

Minutes for the City of Lansing Charter Commission

Regular Meeting | Tuesday, November 12, 2024, 6:30 PM

Tony Benavides City Council Chambers,
Lansing City Hall, 10th floor, 124 W. Michigan Ave.

Present: Commissioners Adams Simon, Anderson, Bauer, Dowd, Jeffries, Lopez, Qawwee (6:33), Washington

Absent: Commissioner Boyd (excused)

Staff Present: City Clerk Swope, Deputy Clerk Drever, Attorney Rewa

Call to Order

The meeting was called to order by Chair Jeffries at 6:30 PM.

Roll Call

Clerk Swope called the roll of the Commission. A quorum was present.

Adopt the Agenda

Moved by Commissioner Dowd to adopt the agenda as presented.

Motion Carried.

Approval of Minutes

A. October 22, 2024, Minutes

Moved by Commissioner Lopez to approve the October 22, 2024, minutes as presented.

Motion Carried.

Public Comment

Randy Dykhuis spoke about listening to people outside of known power structures.

Loretta Stanaway spoke about the decision to keep a strong mayor government and the Board of Water and Light. Then she suggested a City Council structure of 5 wards and 2 at-large members.

Heath Lowry spoke about expanding ward-based representation on the City Council.

Amarah Tiller spoke about fluoride in the City's water.

Mike Marriott spoke about a nine-member City Council, with four ward members, four district members, and one at-large member.

Dierdre Thompson spoke about fluoride in the City's water.

Fredric McLaughlin spoke about focusing on community development in the City Charter.

Officer Reports

Chair- No Report.

Vice Chair- No Report.

Clerk- No Report.

Presentations

A. Board of Water and Light

David Price, Board of Commissioners Chair, and Dick Peffley, General Manager, from the Board of Water and Light, presented about the role of the Board of Water and Light. Then they took questions from the commissioners about hydropower, fluoride, rate increases, the board composition, solar power, transparency and communication, and budget.

Old Business

A. City Council Structure

i. Legal Opinion

Attorney Rewa explained in open session that there is not a conflict of interest present for Commissioners with relatives on the current City Council.

ii. Discussion

Vice-Chair Adams Simon: for the purposes of discussion, I move to amend the charter to adopt a new Council structure of 4 wards and 3 at-large.

Commissioner Anderson: I would like to thank the people who spoke today and did public comment specifically about this. I think there is a lot of validity in expanding the number of wards to ensure that there is more representation, and I think Heath mentioned a higher diversity of perspectives.

I know there was a conversation point last meeting about our at-large council members are the most diverse council, I would encourage us to look beyond racial diversity and look at socioeconomics, varying levels of ability, etc. This is the first time I've ever seen at-large as diverse as it is, and that's not a guarantee going forward.

Most of the time I've paid attention to local government, most of the at-large lived in the same neighborhood, had similar socioeconomic status, similar races, similar genders, etc. I would encourage us to look beyond that, I don't think that reducing or getting rid of at-large seats means people have less representation. Just because you're elected for a ward doesn't mean you only care about your ward, you still care about the city as a whole. It allows for more direct representation.

Commissioner Washington: I served on Council when half of the council was from the same ward, plus the mayor plus the city clerk, and that's the danger. As far as the at-large seats having diversity, the reality doesn't support that narrative: every person on council is from a protected group.

I will still fight that people in lower socioeconomic groups are only going to get proper representation from their people that understand their way of life. As Commissioner Anderson said it's not just about race, it's about age, it's about diversity of thought, diversity of experience. We need the middle class, we need the higher class, they need representation too. These at-large seats, you cannot guarantee diversity. I served when there were seven women and one man: it's always a mix-up. The at-large seats don't make sense for true representation of people that aren't getting true representation.

It is cost prohibitive for somebody in public housing units to run for office; they will never be able to run to represent their neighborhoods. It is no slam against anybody that ever ran for office and got at-large. We're not doing this charter for days gone by, we're doing this charter for five years, ten years, maybe 20 and if we continue the way we're continuing, we are not going to be sitting at 112,000 people. The hope is the city will grow, and with that we are bringing in a lot of low-income people that deserve proper representation from their people.

Commissioner Washington: I have had a lot of conversations with people, I'm everywhere, Commissioner Anderson is everywhere. And frankly, the idea of these at-large seats is not washing. It may have been good for days gone by, but those days are gone. It's time to think progressively, to think about true representation. We have a more diverse population, a poorer population, and we have people that deserve representation from their people. I don't think lessening the amount of council members is the answer. I truly believe expanding the wards and having ward members only.

Commissioner Lopez: I would like to have conversation about the various proposals; If we make this decision right now, we really haven't looked at the potential of other proposals. I have thought about districts, larger districts than wards. I think we owe the community a conversation of each proposal, and then come to a decision, whatever that is. At least we've taken the community's thought, advice, and proposals to heart. At the end of the day if we don't agree, that's another story, but at least we paid attention and moved on those things, looked at the pros and cons, and then came to a decision. It may still be the same decision, but at least we looked at their recommendations. I would hope that we kind of take a step back and look at the various proposals, what makes sense what doesn't is there a rule and regulation that doesn't allow that. My main point is that we should give each recommendation its due review.

Commissioner Qawwee: I think we should table this and have further discussion. As far as us expanding, the population of Lansing is not expanding. We want it to, and that's the objective. I would hate for us to expand it and we don't move that way for another 15-20 years. I do believe it should be an odd number, whatever we come up with. I'm not going to the at-large or ward. We could maybe put in a provision, if the City gets to 150,000 citizens, then it triggers an addition of council members. As far as us expanding it to nine right now, I don't agree with that.

Commissioner Bauer: I support everyone who has said we should not be voting on this tonight. This issue is more important to the people, than the strong mayor issue. The number, but more than that the ward/at-large. I would hope that we might say something so that the public knows that this is before us, that we are going to be talking about it during our meetings. So, if they want their feelings heard, they let us know. I would hate to make any decisions quickly even though we've been talking about it. I think the public does not realize that part, so I feel strongly that we need to get that word out that this is a topic that's going to be addressed soon.

Vice-Chair Adams Simon: I agree with what everyone saying about this, and I know that the public has come down, they've spoken on it time and again and we appreciate it. Like we did with the strong mayor decision, we need solid research. We've all done our own research and have our own opinions but understanding that outside opinion: what would it look like if we expanded the wards. We need to look at the numbers and how the districts and the representation of those districts shape up. My concern is, and I can be corrected, right now there are three people on council from the third ward. We need to have representation of the entire city. I would like that information first. I've done my own research, and I've listened to the public, but I don't want a situation where someone comes back and says, you didn't listen to the public. I don't think there's any more we can do, the public has sent in information, and they've come to meetings. It's more important to get some solid data and numbers regarding what our city and what our future looks like.

Commissioner Washington: I don't think this is as critical as deciding on the strong mayor. At the end of the day, we are going to have a council, it's just what does that look like.

Commissioner Qawwee: I move to table.

Motion Carried.

New Business

A. January – June 2025 Meeting Schedule

Commissioner Dowd moved to approve the schedule.

Motion carried.

B. Article 1-302: Nondiscrimination and Civil Rights

Attorney Rewa: There is a legal letter opinion with the language and some of the law that may pertain to this. There has been some direction, it seems that the direction the Commission is going, they would like to add some revised language to section 1-302, and I need further guidance in terms of what the scope of that is. Some of the discussion that's been had in the past is on the characteristics that are listed in the current language, which is outdated and incomplete as it pertains to what the current civil rights laws state. It's not just what's listed as the characteristics, but also what is the scope in terms of how you think that this should be drafted.

As it currently stands, Article 1-302 says "In the exercise of its powers or in the performance of its duties the City and all of its agencies shall ensure," so, the scope of this provision as it currently exists is limited to public service discrimination type laws, and ensuring against public service discrimination as the city delivers its services, but when we look at civil rights laws in general and antidiscrimination laws in general, there tends to be various buckets that the laws apply to, employment, public services, public accommodation, housing, education, etc. It's broad.

Some discussion needs to be had and some direction for me, what is the scope of the revision you are envisioning putting into this? Is it simply an updated list of characteristics, or something more broad? To that end I did provide a couple ideas at least to get this started. These are not the only options. To the extent you're looking at this as a cleanup and modernization, we did propose language to add more recent terminology, so instead of handicapped we have disability, because that is the current language in federal and state law. We added to the characteristic language, all characteristics which apply to public services which would include the City as defined in state law. We did not delete any characteristic, so the recommended option one would be to have the list of characteristics be 'race, religion [which would be new], creed, political orientation, color, national origin, marital status, sex, sexual orientation (which would be new), gender identity or expression, age, disability, breastfeeding a child or is expressing human milk.'

The other thing you may wish to consider as well is this is an area of law which constantly evolves. So perhaps adding some language to allow for this to encompass any additional characteristics as determined by the law as something that needs to be protected. You're sort of incorporating what an ordinance, state law, or federal law may provide.

The other option two, if you're looking at something more broad in terms of a policy statement of anti-discrimination in general, we looked to the Human Rights Ordinance, which is the most recent legislative policy of the City of Lansing: "All forms of discrimination adversely affect citizens of Lansing." Putting that language in and having you look at is it something more broad that you'd like to do. You may want to consider keeping some statement providing for equal protection of the laws. When we're talking about antidiscrimination, it's not just looking at characteristics, but also respecting people engaging in their fundamental rights, so freedom of speech and things like that: putting that proviso "or other characteristic as defined by law" to allow for this to continue to expand.

Remember the charter sets a floor, not a ceiling. You are setting the floor which is the base area that should guide city policy and city ordinance, but also allowing it to expand as the years go on.

Commissioner Dowd: Between option one and two, it is pretty great our city has a robust Human Rights Ordinance, and it seems to me that it would be a no-brainer option to put that as the floor. You're proposing language that would allow this to adapt as we move forward without having to make changes in language. So, it would include any additional protections identified by law?

Attorney Rewa: Under option two, the language would be, or other characteristic as defined by law. If you look up in option one, you could also say, or other characteristic as defined by law or ordinance. Allowing that additional statement in there understands that this continues to evolve.

Commissioner Qawwee: I had a question because there are a couple that I would like to add. Can I send those to you, and you can add them?

The one I had here had, in concurrence to applicable laws, there shall be no discrimination against any employee with respect to compensation, terms/conditions, privilege or opportunity for employment, race, color, religion, sex, including pregnancy, gender, gender identity, gender expression, veteran status, medical condition, and has including genetic characteristics, sexual orientation, age, national origin, disabilities as defined in ADA, linguistic characteristics such as accent or limited English, English proficiency where not substantially job related, marital status, or any other basis prohibited by law.

Chair Jeffries: Send that to us, and we will pass it around. Any other questions or comments?

Okay so from here we are going to get that additional information, we are going to address Commissioner Dowd's concern and make sure that's taken care of, and then you'll [Attorney Rewa] bring back to us final language and we can deal with it at the next meeting.

C. Article 2-103: Ineligibility for Office

Attorney Rewa: There's another opinion laying out the current provision in the City Charter regarding felonies and looking at some of the law as it pertains to this. Preemption is going to be an issue you need to know about, because it will apply in provisions we discuss later, but this is not one of them. The current provision in the charter is not preempted by what is in the state constitution. Preemption generally speaking means a local law cannot allow what state law prohibits, and a local law cannot prohibit what state law allows. In this case, the state constitution provides that these things are the floor. A local elected official cannot have these types of felonies. There is a specific provision in the constitution which says you can have additional regulations and qualifications. You can go above it if you want, but you don't have to.

To the extent you want to adopt what the state constitution provides, there are a few options. You can simply just strike the felony provision, then it's just the state constitution that's going to apply, or you can modify the language that's currently in the charter to reflect what is in the state constitution. One thing that's nice about striking or adopting state law is that also allows the benefit of having case law that interprets the state constitution apply to provisions here. There is not a lot of case law about challenging provisions of a candidate's eligibility for office. There is one potential weakness that had been discovered, in that when you are interpreting the application of the constitutional prohibition, it does not apply to felony behavior conducted while in office of a federally recognized tribal nation. That's the only defined limitation. We do have some proposed language that would adopt the constitutional provision exactly as it would apply to the City of Lansing.

Chair Jeffries: I was trying to understand the relationship between Article 5-103: Appointment of Board Members, as it relates to the elective office and 2-103. The way I read it, 5-103 pertains just to board and commission members. A limitation for appointment to board and commissions, there's no prohibition against a felony conviction.

Attorney Rewa: Correct. Currently, the provision we are looking at, 2-103: Ineligibility for Office, says any person that has been convicted of these things shall not be able to hold city office. City Office is not defined, but officer is. The way officer is defined, keep this in mind, officer includes elected officials of the city, which does include members of boards and commissions, their executive staff, all heads of department and divisions. That's why we have to look at the charter as a whole. When we get to 5-103: Appointment of Board Members, there is a specific carve out that the felony prohibition does not apply to those appointed boards and commissions, it's just the elected officials, the executive staff of members of boards and commissions, and heads of departments and divisions.

Chair Jeffries: Would it make sense to amend both provisions then to include the constitutional language?

Attorney Rewa: I don't know that you necessarily need to do that. If we're doing line by line, we can look at that when we get to that point. The other thing to keep in mind is, if you're adopting the Michigan constitutional provision, it only applies to local elected officials. It wouldn't apply to appointed boards or employees, only the specific identified employees listed in the constitution.

I'm always going to put an asterisk when we talk about employees because there's going to be preemption that comes up about employee rights and collective bargaining. I don't think those apply in this situation given the high level of employee the constitutional provision applies to.

I think if you adopt this, I don't think you necessarily need to preserve it, but that should be a cleanup later.

Chair Jeffries: I think it makes sense for both provisions to say if you're running for office or for an appointment, it's the same criteria.

Attorney Rewa: That would be broader than the Michigan constitution currently requires, in terms of scope of who it applies to.

Chair Jeffries: The particular language in 5-103 was an amendment that passed through City vote in 2022, so we should keep that in mind as we look at it.

Commissioner Qawwee: so, the add-on of 20 years was passed in 2022?

Chair Jeffries: The 5-103 that took away the felony issue for board and commission appointments, that was taken out by the voters.

In terms of where we are, what are you [Attorney Rewa] looking for from us?

Attorney Rewa: If the commission wants me to come back with language that would include the application of this limitation, or this definition of the 20-year felonies, to also apply to the appointed boards and commissions, then let me know that and I can look at how to draft that.

Commissioner Qawwee: I think we were looking at the opposite, removing that 20-year felony part.

Chair Jeffries: I think the conversation has been with the public; they're pointing out the constitutional language which includes the 20-year felony but for very limited acts ...

Attorney Rewa: Dishonesty, deceit, fraud, or breach of public trust.

Vice Chair Adams Simon: Like you stated earlier, if we strike it totally, it would default to state constitution.

Attorney Rewa: It would default to state constitution. So we understand, the state constitutional language applies to local elected officials, so anyone subject to election: it's a felony specifically within the deceit, dishonesty, fraud, provision; and the facts are such that the deceit happened within the scope of employment

[Attorney Rewa]: of a public office.

In the one case I mentioned, this Paquin case, there was an individual who was a police chief and on the board of directors of a Tribal Nation that was convicted of a felony for doing some shady things with federal funds. Later, he goes on to be a candidate for a local office for a city. Originally, he was denied being a candidate for the city, and he fought it, and it went to the courts. The court said the plain and unambiguous language of how the constitutional provision applies did not apply to him because the felony had to happen within the scope of engaging in duties public office, which is defined as a local, state, or federal government, and a tribal government does not fall within that.

For example, if you have a candidate convicted of embezzlement for a local nonprofit, and it was 2 years ago, the state constitution does not prohibit that person from running, so that person can still be eligible to run. You have to look at who is this applying to within the structure of city government, and what types of laws and conditions of the laws are you looking to have this apply to.

Chair Jeffries: How do we want to move on this?

Commissioner Anderson: I move to have the language written in the charter and aligned with what is in the state constitution.

Chair Jeffries: So, we are going to use the constitutional language and replace the language in 2-103.1.

Attorney Rewa: For clarification, because the exact language of the state constitution is a little different than we prepared, are you talking specifically about the language in Option 2?

Chair Jeffries: Yes

Motion Carried.

Public Comment

Randy Dykhuis spoke about the roles of the Board of Water and Light's Board of Commissioners in management and governance.

Loretta Stanaway spoke about a proposed City Council structure of 5 wards and 2 at-large members.

Fredric McLaughlin spoke about Donald Shoup's book, The High Cost of Free Parking.

Nicholas Pigeon spoke about campaign finance and redistricting.

Mike Lynn spoke about antidiscrimination policy and action; Article 2-103 Ineligibility for Office; and increasing the number of council members.

Heath Lowry spoke about UNC School of Governance as a source of research for a City Council structure.

Ryan Kost spoke about the experience of representing a large ward as an individual and the cost of running a campaign.

Commissioner Remarks

No remarks were made.

Adjournment

The meeting was adjourned by Chair Jeffries at 9:02 PM.



ATTORNEYS AND COUNSELORS AT LAW

2851 CHARLEVOIX DRIVE, S.E., SUITE 203 • GRAND RAPIDS, MICHIGAN 49546 • PHONE: (616) 975-7470 • FACSIMILE: (616) 975-7471

Kristen L. Rewa
krewa@cnda-law.com

November 7, 2024

Via Email

Mr. Brian C. Jeffries
Chairperson
Lansing Charter Commission
124 W. Michigan Ave., 9th Floor
Lansing, MI 48933
Brian.Jeffries@lansingmi.gov

Re: Section 1-302 Non-Discrimination And Civil Rights

Dear Mr. Jeffries:

This letter addresses Article I, Chapter 3, Section 1-302 in the City Charter and provides proposed language for the Commission to review and discuss.

City Charter, Article I, Chapter 3, §1-302 Non-Discrimination And Civil Rights provides:

1-302 Non-Discrimination And Civil Rights

.1 In the exercise of its powers or in the performance of its duties the City and all of its agencies shall ensure that no person or group engaged in the conduct of official business or seeking to do business with the City is discriminated against because of race, creed, political orientation, color, national origin, marital status, sex, age, handicap or for any cause not reasonably related to the accomplishment of a legitimate governmental purpose, and shall take whatever action is necessary to accomplish this purpose.

.2 The City and all its agencies shall ensure that the civil and constitutional rights of all persons are not denied or abridged.

It appears the current language of Section 1-302.1 aims to prevent discrimination in the provision of city services as provided by the state and federal constitutions as well as state anti-discrimination statutes. We recommend that the Charter Commission consider revising 1-302.1 to reflect more modern anti-discrimination language. Since the Charter was enacted, state law, particularly the Elliott Larsen Civil Rights Act has undergone several revisions.

Michigan's Elliott-Larsen Civil Rights Act (ELCRA) prohibits discrimination in several distinct areas. Most relevant to this discussion, Article 3 of the ELCRA covers "public service", which is defined as follows:

(b) "Public service" means a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of this state, a political subdivision, or an agency of this state or of a political subdivision or a tax exempt private agency established to provide service to the public, except that public service does not include a state or county correctional facility with respect to actions and decisions regarding an individual serving a sentence of imprisonment. [MCL 37.2301].

The City is considered a political subdivision of the state and therefore, city services, buildings, and operations fall within the definition of "public service." Section 302 of the ELCRA prohibits discrimination in public service as follows:

Except where permitted by law, a person shall not do any of the following:

(a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, or marital status. [MCL 37.2302 (emphasis added)].

Additionally, the Persons with Disabilities Civil Rights Act (PDCRA) prohibits a public service, including City services, from discriminating against individuals with disabilities. The Act provides at MCL 37.1302 as follows:

Except where permitted by law, a person shall not:

(a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation or public service because of a disability that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids.

The City's current Charter uses the word "handicap", which was the legal term used in state law at the time. Both state and federal law now use the word "disability" as defined in the PDCRA and the federal Americans with Disabilities Act. We recommend that the Commission replace "handicap" with "disability".

Moreover, the Breastfeeding Antidiscrimination Act, PA 197 of 2014, provides:

Unless expressly permitted by a state or federal statute or a regulation promulgated under a state or federal statute, a person with control over a place of public accommodation or public service shall not do any of the following . . . Deny the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation or public service to an individual because the individual is breastfeeding a child or is expressing human milk.” [MCL 37.232].

City Ordinances also address discrimination. Although current ordinance language is not controlling, it can offer guidance on more recent policy statements of the City. The Human Rights Ordinance provides a general policy statement:

It is the intent of the city that no person be denied the equal protection of the laws; nor shall any person be denied the enjoyment of their civil rights or be discriminated against because of their actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, gender identity or expression, veteran status or HIV status, source of income, ancestry, student status, housing status, political affiliation or belief, or service in armed forces in sovereign nations as all forms of discrimination adversely affect Lansing citizens and the quality of life and opportunities available to all people. [Lansing Ordinance, Title 12, Ch. 297, Sec. 297.01]

The ordinance prohibits discrimination based on the characteristics outlined above, in the provision of public services, which includes city services:

(a) No person shall discriminate against any other person in providing information, offering access, or making referrals regarding public services, or by withholding, denying, curtailing, or otherwise limiting the full use of and benefit from public services. [Ordinance, Sec. 297.05].

Additionally, the City’s ordinance on the Diversity, Equity, and Inclusion Advisory Board directs that board to review newly introduced ordinances and amendments “for potential negative effects that may disproportionately impact citizens on the basis of race, color, religion, national origin, age, height, weight, marital status, political orientation, gender, sexual orientation, arrest record, disability, or for any cause not reasonably related to the accomplishment of legitimate governmental purpose”; opine on goals and implementation of the City’s Racial Justice and Equity Plan; and “[a]dvise on issues of diversity, equity, and inclusion within the Lansing community with the overarching goal of ensuring the City of Lansing is a welcoming and inclusive community to all.” Lansing Ordinance, Title 8, Chapter 256, Section 256.02.

To better align the Charter’s non-discrimination provision modern law, we have prepared two alternative proposed revisions to facilitate this Commission’s review and discussion. These are by no means the only options.

Option 1: maintains the current structure of Charter Section 1-302.1 and adds additional personal characteristics that are protected from discrimination in public services under state

law as it currently stands.

.1 In the exercise of its powers or in the performance of its duties the City and all of its agencies shall ensure that no person or group engaged in the conduct of official business or seeking to do business with the City is discriminated against because of race, religion, creed, political orientation, color, national origin, marital status, sex, sexual orientation, gender identity or expression, age, disability, breastfeeding a child or is expressing human milk, other characteristics defined by law or ordinance, or for any cause not reasonably related to the accomplishment of a legitimate governmental purpose, and shall take whatever action is necessary to accomplish this purpose.

.2 The City and all its agencies shall ensure that the civil and constitutional rights of all persons are not denied or abridged.

Option 2: uses the language developed in the Human Rights Ordinance (with light grammatical modifications), recognizes the inclusion of additional characteristics as may be defined by law, and provides that additional action, including city ordinances, will effectuate the purpose of this section.

.1 It is the intent of the City that no person or group be denied the equal protection of the laws; nor shall any person be denied the enjoyment of their civil rights or be discriminated against because of their actual or perceived race, color, religion, national origin, sex, age, height, weight, marital status, physical or mental disability, family status, sexual orientation, gender identity or expression, veteran status, HIV status, source of income, ancestry, student status, housing status, political affiliation or belief, service in armed forces in sovereign nations, or other characteristic as defined by law, as all forms of discrimination adversely affect Lansing citizens and the quality of life and opportunities available to all people.

.2 The City and all its agencies shall ensure that the civil and constitutional rights of all persons are not denied or abridged.

.3 The City shall take such action, and shall adopt such ordinances, as shall be necessary to accomplish the purpose of this section.

The difficulty in preparing revised language concerning anti-discrimination is the likelihood of the language becoming obsolete or incomplete with time, as federal, state, and local laws change. Charter commissions are generally cautioned to draft charter language concerning policy in broad terms, leaving more detailed treatment and enforcement mechanisms to be developed by ordinance. We recommend that the Charter Commission consider any potential revisions of this section as setting a threshold for the City's policy decisions on discrimination for years to come, allowing City ordinances, regulations, and policies to provide the detailed definitions and enforcement mechanisms to effectuate the general policy statement set forth in the Charter.

A note on future work. Our review of Sec 1-302 identified additional antidiscrimination provisions of the City Charter, including Section 6-301 Non-Discrimination, which prohibits discrimination in city employment. Additionally, several provisions refer to “affirmative action”, including Section 6-301, Section 4-102.10, and Section 4-401. We recommend that these provisions should be reviewed by the Charter Commission in due course.

Very truly yours,

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

A handwritten signature in black ink, appearing to read 'Kristen Rewa', written in a cursive style.

Kristen L. Rewa

KLR/car

cc: Vice Chair Lori Adams Simon (lori.simon@lansingmi.gov)
Chris Swope, MMC/MiPMC (Chris.Swope@lansingmi.gov)
Brian P. Jackson, MiPMC, (Brian.Jackson@lansingmi.gov)



ATTORNEYS AND COUNSELORS AT LAW

2851 CHARLEVOIX DRIVE, S.E., SUITE 203 • GRAND RAPIDS, MICHIGAN 49546 • PHONE: (616) 975-7470 • FACSIMILE: (616) 975-7471

Kristen L. Rewa
krewa@cnda-law.com

November 7, 2024

Via Email

Mr. Brian C. Jeffries
Chairperson
Lansing Charter Commission
124 W. Michigan Ave., 9th Floor
Lansing, MI 48933
Brian.Jeffries@lansingmi.gov

Re: 2-103.1 Ineligibility For Office (Felony Offenses)

Dear Mr. Jeffries:

This Memorandum outlines the law regarding qualifications for officers as well as provides proposed language changes should the Commission choose to consider it.

The Board has received public communication requesting that City Charter Article 2, Chapter 1, Section 2-103.1 be amended to reflect current state constitutional language regarding qualifications for office. Section 2-103.1 currently reads as follows:

2-103 Ineligibility For Office

.1 Any person who has been convicted of either a violation of the election laws of this City, this State or the United States of America or a violation of a public trust or any felony shall not be eligible to hold any City office for a period of 20 years from the date of the conviction.

While “office” is not defined in the Charter, the Charter does define “Officer”:

OFFICER includes, but is not limited to, the elected officials of the City, the members of boards and commissions, and their executive staffs, all heads of departments and divisions. [Charter, Sec 1-205]

The scope of 2-103.1 is limited by Sec 5-103.1, which excludes board members. That section provides:

5-103 Appointment Of Board Members

.1 Every member of a board, commission or committee established by Charter or

ordinance shall be an officer of the City and shall possess the qualifications required by this Charter for holding office, except that a felony conviction shall not render an individual ineligible for appointment or membership. [emphasis added].

Thus, as it currently stands, Sec 5-103.1 applies to the elected officials of the City, executive staff of any elected official or board/commission, and all heads of departments and divisions. It renders any individual seeking those positions ineligible due to any felony conviction or conviction (felony or misdemeanor) related to election law or a violation of public trust for 20 years from the date of the conviction. The conviction does not have to be related to conduct committed while that person was acting in an official government capacity.

Specifically, the Commission received public comment that Section 2-103.1 should be modified to reflect current provisions for ineligibility in office as set forth in the Michigan Constitution. The Michigan Constitution of 1963, Article XI § 8 provides:

A person is ineligible for election or appointment to any state or local elective office of this state and ineligible to hold a position in public employment in this state that is policy-making or that has discretionary authority over public assets if, within the immediately preceding 20 years, the person was convicted of a felony involving dishonesty, deceit, fraud, or a breach of the public trust and the conviction was related to the person's official capacity while the person was holding any elective office or position of employment in local, state, or federal government. This requirement is in addition to any other qualification required under this constitution or by law.

The legislature shall prescribe by law for the implementation of this section.

This provision was added to the Constitution in 2010. As such, this provision did not exist in the Michigan Constitution at the time the Lansing Charter was last revised in 1978. The constitutional provision is also narrower than the current Lansing Charter provision. Article XI § 8 is limited to (1) elected officials or employees with policy-making or discretionary authority over public assets; (2) felony convictions which are (3) less than 20 years old and (3) relate to “dishonesty, deceit, fraud, or a breach of public trust” and (3) the actions which led to the conviction were committed in the person’s official capacity while holding an office or employment in a local, state, or federal government.

Court interpretations of Article XI § 8 have been limited. The federal courts agreed that this provision prohibited an individual from seeking an elective county office in 2022 based on a 2009 bribery conviction stemming from her actions while serving on a city council. See *Conyers v. Garrett*, No. 22-1494, 2022 WL 2081475, at *1 (6th Cir. June 10, 2022)(denying preliminary injunction). However, the Michigan Supreme Court held that this provision did not disqualify an individual from running for a city council seat where his conviction for misuse of federal funds stemming from his official actions as the police chief and board member for a federally recognized tribe did not meet the criteria of this provision because “local, state, or federal government” does not include a sovereign tribal nation. *Paquin v. City of St. Ignace*, 504 Mich. 124, 135, 934 N.W.2d 650, 656 (2019).

It has been asserted that the current language of Sec. 2-103.1 violates or is preempted by Article XI § 8. This is incorrect. A local law is preempted by state law when the local law permits what the state law prohibits or prohibits what the state law permits. See *Ter Beek v City of Wyoming*, 495 Mich 1, 20: 846 NW2d 531 (2014).

As Article XI § 8 clearly indicates, “[t]his requirement *is in addition* to any other qualification required under this Constitution or by law.” As such, the constitutional provision allows more restrictive eligibility requirements “by law”, which includes a city charter. Notably, Michigan Election Law provides that a city’s charter governs qualifications for city office. MCL 168.321(1). In short, the restrictions imposed by the Constitution Article XI, §8 are a “floor”. The City Charter cannot contain language that is less restrictive than Art XI, § 8, but the Charter may contain a more restrictive requirements. The current language of Section 2-103.1 is not in violation of, or preempted by Article XI § 8, or any other provision of the Michigan Constitution or statute. Rather, Section 2-103.1 is a more restrictive requirement placed on City office holders, which is expressly permitted by the Constitution. It is our opinion that the Charter Commission is not required to remove or otherwise revise the current language of Sec. 2-103.1 to comply with state law because Sec 2-103.1 does not violate state law.

However, the Charter Commission is free to consider and recommend revisions to Section 2-103.1 as a matter of public policy. To the extent the Commission wishes to consider changes to Section 2-103.1, it has several options:

Option 1: The Commission could choose to strike all of 2-103.1 from the Charter. If you do so, that would simply leave individuals to refer to the state constitutional requirements, which still apply regardless of the contents of the City Charter. See, *Conyers, supra*.

Option 2: Alter the language of 2-103.1 to reflect the language contained in Article XI § 8. The proposed additional language could read as follows:

A person is ineligible for election or appointment as any elective officer and ineligible to hold an employment position within the City that is policy-making or that has discretionary authority over public assets if, within the immediately preceding 20 years, the person was convicted of a felony involving dishonesty, deceit, fraud, or a breach of the public trust and the conviction was related to the person's official capacity while the person was holding any elective office or position of employment in local, state, or federal government.

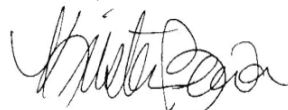
Option 2 tracks the language of Mich Const, Art XI, § 8, with the same limitations and interpretations of that constitutional provision. As such, felony conduct committed in an official capacity as a Tribal nation official would not fall within these provisions, per *Paquin*.

Additional options: There are not simply two options. The Commission may choose to consider additional changes to Section 2-103.1, so long as the revision does not permit what the terms of Mich Const, Art XI, § 8 prohibit. For example, the Commission could chose to address the issue noted by *Paquin* in the list of official conduct to include felony conduct committed in an official capacity in “local, state, federal, or tribal government”. Changes can also include adding more conviction types or adding time to the duration of prohibition.

Please let me know if you have any questions.

Very truly yours,

CUMMINGS, McCLOREY, DAVIS & ACHO, P.L.C.

A handwritten signature in black ink, appearing to read 'Kristen L. Rewa', written in a cursive style.

Kristen L. Rewa

KLR/car

cc: Vice Chair Lori Adams Simon (lori.simon@lansingmi.gov)
Chris Swope, MMC/MiPMC (Chris.Swope@lansingmi.gov)
Brian P. Jackson, MiPMC, (Brian.Jackson@lansingmi.gov)