1974, following four years as an associate at Lord, Bissell, and Brook in Chicago and a year with the Atlanta Legal Aid Society as the recipient of a Reginald Heber Smith Legal Services Fellowship.”

charter commission considers the Governor's objections and has at least two options. One option (which is the customary practice in my experience) is that the charter commission makes changes in the proposed charter to address the Governor's objections and then resubmits a modified proposed charter for the Governor's approval. Another option would be for the charter commission to submit the proposed charter to the voters for approval notwithstanding the Governor's objections.

Finally, **the text of Section 22 does not include a requirement for the Governor's approval of a proposed charter as a prerequisite for a charter commission to submit it for approval by the city's voters. And I have not found such a requirement elsewhere in the HRCA or in any other statute or case thus far in my research.** (Emphasis added.)

It is reasonable for the Charter Commission to rely on the learned opinion of the Assistant Attorney General and submit the question of adoption of the proposed charter to the voters. In fact, that is what they have voted to do at their May 6, 2021 meeting. As the Commission has emphasized, the City's Charter revision process has been community and voter driven. Detroit citizens voted (albeit narrowly) to impanel a Charter Revision Commission and the Commission engaged mightily with the residents. A reasonable argument can be made that the voters be allowed to have their say.

Should the voters ultimately elect to approve this charter in spite of its many flaws, as identified by the Governor, the Attorney General, the City's Law Department, and LPD, the City can take corrective action at that time by accessing the courts before any action is taken to implement the charter. Ultimately, the Mayor's fiduciary responsibility to the City and its residents must be acknowledged. He must remain faithful to the public trust, operating under a duty of loyalty and duty of care. Arguably, implementation of flawed Charter provisions that do not comport with state or federal law, that put the City in financial jeopardy, or do not protect and preserve the City's resources, is contrary to that role.<sup>2</sup>

Should the Council have further questions, LPD will respond.

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<sup>2</sup> Excellent discussion of the role of public officials is included in the following sources:  
<https://www.scu.edu/government-ethics/resources/public-officials-as-fiduciaries/> ;  
<https://commons.stmarytx.edu/cgi/viewcontent.cgi?article=1039&context=lmej> ;  
<https://review.law.stanford.edu/wp-content/uploads/sites/3/2018/02/70-Stan.-L.-Rev.-565.pdf>