



# Michigan Department of State Campaign Finance and Financial Disclosure Complaint Form

**CLEAR FORM**

This complaint form may be used to file a complaint alleging that someone violated the [Michigan Campaign Finance Act \(MCFA\)](#), the [Candidate for Office Financial Disclosure Act](#), or the [Public Officers Financial Disclosure Act](#) (financial disclosure acts). Electronic submission of the form to [BOERegulatory@michigan.gov](mailto:BOERegulatory@michigan.gov) is strongly recommended. For instructions on how to complete this form, see the [Campaign Finance and Financial Disclosure Complaint Guidebook](#) document. All spaces are required unless otherwise indicated.

Section 1. Complainant		
Your name Susan M. Bisio		Daytime telephone number [REDACTED]
Mailing address P.O. Box 1303		
City Clarkston	State MI	Zip 48347
Email (recommended) [REDACTED]		

Section 2. Alleged Violator (Respondent)		
Name George M. Elworth		
Mailing address P.O. Box 30754		
City Lansing	State MI	Zip 48909
Email (recommended) elworthg@michigan.gov		
Committee ID (optional)		

*Please include email addresses to expedite processing time and mitigate mail delays.*

## Section 3. Allegations *(use additional sheets if more space is needed)*

I allege a violation of the following:

- MCFA
- Public officer disclosure
- Candidate disclosure

Identify the section(s) of the MCFA or relevant financial disclosure act section(s) alleged to be violated and explain how the section(s) were violated:

Please see attached Statement of Violation of Michigan Campaign Finance Act.

Evidence included with the submission of the complaint that supports the allegations:

Exhibit A - July 30, 2024, letter from George Elworth

Exhibit B - Attorney General Opinions Policy

Exhibit C - Chart - Comparison of the Local Historic Districts Act, Clarkston's Historic District Ordinance, and the HDC Charter Proposal

Exhibit D - October 24, 2024, Keep Clarkston Charming flyer

Exhibit E - October 30, 2024, Keep Clarkston Charming full-page Clarkston News advertisement

Exhibit F - October 25, 2024, Oakland Press article - "Clarkston voters asked to hand over Historic Commission control to city"

Exhibit G - July 10, 2024, The Traverse City Ticker article - "TIF Ballot Proposal Violates Law But Must Still Go to Voters, Says State"

#### **Section 4. Certification** *(required)*

I certify that to the best of my knowledge, information, and belief, formed after a reasonable inquiry under the circumstances, each factual contention of this complaint is supported by evidence.



Signature of complainant

October 30, 2024

Date

## Section 5. Certification without Evidence *(supplemental to Section 4)*

If, after a reasonable inquiry under the circumstances, you are unable to certify that certain factual contentions are supported by evidence as indicated above, you may make the following certification:

*I certify that to the best of my knowledge, information, or belief, there are grounds to conclude that the following specifically identified factual contentions are likely to be supported by evidence after a reasonable opportunity for further inquiry. Those specific contentions are:*

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Signature of Complainant

Date

Section 15(8) of the MCFA provides that a person who files a complaint with a false certification is responsible for a civil violation of the MCFA. The person may be required to pay a civil fine of up to \$1,000 and some, or all, of the expenses incurred by the Michigan Department of State and the alleged violator as a direct result of the filing of the complaint. MCL 169.215(16).

The financial disclosure acts prohibit a person from filing a complaint with a false certification. MCL 169.313(7); MCL 15.713(7).

## Section 6. Submission

Once completed, submit the complaint form with your evidence to [BOERegulatory@Michigan.gov](mailto:BOERegulatory@Michigan.gov). Alternatively, you may mail or hand deliver the complaint form with your evidence to the address below. The complaint is considered filed upon receipt by the Bureau of Elections.

Michigan Department of State  
Bureau of Elections  
Richard H. Austin Building – 1st Floor  
430 West Allegan Street  
Lansing, Michigan 48918



Susan Bisio v George M. Elworth, Assistant Attorney General, Michigan  
Attorney General  
Section 3 of Complaint Form  
Statement of Violation of Michigan Campaign Finance Act

I and my husband Richard Bisio are involved with a ballot proposal from Citizens for A Sensible Historic District Commission that would add a new Chapter XVI to the City of the Village of Clarkston Charter titled "Historic District and Historic District Commission." This initiative proposal has been submitted to Clarkston voters at the November 5, 2024, election.

The proposal provides for informal dispute resolution with residents; compliance with the Michigan Open Meetings Act and state record-keeping obligations; limiting Historic District Commission (HDC) review to only those things authorized by the Local Historic Districts Act (LHDA), MCL 399.201, *et seq.*; involvement of the city council before the HDC issues an order in three unusual circumstances that would most likely result in significant unbudgeted legal costs to taxpayers; and addressing some of the HDC mistreatment of residents that has occurred over the years (since citizen complaints to the city council about HDC mistreatment have fallen on deaf ears). We believe Clarkston city officials affirmatively and unlawfully used public resources to oppose the ballot proposal and their actions are the subject of two separate campaign finance complaints submitted by Richard Bisio.

As required by state law, the charter proposal was sent to the governor's and attorney general's offices for review. Section 21(2) of the Home Rule City Act (HRCA), MCL 117.21(2), sets out the attorney general's role. It is to determine whether the text of the ballot proposal statement is "not more than 100 words, exclusive of caption, that shall consist of a true and impartial statement of the purpose of the amendment or question in language that does not create prejudice for or against the amendment or question" before ballots are printed.

On July 30, 2024, George M. Elworth, assistant attorney general, sent a letter to Governor Gretchen Whitmer purportedly in response to the Governor's request for a review of the charter proposal. The letter was published using the attorney general's official letterhead and is attached as Exhibit A. Elworth went beyond his HRCA obligations and claimed, "[a] review of the terms of the [charter proposal] discloses that they are in conflict with the provisions of

the Local Historic District [sic] Act in that they seek to rewrite the city's current historic district ordinance." Elworth also alleged the charter proposal was inconsistent with the Home Rule City Act. Finally, Elworth claimed the ballot language itself was inaccurate "because it does not disclose that the proposed amendment is contrary to the [LHDA] . . . ." Elworth's letter did not explain which provisions of the charter proposal were purportedly in conflict with the LHDA, how the proposal seeks to rewrite Clarkston's historic district ordinance, or why it would be a violation of the LHDA if Clarkston's historic district ordinance were changed by the city council or through a ballot proposal. This letter was not intended to be a privileged communication because it was copied to the Clarkston clerk and Clarkston city attorney.

I was a municipal attorney working for public corporations for almost twenty years, and based on that experience, it's obvious to me that the Elworth letter is not the type of privileged communication that would be prepared if Elworth were providing advice to an executive branch client in response to a formal request for an explanation of the prevailing law and why the charter proposal purportedly fails to comply with it. It's not a formal attorney general opinion, nor would such an opinion be appropriate under the attorney general's opinion policy that I've copied from the Attorney General's website and attached as Exhibit B. It goes beyond the statutory obligation of the attorney general to review whether the ballot language is 100 words or less and accurately describes the proposed amendment. Not only is Elworth's letter purposefully vague, but his conclusions are factually and legally incorrect. I've prepared a chart analyzing each section of the charter proposal and comparing it to the LHDA and the Clarkston historic district ordinance. This chart is attached as Exhibit C.

Initiative ballot proposals aren't usually favored by local government and the Clarkston charter proposal is no different. Clarkston government officials have used public resources in the city's efforts to oppose the proposal, including requiring the proponents to file a lawsuit to get the proposal on the ballot, refusing to be open about what the city was doing, soliciting opposition material from the state, inserting opposition material in HDC minutes, and setting up a special city council meeting to provide a forum for those opposing the proposal.

Elworth's vaguely worded letter was less about directly providing advice to the Governor's office than it was to indirectly provide fodder for ballot proposal

opponents to use as ammunition to encourage a “no” vote against an initiative charter proposal. The Elworth letter served its intended purpose.

On October 24, 2024, the ballot proposal committee formed to oppose the charter amendment created and blanketed the city with a flyer highlighting portions of Elworth’s letter with a cover page that suggested the Michigan Attorney General’s office itself has determined the charter proposal “doesn’t pass legal muster” and conflicts with state law. A copy is attached as Exhibit D. This group also took out a full-page ad in our community newspaper making similar claims on October 30, 2024. A copy is attached as Exhibit E.

The Elworth letter was also discussed in a critical story in the Oakland Press on October 25 titled “Clarkston voters asked to hand over Historic District Commission Control to City” which included the following quote: “According to George Elworth, assistant attorney general of the state operations division, the proposed amendment conflicts with the LHDA and violates state law.” Though the Oakland Press story was published behind a paywall, the full article was picked up by MSN and published at <https://www.msn.com/en-us/news/us/clarkston-voters-asked-to-hand-over-historic-commission-control-to-city/ar-AA1sWjKM> (last visited October 28, 2024) where it is broadly available. The Clarkston city attorney jumped on the bandwagon and was quoted in the Oakland Press article as saying: “Even though the governor and/or the attorney general believes it is not lawful, it still has to go on the ballot to be voted on by voters and gets sorted out after that if it passes.” But, as the city attorney undoubtedly knows, the attorney general herself has not weighed in on whether the proposal is “unlawful,” nor did the Elworth “opinion” go through the extensive review that attorney general opinions are required to undergo before public release. A copy of the Oakland Press article is attached as Exhibit F.

In researching Elworth, I found another example of similar conduct this election cycle. Voters in Traverse City will apparently be considering an initiative ballot proposal regarding tax increment financing (TIF) as described in a July 10, 2024 article in The Traverse City Ticker titled “TIF Ballot Proposal Violates Law But Must Still Go to Voters, Says State,” <https://www.traverseticker.com/news/tif-ballot-proposal-violates-law-but-must-still-go-to-voters-says-state/> (last visited October 30, 2024). A pdf copy of the article is attached as Exhibit G. As he did in the Clarkston matter, Elworth alleged the Traverse City TIF proposal violated state law. His correspondence was characterized in The Traverse City Ticker article as a “new

opinion from the state attorney general's office," although it undoubtedly was not an attorney general opinion. The Traverse City city attorney acted similarly to the Clarkston city attorney, claiming the "state's chief lawyer has looked at it," and the city attorney "couldn't rule out a lawsuit if the proposal passes," even though the Traverse City city attorney is undoubtedly aware that Elworth is not the "state's chief lawyer" and his letter is not an officially sanctioned opinion authorized by Attorney General Dana Nessel. As happened in Clarkston, proponents of the Traverse City ballot initiative proposal pointed out that Elworth's analysis and reasoning was inadequate, and the opponents used his communication as ammunition to urge a no vote on the proposal. (My review of the Traverse City ballot initiative matter is limited to The Traverse City Ticker article that I found appropriate to include with this complaint because the public reaction to the Traverse City Elworth letter was similar to the public reaction to the Clarkston Elworth letter.)

The Elworth letter regarding the Clarkston charter proposal initiative is imbued with the imprimatur of the Attorney General herself because it was published using official Attorney General letterhead, even though the text of his letter was not an officially sanctioned opinion from the Office of the Attorney General. Since the Elworth letter regarding the Clarkston charter proposal was purposefully vague and contained no reasoning or specifics for its conclusion, it was impossible for the proposal proponents to adequately respond to its extensive use as campaign fodder by the proposal opponents.

I believe that's exactly the result Elworth intended when he wrote a public letter that he copied to the Clarkston city officials, one or more of whom shared the letter with ballot opponents for use in communications with a public that is generally uninformed about what an attorney general opinion is and how much weight a letter from a staff attorney exceeding his legal obligation under the HRCA should be given. The circumstances allow a reasonable inference that Elworth intended his letter to be used in opposition to the charter proposal. Those circumstances include the fact that the letter contains no substantive analysis but rather is a conclusion without factual or legal support; the letter was not transmitted to the governor subject to attorney-client privilege or other confidentiality but was intended to be publicly available; the letter was transmitted to Clarkston city officials who are opponents of the ballot question and who improperly used city resources to oppose the ballot question; and the letter was transmitted from city officials

to the ballot committee opposing the proposal and widely used by that ballot committee to oppose the ballot question.

Based on the above, the Elworth letter constitutes use of public resources to advocate against approval of the ballot proposal in violation of section 57(1) of the MCFA, MCL 169.257(1). It was produced by an expenditure of state resources as defined in section 6(1) of the MCFA, MCL 169.206(1) because it used the services or facilities of the state in assistance of defeat of a ballot question. Section 57(1) prohibits a public body or person acting for a public body, such as Elworth, from using public resources to make an expenditure as the MCFA defines that term.



# Exhibit A

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30754  
LANSING, MICHIGAN 48909

DANA NESSEL  
ATTORNEY GENERAL

July 30, 2024

**By email only**

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

Attention: Christina Grossi  
Legal Counsel to the Governor

**Re: City of the Village of Clarkston Charter Amendment proposed  
by Initiative Petition –**

Chapter XVI (Historic District and Historic District Commission) – requirements, limitations, procedures, and sanctions applicable to members of the city's historic district commission, city officials, and city employees who implement the city's historic district ordinance which established the Clarkston historic district and governs the Clarkston historic commission

Dear Governor Whitmer:

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

The proposed amendment

The amendment would add a new Chapter XVI (Historic District and Historic District Commission) setting forth requirements, limitations, procedures, and sanctions applicable to members of the city's historic district commission, city officials, and city employees who implement the city's historic district ordinance which established the Clarkston historic district and governs the Clarkston historic commission. According to the city's website, in 1996 the city established a historic district governed by a five-member historic commission. Sections 2 and 4 of the Local Historic Districts Act (Local Historic District Act), 1970 PA 169, as amended,

Honorable Gretchen Whitmer  
Page 2  
Clarkston charter amendment  
July 30, 2024

MCL 399.201 *et seq.*, authorizes a city to establish by ordinance a historic district to be administered by a historic district commission.

Although a city generally has the discretion to provide instructions in its charter to the city council as to the implementation of city ordinances, that discretion is limited in Section 36 of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.*, which states that a charter provision shall “not conflict with or contravene the provisions of any general law of the state.”

A review of the terms of the proposed Chapter XVI (Historic District and Historic District Commission) discloses that they are in conflict with the provisions of the Local Historic District Act in that they seek to rewrite the city’s current historic district ordinance.

Based on the foregoing analysis, I have reviewed the proposed amendment in light of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.*, and conclude that the proposed amendment is **not** consistent with that act.

The ballot language for the proposed amendment

The Attorney General has a separate responsibility to review the ballot language for compliance with the requirements of Section 21(2) of the HRCA, which mandate that the ballot language be limited to 100 words exclusive of caption, and accurately and impartially describe the proposed amendment. I have examined the ballot language for the proposed amendment set forth in the text of the petition and found that the ballot language is **not accurate** because it does not disclose that the proposed amendment is contrary to the Local Historic Districts Act (Local Historic District Act), 1970 PA 169, as amended, MCL 399.201 *et seq.*

Sincerely,  
*/s/George M. Elworth*  
George M. Elworth  
Assistant Attorney General  
State Operations Division  
(517) 335-7573

GME:bjb

Enc: Correspondence from the Governor’s office dated 7-15-2024

cc with enc. *by email only*:

Catherine Ashley, Clarkston city clerk, [clerk@villageofClarkston.org](mailto:clerk@villageofClarkston.org)

Thomas Ryan, Clarkston city attorney, [sylvanlawtr@gmail.com](mailto:sylvanlawtr@gmail.com)

Kristina Gierhart, Executive Assistant, Governor’s Office,

[GierhartK1@michigan.gov](mailto:GierhartK1@michigan.gov)

# Exhibit B



## **AG Attorney General**

### Opinions Policy

Michigan law, MCL 14.32, provides that "[i]t shall be the duty of the attorney general, when required, to give his opinion upon all questions of law submitted to him by the legislature, or by either branch thereof, or by the governor, auditor general, treasurer or any other state officer . . . ." Michigan's Supreme Court has recognized that one of the "primary missions" of the Attorney General is to give legal advice to the Legislature, and to departments and agencies of state government. *East Grand Rapids School Dist v Kent County Tax Allocation Bd*, 415 Mich 381, 394; 330 NW2d 7 (1982). Although not legally required to do so, the Attorney General may respond to opinion requests from individual members of the Legislature. In deciding whether to grant such requests, the Attorney General takes into account the need to allocate limited resources and other long recognized policy considerations outlined below. County prosecutors may also submit opinion requests provided that they are accompanied by a memorandum of law analyzing the legal question.

Consistent with her primary mission, the Attorney General prioritizes opinion requests that affect the operation of state government. Because the Legislature has authorized local units of government to employ their own legal counsel to provide guidance on matters of local concern, the Attorney General typically does not issue opinions concerning the interpretation of local charters, local ordinances, locally negotiated collective bargaining agreements, and other uniquely local issues. Other typical reasons for declining a request are: 1) the requester is not a person authorized to request an opinion under the applicable law; 2) the request seeks an interpretation of proposed legislation that may never become law; 3) the question asked is currently pending before a court or administrative tribunal or likely to be the subject of litigation in the near future; 4) the request involves the operation of the judicial branch of government or a local unit of government; or 5) the request seeks legal advice on behalf of, or involves disputes between, private persons or entities.

If the opinion request is granted, it is assigned to an assistant attorney general having recognized expertise in the relevant area of the law. This attorney is expected to prepare a thoroughly researched and well-written draft. The Assistant Attorney General for Law



then reviews the draft to assure it is legally sound and performs any editing that may be needed before sending the draft to the Chief Legal Counsel. The draft also may be circulated to other attorneys within the Department of Attorney General for additional substantive review. Drafts of most formal opinions and some letter opinions are first submitted for consideration and approval by the Attorney General's Opinion Review Board (ORB), before submission to the Attorney General for review. Given the time and attention accorded these matters, the opinions process may take several months to complete depending upon the complexity of the question presented.



## **Opinions Policy**

Copyright State of Michigan

# Exhibit C

**Comparison of the Local Historic Districts Act, Clarkston’s Historic District Ordinance,  
and the HDC Charter Proposal**

<b>Charter Proposal Section</b>	<b>Local Historic Districts Act (Abbreviated “LHDA” Below)</b>	<b>Clarkston Ordinance</b>	<b>HDC Charter Proposal</b>
Section 16.3 – Authority	State law	LHDA	LHDA; Article 7, Section 22 of Michigan Constitution (voters can adopt and amend charter); Home Rule City Act
Section 16.4 – Appointment of Commissioners	5 to 7 commissioners; must reside in city; must have a clearly demonstrated interest or knowledge of historic preservation; appointed by mayor unless another method is specified in the ordinance; 3-year term; eligible for reappointment; vacancies filled within 60 days; ordinance can allow for removal of members; prefers one member be an architect if available	Same as the LHDA except the number of commissioners is limited to five. Our ordinance allows appointments by city council.	Same as the Clarkston Ordinance but adds that vacancies must be publicized 35 days before appointment; 3 of 5 members must be able to demonstrate in writing that they have more than a general interest in historic preservation or they have had work done on their property; search must continue if the opening is for one of the three people who need to have more than general interest in preservation
Section 16.5 – Commission Policies and Procedures	HDC must adopt rules of procedure and design standards and guidelines	Allows the HDC to adopt rules of procedure but requires the HDC to adopt design review standards and guidelines	Requires the HDC work with the city council to adopt policies and procedures that must be submitted within 30 days after adoption of charter amendment and before matters can be acted upon; must be posted on the city’s website and made available in paper form on request.
Section 16.6 – Commission meetings	Must comply with the Michigan Open Meetings Act; public meeting notices must contain the time, date, place, and an agenda that lists each permit application to be considered	Same as the LHDA.	Same as the LHDA; eliminates Memoranda of Administrative Approval because they are used to violate the Open Meetings Act; meetings must be recorded and uploaded to the city’s website the next business day; meeting minutes must include the speaker, the substance, the decisions, and the reasons for the decisions; people may not be discouraged from attending meetings
Section 16.7 – Commission records	HDC must keep copies of resolutions, proceedings, and actions; records are subject to the Freedom of Information Act	Same as the LHDA.	Same as the LHDA. Defines what commission records are; requires the HDC provide records to the city clerk to be maintained in city files.

**Comparison of the Local Historic Districts Act, Clarkston’s Historic District Ordinance,  
and the HDC Charter Proposal**

<b>Charter Proposal Section</b>	<b>Local Historic Districts Act (Abbreviated “LHDA” Below)</b>	<b>Clarkston Ordinance</b>	<b>HDC Charter Proposal</b>
Section 16.8(a) - Commission Authority – Actions Prohibited When Commission Has No Authority to Regulate	Defines the limits of the things the HDC can regulate	Same as the LHDA.	Same as the LHDA. If the LHDA doesn’t allow the HDC to regulate a matter, then the HDC is prohibited from regulating the matter. This means the HDC can’t demand property owners apply for a permit, can’t take enforcement action, and can’t demand the property owner justify the work on matters that the HDC isn’t authorized to regulate.
Section 16.8(b) - Commission Authority – No Authority Over Ordinary Maintenance	The HDC cannot regulate ordinary maintenance that doesn’t change the exterior appearance of a resource.	Same as the LHDA.	Same as the LHDA.
Section 16.8(c) - Commission Authority – Limitation of Authority Over Repairs	The HDC cannot regulate repairs that do not change the exterior appearance of a resource.	Same as the LHDA.	Same as the LHDA.
Section 16.8(d) - Commission Authority – Limitation of Authority Over the Exterior of Resources	HDC can only regulate matters that change the exterior of a resource and must follow the US secretary of the interior’s guidelines	Same as the LHDA.	Same as the LHDA. Further defines the “exterior of a resource” to mean what it has traditionally meant in the city – things that can be seen by a person of ordinary height from the public road or public sidewalk without the use of visual aids.

**Comparison of the Local Historic Districts Act, Clarkston’s Historic District Ordinance,  
and the HDC Charter Proposal**

<b>Charter Proposal Section</b>	<b>Local Historic Districts Act (Abbreviated “LHDA” Below)</b>	<b>Clarkston Ordinance</b>	<b>HDC Charter Proposal</b>
<p>Section 16.8(e) - Commission Authority – Limitation of Authority Over Open Spaces</p>	<p>“Open spaces” include undeveloped land, a naturally landscaped area, or a formal or manmade landscaped area that provides a connective link or buffer between other resources while also defining a historic resource as a publicly or privately owned building, structure, site, object, feature, or open space <i>that is significant in the history, architecture, archaeology, engineering, or culture of this state or a community within this state or the United States.</i></p>	<p>Same as the LHDA.</p>	<p>Open spaces within the city are limited to a few privately owned lots and Depot Park. Clarkston is on the National Register of Historic Places because it was a mill town in the 1800s. Same as the LHDA but declares that Depot Park is the only “open space” that can be regulated <i>because the few privately owned vacant lots that exist are not significant in the history, architecture, archaeology, engineering, or culture of this state or a community within this state or of the United States.</i> Should someone wish to build on a vacant lot, then this section would not apply, and the proposed structure would need to receive all city approvals, including HDC approval if the structure is proposed within the historic district.</p>
<p>Section 16.8(f) - Commission Authority – Limitation of Authority over Plants, Trees, Landscaping, and Fences</p>	<p>Not specifically mentioned as a subject for HDC regulation.</p>	<p>Not specifically mentioned as a subject for HDC regulation.</p>	<p>In recognition of the fact that Clarkston’s claim to its spot on the National Register of Historic Places is because it was a mill town in the 1800s, the charter language declares that the current configuration of plants, trees, landscaping, and fences <i>are not significant in the history, architecture, archaeology, engineering, or culture of this state or a community within this state or of the United States.</i> Therefore, they are not subject to HDC regulation.</p>
<p>Section 16.8(g) - Commission Authority – Limitation of Authority Over Painting</p>	<p>Not specifically mentioned as a subject for HDC regulation.</p>	<p>Not specifically mentioned as a subject for HDC regulation.</p>	<p>Affirms the HDC cannot regulate painting, which is ordinary maintenance outside the HDC’s authority.</p>



**Comparison of the Local Historic Districts Act, Clarkston’s Historic District Ordinance,  
and the HDC Charter Proposal**

<b>Charter Proposal Section</b>	<b>Local Historic Districts Act (Abbreviated “LHDA” Below)</b>	<b>Clarkston Ordinance</b>	<b>HDC Charter Proposal</b>
Section 16.8(h) - Commission Authority – No Memorandum of Administrative Approval	Neither mentioned nor authorized.	Neither mentioned nor authorized.	The HDC implemented the Memorandum of Administrative Approval to evade the Open Meetings Act. They are prohibited.
Section 16.9(a) - Commission Conduct, Orders, and Enforcement - Standards and Guidelines	HDC must follow the United States secretary of the interior’s standards for rehabilitation of historic buildings as outlined in the Code of the Federal Regulations, 36 CFR 67 and must also consider historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area; the relationship of any architectural features of the resource to the rest of the resource and to the surrounding area; the general compatibility of the design, arrangement, texture, and materials proposed to be used; other factors, such as aesthetic value, that the commission finds relevant; and whether the applicant has certified there will be an adequate fire or smoke alarm system	Same as the LHDA.	Same as the LHDA and prohibits “borrowing” standards and guidelines that apply to other activities that do not involve rehabilitating historic buildings.
Section 16.9(b) - Commission Conduct, Orders, and Enforcement - Entry onto Private Property	Neither mentioned nor authorized.	Neither mentioned nor authorized.	In Michigan, trespassing onto private property after being forbidden to do so can result in a 30-day jail sentence and a \$250 fine. HDC commissioners are expressly forbidden from entering onto private property without the consent of the property owner or occupant – each time there is an entry onto private property.

**Comparison of the Local Historic Districts Act, Clarkston’s Historic District Ordinance,  
and the HDC Charter Proposal**

<b>Charter Proposal Section</b>	<b>Local Historic Districts Act (Abbreviated “LHDA” Below)</b>	<b>Clarkston Ordinance</b>	<b>HDC Charter Proposal</b>
<p>Section 16.9(c) - Commission Conduct, Orders, and Enforcement - Limitation on Enforcement Action</p>	<p>Encourages the HDC to work with owners to establish an economically feasible plan to preserve the resource when the proposed work would affect the exterior of a resource.</p>	<p>Same as the LHDA.</p>	<p>Does not limit HDC enforcement action but requires the HDC take steps <u>before</u> taking enforcement action. The HDC must send a written notice to the property owner explaining that the HDC is contemplating enforcement action and providing the owner with sufficient time to comply (no less than 35 days), engage in good faith negotiation to resolve any issues (discussion), and in the unlikely event the HDC and the property owner can’t agree, then the city will pay for mediation to resolve the issue. No enforcement action may be taken during the time the owner has been given to begin and finish repairs, while discussions are occurring, or during mediation. If these preliminary steps don’t resolve the HDC’s concerns, then the HDC can proceed to formal enforcement action which can include civil infractions and fines, Demolition by Neglect Orders, or Restoration or Modification Orders.</p>
<p>Section 16.9(d) - Commission Conduct, Orders, and Enforcement - Delegation of Authority</p>	<p>Allows the HDC to delegate the authority to issue Certificates of Appropriateness for specified minor classes of work that the full HDC reviews quarterly.</p>	<p>Same as the LHDA, but the HDC has not used this authority.</p>	<p>Same as the LHDA. Specifies that the authority can be delegated to the HDC chair, HDC secretary, and the city manager. Standards for delegation of authority must be reviewed and approved by the city council.</p>

**Comparison of the Local Historic Districts Act, Clarkston’s Historic District Ordinance,  
and the HDC Charter Proposal**

<b>Charter Proposal Section</b>	<b>Local Historic Districts Act (Abbreviated “LHDA” Below)</b>	<b>Clarkston Ordinance</b>	<b>HDC Charter Proposal</b>
<p>Section 16.9(e) - Commission Conduct, Orders, and Enforcement - Civil Infractions</p>	<p>Allows for a civil violation and fine up to \$5,000 for violations but establishes no procedure for issuing citations.</p>	<p>Same as the LHDA.</p>	<p>Same as the LHDA but sets up a procedure that would allow the HDC to issue civil infractions. Requires the HDC establish a schedule of violations and maximum fines for each violation that must be approved by council and include an effective date; civil infractions must be approved by city council before issuance because of the extremely high risk that taxpayers will have to pay for legal expenses to defend civil infractions; only the city manager may issue an HDC civil infraction citation and s/he must follow the state law that governs civil infractions (found in MCL 600.8707). The HDC has never issued a civil infraction.</p>

**Comparison of the Local Historic Districts Act, Clarkston’s Historic District Ordinance,  
and the HDC Charter Proposal**

<b>Charter Proposal Section</b>	<b>Local Historic Districts Act (Abbreviated “LHDA” Below)</b>	<b>Clarkston Ordinance</b>	<b>HDC Charter Proposal</b>
<p>Section 16.9(f) - Commission Conduct, Orders, and Enforcement - Demolition by Neglect</p>	<p>HDC can order a property owner to repair property when an exterior feature has been allowed to deteriorate or if there is a loss of structural integrity. If the property owner doesn’t perform the repairs within a reasonable period of time, the HDC can request a court order that allows the HDC or its agents to enter onto private property and forcefully make the necessary repairs, the cost of which can be charged to the property owner or levied as a special assessment on the property.</p>	<p>Same as the LHDA.</p>	<p>Same as the LHDA but requires a preliminary step before the formal processes are followed. The HDC must submit a proposed Demolition by Neglect Order to the city council for approval before issuing the order or asking for a court order to enforce compliance with the order. The litigation risk over an HDC order is high, and litigation is guaranteed if the HDC seeks a court order (because it requires that the HDC sue the property owner who will then have the right to defend against the lawsuit and countersue the HDC). Council approval is required because the legal fees for these actions are not covered by the city’s insurance and would need to be paid with taxpayer funds, and the city attorney attends all council meetings and can advise both the council and the HDC on the likelihood of success if the order is issued. Demolition by Neglect orders should be a rare occurrence, and we are unaware that the HDC has ever sought to enter onto private property and forcefully do repairs on an owner’s property since its creation.</p>

**Comparison of the Local Historic Districts Act, Clarkston’s Historic District Ordinance,  
and the HDC Charter Proposal**

<b>Charter Proposal Section</b>	<b>Local Historic Districts Act (Abbreviated “LHDA” Below)</b>	<b>Clarkston Ordinance</b>	<b>HDC Charter Proposal</b>
<p>Section 16.9(g) - Commission Conduct, Orders, and Enforcement - Restoration or Modification</p>	<p>If a property owner has done work on property that affects the exterior of the property without receiving a Certificate of Appropriateness from the HDC, the HDC can order the property owner to restore the property to its original condition or to modify the work that has been done on the property so that it qualifies for a Certificate of Appropriateness. If the property owner doesn’t restore the property to its original condition or modify the work that has been done on the property so that it qualifies for a Certificate of Appropriateness within a reasonable time, the HDC can request a court order that allows the HDC or its agents to enter onto private property and forcefully restore or modify the property until the property can qualify for a Certificate of Appropriateness, the cost of which can be charged to the owner or levied as a special assessment on the property.</p>	<p>Same as the LHDA.</p>	<p>Same as the LHDA but requires a preliminary step before the formal processes are followed. The HDC must submit a proposed Restoration or Modification Order to the city council for approval before issuing the order or asking for a court order to enforce compliance with the order. The litigation risk over an HDC order is high, and litigation is guaranteed if the HDC seeks a court order (because it requires that the HDC sue the property owner who will then have the right to defend against the lawsuit and countersue the HDC). Council approval is required because the legal fees for these actions are not covered by the city’s insurance and would need to be paid with taxpayer funds, and the city attorney attends all council meetings and can advise both the council and the HDC on the likelihood of success if the order is issued. Restoration or Modification orders should be a rare occurrence, and we are unaware that the HDC has ever sought to enter onto private property and forcefully restore or modify the property until the property can qualify for a Certificate of Appropriateness.</p>
<p>Section 16.9(h) - Commission Conduct, Orders, and Enforcement - Stop Work Orders</p>	<p>Not mentioned.</p>	<p>Not mentioned.</p>	<p>Since there is no authority for the HDC to issue stop work orders in any city ordinance, stop work orders are prohibited.</p>



**Comparison of the Local Historic Districts Act, Clarkston's Historic District Ordinance,  
and the HDC Charter Proposal**

<b>Charter Proposal Section</b>	<b>Local Historic Districts Act (Abbreviated "LHDA" Below)</b>	<b>Clarkston Ordinance</b>	<b>HDC Charter Proposal</b>
Section 16.9(i) - Commission Conduct, Orders, and Enforcement - Consultation with the City Attorney and City Contractors	Not mentioned.	Not mentioned.	No city official or appointee is authorized to incur unapproved and unbudgeted expenses, and this includes HDC commissioners. The city council must authorize all HDC consultation requests that would result in a fee and establish the maximum amount of the fees. All professional fees attributable to the HDC must be charged to the HDC's general appropriation budget.
Section 16.9(j) - Commission Conduct, Orders, and Enforcement - Recording with the Register of Deeds	Not mentioned.	Not mentioned.	This prohibits the HDC from adding deed restrictions to property located within the historic district.
Section 16.9(k) - Commission Conduct, Orders, and Enforcement - Commission Brochure	Not mentioned.	Not mentioned.	The current brochure is inconsistent with the proposed charter amendment. If the HDC wishes to have a brochure, it needs to update it and submit it to the city council for approval.
Section 16.10 - Commission Expenditures	Not mentioned.	Not mentioned.	The HDC cannot spend money on litigation expenses related to anticipated or actual proceedings before the State Historic Preservation Review Board, state or federal courts, or any other tribunal without the preapproval of at least five city council members of a budget appropriation of a specific dollar amount (except for the mediation proceedings described in section 16.9(c)).

**Comparison of the Local Historic Districts Act, Clarkston's Historic District Ordinance,  
and the HDC Charter Proposal**

<b>Charter Proposal Section</b>	<b>Local Historic Districts Act (Abbreviated "LHDA" Below)</b>	<b>Clarkston Ordinance</b>	<b>HDC Charter Proposal</b>
Section 16.11 - Complaint Procedures and Removal of Commission Members	Allows the city to terminate an HDC commissioner's appointment due to acts or omissions.	Neither mentioned nor authorized.	Establishes a procedure for property owners to file a complaint against an HDC commissioner with the city council, requires due process for the accused HDC commissioner, and requires complaints be heard at a public meeting and appropriate action taken (which could include dismissal of the complaint). The city council may also remove an HDC commissioner for misconduct in office under the existing language in Section 4.21 of the city's charter. HDC commissioners may also be disciplined or removed by the city council for violating any provision of the city's charter or Michigan law.
Section 16.12 - Precedence of This Chapter and City charter	Not mentioned.	Not mentioned.	Standard language for new additions to a law. This is an instruction to a judge in the event of a court proceeding and advises the judge that if there is a conflict between the new language and the old language, then the new language should prevail.
Section 16.13 - Severability	Not mentioned.	Not mentioned.	Standard language for new additions to a law. This is an instruction to the judge that if the judge finds any part of the new charter language to be legally invalid, only the legally invalid language is removed, and other provisions remain in effect.

# Exhibit D

**Here are the**

**REAL  
FACTS**

UH-OH!

**MICHIGAN ATTORNEY GENERAL'S**  
OFFICE FINDS THAT THE PROPOSED CHARTER AMENDMENT IS:

- ★ "...in conflict with the provisions of the Local Historic District Act..."
- ★ "...in light of the Home Rule City Act...the proposed amendment is not consistent with that act."
- ★ "...the ballot language is not accurate because it does not disclose [this fact.]"

Now **THIS** is the **real** way to save the city costly attorney fees!

**IT'S A LAWSUIT WAITING TO HAPPEN!**

**IT'S INCONSISTENT WITH THE HISTORIC DISTRICT LAW AND THE HOME RULE CITY LAW.**

**IF THIS AMENDMENT PASSES UNDOUBTEDLY THERE WILL BE EXPENSIVE LEGAL FEES.**

**THE HISTORIC DISTRICT IS UNDER THREAT!**  
The Charter Amendment is **misleading** and in **conflict** with state law.

**VOTE NO  
ON AN  
AMENDMENT  
THAT  
DOESN'T  
PASS  
LEGAL  
MUSTER!**



STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30754  
LANSING, MICHIGAN 48909

DANA NESSEL  
ATTORNEY GENERAL

July 30, 2024

**By email only**

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

Attention: Christina Grossi  
Legal Counsel to the Governor

**Re: City of the Village of Clarkston Charter Amendment proposed  
by Initiative Petition -**

Chapter XVI (Historic District and Historic District Commission) – requirements, limitations, procedures, and sanctions applicable to members of the city's historic district commission, city officials, and city employees who implement the city's historic district ordinance which established the Clarkston historic district and governs the Clarkston historic commission

*Dear Governor Whitmer:*

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

**The proposed amendment**

The amendment would add a new Chapter XVI (Historic District and Historic District Commission) setting forth requirements, limitations, procedures, and sanctions applicable to members of the city's historic district commission, city officials, and city employees who implement the city's historic district ordinance which established the Clarkston historic district and governs the Clarkston historic commission. According to the city's website, in 1996 the city established a historic district governed by a five-member historic commission. Sections 2 and 4 of the Local Historic Districts Act (Local Historic District Act), 1970 PA 169, as amended,



Honorable Gretchen Whitmer  
Page 2  
Clarkston charter amendment  
July 30, 2024

MCL 399.201 *et seq.*, authorizes a city to establish by ordinance a historic district to be administered by a historic district commission.

Although a city generally has the discretion to provide instructions in its charter to the city council as to the implementation of city ordinances, that discretion is limited in Section 36 of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.*, which states that a charter provision shall "not conflict with or contravene the provisions of any general law of the state."

A review of the terms of the proposed Chapter XVI (Historic District and Historic District Commission) discloses that they are in conflict with the provisions of the Local Historic District Act in that they seek to rewrite the city's current historic district ordinance.

Based on the foregoing analysis, I have reviewed the proposed amendment in light of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.*, and conclude that the proposed amendment is **not** consistent with that act.

The ballot language for the proposed amendment

The Attorney General has a separate responsibility to review the ballot language for compliance with the requirements of Section 21(2) of the HRCA, which mandate that the ballot language be limited to 100 words exclusive of caption, and accurately and impartially describe the proposed amendment. I have examined the ballot language for the proposed amendment set forth in the text of the petition and found that the ballot language is **not accurate** because it does not disclose that the proposed amendment is contrary to the Local Historic Districts Act (Local Historic District Act), 1970 PA 169, as amended, MCL 399.201 *et seq.*

Sincerely,

/s/ George M. Elworth

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

GME:bjb

Enc: Correspondence from the Governor's office dated 7-15-2024

cc with enc. by email only:

Catherine Ashley, Clarkston city clerk, [clerk@villageofClarkston.org](mailto:clerk@villageofClarkston.org)

Thomas Ryan, Clarkston city attorney, [sylvanlawtr@gmail.com](mailto:sylvanlawtr@gmail.com)

Kristina Gierhart, Executive Assistant, Governor's Office,

[GierhartK1@michigan.gov](mailto:GierhartK1@michigan.gov)

# Exhibit E





# Here are the **REAL FACTS**

## MICHIGAN ATTORNEY GENERAL'S OFFICE FINDS THAT THE PROPOSED CLARKSTON CHARTER AMENDMENT:

"...in conflict with the provisions of the Local Historic District Act."

"...In light of the Home Rule City Act...the proposed amendment is not consistent with that act."

"...the ballot language is not accurate because it does not disclose [this fact.]"

### IT'S A LAWSUIT WAITING TO HAPPEN!

**THE CHARTER AMENDMENT IS MISLEADING AND CONFLICTS WITH TWO SEPARATE STATE LAWS! IF THIS AMENDMENT PASSES VERY LIKELY THERE WILL BE EXPENSIVE LEGAL FEES.**

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL  
ATTORNEY GENERAL

July 30, 2024

P.O. Box 30754  
LANSING, MICHIGAN 48909

Honorable Gretchen Whitmer  
Page 2  
Clarkston charter amendment  
July 30, 2024

MCL 399.201 *et seq.*, authorizes a city to establish by ordinance a historic district to be administered by a historic district commission.

Although a city generally has the discretion to provide instructions in its charter to the city council as to the implementation of city ordinances, that discretion is limited in Section 36 of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.*, which states that a charter provision shall "not conflict with or contravene the provisions of any general law of the state."

A review of the terms of the proposed Chapter XVI (Historic District and Historic District Commission) discloses that they are in conflict with the provisions of the Local Historic District Act in that they seek to rewrite the city's current historic district ordinance.

Based on the foregoing analysis, I have reviewed the proposed amendment in light of the Home Rule City Act (HRCA), 1909 PA 279, MCL 117.1 *et seq.*, and conclude that the proposed amendment is not consistent with that act.

#### The ballot language for the proposed amendment

The Attorney General has a separate responsibility to review the ballot language for compliance with the requirements of Section 21(2) of the HRCA, which mandate that the ballot language be limited to 100 words exclusive of caption, and accurately and impartially describe the proposed amendment. I have examined the ballot language for the proposed amendment set forth in the text of the petition and found that the ballot language is not accurate because it does not disclose that the proposed amendment is contrary to the Local Historic Districts Act (Local Historic District Act), 1970 PA 169, as amended, MCL 399.201 *et seq.*

Sincerely,

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

GME:bjh  
Enc: Correspondence from the Governor's office dated 7-15-2024

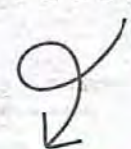
cc with enc. by email only:

Catherine Ashley, Clarkston city clerk, [clerk@villageofClarkston.org](mailto:clerk@villageofClarkston.org)  
Thomas Ryan, Clarkston city attorney, [sylvanlawtr@gmail.com](mailto:sylvanlawtr@gmail.com)  
Kristina Gierhart, Executive Assistant, Governor's Office,  
[GierhartKJ@michigan.gov](mailto:GierhartKJ@michigan.gov)

2024097545-A

Paid for by the Committee to Keep Clarkston Charming, PO Box 393, Clarkston MI 48347

THIS IS THE  
**REAL**  
WAY TO SAVE  
THE CITY  
COSTLY  
ATTORNEY  
FEES!



**VOTE NO  
ON AN  
AMENDMENT  
THAT  
DOESN'T  
PASS  
LEGAL  
MUSTER!**



# Exhibit F

## LOCAL NEWS

SUBSCRIBER ONLY

# Clarkston voters asked to hand over Historic Commission control to city

Proposal would be permanent addition to charter



Voters in Clarkston will vote on an amendment to the city charter on Nov. 5 on changes to the Historic District Commission. photo courtesy City of Clarkston



By **MATTHEW FAHR** | [mfahr@medianewsgroup.com](mailto:mfahr@medianewsgroup.com) | The Oakland Press

UPDATED: October 25, 2024 at 6:42 PM EDT

There is more than meets the eye in a one-sentence ballot proposal about the Clarkston Historic District Commission.

The language on the ballot reads: “Should the city charter be amended by adding a new Chapter XVI to apply requirements to the Historic District Commission (HDC), more clearly specify the commission’s authority and procedures, and provide controls for commission expenditures and enforcement actions?”

The proposal, which was authored by Clarkston residents Richard and Susan Bisio, is actually a four-page, 5,300 word, 13-section “chapter” that would become a permanent addition to the city charter is approved.

“We think there should be clearer specifications and limits on what the Clarkston Historic District Commission can regulate and how it can spend citizens’ tax dollars,” Bisio wrote about the proposal on her personal blog. “Citizens for a Sensible Historic District Commission is petitioning for a charter amendment that would do that.”

City Council member Peg Roth gave a more simple explanation behind the proposal.

“Basically it says that the HDC needs to curb their way of dealing with people and they need to be more considerate,” she said.

Commission member Lisa Patercsak sees it differently.

“It would turn the control of the ... commission to the city council,” said Patercsak. “They want the city council to have control over the historic district and all of the authorities over any actions in the district instead of the commission which has been in place for over 50 years.”

The commission is composed of five Clarkston volunteers who review applications and approve or deny exterior changes to structures to safeguard local heritage. The district includes over 100 structures in the half-square-mile city of Clarkston.

The commission is currently governed by the state Local Historic Districts Act (LHDA) that also applies to 82 other historic districts.

According to George Elworth, assistant attorney general of the state operations division, the proposed amendment conflicts with the LHDA and violates state law.

“A review of the terms of the proposed Chapter XVI discloses that they are in conflict with the provisions of the Local Historic District Act in that they seek to rewrite the city’s current historic district ordinance,” Elworth wrote in a letter to city attorney Thomas Ryan and city Clerk Cathrine Ashley on July 30.

He added, “the ballot language is not accurate because it does not disclose that the

proposed amendment is contrary to the Local Historic Districts Act.”

Ryan said that even though Elworth pointed out issues both in the language on the ballot and the body of the Chapter XVI amendment, there is no requirement to remove the proposal from the ballot or clarify the language. The response from the Attorney General’s office is only an opinion.

“Even though the governor and/or the attorney general believes it is not lawful, it still has to go on the ballot to be voted on by voters and gets sorted out after that if it passes,” said Ryan. “It still has to go to the voters.”

Among the list of how the commission would be altered, according to the amendment:

- Providing budgetary oversight of the commission by the city council;
- Introducing requirements to become a commission member;
- Giving council final approval of commission policies and procedures;
- Giving the council authority over all commission matters;
- Require restoration or modification only with the approval of the city council;
- The commission cannot not consult with the city attorney, planning firm, building department, engineering firm or assessment contractor without city approval;

Other than Depot Park, there is no open space in the historic district the commission may regulate.

Chapter XVI supersedes and repeals provisions of the Historic District Ordinance (currently in the city charter) that conflict with or are inconsistent with the proposed additional chapter.

Susan Bisio explained the motive behind the ballot initiative.

“Our proposal was prompted by the HDC’s April request to the council for the ability to issue civil infractions and fine people up to \$5,000 for purported rule violations,” she said in an email to the Oakland Press. “This was enough of an impetus to tackle a problem that’s been discussed for years in the community and to offer our Clarkston neighbors the opportunity to vote on putting more city council control over the HDC.”

At a Sept. 23 special meeting, council member Ted Quisenberry voiced his opinion on the proposal as a resident in the historic district.

“I am emphatically against the proposal. I confirm my unwavering support for the Historic District Commission,” Quisenberry said from the podium and not the board table. “I would welcome any citizen in that community that has a problem with any issue they have with the historic district, planning, zoning, anything, bring it forth, present it to us and we can take action.”

“Even if it is not specifically written in this very lengthy charter amendment, it will destroy the historic district. What you see out there now will no longer exist,” Clarkston resident Cara Catallo said at the meeting.

For the full text of the Chapter XVI amendment:

<https://mail.google.com/mail/u/0?>

[ui=2&ik=d682dda108&attid=0.1&permmmsgid=msg-](https://mail.google.com/mail/u/0?ui=2&ik=d682dda108&attid=0.1&permmmsgid=msg-)

[f:1809467943362426703&th=191c8581ec92f74f&view=att&disp=inline](https://mail.google.com/mail/u/0?ui=2&ik=d682dda108&attid=0.1&permmmsgid=msg-f:1809467943362426703&th=191c8581ec92f74f&view=att&disp=inline)

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# Exhibit G





# TIF Ballot Proposal Violates Law But Must Still Go to Voters, Says State

By Beth Milligan | July 10, 2024

A ballot proposal requiring a public vote on all tax increment financing (TIF) plans in Traverse City violates state law in both its content and its length, according to a new opinion from the state attorney general's office. That opinion prompted Governor Gretchen Whitmer to reject the proposed charter amendment this week. However, because the proposal is petition-initiated, state law requires it to still go to voters in November despite the governor's objections – setting up a potential legal battle if the proposal passes.

City residents Fred Bimber and Karen Nielsen filed petitions in November in support of the charter amendment. The ballot language would add a section to the city charter stating: "We declare that tax increment financing ('TIF') plans shall be submitted to a vote of the people, since TIF plans divert local property tax revenue away from the general fund and basic city services such as police, fire, ambulance, streets and parks. Any proposal to create a TIF plan, or to modify, amend or extend an existing TIF plan, shall not be adopted or approved by the City or City Commission until after the proposal is submitted to and approved by a majority of the electors of the City at a regular election or at a special election held for that purpose."

After City Clerk Benjamin Marentette verified petitioners had more than the 661 signatures required to put the issue to voters, city commissioners voted in January to put the amendment on the ballot. The amendment was then sent to the attorney general and governor, a mandatory review process that can sometimes take several months. In a July 1 email to Governor Whitmer, Assistant Attorney General George Elworth found multiple legal issues with the ballot language.

According to Elworth, the proposed amendment conflicts with the Recodified Tax Increment Financing Act and the Brownfield Redevelopment Financing Act, “which authorize local units, including cities, to participate in tax increment financing plans and projects. These acts contain no provision for voter approval of each determination by a city commission as to the extent and terms of the city’s participation or support of a proposed entity or project,” Elworth wrote.

In addition, the proposal violates Section 36 of the Home Rule City Act (HRCA), which states that no provision of any city charter “shall conflict with or contravene the provisions of any general law of the state,” Elworth wrote. He noted that the ballot language clocks in at 140 words, while the language circulated on petitions was even longer – another HRCA conflict since the limit is 100 words. Concurring with his opinion, Whitmer wrote in a memo Monday that “pursuant to the HRCA, I do not approve the proposed amendment.”

Despite Whitmer’s objections, the proposal will still go to voters November 5. Michigan law outlines two processes for charter amendments – one for amendments proposed by city commissions or other legislative bodies, and one for amendments initiated by petitioners. A governor’s disapproval of a city commission amendment would send it back to the board to reconsider, at which time commissioners could either change it or submit it as-is to voters if two-thirds of the board approved doing so. But an amendment initiated by petitioners “shall be submitted to the electors notwithstanding” a governor’s objections, the law states, which means it must be placed on the ballot either way.

While the governor’s disapproval doesn’t stop the amendment from going to voters, “if there is litigation over the legitimacy of a provision, that can be taken into consideration, as the state’s chief lawyer has looked at it,” Marentette says. City Attorney Lauren Trible-Laucht says she couldn’t rule out a lawsuit if the proposal passes. Entities ranging from the city, Downtown Development Authority (DDA), and the Brownfield Redevelopment Authority (BRA) to developers and



other community groups would all be affected by the amendment – which would apply not only to downtown TIF plans but all city TIF plans, including brownfield plans.

Supporters and critics of the proposal weighed in Tuesday. Bimber, one of the petition submitters, dismissed the state’s opinion, saying Elworth’s “analysis and reasoning are woefully inadequate.” An attorney himself, Bimber says that “bigger principles of state law in the constitution and in statute” are at play, including those giving residents “a right to set up the city charter on whatever terms they choose and to give or limit powers to the city commission.” While state law may allow cities to enter into TIF plans, “residents and voters have the right to determine under what conditions they’ll allow” their commissioners to enter them, Bimber believes.

Traverse Together (<https://www.traversetogethertc.com>), a citizen group opposed to the amendment, said in a statement they were “not surprised to learn” the state rejected the proposal. “This news supports our position that the referendum goes too far,” the group wrote. “For a host of reasons, Proposal 1 threatens the city’s ability to use tax increment financing to address urgent needs – critical items like streets, sidewalks, environmental clean-up, and affordable housing. This development is an opportunity to remind everyone to show up and vote no on TC Proposal 1 this fall. The TIF tool is not just how we paid for good things in the past; it’s how we create opportunities for future generations in Traverse City.”

Meanwhile, a second TIF-related charter amendment was certified by Marentette’s office Tuesday – but faces an uphill battle to get reviewed by the state in time to meet an August 13 deadline for the November ballot. Bimber and other members of the group TC Taxpayers for Justice (<https://www.tctaxpayersforjustice.com>) submitted petitions on May 31 for a proposal specifically aimed at TIF 97, the DDA plan under consideration for extension this year (<https://www.traverseticker.com/news/with-tif-vote-delayed-again-dda-focuses-on-immediate-future-of-downtown/>). Concerned that city leaders might act to extend TIF 97 before the TIF ballot proposal goes to voters, the group submitted a second amendment to retroactively negate any city actions on TIF 97. The proposed language states:

“The City Commission shall not attempt to evade the petition rights and voting rights of City residents. Any and all ordinances of the City to extend, amend and/or modify Tax Increment Financing and Development Plan #97 ('TIF97'),


which ordinance or ordinances were enacted or are enacted at any time after January 1, 2024 without first being submitted to and approved by a majority of the electors of the City at a regular election or special election held for that purpose are repealed and such ordinance or ordinances shall be void and of no effect.”

Marentette certified Tuesday that enough valid signatures were submitted to put the amendment on the ballot. He says a resolution to approve the language will appear on the city commission agenda Monday (July 15). From there, however, it must go to the attorney general and governor for review. Given that the first amendment took several months to review, Marentette says it’s a “very, very tight timeline” to meet the August deadline. Even though it’s another petition-initiated amendment – and therefore must eventually go on the ballot – the state review process is still required to be completed first, Marentette says.

Since petitioners didn’t ask for a special election nor gather the signatures of 20 percent of registered voters required for one, the amendment would appear on the next general election ballot if not this year. That next election would be November 4, 2025, according to Marentette.

Bimber, however, rejects that timing, pointing to state law that says petition-initiated amendments must go before voters at the next general election that’s at least 90 days after petitions are filed. He believes that would be this November, regardless of whether the governor has completed her review in time. Bimber says he will sue to compel the city to put the amendment on the fall ballot if needed. Tribble-Laucht told *The Ticker* she agrees with Marentette that the proposal can’t go to voters until the governor’s review is complete.

**f** [Comment \(https://www.facebook.com/TraverseCityTicker/\)](https://www.facebook.com/TraverseCityTicker/)

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