

Attorney Memorandum Intended for Public Release

To: Allegan City Council
From: Nick Curcio, City Attorney
Re: Motion to Propose Ballot Question
Date: August 14, 2019

During the August 12 City Council meeting, City Manager Dye asked for Council support to schedule an additional community regarding the Allegan City Dam Feasibility Study. After discussing this request, a Council member made a motion not only to schedule a community meeting for Wednesday, August 28, but also to place “the issue of removal, partial removal, or non-removal of the dam . . . on the March 2020 primary ballot.” The motion garnered three votes, which was a majority of the five Council members present. For that reason, both staff and the Council were under the impression that the motion had carried.

The next day, City Manager Dye asked me to review what had occurred and to comment on any legal issues. This memo is intended to inform both the Council and the general public that the motion required four votes rather than three, and therefore failed. Further, even if the motion had garnered four votes, it would not have resulted in the question being placed on the ballot. As explained below, the City Council lacks the legal authority to pose this particular question to voters in an election.

Voting Requirement

Section 5.16 of the City Charter authorizes and directs the City Council to “determine its own rules and order of business.” The City Council has complied with that directive by adopting a document entitled “City Council Rules of Procedure.” That document provides in pertinent part that:

Unless otherwise stated in these rules, required by ordinance or charter, or by the state or federal law, the passage of *all matters* before the City Council shall require the affirmative vote of four members present at any meeting.¹

The broad reference to “all matters” encompasses oral motions like the one made at the August 12 meeting, indicating that the affirmative vote of four members is

¹ City of Allegan Municipal Policy, p 61 (emphasis added).

required for such motions. This requirement is compatible with — and arguably mandated by² — the City Charter, which does not expressly address the vote requirement for oral motions. Accordingly, the motion at the August 12 meeting did not garner enough votes and therefore failed to carry.

Authority to Submit Questions to Voters

Section 5.27 of the Allegan City Charter states that: “the council shall determine all matters of policy of the city and adopt ordinances and necessary rules and regulations to make the same effective.” The policies of the city include matters relating to the “use, control and regulation of streams, waters and water courses within its boundaries.”³ Accordingly, the decision of whether or not to remove or partially remove the Allegan dam is vested in the City Council.

Michigan courts have long held that, absent a specific statute or charter provision to the contrary, a “city council may not place propositions on the ballot that shift to the electorate the responsibility for making decisions that they themselves are required to make.”⁴ Unlike some municipal charters,⁵ the Allegan City Charter does not give the City Council authority to place questions on the ballot in order to gather input from constituents. Moreover, there does not appear to be any state statute that requires or authorizes the placement of this particular question on the ballot. Accordingly, the City Council lacks the legal authority to place a question on the ballot asking voters whether or not the dam should be removed. Even if four members of the City Council had supported the motion at the August 12 meeting, it would have been unlawful to hold an election on this issue.

² Section 5.18 of the Charter states: “Except as otherwise provided in this charter, no ordinance or resolution shall be adopted or passed except by affirmative vote of at least four (4) members of the council.” There is substantial authority for the proposition that an oral motion is a type of “resolution.” See, e.g., McQuillin, *Municipal Corporations*, (3d ed. 1968) § 15.02; 37 (“A resolution in effect encompasses all actions of the municipal body other than ordinances.”); Am.Jur. *Municipal Corporations* § 142 (“In substance there is no difference between a resolution, order, and motion.”). Accordingly, this provision could be reasonably construed to apply to motions.

³ See MCL 117.4h; Allegan City Charter § 2.1.

⁴ *Southeastern Michigan Fair Budget Coalition v Killeen*, 153 Mich App 370, 379 (1986) (citing *Scovill v Ypsilanti*, 207 Mich 288 (1999)).

⁵ See, e.g., Troy City Charter 7.9.5 (“Should the Council, by an affirmative vote of the members elect, decide to submit an advisory ballot question to the electors, it shall be submitted at the next Regular City Election.”).

August 28 Community Meeting

As a final matter, it is worth noting that the portion of the motion pertaining to the proposed August 28 meeting also failed. However, the scheduling of a community meeting does not require the approval of the City Council, even though the City Manager typically asks the City Council for support before scheduling such meetings. As the chief administrative officer of the City, the City Manager may (on his own initiative) schedule meetings to gather public input.⁶ City Manager Dye has indicated that he still intends to schedule the community meeting for August 28.

I hope this memo is helpful to you in understanding the pertinent legal issues. Please let me know if there is anything further I can do to assist.

⁶ Section 8.4 of the City Charter designates the City Manager as the chief administrative officer of the City. The decision of whether and when to schedule a meeting is clearly administrative in nature, as it does not involve the formulation of important substantive policy.