

Charter Amendment—HRC Initiatory Petition

Introduction

The voters of a home rule city may amend their city charter by an initiatory petition pursuant to the procedures found in the Home Rule City Act (HRCA). MCL 117.21–117.25.

The initiatory petition procedures may be used to change most aspects of the city charter. However, it is not permissible to change the form of government by charter amendment (e.g. providing for a council-manager system in place of a mayor-council form). Examples of changes that can be made by amendment are increasing or decreasing the number of councilmembers, changing the clerk or treasurer position from elected to appointed, providing for council members to be elected at large or from specific districts, and switching from or to partisan or non-partisan elections.

An initiatory petition for a proposed charter amendment must be confined to a single subject. If a subject embraces more than one related proposal, each proposal must be separately stated to afford city voters the opportunity to vote for or against each proposition. MCL 117.21(3) (first and second sentences). In other words, there must be a separate initiatory petition for each unrelated proposed amendment. The analysis of what is a “single subject” in this context is based on the recognition that a proposed amendment is required to be limited to adding and deleting text in the city charter that is integral to the objective of the amendment. For example, an amendment providing for the appointment, rather than election, of a city treasurer involves changes to several sections of a charter. However, those changes are understood as involving one amendment that is confined to a single subject.

Review by the City Clerk

An initiatory petition shall be addressed to and filed with the city clerk. The petition shall state what body, organization, or person is primarily interested in and responsible for the circulation of the petition and the securing of the amendment. Each sheet of the petition shall be verified by the affidavit of the person who obtained the signatures to the petition. The petition shall be signed by at least 5% of the qualified and registered electors of the city. Each signer of the petition shall also write, immediately after his or her signature, the date of signing and his or her street address. A signature obtained more than 1 year before the filing of the petition with the city clerk shall not be counted. MCL 117.25(1) (Second to last sentence).

If the petition contains the signatures of 20% or more of the persons residing in and registered to vote in the city as of the date when they signed it, and the petition requests submission of the proposal at a special election, the city clerk, within 90 days after the date of the filing of the petition, shall call a special election to be held on the next regular election date that is not less than 120 days after the petition was filed. Other proposals, whether initiated by a 5% petition or proposed by the city council within the times provided by the Home Rule City Act, may be submitted at that election. A proposal submitted to the electors by the initiative and receiving an affirmative majority of the votes cast on the proposal shall not be held unconstitutional, invalid, or void on account of the insufficiency of the petition by which the proposal was submitted. MCL 117.25(4).

After verifying that the petition contains the requisite number of signatures of registered electors, the clerk should consult the city attorney regarding the following:

- First, whether the petitioned-for amendment is confined to one subject. MCL 117.21(3). See discussion above – third paragraph of the Introduction.

- Second, whether the ballot language for the proposed amendment, in not more than 100 words—exclusive of caption, consists of a true and impartial statement of the purpose of the proposed amendment that does not create prejudice for or against the amendment. If the petition’s ballot language does not meet these requirements, the city council has the responsibility for adopting a resolution setting forth ballot language for the proposed amendment. MCL 117.21(2) (last sentence).
- Third, if the petition does have ballot language which meets the requirements listed in the preceding paragraph, then the city council has the option of adding an explanatory caption in addition to the ballot language set forth in the petition. Although there is an express requirement for the Attorney General to review the ballot language for a proposed amendment, there is no corresponding requirement for the Attorney General to review the language of an explanatory caption added by the city council. MCL 117.21(2) (last sentence).

Submittal of an Initiatory Petition by the City Clerk or other City Official to the Governor and the Attorney General

The submittal of the initiatory petition and other relevant documents should be sent by email. Although the city has the option of also submitting these documents by U.S. Mail or another courier, this is neither required nor helpful. See Attachment 1 for the contact information for the Governor’s office and the Attorney General’s office.

In addition to a PDF copy of the front and reverse side of the initiatory petition, there should be a certification by the clerk that the petition is signed by the requisite number of signatures of registered electors.

Also to be included in the submittal are:

- 1) any Resolution adopted by the city council regarding the initiatory petition, and
- 2) a letter of transmittal to the Governor (who reviews the proposed amendment pursuant to MCL 117.22) and the Attorney General (who reviews the proposed amendment at the request of the Governor and reviews the ballot language for the proposed amendment pursuant to MCL 117.21(2), but not any explanatory caption added by the city council).

Review of the Proposed Amendment by the Governor

MCL 117.22 provides for the review of the proposed amendment by the Governor who has the authority to approve or disapprove the amendment. However, by contrast with council-proposed amendments, even if the Governor declines to approve an amendment proposed by an initiatory petition, MCL 117.22 (last sentence) provides that the proposed amendment shall be submitted to the city voters notwithstanding the Governor’s disapproval.

Notes regarding court cases concerning initiatory petitions for charter amendments in alphabetical order by city

1. Ann Arbor

Charter amendment to retain city park in the center of the city.

Ann Arbor Central Park Ballot Committee v City of Ann Arbor, unpublished order of the Court of Appeals, entered August 31, 2018 (Docket No. 345248) – the city council did not have authority to add an explanatory caption regarding a proposed amendment mandating the continuing use of a city park – excerpt from COA order of August 31, 2018:

. . . The Ann Arbor City Council exceeded the discretion conferred upon it by MCL 117.21 (2) when it adopted the July 2, 2018 Resolution. MCL 117.21 (2) confers discretion on the city council to add an “explanatory caption” to the language of a ballot proposal. Assigning the term “explanatory caption” its plain and ordinary meaning, the term means a title or heading employed to make the ballot question plain or understandable. *Alken-Ziegler, Inc v. Hague*, 283 Mich App 99, 102; 767 NW2d 668 (2009); Merriam-Webster's Collegiate Dictionary (11th ed).

The language in the July 2, 2018 Resolution does not serve this purpose. Rather, the language provides information that advocates a specific election outcome. On remand, and by the close of business on this date of August 31, 2018, the Washtenaw Circuit Court shall enter an order granting plaintiffs motion for partial summary disposition and declaring that the ballot language contained in the July 2, 2018 Resolution null and void.

The Circuit Court shall also direct defendant city clerk to forward to the Washtenaw County Election Commission the ballot language approved by the June 18, 2018 city council Resolution for placement on the November 6, 2018 General Election Ballot. This order has immediate effect. MCR 7.215(F)(2). This Court does not retain jurisdiction.

2. Clarkston

Charter amendment for two medical marijuana facilities.

Clarkston Cares 2022 v Speagle, unpublished per curiam opinion of the Court of Appeals, issued September 1, 2021 (Docket No. 362670), excerpts and notes from the opinion:

Clarkston cited MCL 117.21, MCL 117.22, and MCL 117.25 of the Home Rule City Act “arguing that those statutes require review by the city council, approval by the attorney general, and submission to the governor for review before a ballot initiative to amend a city charter can be certified by the city clerk to be placed on the ballot. We disagree. Clarkston’s argument is not supported by the plain language of the relevant statutes.” *Clarkston*, at 5.

In *Warren City Council v. Buffa*, 333 Mich App 422, 435 (2020), lv den 506 Mich 889 (2020) (“Buffa”), this court concluded that the Governor’s approval was not a prerequisite or requirement for the city clerk’s certification of ballot language under MCL 646a(2) of the Michigan Election Code. *Buffa*, at 430. Section 22 of the Home Rule City Act, MCL 117.22, does not indicate that the governor’s approval amounts to certification to a local clerk under MCL 646a(2), and MCL 646a(2) does not refer to the approval process of MCL 117.22, “indicat[ing] that our Legislature did not intend for the governor’s approval to stand as a prerequisite to the local clerk’s act of certifying ballot language to the county clerk under MCL 168.646a(2).” “[N]othing in the plain language of the statutes implies that the governor’s approval under MCL 117.22 is the certification contemplated by MCL 168.646a(2).” *Buffa*, at 430. While MCL 646a(2) sets very specific deadlines, MCL 117.22 only states that the governor’s approval must come before the proposal is submitted to the electors. *Buffa*, at 431. The Court explained that the apparent conflict between MCL 117.22 and Michigan Election Law MCL 168.646a(2) “is easily resolved if one understands that the act of certifying ballot language to a local clerk under MCL 168.646a(2) is not the same as the governor’s act of

approving a charter amendment under MCL 117.22.” Similarly, in *Sheffield v. City of Detroit*, 508 Mich 851, 852 (2021), the Michigan Supreme Court noted the requirement in MCL 117.22 that a proposed city charter be submitted to the governor for approval, and that because the statute is silent with regard to whether the governor’s approval is required prior to submission to the electors, it cannot interpret such silence as requiring gubernatorial approval before a charter revision is submitted to the elector and will not read into MCL 117.22 a requirement that is not explicitly spelled out. Furthermore, the language MCL 117.22 expressly states that an amendment initiated by petition, as in this case, “shall be submitted to the electors notwithstanding” the governor’s objections. *Clarkston*, at 5-6.

While the language of MCL 117.21(2) allows the city council to prepare and add an explanatory caption for the ballot proposal, nothing in the statutory language mandates that a ballot question presented by initiative be presented to the city council, nor does the statutory language make city council approval of a caption a prerequisite to the clerk’s certification of the sufficiency of the petition under MCL 117.25(3) or the certification to the local or county clerk under MCL 168.646a(2). While [MCL 117.21(2)] also states that “the text shall be submitted to the attorney general for approval . . . before being printed,” nothing in the plain language of that section indicate that submission to or approval by the attorney general is required before the clerk must certify the sufficiency of the petition under MCL 117.25(3) or the ballot wording under MCL 168.646a(2). Like the governor’s review under MCL 117.22, the city council’s approval of an explanatory statement and the attorney general’s review and approval are not prerequisites or requirements for the city clerk’s certification of ballot language under MCL 168.646a(2).

. . . The plain language of MCL 117.21(1) states that where an amendment to a city charter is proposed by initiatory petition, the amendment *shall* be submitted to the voters at the next election. The plain language of MCL 117.25(3) states that once the city clerk receives the petition, “the city clerk *shall* canvass it” to ascertain if it is signed by the requisite number of registered voters. [MCL 117.25(3)] states that the city clerk “shall certify the sufficiency or insufficiency of the petition” within 45 days of the filing of the petition and that if the petition contains the required number of signatures, “the clerk shall submit the proposed amendment to the voters” at the next election. The use of the word “shall” indicates a mandatory duty or directive. *Buffa*, 333 Mich App at 435. Under MCL 117.25(3), the city clerk’s duty is to canvass the petition to determine whether it has an adequate number of valid signatures and certify the sufficiency or insufficiency of the petition based on that canvass within 45 days of the filing of the petition. Under MCL 117.21(1) and 117.25(3), assuming the petition is deemed to have a sufficient number of signatures, the city clerk is required to submit the proposed amendment to the voters at the next election. Nothing in the language of [MCL 117.21(1) and 117.25(3)] indicates that the certification or submission is dependent on review by the city council, attorney general, or the governor.

Under MCL 168.646a(2), the wording of the ballot question “*must* be certified to the proper local or county clerk not later than 4 p.m. on the twelfth Tuesday before the election.” This plain language shows a mandatory duty to complete any certification to the proper clerk at least 12 weeks before election day. Accordingly, under MCL 117.25(3), the city clerk had 45 days from the date of the petition filing to assess whether it was sufficient or insufficient. Once the city clerk deemed it sufficient based on the numbers, the clerk was required by MCL 117.25(3) to submit the proposed amendment to the electors of the city at the next regular municipal or general state election and required by MCL 168.646a(2) to certify the ballot question by August 16, 2022. The other HRCA provisions cited by *Clarkston* are not prerequisites to the certifications required by MCL 117.25(3) and MCL 168.646a(2). The actions of the *Clarkston* officials were mandated by the plain statutory language of MCL 117.25(3) and MCL 168.646a(2) and so were ministerial. Plaintiff had no other remedy which could grant it meaningful relief. The trial court did not commit errors of law or abuse its discretion by granting the requested mandamus relief. [*Clarkston*, 6-7.]

3. Clio

Charter amendment for not more than two recreational marijuana establishments

Clio Yes 2024 v. Clio Clerk Sproul and Clio City Commission, unpublished per curiam opinion of the Court of Appeals, issued September 6, 2024 (Docket No. 372312) – declines ballot committees request to put an initiatory petition submitted to the city clerk in the summer of 2023 for no more than two recreational marijuana establishments – currently the city’s current prohibition of such establishments – on the November 2024 ballot. Cites *City of Farmington v. Farmington Surv Comm*, __ Mich App __; __ NW3d __ (2024) (Docket No. 372022) – see Farmington discussion below for summary of case. Also discusses, with deciding the relevance, of the signature requirement of 15% of city voters in the city charter to initiatory petitions submitted to the city clerk for proposed amendments to city ordinances.

4. Detroit

Charter amendment for a total of nine members of city council, with one council member with district residency elected from each of seven city districts, and two council members elected at large.

Detroiters for City Council by District v. Detroit city clerk, unpublished order of the Court of Appeals, entered September 22, 2009 (Docket No. 294182) – excerpt from COA order where the ballot language included an accurate summary but not a question:

The HRCA imposes three obligations on a city clerk in connection with an initiated proposal to amend a city charter: to canvass the signatures and to submit the proposals to the voters if there is a sufficient number of signatures, to submit the proposal to the governor, and to submit the proposal to the attorney general for his approval of the 100 word ballot language summary. The clerk has complied with these obligations except for placing the petition on the ballot. See MCL 117.21(2) & MCL 117.22. Under certain circumstances, the form in which the question is to be presented on the ballot may be determined by the applicable legislative body, in this instance the Detroit City Council. MCL 117.21(2). However, to date, the Detroit City Council has declined to offer any ballot language, and the parties herein have stipulated to the form of the question to be presented on the ballot. We conclude that the stipulated language, to which the Attorney General has given express approval, meets the requirements of MCL 117.21. Accordingly, pursuant to MCR 7.216(A)(7), we direct the Detroit city clerk to place on the November 3, 2009, ballot the initiative petition with the following question as stipulated to by the Attorney General, Governor and Detroit City Clerk: “Shall the Detroit City Charter be amended to provide for a total of nine members of City Council with one (1) council member, with district residency, elected from each of seven (7) districts and two (2) members elected at large?” . . .

5. Farmington

Charter amendment mandating two cannabis retail stores.

City of Farmington v. Farmington Surv Comm, __ Mich App __; __ NW3d __ (2024) (Docket No. 372022) – excerpt from September 3, 2024 COA opinion below:

. . . [T]he power to adopt a local regulatory scheme for marijuana retail establishments under [Section 6 of Michigan Regulation and Taxation of Marijuana Act (MRTMA), Initiated Law 1 of 2018, MCL 333.27951 *et seq.*] involves a delegation of authority to the legislative body of the municipality. Because this authority is to be exercised by the legislative body, it cannot be exercised by individuals of the electorate. Instead, . . . , individuals of the electorate are afforded one narrow power of initiative: to seek an ordinance prohibiting or setting the number of marijuana retail establishments. In this manner, [Section 6 of the MRTMA] governs the process by which municipalities may regulate marijuana retail establishments, and these specific provisions of MRTMA control over the more general and otherwise applicable provisions of the [Home Ruly City Act, MCL 117.1 *et seq.*] As a result, aside from petitions to prohibit or set the number of establishments via ordinance, a voter-initiated petition cannot be used to abrogate the authority vested in the municipality to regulate

marijuana establishments through legislative enactment of ordinances, and voter-initiated petitions cannot be used to enact regulations regarding marijuana establishments.

6. Howell

Charter amendment mandating two cannabis retail stores.

Open Stores in Howell Comm v. City of Howell, unpublished opinion of the Court of Appeals, issued September 20, 2024 (Docket No. 372499) – see excerpts below:

The proposed amendment mandating two cannabis retail stores and the corresponding ballot language submitted by the Howell city clerk in August to the Livingston county clerk, the Governor and the Attorney General, may not be unilaterally called back by the city clerk notwithstanding the opinion in *City of Farmington v. Farmington Surv Comm*, ___ Mich App __; ___ NW3d __ (2024) (Docket No. 372022), lv pending. which concluded that this proposed amendment—identical to Farmington’s—mandating two cannabis retail stores was pre-empted by Section 6 of the Michigan Regulation and Taxation of Marihuana Act (MRTMA) which assigns to the city council the determination whether the city should have any cannabis facilities.

This opinion left open the possibility of the amendment being challenged if the amendment was approved by the city voters at the November 2024 election. However, the city voters rejected the proposed amendment.

7. Keego Harbor

Charter amendment to establish an application process, selection criteria, and other regulations pertaining an ordinance—also on the ballot via an initiatory petition—allowing two adult-use marijuana retail facilities.

Oakland Cares Coal v. City Clerk of Keego Harbor, unpublished order of the Court of Appeals, entered September 2, 2022 (Docket No. 362744) —excerpts from the order of September 2, 2022:

Keego Harbor City Clerk Tammy Neeb had a clear legal duty to certify plaintiff’s ballot language to the Oakland County Clerk by 4:00 p.m. on August 16, 2022. As this Court determined in *Warren City Council v Buffa*, 333 Mich App 422, 430, the Governor’s approval of ballot language under MCL 117.22 is not “a prerequisite to the local clerk’s act of certifying ballot language to the county clerk under MCL 168.646a(2).” In addition, as recently discussed in *Clarkston Cares 2022 v Speagle*, unpublished per curiam opinion of the Court of Appeals, issued September 1, 2022 (Docket No. 362670), the city council’s and Attorney General’s review under MCL 117.21(2) “are not prerequisites or requirements for the city clerk’s certification of ballot language under [MCL 168.646a(2)].” As in *Clarkston Cares*, once the defendant city clerk deemed plaintiff’s petition “sufficient based on the numbers, she was required by MCL 117.25(3) to submit the proposed amendment to the electors . . . and required by MCL 168.646a(2) to certify the ballot question by August 16, 2022.” *Id.* The HRCA provisions regarding review by the city council, Attorney General, and Governor “are not prerequisites to the certifications required by MCL 117.25(3) and MCL 168.646a(2).” *Id.* Further, the city council was not authorized to submit alternative language for placement on the ballot in lieu of plaintiff’s ballot language. Because plaintiff provided ballot language in its petition, MCL 117.21(2) authorized the city council to “add an explanatory caption” if it disagreed with plaintiff’s ballot language. The statute did not authorize the city council to substitute plaintiff’s ballot language with language of its own choosing. Accordingly, we direct the city clerk to immediately certify plaintiff’s ballot language to the Oakland County Clerk for inclusion on the November 8, 2022 ballot.

Open Stores in Keego Harbor Comm v. City of Keego Harbor Election Comm’n, unpublished per curiam opinion of the Court of Appeals, issued September 1, 2023 (Docket No. 367479)—excerpts from the opinion:

I. Background

Plaintiff is a ballot question committee formed for the purpose of proposing both an ordinance allowing two adult-use marijuana retail facilities in the City of Keego Harbor and a City Charter amendment to establish an application process, selection criteria, and other regulations pertaining to those

facilities. This appeal concerns only plaintiff's petition to amend the City Charter. Defendants are the City of Keego Harbor Election Commission, the City of Keego Harbor (the City), and the City Clerk of Keego Harbor, Tammy Neeb (the City Clerk). Plaintiff circulated its petition to amend the City Charter in June 2023 and obtained 164 signatures, more than the number of signatures required to place the proposal on the ballot under MCL 117.25(1) of the Home Rule City Act (HRCA), MCL 117.1 *et seq.* On June 22, 2023, plaintiff forwarded its petition to the City Clerk.

Substantively, plaintiff asserted that City Charter § 6.8 requires preapproval before circulation with respect to initiatory and referendary petitions concerning ordinances only and does not apply to petitions seeking charter amendments. Plaintiff also argued that the HRCA governs the charter amendment initiative process and preempts the City's efforts to regulate that process as recognized under City Charter § 18.6. Defendants disagreed and argued that both plaintiff's ordinance proposal and its charter amendment proposal required preapproval before circulation under City Charter § 6.8. Defendants maintained that because plaintiff obtained preapproval before circulating its ordinance initiatory petition, that proposal was approved and will appear on the November 2023 ballot, whereas plaintiff's petition regarding the charter amendment was rejected because plaintiff failed to obtain preapproval before circulating that petition as required under City Charter § 6.8. . . .

The circuit court denied the writ of mandamus and dismissed plaintiff's complaint on the basis that plaintiff failed to obtain preapproval before circulating its petition. The court also determined that laches barred plaintiff's claims because of plaintiff's delay in filing its complaint.

II. Analysis

A. CITY CHARTER § 6.8

. . .

Reading the City Charter provisions in context, it is clear that City Charter § 6.8 applies to initiatory and referendary petitions concerning ordinances and not to petitions proposing charter amendments. Section 6 of the Charter is titled "CITY LEGISLATION," and begins with § 6.1, titled "Ordinance Enactment." The provisions following § 6.1 pertain to ordinances generally. Section 6.7 states that "[a]n ordinance may be initiated by petition, or a referendum on an ordinance enacted by the council may be had, by a petition, as hereinafter provided." (Emphasis added.) Immediately thereafter, § 6.8 provides, in relevant part:

An initiatory or a referendary petition shall be signed by not less than twenty-five (25) percent of the registered electors of the city, who have signed said petition within six (6) months before date of filing the petition with the clerk. Before being circulated for signatures, all such petitions shall be approved as to form by the clerk. . . .

Section 6.9 sets forth the procedure that the City Council must follow after receiving a petition, and states as follows:

Upon receiving such initiatory or referendary petition from the clerk, the council shall within thirty (30) days, either:

- (a) If it be an initiatory petition, adopt the ordinance as submitted in the petition;
- (b) If it be a referendary petition, repeal the ordinance to which the petition refers; or
- (c) Determine to submit the proposal to the electors. [Emphasis added.]

Accordingly, reading § 6.8 in context, the provision applies to initiatory and referendary petitions concerning ordinances and not charter amendments. Section 18.6, pertaining specifically to charter amendments, supports this interpretation and states that "[t]his Charter maybe [sic] amended at any time in the manner provided in Public Act No. 279 of 1909 (MCL 117.1 *et seq.*, MSA 5.2071 *et seq.*),

as amended,” i.e., the HRCA. Thus, § 18.6 and the provisions of § 6, read in context, clearly indicate that § 6.8 does not apply to petitions concerning proposed charter amendments.

...

Plaintiff has a clear legal right to the certification of its petition for placement on the November 2023 ballot, and the City Clerk had a clear legal duty to certify the petition. The act is ministerial and requires no exercise of judgment or discretion. Further, there exists no other adequate remedy. In this regard, we note that plaintiff's petition proposing a charter amendment is not duplicative of its ordinance initiatory petition. Plaintiff's ordinance initiatory petition proposed an ordinance pursuant to § 6(1) of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 et seq., to provide for two adult-use marijuana retail establishments in the City. Plaintiff's petition to amend the City Charter, circulated and submitted pursuant to City Charter § 18.6 and MCL 117.21 and MCL 117.25 of the HRCA, provides for the application process, regulation, and licensure of the two adult-use marijuana retail establishments at issue in the ordinance initiatory petition. Therefore, the two petitions are not duplicative and are in fact complementary.

III. Conclusion

City Charter § 6.8 did not require plaintiff to obtain preapproval of its petition proposing a charter amendment under City Charter § 18.6 and the HRCA before circulating the petition. In addition, defendants were not entitled to assert the equitable doctrine of laches as a defense to plaintiff's claims because plaintiff was not dilatory in asserting its claims, defendants were not prejudiced as a result of any purported delay, and defendants acted with unclean hands. Finally, plaintiff has satisfied all of the requirements for mandamus relief. Accordingly, we direct the City Clerk to immediately certify plaintiff's proposal to the Oakland County Clerk for inclusion on the November 7, 2023 ballot.

Resources

1. MML Fact Sheet – November 2024 Charter Amendment – HRC Legislative Body Resolution.
2. When a petition is filed with the city clerk, the city attorney should gather information regarding the circumstances involved from the city clerk, the county clerk, and the Bureau of Elections in the Michigan Department of State. In addition, the city attorney should consider contacting the Elections and Municipal Affairs Division, (517) 335-7659 of the Attorney General's office. As time permits, attorneys in that division are an informal resource to municipal attorneys regarding municipal matters, including the handling of an initiatory petition filed with the city clerk for a charter amendment.