



# *CITY COUNCIL*

## ***Committee of the Whole***

**Tuesday, May 28, 2019**

**Penn Room**

**5:00 pm**

**Agenda**

*Although Council committee meetings are open to the public, public comment is not permitted at Council Committee of the Whole meetings. However, citizens are encouraged to attend and observe the meetings. Comment from citizens or professionals during the meeting may be solicited on agenda topics via invitation by the President of Council.*

*All electronic recording devices must be located behind the podium area in Council Chambers and located at the entry door in all other meeting rooms and offices, as per Bill No.27-2012.*

- I. Government Study Commission** *info from DCED pgs 13-15*
- II. Interim Auditor** - *See Charter Board Advisory Opinion pgs 16-23 attached*
- III. Agenda Review**
- VI. Executive Session re contracts and litigation**  
Dana South
- V. Adjourn**



***COMMITTEE of the WHOLE***  
***CITY COUNCIL***

**SUMMARY**  
**May 13, 2019**  
**5:00 P.M.**

**COUNCIL MEMBERS PRESENT:**

S. Marmarou, B. Twyman, D. Reed, M. Goodman-Hinnershitz, J. Cepeda-Freytiz, L. Sihelnik, J. Waltman

**OTHERS PRESENT:**

L. Kelleher

The Committee of the Whole meeting was called to order at 5:02 pm by Mr. Waltman. Only the seven members of Council, Ms. Kelleher and Mr. Gombar were present.

**I. Executive Session**

Council entered executive session to discuss contracts and personnel at 5:02 pm and exited at 5:45 pm.

S. Smith, W. Stoudt, J. Kelly, B. Gensemer, F. Lachat, O. Deming, and A. Dominguez joined the meeting at this time.

**II. Summer Interns / Youth Commission**

Ms. Sihelnik stated that Council has the opportunity to have two summer interns – one from Alvernia and one from Kutztown. She expressed the belief that this is the catalyst that is needed to launch the Youth Commission. She stated that the interns may also be able to assist in starting a Government Study Commission.

Mr. Twyman thanked Ms. Sihelnik for moving this initiative forward. He agreed that this is a great opportunity and expressed support to utilize the interns in this way. He noted the need to keep the Recreation Commission involved in the process of growing the Youth Commission.

Mr. Waltman thanked Ms. Sihelnik for taking the lead with the interns. He warned that some interns are great and others require a lot of time and oversight. He noted the need for these interns to function independently. He expressed the belief that this will be a great experience for them.

Ms. Goodman-Hinnershitz stated that Council voted to create the Youth Commission but that there was no clear ownership of who would spearhead finding members and getting it operating. She agreed that this is a great opportunity for the interns. She noted the need to be clear about their expectations and supervision.

Ms. Sihelnik stated that she has worked with many interns in the past. She stated that the interns will bring applicants forward who will move through the same process as that used for other boards. She stated that the intern from Alvernia will be paid by Alvernia. The intern from Kutztown will be receiving academic credit. She noted her hope that this relationship will be beneficial to all.

Ms. Cepeda-Freytiz questioned if the interns would develop the Commission or seek out applicants. She questioned the goals and outcomes of the interns' work.

Mr. Twyman stated that multiple models were reviewed when the Youth Commission was created. He stated that the objectives of the Commission are purposely vague to allow the members to set their own direction. He suggested that there be an executive board and a solid chair to build the goals and outcomes from within.

Mr. Waltman questioned the terms of the interns. Ms. Sihelnik stated that she believes it is eight weeks.

Mr. Waltman suggested that Ms. Sihelnik also work with Ms. Kelleher for office work that could be done to supplement the interns' experience and possibly shadow several Administrative professionals for a short time to get a broader overview of local government.

Ms. Sihelnik stated that she contacted the Administration early in this process and they were not interested in participating.

Mr. Kelly stated that he is working to rebuild the City's internship program.

Ms. Sihelnik questioned if HR must screen the two interns for this summer. Mr. Kelly stated that HR should screen them.

Ms. Kelleher stated that they are not being paid by the City.

Ms. Sihelnik questioned if Ms. Kelleher had former interns screened by HR. Ms. Kelleher stated that HR screened interns only when they were paid by the City.

Mr. Lachat stated that he will review whether the interns need to be screened by HR.

Mr. Waltman stated that a Charter Review Commission will also need to be formed in the near future.

Ms. Sihelnik stated that she will share the dates that the interns will be working and clarify their responsibilities and scope of work. She stated that she will recommend that they serve elsewhere if the process will be changing at the last minute.

Mr. Waltman suggested that Ms. Sihelnik review the scope of work with Ms. Kelleher before communicating it to the interns.

Ms. Goodman-Hinnershitz stated that supervision and mentoring of the interns is also important.

Ms. Cepeda-Freytiz questioned if the body would create the scope of work or several Councilors. Mr. Waltman stated that this can be done by several Councilors.

Ms. Cepeda-Freytiz stated that she has also worked with many interns in the past. She noted the need for them to have one core focus. She stated that she is willing to assist Ms. Sihelnik.

### **III. Interim Auditor**

Mr. Lachat stated that this is a public discussion item.

Ms. Kelleher stated that three residents and three non-residents have applied.

Ms. Goodman-Hinnershitz questioned the Charter interpretation on the need for this appointment to be a resident. Ms. Kelleher stated that a Charter Board Advisory Opinion has analyzed this and that the appointee to be a resident.

Ms. Reed noted her agreement with this opinion. She stated that this is an elected office and that the person appointed will represent the City.

Ms. Goodman-Hinnershitz stated that it would not be fair to interview the non-residents if Council does not support appointing a non-resident.

Mr. Waltman stated that the majority of Council agrees that the non-residents should not be interviewed.

Ms. Sihelnik noted the need for qualified candidates. She cautioned against making the appointment based solely on residency when this position has very specific needs and qualifications.

Ms. Goodman-Hinnershitz stated that this person is not a regular City employee. She stated that the appointee must meet the Charter requirements, including residency.

Ms. Sihelnik noted the need to choose the best candidate for the job.

Mr. Waltman agreed but stated that the candidate must also meet the Charter requirements.

Ms. Cepeda-Freytiz questioned if the candidate has time to establish residency after the appointment. Mr. Waltman stated that the Charter requires the person to be a resident before they are appointed. Mr. Lachat agreed and stated that this is an elected position and not an employee.

Mr. Waltman stated that one applicant was already interviewed. He requested that Ms. Kelleher schedule the other two candidates that are City residents for interviews.

#### **IV. Agenda Review**

Council reviewed this evening's agenda including the following:

- Resolution authorizing the Police Chief to sign a letter of agreement with Let's Think Wireless for support services

Mr. Waltman questioned if this was equipment in the patrol cars. Chief Dominguez stated that it is for the maintenance and repair of the camera system.

Ms. Goodman-Hinnershitz requested that this resolution be moved off the consent agenda because of the amount of the agreement. Ms. Reed agreed.

Ms. Kelleher stated that the consent agenda is meant for non-controversial items that do not need comment regardless of the amount being spent.

Ms. Goodman-Hinnershitz noted her preference that the consent agenda be used only for items with small dollar amounts and recommended that it contain nothing that is \$50,000 or more. Council agreed with this new approach.

- Award of Contract to UBS for the Aggregated Pension Investment Advisor

Mr. Waltman stated that he has costed out the proposed agreement. He stated that he has questions and requested that this be delayed for two weeks.

Mr. Deming stated that he prefers moving forward. He stated that the RFP process was used and that the highest ranking firms were also interviewed. He stated that Mr. Poist has followed up with the firms and the agreement is settled.

Mr. Waltman stated that this is the only voice Council has in the process. He stated that the pensions are a high cost liability to the City and requested a two week delay.

Mr. Deming requested that specific questions be directed to Mr. Poist.

- Resolution authorizing the replacement of the roof at the Riverside Fire Station by Bachman Roofing

Chief Stoudt stated that this roof has been patched multiple times and full replacement is now needed.

- Resolution authorizing the Police Chief to sign a letter of agreement with Let's Think Wireless for support services (continued)

Ms. Cepeda-Freytiz questioned if this was an annual cost. Chief Dominguez stated that it is. He stated that an RFP has been issued for this cost but that it will not be completed before the end of 2019. He stated that this will allow the current contract to be extended through 2019 while the RFP is in process.

Ms. Cepeda-Freytiz questioned when this contract began. Chief Dominguez stated that it has been in place since 2002.

- Resolution authorizing the replacement of the roof at the Riverside Fire Station by Bachman Roofing (continued)

Ms. Cepeda-Freytiz questioned if this project was bid. Chief Stoudt stated that there is no need to bid when a firm that is approved by the State Costars program is used. Mr. Deming explained that the cost is over \$35,000 and needs Council approval.

Ms. Goodman-Hinnershitz thanked Mr. Deming for bringing these projects forward to Council's attention. Mr. Deming expressed the belief that more knowledge is good.

- Award of Contract to UBS for the Aggregated Pension Investment Advisor (continued)

Mr. Waltman requested that Mr. Pottiger cost out the UBS contract with the current contracts to see the specific amount being saved by aggregating the pensions.

- Award of Contract to upgrade the Closed Caption Television truck used to evaluate and inspect sewer lines

Ms. Goodman-Hinnershitz stated that she likes how the agenda headings are worded as they tell Council what process has been followed.

Ms. Cepeda-Freytiz questioned if this is a technology upgrade. Mr. Gensemer explained that the equipment currently being used is from 2008. He stated that the vehicle has been designed to run for a long time but that the computer system still runs on the XP

platform. He stated that the computer and cameras are upgraded as needed and that he works directly with the software company.

- Ordinance amending the capital budget to reflect the funding of the Hillside Pool property purchase and revising the timeline for the Schlegel Pool rehabilitation project

Mr. Waltman questioned if the Schlegel Pool funding is being used to purchase the former Hillside Pool property. Mr. Deming stated that it is. He stated that settlement is next week.

Ms. Goodman-Hinnershitz stated that she requested that the two items be separated but understands that they cannot since it is using the same funding.

Mr. Waltman stated that the capital budget is often changed.

Ms. Cepeda-Freytiz questioned the plan for this property. Mr. Deming stated that it will be a splash park.

Ms. Cepeda-Freytiz questioned what is happening at the former East Reading Pool site. Mr. Deming stated that Council approved purchasing Hillside in 2018. He stated that these are two different areas. He explained that the negotiations for Hillside have taken longer than anticipated.

Ms. Cepeda-Freytiz questioned if improvements are still planned for Schlegel Pool. Mr. Deming stated that the projects there will continue to move forward.

Ms. Sihelnik reminded all that Mr. Johnson indicated that a study will be performed at Schlegel Pool to determine the best way to move forward.

Ms. Reed stated that the Hillside property is very large. She questioned what else would be done there. Mr. Deming stated that this is currently being assessed by Public Works. He stated that Ms. Klahr has been very involved in this analysis as well. He stated that Council will receive a report after the analysis is complete.

Mr. Waltman agreed that this is a very large green space.

Ms. Goodman-Hinnershitz stated that she now has misgivings about this purchase since the purchase of the former East Reading Pool site has been in limbo for an extended amount of time. She stated that there is a business man who is interested in assisting at Hillside who needs storage space for supplies for the Christmas on the Mountain event. She expressed the belief that his assistance has been discounted and noted the need to collaborate to keep the Christmas event successful.

Mr. Deming stated that he will speak with Ms. Klahr about including storage space for the event. Ms. Goodman-Hinnershitz stated that she has already spoken with Ms. Klahr about this.

Ms. Cepeda-Freytiz questioned the funding of the splash park. Mr. Waltman stated that it will be a capital expense.

Ms. Cepeda-Freytiz questioned what Christmas on the Mountain needs at this location. Ms. Goodman-Hinnershitz stated that secure storage site is needed. She expressed the belief that the City should be responsible for storing the decorations.

Mr. Waltman suggested that Mr. Deming meet with Mr. Profit about the need for storage.

- Ordinance amending the Park Code to include the entire Mt. Penn Preserve area in the definition of Park

Ms. Kelleher stated that this definition will now match the description in the police mutual aid agreement.

Chief Dominguez stated that the mutual aid agreement has already been signed and returned to the City.

- Ordinance amending the Administrative Code by adding requirements for Repository Sale bids

Ms. Kelleher stated that the ordinance is written to include the Administration in the process.

Mr. Lachat stated that the ordinance is being reviewed by Mr. Poist. He stated that some language in the “whereas” clauses may need to be changed. He stated that any changes will be complete before final passage in two weeks. He explained that this process gives consent to the sale.

- Ordinance dedicating City parcels for temporary easements and permanent right of way for the River Road Extension Project

Mr. Waltman questioned if this was for one property or several. Ms. Reed stated that it is several.

Mr. Waltman questioned if this includes School District property. Mr. Deming stated that the Windsor & Ritter parcel is a separate negotiation.

Mr. Lachat explained that this is a PennDOT project but that the City is doing much of the work.

- Ordinance amending the Capital Budget to reflect the transfer of budgeted funds required to complete the acquisition of the Hillside Pool and Letisse properties

Ms. Kelleher explained that the settlement costs will exceed the \$200,000 approved by Council.

Ms. Reed requested that this be separated into two different ordinances.

- Ordinance amending the Code of Ordinances by adding Handicapped Parking

Mr. Deming stated that there are applications for handicapped parking spaces that need to be processed. He stated that there is currently no Health Officer and that most municipalities do not use a Health Officer to approve handicapped parking spaces.

Mr. Deming explained that PennDOT already approves the person when they are issued a tag or license plate. He expressed the belief that the need for a space is determined by analysis of the neighborhood, other off-street parking, etc. He stated that this ordinance would make handicapped parking space review a function of Public Works and Zoning. He stated that he has already spoken with Mr. Hunter and Mr. Johnson about this.

Mr. Deming stated that this would allow the backlog of applications to be processed and would allow the City to use specific criteria when evaluating the need for a parking space. He stated that Ms. Kelleher has provided him with the current regulations that were passed by resolution. He expressed the belief that the regulations should be by ordinance.

Ms. Cepeda-Freytiz questioned if the Parking Authority should be involved. Mr. Deming stated that most handicapped parking spaces are in residential areas on the City's streets.

Mr. Marmarou questioned what happens if a person already has a space. Mr. Deming stated that if there is already a parking space that person keeps the space but that it will continue to be reviewed annually for need.

Ms. Goodman-Hinnershitz questioned if a person is issued a temporary handicapped placard if they would qualify for a parking space. Mr. Deming stated that they would qualify. He stated that the space would then be removed when the temporary situation has passed.

Ms. Reed questioned how often spaces are reviewed. Mr. Deming stated that each space is reviewed annually.

- Ordinance increasing the hourly rate of the part-time police Telecommunicator position to \$16 per hour

Mr. Deming stated that the current hourly rate is below market. He stated that raising the rate will help to attract employees and keep the positions filled.

Ms. Cepeda-Freytiz questioned how this will reduce overtime. Mr. Kelly stated that the current staff will not be paid for working extended hours.

Ms. Cepeda-Freytiz questioned if there are budget implications. Mr. Kelly stated that this is budget neutral as long as not more than eight new employees are hired in this position.

- Resolution authorizing the Mayor to sign a natural gas purchase agreement with the lowest responsible bidder immediately after the bid opening

Mr. Lachat stated that Council has recently made this same authorization for the City's electric provider. He described the ever-changing commodity market and that prices are only guaranteed for 24 hours.

## **V. Executive Session**

Mr. Waltman announced the need for an executive session on litigation. All exited the meeting except for the seven members of Council, Mr. Lachat, Ms. Kelleher, and Ms. Smith.

Council entered executive session at 6:50 pm. The executive session ended and the meeting adjourned at 6:58 pm.

*Respectfully Submitted by  
Linda A. Kelleher, CMC, City Clerk*

## II. Beginning Government Study Commission Process

The decision of whether or not to study a municipal government and consider the advisability of change is made by the voters. At the same time this decision is made, the voters elect a group of citizens to conduct the study and report their recommendations back to the electorate for final decision. The entire process can be begun either by the governing body of the municipality, or by a group of citizens through the initiative process.

### Placing the Government Study Commission Question on the Ballot

The Home Rule Law provides two alternate methods for placing the question of having a government study commission on the ballot. **The question may be initiated either by (1) an ordinance of the municipal governing body** or (2) a petition of the registered voters of the municipality. The ordinance or petition must designate one of the three questions permitted by the Home Rule Law.

Government Study Commission Questions. **The Home Rule Law contains three questions — one must be selected to be placed on the ballot in drawing up the ordinance or petition. The choice of the question will restrict the government study commission to a consideration of an optional plan, a home rule charter, or allow it to choose either an optional plan or a home rule charter. The text of the questions as set forth in the Home Rule Law follows.**<sup>1</sup>

- (1) “Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality; to consider the advisability of the adoption of an optional form of government and to recommend whether or not an optional plan of government should be adopted?”
- (2) “Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality, to consider the advisability of the adoption of a home rule charter; and if advisable, to draft and to recommend a home rule charter?”
- (3) “Shall a government study commission of (seven, nine or eleven) members be elected to study the existing form of government of the municipality; to consider the advisability of the adoption of an optional form of government or a home rule charter; to recommend the adoption of an optional form of government, or to draft and recommend a home rule charter?”

In addition to choosing one of the three questions, the petition or ordinance must designate whether the proposed government study commission is to have seven, nine or eleven members.

Initiation by Ordinance.

An ordinance to place a government study commission on the ballot must be adopted by the governing body of the municipality, that is, the county commissioners, city council, borough council, or township commissioners or supervisors. There is no required form for the ordinance, However, it must specify one of the three questions to be placed on the ballot and designate the number of members to be elected to the government study commission.

Within five days after the final enactment of an ordinance, the municipal clerk or secretary must file a certified copy of the ordinance with the county board of elections, together with a copy of the question to be submitted to the voters. The county board of elections will submit the question to the voters at the next primary, municipal or general election occurring not less than the thirteenth Tuesday after the ordinance is filed. The deadline for filing an ordinance to appear on the next election is thirteen weeks before the date of the election.

#### Electing Members of the Government Study Commission

At the same election where the question of having a government study commission is on the ballot, voters are also asked to elect the designated number of members for the commission. Even voters opposing having a government study commission are to vote for members of the commission.

The Home Rule Charter and Optional Plans Law establishes a detailed procedure for simultaneously presenting to the electors two related questions – the first, whether a home rule study should be undertaken and secondly, the election of members to a study commission if the vote is favorable to such a study.

**Eligibility.** The only eligibility requirement for candidates for the office of study commissioner is that they be registered voters of the municipality.<sup>2</sup> Current officeholders, including local, school, county and state officials are eligible to serve as members of government study commissions. As the office is nonpartisan, persons covered by local or state civil service regulations are also eligible to serve.

**Nomination Papers.** Candidates are nominated by filing nomination papers. The nomination papers must include the name and address of the candidate, identify the person as a candidate for the office of government study commissioner, and state the signers are legally qualified to vote for the candidate. The nomination papers may not carry any political party designation or slogan. Nomination papers may be circulated and signed within a time period between the thirteenth and the tenth Tuesday before the election. Candidates must obtain signatures of registered voters equal to at least two percent of the number of votes cast for governor in the last gubernatorial general

election within the municipality, or two hundred registered voters whichever is less. Each voter signing a nominating paper must list their residence, including street number and post office address. Each voter may sign nominating papers for as many candidates as the number of members proposed for the government study commission. Each nomination paper must be accompanied by an affidavit of one or more of the signers, affirming the paper was signed by each signer in their proper handwriting, that to the best of the signer's knowledge all signers are registered voters of the municipality, and that the purpose of the paper is to endorse the candidate named for the office of government study commissioner.

**Filing Nomination Papers.** Nomination papers must be filed no later than the tenth Tuesday prior to the date of the election. Each nomination paper must have attached an affidavit signed by the candidate, consenting to stand as a candidate at the election, and promising to take office and serve, if elected.<sup>9</sup> Candidates filing nomination papers for government study commissioner do not have to pay a filing fee since they serve without compensation.

**Ethics Law Disclosure Statement.** The State Ethics Commission has ruled candidates for government study commission must file ethics law disclosure statements. Forms are available from the county board of elections.

**Campaign Finance Reports.** Candidates for government study commissioner are subject to campaign finance reporting requirements. Most candidates for government study commission will have minimal, if any, campaign receipts or expenditures. Candidates spending less than \$250 are required only to file a notarized statement attesting that fact with the county board of elections. When candidates file their nomination papers, they will be given the appropriate form by the board of elections.

THE CHARTER BOARD OF THE CITY OF READING  
IN RE: The Filling of Vacancies : Request Received November 21, 2013

Under Charter §§ 304 : and 505 : Advisory Opinion No. 35

**ADVISORY OPINION**

**I. PROCEDURAL HISTORY AND QUESTIONS PRESENTED**

By letter dated November 21, 2013 the City Clerk, Linda A. Kelleher, (“Clerk”) requested an advisory opinion from the Charter Board of the City of Reading (“Board”). By letter of December 5, 2013 the Board requested that the Clerk grant the Board a thirty (30) day extension, ending January 22, 2014, in which to issue the requested advisory opinion. The Clerk agreed by a returned written acknowledgement. As the result of inclement weather, the Board requested, and the Clerk granted, a further extension from January 22, 2014 to February 5, 2014.

The substantive issue of the Clerk’s request concerns Sections 304 and 505 of the Home Rule Charter of the City of Reading (“Charter”) and the provisions found there for the filling of vacancies in the offices of Mayor and City Auditor. As the Clerk points out, those Charter sections do not contain any provisions for the timing of the filling of vacancies in those offices, the qualifications or eligibility of the proposed appointee, or the vote necessary to fill such vacancies (i.e., majority, 2/3 vote, etc.).<sup>1</sup> The Clerk asks the Board to clarify what provisions, if any, apply to filling a vacancy in the office of Mayor and City Auditor.

The Board answers the Clerk’s request for an advisory opinion as follows.

<sup>1</sup> The Clerk correctly notes that this lack of detail is not found in the provision for the filling of a vacancy on City Council. See Charter § 207.

**II. DISCUSSION**

**A. Pertinent Provisions of the Charter**

**1. The Office of Mayor**

Charter § 304, concerning a vacancy in the office of Mayor, states:

**Section 304. Vacancy.**

(a) If the office of the Mayor becomes vacant for any reason, Council shall appoint an interim Mayor who shall serve until the next Municipal Election.

(b) A vacancy in the office of Mayor shall be filled at the next Municipal Election, in the manner provided by law. The person elected shall hold the qualifications for the office of the Mayor and shall serve the remaining portion of the vacated term.

Concerning qualifications for a candidate for Mayor, Charter § 303 provides:

**Section 303. Eligibility.**

The candidate for Mayor shall be a registered voter of the City who

shall have resided in the City continuously for at least one year immediately preceding the primary election in which the Mayor seeks office. The Mayor shall continue to reside in the City throughout the term of office.

## **2. The Office of the City Auditor.**

Charter § 505, concerning a vacancy in the office of the City Auditor, states:

### **Section 505. Vacancy.**

(a) If the office of the City Auditor becomes vacant for any reason, Council shall appoint an interim City Auditor who shall serve until the next Municipal Election.

(b) A vacancy in the office of City Auditor shall be filled at the next Municipal Election, in the manner provided by law. The person elected shall hold the qualifications for the office of the City Auditor and shall serve the remaining portion of the vacated term.

Concerning the qualifications for a candidate for City Auditor, Charter § 502 provides:

### **Section 502. Eligibility.**

The candidate for City Auditor shall be a registered voter of the City who shall have resided in the City continuously for at least one year immediately preceding the primary election in which the City Auditor seeks office. The City Auditor shall continue to reside in the City throughout the term of office. In addition, the City Auditor must have a Bachelors Degree in Business Administration, Municipal Government, Accounting, Management or a related field. The City Auditor elected at the first election under this Chapter shall receive an annual salary of \$40,000.00.

## **B. Analysis**

The Charter Board Ordinance<sup>2</sup> (C.B.O.) directs the Board's interpretation of the Charter. See C.B.O. § IV(A). The object of all interpretation and construction of the Charter is to ascertain and effectuate the intent of its authors. When the words of the Charter are clear and free from ambiguity, the letter of it shall not be disregarded in pursuit of its spirit. Likewise, when the Charter is not explicit, the intent of its authors shall be ascertained by considering:

- (a) the mischief to be remedied;
- (b) the object to be attained;
- (c) the circumstances under which it was enacted; and (d) the contemporaneous legislative history. *Id.* The Statutory Construction Act, 1 Pa.C.S. §§ 1501, *et seq.*, serves as a refinement of the above standard. C.B.O. § IV(C).

**As explained in *City Council of the City of Reading v. Eppihimer*.**

In addition, this Court has held that general rules of statutory construction are applicable in interpreting provisions of a home rule charter. *Williams v. City of Pittsburgh*, 109 Pa.Cmwlth. 168, 531 A.2d 42, 44 (1987) (citing *Cottone v. Kulis*, 74 Pa.Cmwlth. 522, 460 A.2d 880 (1983)), *petition for allowance of appeal denied*, 518 Pa. 622, 541 A.2d 748 (1988). We must interpret statutes to ascertain and effectuate the intent of the legislature and, if possible, give effect to all of its provisions. Section 1921(a) of the Statutory Construction Act of 1972, 1 Pa.C.S. § 1921(a). Further, if the words of a statute are clear and unambiguous, a court may not ignore the letter of the law under the pretext of pursuing its spirit. 1 Pa.C.S. § 1921(b); *Ramich v. Workers' Compensation Appeal Board (Schatz Electric, Inc.)*, 564 Pa. 656, 2<sup>nd</sup> Ord. No. 46-2005, as amended by Ord. No. 16-2013

770 A.2d 318 (2001). This Court must presume that the drafters of the charter did not intend a result which is absurd, impossible of execution or unreasonable. *Cottone*, 460 A.2d at 882. *City Council of the City of Reading v. Eppihimer*, 835 A.2d 883, 887 (Pa. Commw. Ct. 2003) (interpreting the Charter).

The pertinent standards for statutory construction are as follows: The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S. § 1921(a); *Commonwealth v. McCoy*, 599 Pa. 599, 962 A.2d 1160, 1167–68 (2009). A statute's plain language generally provides the best indication of legislative intent. *McCoy*, 962 A.2d at 1166; *Ephrata Area Sch. Dist. v. County of Lancaster*, 595 Pa. 111, 938 A.2d 264, 271 (2007); *Pennsylvania Fin. Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 664 A.2d 84, 87 (1995) ("Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words."). Only where the words of a statute are not explicit will we resort to other considerations to discern legislative intent. *Ephrata Area Sch. Dist.*, *supra*; see also 1 Pa.C.S. § 1921(c); *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 577 Pa. 231, 843 A.2d 1223, 1230 (2004).

Moreover, in this analysis, "[w]e are not permitted to ignore the language of a statute, nor may we deem any language to be superfluous." *McCoy*, 962 A.2d at 1168. Governing presumptions are that the General Assembly intended the entire statute at issue to be effective and certain, and that the General Assembly does not

intend an absurd result or one that is impossible of execution. See 1 Pa.C.S. § 1922(1)-(2).

We are also mindful that statutes which relate to the same persons or things must be construed together as one statute. See 1 Pa.C.S. § 1932. “[S]ections of a statute must be read together and in conjunction with each other, and construed with reference to the entire statute.” *Housing Auth. of County of Chester v. Pa. State Civil Serv. Comm'n*, 556 Pa. 621, 730 A.2d 935, 945 (1999). A word or phrase whose meaning is clear when used in one section of a statute will be construed to mean the same thing in another section of the same statute. *Id.* at 946. *Board of Revision of Taxes, City of Philadelphia v. City of Philadelphia*, 607 Pa. 104, 4 A.3d 610 (2010). Although a court should construe a statute, if possible, to give effect to all of its provisions, a court may not supply a provision omitted from a statutory section even if the omission resulted from the General Assembly's inadvertence or failure to foresee the circumstances in question. *Lisanti Painting Co. v. W.C.A.B. (Starinchak)*, 973 A.2d 464, 471 (Pa. Commw. Ct. 2009), *appeal denied* 603 Pa. 697, 983 A.2d 730 (2009). Courts may not add provisions that the General Assembly has omitted unless the phrase is necessary to the construction of the statute. *Commonwealth v. Lewis*, 885 A.2d 51, 57 (Pa. Super. Ct. 2005), *appeal denied* 588 Pa. 777, 906 A.2d 540 (2006).

Here, absent from Charter §§ 304 and 505 are provisions for the timing of the filling of vacancies in those offices, the qualifications or eligibility of the proposed appointee, and the vote necessary to fill such vacancies (i.e., majority, 2/3 vote, etc.). The Board will address each of these matters separately, applying the above cited long-standing principles of statutory construction.

### **1. Timing**

Both Sections 304 and 505 of the Charter are silent as it relates to the timing of the appointment of a Mayor or a City Auditor by City Council in the event of a vacancy. The Charter contains not less than five (5) references to the appointment of candidates to fill vacancies.<sup>3</sup> Only the Charter section for the filling of a vacancy in City Council has a specific time parameter, i.e. thirty (30) days. Charter § 207. Clearly the drafters of the Charter knew that they could provide for a time in which to mandate that a vacancy be filled by Council. Yet the drafters inserted no such provision for vacancies in the offices of Mayor and City Auditor. <sup>3</sup> See Charter §§ 207 (vacancies on City Council to be filled within 30 days), 304 (vacancy in the office of Mayor, stating no time frame), 403, 505 (vacancy in the office of City Auditor, stating no time frame), 1002(b) (vacancies on Boards and Commissions to be filled promptly).

The Board can render no advisory opinion as to the permitted time in which City Council must fill these vacancies. As *Lisanti Painting Co.* and *Lewis, supra.*, prohibit, the Board may not insert a term into the Charter. The Board does not find the lack of a time frame for the filling of a vacancy to cause ambiguity or to prevent an interpretation of Charter

§§ 304 and 505 under their terms as written. Further, should City Council not act promptly in filling any such vacancy, presumably a determination will be made at the ballot box for any actual or perceived tardiness.

It is not for the Board to legislate and insert a time frame by which Council must act. Regarding timing, the Charter is clear only that City Council shall fill vacancies in the offices of Mayor and City Auditor. The Board can opine no further on the issue of timing.

## **2. Qualifications**

Neither Charter §§ 304 or 505 have any requirement that the person appointed to fill a vacancy in the offices of Mayor or City Auditor be “qualified.” However, to be sure, there are qualifications for those offices as set out in Sections 303 and 502, both regarding “eligibility.”

Both referenced sections require the candidates for those offices to meet the minimum qualifications. See Charter §§ 303, 502, *supra*. Black’s Law Dictionary, 6th ed., defines “candidate” as “one who seeks or offers himself, or is put forward by others, for an office, privilege, or honor. A nominee.” (internal citations omitted). It appears to the Board that it is the law of Pennsylvania that a person appointed to fill a vacancy must hold the statutory qualifications to fill the office. See *generally as to qualifications for office, Commonwealth ex rel. Kelley v. Keiser*, 340 Pa. 59, 70-71, 16 A.2d 307, 311-12 (1940).

Qualifications for the offices of Mayor and City Auditor exist under the Charter, therefore a candidate for appointment to fill a vacancy in those offices must meet those stated qualifications. Reading Charter Articles III and V together, to give effect to all of their provisions, would require that the qualifications found in Sections 302 and 504 would equally apply to appointments to fill vacancies in those offices. It would be an absurd result that an appointee to a vacancy need not hold the qualifications for the office to which he or she is appointed. 1 Pa.C.S. § 1922(1).

## **3. The Vote of Council**

The Board recently addressed voting of City Council in the context of appointments to the Charter Review Commission. See Adv. Op. No. 33 (May 9, 2013). There the Board concluded that motions or resolutions voted upon by City Council must garner a simple majority of a quorum to prevail, unless otherwise provided by law, the Charter or an Ordinance. Admin. Code § 1-122(9). See *DiGiacinto v. City of Allentown*, 486 Pa. 436, 439, 406 A.2d 520, 522 (1979); *Ronald H. Brown Charter School v. Harrisburg City School District*, 928 A.2d 1145, 1147-48 (Pa. Commw. Ct. 2007). Advisory Opinion No. 33 opines that the common law rule for the number of votes necessary for a deliberative body to take official action applies to making appointments to the Charter Review Commission. The Board applies and adopts that same analysis here in opining that the

common law rule would also apply to the filling of vacancies, specifically, vacancies in the offices of Mayor and City Auditor. Therefore, to fill a vacancy, a majority of a quorum of City Council must vote in favor of the candidate.

### **III. OPINION OF THE BOARD**

It is the Opinion of the Board that:

A. the Charter is silent as to the timing of the appointment by City Council to fill a vacancy in the offices of Mayor and City Auditor and the Board cannot opine upon, or insert, a time frame;

B. an appointee to fill a vacancy in the offices of Mayor and City Auditor must possess the qualifications and be eligible, in accordance with Charter §§ 302 and 504, to hold the office to which appointment is made;

C. an affirmative vote of a simple majority of a quorum of City Council must be had to fill a vacancy in the offices of Mayor and City Auditor, as the Charter provides for no other description of the votes necessary to fill such a vacancy and therefore the common law rule is applicable.

CITY OF READING CHARTER BOARD

By:

Susan Gibson, Chair

Date: February 5, 2014

Drafted by: City Clerk  
Sponsored/Referred by: City Council  
Introduced on: May 8, 2017  
Advertised on: May 15, 2017

BILL NO. 47 2017  
AN ORDINANCE

**Amending the City Code Chapter 23 Boards, Commissions and Committees by  
creating a new Part 15 Youth Commission**

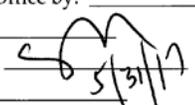
**THE COUNCIL OF THE CITY OF READING HEREBY ORDAINS AS FOLLOWS:**

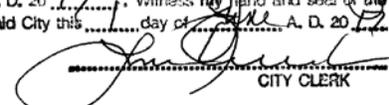
**Section 1.** Amending the City Code Chapter 23 Boards, Commissions and Committees by creating a new Part 15 Youth Commission, as attached in Exhibit A.

**Section 2:** This Ordinance shall be effective ten (10) days after adoption pursuant to Sections 219 and 221 of the City of Reading Home Rule Charter.

ENACTED May 22, 2017  
  
\_\_\_\_\_  
President of Council

ATTEST:  
  
\_\_\_\_\_  
City Clerk

Submitted to Mayor by:   
Date Submitted: 5/23/17  
Received in Mayor's Office by: \_\_\_\_\_  
Date Received: \_\_\_\_\_  
Approved by Mayor:   
Date Approved: 5/31/17  
Vetoed by Mayor: \_\_\_\_\_  
Date Vetoed: \_\_\_\_\_

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 22 day of May A. D. 20 17. Witness my hand and seal of the said City this 1 day of June A. D. 20 17.  
  
\_\_\_\_\_  
CITY CLERK

3. Regular meetings of the Commission shall be determined by the membership but the Commission shall meet no less than four (4) times per year. Notices of meetings will be posted on the City of Reading website.
4. Minutes from meetings will be kept and copies of the meeting minutes will be sent to the City Clerk's Office after each meeting.

**§23-1505. Duties and Functions**

The Commission shall:

- (a) Identify critical issues affecting youth in the City of Reading.
- (b) Provide advice and recommendations to the Mayor, City Council, Managing Director, and other City officials on issues affecting youth in the City of Reading.
- (d) Form subcommittees of less than a majority of its members as deemed necessary to allow for in-depth review of issues of interest to the Commission.
- (e) Make available to the Managing Director its findings and recommendations and present periodic reports to City Council.
- (f) Provide a written report annually on the status of the Commission and its activities to the Mayor and City Council.
- (g) Perform such further duties as may hereafter be delegated to the Commission by resolution of the City Council.