

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Investigation of : Complaint Filed: October 27, 2010
Reading City Council :
: :
: Investigation No. 31

FINAL OPINION AND ORDER

I. PROCEDURAL HISTORY AND FINDINGS OF FACT

A. Procedural History

1. On or about October 27, 2010, Steven S. Keiser, of 515 North 8th Street, Reading, Berks County, Pennsylvania, filed a Charter Board Complaint.

2. The Complaint alleges that Reading City Council violated the Home Rule Charter of the City of Reading (“Charter”) by adopting Bill No. 24-2007 (“Ordinance”).

3. It is alleged that the Ordinance¹ violated the Charter by amending the City of Reading’s (“City”) Administrative Code in that it sets forth additional procedures for the initiative and referendum process that are in conflict with those provided for in Charter Article XI.

4. The procedures of Charter Article XI are codified in the Administrative Code as Chapter 1, Part 11.

5. The Complaint alleges that the Ordinance violates the Charter by amending the Charter’s provisions concerning initiative and referendum by ordinance instead of by referendum as required by Section 1204 of the Charter.

6. Additionally, the Complaint alleges that the provisions of the Ordinance granting authority to the City Clerk to make more than a facial determination of the sufficiency of

¹ For ease of reference, the Board will hereinafter cite to the sections of the Ordinance as adopted. Reference will be made by footnote or parenthetically to the codified citation in the Administrative Code.

initiative or referendum petitions filed with the City Clerk constitutes a conflict of interest, and that this task should be delegated to another body, such as the Berks County Board of Elections.

7. On or about October 29, 2010 the Investigative Officer advised Mr. Keiser via U.S. Mail of the receipt of the Complaint, the determination that jurisdiction existed and the determination that the facts warranted a preliminary investigation.

8. On or about October 29, 2010 the Investigative Officer advised Mr. Vaughn Spencer, City Council President, via U.S. Mail of the Complaint filed against City Council, the determination that jurisdiction existed, and the determination that the facts warranted a preliminary investigation.

9. On or about January 26, 2011, the Investigative Officer advised both Mr. Keiser and Mr. Spencer that based upon the preliminary investigation facts existed to support the authorization of a full investigation.

10. Mr. Keiser also submitted with his Complaint an excerpt from the City Council Meeting Minutes dated May 14, 2007, a copy of an excerpt from Amendment I of the Charter, a copy of Article I of the Charter, and a copy of Charter Board Advisory Opinions No. 3 and 5.

11. During the course of the investigation, the Investigative Officer reviewed the May 14, 2007 City Council Meeting Minutes, the Charter, Article IX of the Pennsylvania Constitution, the Pennsylvania Home Rule Charter and Optional Plans Law, 53 P.S. §§ 2901, *et seq.*, (“Home Rule Charter Law”), the Pennsylvania Election Code, 25 P.S. § 2601 *et seq.* (“Election Code”) and the Ordinance.

12. On February 24, 2011 the Investigative Officer issued the Findings Report upon City Council.

13. City Council did not request an evidentiary hearing.

B. Findings of Fact

1. On May 14, 2007 City Council held a meeting (“Council Meeting”).
2. Council members present at the Council Meeting included:
 - a. Vaughn Spencer;
 - b. Steven Fuhs;
 - c. Marcia Goodman-Hinnershitz;
 - d. Dennis Sterner;
 - e. Stratton Marmarou;
 - f. Maria Baez; and
 - g. Jeffrey Waltman.
3. City Council adopted the Ordinance during the Council Meeting.²
4. The Ordinance, in the form as adopted by City Council, is attached hereto as Appendix “A.”
5. The Ordinance is codified in the City’s Administrative Code at Part 11.
6. After the issuance of the Findings Report, although not a finding of fact found by the Investigative Officer, the Board takes notice that by Bill No. 15-2011 City Council amended Ordinance § 1-1104(5)³ to delete the requirement that ward and precinct information be provided on initiative and referendum petitions. A copy of Bill No. 15-2011 is attached hereto as Appendix “B.”

² As listed in the minutes of the Council Meeting, City Council adopted the Ordinance by a vote of 5 (yea) to 2 (nay). Councilor Waltman and Council President Spencer were the two recorded “nay” votes. The minutes also provide that:

“Councilor Waltman stated he would not support the proposed ordinance, as he felt the provisions were to restrictive, impeding the access citizens have to their government.”

See Complaint attachment (portion of Council Meeting minutes).

³ Admin. Code § 1-1105(E).

II. CONCLUSIONS OF LAW

A. Preliminary Matters

1. The Charter Board Ordinance provides that the Investigative Officer's Findings Report shall set forth the pertinent findings of fact as determined by the officer. Chart. Bd. Ord. § V(A)(6)(a).

2. The Charter Board Ordinance at § V(A)(8)(b) provides that:

If the subject of the complaint does not request an evidentiary hearing, the Board shall decide by a majority vote of those members present whether the Findings Report supports a determination that the subject of the complaint violated the Charter or Administrative Code.

3. Therefore, the Board is not bound by the conclusions of law submitted by the Investigative Officer, but rather the Board's sole determination is whether or not the facts found by the Investigative Officer "supports a determination that the subject of the complaint violated the Charter or Administrative Code." *Id.*

B. Questions Presented

This matter presents two questions for review by the Board:

- (1) By adopting the Ordinance, did City Council attempt to impermissibly amend the Charter?

The Board answers in the affirmative.

- (2) Does the limited role of the City Clerk under the Charter in the initiative and referendum process avoid the impermissible conflict of interest created by the Ordinance, which grants the City Clerk discretion in the initiative and referendum process where the Charter provides for no such discretion?

The Board answers in the affirmative.

C. **Legal Discussion**

1. **Applicable Provisions**

As recently stated by the Board in *Investigation No. 29*⁴ and *Investigation No. 30*,⁵

Section 1 of Charter Amendment I provides:

a. Governing law of the City. This Charter is the governing law of the City of Reading. No action or inaction by City Council, the Administration, or any other body created by this Charter shall be taken contrary to it, whether individually or collectively, by ordinance, resolution, practice, executive order or decision, or any other means.

Amendment I teaches that no method of action or inaction, or any practice, by the City may be taken contrary to the Charter. The Board in Advisory Opinion No. 3 (Nov. 22, 2006) stated the necessary rule flowing from Amendment I: “City Council may not pass an ordinance that conflicts with the Charter.” Adv. Op. No. 3 at pp. 5, 7. Likewise, the Charter may not be amended other than as provided in Charter § 1204. Section 1204 does not provide for amendment by ordinance, and absolutely no amendment of the Charter could occur by ordinance. It clearly flows from these principles that an ordinance adopted that violates or conflicts with the Charter, or which seeks to circumvent the Charter, is null, void and of no effect.

A bedrock principle of the Charter is found in Article XI, relating to citizen’s rights and participation. Indeed, the Charter mandates that “Council shall protect and promote the right of citizens of the City of Reading to participate in a positive and constructive manner in the government of the City.” Charter § 1101. Council’s obligation to the citizens of the City is to protect and promote citizens’ rights, not to challenge and limit those rights. Section 1101(e) specifically enumerates the rights of initiative and referendum “as provided by this Charter” as a

⁴ In re: Investigation of Vaughn Spencer, City Council President (Feb. 8, 2011).

⁵ In re: Investigation of Charles D. Younger, Esquire, Solicitor of the City of Reading (March 4, 2011).

means of citizen participation. The Charter goes further and specifically mandates in great detail the process by which initiative and referendum will be conducted. *See* Charter §§ 1102-1109. There is little room remaining for City Council to legislate regarding initiative and referendum without running afoul of the Charter.

The City Clerk plays a role in the initiative and referendum process. *See for example* Charter §§ 1103, 1105(a), 1106. However, that role is defined in the Charter as strictly ministerial. Charter § 225 provides, in part, that:

The City Clerk shall give notice of Council meetings to its members and the public, take the minutes of all City Council meetings, keep the journal of its proceedings, shall have the power of a notary public, shall serve as secretary to the Council and perform such other duties as are assigned by the administrative code, the Council, or state law.

Sections 1103, 1105 and 1106 of the Charter also state specific acts which the Clerk is responsible to discharge relative to the initiative and referendum process. These acts include accepting for filing initiative or referendum affidavits, issuing petition blanks, examining petitions and affidavits, and issuing a certificate of sufficiency, with respect to petitions.⁶ These are all acts which are ministerial in nature and which do not permit the exercise of personal judgment. Neither Section 225 nor Sections 1103, 1105 or 1106 of the Charter grant the City Clerk any power beyond the Clerk's ministerial function.

2. **The Ordinance impermissibly regulates matters addressed by the Charter, constitutes an improper amendment to the Charter, and expands the role of the City Clerk.**

In Advisory Opinion No. 5 (March 6, 2007) the Board commented on a specific ordinance proposed by City Council which bears significant resemblance to the Ordinance. In Advisory Opinion No. 5, the Board stated that it “believe[d] the Proposed Ordinance contains

⁶ The Administrative Code, §1-161, also sets forth a list of duties for the Clerk, none of which are pertinent to this analysis.

provisions which exceed ministerial clarifications and, in fact, may be substantively or procedurally at odds with the Charter and the Election Code.” Of course, substantive and procedural changes to Charter Article XI require amendment under Charter § 1204, not change by mere ordinance. With the exception of the recent amendment to Ordinance 1-1104(5)⁷ by Bill No. 15-2011, City Council appears to have largely ignored significant substantive portions of Advisory Opinions 3 and 5.

The Ordinance violates the Charter to the extent that it grants to the City Clerk power or authority to examine submitted petitions beyond making only a facial determination of compliance with Charter § 1104. Section 1105 of the Charter limits the power of the City Clerk to only a determination of the “sufficiency” of a petition when measured to the requirements of Charter § 1104. In other words, the Charter does not authorize or empower the City Clerk to do anything more than to examine the facial sufficiency of the petitions for compliance with Charter § 1104.

For instance, regarding the number of signatures required, Ordinance § 1-1114(A)⁸ states that no “petition for referendum shall be filed with the City Clerk unless it contains the required number of signatures.” The City Clerk’s proper responsibility is to be sure that 2000 signatures appear on the petition. The Board takes no issue with this limited, appropriate, task of the City Clerk as it is within her non-discretionary function and within the Clerk’s function as contemplated by the Charter.

⁷ Admin. Code § 1-1105(E).

⁸ Admin. Code § 1-1115(1).

a. **The stated purpose of the Ordinance belies the clear and unambiguous language of the Charter.**

The declaration of purpose in Ordinance § 1-1100⁹ states in part that:

“The lack of clear instruction on the circulation and signature verification of initiative and referendum petitions in the Charter has caused many procedural problems, resulting in court challenges and legal fees to both the City and citizen groups.”

To the contrary, the Board finds the Charter clear and unambiguous on these issues, providing complete substantive detail on the initiative and referendum process. As noted previously, there is little room remaining for City Council to legislate additional requirements for this process without running afoul of the Charter.

b. **Ordinance § 1-1104¹⁰ is invalid.**

The Board agrees with City Council that a uniform petition could be useful. However, the Board views the last sentence of Ordinance § 1-1104 to violate the Charter. To “protect and promote the right of citizens to participate in a positive and constructive manner in the government of the City” requires access by the citizens of Reading to any pre-printed form affidavits or petitions at all times during the ordinary business hours¹¹ of the City Clerk’s Office. The Ordinance is silent on access to such pre-printed petitions and affidavits; citizen access to the Clerk’s pre-printed forms must be assured and the Ordinance does not do so.

Providing the Clerk with discretion to withhold form petitions or affidavits, or to determine petitions or affidavits are invalid solely because they are not on the Clerk’s pre-printed form, is an untenable infringement on the right of citizen participation guaranteed in Charter §

⁹ Admin. Code § 1-1101.

¹⁰ Admin. Code § 1-1105.

¹¹ Section 1-1103(B) of the Ordinance does provide that “a qualified voter shall obtain a Petitioner’s Committee Affidavit and Petition Forms from the City Clerk in the council Office during regular business hours.” Admin. Code § 1-1104(2). This provision does not provide that the City Clerk shall make the affidavits and forms available during regular business hours. If a uniform petition or affidavit is used, those uniform documents must be made available to qualified voters. This provision leaves open the prospect that the City Clerk could refuse to provide said petitions and affidavits.

1101(e) and Article XI. *See* Ordinance § 1-1104 (“Any petition not following the form and content set out above shall be declared invalid.”). As the Charter now stands, a petitioner or affiant could use any Charter complaint form to exercise the rights of initiative and Referendum.

The Board concludes that the Ordinance violates the Charter because:

- i. it does not require the Clerk to freely provide the form petitions and affidavits at all times during the ordinary business hours of the City Clerk’s Office or prevent the Clerk from refusing to supply any qualified person or group a petition or affidavit package; and
- ii. the Clerk may not refuse to accept either Petitioner’s Committee affidavits or petitions solely on the basis of not using the City Clerk’s pre-printed form, when such petitions or affidavits are otherwise compliant with the Charter and state law.

Ordinance § 1-1104 creates a barrier to participation and does not include reasonable provisions to ensure liberal and unrestricted access to the proposed uniform forms. *See* Advisory Opinion No. 5 at p. 7. This section violates the Charter.

c. **Ordinance § 1-1113¹² is invalid.**

Section 1-1113 violates the Charter by placing additional burdens upon Charter § 1101(e) and the Charter mandated initiative and referendum process. Further, Section 1-1113 implies, when read in the context of the entire Ordinance, that the City Clerk could reject a petition solely because it is out of numerical order, or fails to have a letter stating the number of signatures, or other requirements that are not within the Charter. These guidelines may be entirely appropriate for the City Clerk to request or collect as optional or non-mandatory data. However, the Charter prohibits the Clerk from declaring a petition to be invalid merely for non-compliance with this section of the Ordinance, which purports to require the submission of information beyond that required by the Charter. *See* Advisory Opinion No. 5 at p. 8.

¹² Admin. Code § 1-1114.

For these reasons Ordinance § 1-1113 is invalid.

d. Ordinance § 1-1114(B)¹³ is invalid.

Section 1-1114(B) provides:

“B. After completing the initial face value determination, the City Clerk may complete a verification process to find whether signatures of individuals on the petitions are insufficient in the following categories: . . .”

Section 1-1114(B) goes on to list seven categories¹⁴ into which the City Clerk may inquire to determine if the petitions’ signatures are “insufficient.” The Board concludes that this section of the Ordinance is clearly intended to expand the City Clerk’s authority beyond a mere non-discretionary facial examination of the signatures on initiative and referendum petitions to include a “verification process” aimed at making findings¹⁵ as to “whether signatures . . . are insufficient” Use of the word “insufficient” is also telling here. The City Clerk is charged under the Charter to confirm the petitions are “sufficient” under Charter § 1104. Ordinance § 1-1114(B) sets a new standard (i.e. “insufficiency”) and seeks compliance not with Charter § 1104, but rather Ordinance § 1-1114(B).

Also, the Board notes that the verification process required by the Ordinance need not always be applied by the City Clerk. Rather, Section 1-1114(B) provides that the City Clerk “may” complete a verification process. In other words, the City Clerk may choose to complete a verification process as to some petitions, but choose not to as to others. This not only places additional burdens upon the exercise of the rights stated in Charter § 1101(e), but also permits the inequitable and uneven application of the verification process upon different groups. The Charter does not contemplate that the City Clerk, a non-elected ministerial official with limited

¹³ Admin. Code § 1-1115(2).

¹⁴ Admin. Code § 1-1115(2)(A) to (G).

¹⁵ Ordinance § 1-1114(B) (Admin. Code § 1-1115(2)) provides that the “City Clerk may complete a verification process to find whether signatures . . . are insufficient” (emphasis added).

duties under the Charter, may choose which initiative or referendum petitions will or will not receive the heightened examination called for in Ordinance § 1-1114(B).

The examination called for in the sub-parts of Ordinance § 1-1114 requires more than a mere facial examination¹⁶ as stated in paragraph (A) of that section. For instance, sub-parts (4), (5) and (6) of paragraph (B) are problematic.¹⁷

Ordinance § 1-1114(B)(4)¹⁸ states that information “which was not completed by the elector or a person qualified to assist the elector shall not be counted.” Unless that defect appears on the face of the petition, further examination by the City Clerk into the signing of the petition is absolutely improper under the Charter and exceeds the mandated “face value determination” of Ordinance § 1-1114(A).

Ordinance § 1-1114(B)(5)¹⁹ specifically authorizes the City Clerk to affirmatively examine Berks County voter registration records and to make a determination of whether or not “the signature and information” on the petition matches with it. Such an examination and determination by its own terms goes beyond a face value determination of the petitions. This sub-part specifically empowers the City Clerk to look beyond the face of the petition and to exercise discretion by examining another municipality’s (i.e. Berks County’s) voter registration records.

Ordinance § 1-1114(B)(6)²⁰ also authorizes the City Clerk to make an affirmative determination of whether or not an individual is a registered elector in the City. Again, such a

¹⁶ A facial examination necessarily is one involving only an examination of the information contained within the petition and does not permit the examination of other information outside the document itself. The Ordinance, following the Charter to a degree, requires the City Clerk to make only an “initial face value determination.” Ordinance § 1-1114(A) (Admin. Code § 1-115(1)).

¹⁷ Admin. Code § 1-1115(2)(D), (E), (F).

¹⁸ Admin. Code § 1-1115(2)(D).

¹⁹ Admin. Code § 1-1115(2)(E).

²⁰ Admin. Code § 1-1115(2)(F).

determination by the City Clerk requires the examination of information located outside of the four corners of the petition and the exercise of discretion by the Clerk.

The Ordinance places the responsibility of examining the petitions with a city official who does not possess any discretionary powers under the Charter. Each of the aforementioned sub-parts may set out an appropriate examination of such petitions by a board or individual given the authority to exercise discretion, such as the Berks County Court of Common Pleas. Such an examination by the City Clerk, a ministerial officer with narrowly defined, non-discretionary duties, violates Article XI of the Charter. Further, as explained more fully below, the City Clerk is the chief agent of City Council and an untenable conflict of interest is created by giving the power to reject initiative and referendum petitions to the Clerk. The process provided for by the Charter prevents such a conflict of interest from occurring.

e. **Why the Charter limits the role of the City Clerk in the context of initiative and referendum petitions.**

Empowering the City Clerk to do more than make a facial examination of initiative and referendum petitions is problematic because it places the City Clerk in the position of making findings of fact concerning a person's status as a qualified voter or as to residency, or the correctness of voter registration information on file, or other matters not appearing on the face of the petitions. The City Clerk's role under the Charter is ministerial in nature.²¹ A finding of sufficiency by the City Clerk, as required by Section 1105 of the Charter, does not permit the exercise of discretion or judgment by the City Clerk as would be permitted under Section 1-1114 of the Ordinance.

²¹ "Ministerial" is defined as "*a* : being or having the characteristics of an act or duty prescribed by law as part of the duties of an administrative office *b* : relating to or being an act done after ascertaining the existence of a specified state of facts in obedience to a legal order without exercise of personal judgment or discretion." *Merriam-Webster's Dictionary of Law*. Merriam-Webster, Inc. <http://www.merriam-webster.com/dictionary/ministerial?show=0&t=1302712465> (accessed: April 13, 2011).

The Board in Advisory Opinion No. 5, addressing a proposed ordinance significantly similar to the Ordinance, stated:

By analogy, it is instructive to review the law governing objections, withdrawals and certifications of nomination petitions as it relates to county boards of election. 25 P.S. §§ 2936, 2937. Section 2936 itemizes the grounds on which a county board of elections may reject the filing of a nomination petition. None of the specified grounds for rejection involve the exercise of the discretion of the county board of elections, rather, all of the grounds involve only a ministerial, facial examination, of the petitions. As 25 P.S. § 2937 points out, the burden then shifts to an opposing party to file objections to the petition. Indeed, other than the items permitted to be examined by the county board of elections as provided in 25 P.S. § 2936, petitions received and filed are presumed to be valid unless challenged by the filing of a petition before the court of common pleas. This system removes the county board of elections from the roles of advocate, challenger and finder of fact, and expressly limits the board's examination of petitions to the content of the petitions themselves.

The Board believes that the City Clerk must be guided by the provisions of the Election Code governing nomination petitions. The *Referendum Handbook*, Commw. of Penna., Dept. of Community and Economic Dev., 8th ed. (1999), provides that the Election Code's provisions on nomination petitions should be followed in the absence of other law. *Id.* at 6. The Board also notes, again, that the Charter only permits a facial examination by the City Clerk for the sufficiency of the petitions as to the requirements of Section 1104.

To the extent the Proposed Ordinance provides for practices and procedures contrary to the aforementioned discussion, the Proposed Ordinance violates the Charter of the City of Reading.

Advisory Op. No. 5 at pp. 4-5 (footnote omitted).

The Ordinance, by empowering the City Clerk with the discretion to examine petitions beyond the information contained within the four corners of the document, transforms the Clerk's role to that of an advocate, or challenger, similar to that contemplated in 25 P.S. § 2937, which provides the framework for petition challenges by an opposing party. Under the Charter there is

no conceivable instance where the City Clerk, in reviewing the mere facial sufficiency of initiative and referendum petitions, could be transformed into a party in opposition to the exercise of citizen rights. However, the Ordinance creates this untenable and impermissible conflict.

In the context of initiative and referendum petitions, the Charter provides a role for the City Clerk akin to that of the County Board of Elections, where the Board is permitted to make only a facial determination of sufficiency. Because the City Clerk's powers under the Charter are likewise fixed as ministerial, a mere ordinance cannot expand those powers to add discretionary, fact finding functions.

The City Clerk acting as an advocate for City Council, challenging initiative or referendum petitions and searching for “insufficiencies,” violates City Council’s mandate under the Charter to “protect and promote the rights of citizens to participate in a positive and constructive manner in the government of the City.” Charter § 1101. City Council’s interposition of the City Clerk as a tool to limit the rights of initiative and referendum, and by the Ordinance, clothing the Clerk with discretionary powers, violates Charter § 1101. Further, the Board finds that under the Election Code and Charter § 1105(c), the proper place for a discretionary, factual finding as to the insufficiency of initiative and referendum petitions is with the Court of Common Pleas of Berks County and not with the City Clerk.

D. Conclusions of Law

1. The Charter mandates the role of the City Clerk to be ministerial in nature, undertaking non-discretionary tasks.
2. The Charter provides the complete substantive detail to be undertaken in the initiative and referendum process.
3. The Charter limits the City Clerk's determination of sufficiency to those items identified in Charter § 1104.
4. The Ordinance constitutes an attempt to make an improper amendment to the Charter contrary to Charter § 1204.
5. The Ordinance is prohibited by Charter Amendment I.
6. The Ordinance violates Charter Article XI.
7. No ordinance can conflict with the Charter.
8. An ordinance that conflicts with the Charter is null, void and of no effect.
9. The various provisions of the Ordinance are not severable and are internally connected, intertwined and inter-reliant on the validity of all other provisions.

III. DETERMINATION OF THE BOARD

The Board holds the following:

1. The Ordinance impermissibly expands the role of the City Clerk in violation of the Charter.
2. The Ordinance constitutes an impermissible attempt to amend the initiative and referendum process of Charter Article XI, and violates Article XI.
3. The Ordinance is not severable and in its entirety violates the Charter.
4. City Council, as a body, violated the Charter by adopting the Ordinance.
5. The Ordinance violates Charter § 1204.

6. Amendment I of the Charter prohibits the Ordinance.
7. The Ordinance is null, void and of no effect.
8. The Administrative Code Chapter 1, Part 11, is restored as though the Ordinance, and any amendments thereto, had not be adopted.

IV. PENALTIES IMPOSED

Having considered the applicable factors stated in the Charter Board Ordinance at Section V(B)(2)(a)(i), and as a consequence of City Council's violations of Charter Amendment I and Section 1204, the Board imposes the following penalties:

A. Public Censure

The Board will, not earlier than thirty-one days from the date of this Final Opinion and Order, notify the media of this decision and provide the media with a copy of the original of this Final Opinion and Order, and provide notice and other information as required by Section V of the Charter Board Ordinance.

B. Cease and Desist

City Council, its chief clerk, the City Clerk, and the Office of the City Clerk, shall cease and desist from:

- (1) enforcing any aspect of the Ordinance;
- (2) refusing to accept or certify any paper, petition or signature presented for filing or submission which is in compliance with Charter Article XI;
- (3) refusing to act in accordance with Charter Article XI as applied to the initiative and referendum process.

C. Specific Action

The Board directs that City Council and its chief clerk, the City Clerk, shall:

- (1) accept and certify any paper, petition or signature presented for filing or submission so long as such filing or submission complies with Charter Article XI;

- (2) not enforce any aspect of the Ordinance;
- (3) cease in all ways any application of the Ordinance;
- (4) treat the Ordinance as null, void and stricken for all purposes.
- (5) reinstate the Administrative Code, Chapter 1, Part II, to the form and content that existed prior to the adoption of the Ordinance and any amendments thereto.

D. Considerations of the Board

In determining the penalties assessed against City Council the Board considered each of the factors set forth in Section V(B)(2)(a)(i) of the Charter Board Ordinance. The offense is serious and, if unchecked by the instant Complaint and this Final Opinion and Order, would have a substantive effect on the application of the Charter and its purposes. City Council has attempted to amend the Charter and expand the power of the City Clerk through a mere ordinance. The Board views this act as disregarding the importance of the Charter and as undermining the citizen participation provided for in Charter Article XI. Although no prior decisions have been entered against City Council on this issue, the Board did issue two advisory opinions addressing various facets of the issues raised in the Complaint. *See* Advisory Opinions Nos. 3 and 5.²² The Board considers the single violation of Charter § 1204 to be significant. Ignoring this section and undertaking what amounts to an amendment by ordinance is a direct assault on the Charter. Further, the Ordinance also expanded the limited power and authority of the City Clerk afforded under the Charter. The consequences of this violation, if unchecked, would be a serious impingement on the rights of citizens to proceed through the initiative and referendum process without political interference by the City Clerk and City Council.

The Board is of the opinion that City Council's Charter violations were the result of more than mere negligence, oversight or mistake. As set forth herein, the City Clerk requested two

²² Linda A. Kelleher, the City Clerk, requested each of these two advisory opinions.

advisory opinions in advance of adoption of the Ordinance by City Council. The Ordinance ignored much of the Board's advisory opinions.

V. **ORDER**

The Board enters the Order attached hereto.

CITY OF READING CHARTER BOARD

By: *Susan J. Gibson*
Susan Gibson, Chair

Date: April 25, 2011

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Investigation of : Complaint Filed: October 27, 2010
Reading City Council :
: :
: :
Investigation No. 31

ORDER

AND NOW, this 25th day of April, 2011, upon consideration of the Findings Report issued by the Investigative Officer on February 24, 2011, and there being no request for evidentiary hearing requested by City Council, the Charter Board of the City of Reading (“Board”) determines, for the reasons more fully set forth in the Board’s Final Opinion and Order entered in this matter, that:

1. The Ordinance impermissibly expands the role of the City Clerk in violation of the Charter.
2. The Ordinance constitutes an impermissible attempt to amend the initiative and referendum process of Charter Article XI, and violates Article XI.
3. The Ordinance is not severable and in its entirety violates the Charter.
4. City Council, as a body, violated the Charter by adopting the Ordinance.
5. The Ordinance violates Charter § 1204.
6. Amendment I of the Charter prohibits the Ordinance.
7. The Ordinance is null, void and of no effect.
8. The Administrative Code Chapter 1, Part 11, is restored as though the Ordinance, and any amendments thereto, had not be adopted.

In accordance with the Final Opinion and Order the following is **ORDERED**:

- A. Censure. City Council shall be publicly censored as provided by Section V of the Charter Board Ordinance and in accordance with that section, and not earlier than thirty-one days

from the date set forth above, a copy of this Final Opinion and Order shall be transmitted to the following:

- (1) Carl E. Geffken, Managing Director;
- (2) Thomas McMahon, Mayor of the City of Reading;
- (3) Reading Eagle Company;
- (4) Berks Community Television;
- (5) WFMZ Television.

B. Cease and Desist

City Council, its chief clerk, the City Clerk, and the Office of the City Clerk, shall cease and desist from:

- (1) enforcing any aspect of the Ordinance;
- (2) refusing to accept or certify any paper, petition or signature presented for filing or submission which is in compliance with Charter Article XI;
- (3) refusing to act in accordance with Charter Article XI as applied to the initiative and referendum process.

C. Specific Action

The Board directs that City Council and its chief clerk, the City Clerk, shall:

- (1) accept and certify any paper, petition or signature presented for filing or submission so long as such filing or submission complies with Charter Article XI;
- (2) not enforce any aspect of the Ordinance;
- (3) cease in all ways any application of the Ordinance;
- (4) treat the Ordinance as null, void and of no effect for all purposes;
- (5) reinstate the Administrative Code, Chapter 1, Part 11, to the form and content that existed prior to the adoption of the Ordinance and any amendments thereto.

C. Distribution. Copies of this Final Opinion and Order shall be distributed to the following:

- (1) Hon. Vaughn Spencer, President, City Council;
- (2) David K. Brennan, Esquire, Investigative Officer;
- (3) Complainant, Steven S. Keiser, (via certified, return receipt US Mail);
- (4) Eric B. Smith, Solicitor, Charter Board.

CITY OF READING CHARTER BOARD

By: *Susan J. Gibson*
Susan Gibson, Chair

Date: April 25, 2011

BILL NO. 24-2007

AN ORDINANCE

AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF READING BY ADDING A NEW PART 11 TO THE ADMINISTRATIVE CODE - INITIATIVE AND REFERENDUM

THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Amending the Codified Ordinances by adding a new Part 11 to the Administrative Code - Initiative and Referendum, as attached in Exhibit A.

SECTION 2. This ordinance shall be effective ten (10) days after its adoption and approval by the Mayor, or repassage by City Council over the Mayor's veto, in accordance with Section 219 of the City of Reading Home Rule Charter, or as set forth in Section 221 of the City of Reading Home Rule Charter.

Enacted May 14th 2007

[Handwritten Signature]
President of Council

Attest:

[Handwritten Signature]
DEPUTY City Clerk

(Council Staff)

Submitted to Mayor: *[Signature]*
Date: 05/15/07

Received by the Mayor's Office: *[Signature]*
Date: 5/15/07

Approved by Mayor: *[Signature]*
Date: _____

Vetoed by Mayor: _____
Date: _____

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original ordinance passed by the Council of the City of Reading, on the 14th day of May, A. D. 2007. Witness my hand and seal of the said City this 15th day of May, A. D. 2007.

[Handwritten Signature]
CITY CLERK

(Exhibit A)

§1-1100 Declaration of Purpose:

The City of Reading City Council recognizes the importance of protecting and promoting the ability of our citizens to participate in government through Initiative and Referendum. Since the change to Home Rule government there have been approximately 10 citizen petitions efforts. The lack of clear instruction on the circulation and signature verification of initiative and referendum petitions in the Charter has caused many procedural problems, resulting in court challenges and legal fees to both the City and citizen groups. Therefore, through the enactment of this ordinance, City Council sets out regulations pertaining to the circulation and signing of initiative and referendum petitions to assist Reading voters with their rights to participation provided by the Home Rule Charter.

§1-1101 Definitions

Affidavit – a written declaration or statement of facts, made voluntarily taken and signed before a notary public

Petition - an initiative or referendum petition for ordering a measure to be submitted to City Council and/or the voters

Petitioners Committee – a group of 5 registered voters responsible for circulating and filing the petition with the City Clerk's Office in proper form.

Petition Blanks – forms prepared by the City Clerk's Office containing a petition with a serial number, a Circulators Affidavit, and the full copy of the ordinance proposed for enactment or repeal

Regular election – a primary or general election conducted by the Berks County Department of Elections

§1-1102. Initiative and Referendum.

A. Initiative. The qualified voters of the City shall have the power to propose ordinances to the Council. If the Council fails to adopt such an ordinance, the initiative process may be commenced giving the qualified voters of the City the opportunity to adopt or reject said ordinance at a City election. (*Charter, 11/3/1993, §1102*)

B. Referendum. The qualified voters of the City shall have the power to require reconsideration by the Council of any adopted ordinance. If the Council fails to repeal an ordinance so reconsidered, the referendum process may be commenced giving the qualified voters of the City the opportunity to approve or reject said ordinance at a City election. (*Charter*, 11/3/1993, §1102)

§1-1103. Initiative and Referendum; Commencement of Proceedings; Petitioners Committee; Affidavit.

A. Any five qualified voters of the City may commence initiative or referendum. A qualified voter is a legal resident of the City of Reading who is registered and constitutionally entitled to vote in Pennsylvania.

B. A qualified voter shall obtain a Petitioner's Committee Affidavit and Petition Forms from the City Clerk in the Council Office during regular business hours.

C. The Petitioner's Committee Affidavit shall state the names and addresses of 5 qualified voters who will constitute the Petitioner's Committee and be responsible for circulating the petition and filing it in proper form, and specifying the address to which all notices to the committee are to be sent, and setting out in full the proposed initiative ordinance or the ordinance sought to be reconsidered.

D. In case of referendum, such an Petitioner's Committee Affidavit must be filed within 10 days of the adoption of the ordinance

E. Within 5 days after the Petitioner's Committee Affidavit is filed and validated, the City Clerk shall issue the appropriate petition blanks to the petitioners. (*Charter*, 11/3/1993, §1103)

§1-1104. Form and Content

The form and content of each petition pack shall be prepared as follows:

1. Each petition shall be uniform in size and style on 8 ½ x 11 paper, marked sequentially and/or contain a serial number.
2. Each petition pack shall contain a one petition.
3. Have an Affidavit of Circulator, as defined in Section 1-1105 below.
4. Contain complete text of the initiative ordinance being considered or the ordinance to be considered for repeal by referendum, as stated in Section 1-1106

or 1-1107 below.

5. Contain no more than 20 signature lines for the printed name, address, ward, precinct, signature of each person signing the petition, and the date signed.

6. Contain a Warning Statement advising that it is unlawful for anyone to sign any initiative or referendum petition with any name other than his/her own, or to knowingly sign his/her name more than once for the same proposal, or to sign such petition when he/she is not a legal voter in the City of Reading.

7. No corrections, additions or alterations shall be made to the form of all petitions issued by the City Clerk to the Petitioner's Committee.

Any petition not following the form and content set out above shall be declared invalid.

§1-1105. Affidavit of Circulator. Each paper of a petition shall have attached to it upon filing a notarized affidavit executed by the circulator thereof stating that he or she personally circulated the paper, the number of signatures thereon, that all the signatures were affixed in the circulator's presence, and believes them to be valid and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered. (*Charter, 11/3/1993, §1102*)

§1-1106. Initiative Petitions. All Initiative Petitions shall contain an initiative statement, describing the intent of the ordinance not exceeding 100 words, phrased in the form of a question that can be answered only with an affirmative or negative response. The initiative statement may be distinct from the petitioner's title of the measure, and shall express and give a true and impartial statement of the purpose of the measure. It shall not intentionally be an argument, nor likely to create prejudice, either for or against the measure. This statement shall be delivered to the City Clerk at the time the request for the Petitioner's Committee Petition form is requested. Each petition shall also have attached to it the full body of the initiative ordinance.

§1-1107. Referendum Petitions. All Referendum Petitions shall contain the title of the bill enacted by City Council as well as the bill number and date of enactment of the bill sought to be repealed. Each petition shall also have attached to it the full body of the bill sought to be repealed.

§1-1108. Signatures. Initiative and referendum petitions must be signed in ink or indelible pencil by 2000 qualified voters of the City of Reading.

§1-1109. Circulation of Petitions. The Petitioner's Committee shall be responsible for

instructing circulators on the regulations and guidelines for circulating petitions, as contained herein.

A. All circulators must reside in the City of Reading and be registered to vote as defined in §1-1103 A above.

B. Each person collecting signatures must allow any person to review the text of the initiative ordinance or ordinance to be reconsidered.

C. Each signature collected must be personally witnessed by the circulator.

D. The circulator must complete the Affidavit of Circulator before a Notary Public after all the signatures on the sheet have been collected.

E. Circulators must not attempt to obtain signatures of persons knowing that the person signing the petition is not qualified to sign it.

F. Circulators must not offer money or any thing of value to another person or threaten a person to sign or not to sign a petition, nor shall they sell or offer to sell signature sheets.

G. Circulators must not accept compensation to circulate a petition that is based on the number of signatures obtained.

H. Any person violating the circulator regulations shall be charged in accordance with the applicable offense sections of the Elections Code 25 P.S. §2601 et seq.

§1-1110. Time for Circulating and Filing Referendum Petitions. Referendum petitions must be circulated and filed within 35 days after the filing of the Petitioner's Committee Affidavit. The City Clerk shall only accept petitions filed by the Petitioner's Committee. The City Clerk shall not accept any petitions submitted by any other circulators, representatives or agents thereof.

§1-1111. Time for Circulation and Filing Initiative Petitions. Initiative petitions must be circulated and signed within a period of 65 days from the date of the filing of the Petitioners Committee Affidavit with the City Clerk. The City Clerk shall only accept petitions filed by the Petitioner's Committee. The City Clerk shall not accept any

petitions submitted by any other circulators, representatives or agents thereof.

§1-1112. Referendum Petitions; Suspension of Effect of Ordinance.

When a referendum petition is filed with the City Clerk, the ordinance sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

A. There is a final determination of insufficiency of the petition; or

B. The Petitioner's Committee withdraws the petition; or

C. Council repeals the ordinance; or

D. Thirty-five days have elapsed since the issue of the affidavit and the required number of signatures has not been secured. (*Charter, 11/3/1993, §1106*)

§1-1113. Submission of Petitions

Before submitting the signature sheets for verification, the Petitioner's Committee must stack petition packs beginning with the number 1 and continue sequentially until all sheets petitions issued are accounted for. The petitions submitted must contain at least 2000 original signatures. The Petitioner's Committee must also include a letter stating how many signatures they purport to have. The City Clerk shall advise the Petitioner's Committee of their ability to obtain the necessary number of signatures or make other corrections in accordance with Section 1-1113 of this part herein.

§1-1114. Initiative and Referendum; Procedure after Filing.

A. Sufficiency of Petitions – Determination

No petition for referendum shall be filed with the City Clerk unless it contains the required number of signatures. Upon filing of a petition for initiative or referendum with the City Clerk, the City Clerk shall make an initial face value determination of sufficiency and report the results thereof to the City Council within two (2) days of the date of such filing. The City Clerk may make its determination of sufficiency of the petitions and the signatures contained thereon as stated hereafter and in Section 1-1115 below.

B. After completing the initial face value determination, the City Clerk may complete a verification process to find whether signatures of individuals on the petitions are

insufficient in the following categories:

1. Address shown by signer is not located within the city limits of the City of Reading;
2. Any signature appearing on the petition more than once, in which event all signatures of said individual shall be deleted except one;
3. More than one individual signature is on a signature line, in which event the line shall count as one;
4. Signature lines containing incomplete information or information which was not completed by the elector or a person qualified to assist the elector shall not be counted;
5. Signature and information that does not match the Berks County Voter Registration Records;
6. Signatures of individuals who are not registered electors in the city.
7. Each petition pack shall only contain one petition; multiple petitions may not be attached to a single ordinance and circulators affidavit.

C. The petition may not be removed and no signature may be removed or deleted by a signer, circulator, or representative of a circulator or signer after the petitions have been filed with the City Clerk. Copies of the petitions submitted will not be provided to the Petitioner's Committee by the City.

§1-1115. Certificate of Clerk; Amendment. Within 20 days after the petition is filed, the City Clerk shall complete a certificate as to its sufficiency, specifying, if it is insufficient, the particulars wherein it is defective and shall promptly send a copy of the certificate to the Petitioner's Committee by registered mail.

A petition certified insufficient for lack of the required number of valid signatures may be amended once if the Petitioner's Committee files a notice of intention to amend it with the City Clerk within 2 days after receiving the copy of the certificate and files a supplementary petition upon additional papers to be supplied by the City Clerk within 10 days after receiving the copy of such certificate.

Such supplementary petition shall comply with the requirements of this Chapter and within 5 days after it is filed, the City Clerk shall complete a certificate as to the sufficiency of the petition as amended and promptly send a copy of such certificate to the Petitioner's Committee by registered mail as in the case of an original petition.

If a petition or amended petition is certified insufficient and the Petitioner's Committee does not elect to amend or request Council review under Section 1-1114 within the time required, the City Clerk shall promptly present their certificate to the Council and the certificate shall then be a final determination as to the sufficiency of the petition. (*Charter, 11/3/1993, §1102*)

§1-1116 Council Review. If a petition has been certified insufficient and the Petitioner's Committee does not file notice of intention to amend it, or if an amended petition has been certified insufficient, the committee may, within 2 days after receiving the copy of such certificate, file a request that it be reviewed by the Council. The Council shall review the certificate at its next meeting following the filing of such request and approve or disapprove it, and the Council's determination shall then be a final determination as to the sufficiency of the petition. (*Charter, 11/3/1993, §1102*)

§1-1117. Court Review; New Petition. A final determination as to the insufficiency of a petition shall be subject to court review. A final determination of insufficiency, even if sustained upon court review, shall not prejudice the filing of a new petition for the same purpose. (*Charter, 11/3/1993, §1105*)

§1-1118. Initiative and Referendum; Action on Petitions.

A. Action by Council. When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance in the manner provided in Article II of the Charter or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within 60 days or fails to repeal the referred ordinance within 30 days after the date the petition was finally determined sufficient, it shall submit the proposed or referred ordinance to the voters of the City. (*Charter, 11/3/1993, §1102*)

B. Submission to Voters. The question shall be placed on the ballot at the next primary, municipal or general election occurring at least 35 days after final Council action. Copies of the proposed and referred ordinance shall be made available at the voting precincts. (*Charter, 11/3/1993, §1102*)

C. Withdrawal of Petitions. An initiative or referendum petition may be withdrawn at any time prior to the 45th day preceding the day scheduled for a vote of the City by

filing with the City Clerk a request for withdrawal signed by at least four members of the Petitioner's Committee. Upon the filing of such request, the petition shall have no further force of effect and all proceedings thereon shall be terminated. (*Charter*, 11/3/1993, §1107)

§1-1119. Initiative and Referendum; Results of Election.

A. Initiative. If a majority of the qualified voters voting on a proposed initiative vote in its favor, it shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as ordinances of the same kind adopted by the Council. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

B. Referendum. If a majority of the qualified voters voting on a referred ordinance vote against it, it shall be considered repealed upon certification of the election. (*Charter*, 11/3/1993, §1108)

§1-1120. Initiative and Referendum; Limitations.

A. Default of Initiative and Referendum. Any ordinance proposed or sought to be reconsidered which is rejected by the qualified voters in an election cannot be resubmitted for initiative and referendum for a period of 2 years from the date of the election where the ordinance was defeated. (*Charter*, 11/3/1993, §1102)

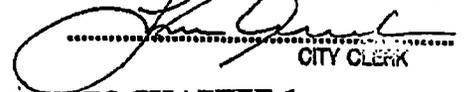
B. Repeal or Modification of Initiative and Referendum by Council. The Council shall take no action to repeal or significantly modify an ordinance adopted by initiative and referendum within a period of 2 years from the date of the election at which the ordinance was approved. (*Charter*, 11/3/1993, §1102)

C. Limit on the Number of Initiative and Referendum. No more than two initiative and two referendum measures may be placed on the ballot at any primary, municipal or general election. The first two initiative and referendum measures which are filed with the City Clerk will be the only ones allowed on the ballot. (*Charter*, 11/3/1993, §1109)

BILL NO. 15 2011

AN ORDINANCE

I, LINDA A. KELLEHER, City Clerk of the City of Reading, Pa., do hereby certify, that the foregoing is a true and correct copy of the original Ordinance passed by the Council of the City of Reading, on the 28 day of March A. D. 2011. Witness my hand and seal of the said City this 30 day of March A. D. 2011.


CITY CLERK

AMENDING THE CITY OF READING CODIFIED ORDINANCES CHAPTER 1 ADMINISTRATION & GOVERNMENT, PART 11 INITIATIVE AND REFERENDUM SECTION 1105 FORM AND CONTENT IN ACCORDANCE WITH THE ORDER FROM THE CHARTER BOARD DATED FEBRUARY 2011.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Amending the Codified Ordinances Chapter 1 Administration and Government, Part 11 Initiative and Government Section 1105 in accordance with the order of the Charter Board dated February 2011 as follows:

**PART 11
INITIATIVE AND REFERENDUM**

§1-1105. Form and Content.

The form and content of each petition pack shall be prepared as follows:

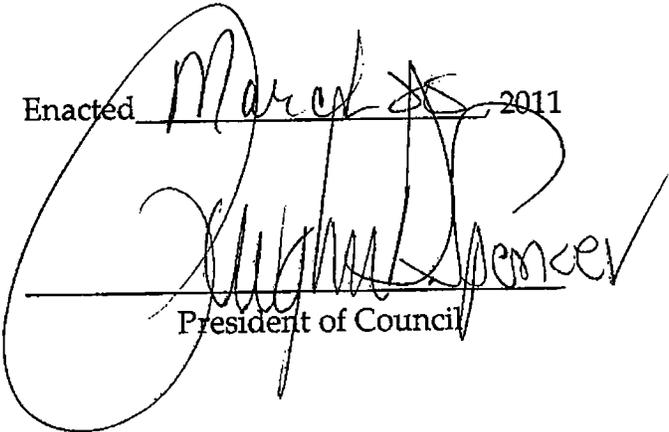
- A. Each petition shall be uniform in size and style on 8½ x 11 paper, marked sequentially and/or contain a serial number.
- B. Each petition pack shall contain one petition.
- C. Have an affidavit of circulator, as defined in §1-1106 below.
- D. Contain complete text of the initiative ordinance being considered or the ordinance to be considered for repeal by referendum, as stated in §1-1107 or 1-1108 below.
- E. Contain no more than 20 signature lines for the printed name, address, ~~ward,~~ ~~precinct,~~ signature of each person signing the petition, and the date signed.
- F. Contain a warning statement advising that it is unlawful for anyone to sign any initiative or referendum petition with any name other than his/her own, or to knowingly sign his/her name more than once for the same proposal, or to sign such petition when he/she is not a legal voter in the City of Reading.
- G. No corrections, additions or alterations shall be made to the form of all petitions issued by the City Clerk to the petitioner's committee.

Any petition not following the form and content set out above shall be declared invalid. (Ord. 24-2007, 5/14/2007, §1)

SECTION 2. All relevant ordinances, regulations and policies of the City of Reading, Pennsylvania not amended per the attached shall remain in full force and effect.

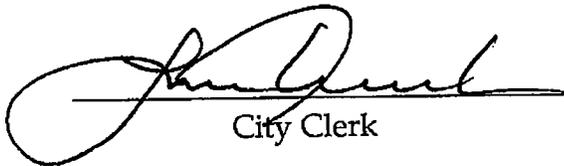
SECTION 3: If any section, subsection, sentence or clause of this ordinance is held, for any reason, to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance.

SECTION 4. This Ordinance will become effective in ten (10) days, in accordance with Charter Section 219.

Enacted March 28, 2011


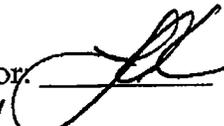
President of Council

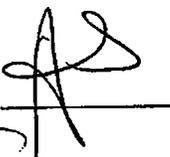
Attest:



City Clerk

(Council Staff/Law)

Submitted to Mayor: 
Date: 3/29/11

Received by the Mayor's Office: 
Date: 3-30-11

Approved by Mayor: 
Date: 3/30/11

Vetoed by Mayor: _____

Date: _____