

IN THE SUPREME COURT OF OHIO

State ex rel. City of Youngstown)
26 South Phelps Street)
Youngstown, OH 44503)

Relator,)

v.)

Mahoning County Board of Elections)
3450 Oak Hill Ave.- Entrance A)
Youngstown, OH 44503)

And)

David Betras)
3450 Oak Hill Ave.- Entrance A)
Youngstown, OH 44503)

And)

Mark Munroe)
3450 Oak Hill Ave.- Entrance A)
Youngstown, OH 44503)

And)

Robert Wasko)
3450 Oak Hill Ave.- Entrance A)
Youngstown, OH 44503)

And)

Tracey Winbush)
3450 Oak Hill Ave.- Entrance A)
Youngstown, OH 44503)

And)

John Husted, Ohio Secretary of State)
180 East Broad Street, 16th Floor)
Columbus, OH 43215)

Respondents.)

Case No. _____

**VERIFIED COMPLAINT FOR
A PEREMPTORY WRIT
OF MANDAMUS**

**EXPEDITED ELECTION CASE
PURSUANT TO S.C.R.P. 12.08**

Relator, State ex rel. City of Youngstown, proceeds by and through its counsel, Martin S. Hume, Law Director, and Mark D'Apolito, Assistant Law Director, and sets forth the below complaint:

PRELIMINARY STATEMENT

1. Petitioner seeks a writ of mandamus to compel the Respondents, the Mahoning County Board of Elections and its members, Respondents David Betras, Mark Munroe, Robert Wasko, and Tracey Winbush, together with Ohio Secretary of State John Husted, ("Respondents") to certify a proposed amendment to the Charter of the City of Youngstown to appear on the November 3, 2015 ballot.
2. The proposed Charter Amendment, commonly referred to as the "Community Bill of Rights" proposal, was presented to Youngstown City Council on August 3, 2015, by the proponents of the charter amendment with a sufficient number of valid signatures to comply with the requirements of the Youngstown City Charter and the Ohio Constitution and laws of the State of Ohio to be placed on the November 3, 2015 ballot.
3. On August 24, 2015, Youngstown City Council passed ordinance No. 15-283 directing that the Community Bill of Rights be sent to the Mahoning County Board of Elections for submission to the electors of the City of Youngstown as provided by law. A copy of the ordinance is attached hereto as Exhibit "A".
4. On August 26, 2015, Respondents failed to perform the mandatory duties required by law and exceeded the power granted to the Board of Elections and its members

under Ohio Revised Code Section 3501.11, when in direct contravention of the legal advice provided by the Board of Elections' legal counsel, the Mahoning County Prosecutor, they refused to certify the "Community Bill of Rights" proposal to be placed on the ballot. This Complaint in Mandamus requests that a Peremptory Writ of Mandamus issue to require the Respondents to perform their mandatory legal duty.

JURISDICTION

5. This court has jurisdiction over this matter pursuant to O.R.C. Chapter 2731, which governs mandamus proceedings in the courts, and specifically lays jurisdiction in Ohio's Supreme Court by O.R.C. § 2731.02.
6. The claims in this matter arise from the denial of Relator's legal rights by the Mahoning County Board of Elections which occurred when the board refused to perform its nondiscretionary legal duty and certify the proposed charter amendment known as the "Community Bill of Rights" to appear on the ballot.
7. The Respondents do not have any legal authority to deny certification of a proposed charter amendment to the ballot based upon the content of the proposal.
8. The Mahoning County Board of Elections has a limited number of ministerial functions outlined in Ohio Revised Code Section 3501.11.
9. By relying on the opinion of board members and Respondent John Husted instead of the legal opinion of the Mahoning County Prosecutor, who advised that the proposed charter amendment should be placed on the ballot, the board exceeded the powers granted to them under the Constitution and laws of the State of Ohio.

10. Failing to certify the proposed “Community Bill of Rights” is a violation of the First Amendment to the United States Constitution.
11. The Respondents lack the authority to review the constitutionality of a proposed charter amendment.
12. The issues of constitutionality of a proposed charter amendment can only be adjudicated by a court of law when the matter is ripe for adjudication.
13. A proposed charter amendment is not ripe for adjudication until it has been passed and someone has the right to claim that he or she is aggrieved by the charter amendment that was passed.
14. There are less than ninety (90) days remaining until the November 3, 2015 election and Relator has no plain or adequate remedy at law to correct the unlawful, unreasonable and/or arbitrary acts and abuses of discretion committed by the Respondents by improperly refusing to fulfill their mandatory legal duty to certify the proposed “Community Bill of Rights” to appear on the ballot.

PARTIES

15. Relator, the City of Youngstown, is a municipal corporation within the State of Ohio. The City of Youngstown has the requisite standing to commence this mandamus action because of its undeniable interest in having the election proceed pursuant to the pertinent charter provisions. *State ex rel. Bedford v. Cuyahoga Cty. Bd. of Elections* (1991), 62 Ohio St.3d 17, 577 N.E.2d 645 (home-rule city entitled to writ of mandamus to compel board of elections and Secretary of State to place on ballot advisory election on issue of subsequent charter amendments).

See also *State ex rel. City of Toledo v. Lucas County Bd. of Elections*, 95 Ohio St. 3d 73 (2002).

16. The City of Youngstown has a duly enacted city charter. The Youngstown Charter was approved by the voters on May 15, 1923, and has been amended from time to time thereafter. A complete copy of the current charter is attached hereto as Exhibit "B."
17. Respondent, the Mahoning County Board of Elections, is legally responsible under various provisions of the Ohio Constitution and Ohio Revised Code for the conduct of elections in Mahoning County, Ohio according to law. The Mahoning County Board of Elections is capable of being sued and of having its decisions relative to the content of election ballots challenged and determined by Ohio courts.
18. Respondents, David Betras, Mark Munroe, Robert Wasko, and Tracey Winbush are the duly appointed members of the Mahoning County Board of Elections.
19. Respondents Betras, Munroe, Wasko and Winbush have a mandatory legal duty pursuant to Ohio Revised Code Section 3501.11, to perform ministerial acts in order to ensure that properly certified charter amendments appear on the ballot.
20. Respondent, John Husted is the Secretary of State of the State of Ohio. On August 13, 2015, Secretary Husted issued an opinion determining proposed charter provisions in Athens, Fulton, and Medina Counties to be invalid. A copy of the opinion of the Secretary of State is attached hereto as Exhibit "C." Respondents, Mahoning County Board of Elections and the individual board

members claim to have relied on Secretary Husted's opinion in refusing to certify the Community Bill of Rights to appear on the ballot.

FACTUAL AVERMENTS

21. Pursuant to Youngstown City Charter Section 120, Amendments to the Charter "shall be submitted to the Electors of the City of Youngstown in the manner provided by the Constitution and law of the State of Ohio." (emphasis added).
22. Submission of municipal charter amendments is governed by the Ohio Constitution, Article XVIII, Sections 8 and 9.
23. The council clerk for the City of Youngstown received petitions on August 3, 2015, submitted by the proponents of a charter amendment commonly referred to as the "Community Bill of Rights."
24. Review of the petitions by the council clerk revealed that the proponents of the charter amendment had obtained more signatures than the number required to place the proposed charter amendment on the ballot.
25. On August 24, 2015, Youngstown City Council unanimously passed Youngstown City Ordinance No. 15-283 directing that the proposed charter amendment be forwarded to the Mahoning County Board of Elections to be placed on the November 3, 2015 ballot.
26. Pursuant to the ordinance, the Mayor and Clerk of Council certified the proposed amendment to the Board of Elections of Mahoning County, Ohio, for submission to the voters of the City of Youngstown as provided by law.
27. The Respondent, Mahoning County Board of Elections, and its members, Respondents Betras, Munroe, Wasko and Winbush confirmed that the proponents

of the charter amendment had obtained more valid signatures than the number required to place the charter amendment on the ballot.

28. One Thousand One Hundred and Twelve (1,112) valid signatures were required for the proposed charter amendment to appear on the ballot.
29. Respondent, Mahoning County Board of Elections, found that One Thousand Five Hundred and Thirty-four (1,534) valid signatures were submitted by the proponents of the charter amendment.
30. On August 26, 2015, Respondents Betras, Munroe, Wasko and Winbush held a meeting of the Mahoning County Board of Elections.
31. At the meeting, Respondents Betras, Munroe, Wasko and Winbush voted 4-0 to “not certify” the proposed charter amendment and thus, have prevented it from appearing on the ballot to be considered November 3, 2015.
32. Respondent, Mahoning County Board of Elections is forbidden by pertinent constitutional principles from arrogating to itself the power to peremptorily “invalidate” the proposed charter amendment because of the Respondent members’ personal opinions on its legality.
33. Since the proposed charter amendment petitions conform to the requirements of law and have been submitted to the Respondent, Board of Elections, with more than the minimal requisite numbers of signatures of eligible electors, the proposed charter amendment must be placed on the ballot to be subjected to a formal vote on November 3, 2015.
34. Respondents’ “invalidation” of the charter amendment petitions is unconstitutional, arbitrary, illegal and an abuse of discretion.

STATUTORY AND LEGAL FRAMEWORK

35. O.R.C. § 3501.38 requires petitions to be signed by electors qualified to vote on the issue; signatures must be made in ink; each signer must place on the petition the signer's name, date of signing, and location of voting residence; the petitions must have, on each paper, the circulator's indication of number of signatures and the circulator's statement that they witnessed the signatures of qualified signers; and the petition must be submitted with all part petitions at one time. All of these requirements were met in this case.
36. It is long-established that the substance of a charter proposal is off-limits to pre-election protest. See, e.g., *State ex rel. Kilby v. Summit Cnty. Bd. of Elections*, 133 Ohio St.3d 184, 2012-Ohio-4310, 977 N.E.2d 590, ¶ 12 (“any claims challenging the validity of the proposed charter amendment are premature when made before the amendment is approved by the electorate.”); *State ex rel. Citizen Action v. Hamilton Cnty. Bd. of Elections*, 115 Ohio St.3d 437, 2007-Ohio-5379, 875 N.E.2d 902, ¶ 43 (“insofar as the board’s claim could be construed as a challenge to the constitutionality or illegality of the substance of the initiative, that challenge is premature before the proposed legislation is enacted by the electorate.”); *State ex rel. DeBrosse v. Cool*, 87 Ohio St.3d 1, 6, 1999-Ohio-239, 716 N.E.2d 1114 (“Any claims alleging the unconstitutionality or illegality of the substance of the proposed ordinance, or actions to be taken pursuant to the ordinance when enacted, are premature before its approval by the electorate.”).
37. The Mahoning County Board of Election’s position that it has the legal right to determine that the charter amendment proposal is invalid because provisions of

the proposal may be unconstitutional or in conflict with existing state law is unsupported by the applicable law.

38. Pursuant to the Ohio Constitution, exclusive jurisdiction to determine the constitutionality of laws is reserved to the judicial branch of government.
39. The suspected unconstitutionality of a proposed charter amendment is not a reason for the Board of Elections not to allow a ballot proposal to be voted upon. *State ex rel. McGovern v. Bd. of Elections*, 24 Ohio Misc. 135, 136, 263 N.E.2d 586 (C.P.1970). (...nowhere does the court find in R. C. 3501.11, defining the powers and duties of the board of elections, any power or right to make judicial determinations of the legality or nonlegality of issues to be presented to the people. If in fact the proposed charter amendment was duly passed by council and procedural requirements were met before its submission to the board of elections, the board was duty bound to put it on the ballot for a vote of the people.)
40. In the recently decided case of *State ex rel. Ebersole v. City of Powell*, 141 Ohio St. 17 (2014), the Ohio Supreme Court reaffirmed the principle that, "The proper time for an aggrieved party to challenge the constitutionality of (a proposed) charter amendment is after the voters approve the measure, assuming they do so."
41. The Mahoning County Prosecuting Attorney, who represents the Respondent, Mahoning County Board of Elections, specifically advised that the board members had a mandatory duty to place the proposed charter amendment on the ballot.
42. Respondents unlawfully disregarded the advice of their counsel, and voted not to place the proposed charter amendment on the ballot.

43. In refusing to place the proposed charter amendment on the ballot, Respondents referred to the case of *State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485, for the proposition that the substance of the proposed Community Bill of Rights was unconstitutional.
44. The proponents of the proposed Community Bill of Rights charter amendment contend that the content of the Community Bill of Rights is different from the content of the law found unconstitutional in the *Beck Energy* case, and therefore, a different result would be obtained if the constitutionality of the Community Bill of Rights were to be challenged following its passage.
45. Proponents of the proposed charter amendment can make a good faith argument for the proposition that the proposed charter amendment is not unconstitutional under existing law and/or a good faith argument for an extension, modification or reversal of existing law such that the proposed charter amendment will be found not to be unconstitutional or illegal.

**RELATORS ARE ENTITLED TO A PEREMPTORY WRIT OF
MANDAMUS**

46. The writ of mandamus is an extraordinary remedy that arose historically to deal with situations like this, where there is no other avenue for justice. It is the Court's duty in such situations to review the actions of the Mahoning County Board of Elections to place limits on the exercise of discretion to ensure that discretion is not exercised arbitrarily, or abused.
47. It is further the Court's duty, when a governmental official has refused to undertake a nondiscretionary act, to order such act to be undertaken.

48. Relator has been denied justice through the refusal of Respondents to place the proposed charter amendment on the ballot for the November 3, 2015 general election.
49. The decision of a Board of Elections is final. *State ex rel. Senn v. Bd. of Elections*, 51 Ohio St.2d 173, 367 N.E.2d 879 (1977).
50. The decision of the Respondents is subject to judicial review for fraud, corruption, abuse of discretion, or clear violation of applicable legal provisions. *State ex rel. Clinard v. Greene Cnty.*, 51 Ohio St.3d 87, 88, 554 N.E.2d 895 (1990).
51. The Respondents' refusal to put the Community Bill of Rights charter amendment on the ballot for a public vote was improper, unlawful, an abuse of discretion and arbitrary, and must be reversed by this Court.
52. The Respondents' acts and omissions are ultra vires, as they ignore the requirements of statute, which in turn are constrained by the Ohio Constitution. The Respondents' acts and omissions comprise a continuing abuse of discretion that must be corrected by a specific mandate from the Court. The Court must intervene to vindicate the rights of Relator and all of the Citizens of Youngstown and to protect their rights under the Ohio Constitution to vote on a properly-presented charter amendment proposal.
53. Relator has no adequate remedy in the ordinary course of law.
54. Unless the court grants a writ of mandamus as requested by Relator, the citizens of Youngstown will be deprived of their right to vote on a proposed charter amendment in violation of the Charter of the City of Youngstown, the Constitution and laws of the State of Ohio, and the United States Constitution.

WHEREFORE, Relators pray the Court issue a peremptory writ of mandamus, or alternatively, an alternate writ, pursuant to O.R.C. Chapter 2731, which requires Respondents to comply with the requirements of O.R.C. § 3501.11 and the Ohio and United States' Constitutions by immediately Ordering the Respondents to place the "Community Bill of Rights", on the ballot for the November 3, 2015 general election for a vote of the citizenry.

Relators further request to be awarded their costs and reasonable attorneys' fees, and such other and further relief at law or in equity as the Court may deem necessary and proper in the premises.

Respectfully submitted,



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Law Director

MARK D'APOLITO (0092037)

Assistant Law Director

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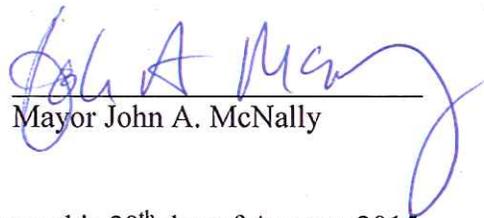
mhume@YoungstownOhio.gov

Counsel for the Petitioner

VERIFICATION

State of Ohio)
)
County of Mahoning) ss:

I, John A. McNally, am Mayor of the City of Youngstown. I have reviewed the allegations in the Verified Complaint and the factual allegations contained herein are true to the best of my knowledge, information, and belief.



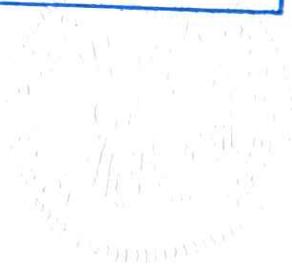
Mayor John A. McNally

Sworn to before me and subscribed in my presence this 28th day of August, 2015.



Notary Public

MARK D'APOLITO
Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Sec.147.03 R.C.



CERTIFICATE OF SERVICE

We hereby certify that a copy of the foregoing, "Verified Complaint For A
Peremptory Writ Of Mandamus-Expedited Election Case Pursuant to S.C.R.P. 12.08,"
was forwarded this 28th day of August, 2015 by facsimile transmission and/or email
delivery to:

Mahoning County Board of Elections at (330)-783-2801 and

JPesta@mahoningcountyoh.gov

David Betras at dbetras@bhllaws.com

Mark Munroe at mark@compcoind.com

Robert Wasko at bob@waskofamily.com

Tracey Winbush at twinbush@traceyandfriends.com

Ohio Secretary of State John Husted at (614) 644-0649

Mahoning County Prosecutor Paul J. Gains at PGains@mahoningcountyoh.gov

Ohio Attorney General Michael DeWine at (866) 761-0226



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Counsel for the Petitioner

APPROVED AS TO FORM: MAYOR JOHN A. McNALLY

Mark L.

ORD-15-283



MOVED TO 2nd RD.	_____
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COMMITTEE	_____
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DEPARTMENT OF LAW

AN ORDINANCE

PROVIDING THAT A PROPOSED AMENDMENT TO THE CHARTER OF THE CITY OF YOUNGSTOWN SHALL BE SUBMITTED TO THE ELECTORS OF THE CITY OF YOUNGSTOWN, FOR ADOPTION OR REJECTION, AT THE NEXT REGULARLY-SCHEDULED ELECTION TO BE HELD ON NOVEMBER 3, 2015, PURSUANT TO SECTION 120 OF THE CHARTER OF THE CITY OF YOUNGSTOWN AND ARTICLE XVIII, SECTIONS 8 AND 9 OF THE CONSTITUTION OF THE STATE OF OHIO, TO **AMEND THE CHARTER OF THE CITY OF YOUNGSTOWN BY ADDING SECTION 122, COMMUNITY BILL OF RIGHTS, UPON PETITIONS SIGNED BY TEN PERCENT OF THE ELECTORS, BASED UPON THE TOTAL VOTE CAST AT THE LAST PRECEDING GENERAL MUNICIPAL ELECTION,** SHALL AS HEREIN DESCRIBED; SETTING FORTH THE EFFECTIVE DATE OF THE PROPOSED AMENDMENTS; AND PROVIDING THAT THIS ORDINANCE SHALL BE AN EMERGENCY MEASURE.

* * *

WHEREAS, pursuant to Section 120 of the Youngstown City Charter and Article XVIII Sections 8 and 9 of the Constitution of the State of Ohio, Youngstown City Council, upon petitions signed by ten percent of the electors, based upon the total vote cast at the last preceding general municipal election, shall submit the proposed amendment to the electors of the City of Youngstown for their adoption or rejection at the next regularly-scheduled election to be held on November 3, 2015, in the City of Youngstown.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF YOUNGSTOWN, STATE OF OHIO:

SECTION 1

That a proposed amendment shall be submitted to the electors of the City of Youngstown for adoption or rejection, at the next regularly-scheduled election to be held on November 3, 2015, pursuant to Section 120 of the Charter of the City of Youngstown and Article XVIII, Sections 8 and 9 of the Constitution of the State of Ohio, to **enact Section 122, Community Bill of Rights, under the existing Charter of the City of Youngstown,** to read as follows:

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COMMUNITY BILL OF RIGHTS

Section 122-1 The rights enumerated herein are adopted pursuant to the people's natural inherent right to preserve and protect themselves, their families and their community, both human and natural, and their constitutional right of local community self-government.

A. Right to Local Community Self-Government. All Youngstown residents possess the right to local community self-government, which shall include the right to enact local laws recognizing and protecting fundamental rights.

B. Right of Self-Government. The people's right of self-government includes the authority to change their municipal system of government to restrict corporate and governmental powers that interfere with that right. The people, therefore, have a right to use their municipal corporations to make and enforce laws, without limiting or abridging their right of self-government, and the right to subordinate corporate powers to this right.

C. Right to a Sustainable Energy Future. All City residents possess the right to a sustainable energy future. That right shall include the right to be free from any oil and gas extraction that would violate the right of residents to pure water, clean air, the peaceful enjoyment of their home, or their right to be free from toxic chemical trespass; or that would violate the right of natural communities and ecosystems to exist and flourish.

Section 122-2 Rights are Self-Executing. All rights delineated and secured by this Charter are fundamental, unalienable, and self-executing; and these rights shall be enforceable against private and public entities.

Section 122-3 Securing and Protecting Rights. To further secure and protect the rights enumerated by the Community Bill of Rights the following shall be Law:

A. It shall be unlawful for any government or corporation to engage in the extraction of oil and gas within the City of Youngstown. The term "*to engage in the extraction of oil and gas*" shall include the use of unconventional high volume, high pressure, horizontal and directional drilling technology, commonly known as "hydro-fracturing," and related activities. It shall also include the depositing, disposal, storage, and transportation of water or chemicals to be used in the extraction of oil and gas, and the disposal or processing of waste products from the extraction of oil and gas. The term shall also include the extraction of water within Youngstown for use in the extraction of oil and gas, as well as the application for, or issuance of, permits which allow any of these activities. These prohibitions shall not apply to the manufacture, production, sale, or distribution of materials and components used in the extraction of oil and gas, so long as such materials and components are not sited to engage in the extraction of oil and gas within the City of Youngstown.

B. Governments or corporations engaging in the extraction of oil and gas adjacent to Youngstown shall be strictly liable for all harms caused within the City of Youngstown, including, but not limited to, harm to Meander Creek and its tributaries.

C. Corporations which violate this Charter Section, or which seek to violate this Charter Section, shall not be deemed to be "persons," nor shall they possess any other legal rights, privileges, powers, or protections which would interfere with the rights or prohibitions enumerated by this Amendment. The term "*rights, privileges, powers, or protection*" shall include the power to assert that the people of this municipality lack the authority to adopt this Amendment, and the power to assert state, federal, or international preemptive laws in an attempt to overturn this Amendment.

D. No permit, license, privilege, or charter issued by any state or federal entity which would violate this Charter shall be deemed valid within the City of Youngstown.

E. Any person, corporation, or other entity that violates any provision of this Law set forth in Sections 122-1, 122-2 and 122-3, shall be guilty of a first degree misdemeanor and subject to the penalties set forth in Ohio Revised Code Sections 2929.24 and 2929.28. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each of said sections found to be violated. Enforcement of this Charter section may be initiated by the Director of Law, Chief of Police, or Mayor. The City of Youngstown may also enforce this Law through an action in equity. In such an action, the City of Youngstown shall be entitled to recover damages and all costs of litigation, including, without limitation, experts' and attorneys' fees.

F. Any City resident shall have the authority to enforce this Law through an action in equity. In such an action, the resident shall be entitled to recover damages and all costs of litigation, including, without limitation, experts' and attorneys' fees. Any person who brings an action to secure or protect the rights of natural communities or ecosystems within the City of Youngstown shall bring that action in the name of the natural community or ecosystems in a court of competent jurisdiction. Damages shall be measured by the cost of restoring the natural community or ecosystem to its pre-damaged state, and shall be paid to the City of Youngstown or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem.

Section 122-4 The provisions of this Section are severable. If any court decides that any sub-section, clause, sentence, part, or provision of this section is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sub-sections, clauses, sentences, parts, or provisions of this Charter section. All inconsistent provisions of prior laws ordinances adopted at any time by the City of Youngstown are hereby held in abeyance, but shall take immediate effect in the event this Bill of Rights and its protective prohibitions are overturned.

AMENDMENT

That it is recommended that the amendment herein proposed shall be designated on the ballot by its descriptive title as hereinabove set

forth. The adoption of such amendment by its descriptive title shall have the effect of adopting the amendment in full, as proposed by this ordinance. The form of the ballot used in submitting the provisions of said amendment by its descriptive title at said special election shall be as follows:

PROPOSED CHARTER AMENDMENT

CITY OF YOUNGSTOWN

**A majority affirmative vote
is necessary for passage.**

Shall Section 122, Community Bill of Rights, of the Charter of the City of Youngstown be enacted to read as follows:

COMMUNITY BILL OF RIGHTS

Section 122-1 The rights enumerated herein are adopted pursuant to the people's natural inherent right to preserve and protect themselves, their families and their community, both human and natural, and their constitutional right of local community self-government.

A. Right to Local Community Self-Government. All Youngstown residents possess the right to local community self-government, which shall include the right to enact local laws recognizing and protecting fundamental rights.

B. Right of Self-Government. The people's right of self-government includes the authority to change their municipal system of government to restrict corporate and governmental powers that interfere with that right. The people, therefore, have a right to use their municipal corporations to make and enforce laws, without limiting or abridging their right of self-government, and the right to subordinate corporate powers to this right.

C. Right to a Sustainable Energy Future. All City residents possess the right to a sustainable energy future. That right shall include the right to be free from any oil and gas extraction that would violate the right of residents to pure water, clean air, the peaceful enjoyment of their home, or their right to be free from toxic chemical trespass; or that would violate the right of natural communities and ecosystems to exist and flourish.

Section 122-2 Rights are Self-Executing. All rights delineated and secured by this Charter are fundamental, unalienable, and self-executing; and these rights shall be enforceable against private and public entities.

Section 122-3 Securing and Protecting Rights. To further secure and protect the rights enumerated by the Community Bill of Rights the following shall be Law:

A. It shall be unlawful for any government or corporation to engage in the extraction of oil and gas within the City of Youngstown. The term "*to engage in the extraction of oil and gas*" shall include the use of unconventional high volume, high pressure, horizontal and directional drilling technology, commonly known as "hydro-fracturing," and related activities. It shall also include the depositing, disposal, storage, and transportation of water or chemicals to be used in the extraction of oil and gas, and the disposal or processing of waste products from the extraction of oil and gas. The term shall also include the extraction of water within Youngstown for use in the extraction of oil and gas, as well as the application for, or issuance of, permits which allow any of these activities. These prohibitions shall not apply to the manufacture, production, sale, or distribution of materials and components used in the extraction of oil and gas, so long as such materials and components are not sited to engage in the extraction of oil and gas within the City of Youngstown.

B. Governments or corporations engaging in the extraction of oil and gas adjacent to Youngstown shall be strictly liable for all harms caused within the City of Youngstown, including, but not limited to, harm to Meander Creek and its tributaries.

C. Corporations which violate this Charter Section, or which seek to violate this Charter Section, shall not be deemed to be "persons," nor shall they possess any other legal rights, privileges, powers, or protections which would interfere with the rights or prohibitions enumerated by this Amendment. The term "*rights, privileges, powers, or protection*" shall include the power to assert that the people of this municipality lack the authority to adopt this Amendment, and the power

to assert state, federal, or international preemptive laws in an attempt to overturn this Amendment.

D. No permit, license, privilege, or charter issued by any state or federal entity which would violate this Charter shall be deemed valid within the City of Youngstown.

E. Any person, corporation, or other entity that violates any provision of this Law set forth in Sections 122-1, 122-2 and 122-3, shall be guilty of a first degree misdemeanor and subject to the penalties set forth in Ohio Revised Code Sections 2929.24 and 2929.28. A separate offense shall arise for each day or portion thereof in which a violation occurs and for each of said sections found to be violated. Enforcement of this Charter section may be initiated by the Director of Law, Chief of Police, or Mayor. The City of Youngstown may also enforce this Law through an action in equity. In such an action, the City of Youngstown shall be entitled to recover damages and all costs of litigation, including, without limitation, experts' and attorneys' fees.

F. Any City resident shall have the authority to enforce this Law through an action in equity. In such an action, the resident shall be entitled to recover damages and all costs of litigation, including, without limitation, experts' and attorneys' fees. Any person who brings an action to secure or protect the rights of natural communities or ecosystems within the City of Youngstown shall bring that action in the name of the natural community or ecosystems in a court of competent jurisdiction. Damages shall be measured by the cost of restoring the natural community or ecosystem to its pre-damaged state, and shall be paid to the City of Youngstown or other applicable governmental entity, to be used exclusively for the full and complete restoration of the natural community or ecosystem.

Section 122-4 The provisions of this Section are severable. If any court decides that any sub-section, clause, sentence, part, or provision of this section is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sub-sections, clauses, sentences, parts, or provisions of this Charter section. All inconsistent provisions of prior laws ordinances adopted at any time by the City of Youngstown are hereby held in abeyance, but shall take immediate effect in the event this Bill of Rights and its protective prohibitions are overturned.

_____ YES

_____ NO

Above to be voted upon: **CITY OF YOUNGSTOWN-ALL PRECINCTS**

SECTION 2

That Section 122, Community Bill of Rights, herein above described, of the Charter of the City of Youngstown shall be and the same is hereby enacted, by addition or deletion, effective in its pertinent sections, as herein stated and any and all amendments without an effective date shall be effective immediately, provided the provisions of these proposed amendments are adopted by the electors of the City of Youngstown at the next regularly-scheduled election to be held on November 3, 2015, in the City of Youngstown, Ohio.

SECTION 3

That the Mayor and the Clerk of Council are hereby directed to certify the foregoing proposed amendment to the Board of Elections of Mahoning County, Ohio, for submission to the electors of the City of Youngstown as provided by law.

SECTION 4

That the Board of Elections of Mahoning County, Ohio, shall certify to the Council and the Mayor of the City of Youngstown, the results of the vote upon said amendment, and if said amendment is approved by the majority of the electors voting thereon, it shall become a part of the Charter of the City of Youngstown, as hereinabove set forth, in accordance with the provisions for taking effect as set out in Section 120.

SECTION 5

Upon certification to the Mayor and Council by the Board of Elections of Mahoning County, Ohio, that the amendment proposed in this ordinance shall have been approved by a majority of the electors voting thereon, it shall be the duty of the Mayor and Clerk of Council to certify a copy of said amendments to the Secretary of State, State of Ohio, as required by the Constitution of the State of Ohio.

SECTION 6

That the Clerk of Council is hereby directed to publish the passage of this proposed amendment to the Charter of the City of Youngstown pursuant to Section 120 of the Charter of the City of Youngstown and Article XVIII, Section 9, of the Constitution of the State of Ohio, and Section 731.211 of the Ohio Revised Code.

SECTION 7

That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, welfare and safety, the emergency being the necessity to immediately pass said legislation in order to give the electors of the City of Youngstown time to familiarize themselves with the proposed amendment to the Charter of the City of Youngstown; and as such, this ordinance shall take effect and be in force immediately upon its passage and approval by the Mayor.

PASSED IN COUNCIL THIS 24th DAY OF August, 2015.

[Signature]
PRESIDENT OF COUNCIL

ATTEST:

Valencia Morrow
CITY CLERK

APPROVED: THIS 25th DAY OF August, 2015.

[Signature]
MAYOR

— CERTIFICATION —
This is a true copy of the original
record on file in my office
Valencia Morrow
City Clerk
August 27, 2015
Date

**CHARTER
OF THE CITY OF YOUNGSTOWN
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CHARTER

PREAMBLE

We, the people of the City of Youngstown, in order to secure and exercise the powers of local self-government under the Constitution of the State of Ohio, do enact and ordain this Charter.

Section 1.

The inhabitants of the City of Youngstown, as its limits now are, or may hereafter be, shall continue to be a body politic and corporate, by name the City of Youngstown, and as such shall have perpetual succession.

It shall have all powers that now are, or hereafter may be granted to municipalities by the Constitution or laws of Ohio; and all such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this Charter, or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the Council. In the absence of such provisions as to any power, such power shall be exercised in the manner now or hereafter prescribed by the general laws of the State, applicable to municipalities.

The reference herein to a person as he or him shall also include she or her.

(Amended November 4, 1986.)

Section 2.

The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated herein, implied thereby or appropriate to the exercise thereof, the City shall have, and may exercise all other powers which, under the Constitution and laws of Ohio, it would be competent for this Charter specifically to enumerate.

A Charter Review Committee will be convened by the Mayor every four (4) years to review and consider recommending amendments to the Charter. (Amended November 4, 1986.)

Section 3.

The executive and administrative powers of the City shall be vested in the Mayor, heads of Departments and other officers provided for in this Charter.

THE MAYOR

Section 4.

The Mayor shall be the chief executive officer of the City. The Mayor shall be eligible to be elected for an unlimited number of terms of four years each. The Mayor will be eligible for election after an intervening term. The Mayor shall not hold any other public office, except that of notary public. The Mayor shall be an elector and resident of the City for the five years immediately preceding the Mayor's election, and not less than thirty years of age. The Mayor shall appoint and may remove the heads of all departments, except as otherwise provided in this Charter. The Mayor shall exercise such powers and perform such duties as are conferred or required by this Charter or the laws of the State insofar as they are consistent with this Charter.

(Amended November 6, 2012)

COUNCIL

Section 5.

The legislative power of the City, except as reserved to the people by this Charter, by means of the initiative and referendum, shall be vested in a council of seven members, elected by wards, one from each ward, and for a maximum of two (2) complete consecutive terms of four (4) years each. A Councilperson will be eligible for election after an intervening term. A Councilperson shall be an elector of the ward from which the Councilperson is elected and of not less than twenty-one years of age. (Amended November 4, 2003)

PRESIDENT OF COUNCIL

Section 6.

The President of Council shall be elected by the people for a maximum of two (2) complete consecutive terms of four (4) years each. The President of Council will be eligible for election after an intervening term, commencing on the first day of January next after the President of Council's election, and shall serve until the President of Council's successor is elected and qualified. Qualifications for the President of Council shall be the same as those required for Mayor. (Amended November 4, 2003)

Section 6-1.

When the Mayor is absent from the City, or is unable for any cause, to perform the Mayor's duties, the President of Council shall be the acting Mayor. While the President of City Council is acting as Mayor, the President of Council shall not serve as President of Council. (Amended November 4, 2003)

Section 6-1A.

In case of the death, resignation or removal of the Mayor, the President of Council shall become the Mayor and serve for the unexpired term, and until the successor is elected and qualified. Thereupon the President pro tem of Council shall become President thereof, and shall have the same rights, duties and powers as the President whom the President pro tem succeeds. The vacancy thus created in Council shall be filled as other vacancies and Council shall elect another President pro tem. (Added November 7, 1933)

MEETINGS OF COUNCIL

Section 7.

At eight o'clock P. M. on the first Monday in January, following a regular municipal election, the Council shall meet at the usual place for holding meetings, at which time the newly elected Councilpersons shall assume the duties of their office. Thereafter the Council shall meet at such times as may be prescribed by ordinance or resolution. The Mayor, the President of the Council, or any three members thereof, may call special meetings of the Council upon at least twelve hours' written notice to each member of the Council, served personally on each member or left at the Councilperson's usual place of residence. Such notice shall state the subjects to be considered at the meeting and no other subjects shall be then considered unless all members of Council are present. All meetings of the Council or committees thereof shall be public unless an executive session is held for one of the reasons set forth in Ohio Revised Code 121.22(G) and any citizen shall have access to the minutes and records at all reasonable times.

(Amended November 4, 2003)

COUNCIL CLERKS AND EMPLOYEES

Section 8.

The Council shall appoint a clerk, who shall be known as the City Clerk, and such other assistant clerks of Council as may be necessary. The City Clerk shall keep the records of the Council and perform such other duties as may be required by this Charter or by the Council. Such Clerk shall serve during the pleasure of the Council. Council shall exercise no power of appointment except as herein expressly provided. Council shall not appoint any legislative aides nor shall Council appoint any family members as assistant clerks.

(Amended November 2, 2004)

DEPARTMENTAL OFFICERS AND EMPLOYEES

Section 9.

Except as herein otherwise provided, Council shall by ordinance determine the number of officers and employees in each Department of the City Government.

COMPENSATION OF OFFICERS AND EMPLOYEES

Section 10.

Subject to the provisions of this Charter, Council shall fix by ordinance, the salary or compensation of all officers and employees of the City government, and all fees pertaining to any office shall be paid into the City Treasury.

EMERGENCY MEASURES

Section 11.

All ordinances and resolutions shall be in effect from and after thirty (30) days from the date of their passage by the Council except as otherwise provided in this Charter. The Council may, by a vote of six of its members, pass emergency measures to take effect at the time indicated therein. An emergency measure is an ordinance or resolution necessary for the immediate preservation of the public peace, property, health, or safety.

Section 12.

Ordinances appropriating money may be passed as emergency measures, but no measure making a grant, renewal or extension of a franchise or other special privilege, or regulating the rate to be charged for its service by any public utility, shall ever be so passed; nor shall any ordinance, resolution or any other measure ever be passed providing for the levying or assessing of an occupational tax, upon the various trades, professions, occupations, businesses or employments carried on and performed in the City of Youngstown, without having first submitted such ordinance, resolution, or other measure providing therefor, to a vote of the electors of the City of Youngstown, and having been approved by a majority of the electors voting thereon. (Amended November 3, 1925)

MAYOR'S VETO

Section 13.

Any ordinance or resolution passed by the Council shall be signed by the President or President Pro Tempore, and be presented forthwith to the Mayor by the City Clerk. If the Mayor approves such ordinance or resolution, the Mayor shall sign it within ten days after its passage or adoption by the Council, but, if the Mayor does not approve it, the Mayor shall within ten days return it, together with the Mayor's objections, to the City Clerk, who shall transmit the same to the Council at the next regular meeting thereof, which objections the Council shall cause to be entered in full on its journal. The Mayor may approve or disapprove the whole or any item or part of an ordinance or resolution appropriating money. If the Mayor does not sign or disapprove an ordinance or resolution after its passage or adoption, within the time specified, it shall take effect in the same manner as if the Mayor had signed it.

(Amended November 4, 2003)

Section 14.

When the Mayor refuses to sign an ordinance or resolution, or part thereof, and returns it to Council with his objections, the Council shall, after the expiration of not less than one week, proceed to reconsider it; and, if upon reconsideration, the ordinance or resolution, or part or item thereof, disapproved by the Mayor, be approved by the Council by a two-thirds vote of all members thereof; it shall take effect without the signature of the Mayor; provided, however, that no ordinance or resolution providing for the expenditure of more than Five Thousand (\$5,000.00) Dollars, which has been disapproved by the Mayor, shall take effect after such reconsideration and approval by such two-thirds vote, unless it shall be submitted by Council to a referendum of the electors of the City at the next general election held throughout the City, more than sixty (60) days thereafter, and be approved by a majority of those voting thereon.

Section 15.

Any ordinance or resolution providing for the expenditure of more than Five Thousand (\$5,000.00) Dollars, which has been passed by Council, disapproved by the Mayor, and reconsidered by Council, and approved by a two-thirds vote of all members thereof, as provided in the preceding Section, may by resolution of Council be submitted to a referendum of the electors of the City at the next general election held throughout the City, more than sixty (60) days thereafter; and, if approved by a majority of those voting thereon, shall take effect upon the official determination of the result of such election.

ORDINANCES

Section 16.

Filing and Publication. Every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose, and shall be authenticated by the signature of the City Clerk. Every ordinance or resolution of a general nature, or providing for public improvements, or assessing property, shall, upon its final passage, be promptly published one time in a newspaper of general circulation throughout the City. In lieu of such publication the Council may provide for the publication of a City Bulletin in which such publication may be made and in which all other publications may be made which are required by this Charter or the Revised Code.

In the publication of an ordinance or resolution it shall be sufficient to state the title and the substance thereof, together with the fact that a complete copy thereof is on file and may be seen at the office of the City Clerk.

MAYOR'S RIGHT IN COUNCIL; DEPARTMENTAL HEADS

Section 17.

The Mayor and Heads of Departments shall be entitled to seats in the Council, but shall have no vote therein. The Mayor shall have the right to introduce ordinances, and take part in the discussion of all matters coming before the Council; and the Heads of Department shall be entitled to take part in all discussions in Council relating to their respective Departments.

SALARIES

Section 18.

Each member of the Council except the President shall receive a salary of twenty-seven thousand eight hundred seventeen dollars and twenty-four cents (\$27,817.24) a year, and the President shall receive a salary of twenty-eight thousand one hundred seventeen dollars and twenty-four cents (\$28,117.24) a year, payable in equal bi-weekly installments; provided, however, that for each absence of a Councilman from a regular meeting of the Council there shall be deducted twelve dollars (\$12.00) from his salary. The salary of the Council members and President of Council may be amended from time to time by ordinance, such ordinance being passed prior to the beginning of the term of the Council and Council President to be affected thereby. (Amended November 2, 2004)

The salary of Mayor shall be set by ordinance of Council; the Mayor must be the highest paid elected official, i.e., higher than the City's share of the Municipal Judges and Clerk of Courts salaries. The Mayor's salary shall be payable in equal bi-weekly installments. The salary for the other members of the Board of Control shall be eighty percent (80%) of the Mayor's salary. Such ordinance shall be passed prior to the beginning of the term of the Mayor to be affected thereby. (Amended November 4, 2003.)

Section 19.

Except as otherwise provided in this Charter, the powers, duties and procedure of the Council shall be as provided by the Revised Code.

ADMINISTRATIVE DEPARTMENTS

Section 20.

The following Administrative Departments are hereby created:

- (1) The Department of Law.
- (2) The Department of Finance.
- (3) The Department of Public Works.
- (4) The Department of Water and other Public Utilities.
- (5) The Department of Police.
- (6) The Department of Fire.
- (7) The Department of Community Planning and Economic Development.

(Amended November 4, 2014.)

Section 21.

The Mayor shall be ex-officio Director of the Department of Public Works, and the Department of Water and other Public Utilities.

The Mayor shall appoint a Director of Finance, Law Director, Chief of the Fire Department, Chief of the Police Department, the Commissioner of Water, Commissioner of Engineering and Commissioner of Public Buildings, and Director of Community Planning and Economic Development, each of whom shall serve until removed by the Mayor and until a successor is appointed and qualified. The Director or Chief of each Department shall have the supervision and control of the Department, the disposition and performance of its business, and the custody and preservation of the books, records, papers and property of the Department.

(Amended November 4, 2014.)

Section 22.

The work of the several departments shall be distributed among such divisions thereof as are established by this Charter. There shall be a Commissioner or head to each division, who shall be appointed and may be removed by the Director of the Department with the concurrence of the Mayor. The Commissioner or head of each Division with the approval of the Director of the Department, shall appoint and may remove all officers and employees therein. The number of employees in each department and division thereof, and the salary or wages paid to each shall be fixed by ordinance of Council upon the recommendation of the Mayor. Except Department Heads, Commissioners or Heads of Divisions, all employees shall be selected and employed pursuant to the Civil Service provisions of this Charter. Nothing herein contained shall apply to the Board of Health, or its employees, or the Health Commissioner.

(Amended November 5, 1957.)

DEPARTMENT OF LAW

Section 23.

The City Law Director shall be the head of the Department of Law. The City Law Director shall be an Attorney at Law, and shall have been in actual practice in the State of Ohio, not less than five years. The City Law Director shall be the legal adviser of and attorney and counsel for the City, and for all officers thereof in matters relating to their official duties. Except as otherwise provided in this Charter, the City Law Director shall possess the powers and perform the duties prescribed by the Revised Code. The City Law Director's salary shall be payable in equal bi-weekly installments. Said salary may be changed by the Council, but not during the term of the City Law Director to be affected thereby.

(Amended November 4, 2003.)

DEPARTMENT OF FINANCE

Section 24.

The Director of Finance shall be the head of the Department of Finance. The Director of Finance shall be appointed by the Mayor and shall be confirmed by Council or Council must show cause why the Director of Finance should not be confirmed. The Finance Director shall serve at the pleasure of the Mayor. The Director of Finance shall serve until a successor is appointed and qualified. The Director of Finance shall give such bond for the faithful discharge of the duties as the Council may by ordinance require. The Director of Finance's duties shall include the keeping and supervision of all accounts, the collection and custody of all public money of the City, except funds and accounts of the Board of Education, and such other duties as may be provided by this Charter or by ordinance of Council.

All public money coming into the Director of Finance's hands shall be deposited each day in such bank or banks as the Council may designate by ordinance; and all disbursements of public money shall be by check, showing the name of the payee and the purpose for which the money is paid. The Director of Finance shall keep a record of all checks issued by the Director of Finance, the name of the payee, and the purpose for which the money was paid.

No check shall be issued for the payment of any claim, unless such claim be evidenced by a voucher approved and countersigned by the head of the Department for which the indebtedness was incurred.

The Finance Committee of Council shall make an examination of the books and accounts of the Director of Finance at least once each year, and Council may by resolution order an examination of such books and accounts by the Finance Committee at any time.

(Amended November 4, 2003.)

DIRECTOR OF FINANCE

Section 25.

The Director of Finance shall devise, install and maintain an accounting system, adequate to report in detail all financial transactions of the City, and each of the Departments, and prescribe the method of accounting by all Departments.

The Director of Finance shall have power to investigate the financial transactions of any officer or Department at any time, and may administer oaths and compel the attendance of witnesses and the production of books and papers in such investigation.

(Amended November 4, 2003.)

Section 26.

The Director of Finance shall be the Purchasing Agent of the City, and shall, in the manner provided by ordinance, make all purchases for the City, have charge of the storage and distribution of supplies, sell any property, real or personal, of the City, not needed for public use or that may have become unsuitable for use, or that may have been condemned as useless by a Director of a Department, except as otherwise provided in this Charter.

The salary of the Director of Finance shall be payable in equal bi-weekly installments. Said salary may be changed by the Council, but not during the term of the City Finance Director to be affected thereby. (Amended November 4, 2003.)

DEPARTMENT OF PUBLIC WORKS

Section 27.

Section 27. The Department of Public Works shall consist of the following Divisions:

- (1) Engineering, Construction, Maintenance and Repair.
 - (2) Public Buildings and Grounds.
 - (3) Building, Plumbing and Wiring Inspection.
 - (4) Park and Recreation. The Park and Recreation Director shall be in the unclassified service and appointed by the Mayor and confirmed by Council.
- (Amended November 5, 2013.)

DIVISION OF ENGINEERING, CONSTRUCTION, MAINTENANCE AND REPAIRS

Section 28.

The Division of Engineering, Construction, Maintenance and Repairs, shall be in charge of a Commissioner of Engineering, who shall be the Chief Engineer of the City, and shall be the Deputy Director of Public Works. The Commissioner of Engineering shall manage and supervise all public improvements, works and undertakings of the City except as otherwise provided in this Charter. The Commissioner of Engineering shall have charge of the construction, improvement, repair and maintenance of streets, sidewalks, alleys, lanes, bridges, viaducts and other public highways; of drains, ditches, culverts, streams and water courses; the Commissioner of Engineering shall have charge of the collection and disposal of garbage; the Commissioner of Engineering shall manage and control municipal market houses, and public utilities supported in part or in whole by taxation; the Commissioner of Engineering shall enforce all the obligations of privately owned or operated public utilities enforceable by the City. The Commissioner of Engineering shall have charge of the making and preservation of surveys, maps, plans and drawings and estimates for all public work; the cleaning, flushing and lighting of streets and public places; the preservation of contracts, papers, plans, tools and appliances belonging to the City and pertaining to the functions of this Department. (Amended November 4, 2003.)

Section 29.

The Mayor shall have supervision of the Division of Building, Plumbing and Wiring Inspection, and the collection of Inspection fees; and the Mayor shall, in the manner provided in this Charter or by ordinance, appoint inspectors and provide rules and regulations for their administration. (Amended November 4, 2003.)

DIVISION OF PUBLIC BUILDINGS AND GROUNDS

Section 30.

The Division of Public Buildings and Grounds shall be in charge of a Commissioner of Public Buildings, who shall have supervision of all buildings, and grounds in connection therewith, owned, controlled or leased by the City and used for public affairs, except as otherwise provided in this Charter. The Commissioner of Public Buildings shall provide the necessary labor and supplies for such buildings and grounds and shall have charge of the maintenance, improvement and repair of all such City owned, controlled or leased buildings, and shall make, with the approval of the Mayor, such rules and regulations as are necessary for their conduct and operation.

The Commissioner of Public Buildings shall act as custodian of the City Building, the Central Police Station, and such other public buildings as may be hereafter acquired by the City.

(Amended November 4, 2003.)

DEPARTMENT OF COMMUNITY PLANNING AND ECONOMIC DEVELOPMENT

Section 31.

The Director of Community Planning and Economic Development shall be the Head of the Department of Community Planning and Economic Development. The Director of Community Planning and Economic Development shall plan, organize and administer programs that encourage community and economic development in the City of Youngstown.

(Added November 4, 2014.)

PARK AND RECREATION COMMISSION

(EDITOR'S NOTE: Former Sections 31-36 Park and Recreation Commission were deleted from the Charter by the voters on November 5, 2013.)

Sections 37 to 40 inclusive. (Repealed November 5, 1957.)

HEALTH AND PUBLIC WELFARE

Section 40-1.

The City of Youngstown shall be constituted as a City Health District as that term is defined by the Revised Code of Ohio, which Health District shall be subject to the supervision and control of the City District Board of Health as that term is defined by the Revised Code of Ohio, and said Board of Health shall have all the powers and perform all the duties which are conferred by the Revised Code of Ohio upon City District Boards of Health and such other powers and duties as may be conferred upon it by ordinances of Council.

Section 40-2.

The Provisions of the Revised Code of Ohio as to City Health Districts and City District Boards of Health shall be and are hereby adopted as a part of this Charter and shall be in full force and effect for the City of Youngstown except as otherwise provided herein.

Section 40-3.

There shall be, and there is hereby created, a City District Board of Health for the City of Youngstown and such City District Board shall consist of five (5) members who shall be electors of the City of Youngstown and serve without compensation. The members of the Board shall be appointed and confirmed as provided in Section 3709.05 of the Revised Code of Ohio. A majority of such members shall constitute a quorum. The Mayor shall be the President of the Board as provided therein. The term of office of each member of the Board of Health shall be five (5) years from the first day of April of the year in which his term begins, except that the members of the first Board of Health appointed hereunder shall be appointed for terms of 1, 2, 3, 4, and 5 years respectively and thereafter one shall be appointed each year for a five (5) year term. All members so appointed shall hold office until their respective successors are duly appointed and qualified. All appointees to boards and commissions authorized by the Charter shall serve no more than two (2) complete consecutive terms of office. They will be eligible for appointment after an intervening term. (Amended November 4, 1986.)

Section 40-4.

The Board of Health shall appoint a full time Health Commissioner and shall fix the Health Commissioner's compensation. The Commissioner so appointed shall hold a Master's or Doctor's Degree in Public Health at time of the Health Commissioner's appointment. (Amended November 4, 2003.)

Section 40-5.

Adoption of this Amendment shall not be construed as abolishing positions which have heretofore existed in the Department of Health in the City of Youngstown, and all such positions in existence on the date when this Amendment becomes effective shall be construed to be positions in the City Health District in the City of Youngstown under the jurisdiction of said Board of Health. Present employees in such positions, except the present Health Commissioner who shall be replaced by a Health Commissioner appointed in accordance with the provisions of this Amendment, shall continue to hold the same unless or until removed in accordance with the applicable Civil Service laws, rules and regulations. Nothing however in this Amendment shall be deemed to limit or restrict the power of the Board of Health to create or abolish offices or positions under its jurisdiction.

Section 40-6.

All Sections of the Charter, in whole or in part, which are in conflict with these proposed Amendments shall be, and the same are hereby, repealed.

Section 40-7.

See last page.

DIVISION OF CHARITABLE AND CORRECTIONAL INSTITUTIONS

Section 41.

(EDITOR'S NOTE: This section was repealed by the voters on November 4, 1986.)

DIVISION OF EMPLOYMENT

Section 42.

(EDITOR'S NOTE: This section was repealed by the voters on November 4, 1986.)

DEPARTMENT OF WATER AND OTHER PUBLIC UTILITIES

Section 43.

The Director of Water and Other Public Utilities shall control and supervise all non-tax supported public utility undertakings of the City, including all water, lighting or other utility enterprises now owned or hereafter acquired by the City.

The Commissioner of Water shall be the Deputy Director of Water and other Public Utilities.

In the event the City hereafter acquires any public utility, Council may by ordinance authorize the appointment of a Commissioner or Manager thereof, and prescribe the duties thereof.

No obligation of the Department of Water and Other Public Utilities may be created unless authorized by the head of the Division affected, and approved by the Mayor.

(Amended November 4, 2003.)

Section 44.

The accounts of all Public Utilities owned and operated by the City and dependent for their revenue upon the sale of their products or services shall be kept separate and distinct from all other accounts of the City.

Such utilities may exercise the functions of a purchasing department, so far as it pertains to the purchase or sale of their own material or property and the distribution thereof to the various divisions and subdivisions thereof; subject to the provisions of Section 111 of this Charter.

(Amended November 4, 2003.)

COMMISSIONER OF WATER

Section 45.

The Division of Water shall be in charge of a Commissioner of Water. The Commissioner of Water shall adopt and enforce, with the approval of the Mayor, all rules and regulations governing the Division of Water, and fix the rates and conditions for the supplying of water. The Commissioner of Water shall adopt such regulations as to the security for water rents as shall be deemed necessary or advisable. Such rates shall be classified and uniform to all consumers within the city. Special rates, based on the cost of operation, may be provided for charitable and semi-charitable institutions within the City.

(Amended November 4, 2003.)

Sections 46 and 47. (Repealed November 7, 1935.)

DEPARTMENT OF POLICE

Section 48.

The Chief of Police shall be the head of the Department of Police and shall have exclusive control of the stationing and transfer of all patrolmen and other officers and employees constituting the police force.

The Police Force shall be composed of a Chief, and such officers, patrolmen and other employees as may be provided by ordinance of the Council. In case of riot or other emergency, the Chief of Police may appoint additional patrolmen and officers for temporary service, who need not be in the classified list of such Division, but who shall have been citizens and residents of the City of Youngstown for not less than three years.

Section 49.

No person shall act as special policeman, special detective or other special officer for any purpose whatsoever, except upon written authority from the Chief of Police. Such authority shall be exercised only under the direction and control of the Chief of Police and for a specified time, not to exceed six months.

DEPARTMENT OF FIRE

Section 50.

The Chief of the Department of Fire shall be the head of that Department and shall have exclusive control of the stationing and transfer of all firemen and other officers and employees constituting the fire force.

The Fire Force shall be composed of a Chief, and such other officers, firemen and employees as may be provided by ordinance of the Council. In case of riot, conflagration, or like emergency, the Chief may appoint additional firemen and officers for temporary service, who need not be in the classified service.

PENSIONS OF POLICEMEN AND FIREMEN

Section 51.

(EDITOR'S NOTE: This section was repealed by the voters on November 4, 1986.)

CIVIL SERVICE

Section 52.

All of the provisions of the Revised Code of the State of Ohio relating to Municipal Civil Service are hereby adopted and made a part of this Charter, excepting that all positions in the public service of the City of Youngstown shall be classified as follows:

A. The unclassified service shall include:

- (1) All officer elected by the people.
- (2) Chief of Police.
- (3) Chief of Fire Department.
- (4) Commissioner of Water.
- (5) Members of Board of Health.
- (6) (Deleted)
- (7) Commissioner of Engineering.
- (8) Commissioner of Public Buildings.
- (9) Director of Law and Assistants.
- (10) Director of Finance.
- (11) Clerk of Council.
- (12) One Secretary for Head of a Department.
- (13) Unskilled Labor.
- (14) Architects, Civil Engineers and other professionals not in the regular employment of the City may be engaged for special work requiring experience and knowledge by the officers and boards in charge of the several departments, provided that the approval of the Mayor and of Council must first be secured in all cases.
- (15) Director of Community Planning and Economic Development.
- (16) Code Enforcement and Blight Remediation Superintendent.

B. The classified service shall comprise all positions not specifically included in the Charter in the unclassified service.

C. All employees, elected officials and all appointees to commissions or boards shall be residents and domiciled in the City of Youngstown.

D. All appointees to boards and commissions authorized by the Charter shall serve no more than two (2) complete consecutive terms of office. They will be eligible for appointment after an intervening term.

E. Any applicant who is a resident of the City of Youngstown, may file documentation, and upon the filing of such proof consistent with rules issued by the Civil Service Commission, shall receive additional credit of fifteen percent (15%) of the person's total grade given in civil service entry-level examination, in which the applicant receives a passing grade. The Civil Service Commission shall issue rules necessary to implement this provision.

(Amended November 4, 2014.)

Sections 53 to 68. (Repealed November 7, 1933.)

NOMINATIONS AND ELECTIONS

Section 69.

Regular municipal elections for all elective offices provided for in this Charter shall be held at the times and in the manner required by the general laws of the State.

Primary elections shall be held in the manner and at the times provided in the general laws of the State to nominate party candidates for the offices to be filled at the regular municipal elections.

Nothing in this section shall be construed to affect the provisions of this Charter with respect to the creation, term or tenure of office of municipal officials.

(Amended November 4, 1941.)

Section 70.

(Repealed November 4, 1941.)

Section 71.

(Repealed November 7, 1933.)

Section 72.

(Repealed November 7, 1933.)

Section 73.

(Repealed November 4, 1941.)

THE RECALL

Section 74.

The Mayor may be removed from office by the electors of the City, and members of the Council may be removed from office by the electors of their respective wards, by the following procedure:

Petitions for the recall of the Mayor shall be signed by at least five thousand registered electors of the City, and petitions for the recall of a member of Council shall be signed by at least seven hundred registered electors of the Council member's ward. Such petitions shall be signed and verified in the manner provided in this Charter for petitions for the nomination of candidates.

The petitions shall state that the signers thereof demand the recall of the official sought to be recalled, and shall contain the names and addresses of a committee of three electors who shall be the agents of the petitioners in all matters relating to the petitions.

Such petitions shall be filed with the City Clerk, who shall examine them, and if regular in form and having sufficient number of signatures, shall be certified by him to the election authorities of the City, who shall forthwith examine the signatures to such petitions and determine whether they are properly signed by the required number of registered electors; and if the petitions be found sufficient, they shall forthwith order a recall election as asked for in such petitions, to be held at the same time as the next general or primary election to be held throughout the City, not less than sixty (60) days thereafter, and they shall forthwith certify their finding and the time fixed for such recall election to the City Clerk and the official or officials whose recall has been so petitioned.

(Amended November 4, 2003.)

Section 75.

If any official whose recall has been petitioned shall file a written resignation with the City Clerk at any time before the time fixed for such recall election, such resignation shall take effect at once and shall be irrevocable, and no further proceedings for the official's recall shall be had. (Amended November 4, 2003.)

Section 76.

If such recall petitions shall be found insufficient by the election authorities, they shall forthwith return the petitions with their finding to the City Clerk. If the City Clerk shall find such recall petitions insufficient as to form and number of signatures, or if such petitions shall be returned to the City Clerk as insufficient by the election authorities, the City Clerk shall forthwith so notify the committee named in such petitions, who may within thirty (30) days thereafter file new or additional petitions, on which the procedure shall be the same as on the original petitions. Provided, however, if the election authorities shall a second time find such petitions insufficient, they shall retain the petitions and certify their finding and the reasons therefor to the City Clerk, and no recall petition against the official named in such rejected petitions shall be filed within six months from date of such finding.

(Amended November 4, 2003.)

Section 77.

The ballots at such recall election shall conform to the following requirements. With respect to each person whose removal is sought, the question shall be submitted: "Shall (name of person) be removed from the office of (title of office) by recall?" Immediately following each such question there shall be printed on the ballots the two propositions in the order here set forth:

"For the recall of (Name of person)."

"Against the recall of (Name of person)."

Immediately to the right of each of the propositions shall be placed a square in which the voters, by making a cross mark (X), may vote for either of such propositions.

Section 78.

In any such election, if a majority of the votes cast on the question of removal of any officer are affirmative, the person whose removal is sought shall thereupon be deemed removed from office upon the announcement of the official canvass of that election, and the vacancy caused by such recall shall be filled in the manner provided in

this Charter for filling vacancies caused by death or resignation.

Section 79.

No petition to recall any officer shall be filed within six months after the officer takes office. (Amended November 4, 2003.)

Section 80.

No person shall pay another or receive or accept payment for circulating or securing signatures to any recall petition, and any petition circulated or taken charge of by any person paid therefor shall be void.

Section 81.

No person removed from office by recall shall be eligible to be elected or appointed to any City office within two years thereafter.

INITIATIVE AND REFERENDUM

Section 82.

The provisions of the Revised Code as to the Initiative and Referendum shall remain in full force and effect, except that the number of electors necessary for an initiative petition shall be three per cent, and for a referendum petition six percent, and such petition shall be filed with the City Clerk.

Council shall provide proper forms of petitions for the Initiative, Referendum and Recall, which shall be kept in the custody of the City Clerk from whom any citizen may obtain them under such reasonable rules and regulations as Council may by ordinance prescribe.

DIVISION OF CITY INTO WARDS

Section 83.

Before September 1, 1923, the present Council shall divide the City into seven wards. All wards shall be composed of contiguous and compact territory, as nearly equal in population as possible, and bounded by natural boundaries or street lines. If the Council fails to make such sub-division into wards within said time, the Director of Law shall make such sub-division within thirty (30) days thereafter. Upon annexation of new territory to the City, Council shall apportion the same to an existing ward or wards. Following each Federal Census, Council shall re-district the City whenever there is a reasonable population change, so as to maintain a reasonable equality of population among the seven wards.

(Amended November 6, 2012)

BOARD OF SINKING FUND TRUSTEES

Section 84.

The Board of Sinking Fund Trustees shall consist of the Mayor, the Director of Law and the Director of Finance; the Mayor shall be the President, and the Director of Finance the Secretary of the Board. They shall make their own rules, and shall be governed by the provisions of the Revised Code relating to Sinking Fund Trustee for Cities.

CITY PLANNING COMMISSION

Section 85.

There is hereby created a City Planning Commission composed of Seven (7) members, consisting of the Mayor, Director of Law, Commissioner of Engineering, one member of the Park and Recreation Commission who shall be appointed by the Mayor, and three citizens at least one of whom shall be a woman, to be appointed by the Mayor for terms of four years each.

The Mayor shall be Chairman of the Commission, and the Commissioner of Engineering shall be the Chief Engineer and Secretary thereof.

The Commission shall possess the powers and perform the duties prescribed for Planning Commissions by the Revised Code. (Amended November 5, 1935.)

ADMINISTRATIVE COUNCIL

Section 86.

The Mayor and the heads of Departments and Divisions provided for in this Charter shall constitute a Council of Administration, which shall meet at least once each month for the discussion of matters relating to the administration of City affairs and the improvement of methods of procedure in the various Departments. The Mayor shall be the Chairman of the Council of Administration.

Section 87.

The Council of Administration shall prepare and submit to the City Council for adoption an administrative code of ordinances, which shall organize, and define and distribute the functions of the several Departments, Divisions and offices of the City government in conformity to the provisions of this Charter, and which shall provide in detail a method of procedure for the exercise of the powers and duties of said Departments, Divisions and offices. Such administrative code shall require that the head of each Department or Division shall personally perform such of the duties of the Department or Division as the head of each Department or Division may be able to do, and shall also provide for such necessary assistance as Council may deem proper. (Amended November 4, 2003.)

NEW DEPARTMENTS OR DIVISIONS

Section 88.

Council shall have power to consolidate Departments, Divisions or offices, provided for by this Charter, and prescribe by ordinance additional duties for any Department, Division or office, but any ordinance creating any new Department, Division or office, shall not become effective until approved by the electors of the City at a referendum election, as provided by this Charter. Council may, by a resolution adopted by a two-thirds vote of all its members, submit such ordinance to a referendum vote at the next general election throughout the City, more than sixty (60) days thereafter.

BUDGET ESTIMATE

Section 89.

The fiscal year of the City shall begin on the first day of January. On or before the first day of July in each year the Director of Finance shall prepare an estimate of the expenses of conducting the affairs of the City for the following year. This estimate shall be compiled from detailed information obtained from the various Division heads on uniform blanks prepared by the Director of Finance and shall set forth:

- (a) An itemized estimate of the expense of conducting each division.
- (b) Comparisons of such estimates with the corresponding items of expenditures for the last two (2) complete fiscal years, and an estimate of expenditures necessary to complete the current fiscal year.
- (c) Reasons for increases or decreases in such items of expenditures.
- (d) A separate schedule for each Division showing the things necessary for the Division to do during the year, and which of these things is the most desirable to be done.
- (e) All items of payroll increases, either as additional pay to present employees, or pay for more employees.
- (f) A statement from the Director of Finance of the total probable income of the City from taxes for the period covered by the budget.
- (g) A statement from the head of each Division of all anticipated revenues from sources other than the tax levy.
- (h) The amount of the bonded indebtedness and the sum necessary for interest and Sinking Fund purposes for the year.
- (i) Such other information as may be required by the Mayor.

PUBLIC HEARINGS

Section 90.

The Director of Finance shall submit the estimate thus prepared to the Mayor, and shall have copies of a condensed statement of the same printed for distribution to citizens who may call for them and shall furnish copies of said printed statement to the newspapers of the City.

The Mayor and Director of Finance shall immediately make provision for holding hearings on the estimate, and ample provision shall be given for citizens to be present at and participate in such public hearing.

PREPARATION OF BUDGET

Section 91.

When the estimate shall have been found to be in a form satisfactory to the Mayor and the Director of Finance it shall immediately be submitted to Council, and when approved by Council the same shall be so certified to the Director of Finance.

APPROPRIATIONS

Section 92.

On or before the first day of June and December in each year, the head of each Division shall prepare an estimate of the expenses of conducting the respective Division during the ensuing fiscal half year, classified under appropriate heads as prescribed by the Director of Finance. Each estimate shall include an itemized list of the number of employees, rates of wages paid, quantity of supplies desired and price per unit, together with such other information as may be required, which estimates are to be presented to the Director of Finance on uniform blanks prepared by the Director of Finance. (Amended November 4, 2003.)

Section 93.

Said estimates shall be prepared in triplicate by the Division Heads who shall retain one copy, file one with the Mayor and one with the Director of Finance. The Mayor and Director of Finance shall examine the estimates as presented and when satisfactory shall be reduced to ordinance form by the Director of Finance and presented to Council, together with a statement of the revenues estimated to come into the Treasury from taxes and all other sources during the ensuing fiscal half year, together with balances on hand at the beginning of the period. When Council shall find the ordinance to be satisfactory and it is adopted in accordance with law, it shall constitute an appropriation from which all expenditures within the following six months shall be made, and within which such appropriations and balances thereof, all expenditures for the period must be confined.

Section 94.

Unexpended appropriations or balances of appropriations remaining over at the end of the year, and balances remaining over at any time after a fixed charge shall have been terminated by reason of the object of the appropriations having been satisfied, shall revert to the funds from which they were taken and shall be subject to such further authorized use as the Council may determine.

SPECIAL ASSESSMENTS

Section 95.

Council shall have power to provide for the construction, repair and maintenance of all things in the nature of street improvements, either by contract, or directly by the employment of labor and purchase of material; and shall provide for the payment of the cost of the same by levying and collecting special assessments, upon abutting, adjacent or specifically benefited property, the amount necessary to pay for such improvement.

Section 96.

Special assessments upon property benefited shall be by any one of the following methods:

- (a) By percentage of the tax value of the property assessed.
- (b) In proportion to the benefits resulting from the improvement.
- (c) By the foot frontage of property abutting upon the improvement.

Section 97.

No resolution to proceed with any improvement, the cost of which is to be paid by special assessment, shall be introduced in Council, unless a petition shall have been filed with the Commissioner of Engineering asking for such improvement, except as hereinafter provided.

Such petition shall state accurately the nature and location of the proposed improvement, and waive the rights of the signers thereof to any and all exemptions against assessments that may be made to pay for such improvements.

Such petition shall be signed by the owners of two-thirds of the foot frontage of the property abutting on the street or portion of the street so to be improved.

In case of an extraordinary emergency or public necessity, Council may, by three-fourths vote of all its members, proceed with any street improvement, without a petition being previously filed.

Section 98.

On or before the first day of January in each year, or as often thereafter as may be deemed advisable, the Commissioner of Engineering shall prepare and present to Council a budget setting forth all proposed improvements for the ensuing calendar year, which are to be paid for in whole or in part by special assessments.

Said budget shall contain the following information:

- (1) Location and general description of proposed improvements.
- (2) Estimated cost of the same.
- (3) Method of financing.
- (4) Method of assessments, mode of payment, number of annual payments, and estimated rate of assessment, and any additional information regarding such proposed improvements as Council may require.
- (5) A statement showing what proposed improvements are most necessary.

Section 99.

Upon receipt of said budget, Council shall forthwith proceed to hold public hearings on the same, after notice of such hearings shall have been given as provided in this Charter.

After such hearing a resolution shall be introduced in Council to proceed with the improvements determined upon, which resolution shall set forth the nature of the proposed improvement, the method of assessment, the manner of payment, the number of annual installments, and other necessary information.

It shall declare the intention of Council to make such improvements, and shall approve proper plans, profiles and specifications, which shall have been prepared by the Commissioner of Engineering.

The resolution shall be passed only by a two-thirds vote of all members of Council.

All street improvements shall be financed as provided in this Charter.

If, previous to the passage of any resolution providing for any improvement of any street or part thereof, a petition, signed by the owners of two-thirds of the foot frontage of property abutting upon such street or part thereof, shall be filed with the City Clerk, objecting to such proposed improvement, Council shall thereupon drop such proposed improvement from said resolution, except in case of extraordinary emergency or public

necessity.

Section 100.

At the time of the passage of said resolution, there shall be on file, in the office of the Commissioner of Engineering, plans, specifications, profiles, and estimates of the cost of such proposed improvement, which shall be open to the inspection of the public.

Section 101.

Immediately upon the passage of the ordinance to proceed with the improvement of any street determined upon, the Director of Finance shall submit to Council an ordinance providing for the sale of bonds in an amount equal to three-fourths of the estimated cost of such improvement, in anticipation of the collection of special assessments for the payment of said bonds.

Upon the passage of such ordinance, Council shall by motion instruct the Commissioner of Engineering to proceed with the proposed improvements.

Section 102.

The method of legislation for and sale of special assessment bonds shall be in accordance with the provisions of this Charter; and the money realized from the sale of such bonds shall be deposited to the account of the General Assessment Fund. Immediately upon the passage of the ordinance providing for the sale of bonds, provided for in this Section, the City Clerk shall cause to be mailed to each person assessed, a statement setting forth the amount per foot of the estimated assessment, and the date of the sale of bonds, before which time the owner of property assessed may pay the estimated assessment.

(Amended November 4, 2003.)

Section 103.

After the completion of any improvement the Commissioner of Engineering shall immediately proceed to make a correct assessment, report the same to Council; and, upon the filing of the same, the City Clerk shall cause a notice to be served by mail upon all the owners of property assessed for such improvement, and all persons, who cannot be so notified, shall be given notice as provided in this Charter.

Such notice shall state the character of the improvement, the total cost of the same, the amount of the assessment against the owner of property so notified, the fact that the assessment report has been filed with Council, and name a time and place when and where hearing will be held by the Special Assessment Board, which time shall not be earlier than ten (10) days after giving said notice.

Section 104.

The Special Assessment Board shall consist of the Director of Law, the Director of Finance, and the Commissioner of Engineering.

The Commissioner of Engineering shall be the President of said Board; and the Director of Finance the Secretary. Said Board shall meet as required by its rules and regulations, or as provided by ordinance of Council; and hear and determine all matters pertaining to special assessments for improvements of all kinds.

Section 105.

When the Special Assessment Board shall have made its final report to Council as to any improvement, Council shall proceed to pass a proper ordinance levying the assessments as reported by said Board.

In such ordinance, it shall be sufficient to describe the lots and lands abutting upon the improvement, and to be assessed therefor, by giving the proper City Lot or Out-Lot number thereof.

CONTRACTS PRIOR TO CHARTER

Section 106.

All contracts entered into by the City or for its benefit prior to the taking effect of this Charter, shall continue in full effect. All public work begun prior to the taking effect of this Charter may be continued and perfected hereunder. Public improvements for which legislative steps shall have been taken under laws in force at the time this Charter takes effect may be carried to completion in accordance with the provisions of such laws.

CERTIFICATION OF CONTRACTS AS TO FUNDS IN TREASURY

Section 107.

No contract, agreement, or other obligation, involving the expenditure of money shall be entered into, nor shall any ordinance, resolution, or order for the expenditure of money be passed by the Council, or be authorized by any officer of the City, unless the Director of Finance first certify to the Council or to the proper officer, as the case may be, that the money required for such contract, agreement, obligation, or expenditure, is in the Treasury, to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose, which certificate shall be filed and immediately recorded. The sum so certified shall not thereafter be considered unappropriated until the City is discharged from the contract, agreement or obligation.

Section 108.

All moneys actually in the Treasury to the credit of the fund from which they are to be drawn, and all moneys applicable to the payment of the obligation or appropriation involved, that are anticipated to come into the Treasury before the maturity of such contract, agreement or obligation, from taxes or assessments or from sale of services, products, or by-products or from any City undertakings, fees, charges, accounts and bills receivable or other credits in process of collection and all moneys applicable to the payment of such obligation or appropriation, which are to be paid into the Treasury prior to the maturity thereof, arising from the sale or lease of lands or other property, and moneys to be derived from lawfully authorized bonds sold and in process of delivery shall, for the purposes of such certificate, be deemed in the Treasury and subject to such certification.

CONTRACTS-WHEN VOID

Section 109.

All contracts, agreements, or other obligations and all ordinances, resolutions and orders entered into or passed contrary to the provisions of the preceding sections, shall be void, and no person whatsoever shall have any claim or demand against the City thereunder, nor shall the Council, or any officer of the City, waive or qualify the limits fixed by any ordinance, resolution or order, as provided in Section 107 and 108, or fasten upon the City any liability whatever, in excess of such limits, or release any party from an exact compliance with the contract under such ordinance, resolution or order.

(Amended November 4, 2003.)

Section 110.

For the purpose of executing contracts and agreements on behalf of the City, there is hereby created a Board of Control, consisting of the Mayor, the Director of Law and Director of Finance, of which the Mayor shall be Chairman and the Director of Finance the Secretary. It shall be the duty of the Board of Control to keep a Journal of all its proceedings as well as a copy of all contracts authorized by it.

Section 111.

When any expenditure in any department other than the compensation of persons employed therein, exceeds monetary limits prescribed by the Ohio Revised Code, it shall first be authorized and directed by ordinance of the Council. When so authorized and directed, the Board of Control shall make a written contract with the lowest and best bidder who is responsible after advertisement once a week for at least two weeks in a newspaper of general circulation within the City.

The bids shall be opened at 12:00 o'clock noon, on the last day for filing the same by the Mayor in the presence of the Director of Finance and publicly read. Each bid shall contain the full name of every person or company interested in the same, and shall be accompanied by a sufficient bond or certified check on a solvent bank of the City, as required by the specifications for the improvement, that if the bid is accepted a contract will be entered into and an acceptable bond in the sum of not less than fifty percent of the contract price given to properly secure the performance of the same within the contract time. If the work bid for embraces both labor and material, they shall be separately stated with the price therefor. If the bids so received are in excess of the Commissioner of Engineering's estimate of the cost, it shall be optional with the City, either to elect to furnish the material and do the work under the Commissioner of Engineering's Supervision or readvertise for new proposals. The Board of Control may reject any or all bids, but shall indorse on the bid or bids rejected the reason for so doing.

(Amended 11-2-93)

ALTERATIONS OR MODIFICATIONS IN CONTRACTS

Section 112.

When it becomes necessary, in the opinion of the Director or Head of the appropriate Department, in the prosecution of any work, or improvement under contract, to make alterations or modifications, such changes shall be made only upon the order of such Director or Head in writing and upon the approval of the Board of Control. No such order shall be effective until the price to be paid for the work or material, or both, under the altered or modified contract, shall have been agreed upon in writing and signed by the Contractor and the Director or Head of the Department in behalf of the City.

INTEREST IN CONTRACTS OR SUPPLIES

Section 113.

No officer or employee of the City shall have a personal interest, direct or indirect, in the profits of any contract or job with the City or be personally interested directly or indirectly in the sale to the City of any supplies, material, service or land, except on behalf of the City as an officer or employee. Any violation of this Section shall constitute malfeasance in office, and any officer or employee found guilty thereof shall forfeit that office. The City shall maintain a Conflict of Interest Policy and annually all employees and elected officials shall complete and sign a Conflict of Interest Disclosure Form.
(Amended November 6, 2012.)

Section 114.

Public improvements of all kinds may be made by the appropriate Department, by direct employment of the necessary labor and the purchase of necessary supplies and materials, with separate accounting for each improvement so made, and Council may by ordinance require any specific improvement to be so made.

HOURS OF LABOR

Section 115.

Eight hours shall constitute a day's work and not to exceed forty-eight hours a week's work, for workers engaged on any public work done by the City. In any case of extraordinary emergency, the Council may by resolution suspend the operation of this Section as to any particular job, contract or operation.

(Amended November 4, 2003.)

OFFICIAL TIME

Section 115-1.

From 2 o'clock A.M. of the second Sunday of March of each year and ending at 2 o'clock A.M. on the first Sunday of November of each year, a standard of time, based on the mean astronomical time of the 75th meridian of longitude west from Greenwich, and from 2 o'clock A.M. of the second Sunday in March to 2 o'clock A.M. of the first Sunday of November, a standard of time one hour faster than that of the 75th meridian of longitude west of Greenwich shall be the official time in the City of Youngstown, for the handling of municipal affairs and for governmental purposes. In all official use by officers and employees of the City of Youngstown, official time of the City shall be designated as "Eastern Standard Time" during the period between the second Sunday in March and the first Sunday in November, and as "Daylight Savings Time" during the period between the second Sunday in March and the first Sunday in November. (Amended November 6, 2012.)

Section 116.

(Repealed November 7, 1933.)

GENERAL PROVISIONS

Section 117.

Prior Ordinances. All ordinances and resolutions in force at the time of the taking effect of this Charter, not inconsistent with its provisions, shall continue in force until amended or repealed.

Section 118.

Notice of Claims. The Council shall prescribe by ordinance the periods within which notices of injuries to person or property claimed to have been sustained by reason of alleged negligence of the City must be presented as a condition precedent to the right of action against the City or as a condition precedent to the liability of the City.

Section 119.

When Charter takes effect. For the purpose of nominating and electing officers, exercising the powers of the City as provided herein, and sub-dividing the City into seven wards, this Charter shall take effect from the time of its approval by the electors of the City. For the purpose of establishing Departments, Divisions and offices, and distributing the functions thereof, and for all other purposes, it shall take effect on the first day of January, 1924.

Section 120.

Amendments. Amendments to this Charter shall be submitted to the Electors of the City of Youngstown in the manner provided by the Constitution and laws of the State of Ohio. (Amended May 2, 1972.)

Section 121.

Following each Federal Census, the City Council of the City of Youngstown shall review and, if necessary, request any necessary updates of the City of Youngstown's Comprehensive Plan.
(Enacted November 2, 2004.)

NOTE: Sections 36-B and 40-7.

CONSTITUTIONALITY- That if any part or provision of Sections 20, 21, 22, 27, 31 to 36A inclusive, Sections 40-1 to 40-7 inclusive, Section 52 and Section 85 be declared unconstitutional or inoperative by the courts, this shall only affect part or provision, the remainder of these amended Sections continuing in full force and effect.

See Ordinance No. 39191 - Nov. 5, 1935

Ordinance No. 62844 - Nov. 5, 1957

CODIFIED ORDINANCES OF YOUNGSTOWN





Jon Husted
Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (877) 767-6446 Fax: (614) 644-0649
www.OhioSecretaryofState.gov



August 13, 2015

Athens County Board of Elections
15 South Court Street, #130
Athens, Ohio 45701

Athens County Board of Commissioners
15 South Court Street, 2nd Floor
Athens, Ohio 45701

Fulton County Board of Elections
135 Courthouse Plaza
Wauseon, Ohio 43567

Fulton County Board of Commissioners
152 South Fulton Street, Suite 270
Wauseon, Ohio 43567

Medina County Board of Elections
3800 Stonegate Drive, Suite C
Medina, Ohio 44256

Medina County Board of Commissioners
144 North Broadway Street
Medina, Ohio 44256

Re: Protests filed pursuant to R.C. 307.95

To the Members of the Athens, Fulton, and Medina County Boards of Elections and Boards of Commissioners:

On August 3, 2015, my office received protests against proposed county charter petitions¹ from the Athens, Fulton, and Medina County Boards of Elections.

Pursuant to R.C. 307.95, I am required to "determine the validity or invalidity" of these charter petitions within ten days after receipt of the protests.² To aid in my determination, I issued Advisory 2015-06 requesting parties to the protest to submit additional written briefs and supporting documentation, and permitting interested parties to submit *amicus* briefs to my office by 5:00 p.m. on Friday, August 7, 2015.

FACTUAL BACKGROUND AND PROCEDURE

The Ohio Constitution (Article X, Section 3) and R.C. 307.94 allow electors of a county to file a petition seeking to submit the question of the adoption of a county charter to the electors of the county.

¹ For ease of reference, I will refer to these county charter petitions as the "Athens petition," the "Fulton petition," and the "Medina petition," respectively.

² "The secretary of state, within ten days after receipt of the protests, shall determine the validity or invalidity of the petition and the sufficiency or insufficiency of the signatures. The secretary of state may determine whether to permit matters not raised by protest to be considered in determining such validity or invalidity or sufficiency or insufficiency, and may conduct hearings, either in Columbus or in the county where the county charter petition is filed. The determination by the secretary of state is final." R.C. 307.95(C).

A committee of petitioners in Athens, Fulton, and Medina counties each initiated, circulated, and filed substantially similar county charter petition proposals for the November 3, 2015 general election ballot.

The Fulton and Medina petitions were filed with their respective county Boards of Elections on June 24, 2015. The Boards certified their petition to their respective Board of Commissioners, which, in turn, certified the petition back to that Board of Elections for placement on the ballot.

In Athens County, the Board of Elections certified the petition as invalid to the Board of Commissioners on July 6, 2015, after which, on July 9, 2015, the petitioners requested the Board of Elections, pursuant to R.C. 307.94,³ to “establish the validity or invalidity” of the Athens petition in an action before the Athens County Court of Common Pleas.

The Board of Elections complied with petitioners’ request and filed an action with the Court of Common Pleas on Monday, July 13, 2015. On July 15, 2015, Judge George P. McCarthy determined that “the petition is valid and contains sufficient valid signatures,” and certified his decision to the Board of Commissioners, which, in turn, certified the petition back to the Board of Elections on July 23, 2015.

DISCUSSION

According to R.C. 307.95, when certifying a county charter petition a board of elections must determine that the petition does, in fact, “meet the requirements of law.”

I am unconvinced by Petitioners’ contention that my legal examination herein is solely restricted to the “part petition” itself, as opposed to a review of the petition *and* the charter proposal which, for all practical purposes, is one document. The initiative petition and the proposed charter are inseparable at this stage of the process.⁴

Nor am I persuaded that the law restricts R.C. 307.95’s statutory mandate of legal compliance to merely the administrative or technical aspects of a particular petition, or to the provisions of R.C. 3501.38, as Petitioners claim.

³ R.C. 307.94 (in relevant part) provides that, “[i]f the petition is certified by the board of elections to be invalid or to have insufficient valid signatures, or both, the petitioners’ committee may protest such findings or solicit additional signatures as provided in section 307.95 of the Revised Code, or both, or request that the board of elections proceed to establish the validity or invalidity of the petition and the sufficiency or insufficiency of the signatures in an action before the court of common pleas in the county.”

⁴ See *Durell v. Celebrezze*, 1980 WL 353759 (10th Dist. Ct. App. 1980), in which the Court determined that the substance of the initiative legislation at issue was “inseparable” from the initiative petition itself.

Accordingly, I find nothing to materially limit the scope of my legal review of the petitions (including the language and substantive content of the county charter proposals) in question.

On the contrary, I am empowered by the unique language of R.C. 307.95 that both permits the chief elections officer to consider matters that may not have been raised via the protests, and provides unfettered authority to “determine the validity or invalidity of the petition.”

Finally, I am unmoved by Petitioners’ argument which flatly asserts that I am unable at this time to consider the *substance* of the proposed county charters as I reach my decision. Among other distinguishing factors, the cases cited by Petitioners⁵ involved municipal legislative authorities reviewing municipal petitions, relied on different fact patterns and different statutes to reach their respective conclusions, and did not involve the constitutionally empowered chief elections officer of the state reviewing a county charter petition pursuant to statutory authority.

I maintain, instead, that the unrestricted language⁶ of the sole statute governing this protest plainly and unambiguously authorizes me to examine every aspect of these petitions in more than just a “ministerial” fashion.

In *Durell v. Celebreeze*, 1980 WL 353759 (10th Dist. Ct. App. 1980), the plaintiffs successfully enjoined the Secretary of State from placing on the ballot at the general election an initiative petition on the basis that the proposed initiative sought to pass a law that would clearly violate a provision of the Ohio Constitution that prohibits using the initiative process to authorize a classification of property for the purpose of levying different rates of taxation.⁷

Our situation is analogous. Article X, Section 3 provides for initiative county charter petitions, but, as in *Durell*, the Constitution restricts what may be contained in the substance of the initiative petition itself.

In this case, Article X, Section 3 provides that the initiative process is “reserved to the people of each county on all matters which such county may now or hereafter be authorized to **control by legislative action**,” (Emphasis added.) As I will explain later in my decision, substantive provisions of these petitions contain questions on which a county is not authorized by law to control by legislative action.⁸

As the 10th District Court of Appeals in *Durell* wisely noted:

⁵ *State ex rel. Ebersole, et al. v. The City of Powell, et al.*, 141 Ohio St.3d 17 (2014), and a similar line of cases.

⁶ R.C. 307.95 (in part): “The secretary of state...shall determine the validity or invalidity of the petition....” (Emphasis added.)

⁷ O. Const. Article II, Section 1(e): “The powers defined herein as the ‘initiative’ and ‘referendum’ shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.”

⁸ See also *State ex rel. Rhodes v. Board of Elections of Lake County*, 12 Ohio St.2d 4 (1967), in which relators failed to force the local board of elections to place an initiative petition on the ballot because it contained proposed legislation that a municipality is not authorized by law to control by legislative action.

“Form should not prevail over substance. The law becomes a laughing stock when such subterfuge succeeds.”

County government in Ohio is established in Article X, Section 1 of the Ohio Constitution,⁹ which instructs the General Assembly to provide “by general law for the organization and government of counties...” Consistent with this mandate, the General Assembly enacted various provisions of Chapter 301 of the Revised Code that provide the structure for basic county government in Ohio.

Article X, Section 1 also permits the General Assembly to pass laws providing the structural requirements for “alternative forms of county government.” These laws are enacted in Chapter 302 of the Revised Code.

One of these “alternative forms of government” is a “home rule” county, which is implemented when voters of a county approve a county charter proposal petition via the procedures outlined in R.C. 307.94.

The petitioners in Athens, Fulton, and Medina counties are seeking to implement this home rule type of county government in their county charter proposal petitions.

These petitions, for the most part, contain the same general language and provisions. For example, the Preamble of each petition declares the following:

“... [W]e deem it necessary to alter the current County government...”

“... [W]e form this Charter so that the people in all incorporated and unincorporated parts of the county may exercise all powers including, but not limited to, those vested by the Constitution and laws of Ohio in home rule municipalities.”

“We...adopt this home rule Charter...to elevate the consent of the governed above administrative dictates and preemptions...”

Section 3.01 of each proposal similarly provides:

“The County...shall...[have] all the powers, authorities, and responsibilities granted by this Charter and by general law, including but not limited to all or

⁹ O. Const. Article X, Section 1: The general assembly shall provide by general law for the organization and government of counties, and may provide by general law alternative forms of county government. No alternative form shall become operative in any county until submitted to the electors thereof and approved by a majority of those voting thereon under regulations provided by law. Municipalities and townships shall have authority, with the consent of the county, to transfer to the county any of their powers or to revoke the transfer of any such power, under regulations provided by general law, but the rights of initiative and referendum shall be secured to the people of such municipalities or townships in respect of every measure making or revoking such transfer, and to the people of such county in respect of every measure giving or withdrawing such consent.

any powers vested in municipalities by the Ohio Constitution or by general law.”

Additionally, provisions of each petition clearly aim to regulate what is commonly known as “fracking” within their respective county borders by making it illegal to “[d]eposit, store, treat, inject, dispose of, or process wastewater, produced water, ‘frack’ water, brine or other substances, chemical, or by-products that have been used” in the unconventional extraction (or “high-volume horizontal hydraulic fracturing”) of gas and oil on or into the land, air or waters....”¹⁰

Likewise, each outright ban the “procurement or extraction of water from any source” for use in hydraulic fracking.¹¹

The Fulton and Medina petitions proceed a step further, prohibiting “the exploration for or extraction of gas or oil” within these counties, with an exception for currently operating gas and oil wells,¹² and banning the “siting or operation of equipment to support extraction of oil or gas, including pipelines, compressors, or other infrastructure.”¹³

In a similar vein, each of the petitions contains a “Community Bill of Rights” granting certain rights to “ecosystems,” and a general “right to be free of chemical trespass.”

What these charter petitions do *not* contain, however, is also fundamental to examine.

Significantly, I find that none of the petitions realistically provide for a county executive, or, indeed, provide for *any* meaningful change to the structure of county government.

As mentioned above, the Ohio General Assembly enacted Chapter 302 of the Revised Code to implement the “alternative form of government,” which these petitions purport to create. According to statute, every alternative form of county government in Ohio must include either an elected or an appointed county executive.¹⁴

None of these petitions, however, provide for the election or appointment of a county executive as required by Ohio law.

In fact, the language of each petition confirms as much, explicitly providing for the continuation of the same offices that exist in their current county governments (each of which include three county commissioners, an auditor, a treasurer, a prosecuting attorney, etc.) while not providing for a county executive:

¹⁰ See Section 2.01.1, Athens petition; Section 2.01.3, Fulton and Medina petitions.

¹¹ See Section 2.01.2, Athens petition; Section 2.01.4, Fulton and Medina petitions.

¹² See Section 2.01.1, Fulton and Medina petitions.

¹³ See Section 2.01.2, Fulton and Medina petitions.

¹⁴ See R.C. 302.02: “An alternative form of county government shall include either an elective county executive...or an appointive county executive...,” and R.C. 302.14: “There shall be a county executive, who shall be the chief executive officer of the county.”

The offices and duties of those offices, as well as the manner of election to and removal from County offices, and every other aspect of county government not prescribed by this Charter, or by amendments to it, shall be continued without interruption or change in accord with the Ohio Constitution and the laws of Ohio that are in force at the time of the adoption of this Charter and as they may subsequently be modified or amended.

Section 4.01 County Officers, Duties, Powers and Manner of Election
(Emphasis added.)

The unavoidable truth is that the Athens, Fulton, and Medina petitions simply fail to adhere to the Revised Code's clear requirements for a legally constituted "alternative form of government."

In addition, recent court decisions forcefully address "home rule" as it relates to local governments (as political subdivisions of the state) and their attempted regulation of the oil and gas industry.

These cases acknowledge the primacy of the Ohio Constitution (which in Article II, Section 36 grants the General Assembly the power to pass laws providing for the "*regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals,*") and a "comprehensive regulatory scheme" found in R.C. 1509.02 that explicitly reserves for the state, to the exclusion of political subdivisions of the state, the right to regulate "all aspects" of the location, drilling, and operation of oil and gas wells.¹⁵

These provisions prohibit local governments from exercising powers in a way that "discriminates against, unfairly impedes, or obstructs oil and gas activities and operations" already regulated by the state.¹⁶

In OAG 85-047, the Attorney General describes the adoption of a county charter as a way by which "the people of any county may increase the authority of their county government."

Article X, Section 3 of the Ohio Constitution states in part that county charters "may provide for the concurrent or exclusive exercise by the county...of all or of any designated powers vested by the Constitution or laws of Ohio in municipalities."

Section 3.01 of each county charter petition attempts to provide these municipal powers to their respective counties.¹⁷ In this way, the petitioners seek to "increase the authority of their county government" by authorizing the county to exercise the same local self-government and

¹⁵ In particular, *State ex rel. Morrison v. Beck Energy Corporation*, 2015 WL 687475 (2015), and *Bass Energy v. City of Broadview Heights, Cuyahoga, C.P. No. CV-14-828074* (Mar. 11, 2015).

¹⁶ *State ex rel. Morrison v. Beck Energy Corporation, supra*.

¹⁷ See Section 3.01, Athens, Fulton, Medina petitions. ("In addition, the County may exercise all powers specifically conferred by this Charter or incidental to powers specifically conferred by this Charter, including, but not limited to, the concurrent exercise of all or any powers vested in municipalities by the Ohio Constitution or by general law.")

police powers as a municipality in Ohio. The grant by a county charter of this municipal power may not, however, come into conflict with any constitutional provision.¹⁸

The courts in Ohio have spoken: a municipality may not “discriminate against, unfairly impede, or obstruct” the operation of oil and gas wells in Ohio.¹⁹

Common sense, and the law, both dictate that a county charter may not grant to a county *more* authority than a municipality in Ohio can have pursuant to the Ohio Constitution. Yet that is exactly what the restrictive “fracking-related” provisions²⁰ of these charter petitions propose to do.

Accordingly, the petitions must be invalidated on the basis that the petitions fail to provide for an alternate form of government consistent with clear statutory and constitutional requirements, and that state law preempts any authority to regulate “fracking” by political subdivisions of the state, including charter counties.

DECISION

Having carefully reviewed the law, court decisions, and the materials submitted in connection with the protests, I find that the Athens, Fulton, and Medina petitions violate the aforementioned provisions of statutory and Ohio constitutional law.

For the foregoing reasons, the protests in Athens, Fulton, and Medina counties are upheld, the petitions are invalidated, and the county charter proposals appended to each of the petitions shall not be placed upon the November 3, 2015 general election ballot.

Sincerely,


Jon Husted
Secretary of State

¹⁸ See Ohio Attorney General Opinion 85-047 (1985).

¹⁹ See, *Bass Energy v. City of Broadview Heights*, *supra* (in which the court ruled that the City does not have the power to enforce provisions of its Charter that are nearly identical to those in the Athens, Fulton, and Medina petitions) and *State ex rel. Morrison v. Beck Energy Corporation*, *supra*.

²⁰ See Sections 2.01.1 and 2.01.2, Athens petition; Sections 2.01:1 through 2.01.4, Fulton and Medina petitions.