



# COUNTY OF ALLEGHENY

## DEPARTMENT OF ADMINISTRATIVE SERVICES ELECTIONS DIVISION

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COUNTY EXECUTIVE

August 10, 2011

Linda Johnson-Wasler, City Clerk  
City of Pittsburgh  
510 City-Council Building  
Pittsburgh, PA. 15219

Re: *Proposed Referendum Question – November 8, 2011 Municipal Election  
Amendment of City of Pittsburgh Home Rule Charter*

Dear Ms. Johnson-Wasler:

Yesterday, August 9, 2011, you submitted a copy of City of Pittsburgh Bill 2011-1939 to the Allegheny County Elections Division. This bill is a proposed ordinance requesting that the Elections Division place on the November 8, 2011 Municipal Election Ballot a referendum question to amend the City of Pittsburgh's Home Rule Charter.

Following past practice, the Elections Division acknowledged receipt of this bill and the referendum request. At the time of receipt, I indicated that the Allegheny County Law Department would review the bill and the referendum request and that a decision on whether a referendum on the home rule charter amendments would be placed on the ballot would be forthcoming.

The Allegheny County Law Department has completed its review. Based upon the Law Department's review of City of Pittsburgh Bill 2011-1939 and the applicable law, please be advised that this proposed referendum cannot be legally placed upon the November 8, 2011 Ballot.

Section 2942 of the Home Rule Charter and Optional Plans Law sets forth the process by which a home rule charter or option plan of government can be amended. Section 2942 states that home rule charter or option plan amendment can be initiated either by a petition of the electors or by an ordinance of the governing body of the municipality. Pa. Cons. Stat. Ann. tit. 53, § 2942.

Additionally, the Home Rule Charter and Optional Plans Law establishes a time period for when a referendum petition or ordinance proposing an amendment of a home rule charter or option plan must be submitted to election officials for review and disposition. Section 2943 (a) of the Home Rule Charter and Optional Plans Law provides that the referendum petition or

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ordinance proposing an amendment must be filed with the elections officials not later than the 13<sup>th</sup> Tuesday prior to the next primary, municipal or general election. *Id.*, § 2943 (a).

Based upon these two provisions in the Home Rule Charter and Optional Plans Law, a valid ordinance proposing an amendment of the City of Pittsburgh's Home Rule Charter had to be submitted to the Allegheny County Elections Division not later than August 9, 2011.

What you submitted to the Elections Division yesterday does not satisfy the requirements in the Home Rule Charter and Optional Plans Law for amendment of a home rule charter. What you presented to the Elections Division is not a valid ordinance proposing an amendment of the City's Home Rule Charter; rather, it is only a bill that has been approved by City Council. Section 321 of the City's Home Rule Charter states in part:

**§ 321. SUBMISSION OF LEGISLATION TO MAYOR AND VETO POWER.**

City Council is required to submit all proposed legislation to the Mayor for approval prior to its effective date. The Mayor shall sign the legislation within ten days if approved, but if not, shall return it to the Council stating his objections. Council, at its next meeting, shall reconsider the legislation disapproved by the Mayor and may pass it in spite of the Mayor's disapproval by a two-thirds vote of all members. If the Mayor fails to sign or return the legislation with reasons for disapproval, it shall become law as of its effective date, ten days after submission to the Mayor.

Home Rule Charter of the City of Pittsburgh, Pennsylvania, § 321.

The materials submitted along with a copy of City of Pittsburgh Bill 2011-1939 indicate that City Council approved the Bill on Monday, August 1, 2011. Based upon Section 321 of the City's Home Rule Charter, the Mayor has ten days after submission of the legislation to either approve the bill, veto the bill or take no action on the legislation and thereby permit the legislation to become law.

As of today's date, the Mayor has not signed City of Pittsburgh Bill 2011-1939 into law. Further, the Mayor has not vetoed City of Pittsburgh Bill 2011-1939. Finally, the ten day period following submission of the City of Pittsburgh Bill 2011-1939 to the Mayor has not run its course. Therefore, City of Pittsburgh Bill 2011-1939 is not a valid ordinance. Because it is not a valid ordinance and not timely, it fails to meet the requirements of the Home Rule Charter and Optional Plans Law and any referendum question to amend the City's Home Rule Charter cannot be placed on the November 8, 2011 Ballot.

Finally, I note that materials submitted along with a copy of City of Pittsburgh Bill 2011-1939 include six signed copies of a document entitled "INTERIM APPROVAL OVERRIDING THE VETO OF THE MAYOR OF BILL 2011-1939." According to the opinion that I received from the Allegheny County Law Department, these documents are legally inconsequential and

do not change the conclusion that the referendum question proposed by this Bill cannot be placed on the ballot. First, these documents presume an act (i.e. – the Mayor's veto of City of Pittsburgh Bill 2011-1939) that may not occur. Second, the law does not recognize a concept of a "preemptive" override of a veto.

For the reasons set forth herein, the request that a referendum question be placed on the November 8, 2011 Ballot to amend the City of Pittsburgh's Home Rule Charter in the manner set forth in City of Pittsburgh Bill 2011-1939 is denied.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark Wolosik', with a long horizontal flourish extending to the right.

Mark Wolosik, Division Manager  
Department of Administrative Services  
Elections Division

cc: Michael Wojcik, County Solicitor  
Allan J. Opsitnick, Assistant County Solicitor