

AGENDA

Committee of the Whole AGENDA FOR AUGUST 9, 2021 AT 5:00 PM



Lansing City Hall, Tony Benavides Lansing City Council Chambers
124 W. Michigan Avenue, 10th Floor

To provide input or ask questions on any item that is listed on the agenda,
members of the public may contact the City Council at city.council@lansingmi.gov or (517) 483-4177 prior to the meeting.

**Based on recommendations from the Centers for Disease Control (CDC),
City Council President Spadafore is requesting members of the public, City staff and Council Members
wear face coverings at meetings of the City Council and their Committees.**

Council Member Spadafore, Chairperson
Council Member Hussain, Vice Chairperson

1. Call to Order

2. Roll Call

3. Minutes

A. July 26, 2021

4. Public Comment on Agenda Items (Up to 3 Minutes)

5. Presentations:

B. RE: Elections - Rank Choice Voting

- Rank Michigan Vote (RMV) - James R. Lancaster
- Ingham County Clerk - Barb Byrum
- City of Lansing City Attorney

6. Discussion/Action:

C. RESOLUTION - Setting a Public Hearing; Consideration of Tax Equity and
Fiscal Responsibilities Act (TEFRA) Bond for the Lansing Charter Academy

Closed Session

D. Moved by City Council Vice President Hussain,
Pursuant to MCL 15.268(e), Closed session to consult with the City Attorney in connection with specific
pending litigation. An open meeting will have a detrimental financial effect on the litigating or
settlement position of the Lansing City Council concerning these cases.

Reconvene

7. Other

8. Adjourn

Persons with disabilities who need an accommodation to fully participate in these meetings should contact the City
Council Office at 517-483-4177 (TTY 711) 24 hour notice may be needed for certain accommodations. An attempt
will be made to grant all reasonable accommodation requests.

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MINUTES **Committee of the Whole** **Monday, July 26, 2021 @ 5:00 p.m.** **Lansing City Hall, Tony Benavides Lansing City Council Chambers**

CALL TO ORDER

Council President Spadafore called the meeting to order at 5:00 p.m.

PRESENT- via audio/video

Councilmember Peter Spadafore
Councilmember Adam Hussain
Councilmember Carol Wood
Councilmember Patricia Spitzley
Councilmember Kathie Dunbar
Councilmember Brandon Betz
Councilmember Jeremy Garza
Councilmember Brian T. Jackson

OTHERS PRESENT

Sherrie Boak, Council Staff
Mark Lawrence, Mayor's Office
Jim Smiertka, City Attorney
Lisa Hagen, City Attorney
Eric Brewer, Council Internal Auditor
Dr. Paul Elam
Kim Coleman, HRCS Director
Linda Sanchez-Gazella, HR Director
Mayor Schor
Kate Long, TCOA
Jim DeLine
Calvin Jones, BWL
Loretta Stanaway
James Lancaster, Representative from Rank MI Vote Ballot Committee
Max Donovan
Greg Venker, OCA
Guadalupe Ayala, HRCS
Willard Walker

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Minutes

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE MINUTES FROM JULY 12, 2021 AS PRESENTED. MOTION CARRIED 8-0.

Public Comment

Mr. DeLine spoke on agenda items G. and H. for Discussion on Rank Choice Voting Charter Amendments and ballot proposal. Mr. DeLine spoke acknowledged the due diligence of the City and spoke in opposition to the letters in the packet from Barb Byrum, Ingham County Clerk and the Secretary of the State Director of Elections.

Ms. Stanaway spoke on the ballot language for the charter amendments on rank choice voting. She then asked where the funds were coming from, what is the timeline, and how much.

Mr. Lynn read a resolution on the serious concerns with racial discrepancies in the City of Lansing. Mr. Lynn offered to send the document he read to Council.

Mr. Lancaster spoke in support of the proposed charter amendment ballot language for Rank Choice Voting, highlighting Michigan Constitutional Articles, and Sections 321 and 323 of the Election Code.

Mr. Donovan spoke on the letters from the County Clerk and the Secretary of State in the packet on the language of ballot language to change the Charter for Rank Choice Voting.

Presentation

Ms. Sanchez- Gazelle stated that Dr. Elam was not presented yet, and asked for the presentation and action on the resolution be moved on the agenda.

DISCUSSION

RESOLUTION – AMEND THE 2021 CITY COUNCIL MEETING SCHEDULE; RESOLUTION 2020-2038

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION TO AMEND THE 2021 CITY COUNCIL AND COMMITTEE OF THE WHOLE MEETING SCHEDULE. MOTION CARRIED 8-0.

RESOLUTION – Tri County on Aging Fiscal Year 2022 Annual Implementation Plan

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION ON THE TRI-COUNTY ON AGING FISCAL YEAR 2022 ANNUAL IMPLEMENTATON PLAN.

Council Member Wood asked if there were any significant changes in the plan to point out especially with the impact of COVID. Ms. Long stated there were no changes but a continuation of the multi-year plan, with a few additions from the last annual plan. They added a goal of emergency preparedness response, but that is just capturing their existing efforts. Council Member Wood asked if there was any additional funding. Ms. Long confirmed there were COVID relief funds that were passed through to them, and those mostly went to Meals on Wheels, the meal pick up program through the congregate program. There are other programs that benefited as well. Council Member Wood asked about the congregate program and if it has started back up. Ms. Long confirmed some are expected to open back up in August, and once they have those dates confirmed they hope to have that information updated on their website.

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Council President Spadafore clarified that the packet did include the cover letter from Ms. Long and the correct resolution, however the plan was Tri County Planning report. He then cited the Tri County on Aging website, www.tcoa.org for the report posting.

MOTION CARRIED 8-0.

RESOLUTION – Appointment Semone James, 1st Ward Member Board of Water and Light; Term to Expire June 30, 2025

MOTION BY COUNCIL MEMBER HUSSAIN TO APPOINTMENT SEMONE JAMES, 1ST WARD MEMBER OF THE BOARD OF WATER AND LIGHT.

Ms. James outlined her career with the Bureau of Investments since 2017, and prior to that her time with the Landbank Authority. Ms. James also served in the early 2000's on the Board of Water and Light. Council Member Betz spoke in support of the appointment. Council Member Jackson asked her if she had any thoughts to share from her time serving on this same board 2009. Ms. James stated that in that era, while serving, she did not like how things were working and now supports the new administration with assisting the Board moving forward. Council Member Jackson asked about the past action of the Board when she served, and she noted she did not support spending funds that were spent during that tenure on the Board. Council Member Wood asked how she intended to make sure members of the 1st Ward are represented. Ms. James stated she will be open to any communication and seeks to hear their concerns. Council Member Wood asked her to reach out to all Council Members to attend their neighborhood meetings. She then asked if Ms. James was interested keeping BWL public or selling. Council Member Hussain acknowledged Ms. James for what she has done so far.

MOTION CARRIED 8-0.

Presentations

Dr. Paul Elam – MRJEA

Ms. Sanchez- Gazelle spoke on how the internal scan, survey and forum were held with City employees.

Council President Spadafore passed the gavel to Council Vice President Hussain and stepped away.

Dr. Elam began his presentation included in the packet.

Council Vice President Hussain passed the gavel to Council President Spadafore.

Council Member Betz stepped away from the meeting at 5:35 p.m.

Dr. Elam highlighted the work that was done and began with the background.

Council Member Betz returned to the meeting at 5:37 p.m.

The presentation noted the purpose of the survey was to look at City of Lansing departments, the goal being to gather data regarding perceptions and working experiences. The details were provided to the City Attorney. Dr. Elam outlined the three-phase approach beginning in January 2021 to phase 3 in March, 2021. The participation was 239 in the City wide survey, and 36 employees in the focus group. Dr. Elam outlined the assessment questions on employee perceptions and the RQ1 Overall Perception. Continuing with the presentation were slides on perceptions of diversity, perceptions of equity, perceptions of inclusivity, and

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the four (4) themes that emerged. Dr. Elam concluded by highlighting the list of employee recommendations and the MPHI Recommendations for Action.

Council Member Garza asked about the focus groups, and if there is a breakdown on how many of the different ethnic communities are members in the staff numbers. He then asked if there is an equal training for all ethnic groups. Dr. Elam, stated they can provide information on who participated in the group however they were all promised anonymity. He added that they do have demographics in City staff, bi-races and ethnicity in the final report. Council Member Garza further expanded his question to ask for the numbers of Latinos, Asians, and other ethnicities that are employees. Ms. Sanchez Gazelle stated she could provide that information.

Council Member Spitzley asked about the 36 employees in the focus group, questioning if that is enough people to make their recommendation since there are over 800 employees. Dr. Elam it is in the quantitative method they used for a representation of employees. The focus group was not to represent everyone, but used to get the overall representation from all people. Council Member Spitzley noted since there was a low number and a reluctance to participate, she wanted to know his opinion on why the participation was low. Council Member Spitzley then referenced question 1 and the overall perception and clarification on the 60%, and was told it was 60% of the 239. Council Member Spitzley asked his recommendation for more participation, and Dr. Elam stated those that want to have the dialogue appreciate the survey and the communication. Council Member Spitzley then asked about perception of diversity, and if the leaders are more informed in how they are trying to accomplish, and asked if the determination was made that management understands but the information is not being forwarded down to all employees. Dr. Elam acknowledged that if there was more time and money he could have delved deeper into the issues. Council Member Spitzley then asked about the lack of focus on sexism and would appreciate more time in the discussion on that. Lastly Dr. Elam was asked by Council Member Spitzley if he signed a non-disclosure agreement with the Mayors Diversity group. Dr. Elam was not able to recall, but Ms. Coleman stated she believe he had.

Council Member Wood asked who determined the questions in the project.

Council Member Betz stepped away from the meeting at 6:19 p.m.

Dr. Elam confirmed the group did a co create and worked with the leadership team. Council Member Wood then referred to the resolution and the document presented, noting that as part of the initial discussion and resolution Council was to hear the different perspectives on how the money was going to be spent and so they could have a clear understanding.

Council Member Betz returned to the meeting at 6:20 p.m.

Council Member Wood referred back to the presentation on June 7th, noting that Mr. Butler stated he had wished his community would have done the same approach as us, then asked Dr. Elam if he had reviewed the draft plan on the funding sources, and if so what his opinion was and would it meet the needs he has outlined.

Council Member Garza stepped away from the meeting at 6:20 p.m.

Council Member Wood also asked if Dr. Elam was satisfied with the sources enough for the City to start and Dr. confirmed his details and stated he was satisfied with the proposed.

Council Member Garza returned to the meeting at 6:22 p.m.

Council Member Wood asked that before it goes out to the community there needs to be a common language that City Employees and management are talking. Dr. Elam acknowledged

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that her statement was a clear understanding and he envisions everyone who comes into the City gets incorporated in the vision. Council Member Wood then asked if there was a plan to report back to Council on when they move forward. Mayor Schor acknowledged that they can update Council as things happen, or quarterly. In addition he stated as they establish trainings Council can be updated and provided information when needed. Mayor Schor concluded by confirming they will work with the unions to get information out, and keep all employees informed.

Council Member Dunbar asked Dr. Elam what he learned from the Phase 2. Dr. Elam referred to slide 17, and in terms of recommendations, item 6 addresses that. When the final report is released there is an addendum where a gap analysis was, and what the policy says and the recommendation on how to improve outcomes. The OCA has the information and will let them know when the report will be released. Once it is released the group can come back to Council and provide his interpretation on where the policies fall short. He admitted there is information now, but not pulled together for this report. Council Member Dunbar referenced his recommendation #6 noting the policies need to change but the practice needs to change also. She then asked if the group looked at the report by the Mayors Diversity Inclusion Council that came out in November 2019. That report, she noted, had some substantial recommendations that should be included, and in her opinion the accountability piece was missing in this recent report. Dr. Elam admitted he has never seen the 2019 report, and regarding her statement on policies, procedures and practices this report was strong in using those terms. Regarding accountability and follow through, Dr. Elam noted he is not part of the administration, but if they look at all 3 levels the language should emerge within. Ms. Coleman confirmed she was aware of the 2019 report and did review it. Council Member Dunbar suggested Dr. Elam review the first survey and report from 2019. Council Member Dunbar then referenced earlier comments that some departments are worse and asked for the list of departments that need the most work. Dr. Elam clarified they specifically looked at police and fire, and then the City in general, and the final report will be able to address that request. Council Member Dunbar asked how it was determined who was aware of the policies in the department with the managers and front line workers, and was it determined that if the department managers were aware those were the departments that had lower problems. Dr. Elam explained if it was a supervisor that responded to focus groups they were more inclined to know, compared to staff. However, they did hear that staff was not sure what was going on. Council member Dunbar asked about the recommendations from staff, and if they were drop down options or they were free written suggestions. Dr. Elam confirmed they were open ended questions and answered for individual suggestions.

Council Member Betz referenced the recommendations for action, specifically #2, and after approaching the OCA on what it would look like, his initial goal would be to model the board after Equity Diversity Inclusion to exam resolutions and recommendations to Council. He then asked Dr. Elam on his recommendation to create and design the board, who should the members be, etc. Dr. Elam confirmed that is the next phase of the work and he will work with leadership. Council Member Betz asked for a full Council discussion on how the board should look.

Council Member Dunbar asked about the \$300,000 breakdown, noting there was an item labeled "TBD", and asked what items would be lower to cover that line item, to keep the total still at \$300,000. Ms. Coleman stated that item #9 will not affect the breakdown and the intent is not to adjust any items lower.

Council Member Jackson stepped away from the meeting at 6:46 p.m.

Discussion/Action- Continued

RESOLUTION – Racial Justice and Equity Plan

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION FOR RACIAL JUSTICE AND EQUITY PLAN.

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Council Member Jackson returned to the meeting at 6:47 p.m.

Council Member Spitzley referenced the presentation by Jonathon Butler, Esq. (Equity Manager, San Antonio, Texas on June 7, 2021, and spoke in opposition to the proposed resolution believing the plan needs to be presented and transparent. Council Member Spitzley added that she did support his recommendations, but do not believe if a member has to sign a non-disclosure then it would not be appropriate. Mayor Schor summarized the funds would be \$300,000 for training in the proposed budget plan for the racial and justice strategies, noting they did have several community meetings, and took significant feedback. Council Member Dunbar voiced her concern with the term “immediately”, and asked what they did with the first recommendations that were given in November 2019. The group, she noted, was a group of citizens that met, came up with findings, presented them, and finally got a response 8 months later in June 2020, however it does not appear any of those recommendations are on the presented list. Secondly she spoke in opposition to self-suggesting surveys. Lastly, Council Member Dunbar stated her opposition to the resolution and spending of \$300,000. Council Member Jackson asked for the plan. Council Member Wood stated there was a draft financial budget plan in March during the budget process, and Ms. Boak distributed that draft March document.

MOTION 6-2.

DISCUSSION – Resolution 2021-149; Ballot Language Charter Amendment; Ranked Choice Voting

DISCUSSION – Resolution 2021-150; Charter Amendment Ballot Language; Elimination of Primary Elections

Mayor Schor and Mr. Lawrence left the meeting at 6:55 p.m.

Council President Spadafore referenced letters in the packet from the State of Michigan Secretary of State Director of Elections and Ingham County Clerk Barb Byrum, stating based on that recommending he was asking the Council to pulling the vote back and wait for a presentation from Ms. Byrum at the next meeting. Council Member Wood asked if he was looking for a motion to reconsider at this time, and Council President Spadafore confirmed it was just a discussion at this meeting, the motion to reconsider would be at Council later in the evening. Council Member Wood asked for Mr. Smiertka respond to the letters since the letters were sent to the Office of the City Attorney.

Council President Spadafore passed the gavel to Vice President Hussain and stepped away from the meeting at 6:56 p.m.

Mr. Smiertka provide a brief history of the process so far; when the proposal first came to the OCA, they did an analysis and could not find any case law. He did note that there is a decision in Eastpointe which was a Federal Civil Rights decision. The analysis issues are in the Charter and the Home Rules Act cities the Act. The resolution has provisions to amend the Charter and steps for to create the questions. The document will then go to the AG and in turn they will provide to the Governor if it is correct. When the OCA submitted the document to the AG the feedback was not positive and they actually got feedback to create the second ballot language resolution the Council saw and acted on July 12, 2021.

Council President Spadafore returned to the meeting at 6:58 p.m. and Council Vice President Hussain passed the gavel.

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Mr. Smiertka continued his details noting that the week of July 12th communications came to the City from the Ingham County Clerk and the State of Michigan Office of Elections. Since the timing of those letters, and the timing of submittal to the Attorney General and their response, along with the objections in those letters, he recommended City Council pull back on the proposed changes to the Charter, via the ballot language they passed on July 12th.

Mr. Lawrence returned to the meeting at 6:59 p.m.

Council Member Wood asked if the OCA was recommending the Council pull back, reconsider the vote and table action. Mr. Smiertka stated that in the Council rules it stated they have to reconsider action at the same meeting or the first meeting thereafter. Therefore the recommendation is to reconsider each one at Council, then he recommended to table action on both, noting these are 5 vote items. Council Member Betz asked what the deadline was on submission on the ballot, and Council President Spadafore stated August 10th, and the next Council meeting is August 9th. Council Member Jackson asked for more details since it appears the highest authority is the AG, and they have already provided their input before Council voted July 12th. Council President Spadafore responded that the OCA has stated the review by the AG prior to July 12th was an informal review, and they did not look at it for election law. Mr. Smiertka added that the attorney in the AG office they worked with was with municipal law, however they have been in constant communication. Council Member Jackson supported not stopping the motion now, but if it is not correct they could always bring it back. He also referenced the letter from the County Clerk which cited equipment and election costs, inquiring if Ms. Byrum had any further information. Council President Spadafore noted that is why Ms. Byrum would be at the next meeting. Mr. Smiertka clarified an earlier statement that the attorney they had been in communication with in the AG office was Mr. Elworth who is in municipal affairs, not in the election law unit of the Attorney General office, so it was determined the final AG decision would come from the election unit.

Council Member Betz asked if the Governor corresponded with the Elections Unit on this. Mr. Smiertka responded that his experience with the AG office is that after review of the Charter amendment then the letter comes from Municipal Affairs Office endorsed by the Governor.

Council Member Spitzley voiced her concern that if it goes through the process and then gets to the Governor and it is not signed, what the next steps would be. Therefore she supported stepping back, waiting and clarifying so Council is positive. Mr. Smiertka stated that if Council proceeds, and the people vote for it, then it is determined to be non-valid, there would be law suits, and forfeiture of office of those that were all elected under the RCV. Council Member Spitzley reiterated that she would support waiting to make sure there is enough information and it is correct before moving forward.

Council Member Jackson again spoke in support of moving forward since it takes years to implement, and there would be time to address any issues.

Council Member Wood stated her concern for the record that this body would know there was information out there that there might be something that would make what they were proposing illegal, in addition she reiterated that the OCA had already recommended Council reconsider and table. By tabling today, and hearing Ms. Byrum on August 9th, there would be more information to take action on something that night if they so choose, and if they choose not to, then Council will have time to look into what needs to be done to make it happen. Based on the information in front of them at this time, Council Member Wood stated she felt Council needs to be prudent.

Council President Spadafore concurred with the hesitation of the other members, noting when the first voted they were not aware of the concerns and issues brought forth by the Council Clerk and the State.

Council Member Spitzley asked what the City Clerk's thoughts were on this subject, and Council President Spadafore state they could ask it of him at Council.

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Council Member Betz concluded the discussion stated his agreement that there is hesitation to approve the language, pass it on the ballot, then have to come back with another charter amendment to align with the State law.

RESOLUTION – Intergovernmental Agreement; Montgomery Drain Drainage District-Red Cedar Development

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION FOR THE INTERGOVERNMENTAL AGREEMENT; MONTGOMERY DRAIN DRAINAGE DISTRICT – RED CEDAR DEVELOPMENT.

Mr. Venker informed the Committee this was the last step in the agreement, and he explained that this is a component just on the Red Cedar property, and will benefit only them. Mr. Venker then listed the steps; the City ask the Drain District to perform the work, they then assess the City, the City then directs the assessment back to the Red Cedar Development. With this resolution the Council is authorizing the City to enter an agreement with the Drain District to do the work, then an agreement with the developer that they agree to be assessed for the work. Mr. Venker emphasized that the resolution in front of them is drafted in a way that the City cannot enter into the agreement with the Drain District until the agreement with the Red Cedar Development is in place. In the agreement with Red Cedar Development it will be stated that if something goes wrong they have to pay the assessment immediately. Council Member Spitzley asked for confirmation that the City would not be paying for this, and Mr. Venker agreed that the City would not. Council Member Wood asked if this was coming from the as surety bond, at which Mr. Venker it was not on this component, instead they have a direct payment guarantee with Frank Cass, Jon Lux and Joel Ferguson.

MOTION CARRIED 8-0.

CLOSED SESSION

MOTION BY COUNCIL MEMBER HUSSAIN AT 7:16 PM: Pursuant to MCL 15.268(c) of the Open Meetings Act, I hereby move that we recess into closed session for strategy and negotiation sessions connected with the negotiation of the Collective Bargaining Agreement between City of Lansing and the Teamsters 214, as requested by the City.

ROLL CALL VOTE. MOTION CARRIED 7-1.

RECONVENE

Council President Spadafore reconvened the meeting at 7:26 p.m.

OTHER

RESOLUTION – Ratification of Teamsters Local 214 Supervisory and Teamsters Local 214 Clerical, Technical and Professional Collective Bargaining Agreements (CBA)

MOTION BY COUNCIL MEMBER HUSSAIN TO APPROVE THE RESOLUTION FOR THE TEAMSTERS 214 SUPERVISORY CBA AND 214 CLERICAL, TECHNICAL AND PROFESSIONAL CBA.

Council Member Hussain detailed the CBA that reflected changes including a 2% increase, no retro-active pay, signing bonus, and elimination of specifics on adverse conditions.

MOTION CARRIED 8-0.

Adjourn

The meeting adjourned at 7:27 pm
Respectfully Submitted by,
Sherrie Boak, Recording Secretary

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Lansing City Council
Approved by the Committee



MEMORANDUM

TO: Members of the Lansing City Council

FROM: James R. Lancaster, Legal Counsel 
Rank MI Vote Ballot Question Committee

RE: City of Lansing Resolutions 2021-149 and 2021-150

DATE: April 26, 2021

I represent Rank MI Vote Ballot Question Committee ("RMV"). RMV was formed for the purpose of promoting the use of Ranked Choice Voting ("RCV") in Michigan. I have been working closely with Jim DeLine and Hugh McNichol regarding the above referenced resolutions.

Attached is a letter I have submitted to Governor Whitmer supporting your request for her approval of the ballot questions that would implement Ranked Choice Voting ("RCV") for elections to city offices. In summary, we believe that assertions that implementation of RCV by Home Rule Cities is violative of the Michigan Election Law are erroneous. The primary issues raised in our letter to Governor Whitmer are:

- Mich. Const. Art. 2, §4(2) grants broad authority to the Legislature to regulate the "time, place and manner" of all elections.
- Mich. Const. Art. 7, §22 grants broad self-governance authority to Home Rule Cities.
- In Section 117.3 of the Home Rule City Act the Legislature has delegated to Home Rule Cities the power to provide in their charters the "time, manner, and means" of holding elections for City offices.
- Sections 321 and 323 of the Michigan Election Law acknowledge that the election of city officers must be in accordance with its city charter, and that the conduct of elections, the canvass and certification of the returns, and all other particulars shall be in accordance "*as nearly as may be*," with the provisions of the Michigan Election Law. Thus, strict compliance with the Michigan Election Law is not required for implementation of RCV.

So, in summary, we believe that RCV can be implemented by the City of Lansing under existing law. If you have any questions, please do not hesitate to contact me.



July 26, 2021

The Honorable Gretchen Whitmer
Governor
State of Michigan
111. S. Capitol Ave., 2nd Floor
Lansing, Michigan 48933

Re: City of Lansing Resolutions 2021-149 and 2021-150
Proposing Implementation of Ranked Choice Voting

I represent Rank MI Vote Ballot Question Committee ("RMV"). RMV was formed for the purpose of promoting the use of Ranked Choice Voting ("RCV") in Michigan.

On behalf of RMV, I am writing in support of the request by the City of Lansing for your approval, pursuant to Home Rule City Act ("HRCA") § 22, MCL 117.22, of the ballot language in City of Lansing Resolutions 2021-149 and 2021-150. These resolutions propose to present to the voters amendments to the Lansing City Charter implementing Ranked-Choice voting for City of Lansing elections.¹ Resolution 2021-149 proposes to implement what it describes as "ranked-choice/instant run-off" voting for the positions of mayor, city clerk and city council. Resolution 2021-150 proposes to eliminate the primary election for these positions. These proposals are tie-barred.

This letter sets forth my analysis of the Michigan Constitution and existing statutes, including the Home Rule City Act, MCL 117.1 *et. seq.* and the Michigan Election Law, MCL 168.1 *et. seq.*, regarding the authority of Home Rule Cities to implement RCV for elections for city offices.

The 1963 Michigan Constitution and relevant statutes clearly establish that Home Rule Cities may amend their charters to implement RCV for city offices. State law clearly defers to city charters with respect to elections for city offices. Therefore, we request that, pursuant to Home Rule City Act Section 22, MCL 117.22, you approve submission of these ballot questions to the City of Lansing voters at the November 2021 General Election.

The 1963 Michigan Constitution and The Home Rule City Act

The 1963 Michigan Constitution grants broad authority to the Legislature to regulate the “time, place and manner” of elections. Article 2, §4(2) provides:

§ 4 Place and manner of elections.

Sec. 4. (2) Except as otherwise provided in this constitution or in the constitution or laws of the United States the legislature shall enact laws to regulate the time, place and manner of all nominations and elections, to preserve the purity of elections, to preserve the secrecy of the ballot, to guard against abuses of the elective franchise, and to provide for a system of voter registration and absentee voting. No law shall be enacted which permits a candidate in any partisan primary or partisan election to have a ballot designation except when required for identification of candidates for the same office who have the same or similar surnames. (Emphasis added)

The Constitution also grants broad self-governance authority to Home Rule Cities. Article 7, §22 provides:

§ 22 Charters, resolutions, ordinances; enumeration of powers.

Sec. 22. Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section. (Emphasis added)

The Legislature has delegated to Home Rule Cities the power to establish the time, place and means of conducting elections for city offices. Section 117.3 of the HRCA, MCL 117.3(a) provides the following:

117.3 Mandatory charter provisions.

Sec. 3. Each city charter shall provide for all of the following:

(a) The election of a mayor, who shall be the chief executive officer of the city, and of a body vested with legislative power, and for the election or appointment of a clerk, a treasurer, an assessor or board of assessors, a board of review, and other officers considered necessary. The city charter may provide for the selection of the mayor by the legislative body. Elections may be by a partisan, nonpartisan, or preferential ballot, or by any other legal method of voting...

.....

(c) The time, manner, and means of holding elections and the registration of electors, subject to section 26² and other applicable requirements of law. (Emphasis added).

The Michigan Election Law recognizes the autonomy of Home Rule Cities with respect to the selection of the appropriate manner to elect city officials. Michigan Election Law Section 321(1), MCL 168.321(1) provides:

168.321 City officers; qualifications, nomination, election, appointment, term, and removal; list of candidates; quorum; election or appointment of successor.

Sec. 321. (1) Except as provided in subsection (3) and sections 322, 327, 641, 642, 644e, 644f, 644g, and 646a [*none of which are relevant to this situation*], the qualifications, nomination, election, appointment, term of office, and removal from office of a city officer must be in accordance with the charter provisions governing the city. (Comment and emphasis added)

Additionally, Michigan Election Law Section 323, MCL 168.323, provides:

168.323 Board of city election commissioners; preparation of ballots, canvass of returns, conduct of primary and election; provisions governing.

Sec. 323. It is the duty of the board of city election commissioners to prepare the primary ballots to be used by the electors. The returns shall be canvassed by the board of county canvassers and the results certified to the board of city election commissioners, who shall prepare and furnish ballots for the ensuing election. The printing and distribution of ballots, equipment, and supplies, the conduct of the primary and election, the canvass and certification of the returns, and all other particulars shall be in accordance, as nearly as may be, with the provisions of this act governing general primaries and elections. (Emphasis added)

This last sentence in Section 323 recognizes that “[s]tate law defers to local rule in the sphere of city elections.” *Barrow v. City of Detroit Election Commission*, 305 Mich. App. 649, 664; 854 N.W. 2d 489 (2014). Therefore, implementation of RCV does not require strict compliance with Michigan Election Law.

The City of Lansing has the authority pursuant to the Michigan Constitution and the Home Rule City Act to amend its charter to implement RCV for elections to city offices. Michigan Election Law recognizes the supremacy of the city charter over its provisions. If the voters of the City of Lansing choose to adopt Resolutions 2021-149 and 2021-150, any provisions of Michigan Election Law that would inhibit the ability of the City to implement RCV are unenforceable.

Bureau of Elections Objections to the Implementation of RCV

The Michigan Department of State, Bureau of Elections, has maintained that RCV cannot be implemented under current Michigan law. This was expressed recently in an affidavit filed by the Director of Elections, Jonathan Brater.³ We are also aware of a more recent letter from Mr. Brater to Assistant Lansing City Attorney Lisa Hagan dated July 22, 2021. A copy of this letter is attached.

There is no question that with respect to elections for all other public offices except for city offices, RCV cannot be implemented. However, Mr. Brater's conclusion with respect to Home Rule Cities, is erroneous. It appears to be based on the premise that the Michigan Election Law supercedes all other statutes and relevant provisions of the Michigan Constitution.

Michigan Election Law specifies that candidates for all offices except for city offices are elected based on plurality voting; i.e., the candidate receiving the most votes is declared to be duly elected. For example, MCL 168.51 regarding the election of the Governor and Lieutenant Governor, states:

168.61 Governor and lieutenant governor; certificate of determination by board of state canvassers.

Sec. 61. The board of state canvassers shall determine which candidates for governor and lieutenant governor have received the greatest number of votes and shall declare such candidates to be duly elected. The said board shall forthwith make and subscribe on its statement of return a certificate of such determination and deliver the same to the secretary of state. (Emphasis added)

Similarly, for county offices, MCL 168.201 provides:

168.201 County officers; certificate of determination by board of county canvassers.

Sec. 201. The board of county canvassers shall determine which candidates for the offices named in section 191 of this act received the greatest number of votes and shall declare such candidates to be duly elected. The said board shall forthwith make and subscribe on its statement of returns a certificate of such determination and deliver same to the county clerk within 14 days following the date of the election. (Emphasis added)

Similar provisions exist for every other election except for the election of city officials. See Michigan Election Law Chapters 4 – 14, and 16-24A.

As noted above, Chapter 15 regarding City elections does not state that the candidate receiving the greatest number of votes is “declared” to be “duly elected.” Instead, Section 321(1), MCL 168.321(1), provides that:

...the qualifications, nomination, election, appointment, term of office, and removal from office of a city officer must be in accordance with the charter provisions governing the city.

And Section 323, MCL 168.323 provides:

...the conduct of the primary and election, the canvass and certification of the returns, and all other particulars shall be in accordance, as nearly as may be, with the provisions of this act governing general primaries and elections. (Emphasis added)

In other words, the City Charter is the primary determinant of the manner of electing city officials, not the Michigan Election Law.

Moreover, RCV has been successfully implemented in Michigan in the City of Eastpointe. While this occurred in the context of a federal consent decree settling a Voting Rights Act lawsuit in the case *U.S. v. City of Eastpointe, et.al.* U.S. District Court, Eastern District of Michigan, Civil Action No. 4:17-CV-10970 (2019), the Eastpointe experience illustrates the feasibility of implementing RCV for elections for city offices.

The Consent Decree in *Eastpointe* addressed three specific concerns apparently raised by the Elections Bureau regarding conflicts between the implementation of RCV and Michigan Election Law. These sections of the Michigan Election Law are:

- MCL 168.691: Prohibition of listing a candidate's name in more than one column on the ballot for the same office:

168.691 Official ballots; names of candidates; identification numeral; compliance.

Sec. 691. (1) Each board of election commissioners shall have printed on the ballot, or on ballot labels or slips to be placed on a voting machine, when used, the names of the candidates certified to that board under this act. **A candidate's name shall not be placed or printed in more than 1 column on the ballot for the same office.** A board of election commissioners for a county or city may arrange the ballots with an identification numeral placed in the same space with the name of each of the candidates. That identification numeral shall be rotated with the name of the candidate, and when rotated, shall appear in the same space with the same candidate regardless of where the candidate's name appears on the ballot.⁴

The Consent Decree stated that “Defendants may use a ranked choice ballot that lists a candidate’s name in more than one column on the ballot for the same office.

- MCL 168.736b-736f: Restrictions on instructions on ballot security sleeves:

168.736b Secrecy sleeve; primary election; instructions.

Sec. 736b. Each ballot secrecy sleeve used at a primary election must either contain the following ballot **marking instructions printed on the front of the ballot secrecy sleeve or must have a clear plastic pocket on the front of the ballot secrecy sleeve that contains a printed copy of the following ballot marking instructions.**...[remainder of section spells out the specific ballot language required; it does not include or allow for instructions on RCV]

Similar language is contained in sections 736c [general elections], 736d [nonpartisan elections], 736e [special elections], and 764 [absent ballot instructions].

168.736f Ballot marking instructions; limitation.

Sec. 736f. The ballot marking instructions as provided in sections 736b, 736c [general election], 736d [non-partisan], 736e [special elections], and 764 [absent ballot instructions], are the only written ballot marking instructions that shall be provided to an elector.⁵

The Consent Decree stated that “Notwithstanding Section 736f of the Michigan Election law, Mich. Comp. Laws §168.736f, Defendants may provide ballot marking instructions compatible with ranked choice voting to electors.”

- MCL 168.795(1)(c): Voting for multiple candidates for the same office:

168.795 Electronic voting system; requirements; method for rendering electronic tabulating equipment inoperable; equipping each polling place with accessible voting device.

Sec. 795. (1) An electronic voting system acquired or used under sections 794 to 799a shall meet all of the following requirements:

.....

(c) Permit each elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; and to vote for or against any question upon which the elector is entitled to vote. Except as otherwise provided in this subdivision, the electronic tabulating equipment must reject all choices recorded on the elector's ballot for an office or a question if the number of choices exceeds the number that the elector is entitled to vote for on that office or question. Electronic tabulating equipment that can detect that the choices recorded on an elector's ballot for an office or a question exceeds the number that the elector is entitled to vote for on that office or question must be located at each polling place and programmed to reject a ballot containing that type of an error. If a choice on a ballot is rejected as provided in this subdivision, an elector must be given the opportunity to have that ballot considered a spoiled ballot and to vote another ballot. (emphasis added)

The Consent Decree stated: “Notwithstanding Section 795(1)(c) of the Michigan Election Law, Mich. Comp. Laws §168.795(1)(c), in tabulating a voter's ballot for an office elected using ranked choice voting, the voter's first preference will be counted by Defendants even if the voter has overvoted on subsequent preferences. Similarly, a voter's second or third preference may be counted by Defendants...even if the voter has overvoted on subsequent preferences.”

Mr. Brater's July 22, 2021 letter raises other issues expressing other additional concerns. If the voters of the City of Lansing adopt Resolutions 2021-149 and 2021-150, it may be necessary for the City to enter into a Memorandum of Understanding (“MOU”) or similar agreement with the State to assure the accuracy and integrity of elections implementing RCV.

But the Eastpointe experience shows it is feasible to do so. The provision of the Michigan Constitution, the Home Rule City Act and Michigan Election Law, cited in this letter, mandate that the Elections Bureau allow for implementation of RCV for Home Rule Cities.

Furthermore, none of the issues raised in the Eastpointe Consent Decree, or Mr. Brater's letter, invalidate the substantive right of Home Rule Cities to implement by RCV. Pursuant to MCL 168.323, these provisions cannot be strictly enforced to prevent the City of Lansing voters from adopting RCV, should they choose to do so.

Judicial Decisions Addressing RCV

There is little judicial analysis of the validity of the implementation of RCV in Michigan. The only relevant judicial opinion I found that has been issued since the adoption of the 1963 Constitution is a circuit court opinion in the case *Stephenson v. City of Ann Arbor* (Washtenaw County Circuit Court Case No. 10166-AW, 1975). A copy of this case is attached. This case addressed a challenge to a form of RCV (which it called Majority Preferential Voting) in the Ann Arbor City Charter at that time, that is substantially the same as what is being proposed in Lansing Resolution 2021-149.

The plaintiff challenged the use of RCV in Ann Arbor City Mayor's race, alleging it violated the Equal Protection clause of the 14th Amendment of the U. S. Constitution, and Article 1, Section 2 of the Michigan Constitution of 1963. The Court upheld the use of RCV, though it did not specifically address whether the use of RCV conflicted with the Michigan Election Law.

The *Stephenson* decision cited two older cases that addressed the constitutionality of RCV in the context of the 1850 and 1909 Michigan Constitution, *Maynard v. Board of District Canvassers*, 84 Mich 228; 47 NW 756 (1890) and *Wattles v. Upjohn*, 211 Mich 514, 173 NW 335 (1920). However, as the Circuit Judge noted in *Stephenson*, those cases address voting systems that were significantly different from the RCV, or "preferential," voting methods implemented by Ann Arbor; and, thus, are distinguishable from what is now being proposed for the City of Lansing. Also, those cases predate the addition of the language in Art. 7, §22 in the 1963 Constitution, and thus are of questionable validity in addressing this issue.

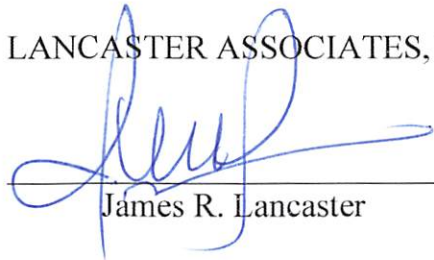
Conclusion

The implementation of RCV is clearly and explicitly authorized by the 1963 Michigan Constitution Article 2, §4(2) and Article 7, §22, and §117.3 of the HRCA. Section 321 and 323 of Michigan Election Law clearly provides that any provisions in the Michigan Election Law contrary to this conclusion cannot be strictly enforced.

State law clearly defers to local charters with respect to elections for city offices. Therefore, we request that, pursuant to Home Rule City Act Section 22, MCL 117.22, you approve submission of these ballot questions to the City of Lansing voters at the November 2021 General Election.

Respectfully,

LANCASTER ASSOCIATES, PLLC


James R. Lancaster

Cc: The Lansing City Council
Hon. Andy Schor
Hon. Barb Byrum
Mark Totten
Jonathan Brater
Ron Zimmerman
Jim DeLine

¹ A copy of Lansing City Clerk Chris Swope's letter to you dated July 12, 2021, and the two resolutions are attached as Exhibit A.

² Home Rule City Act Section 26 provides:

117.26 Elections; general provisions; applicability of MCL 168.641.

Sec. 26. (1) All elections held under this act shall be paid for by the locality where held. Except as otherwise provided by law or ordinance, the legislative body of the city shall determine the publication and notice of the election.

(2) Notwithstanding another provision of this act or a charter provision, an election under this act is subject to section 641 of the Michigan election law, 1954 PA 116, MCL 168.641[relating to the dates for elections] .

³ *Bailey v Antrim County and Benson*, 13th Judicial Circuit Court (Antrim County) File No. 20-9238-CZ (Judge Kevin Elsenheimer). This lawsuit received national attention as it was filed by parties supporting former President Trump, claiming that the Presidential Election results in this county were invalid due to improprieties in the Dominion vote tabulation equipment. It was determined that the mistakes that occurred in initial vote tabulations were result of a programing error by the County Clerk. The case was recently dismissed. However, in this lawsuit Director Brater filed an affidavit which stated, in relevant part:

"Ranked Choice Voting is not authorized by the Michigan Election Law for use in federal or state-level elections."

In a footnote to this sentence, the Affidavit states:

"Due to a consent decree it entered with the Department of Justice in 2019, the City of Eastpointe in Macomb County is the only jurisdiction in Michigan that uses ranked choice voting to elect city officers. *United States v City of Eastpointe*, Case No. 4:17-cv-10079, E.D. Mich. Notably, the voting system used in Macomb County is not Dominion, but Election Systems and Software (ES&S)."



Chris Swope
Lansing City Clerk

July 13, 2021

Governor Gretchen Whitmer
P.O. Box 30013
Lansing, Michigan 48909

RE: City of Lansing Proposed Charter Amendment: Ranked Choice Voting

Dear Governor Whitmer:

On July 12, 2021, the City Council of the City of Lansing, by a vote of 7 yeas and 0 nays, has adopted the enclosed resolution to propose an amendment to the Lansing City Charter. The resolution places the question before Lansing voters on November 2, 2021.

Pursuant to the Home Rule City Act, specifically MCL 117.22, I am submitting the proposal for your approval.

Please contact me if any further information is needed.

Sincerely,

Chris Swope, MiPMC / MMC
Lansing City Clerk

Enclosure: City of Lansing Resolution 2021-149

RESOLUTION #2021-149
BY THE COMMITTEE OF THE WHOLE
RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANSING

WHEREAS, it is required that a method of election of elective officers be provided for by Charter; and

WHEREAS, it has been argued that the current methods of election codified by Charter may contribute to insufficient choice and participation for residents; and

WHEREAS, it has been argued that other methods of election may be more efficient while providing citizens with a superior range of options;

WHEREAS, in the event that the electors adopt the pending Charter amendment to elect City officers by the instant run-off voting procedure, the use of primary elections for these officers will be eliminated;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lansing, pursuant to the authority of the Home Rule Cities Act (MCL 117.1, et. seq.), and by a three-fifths (3/5) vote of its members elect, hereby proposes that the following amendment to Article 2, Chapter 2, Sections 2-205, 2-206, and the addition of Section 2-207 of the Lansing City Charter be submitted, to the electors of the City for adoption or rejection at the election to be held on November 2, 2021:

Chapter 2 ELECTION OF OFFICERS

2-205 METHOD OF ELECTION

.1 THE PERSON RECEIVING THE HIGHEST NUMBER OF VOTES FOR ANY OFFICE SHALL BE DEEMED TO HAVE BEEN DULY ELECTED TO THAT OFFICE, UNTIL SUCH TIME AS VOTING MACHINE EQUIPMENT CAPABLE OF IMPLEMENTING INSTANT RUN-OFF VOTING IS AVAILABLE AND OBTAINED BY THE CITY OF LANSING, AND SUCH EQUIPMENT IS APPROVED BY THE ELECTION COMMISSION; THEREAFTER, FOR THE OFFICES OF MAYOR, CITY CLERK, AND CITY COUNCIL A CANDIDATE SHALL BE ELECTED FOR THAT OFFICE BY RECEIVING MORE THAN 50% OF THE VOTES CAST USING THE FOLLOWING METHOD: EACH VOTER SHALL DESIGNATE THE CANDIDATES FOR OFFICE BY RANKING THE CANDIDATES IN ORDER OF THE VOTER'S PREFERENCE. IF A CANDIDATE RECEIVES MORE THAN 50% OF FIRST PREFERENCE VOTES, THEN THE CANDIDATE IS ELECTED. IF NO CANDIDATE RECEIVES MORE THAN 50% OF THE FIRST PREFERENCE VOTE, THE CANDIDATE WITH THE FEWEST FIRST PREFERENCE VOTES SHALL BE ELIMINATED AND THE ELIMINATED CANDIDATES VOTERS' SECOND PREFERENCE VOTES SHALL BECOME THEIR FIRST PREFERENCE AND BE ADDED TO THE FIRST PREFERENCE VOTES OF THE REMAINING CANDIDATES. THIS PROCESS OF ELIMINATION AND REALLOCATION OF VOTES BY ORDER OF

VOTER PREFERENCE SHALL CONTINUE UNTIL ONE CANDIDATE RECEIVES MORE THAN 50% OF THE VOTE AND IS THEREFORE ELECTED.

.2 CITY COUNCIL AT LARGE ELECTIONS: WHEN MORE THAN ONE CANDIDATE IS TO BE ELECTED, THEN THE PROCESS OF PREFERENTIAL RANKING OF CANDIDATES AND ELIMINATION OUTLINED IN 2-205.1 SHALL BE FOLLOWED. ONCE THE FIRST CANDIDATE IS ELECTED, ALL BALLOTS ARE RECOUNTED AND THE NEXT CANDIDATE WHO RECEIVES MORE THAN 50% OF THE VOTES IS ELECTED, EXCEPT THAT THE ALREADY ELECTED CANDIDATE IS ELIMINATED AND THE SECOND PREFERENCE OF THE VOTERS FOR THAT CANDIDATE ARE COUNTED INSTEAD, WITH THAT PROCESS BEING CONTINUED UNTIL THE SECOND CANDIDATE RECEIVES MORE THAN 50% OF VOTES.

.3 THE INSTANT RUN-OFF VOTING PROCEDURE IN THIS SECTION 2-205 SHALL BECOME EFFECTIVE ONLY IF THE PENDING CHARTER AMENDMENTS TO ELIMINATE PRIMARY ELECTIONS OF CITY OFFICERS IS SIMULTANEOUSLY PASSED.

2-205 2-206 Election Commission

.1 The conduct of City elections shall be the responsibility of the Election Commission consisting of the City Clerk, the City Attorney and the Assessor. The City Clerk shall preside.

.2 The Election Commission shall prescribe the procedures to be followed in the conduct of City elections in accord with state law AND THIS CHAPTER.

2-206 2-207 State Law To Apply

The general election laws of the state as supplemented by the provisions of this Charter and relevant ordinances shall apply to the qualifications and registration of voters, the filing for office by candidates, and the conduct and canvass of City elections.

BE IT FURTHER RESOLVED that in accordance with the Home Rule Cities Act (MCL 117.1, et. seq.), the question shall be captioned and stated on the ballot as follows:

CITY OF LANSING CHARTER AMENDMENT

INSTALLMENT OF RANKED-CHOICE (AUTOMATIC RUNOFF) VOTING BY AMENDING THE LANSING CITY CHARTER ARTICLE 2, SECTION 2-205, AND RENUMBERING THE REMAINING SECTIONS OF ARTICLE 2 THEREAFTER

This amendment provides for election of the mayor, city clerk, and council members by majority vote using an instant run-off voting procedure of counting votes (as soon as the City acquires voting machine equipment approved by the City Election Commission) if the Charter is simultaneously amended to eliminate primary elections. Voters shall designate first preferences and subsequent preferences; if no candidate receives more than 50% of first preference votes the candidate with the fewest first preferences is

eliminated and the secondary preferences for that candidate are recounted until a candidate receives a majority of votes.

Shall this amendment be adopted?

_____ YES
_____ NO

BE IT FURTHER RESOLVED that the Charter amendment would take effect on January 1, 2022.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed and authorized to, in accordance with the Home Rule Cities Act (MCL 117.1, et. seq.), transmit a copy of this resolution and roll call vote on it, along with a copy of the proposed amendment to the Governor of the State of Michigan for approval and a copy to the Attorney General of the State of Michigan for approval as to the form in which the proposal shall be presented to the electors.

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to cause the above proposal to be placed on the ballot at the election to be held on November 2, 2021.

BE IT FURTHER RESOLVED that the ballot wording is hereby certified to the City Clerk for submission to the City's electors at the election to be held on November 2, 2021.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to give notice of the election and notice of registration therefore in the manner prescribed by law and to do all things and to provide all supplies necessary to submit the ballot proposal to the vote of the electors as required by law.

BE IT FURTHER RESOLVED that in accordance with law, the City Clerk shall post the proposed Charter amendment in full at each polling place.

BE IT FINALLY RESOLVED that the canvass and determination of the votes of said question shall be made in accordance with the laws of the State of Michigan and the Charter of the City of Lansing.


Chris Swope, CMMC/MAYC
Lansing City Clerk

I hereby certify that the foregoing is true
and is a complete copy of the action
adopted by the Lansing City Council.



Chris Swope
Lansing City Clerk

July 13, 2021

Governor Gretchen Whitmer
P.O. Box 30013
Lansing, Michigan 48909

RE: City of Lansing Proposed Charter Amendment: Elimination of City Primary Election

Dear Governor Whitmer:

On July 12, 2021, the City Council of the City of Lansing, by a vote of 7 yeas and 0 nays, has adopted the enclosed resolution to propose an amendment to the Lansing City Charter. The resolution places the question before Lansing voters on November 2, 2021.

Pursuant to the Home Rule City Act, specifically MCL 117.22, I am submitting the proposal for your approval.

Please contact me if any further information is needed.

Sincerely,

Chris Swope, MiPMC / MMC
Lansing City Clerk

Enclosure: City of Lansing Resolution 2021-150

RESOLUTION #2021-150
BY THE COMMITTEE OF THE WHOLE
RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANSING

WHEREAS, it is required that a method of election of elective officers be provided for by Charter; and

WHEREAS, it has been argued that the current methods of election codified by Charter may contribute to insufficient choice and participation for residents; and

WHEREAS, it has been argued that other methods of election may be more efficient while providing citizens with a superior range of options;

WHEREAS, in the event that the electors adopt the pending Charter amendment to elect City officers by the instant run-off voting procedure, the use of primary elections for these officers will be eliminated;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lansing, pursuant to the authority of the Home Rule Cities Act (MCL 117.1, et. seq.), and by a three-fifths (3/5) vote of its members elect, hereby proposes that the following amendment to Article 2, Chapter 2, Sections 2-201, 2-203, 2-204, and 2-406 of the Lansing City Charter be submitted, to the electors of the City for adoption or rejection at the election to be held on November 2, 2021:

Chapter 2 ELECTION OF OFFICERS

2-201 Time Of Elections

.1 IF THIS CHARTER IS AMENDED TO PROVIDE FOR AN INSTANT RUN-OFF VOTING PROCEDURE FOR THE ELECTION OF THE OFFICES OF MAYOR, CITY CLERK, AND CITY COUNCIL, UPON THE EFFECTIVE DATE OF THE IMPLEMENTATION OF THE INSTANT RUN-OFF VOTING PROCEDURE, THE PRIMARY ELECTIONS TO DETERMINE THE CITY OFFICE CANDIDATES SHALL BE ELIMINATED AND THE REFERENCE TO PRIMARY ELECTIONS SHALL BE REMOVED FROM CHARTER SECTIONS 2-201, 2-203, 2-204, AND 2-406.

.2 ~~The primary and general~~ Elections for all City offices shall be held ON THE FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER. ~~at the time provided by State law.~~

2-203 - Wards.

.1 The City of Lansing shall be divided into four (4) wards, from each of which a member of the City Council shall be nominated and elected.

.2 Each ward shall have the same boundaries as shall exist on the effective date of this Charter until changed in accord with law.

.3 The Election Commission shall revise the boundaries of the wards within sixty (60) days after the figures from the Federal decennial census become available. New ward boundaries created within one hundred twenty (120) days of a City primary election shall become effective after the NEXT general election.

.4 The Election Commission shall, to the greatest extent possible, establish wards that are compact, contiguous and of equal population.

2-204 Method Of Nomination

.1 The method of nomination for all elective offices in the City shall be by petition, or by a candidate submitting a filing fee. ~~A primary election shall be on those occasions when the number of persons submitting valid nominating petitions or filing fees exceeds twice the number of positions to be filled in the office.~~

.2 Nominating petitions submitted by candidates for offices to be filled by voters of a ward shall be signed by at least one hundred (100), but no more than one hundred fifty (150), of the persons registered to vote in the ward in which the election is to be held.

.3 Nominating petitions submitted by candidates for offices to be filled by the voters of the City at large shall be signed by at least four hundred (400), but not more than six hundred (600), of the registered electors of the City.

.4 In lieu of submitting nominating petitions, a candidate may nominate himself or herself for City office by submitting a filing fee of one hundred dollars (\$100). The filing fee shall be nonrefundable.

.5 The City Clerk shall assist members of the public by providing information regarding the requirements for candidacy, and in the preparation of petitions.

.6 Neither nominating petitions, nor filing fees shall be accepted unless accompanied by an affidavit sworn to or affirmed by the candidate, stating that the candidate possesses the legal qualifications for the office and requesting that the candidate's name be printed on the ballot.

2-406 - Special elections.

.1 Special City elections shall be held when called by resolution of the City Council at least fifty (50) days in advance of the election, or when required by this Charter or State law. Any resolution calling a special election shall set forth the purpose of such election.

.2 Special elections to fill vacancies shall be called at least ninety (90) days before the general election. ~~A special primary election shall be held at least twenty-five (25) days before the special general election.~~

.3 Any election to fill a vacancy in an elective City office shall be held on election day in November ~~and shall be preceded by a primary election.~~ No general election to fill a vacancy may be held unless the vacancy occurred at least six (6) months prior to the general election.

.4 Whenever a vacancy in the office of Mayor, City Clerk or City Council exists for thirty (30) days and the City Council has failed to fill the vacancy, the Election Commission shall schedule a special election to fill the vacancies at the earliest possible time. The date of the election shall not be subject to the provisions of Section 2-406.3.

BE IT FURTHER RESOLVED that in accordance with the Home Rule Cities Act (MCL 117.1, et. seq.), the question shall be captioned and stated on the ballot as follows:

CITY OF LANSING CHARTER AMENDMENT
REMOVAL OF REFERENCES TO A PRIMARY ELECTION, CONTAINED IN LANSING
CITY CHARTER ARTICLE 2, SECTIONS 2-201, 2-203, 2-204, AND 2-406

This amendment provides for the elimination of primary elections for the City offices of Mayor, City Clerk, and City Council, if the Charter is simultaneously amended to provide for the election of City officers by an instant run-off procedure and the new method of election is implemented.

Shall this amendment be adopted?

_____ YES
_____ NO

BE IT FURTHER RESOLVED that the Charter amendment would take effect on January 1, 2022.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed and authorized to, in accordance with the Home Rule Cities Act (MCL 117.1, et. seq.), transmit a copy of this resolution and roll call vote on it, along with a copy of the proposed amendment to the Governor of the State of Michigan for approval and a copy to the Attorney General of the State of Michigan for approval as to the form in which the proposal shall be presented to the electors.

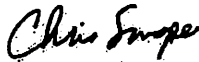
BE IT FURTHER RESOLVED that the City Clerk is hereby authorized to cause the above proposal to be placed on the ballot at the election to be held on November 2, 2021.

BE IT FURTHER RESOLVED that the ballot wording is hereby certified to the City Clerk for submission to the City's electors at the election to be held on November 2, 2021.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to give notice of the election and notice of registration therefore in the manner prescribed by law and to do all things and to provide all supplies necessary to submit the ballot proposal to the vote of the electors as required by law.

BE IT FURTHER RESOLVED that in accordance with law, the City Clerk shall post the proposed Charter amendment in full at each polling place.

BE IT FINALLY RESOLVED that the canvass and determination of the votes of said question shall be made in accordance with the laws of the State of Michigan and the Charter of the City of Lansing.



Chris Swope, CMMC/MAC
Lansing City Clerk

I hereby certify that the foregoing is true
and is a complete copy of the action
adopted by the Lansing City Council.



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

July 22, 2021

Lisa Hagan
Assistant City Attorney
Office of the Lansing City Attorney

Via email to Lisa.Hagen@lansingmi.gov

Dear Ms. Hagen:

Thank you for letting us know about the City of Lansing's proposed charter amendments regarding ranked choice voting (RCV). The letter includes information regarding the implementation of RCV in Michigan. While the Bureau of Elections (BOE) does not oppose RCV in concept, RCV is inconsistent with several provisions of the Michigan Election Law (MEL), 1954 PA 116, MCL 168.1 *et seq.*, and holding an election using RCV creates multiple challenges under the MEL.

Accordingly, with one court-ordered exception, recent elections in Michigan have not been conducted with RCV notwithstanding municipal charter requirements. You may be aware, for example, that the City of Ferndale's charter contains provisions for RCV, but the city has not conducted an election using this method.

The City of Eastpointe is currently *required* to conduct their city council elections using RCV, but this is being done under a settlement agreement with the U.S. Department of Justice to resolve the allegation that the city's "at-large method of electing the Eastpointe City Council dilutes the voting strength of black citizens, in violation of Section 2 of the Voting Rights Act", which is federal law. Complaint, United States v City of Eastpointe. The federal consent agreement, which supersedes state law, required Eastpointe to adopt multi-winner RCV for city council elections beginning with the November 5, 2019 election.

Outside of a federal requirement to set aside these provisions, several provisions of MEL inhibit the ability to conduct elections with RCV. For example, the MEL does not contemplate or authorize any reduction in the number of votes cast for an elected candidate; subtraction and redistribution of validly cast, surplus votes to continuing candidates; and redistribution of a losing candidate's total votes.

Among these is the requirement to electronically tabulate results in the precinct on Election Night. None of the three Election Management System vendors used in Michigan currently provides an end-to-end, self-contained system for tabulating results and determining winners for multi-winner RCV that has been tested, certified, and approved for use with Michigan-compliant voting systems.

The MEL requires that all election results be canvassed and reported by precinct inspectors: “Immediately on closing the polls, the board of inspectors of election in each precinct shall proceed to canvass the vote.” MCL 168.801. In other words, the initial canvass cannot be performed outside of the precinct, nor by anyone other than the election inspectors. Next, the inspectors are required to prepare the statement of returns showing the number of votes cast for all candidates for each office. MCL 168.806, 809. All of this is done in the precinct on Election Night after polls close and before the election materials are delivered to the receiving board, and without human intervention (in counting and assigning votes to specific candidates). Under current law, it simply is not possible to assign the duties necessary to determine who was elected when using RCV (such as the distribution of votes among the candidates and necessary calculations) to another election official (such as the city clerk or Board of County Canvassers).

Additionally, the MEL bars “overvotes,” or voting for more candidates than the total number to be elected to a particular office. MCL 168.576a provides, “In all partisan and nonpartisan primary elections, the voter shall be entitled to vote for a number of candidates for each office equal to the number of persons to be elected for that office.” Similarly, MCL 168.580 provides, “In counting the ballots after the closing of the polls, only those candidates having crosses or check marks marked in the squares to the left of their names shall be considered to have received votes, and any ballot upon which more votes have been recorded for candidates for any office than may, by law, be elected to that office shall be rejected as to all names appearing on the ballot for that office only.” Electronic voting systems approved for use in Michigan must be programmed to detect and reject ballots containing overvotes:

(1) An electronic voting system acquired or used under sections 794 to 799a shall meet all of the following requirements: ... (c) Permit each elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; and to vote for or against any question upon which the elector is entitled to vote. Except as otherwise provided in this subdivision, the electronic tabulating equipment shall reject all choices recorded on the elector’s ballot for an office or a question if the number of choices exceeds the number that the elector is entitled to vote for on that office or question. Electronic tabulating equipment that can detect that the choices recorded on an elector’s ballot for an office or a question exceeds the number that the elector is entitled to vote for on that office or question shall be located at each polling place and programmed to reject a ballot containing that type of an error. If a choice on a ballot is rejected as provided in this subdivision, an elector shall be given the opportunity to have that ballot considered a spoiled ballot and to vote another ballot. MCL 168.795.

The Michigan Election Law is quite restrictive in terms of the written instructions that are provided to voters. Under MCL 168.736f, “The ballot marking instructions as provided in sections 736b, 736c, 736d, 736e, and 764, are the only written ballot marking instructions that shall be provided to an elector.” These sections deal with primary, general, nonpartisan and special elections, and absent voter ballots, respectively, and none contemplate RCV.

The following chart contains a summary of the provisions of the MEL which conflict with the use of RCV in Michigan:

Requirement	Citation
Candidates' names must be rotated on the ballot	MCL 168.569a
Ballot must allow voters to vote for write-in candidates	MCL 168.795
VAT must allow an individual with disabilities to vote in a manner that provides the same opportunity for access and participation as provided for other voters	MCL 168.795
Vote accumulation software must meet SOS specifications; SOS must so certify	MCL 168.795
Tabulator must be programmed to reject ballots containing errors	MCL 168.795
Firmware and software must be tested and approved by a certified independent testing authority (ITA) accredited by the National Association of State Election Directors	MCL 168.795a
Firmware and software must be approved by Board of State Canvassers	MCL 168.795a
Source code must be escrowed	MCL 168.797c
Statement of votes must indicate the total number of votes for each candidate	MCL 168.806
Results must be available in the precinct	MCL 168.807

Thus, while not expressly prohibiting RCV, the MEL does not contemplate the use of the practice and has several provisions in conflict with it. The only state statute that addresses RCV at all, the Home Rule City Act, 1909 PA 279, MCL 117.3(a), simply provides, "[City] Elections may be by a partisan, nonpartisan, or preferential ballot, or by any other legal method of voting." There are no state laws, administrative rules, or policies to guide RCV implementation.

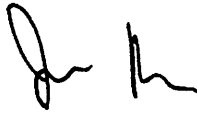
Accordingly, BOE construed and applied existing election laws to maintain the best semblance of compliance with current state legal requirements in order to assist Eastpointe to comply with their federal court-ordered mandate. In order to avoid the manual counting of RCV ballots, Eastpointe used third-party tabulation software developed by the Ranked Choice Voting Resource Center (Resource Center). The Resource Center's product is stand-alone software, not an integral component of a currently certified and approved voting system. The Resource Center submitted its tabulation software to a voting system test laboratory (VSTL) for testing and certification, which was completed in early September 2019.

VSTL certification of any tabulation software is necessary because it will be used to count votes, accumulate totals from multiple precincts and determine election winners. After VSTL certification, the Resource Center submitted its software for state certification and testing to ensure compatibility with the ES&S system, used in Eastpointe, and obtained conditional approval of the Board of State Canvassers (BSC). The BSC conditionally approved the use of the Resource Center's product for use only in Eastpointe and in conjunction with the ES&S voting system. Any other use, or any alternative tool to calculate the results of an RCV election, would need to go through the same rigorous testing prior to implementation. State certification testing includes a successful demonstration of the following functionalities: import of election files; creation of election and ballot files; tabulation of test decks on precinct tabulators, accessible voting devices and AVCB tabulators; and secure transmission of results via modem, if

applicable, and directly via memory devices to the vote accumulation software on a central computer.

BOE has learned a significant amount about RCV from the Eastpointe election, and would do its best to use this knowledge in assisting Lansing, Dominion, Ingham County, or any other jurisdictions that were conducting an election under RCV if it were legally permissible. BOE will also work collaboratively with national experts and legislators who support the policy, as it continues to be discussed in Michigan. However, it currently is not possible to conduct an election using RCV and comply with the MEL. If Lansing does place charter amendments to implement RCV for city elections on the ballot, and those amendments pass, Lansing will not be able to conduct city elections using RCV until the MEL is amended.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Brater', with a stylized, cursive script.

Jonathan Brater, Director of Elections

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF JACKSON

JAMES E. STEPHENSON,
Plaintiff,

FILE NO. 75—10166 AW

ANN ARBOR BOARD OF CITY CANVAS-
SERS and JEROME S. WEISS,
Defendant,

V

ALBERT H. WHEELER, JAMES M. DAHL,
DOROTHY L. CAHN, MARJORIE C. BRAZER,
LeROY CAPPAERT, DEBORA H. FREEMAN,
MARY HELEN S. GILBERT, CHESTER FELDMAN
and HENRIETTA FELDMAN, individually
and as a Class,
Intervening Defendants.

OPINION OF THE COURT

The City of Ann Arbor, Michigan, on April 7, 1975 held an election for the offices of Mayor and City Councilman. The election of council persons was determined by the plurality system of voting, i.e., the candidate with the most votes was declared the winner.

The Mayor's race was conducted pursuant to a duly adopted Charter Amendment, Section 13.12(b), Ann Arbor City Charter, where by a "Preferential Voting System" was employed. This particular type of preferential voting has been termed the "Ware System" or "Majority Preferential Vote" also referred to as the "M.P.V. System." [1]

The Ann Arbor voters in the November 5, 1974 general election added Section 13.12(b) to their City Charter. The amendment was adopted by a majority of the voters.

Under the "Ware System" of preferential voting, where there are two or more candidates for the office in question, the voter has the right to indicate on his paper ballot, a first and second choice or as many choices in a descending numerical order as there are candidates. If five candidates were listed on the ballot, then each voter would have the right to indicate by number, his or her first, second, third, fourth and fifth choice. The ballot explanation informed the voter to mark his first choice with the number "1", and his second choice with a number "2" and third choice with a number "3" (Ballot, Exhibit No Two).

Thus, the voter indicated by number who his or her next selection would be if his or her first choice was not in the race, or was eliminated from the race under the "Ware" or "M.P.V. System."

Under the "Ware" or "M.P.V. System" as is set forth in the Ann Arbor Charter Amendment, the candidate with the lowest number of votes is dropped or eliminated from consideration (where there are three or more candidates) and the second choice preferences from the ballots cast for the eliminated candidate, are then counted and distributed to the remaining candidates according to the second indicated preference on each ballot.

In the April 7, 1975 Ann Arbor Mayoral election, there were three candidates listed on the paper ballots. They were Carol Ernst, James E. Stephenson and Albert Wheeler.

The results of the election were as follows:

First Preference Votes for Stephenson 14,453

First Preference Votes for Wheeler 11,815

First Preference Votes for Ernst 3,181

First Preference votes for Miscellaneous

Write-in Candidates 52

Total Valid First Preference Votes 29,501

No Candidate, whether listed on the paper ballot or by write-in vote received a majority of the valid votes cast as required by the Ann Arbor Charter Amendment.

Following the procedures outlined in the Charter Amendment, write-in candidates, and the ballot candidate with the least number of votes (Ernst) were dropped or eliminated, and the second choice votes wherein they were "First Preference" were counted and distributed among the remaining candidates. Note that because some voters elected not to exercise the option of choosing a second preference, the total number of Valid countable votes was 29,262.

That count of the "Second Preference" Votes from the Ernst ballots and distribution of them among the two candidates resulted in the following vote totals:

Wheeler	14,684
Stephenson	14,563

In view of the fact that the Charter Amendment required that a majority of the total countable vote was necessary in order for a candidate to be elected, and the total countable vote being 29,262, a majority of the vote was 14,631 plus one, or 14,632.

Candidate Wheeler having received 14,684 votes, after the second preference choices were counted from the eliminated candidate's ballots, thus received a majority of the valid countable votes cast and was declared the winner.

Plaintiff Stephenson brought suit, challenging the Constitutionality of the Preferential Voting system established by the Charter Amendment. As part of that action, Plaintiff Stephenson seeks in a Motion for Summary Judgment, a declaration by this Court, that the Charter Amendment is unconstitutional because it violates the equal protection clauses of the 14th Amendment to the Constitution of the United States, and Article 1, Section II, of the Michigan Constitution of 1963.

For purposes of the summary judgment motion the parties hereto agreed that no genuine issue of fact exists, only issues of law. The Court agrees that no genuine issue of fact is before it for consideration and the issue is one of law as raised by the pleadings. Pending decision on this motion, the Court stayed a recount filed by the Plaintiff Stephenson.

The City of Ann Arbor has the duty to insure equal protection of the franchise right to each voter. The equal protection clause of the Fourteenth Amendment to the U.S. Constitution so mandates now that political subdivisions are brought within its coverage by decision of the United States Supreme Court. *Avery v Midland County*, 390 US 474, 88 S Ct 1114; 20 L Ed 45 (1968).

The equality of voting effectiveness is safeguarded by this Amendment. *Reynolds v Simms*, 374 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964); *Wesberry v Sanders*, 376 US 1; 84 S Ct 526; 11 L Ed 481 (1964).

The Michigan Constitution of 1963 additionally guarantees equal protection of the law. Article I, Section 2. And that guarantee likewise extends to the voting franchise.

In view of these provisions and the U.S. Supreme Court interpretation of the guarantees therein provided, does the City of Ann Arbor's Preferential Voting System for the office of Mayor afford equal protection to each voter?

If so, then the Charter Amendment providing for the Preferential Voting System is constitutional. If not, it is unconstitutional. The Michigan Constitution provides that a City has the power and authority to frame, adopt and amend its charter. Article VII, Section 22.

Under the Home Rule Act, MCLA 117.3; MSA 5.2073(a) voting in a municipal election may be partisan, nonpartisan or preferential ballot, or by any other legal method of voting.

The Michigan Statutes do not provide a definition of preferential voting, and only in this oblique manner is mention made of preferential voting. Nevertheless, because preferential voting is authorized in the Home Rule, a form of preferential voting is permissible under that enabling Act.

The voters of the City of Ann Arbor by majority vote November 5, 1974, decided that a form of preferential voting in the Mayorial Contest should be a part of that City's Charter. There is no question that this Charter amendment was adopted in a proper manner and is a part of the Charter and must, therefore, be followed unless the method of preferential voting employed creates inequities and inequalities among the voters and runs afoul of the equal protection guarantees.

The crux of Plaintiff Stephenson's claim of unconstitutionality is that preferential voting under this Charter amendment creates a classification that restricts the franchise of certain voters and thus treats them unequally.

This claimed classification results from certain voters having their second choice ballots counted while the second choice of other voters whose candidate remains in the race, are not so counted. This creates separate classes of voters and affords the vote of some, more weight than others, Plaintiff asserts.

Plaintiff claims there is no "compelling state reason or interest" for creating such classifications, that would render this preferential voting system constitutional.

In *Hill v Stone*, 95 S Ct 1637 (1975) , 43 LW 4576, and *Kramer v Union Hill School District*, 395 OS 621, 89 S Ct 1886 (1969), the U.S. Supreme Court stated that a classification may not restrict the franchise on grounds other than residence, age and citizenship unless a compelling state interest was shown.

An examination of these cases reveals classifications of voting rights based on ownership versus nonownership of real property and apportionment of voting districts. Nothing in the Charter Amendment itself speaks to classifications of voters as in the *aforecited* cases. The Charter Amendment does not discriminate patently or latently against some segment of voters.

All voters for the office of Mayor possessed the same rights that is, the right to, or right not to, select and list their preferences in numerical order.

All voters possessed the right at the same time (election day) to decide who their second choice etc., candidate would be if their first choice were eliminated from the race.

No voter was restricted in his right. Each voted with this same understanding that his second and third choice preferences could be counted if his or her first choice was the candidate with the least number of votes.

No classification was established by the Charter Amendment or City of Ann Arbor to discriminate against any voter or group of voters--all voters possessed the same rights.

Whatever classification that could be said to have existed, created itself, when a voter had his or her first choice candidate eliminated from the race for having the lowest number of votes after it was ascertained that no candidate possessed a majority of the total vote.

In that context, the second preference vote of a voter became viable as his first preference was eliminated from consideration.

That voter in substance still has only one vote that is counted, his or her first choice having been eliminated. His second preference vote is counted the same as the votes for the first two candidates. Such a voter does not have his vote counted twice--it counts only once and if that first preference no longer remains and is eliminated from consideration, his or her second preference is the "counted" vote. Voters for the top two candidates still have their vote counted for their first choice.

There is no deliberate scheme or practice that classifies voters under this system of voting. Each voter has the same right at the time he casts his or her ballot. Each voter has his or her ballot counted once in any count that determines whether one candidate has a majority of the votes. Each voter has the same opportunity as the next voter in deciding whether or not to list numerical preferences for his or her candidate and has the same equality of opportunity as any other voter if his or her candidate is eliminated as the lowest vote-getter, and his or her second choice preference becomes the viable vote.

This Court further finds nothing unconstitutional in the Charter Amendment that requires the winning candidate to have a majority of the votes cast in an election for the office of Mayor. Much has been said and written on the subject of a winning candidate for office, assuming that office with the backing (by votes) of less than a majority of those voting. Who can say that the voters of Ann Arbor do not know what they want, by their mandate that the Mayor of the City be elected by a majority of the voters. Far better to have the People's will expressed more adequately in this fashion, than to wonder what would have been the results of a run-off election not provided for.

The fact that the Charter Amendment in question consolidates two elections into one, does not of itself create a classification nor discriminate against any group of voters. It possesses a monetary savings to the municipality in question and is not a factor to be overlooked.

Basic to all, is the right of self determination by the Ann Arbor voters. Their Charter Amendment was voted into effect by a majority of those voting November 5, 1974. The fact that "Ware" or preferential voting system is "different" from the system of voting we have come to know in this State, does not affect its validity.

This Court finds no classification of voters or their rights, created under this system of preferential voting, as the U.S. Supreme Court found in *Hill v Kramer*, supra.

Under the Michigan Constitution, Article VII, Section 22, the City of Ann Arbor has "the power and authority to frame, adopt and amend its charter". The provisions of Michigan's Constitution as concerns municipalities are to be liberally construed, in their favor, Section 34.

Thus, it is clear that the City of Ann Arbor could and did amend its charter to provide for a system of voting permitted by state statute, MCLA 117.3; MSA 5.2073(a). So long as that system of voting meets constitutional requirements, however "different" it may seem to some, it is a permissible form of voting.

Examined from every angle and tested against the standards of *Hill v Stone*, supra, this Court finds no classification or suspect classification of voters or their rights that would violate the equal protection clauses of either the United States or Michigan Constitutions. Nor can there be found any infringement of a fundamental right of any voter of the City of Ann Arbor in the exercise or operation of this voting system. All voters possess the same right to vote, to list numerical preferences and are subject to the same possibility of having their first preference eliminated and second or third etc., preference then counted in order to achieve the election of their Mayor by a majority of the total countable votes cast in the election.

The Court also finds no merit to Plaintiff's claim that certain voters have an opportunity to change their minds and their votes while others do not have that right under this "M.P.V." System. Each voter has an equal opportunity and right at the time he or she casts his or her ballot election day. The fact that each person voting lists different orders of preference does not mean that some voters have greater rights than others. Each voter is on an equal footing with the next voter as to whether his first preference, second preference etc. will remain in the "elimination process". It is the equal right to list preferences and the equal opportunity to be eliminated or to stay in the running that accords each voter the same rights, not the possibilities of whose first or second preference may or may not stay in the counting. Each voter is given the same rights at the same time, that is, the time of casting his or her ballot. It is then that a voter may "change his or her mind" by consciously deciding who his or her first, second or third preference is for the office of Mayor. Thus, at the time of vote casting, each voter who chooses to make more than one preferential selection, in effect exercises his or her mental process of changing his or her mind, as the voter decides that a certain candidate meets his tests for Mayor in the event his or her first choice does not remain in the the running. This Court finds no constitutional infringement or prohibition against changing one's mind in this fashion, inasmuch as each voter is given the same right to do so at the same time and each voter's ballot is given the equal right to be counted in the same manner as any other voter's ballot. Each voter has the same rights as the next one. Nothing in the "M.P.V." system weighs one voter's rights over the other. The M.P.V. system, thus has the same effect as a run-off election, except that it consolidates it into one election.

Plaintiff has failed to demonstrate any true classification restricting the franchise of certain voters. Even if such a classification were found, this Court finds that a compelling state interest exists that would permit a classification in vote counting under such a M.P.V. system, as the City of Ann Arbor provides in its charter. The State does possess a great interest in speedy determination of elections, reduced election costs, involvement of a greater base of voters, affording greater voice in government by minorities and having the elected officer-holder be one who is the choice of a majority of the voters.

The argument by Plaintiff that the M.P.V. system employed here, violates the "one-man, one-vote" requirement of *Baker v Carr*, 369 US 186; B2 S Ct 691; *Reynolds v Simms*, supra, and *Wesberry v*

Sanders, *supra*, likewise fails when the tests of those cases are applied to the manner and method this M.P.V. system employed to determine the winner. Again, each voter is given the same equal opportunity at the time he or she casts his ballot. His or her vote is not "weighed differently" from any other votes in the election. Each voter will have one of his or her preferences counted if he or she elects to make more than one preference. The fact that a few voters may decide not to make more than one preference does not render the system unconstitutional. It is a choice or right possessed that the voter may or may not exercise.

To count every second preferential vote as Plaintiff urges, would make the system self-defeating and in essence would encourage voters not to make a second or third choice, since it would work to defeat that voter's first choice. In "M.P.V.", the second choice of a voter is not counted unless his or her first choice is eliminated from the election first.

An examination of the one-man, one-vote cases discloses that the Court was concerned with certain voter's votes being weighted more than other voters. A voter in one district would have one vote for a particular office while a voter in another district would have two votes for a similar office in the same Representative Body, due to the second voting area only having half the population of the first area. This situation violated equal protection rights guaranteed to all voters under the United States Constitution. What violated equal protection there, was the inequitable effect of giving some voters two votes and other voters only one vote for their representative to the same representative body.

Under the "M.P.V. System", however, no one person or voter has more than one effective vote for one office. No voter's vote can be counted more than once for the same candidate. In the final analysis, no voter is given greater weight in his or her vote over the vote of another voter, although to understand this does require a conceptual understanding of how the effect of a "M.P.V. System" is like that of a run-off election. The form of majority preferential voting employed in the City of Ann Arbor's election of its Mayor does not violate the one-man, one-vote mandate nor does it deprive anyone of equal protection rights under the Michigan or United States Constitutions.

Plaintiff cited *Wattles Ex Rel Johnson v Upjohn*, 211 Mich 514, 179 NW 335 as authority for its claim that Preferential Voting is unconstitutional. While *Wattles* was decided under the 1908 Michigan Constitution, the crux of the matter is that the facts in the present case are clearly distinguishable from *Wattles*. In *Wattles*, the Court was dealing with a multiple office situation involving proportional representation. The Preferential System employed was the "Hare" System, which is clearly different from the "Ware" or "M.P.V." System used in Ann Arbor.

This difference is well set forth in *Representation of Minorities In An At Large Election in City and Village Governments under Michigan Law*, by Leon H. Weaver, M.S.U., at pages 43-47.

Likewise, in *Maynard v Board of Canvassers*, 84 Mich 228; 47 NW 756, the system of voting struck down by the Court was not the "Ware" or "M.P.V. System" but a cumulative voting system that clearly violated equal protection of voting rights. See also 29 C.J.S. Elections, page 53.

The Michigan Courts, heretofore, have not ruled on the constitutionality of the "Ware" or "Majority Preferential Voting" system as was employed by the City of Ann Arbor in its Mayorial race.

For the reasons set forth herein, and because of the obligation of this Court to scrutinize carefully any attack on the constitutionality of a State statute and self-determination rights this Court finds and determines the "Ware" or "Majority Preferential Voting" System as adopted and employed in the Ann Arbor Mayorial race to be constitutional and not violative of the equal protection clauses of the United States or Michigan Constitutions.

Accordingly then, the Summary Judgment Motion of the Defendants herein is granted and the Summary Judgment Motion of the Plaintiff is denied.

Counsel for the Defendant, Albert H. Wheeler et al shall within 10 days prepare the Judgment pursuant to this Opinion and have the same approved as to form by counsel for the Plaintiff and present the same to the Court for signature. In the event of disagreement or failure to agree upon the form of the Judgment settlement of it shall be noticed for hearing within the same period of time.

This being a question of public import and precedent, no costs or attorney fees are awarded Either party.

James G. Fleming

Circuit Judge

[1] "The Majority Preferential Vote in Michigan Cities", an unpub-lished article by Dr. Leon H. Weaver, Michigan State University, East Lansing, Michigan.



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Barb Byrum
Ingham County Clerk

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July 20, 2021

Lansing City Council
124 W. Michigan Ave.
Lansing, MI 48933

Lansing City Council Members,

I was surprised to hear that the Lansing City Council recently approved language for a ballot proposal to amend the Lansing City Charter to allow for Ranked Choice Voting for City Elections.

As the County Clerk, I am responsible for programming all elections in the County and accumulate and report results on Election Night. At this time, I believe this proposed charter amendment has not been completely thought through as I have concerns about the implementation of Ranked Choice Voting elections in the City of Lansing. I am not against the concept of Ranked Choice Voting (RCV) in principle, but I do think a further conversation should be had before this is implemented for City Elections.

First and foremost, the current election equipment and software in Ingham County does not allow for Ranked Choice Voting. If I am forced to program and accumulate results for a RCV election before there is a state-approved system, it will likely cost the City of Lansing a sum that may reach the hundreds of thousands of dollars. RCV elections would likely require the purchasing of new equipment for the City of Lansing, which, at this point, the Bureau of Elections has not tested or certified a system that would be capable of running RCV elections.

An alternative "solution" would be to use uncertified "freeware" to manage results from an RCV election, which raise serious security concerns and I would likely find it necessary to utilize a separate server and election equipment to maintain the integrity of the equipment that is used for State and Federal Elections in the City of Lansing and the rest of Ingham County.

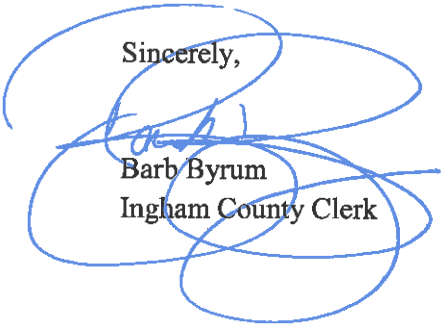
Second, Michigan Election Law does not currently support using Ranked Choice Voting for elections. Put more clearly: To run an election in this manner would be going against state law. Rules and guidance from the Michigan Bureau of Elections are also not set up for RCV. Michigan's election procedures, security measures, and equipment testing & certification standards do not currently allow for RCV.

You have no doubt heard from or at least heard about other municipalities that have adopted RCV into their city charters and from Eastpointe, which had used RCV in a recent election. It is worth noting that Eastpointe has only used RCV because of a Voting Rights Act violation and subsequent court order from a federal judge. All accounts for how that process was implemented suggest that this was not a good idea with our current state law and technology. The other communities that have adopted RCV into their city charters have been told what I am telling you now: It is not feasible, cheap, or legal to run an RCV election in Michigan, at this time.

I would be happy to avail myself to any council member who wished to speak on this or any other election-related matter. Unfortunately, I was only consulted informally by one member prior to the first vote on this matter, to whom I relayed these concerns.

I urge you to reconsider the vote by which your charter amendment was approved to be added to the November ballot, and am happy to discuss this matter further, or answer any election questions that you may have, now or in the future.

Sincerely,



Barb Byrum
Ingham County Clerk



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

July 22, 2021

Lisa Hagan
Assistant City Attorney
Office of the Lansing City Attorney

Via email to Lisa.Hagen@lansingmi.gov

Dear Ms. Hagen:

Thank you for letting us know about the City of Lansing's proposed charter amendments regarding ranked choice voting (RCV). The letter includes information regarding the implementation of RCV in Michigan. While the Bureau of Elections (BOE) does not oppose RCV in concept, RCV is inconsistent with several provisions of the Michigan Election Law (MEL), 1954 PA 116, MCL 168.1 *et seq.*, and holding an election using RCV creates multiple challenges under the MEL.

Accordingly, with one court-ordered exception, recent elections in Michigan have not been conducted with RCV notwithstanding municipal charter requirements. You may be aware, for example, that the City of Ferndale's charter contains provisions for RCV, but the city has not conducted an election using this method.

The City of Eastpointe is currently *required* to conduct their city council elections using RCV, but this is being done under a settlement agreement with the U.S. Department of Justice to resolve the allegation that the city's "at-large method of electing the Eastpointe City Council dilutes the voting strength of black citizens, in violation of Section 2 of the Voting Rights Act", which is federal law. [Complaint](#), *United States v City of Eastpointe*. The federal consent agreement, which supersedes state law, required Eastpointe to adopt multi-winner RCV for city council elections beginning with the November 5, 2019 election.

Outside of a federal requirement to set aside these provisions, several provisions of MEL inhibit the ability to conduct elections with RCV. For example, the MEL does not contemplate or authorize any reduction in the number of votes cast for an elected candidate; subtraction and redistribution of validly cast, surplus votes to continuing candidates; and redistribution of a losing candidate's total votes.

Among these is the requirement to electronically tabulate results in the precinct on Election Night. None of the three Election Management System vendors used in Michigan currently provides an end-to-end, self-contained system for tabulating results and determining winners for multi-winner RCV that has been tested, certified, and approved for use with Michigan-compliant voting systems.

The MEL requires that all election results be canvassed and reported by precinct inspectors: “Immediately on closing the polls, the board of inspectors of election in each precinct shall proceed to canvass the vote.” MCL 168.801. In other words, the initial canvass cannot be performed outside of the precinct, nor by anyone other than the election inspectors. Next, the inspectors are required to prepare the statement of returns showing the number of votes cast for all candidates for each office. MCL 168.806, 809. All of this is done in the precinct on Election Night after polls close and before the election materials are delivered to the receiving board, and without human intervention (in counting and assigning votes to specific candidates). Under current law, it simply is not possible to assign the duties necessary to determine who was elected when using RCV (such as the distribution of votes among the candidates and necessary calculations) to another election official (such as the city clerk or Board of County Canvassers).

Additionally, the MEL bars “overvotes,” or voting for more candidates than the total number to be elected to a particular office. MCL 168.576a provides, “In all partisan and nonpartisan primary elections, the voter shall be entitled to vote for a number of candidates for each office equal to the number of persons to be elected for that office.” Similarly, MCL 168.580 provides, “In counting the ballots after the closing of the polls, only those candidates having crosses or check marks marked in the squares to the left of their names shall be considered to have received votes, and any ballot upon which more votes have been recorded for candidates for any office than may, by law, be elected to that office shall be rejected as to all names appearing on the ballot for that office only.” Electronic voting systems approved for use in Michigan must be programmed to detect and reject ballots containing overvotes:

(1) An electronic voting system acquired or used under sections 794 to 799a shall meet all of the following requirements: ... (c) Permit each elector to vote at an election for all persons and offices for whom and for which the elector is lawfully entitled to vote; to vote for as many persons for an office as the elector is entitled to vote for; and to vote for or against any question upon which the elector is entitled to vote. Except as otherwise provided in this subdivision, the electronic tabulating equipment shall reject all choices recorded on the elector’s ballot for an office or a question if the number of choices exceeds the number that the elector is entitled to vote for on that office or question. Electronic tabulating equipment that can detect that the choices recorded on an elector’s ballot for an office or a question exceeds the number that the elector is entitled to vote for on that office or question shall be located at each polling place and programmed to reject a ballot containing that type of an error. If a choice on a ballot is rejected as provided in this subdivision, an elector shall be given the opportunity to have that ballot considered a spoiled ballot and to vote another ballot. MCL 168.795.

The Michigan Election Law is quite restrictive in terms of the written instructions that are provided to voters. Under MCL 168.736f, “The ballot marking instructions as provided in sections 736b, 736c, 736d, 736e, and 764, are the only written ballot marking instructions that shall be provided to an elector.” These sections deal with primary, general, nonpartisan and special elections, and absent voter ballots, respectively, and none contemplate RCV.

The following chart contains a summary of the provisions of the MEL which conflict with the use of RCV in Michigan:

Requirement	Citation
Candidates' names must be rotated on the ballot	MCL 168.569a
Ballot must allow voters to vote for write-in candidates	MCL 168.795
VAT must allow an individual with disabilities to vote in a manner that provides the same opportunity for access and participation as provided for other voters	MCL 168.795
Vote accumulation software must meet SOS specifications; SOS must so certify	MCL 168.795
Tabulator must be programmed to reject ballots containing errors	MCL 168.795
Firmware and software must be tested and approved by a certified independent testing authority (ITA) accredited by the National Association of State Election Directors	MCL 168.795a
Firmware and software must be approved by Board of State Canvassers	MCL 168.795a
Source code must be escrowed	MCL 168.797c
Statement of votes must indicate the total number of votes for each candidate	MCL 168.806
Results must be available in the precinct	MCL 168.807

Thus, while not expressly prohibiting RCV, the MEL does not contemplate the use of the practice and has several provisions in conflict with it. The only state statute that addresses RCV at all, the Home Rule City Act, 1909 PA 279, MCL 117.3(a), simply provides, “[City] Elections may be by a partisan, nonpartisan, or preferential ballot, or by any other legal method of voting.” There are no state laws, administrative rules, or policies to guide RCV implementation.

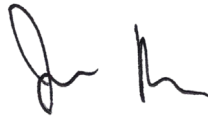
Accordingly, BOE construed and applied existing election laws to maintain the best semblance of compliance with current state legal requirements in order to assist Eastpointe to comply with their federal court-ordered mandate. In order to avoid the manual counting of RCV ballots, Eastpointe used third-party tabulation software developed by the Ranked Choice Voting Resource Center (Resource Center). The Resource Center’s product is stand-alone software, not an integral component of a currently certified and approved voting system. The Resource Center submitted its tabulation software to a voting system test laboratory (VSTL) for testing and certification, which was completed in early September 2019.

VSTL certification of any tabulation software is necessary because it will be used to count votes, accumulate totals from multiple precincts and determine election winners. After VSTL certification, the Resource Center submitted its software for state certification and testing to ensure compatibility with the ES&S system, used in Eastpointe, and obtained conditional approval of the Board of State Canvassers (BSC). The BSC conditionally approved the use of the Resource Center’s product for use only in Eastpointe and in conjunction with the ES&S voting system. Any other use, or any alternative tool to calculate the results of an RCV election, would need to go through the same rigorous testing prior to implementation. State certification testing includes a successful demonstration of the following functionalities: import of election files; creation of election and ballot files; tabulation of test decks on precinct tabulators, accessible voting devices and AVCB tabulators; and secure transmission of results via modem, if

applicable, and directly via memory devices to the vote accumulation software on a central computer.

BOE has learned a significant amount about RCV from the Eastpointe election, and would do its best to use this knowledge in assisting Lansing, Dominion, Ingham County, or any other jurisdictions that were conducting an election under RCV if it were legally permissible. BOE will also work collaboratively with national experts and legislators who support the policy, as it continues to be discussed in Michigan. However, it currently is not possible to conduct an election using RCV and comply with the MEL. If Lansing does place charter amendments to implement RCV for city elections on the ballot, and those amendments pass, Lansing will not be able to conduct city elections using RCV until the MEL is amended.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Brater', with a stylized, cursive script.

Jonathan Brater, Director of Elections

Boak, Sherrie

From: Paul Holmes <paul.holmes@dominionvoting.com>
Sent: Monday, August 9, 2021 1:59 PM
To: Jackson, Brian
Cc: sdelongchamp@electionsource.com; Kay Stimson; Gio Costantiello; lancaster-law@comcast.net; Stites, Robin
Subject: RE: [EXTERNAL] UPDATE? : Ranked Choice Voting on Dominion Voting Systems - 5 p.m. EST Deadline

Hi Brian,

See the below responses in red to the questions:

1. Attached is a document that was found in the files of the Michigan Bureau of Elections. We believe that document was obtained by the Bureau in 2019 when it was working on the implementation of Ranked Choice Voting ("RCV") in the City of Eastpointe, Michigan. Is this a Dominion document, and is it accurate?

Yes, the document was produced by Dominion and submitted to the Bureau of Elections in response to a request for information.

2. Is the software and voting equipment used by Ingham County and the City of Lansing capable of conducting RCV elections? Or is some additional software necessary, or a third-party software?

RCV was not a part of the VSTL test report used for Michigan certification and thus, any RCV software would need state approval prior to use.

3. Would there be any additional costs that the City would incur if Lansing were to implement RCV for city elections? I am only asking for a brief description of what those costs might be, and a rough estimate of their amount.

Yes, the City would have to purchase the software and associated licensing fees, in addition to any certification costs, programming costs, and local training and testing needs. Any voter outreach and education efforts should also be factored into costs. See example here: <https://www.votedifferentsantafe.com/>.

4. Has the Dominion RCV software received voting system test laboratory ("VSTL") certification in Michigan or any other jurisdiction?

RCV has been part of some of our state level certifications, including California and New Mexico. See #2 for details on Michigan.

5. Has the Dominion RCV software received approval/certification from the Election Assistance Commission ("EAC") for Michigan or any other jurisdiction?

This is not relevant to Michigan use. See #2.

6. Is there software to perform the calculation of the rounds of voting that is tested and certified by an ITA accredited by the National Association of State Election Directors?

This question needs some discussion/clarification re ITA accreditation through NASED.

7. Can candidate names be rotated by precincts in the Dominion RCV software?

Also needs more discussion.

8. Can write-in candidates receive votes?

Yes.

9. Does the ICX (VAT) permit for RCV on the Dominion software?

The ICX supports RCV.

10. Can the Dominion ICP be programmed to reject RCV ballots containing errors?

Yes.

Stay safe,

Paul

R. PAUL HOLMES | DEALER CHANNEL & PRINT QUALITY MANAGER

DOMINION VOTING SYSTEMS, INC.
1.866.654.VOTE (8683) | DOMINIONVOTING.COM

From: Jackson, Brian <Brian.Jackson@lansingmi.gov>

Sent: Monday, August 9, 2021 1:15 PM

To: Paul Holmes <paul.holmes@dominionvoting.com>

Cc: sdelongchamp@electionsource.com; Kay Stimson <kay.stimson@dominionvoting.com>; Gio Costantiello <gio.costantiello@dominionvoting.com>; Lancaster-law@comcast.net; Stites, Robin <Robin.Stites@lansingmi.gov>

Subject: [EXTERNAL] UPDATE? : Ranked Choice Voting on Dominion Voting Systems - 5 p.m. EST Deadline

Paul, I am checking in on Clerk Swope's behalf on the status of his request (see attached).

At 5 p.m. EST, City Council will be discussing Ranked Choice Voting as stated in his request. We want to make sure that they received accurate information about your equipment.

Should we expect a response prior to the 5 p.m. meeting?

Thanks for your assistance.

Brian P. Jackson, *MiPMC*
pronouns: He/Him/His
Chief Deputy City Clerk
Lansing City Clerk's Office

Chris Swope, *MMC/MiPMC*
Lansing City Clerk

City Hall/Main Office | 124 W. Michigan Ave. | 9th Floor | Lansing MI 48933
Elections Unit/Marijuana Licensing | 2500 S. Washington Ave. | Rear Entrance | Lansing MI 48910

Paul

R. PAUL HOLMES | DEALER CHANNEL & PRINT QUALITY MANAGER

DOMINION VOTING SYSTEMS, INC.
1.866.654.VOTE (8683) | DOMINIONVOTING.COM

From: Swope, Chris <Chris.Swope@lansingmi.gov>

Sent: Thursday, August 5, 2021 9:32 AM

To: Paul Holmes <paul.holmes@dominionvoting.com>

Cc: Steve DeLongchamp <sdelongchamp@electionsource.com>; Kay Stimson <kay.stimson@dominionvoting.com>; 'gio.costaniello@dominionvoting.com' <gio.costaniello@dominionvoting.com>; 'James Lancaster' <lancaster-law@comcast.net>

Subject: [EXTERNAL] Ranked Choice Voting on Dominion Voting Systems

To: Paul Holmes
Dominion Voting Systems

From: Chris Swope
Lansing City Clerk

Re: Ranked Choice Voting

Date: August 5, 2021

I have several questions regarding the Dominion Voting System software and equipment used by Ingham County and the City of Lansing.

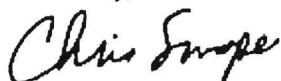
There is significant time sensitivity to our need for this information. The Lansing City Council will be meeting at 5 pm next Monday August 9, 2021 to consider whether to place on the November 2021 General Election ballot. I will be out of town next week, so I need your responses no later than 5 pm tomorrow, Friday August 6, 2021. I apologize for this tight time frame, but I think the questions we have are pretty straight forward.

1. Attached is a document that was found in the files of the Michigan Bureau of Elections. We believe that document was obtained by the Bureau in 2019 when it was working on the implementation of Ranked Choice Voting ("RCV") in the City of Eastpointe, Michigan. Is this a Dominion document, and is it accurate?
2. Is the software and voting equipment used by Ingham County and the City of Lansing capable of conducting RCV elections? Or is some additional software necessary, or a third-party software?

3. Would there be any additional costs that the City would incur if Lansing were to implement RCV for city elections? I am only asking for a brief description of what those costs might be, and a rough estimate of their amount.
4. Has the Dominion RCV software received voting system test laboratory ("VSTL") certification in Michigan or any other jurisdiction?
5. Has the Dominion RCV software received approval/certification from the Election Assistance Commission ("EAC") for Michigan or any other jurisdiction?
6. Is there software to perform the calculation of the rounds of voting that is tested and certified by an ITA accredited by the National Association of State Election Directors?
7. Can candidate names be rotated by precincts in the Dominion RCV software?
8. Can write-in candidates receive votes?
9. Does the ICX (VAT) permit for RCV on the Dominion software?
10. Can the Dominion ICP be programmed to reject RCV ballots containing errors?

I appreciate your assistance.

Sincerely,



Chris Swope, MMC/MiPMC | pronouns: He/Him

Lansing City Clerk

Michigan Association of Municipal Clerks (MAMC), Immediate Past President

Lansing City Clerk's Office

City Hall/Main Office | 124 W. Michigan Ave. | 9th Floor | Lansing MI 48933

Elections Unit/Marijuana Licensing | 2500 S. Washington Ave. | Rear Entrance | Lansing MI 48910

Main: (517) 483-4131 | Fax: (517) 377-0068

Direct: (517) 483-4130 | Mobile: (517) 230-1566

chris.swope@lansingmi.gov

[Website](#) | [Facebook](#) | [Twitter](#)



Types of Ranked Choice Voting

Democracy Suite supports the tabulation of ranked choice voting using three different methods:

- **Instant Runoff Voting (IRV)** – Most common form of RCV used in the US for single choice contests. A winner is determined when one candidate achieves 50% of the vote plus 1.
 - Single choice RCV contests are most commonly calculated using the IRV method. In the first round, only first choices are tabulated. If a candidate gets 50% of the vote plus 1, then that candidate is declared the winner. If not, the candidate with the lowest vote total is eliminated. The ballots that had the eliminated candidate marked as first choice are re-distributed according to their second choice and the second round is tabulated. This continues until one candidate achieves 50% of the vote plus 1.
- **Single Transferable Voting (STV)** – Uses the Weighted Inclusive Gregory Method which implements fractional surplus transfer of elected candidates. Used when there is more than one candidate to be elected in a single contest.
 - Multiple choice RCV contests would use the STV method. First, a quota or threshold is established based on the number of ballots cast and the number to be elected. In the first round, only first choices are tabulated. If any candidate receives a number of votes equal to or greater than the quota, they are elected. The number of votes that candidate receives in excess of the quota are redistributed to the other continuing candidates on a fractional basis by counting a fraction of each vote for the elected candidate for the candidate ranked next. For example, if a candidate has 10% more votes than the election threshold, every one of their voters will have 10% of their vote count for their next choice. The candidate with the lowest vote total in each round is eliminated. Rounds and eliminations continue until the number of candidates reaching the quota is equal to the number to be elected.
- **Points Instant Runoff Voting (Points IRV)** – A modified form of Instant Run-off Voting where ranked choice voting results are evaluated on a district per district basis and each district has a set number of points (100). Elimination and declaration of winners is done on basis of points, not votes.
 - In Dominion's experience thus far, Points IRV has only been used in Canadian elections. In Points IRV, each electoral district is worth 100 points. Candidates are assigned a point total based on their percentage of the vote in each electoral district. To win, a candidate must obtain a majority of points from across the jurisdiction.

- **Elimination Type**

Candidates	Vote Totals	Maximum Possible
A	10	10
B	10	20
C	30	50
D	40	90
E	400	490
F	600	1090
G	800	1890

- **Single** – The system will detect that candidates A and B are tied for elimination and the tie will be broken based on the tie breaking method selected. A single candidate will be eliminated. (Recommended)
- **Single and Tied** – The system will detect that candidate A and B are tied for last place and that their vote total sum of 20 is less than the vote total of the subsequent continuing candidate with 30 votes. Also at least two candidates are left to continue so candidates A and B will be eliminated.
- **Batch Elimination** – The largest set of candidates for which the summed vote total is smaller than the next continuing candidate, and which still leave at least two candidates to continue in the next round, is the set of candidates A, B, C, D and E (maximum possible is 490 for this set, and next vote total is 600), so these candidates will be eliminated.

- **Options for Using Thresholds to Determine the Winner (STV)**

- **Declare Winner by Threshold** – If this option has been selected, the system will declare winners by threshold. The threshold is the number of votes sufficient for a candidate to be elected. The threshold is calculated in each round by taking the number of continuing ballots, divided by the number of positions to elect plus one, then adding one to the quotient, disregarding any fractions.

Example: $15 \text{ ballots} / 2 \text{ (1 to be elected plus 1)} + 1 = 8$ A winner is declared upon reaching 8 votes.

If this option is left unselected the system will not use the threshold to elect candidates but will continue eliminating candidates each round until the number of continuing candidates is equal to the number of positions left to be elected plus one. It will then eliminate the candidate with the least amount of votes and declare the remaining candidate as elected.

- **Unused Ranking** – One or more, but not all, rankings are marked properly with no gaps.
 - In the example below, the first choice is valid. If the first choice is eliminated during tabulation rounds, this contest on this ballot is considered “exhausted”.

FOR MAYOR / PARA ALCALDE					
First (1 ^o) Choice / Primer Elección (1 ^o)					
Ranking / Orden de Elección					
	1 st Choice 1 ^o Elección	2 nd Choice 2 ^o Elección	3 rd Choice 3 ^o Elección	4 th Choice 4 ^o Elección	5 th Choice 5 ^o Elección
Peter N. Ivas	☒	☐	☐	☐	☐
Alan Webber	☐	☐	☐	☐	☐
Kate L. Noble	☐	☐	☐	☐	☐
Joseph M. Maestas	☐	☐	☐	☐	☐
Ronald S. Trujillo	☐	☐	☐	☐	☐

- **Unvoted RCV contest** – no readable marks are detected in the contest.
 - The contest is rejected from the vote count and thus, no votes are counted for any candidate.

RCV Tabulation

RCV tabulation is done only in RTR and does not commence until all tabulator results have been loaded into RTR. The tabulators (ICP, ICE, ICX, and ICC) do not tabulate ranked choice voting.

Results tapes printed from individual tabulators are not reflective of any tabulated RCV results. They are only the raw results from each rank as seen by the tabulator.

Again, when it comes to RCV, all the calculations happen in RTR. The tabulators simply make a record of how each RCV contest was marked.

There are a number of configurable options in RTR with regards to tabulating RCV contests. Those options include:

BY COMMITTEE OF THE WHOLE
RESOLVED BY THE CITY COUNCIL OF THE CITY OF LANSING

WHEREAS, the Committee of the Whole received a request to approve issuance of certain bonds by The Industrial Development Authority of the County of La Paz (the "Authority") of qualified 501(c)(3) bonds (the "Bonds") as defined in section 145 of the Internal Revenue Code of 1986, as amended (the "Code") in one or more series pursuant to a plan of finance. The hearing is being held pursuant to section 147(f) of the Code; and

WHEREAS, The Bonds will be issued for the project described below in an aggregate principal amount not to exceed \$12,500,000. The funds in question do not involve City of Lansing funds, taxes or other financial resources. Further, this public hearing or any subsequent resolution of City Council does not affect any determination as to non-profit status by the City of Lansing Assessor; and

WHEREAS, Proceeds of the sale of the Bond which will be issued as qualified 501(3) bonds will be loaned by the Authority to Campus Partners 1 and its affiliates, all single member limited liability companies and disregarded entities of Campus Partners 1 (collectively, the "Borrower") to be used to finance or reimburse all or a portion of the costs of a project that consists of (1) the acquisition and improvement of a public charter school facility (the "Charter School Facility") identified below for use in its school operations at the location and in the estimated maximum principal amount listed below; (2) the funding of any required reserves; and (3) the payment of the costs of issuance of the Bonds. The Borrower will lease the Charter School Facility to qualified 501(c)(3) entities or governmental entities. The Charter School Facility will be owned by the Borrower as the initial legal owner.

WHEREAS, In accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder, a public hearing on the issuance of bonds shall be held;

NOW, THEREFORE BE IT RESOLVED, that a public hearing be held, at the Lansing City Council meeting held on August , 2021, at 7:00 p.m. in the Tony Benavides Lansing City Council Chambers on the tenth floor of City Hall, in consideration of the request to approve issuance of bonds.

NOTICE OF PUBLIC HEARING

The City Council of Lansing will conduct a Public Hearing on August , 2021 at 7:00 pm in the Tony Benavides Lansing City Council Chambers on the 10th Floor of Lansing City Hall, located at 124 W. Michigan Avenue, in connection with the proposed issuance by The Industrial Development Authority of the County of La Paz (the “Authority”) of qualified 501(c)(3) bonds (the “Bonds”) as defined in section 145 of the Internal Revenue Code of 1986, as amended (the “Code”) in one or more series pursuant to a plan of finance. The hearing is being held pursuant to section 147(f) of the Code.

The Bonds will be issued for the project described below in an aggregate principal amount not to exceed \$12,500,000. **The funds in question do not involve City of Lansing funds, taxes or other financial resources. Further, this public hearing or any subsequent resolution of City Council does not affect any determination as to tax-exempt status by the City of Lansing Assessor pursuant to the Laws of the State of Michigan.**

Proceeds of the sale of the Bond which will be issued as qualified 501(3) bonds will be loaned by the Authority to Campus Partners 1 and its affiliates, all single member limited liability companies and disregarded entities of Campus Partners 1 (collectively, the “Borrower”) to be used to finance or reimburse all or a portion of the costs of a project that consists of (1) the acquisition and improvement of a public charter school facility (the “Charter School Facility”) identified below for use in its school operations at the location and in the estimated maximum principal amount listed below; (2) the funding of any required reserves; and (3) the payment of the costs of issuance of the Bonds. The Borrower will lease the Charter School Facility to qualified 501(c)(3) entities or governmental entities. The Charter School Facility will be owned by the Borrower as the initial legal owner.

<u>Charter School Facility</u>	<u>Location</u>	<u>Maximum Amount in location</u>
Lansing Charter Academy	3300 Express Court, Lansing, MI 48910-4370	\$12,500,000

All persons desiring to express an opinion about the proposed issuance of bonds by Industrial Development Committee of La Paz County to Lansing Charter Academy are invited to attend this public hearing or submit written comments.

If you are interested in this matter, please attend the public hearing or send a representative. Written comments will be accepted between 8:00 am and 5:00 pm on City business days if received before 5:00pm, on the day of the Public Hearing at the City Clerk’s Office, 9th Floor, 124 W. Michigan Avenue, Lansing, MI 48933 or email city.clerk@lansingmi.gov.

This notice is published in accordance with, the public notice requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder.

DEBT FINANCINGS OF THE AUTHORITY ARE NOT OBLIGATIONS OF THE CITY OF LANSING, THE STATE OF MICHIGAN, OR ANY POLITICAL SUBDIVISION THEREOF.

CITY OF LANSING, MICHIGAN