

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30754
LANSING, MICHIGAN 48909

DANA NESSEL
ATTORNEY GENERAL

September 8, 2021

By email only

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

Attention: Mark Totten
Legal Counsel to the Governor

**Re: City of Perry – Proposed Charter Amendment by Initiative
Petition – Medical Marihuana Facilities**

Section 2.1 (Powers of the City), Section 4.6 (Administrative Services), Section 9.1 (Public Records) and new Chapter 11 (Medical Marihuana) – for the establishment of the Perry Department of Medical Marihuana headed by the city clerk whose administration of this department is independent of the city council; the clerk issuing licenses to growers, processors, providers and others whose activities are regulated by state laws governing medical marihuana; facilities for growing and processing medical marihuana and provisioning centers open daily to the public; an expedited process for provisional and permanent licenses with vested property rights for license holders and their transferees with the city having limited authority to revoke or deny renewal of such licenses; and a ceiling on the fees that the city may charge to license applicants for the costs incurred for reviewing license and renewal applications

Dear Governor Whitmer:

You have requested review by this office of the referenced charter amendment set forth in the materials submitted to you by the Perry city attorney on August 6, 2021. Attachment No. 1. For readability, Attachment No. 2 restates the amendment and proposed ballot language using regular capitalization instead of the “all capitals” format.

Petitions filed with other cities for the November ballot

Beginning on July 22, 2021, this department learned that petitions similar to the Perry petition were being circulated for the November ballot in Rockwood, Chelsea, Flat Rock, Keego Harbor, Clarkston, Fenton, Morrice and Mason. On July 27, 2021, Mason sought your review of the petition filed with its clerk. However, on August 17, 2021, that city withdrew its request for review.

The petition filed in Keego Harbor has been in litigation since August 9, 2021—first in Oakland County Circuit Court and then in the Court of Appeals. Oakland Circuit Judge Rae Lee Chabot signed a final order of dismissal on August 18, 2021. An emergency appeal followed. See *Oakland Cares Coalition v Keego Harbor City Clerk*, Court of Appeals Docket No. 358221, which includes an order of August 25, 2021 (“The application for leave to appeal is DENIED for lack of merit in the grounds presented.”). See also *Oakland Cares Coalition v Keego Harbor City Clerk*, Court of Appeals Docket No. 35833, Order of September 1, 2021 (“[T]he August 18, 2021, order [of Oakland Circuit Judge Chabot] denying mandamus relief is AFFIRMED.”).

Perry’s request for an expedited review by the Governor

The city attorney requests an expedited review by the Governor based on the petitioners’ stated intention of having this proposal on the ballot at the November election. As to the petition’s meeting the signature requirements of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1, *et seq*, see the clerk’s letter to attorney Michael Woodyard, August 3, 2021, in the submitted materials (“I certify that the number of signatures meet the state requirements to be submitted to the electors of the City of Perry.”)¹ The submitted materials also include an August 5, 2021 resolution of the city council acknowledging the ballot language for the proposal as set forth in the petition.

¹ Subsection 7 of Section 25 of the HRCA which regulates initiative petitions for charter amendments that are filed with a city clerk provides as follows: “A person aggrieved by an action, or failure of action, of the city clerk may bring an action against the clerk in the circuit court for writ of mandamus or for other appropriate relief.” MCL 117.25(7).

Analysis of proposed charter amendment in light of the requirements of the Home Rule City Act

Since the requirements of this proposal have the potential to be crippling for a small city such as Perry², this amendment represents a restructuring of government that must be accomplished in Michigan by an elected charter commission which has the authority to draft a proposed charter for submission to the city's voters. The revision process enables an elected charter commission to consider the benefits and risks of a new undertaking—such as is proposed here—in light of the city's current governmental structure.

As held by the Court of Appeals in *City of Midland v Arbury*, 38 Mich App 771, 774 (1972), "If the proposed change only amends, alters, or improves within the lines of the original charter, it is an amendment and the passage by the city electorate was valid. But, if the proposed change totally disrupts, cancels, abrogates, or makes inoperable the original charter, it is a revision and the amendment procedure and vote is subject to reversal." The Court stated that the amendment process under the HRCA was not available for a change in the form of the government of a home rule city, citing *Kelly v Laing*, 259 Mich 212, 217 (1932). See also OAG, 1975-1976, No 4916, p 259 (January 22, 1976. Since 1988, to my knowledge, there have been three instances of proposed charter amendments via initiative petition that were determined as being revisions in letters of review of the Attorney General—Hillsdale (2006), Hartford (2011), and Walled Lake (2020). Each imposed term limits on existing city managers. However, for Hartford, there was also an amendment imposing a requirement for voter approval before an ordinance adopted by the city council could take effect.³

As adopted in 1988, Perry's charter provides for the customary purposes of home rule government—elected and appointed officials accountable to the city's

² According to the Michigan Department of Treasury, Perry has 2,100 residents and annual revenues of \$2.59 million dollars, see Michigan Department of Treasury at <http://micommunityfinancials.michigan.gov/#!/dashboard/CITY/2663700?lat=42.83103300000002&lng=-84.22155700000002&zoom=10&showSidebar=yes> for information as of 2019.

³ For a discussion of the Hartford amendments, see the Hartford report, MAMA PCLS 8.2.13, Attachment 3.

voters for public safety, roads, public utilities, parks, recreation programs, and other community services.⁴ However, going forward, if city officials are responsible for the implementation of this proposal, current city operations would have to be adjusted in an effort to implement this proposal without plunging the city into financial distress with the potential for protracted litigation and unfunded costs of administration and regulation, not to mention the disruption to the daily lives of city residents.⁵

Accordingly, it is concluded that the proposed amendment is not consistent with the HRCA, because it involves a fundamental restructuring of city government which may not be accomplished by a charter amendment but only by a charter revision drafted a charter commission operating under Sections 18–24 of that Act.

Submission to the voters even if the Governor's disapproves an amendment proposed by initiative petition

As you know, Section 22 of the HRCA requires that a proposed amendment submitted by a qualified initiative petition shall be submitted to the city's voters for approval, even if the Governor declines to approve the charter amendment. However, in light of the experiences of Hillsdale in 2006 and Hartford in 2011, if this proposal were to be approved by the city voters, the city council could then consider: 1) consulting with its city attorney as to whether the city is required to take any action with respect to the requirements of this amendment under Michigan law, or 2) requesting that the city attorney seek a court ruling that the amendment is contrary to Michigan law. See the Hartford report of August 2, 2013, regarding amendments to the Hartford charter that would have fundamentally disrupted city government, including the letter of review of the Attorney General, the letter from the Governor's office declining to approve these amendments, and excerpts from the litigation brought by the city attorney at the request of the city council after the voters adopted those amendments. Attachment No. 3.

⁴ There is an overview of the current charter in the city's 2010-2040 Master Plan, June 2013, Ch 6: Governmental Organization/Structure, p 39 which is posted on the city's website:

http://perry.mi.us/Portals/32/Master%20Plan/Chapter%201_7_final.pdf.

⁵ For an account of Port Huron in 2020 and 2021 regarding an ordinance somewhat similar to this proposed amendment, see [Port Huron voters approve 2nd marijuana ballot proposal – ibodyCBD 8/4/21](#) and [City Council rejects latest marijuana petition, but it's still headed for Aug. 3 ballot \(thetimesherald.com\) 5/11/21](#)

Honorable Gretchen Whitmer
Page 5
City of Perry
September 8, 2021

The ballot language for the proposed amendment

The Attorney General has a separate responsibility to review the proposed 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 and accurately and impartially describe the proposed amendment. As set forth in the petitions for this proposed amendment, the ballot language is as follows:

MEDICAL MARIHUANA PROPOSAL

This proposed charter amendment, if adopted, would assist patients in need of medical marihuana for conditions such as epilepsy, multiple sclerosis, colitis, arthritis, crohn's disease, cerebral palsy, chronic pain, parkinson's disease, post traumatic stress disorder and other medical conditions for which marihuana is an approved medical use by the State of Michigan, end the City's prohibition of medical marihuana facilities, and create a City Department of Medical Marihuana responsible for overseeing the local regulatory structure for such facilities.

SHALL THE PROPOSAL BE ADOPTED?

I have reviewed the above-quoted ballot language and conclude that it is not consistent with the requirements of Section 21(2) of the HRCA in failing to inform the voters that this amendment is contrary to Michigan law. Further, the ballot language does not put the voters on notice of the burdens being imposed by the proposal.

Sincerely,

/s/George M. Elworth

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

GME:bb
Atts. (3)

1. August 6, 2021 Referral letter from the Governor's office to Attorney General for review, which includes the petition for the proposed charter amendment,

Honorable Gretchen Whitmer
Page 6
City of Perry
September 8, 2021

a resolution of the city council, and letters of the city attorney and the city clerk.

2. Restatement of the amendment and proposed ballot language with regular capitalization in place of the "all capitals" petition format
3. Hartford report, MAMA PCLS 8.2.13

cc: Justin D. English, City Attorney, by email: justin@jdelawoffice.com
Devin Miller, City of Perry Clerk, by email: clerk@perry.mi.us
Kristina Gierhart, Executive Assistant, Governor's office, by email only

2021-0326484-A

Attachment 1

to the letter to the Governor

August 6, 2021 Referral letter from
the Governor's office to Attorney
General for review



STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GRETCHEN WHITMER
GOVERNOR

GARLIN GILCHRIST II
LT. GOVERNOR

August 6, 2021

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

RE: Proposed Charter Amendment – City of Perry

Dear Mr. Elworth,

Enclosed please find the proposed charter amendment from the City of Perry for your legal review.

I have included a copy of my cover letter to Perry City Attorney, Justin D. English, 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 6, 2021

Justin D. English
English Law Office, PLC
120 W. Exchange St.
Suite 104
Owosso, MI 48867

Re: Proposed Charter Amendment- City of Perry

Dear Mr. English,

On behalf of Governor Whitmer I am responding to your email and attached letter dated August 6, 2021. I am forwarding your information to the Attorney General's Office for legal review of the proposed charter amendment for the City of Perry. Our office will respond upon completion of that review and recommendation.

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

City of Perry

203 W. Polly St.
Perry, MI 48872



www.perry.mi.us

Phone: (517) 625-6155

Fax: (517) 625-6157

Hearing Impaired: 711

August 3, 2021

Law at Woodyard & Associates, PLLC
Michael Woodyard, Attorney
45450 Parkdale St.
Suite 100
Canton, MI 48188

Dear Michael Woodyard:

Please be advised that the City of Perry Clerk received the enclosed petitions for a City Charter Amendment from Zack Lask.

The original petitions filed in my office each have a complete packet attached to them. In effort to save coping time and costs, I have made one copy of the complete packet and a copy of all petitions. If you would like to review the originals, please let me know and we can make arrangements that are convenient for both of us.

I am also enclosing a certification of the number of signatures with names of city registered voters who signed petitions. I certify that that the number of signatures meet the state requirements to be submitted to the electors of the City of Perry.

If you have any questions or concerns regarding this matter, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Devin Miller". The signature is written in dark ink and is positioned above the printed name and title.

Devin Miller
City of Perry Clerk

Enclosure

Attachment 2

to the letter to the Governor

Restatement of the amendment and
proposed ballot language with
regular capitalization in place of
the “all capitals” petition format

INITIATIVE PETITION AMENDMENT TO THE CHARTER

To the Clerk of the City of Perry: We, the undersigned qualified and registered electors, residents in the 4th congressional district in the state of Michigan, respectively petition for initiation of a charter amendment to end the City's prohibition of medical marihuana facilities, to assist medical marihuana patients with critical medical conditions, and to create a City Department of Medical Marihuana with local regulatory authority. We respectfully request that this proposed amendment be submitted to a vote of the electors of the City of Perry for the November 2, 2021 General Election.

The amendment, if adopted, would add CHAPTER 11 to the Charter and would alter or abrogate CHAPTER 2 SECTION 2.1, CHAPTER 4 SECTION 4.6, and CHAPTER 9 SECTION 9.1 as follows (new language capitalized and bolded, deleted language struck out with a line):

CHAPTER 2 GENERAL POWERS

Section 2.1 Powers of City.

The City of Perry shall have, and by appropriate action of its Council shall exercise, all powers which home rule cities are required to exercise or are permitted to exercise in its Charter except those limited or controlled by Chapter 11 of this Charter, and no specific enumeration of an authorized power shall be considered as exclusive of any other powers permitted by the laws of this State and this Charter.

The City and its officers shall have the power to exercise all municipal powers in the management and control of municipal property and in the administration of the municipal government except as otherwise limited or controlled by Chapter 11 of this Charter, whether such powers be expressly enumerated or not; do any act to advance the interests of the City, the good government and prosperity of the Municipality and its inhabitants, and through its regularly constituted authority; to pass and enforce all laws, ordinances, and resolutions relating to its municipal concerns, subject to the Constitution and general laws of the State and provisions of this Charter.

CHAPTER 4 GOVERNMENTAL ORGANIZATION

Section 4.6 Administrative Services.

There shall be, within the administrative service of the City, a Clerk, Treasurer, Assessor, Chief of Police, Superintendent of Public Works, Health Officer, Attorney and such additional administrative officers as may be created by ordinance or resolution except as limited or controlled by Chapter 11 of this Charter. The Council may, except as limited or controlled by Chapter 11 of this Charter, combine any administrative offices in any manner it deems necessary or advisable for the proper and efficient operation of the City. The City Council shall fix the rate of compensation for all administrative officers of the City within the limits of budget appropriations.

Except as hereinafter provided, all administrative officers of the City shall be appointed by the Mayor with the approval

of the Council, for an indefinite period, and shall serve at the pleasure of the Council.

If a vacancy occurs in any administrative office and the Mayor fails to make an appointment thereto approved by the Council within sixty days from the date the vacancy occurs, then such vacancy shall be filled by the Council.

Except as may be otherwise provided by statute or this Charter, the Council shall establish by ordinance or resolution such departments of the City as it deems necessary or advisable and shall prescribe therein the functions of each department and the duties, authorities and responsibilities of the officers of each department.

The City may by initiatory ordinance, to be approved by a majority vote of the electors of the City, create the office of City Manager. The City Manager shall be responsible to the Council for the efficient administration of all departments of the City government under his jurisdiction.

CHAPTER 9 MISCELLANEOUS

Section 9.1 Records to be Public.

All papers, books or other records of the City shall be public, unless otherwise provided by law or by Chapter 11 of this Charter; shall be kept in City Hall; and shall be available for inspection and copying at all reasonable times.

CHAPTER 11 MEDICAL MARIHUANA

Section 1. Purpose

The purpose of this article is to end the city's prohibition of marihuana facilities, and authorize and regulate such facilities within the city consistent with the Medical Marihuana Facilities Licensing Act, 2016 PA 281, MCL 333.27101 et seq, and to provide qualifying patients local access to medical marihuana for conditions such as epilepsy, multiple sclerosis, colitis, arthritis, crohn's disease, cerebral palsy, chronic pain, parkinson's disease, post traumatic stress disorder, and other medical conditions for which marihuana has been deemed an approved medical use by the State of Michigan. The administration and regulation of marihuana facilities within the City shall be carried out by the City Department of Medical Marihuana, whose powers and authority are enumerated herein. Nothing contained within this article, or within any local approval issued by the city, shall be construed to relieve a person of the duties and obligations imposed under state laws and regulations. Notwithstanding the foregoing, it is not the intent of this Article to diminish, abrogate or restrict protections for the medical use of marihuana provided in the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 et seq. Nothing in this Article is intended to grant individuals immunity from the enforcement of federal laws prohibiting marihuana activity. The provisions of this article are regulatory in nature and not intended to be interpreted as zoning laws. The provisions of this article are severable and self-executing. This article is hereby declared necessary to preserve the public peace, health, safety and welfare of the people of the city, to advance the interests of the city and the good government and prosperity of the city and its inhabitants through the city's regularly constituted authority to pass all laws

relating to its municipal concerns, to regulate occupations and trades in the city in accordance with state law, and to regulate marihuana facilities within the city pursuant to its authority to alter, amend or repeal any special act affecting any municipal concern.

Section 2. Definitions

(A) All definitions provided in the MMFLA are hereby Incorporated by reference into this article, and the term "marijuana" shall be synonymous with the term "marihuana."

(B) "Business facility address" is defined as the singular United States postal address, for a building structure located atop a land parcel, where a marihuana facility is proposed to be located for a license type listed in an application to the city. The existing square footage of the enclosed building structure at the business facility address at the time of the application's submission shall solely be used for determining the square footage of the business facility address.

(C) "Business facility adjacent address" is defined as the singular united states postal address of a building structure which is physically adjoining or directly physically touching the building structure of a business facility address. Physically adjoining shall, for the purposes of this definition, refer to the physical connection through walls, adjacent walls, or a common building structure, though this definition shall not include any common road, foundation, or surface That the building structure sits on.

(D) "City" shall refer to the City of Perry.

(E) "City department" is defined as the City's Department of Medical Marihuana.

(F) "City full license authorization" shall be defined as The full local approval that the city of Perry automatically grants a local applicant to operate a marihuana facility at a business facility address when the local applicant has received a state operating license pursuant to the MMFLA. It shall not be considered a municipal license.

(G) "Clerk" is defined as the city clerk of the City of Perry.

(H) "Council" is defined as the city council of the City of Perry.

(I) "Land parcel" or "parcel" shall be defined as a land parcel, with an associated tax identification number, allocated by the appropriate governmental body, whose official records are held by the clerk, the register of deeds, or other appropriate governmental body, for the purposes of tracking the use of land within the city.

(J) "License type" is defined as a single category of a license that a local applicant can apply for, such as a provisioning center license, a grower license, or any other license that a local applicant can apply for through the processes set forth in this article.

(K) "Local applicant" is defined as an individual, entity, person, or persons who submits an application for a license type to the city.

(L) "MMFLA" is defined as the Medical Marihuana Facilities

Licensing Act, 2016 PA 281, MCL 333.27101 et seq.

(M) "MMMA" is defined as the Michigan Medical Marihuana Act, 2008 IL 1, MCL 333.26421 et seq.

(N) "MRTMA" is defined as the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 et seq.

(O) "Provisional License" is defined as a provisional local authorization issued by the city for a local applicant, contingent upon approval of a state operating license by the agency, to operate a marihuana facility at a business facility address, provided that the provisional license shall become a city full license authorization upon the local applicant receiving a state operating license pursuant to the MMFLA. A local applicant shall be prohibited from operating a marihuana facility without a state license issued by the agency.

(P) "Percentage Occupancy" shall be defined as the occupancy percentage of a business facility address for the calendar year immediately prior to the application date or, if applicable, for the calendar year ending no earlier than three (3) months prior to the application date if the requirements of section 2(P)(4) are met, and shall consist of the occupancy percentage of any buildings, structures, or units contained within the parcel upon which the business facility address sits for the calendar year immediately prior to the application date. The percentage occupancy shall be calculated using the average square footage of any buildings, structures, or units contained within the parcel upon which the business facility address sits that is occupied during the calendar year immediately prior to the application

date, utilizing a method determined by the city department. The method of determining percentage occupancy shall be subject to the following requirements of this article:

(1) Construction activity, renovation activity, or storage activity in the buildings, structures, or units contained within the parcel upon which the business facility address sits shall not be considered occupancy or counted as part of the percentage occupancy of a business facility address. However, storage units which are part of commercial storage businesses where rent is paid for the use of a storage space shall be considered occupancy and shall count towards percentage occupancy, and storage activity relating to inventory and/or equipment incidental to the operation of a business or other organization that is otherwise occupying the business facility address shall be considered occupancy and shall count toward percentage occupancy.

(2) The determination of percentage occupancy shall require an occupancy affidavit and, if possible, provide supporting documentation attesting to the occupancy of any buildings, structures, or units contained within the parcel upon which the business facility address sits for the calendar year immediately prior to the application date, or, if applicable, for the calendar year ending no earlier than three (3) months prior to the application date if the requirements of section 2(p)(4) are met.

(3) For the purposes of issuing a provisional license, the city shall verify the percentage

occupancy of the business facility address through an occupancy affidavit and, if possible, utilizing other supporting documentation which may include, but not be limited to, lease documents, purchase agreements, certificates of occupancy, utility bills, and other documentation that can show the occupancy level over the time period.

(4) notwithstanding the requirements of this Section, if a local applicant submits an occupancy affidavit that is dated no earlier than three (3) months prior to the application date attesting to the percentage occupancy of the business facility address, the local applicant will be deemed to meet the requirements of the "calendar year immediately prior to the application date" percentage occupancy definition.

(Q) "Stand alone business facility address" is defined as a business facility address that does not have a business facility adjacent address and where the proposed business facility address is physically separated from areas where smoking or the use of cannabis is prohibited, not including the business facility address in question, and where smoke or the smell of cannabis does not infiltrate into nonsmoking areas or buildings that are not part of the business facility address.

Section 3. Authorization of Medical Marihuana Facilities

(A) Pursuant to the MMFLA, the City and the City Department shall immediately upon enactment of this article to authorize the following number of marihuana facilities to

operate within its boundaries:

- (1) Marihuana Safety Compliance Facility – one (1) license
 - (2) Marihuana Secure Transporter – One (1) license
 - (3) Marihuana Provisioning Center – Two (2) licenses issued at a minimum, maximum of two (2) licenses allowed
 - (4) Marihuana Processor – One (1) license
 - (5) Class A Marihuana Grower – One (1) license
 - (6) Class B Marihuana Grower – One (1) license
 - (7) Class C Marihuana Grower – One (1) license
- (B) Within 30 days of the effective date of this article, the city council shall enact all ordinances and resolutions necessary to facilitate operation of this article, but no ordinance or resolution shall limit or restrict the application of the provisions of this article.

Section 4. City Department of Medical Marihuana

This article establishes the City Department of Medical Marihuana which shall be responsible for the administration and regulation of marihuana facilities within the city subject to the laws of the State of Michigan. The city clerk shall be the director of the City Department of Medical Marihuana.

The City Department shall:

(A) Authorize marihuana facilities to operate between the hours of 9:00 AM to 9:00 PM, Monday through Sunday, though any marihuana processor or grower facility may operate twenty-four (24) hours per day, seven (7) days per week.

(B) On the tenth day after the effective date of this Article, begin to accept applications for provisional licenses. This initial application window shall close at 5:00 PM on the tenth day after it opens. If the City Department fails to make an application form available upon the opening of this initial application window, local applicants may submit their own application entitled "marihuana facility application" which shall conform to the requirements of this article.

(C) Require an affidavit from all local applicants attesting to the veracity of their application at the time of the application's submission, and verify that the information contained within the applications submitted by all local applicants is true to the extent that such information can be verified by the city department.

(D) Charge an application fee no greater than \$100, and charge a fee no greater than \$5,000 for the renewal of either a provisional license or a city full license authorization.

(E) Develop an application process for local applicants to apply for provisional licenses. This application process shall conform to and be limited to the following provisions of this article:

(1) Applications shall be scored using the

following transparent scoring procedure. Only one license type can be scored per application. The following scoring procedure is intended to ensure the fair, just, and proper implementation of this Article, ensure that licenses are awarded to local applicants who are best suited to operate in compliance with the MMFLA, and to promote the general welfare of the city.

(2) applications shall be scored on a scale from 0 to 100 points, with 100 being the highest possible score using the following scoring procedure:

(i) Local applicant vetting: this category allocates points based on the degree to which the local applicant has been found qualified for licensure by the agency. A maximum of fifty (50) points shall be awarded for this category. If the local applicant possesses a state operating license pursuant to the MMFLA or the MRTMA, fifty (50) points shall be awarded for this category; or, if the local applicant possesses a state pre-qualification approval from the agency pursuant to the MMFLA or the MRTMA, thirty (30) points shall be awarded for this category. A local applicant can only earn points for either a state operating license or a state pre-qualification approval in this category. Such documentation must be provided in the local applicant's application to be considered for scoring by the city department.

(ii) structural suitability: this category allocates points based on whether the business

facility address is likely to be in compliance with the MMFLA, the time it will take for the business facility address to come into compliance with the MMFLA, the safety risk posed by building structures that are not well suited to operate as marihuana facilities, and the need to minimize the impact of marihuana facilities to surrounding businesses. A maximum of twenty (20) points shall be awarded for this category. If the business facility address is a stand alone business facility address at the time of the application's submission, ten (10) points shall be awarded toward this category. Whether the business facility address is a stand alone business facility address at the time of the application's submission shall be demonstrated by a site plan or preliminary sketch submitted by the local applicant, the accuracy of which shall be verified by the clerk. Further, if the application is for a provisioning center license type and the business facility address contains a minimum of two thousand (2,000) square feet and no more than five thousand (5,000) square feet, ten (10) additional points shall be awarded toward this category, or if the application is for any other license type and the business facility address contains a minimum of five thousand (5,000) square feet, ten (10) additional points shall be awarded toward this category.

(iii) Commitment to community: this category allocates points based on the local applicant's commitment to advance the broader interest and goals of the community through investment in the people of the community and in the

community's tax base. this is demonstrated through the following criteria: commitment to the hiring of local residents and hiring of local contractors for work and improvements to its business facility address, and its commitment to long-term investment in the community through the redevelopment of vacant, blighted, or abandoned property in the community. A maximum of thirty (30) points shall be awarded for this category. Points in this category shall be awarded as follows: if the local applicant commits to hiring a minimum of ten (10) percent of its employees from residents of the city, five (5) points shall be awarded for this category. If the local applicant commits to hiring local contractors for work and improvements to its business facility address, five (5) additional points shall be awarded for this category. Points for long-term community investment and re-development in this category shall be awarded based on the percentage occupancy of the business facility address. if the business facility address has a percentage occupancy of zero (0) percent, the local applicant shall be awarded fifteen (15) additional points for this category. If the business facility address has a percentage occupancy greater than zero percent and less than or equal to twenty-five (25) percent, the local applicant shall be awarded ten (10) additional points for this category. If the business facility address has a percentage occupancy greater than twenty-five (25) percent and less than or equal to fifty (50) percent, the local applicant shall be awarded five (5) additional points for this category. If the business facility address has a percentage occupancy greater than fifty (50)

percent, the local applicant shall be awarded zero (0) additional points for this category. If the business facility address consists of no commercially viable building structures or is a vacant land parcel, the local applicant shall be awarded zero (0) additional points for this category. In addition, if the local applicant makes a legally binding commitment to donating \$10,000.00 per year to a community organization that provides food to food-insecure families who live within the municipality, five (5) additional points shall be awarded in this category.

(3) the city department shall sum the points awarded to each application submitted within the initial application window and award provisional licenses to the local applicants who are awarded the highest number of points. In the event of a tie in the scoring for two or more provisional license applications, the city shall hold a lottery, which shall be made open to the public, as a tiebreaker to decide among such local applicants.

(4) Applications shall include documentation of ownership, lease agreement, or other legal arrangement permitting the local applicant to apply for a license or any and all municipal permits or approvals needed for the business facility address at the time of the application's submission pursuant to the terms of this article.

(5) Applications shall include a sworn oath from an authorized representative of the local applicant that all information contained within the application is true to the best of their knowledge, and that they have the

exclusive authority to apply for a license type at the business facility address.

(6) Applications shall include an affidavit affirming and attesting that neither the local applicant nor any stakeholder of the local applicant is in default to the city.

(7) Applications shall include the full name, date of birth, physical address, email address, and telephone number of the local applicant in the case of an individual, or, in the case of an entity, all direct stakeholders thereof.

(8) Local applications shall still be considered if they are adjudged, at the discretion of the clerk, to be compliant with over 90 percent of the application requirements of this article.

(F) Review and score all applications submitted according to the requirements herein within a thirty day period after the close of the initial application window. Upon the thirty-first day after the closing of the initial application window, the city department shall award provisional licenses to local applicants in order from highest-scoring to lowest-scoring applications. If this does not occur, all local applicants shall have the ability to operate by right conditional upon receiving a license from the agency beginning on the thirty-second day after the closing of the initial application window. no application materials shall be subject to the freedom of information act, 1976 pa 442, MCL 15.231 et seq, except as required by state law.

(G) Promulgate rules that conform to, and do not

conflict with, the provisions of this article, including the following:

(1) Licensees or provisional license holders or city full license authorization holders may transfer a city full license authorization or provisional license to a location at a different business facility address upon receiving written approval from the city department which shall not be withheld unless the new proposed business facility address would be in violation of a local zoning ordinance. In order to request city department approval to transfer a city full license authorization or provisional license to a new business facility address, the licensee or provisional license holder or city full license authorization holder must make a written request to the city department, indicating the current location of the marijuana facility provisional license or city full license authorization and the new proposed business facility address. The city department shall respond to a location transfer request within five (5) days of receipt of the request.

(2) Licensees or provisional license holders or city full license authorization holders may transfer a city full license authorization or provisional license to a different individual or entity, and the licensee or city full license authorization holder or provisional license holder or provisional license holder shall notify the city department of the transfer. The transfer shall not require approval by the agency or the clerk. the city and city department shall be prohibited from interfering with

such transfers provided that the new owner must notify the city department of the transfer by filing an application with the city department upon a form provided by the city department or, if such a form is unavailable, they shall submit the same information required for an application for the transferred marihuana facility provisional license and file such information with the city department. In either case, the city department shall respond to such a transfer request within five (5) days of receipt of the request. The city and the city department shall grant the new licensee or provisional license holder or city full license authorization holder the same rights as the previous licensee or city full license authorization holder or provisional license holder.

(3) A provisional license and a city full authorization license shall each be considered a vested property right by the city and treated as such, and may not be revoked unless the accompanying state operating license issued by the agency for the license type at the business facility address is permanently revoked (not suspended) by the agency. Provisional licenses shall be valid for one (1) calendar year from the date they are issued. A provisional license or city full license authorization shall automatically be renewed each year for one (1) calendar year, and such renewals may occur in perpetuity. each local applicant shall pay a five thousand dollar (\$5,000) annual renewal fee, which may occur in perpetuity, and a license renewal may not be denied for failure to promptly pay an annual renewal fee.

(4) In any circumstance in which the city department has refused to issue a provisional license or city full license authorization or grant renewal of a provisional license or city full license authorization, or has revoked a city full license authorization, the city department shall notify a local applicant or licensee or city full license authorization holder or license holder of the reasons for denial, suspension or nonrenewal of an application for a license type or of a city full license authorization renewal or for revocation of a provisional license or city full license authorization or any adverse decision under this article and shall provide the local applicant or licensee or city full license authorization holder or provisional license holder with the opportunity to be heard. Any local applicant or licensee or city full license authorization holder or provisional license holder aggrieved by the denial, suspension, or revocation of a license or any other adverse decision under this article may appeal to the city department, who shall appoint a hearing officer to hear and evaluate the appeal and make a recommendation to the city department. such an appeal shall be taken by filing with the city department, within ten (10) days after notice of the denial, suspension, revocation or other adverse decision has been mailed to the last known address of the local applicant or licensee or provisional license holder or city full license authorization holder on the records of the city department, a written statement setting forth fully the grounds

for such appeal. The city department shall review the report and recommendation of the hearing officer and make a decision on the matter within ten (10) days. The city department's decision may not be further appealed within the city. Any decision by the council on an appeal shall be subject to all remedies available to the local applicant or licensee or provisional license holder or city full license authorization holder under the laws of the state of Michigan.

Section 5. Repealer

Any other provisions of articles, city regulations, city resolutions and ordinances that conflict with this article are inapplicable to conduct authorized under this article. The city council shall pass all ordinances, regulations, and resolutions necessary to give full effect to this article.

Section 6. Effective Date

This article shall become effective immediately upon certification by the Shiawassee county board of canvassers or the appropriate controlling body for certification of election results under state law.

Section 7. Severability and Execution

The various parts, sections and clauses of this article are hereby declared to be severable and self-executing. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid as to any person or circumstance by a court of competent jurisdiction, the remainder of the

article shall not be affected thereby and that invalidity or unenforceability shall not affect the validity, enforceability, or application of any other portion of this article. Other articles may be enacted to facilitate operation of this article. The city shall zealously advocate for and defend this article from any and all legal challenges and shall use best efforts to defend this article from any and all legal challenges that may arise. this subsection shall be liberally construed in favor of voters' rights in order to effectuate its purpose. If any portion of this subsection is held to be invalid or unenforceable as to any person or circumstance, that invalidity or unenforceability shall not affect the validity, enforceability, or application of any other portion of this article.

FORM OF THE PROPOSED BALLOT LANGUAGE:

MEDICAL MARIHUANA PROPOSAL

This proposed charter amendment, if adopted, would assist patients in need of medical marihuana for conditions such as epilepsy, multiple sclerosis, colitis, arthritis, crohn's disease, cerebral palsy, chronic pain, parkinson's disease, post traumatic stress disorder and other medical conditions for which marihuana is an approved medical use by the State of Michigan, end the City's prohibition of medical marihuana facilities, and create a City Department of Medical Marihuana responsible for overseeing the local regulatory structure for such facilities.

SHALL THE PROPOSAL BE ADOPTED?

YES NO

Attachment 3

to the letter to the Governor

Hartford report, MAMA PCLS

8.2.13

**After the Ballots are Counted:
Lessons Learned from the Trenches**

Harold G. Shuitmaker, *Shuitmaker, Cooper, Shuitmaker, Cypher & Knotek*

STATE OF MICHIGAN
IN THE 36TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF VAN BUREN

IN RE:
CITY OF HARTFORD, a Michigan Municipal
Corporation,

File No. 2012 CH-H

Plaintiff,

v.

Hon. Paul E. Hamre, Circuit Judge

UNKNOWN CLAIMANTS,

Defendant(s).

Harold Schuitmaker (P20087)
M. Brian Knotek (P55515)
Schuitmaker, Cooper, Schuitmaker, Cypher & Knotek, P.C.
Attorneys for Covert Township
181 W. Michigan Ave., Ste. 1
Paw Paw, MI 49079
269.657.3177

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES the CITY OF HARTFORD, by and through its attorneys, Schuitmaker, Cooper, Schuitmaker, Cypher & Knotek, P.C., pursuant to MCR 2.605, and for its Complaint seeking a declaratory judgment, states:

JURISDICTION AND PARTIES

1. Plaintiff, CITY OF HARTFORD (hereinafter "CITY"), is a Michigan municipal corporation, and a Home Rule City pursuant to the Home Rule City Act (Act 279 of 1909).
2. The subject of this action is legally defined as being within the city limits of the City of Hartford.

3. An action for a declaratory judgment is properly before this court as the court rules confer the power to render declaratory judgments upon Circuit Courts. MCR 2.605.

COMMON ALLEGATIONS

4. CITY does hereby restate and reallege paragraphs 1 through 3 and incorporates same by reference as if repeated verbatim herein.

5. Home Rule Cities may amend their charters in accordance with procedures found in MCL 117.21-117.25 of the Home Rule City Act (Act 279 of 1909).

6. The amendment process may be used to change details in the charter.

7. It is not permissible to change the form of government by charter amendment (e.g., providing for a city manager system in place of a mayor-council form). Examples of changes that can be made by amendment are changes to increase or decrease the number of council members, changing the position of clerk or treasurer from an elected to an appointed one, setting the purchasing dollar amount limit that can be spent before the municipality is required to establish a bid process, and establishing pension plans.

8. On July 23, 2011, an initiatory petition was filed with the Hartford City Clerk seeking an amendment to the City Charter to require a 2/3 majority vote of the registered electors of the City in order to approve or disapprove of the adoption or amendment of an ordinance, as well as a 2/3 majority of the registered electors of the City of Hartford in order to ratify the City Commission's adoption of any emergency

ordinance, with the electors of the City of Hartford serving "as part of the legislative body of the City of Hartford." Exhibit A. This initiative was approved by three votes.

9. As required by statute, the statement of purpose, proposed amendment and proposed ballot language were submitted to the Attorney General's office.

10. In an August 30, 2011 letter to Governor Snyder from Assistant Attorney General Stephen Rideout, Mr. Rideout opined that the proposed amendment essentially provided the voters in the City of Hartford with the authority to approve or disapprove all ordinances and all amendments to ordinances enacted by the City Commission. Exhibit B. This "proposed amendment", if passed, would abrogate the authority of the City Commission provided in the existing City Charter.

11. In a September 12, 2011 letter, Governor Snyder did not approve the proposed *Amendment* revision to the City Charter, quoting the conclusion of the Attorney General's office; i.e., "the proposal was not consistent with certain provisions of the Home Rule City Act, 1909 PA 279, MCL 117.1 et. seq. Exhibit C.

12. Despite the opinion of the Attorney General and the Governor that the proposed changes to the charter would result in a change in the form of government of the City of Hartford, an impermissible result by initiatory petition, the City was obligated nonetheless to present the questions to the voters of the City. MCL 117.22.

13. On November 8, 2011, the following question was presented to the voters of the City:

Shall Section 3.9(F) be added to the Charter of the City of Hartford be amended to: 1) to require an election to enact an ordinance or amendment to an ordinance; 2) require a 2/3rd's majority vote of the registered electors for the approval of the

enactment of any ordinance or amendment of any ordinance; 3) require the City to mail a copy of each proposed ordinance or amendment to all households within the City at least six weeks prior to the date of the election; and, 4) for these purposes, have the electors serve as part of the legislative body of the City?

14. The vote on the question was "Yes, 137" to "No, 134". The measure was approved by the voters.

15. The Michigan Constitution provides local governments with the legislative power and authority to adopt ordinances. The powers of the cities to do so is set forth in Article 7, Section 22 of the Michigan Constitution:

Each such city and village shall have the power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law.

16. The Michigan Constitution further requires that constitutional provisions and state laws concerning local government powers must be liberally construed. Article 7, Section 34 provides:

The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor.

17. The requirement that all ordinances or amendments to ordinances be first submitted to an election of all qualified voters (requiring a majority of qualified electors no less) is inconsistent with the following provisions of Home Rule Cities Act (HRCA), 1909 PA 279, MCL 117.1 et seq., as amended through 2011 PA 133:

a) *Under MCL 117.5(c) the City cannot call more than 2 special elections within one year. This would restrict the City's ability to adopt ordinances, even in emergency situations.*

b) *The question as approved by the voters would remove or substantially alter provisions in the Charter which are statutorily mandated [i.e., procedures of adopting, continuing, amending, and repealing the city ordinances, MCL 117.3(k)]*

18.

No provision of any city charter can conflict with or contravene the provisions of any general law of the state. MCL 117.36.

19.

The change approved by the voters would have the effect of removing or substantially altering provisions in the Charter which are statutorily mandated [i.e., procedures of adopting, continuing, amending, and repealing the city ordinances, MCL 117.3(k)].

20.

The change would alter the form of the City's government.

21.

This change cannot be done by simply amending the Charter; rather the entire Charter must be revised. See City of Midland v Arbury, 38 Mich App 771 (1972) (citing Kelly v Laing, 259 Mich 212, 217 (1932)); see also Opinion of Attorney General, 1975-1976, No. 4916, p. 259. Exhibit D.

22.

To revise the City's Charter in the manner approved by the voters would render the Charter itself inconsistent with Michigan law in several respects.

23.

The methods and procedures in the initiative petition did not comply with the Home Rule City Act because it sought a revision of the City Charter and not an amendment to the Charter.

24. The CITY brings this action following a resolution of the City Council adopted March 26, 2012. (Exhibit E)

25. Because the vote in the November 8, 2011 election was by secret ballot, those who voted in favor of the question are unknown.

26. Michigan Court Rules (MCR 2.201(D)) provide that persons who are or may be interested in the subject matter of an action, but whose names cannot be ascertained on diligent inquiry, may be made parties by being described as "unknown claimants".

COUNT I – DECLARATORY JUDGMENT

27. Plaintiff does hereby restate and reallege paragraphs 1 through 26 and incorporates same by reference as if repeated verbatim herein.

28. A declaratory action is necessary to guide the CITY in its conduct in order to comply with the Home Rule City Act.

29. An actual controversy exists with respect to the above, which can only be determined by an adjudication in the nature of a declaratory judgment, as provided by law.

30. The court may order a speedy hearing of this action for declaratory relief and may advance it on the calendar. MCR 2.605(D).

WHEREFORE, Plaintiff CITY OF HARTFORD, respectfully requests this Honorable Court enter a judgment:

A. Determining the question voted upon by the electors of the City be held inconsistent with and in violation of the Home Rule City Act (Act 279 of 1909).

B. Ordering that, despite the approval by the voters of the question presented, given its violation of the Home Rule City Act (Act 279 of 1909), the measure is of no legal effect and void ab initio.


C. Any other relief the Court deems just and equitable.

In Re: City of Hartford vs Unknown Claimants
Complaint for Declaratory Relief
Page 7

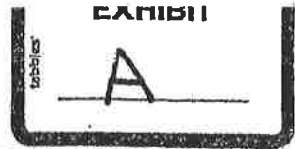
Respectfully submitted;

SCHUITMAKER, COOPER, SCHUITMAKER,
CYPHER & KNOTEK, P.C.

Dated: April 5, 2012



Harold Schuitmaker (P20087)
M. Brian Knotek (P55515)
Attorneys for City of Hartford



A PROPOSAL FOR A CHARTER AMENDMENT WHICH WOULD PLACE ANY PROPOSED ORDINANCES OR ANY PROPOSED AMENDMENT TO AN ORDINANCE TO A VOTE OF THE QUALIFIED ELECTORS OF THE CITY OF HARTFORD.

A proposal to amend section 3.9 of the city charter by the addition of the following:

SECTION 3.9

F. With the exception of any emergency ordinance or any ordinances initiated by a petition which is certified by the clerk to be sufficient and proper, no ordinance shall be enacted in the absence of a 2/3 majority vote of the registered electors in favor of such specific proposed or initiated ordinance, neither shall any amendment to any ordinance be enacted in the absence of a 2/3 majority vote of the registered electors in favor of such specific proposed or initiated amendment.

Any emergency ordinance shall be instantly and in all respects repealed in the absence of a 2/3 majority vote of the registered electors of the city of Hartford in favor of such specific emergency ordinance, to be held within 140 days from the date the aforementioned emergency ordinance was ordained by the city commission. In the absence of a 2/3 majority vote of the electors in favor of such aforementioned emergency ordinance, no similar ordinance/s affecting the same object/s, subject/s and/or action/s - nor any ordinance relating to the city commission's basis for action in adopting such emergency ordinance may be enacted as an emergency ordinance within four years following the repeal of such emergency ordinance.

A full copy of each proposed, initiated, or emergency ordinance and each proposed or initiated amendment to an ordinance shall be mailed to all households within the city of Hartford at least six (6) weeks prior to the date of the election in which such proposed, initiated or emergency ordinance or proposed/initiated ordinance amendment will be on the ballot. Within the same aforementioned mailing, shall be stated the date of election on which each such proposal and/or initiative will be on the ballot.

For the provision of this section - by reason of their role in determining the aforementioned ballot question/s - the electors of the city of Hartford serve as part of the legislative body of the City of Hartford.

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE
ATTORNEY GENERAL

August 30, 2011

SEP - 6 2011

EXHIBIT

B

P.O. Box 30754
LANSING, MICHIGAN 48909

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

Attention: Michael F. Gadola
Legal Counsel to the Governor

Dear Governor Snyder:

Re: **City of Hartford – proposed charter amendments by initiative petition**

Section 4.2.(A) - The proposed amendment, as more fully set forth in the attached petition identified under the heading Question #1, essentially provides the voters in the City of Hartford with the authority to select and remove the city manager, abrogating the authority provided to the City Commission in the existing charter.

Section 3.9 - The proposed amendment, as more fully set forth in the attached petition identified under the heading Question #2, essentially provides the voters in the City of Hartford with the authority to approve or disapprove all ordinances and all amendments to ordinances enacted by the City Commission, abrogating the authority of the City Commission provided in the existing charter. As explicitly stated in the petition: "the electors of the City of Hartford serve as part of the legislative body of the City of Hartford".

This office has examined two proposed charter amendments submitted via initiative petitions filed with the City of Hartford Clerk.

I have examined the proposed amendments in light of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq*, and conclude that the amendments are not consistent with the HRCA and cannot recommend your approval of these proposed amendments for the reasons set forth in this letter.

The proposed amendments fundamentally change the form of government in the City of Hartford by changing the role of the City Commission. All actions of the City Commission as they relate to the appointment/re-appointment and review of the city manager and the enactment/revision of ordinances, under the proposed amendments, are subject to majority vote of all qualified electors in the City rather than the City Commissioners acting as the representative of the residents of the City and as currently designated in the Charter.

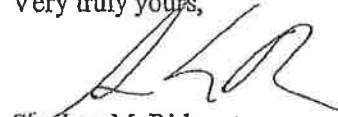
Hon. Richard D. Snyder
Page 2
August 30, 2011

As held by the Court of Appeals in *City of Midland v Arbury*, 38 Mich App 771, 774 (1972) "If the proposed change only amends, alters, or improves within the lines of the original charter, it is an amendment and the passage by the city electorate was valid. But, if the proposed change totally disrupts, cancels, abrogates, or makes inoperable the original charter, it is a revision and the amendment procedure and vote is subject to reversal. A change in the form of government of a home rule city may be made only by revision of the city charter, not by amendment." The Court stated that the amendment process under the HRCA was not available for a change in the form of the government of a home rule city, citing *Kelly v Laing*, 259 Mich 212, 217 (1932). See also OAG, 1975-1976, No 4916, p 259 (January 22, 1976).

It should be noted that Section 22 of the HRCA requires that all proposed amendments submitted by initiative petition shall be submitted to the city's voters for their approval – even if the Governor has declined to approve the charter amendments.

The Attorney General has a separate responsibility to review the proposed ballot language for compliance with the requirements of Section 21 of the HRCA. I have examined the ballot language for the proposed amendments. Because the ballot questions provided are not a true and impartial statement of the purpose of the amendments as the petitions do not call for the establishment of a Charter Commission, the ballot questions do not conform to the requirements of Section 21 of the Home Rule City Act.

Very truly yours,



Stephen M. Rideout
Assistant Attorney General
Finance Division
Phone: (517) 373-1130

SMR/sh
Enc.

c: ✓ Harold Schuitmaker, Attorney
RoxAnn Rodney-Isbrecht, Clerk

2011-0020608-A/City of Hartford/Gov ltr



STATE OF MICHIGAN
EXECUTIVE OFFICE
LANSING

RICK SNYDER
GOVERNOR



BRIAN GALLEY
LT. GOVERNOR

September 12, 2011

Mr. Harold Schuitmaker
City Attorney
City of Hartford
P.O. Box 520
181 W. Michigan Avenue, Suite 1
Paw Paw, Michigan 49079

Re: City of Hartford Proposed Charter Amendments by Initiative Petition

Dear Mr. Schuitmaker:

My office has received the proposed revised charter of the City of Hartford, which you submitted by way of a letter dated August 22, 2011. The Attorney General's Office reviewed the proposed amendments and in a letter dated August 30, 2011, concluded that the proposal was not consistent with certain provisions of the Home Rule City Act, 1909 PA 279, MCL 117.1 et seq.

Because of the inconsistency with state law identified in the attached letter from the Attorney General's Office, I do not approve the proposed revised charter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Snyder".

Rick Snyder
Governor

Attachment

c: Attorney General's Office, Finance Division
RoxAnn Rodney-Isbrecht, City Clerk



C

Court of Appeals of Michigan, Division No. 3.
CITY OF MIDLAND, a municipal corporation,
Plaintiff-Appellee,

v.

Anderson ARBURY, Defendant-Appellant.

Docket No. 11992.

Feb. 25, 1972.

Leave to Appeal Denied May 10, 1972.

Released for Publication May 12, 1972.

Action by city against defendant as circulator of petition requesting that city charter dealing with recall be amended. The Circuit, Court Midland County, James R. Rood, J., entered judgment from which defendant appealed. The Court of Appeals, McGregor, P.J., held that proposed change in city charter to add city manager to officers subject to voter recall would effectively destroy the city manager form of government and should be effected by means of a charter revision rather than by amendment.

Affirmed.

West Headnotes

11 Constitutional Law 92 ¶975

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional

Questions

92VI(C)2 Necessity of Determination

92k975 k. In General. Most Cited Cases

(Formerly 92k46(1))

Constitutional questions need not be decided where a case may be disposed of without such a determination.

12 Municipal Corporations 268 ¶46

268 Municipal Corporations

268I Creation, Alteration, Existence, and Disso-

lution

268I(C) Amendment, Repeal, or Forfeiture of Charter, and Dissolution

268k46 k. Amendment of Charter or Special Act. Most Cited Cases

Municipal Corporations 268 ¶48(1)

268 Municipal Corporations

268I Creation, Alteration, Existence, and Dissolution

268I(C) Amendment, Repeal, or Forfeiture of Charter, and Dissolution.

268k48 New Charter and Reorganization

268k48(1) k. In General. Most Cited

Cases

If proposed change only amends, alters, or improves within lines of original charter, it is an amendment and the passage by the city electorate is valid; but, if proposed change totally disrupts, cancels, abrogates or makes inoperable the original charter, it is a revision and the amendment procedures and vote are subject to reversal. M.C.L.A. §§ 117.18, 117.21.

13 Municipal Corporations 268 ¶46

268 Municipal Corporations

268I Creation, Alteration, Existence, and Dissolution

268I(C) Amendment, Repeal, or Forfeiture of Charter, and Dissolution

268k46 k. Amendment of Charter or Special Act. Most Cited Cases

Municipal Corporations 268 ¶48(1)

268 Municipal Corporations

268I Creation, Alteration, Existence, and Dissolution

268I(C) Amendment, Repeal, or Forfeiture of Charter, and Dissolution

268k48 New Charter and Reorganization

268k48(1) k. In General. Most Cited

Cases

A change in form of government of a home rule



CITY OF HARTFORD,
VAN BUREN COUNTY, MICHIGAN
RESOLUTION 2012 - 004

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HARTFORD, COUNTY OF VAN BUREN, STATE OF MICHIGAN TO BRING CIRCUIT COURT ACTION

At a meeting of the City Council of the City of Hartford, County of Van Buren, Michigan, held at the City Hall in said City on March 26, 2012, at 7:30 p.m. ET,

Present: Rodney Austin; Frank Dockter; Dennis Goss; Rick Hall; Leo Latus; John Miller and Ted Johnson

Absent: None

The following resolution was offered by Hall, and supported by Latus.

WHEREAS, on November 8, 2011, the following question was presented to the voters of the City:

Shall Section 3.9(F) be added to the Charter of the City of Hartford be amended to: 1) to require an election to enact an ordinance or amendment to an ordinance; 2) require a 2/3rd=s majority vote of the registered electors for the approval of the enactment of any ordinance or amendment of any ordinance; 3) require the City to mail a copy of each proposed ordinance or amendment to all households within the City at least six weeks prior to the date of the election; and, 4) for these purposes, have the electors serve as part of the legislative body of the City?

and,

WHEREAS, the vote on the question was "Yes, 137" to "No, 134". The measure was approved by the voters, and

WHEREAS, the Michigan Constitution provides local governments with the legislative power and authority to adopt ordinances, and

WHEREAS, the Michigan Constitution further requires that constitutional provisions and state laws concerning local government powers must be liberally construed, and

WHEREAS, The requirement that all ordinances or amendments to ordinances be first submitted to an election of all qualified voters (requiring a majority of qualified electors no less) is

inconsistent with the provisions of Home Rule Cities Act (HRCA), 1909 PA 279, MCL 117.1 et seq., as amended through 2011 PA 133, and

WHEREAS, the question as approved by the voters would remove or substantially alter provisions in the Charter which are statutorily mandated [i.e., procedures of adopting, continuing, amending, and repealing the city ordinances, MCL 117.3(k)].

NOW, THEREFORE, BE IT RESOLVED THAT:

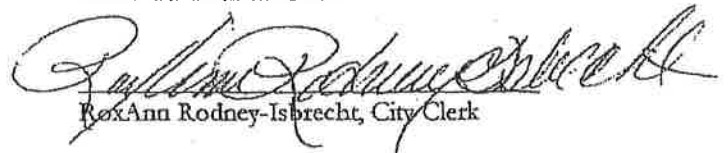
The City Manager, is hereby authorized to bring Circuit Court action in the Van Buren County Circuit Court to request the Circuit Court determine the question voted upon by the electors be held inconsistent with and in violation of the Home Rule City Act (Act 279 of 1909) and, given its violation of the Home Rule City Act, the measure is of no legal effect and *void ab initio*.

Ayes: Hall; Latus; Miller and Johnson

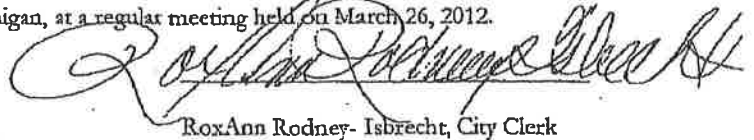
Nays: Austin; Dockter and Goss

Dated: March 26, 2012

CITY OF HARTFORD


RoxAnn Rodney-Isbrecht, City Clerk

I hereby certify that the foregoing is a true copy of the resolution adopted by the City Commission of the City of Hartford, County of Van Buren, State of Michigan, at a regular meeting held on March 26, 2012.


RoxAnn Rodney-Isbrecht, City Clerk

STATE OF MICHIGAN
IN THE 36TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF VAN BUREN

IN RE:

CITY OF HARTFORD, a Michigan Municipal
Corporation,

File No. 2012-62-007-CH-H

Plaintiff,

v.

Hon. Paul E. Hamre, Circuit Judge

UNKNOWN CLAIMANTS,

Defendant(s).

Harold Schuitmaker (P20087)
M. Brian Knotek (P55515)
Schuitmaker, Cooper, Schuitmaker, Cypher & Knotek, P.C.
Attorneys for Plaintiff
181 W. Michigan Ave., Ste. 1
Paw Paw, MI 49079
269.657.3177

DECLARATORY JUDGMENT DECLARING VOTE VOID AB INITIO

At a session of said Court held in the Courthouse in the Village of Paw
Paw, State of Michigan, on the 14th day of July, 2012.

PRESENT: The Honorable Paul E. Hamre, Circuit Judge

A COMPLAINT for declaratory judgment having been filed by the City of Hartford to guide the City of Hartford in its conduct in order to comply with the Home Rule City Act (1909 PA 279, MCL 117.1 et seq.), and publication in three legal newspapers, and posting having been made to inform all persons, proper proof of publication and posting having been filed with the court, and no appearance contesting this matter by anyone, and a default having been filed, and the Court being fully apprised in the premises,

IT IS HEREUPON ORDERED and ADJUDGED that the question voted upon and approved (by a 3-vote-margin) by the electors of the City of Hartford on November 8, 2011; i.e.,

Shall Section 3.9(F) be added to the Charter of the City of Hartford be amended to: 1) to require an election to enact an ordinance or amendment to an ordinance; 2) require a 2/3rd's majority vote of the registered electors for the approval of the enactment of any ordinance or amendment of any ordinance; 3) require the City to mail a copy of each

proposed ordinance or amendment to all households within the City at least six weeks prior to the date of the election; and, 4) for these purposes, have the electors serve as part of the legislative body of the City?

is hereby determined to be inconsistent with and in violation of the Home Rule City Act (Act 279 of 1909). Because the ballot language called for an illegal revision to the City Charter rather than a permissible amendment to the City Charter.

IT IS FURTHER ORDERED AND ADJUDGED that despite the approval by the voters of the question presented, given its violation of the Home Rule City Act (Act 279 of 1909), the measure is ORDERED AND ADJUDGED to be of no legal effect and void *ab initio*.

Dated: July 16, 2012

PAUL E. HAMRE

Paul E. Hamre, Circuit Judge

I:\PAM\HARTFORD\Charter Amendments\Declaratory Action\Declaratory Judgment.doc

TRUE COPY

JUL 16 2012

TINA LEARY
Van Buren County Clerk

