

To: City Council

From: President Hendricks and Vice President Mota

Date: June 14, 2023

Re: Initiative

We thought it appropriate to commit some observations to writing on the initiative being considered. City Council and the Mayor share mutual goals noted in the bill introduced under the initiative provisions of the charter - a community response model that serves residents and achieves better outcomes that is also an efficient use of taxpayer dollars. We are all there. The Police Department has been incrementally working on a crisis intervention model with Pinebrook Family Services. They are in the process of evaluating the program with the help of Cedar Crest College. The Public Safety Committee is committed to looking at city data to see where armed responses are not needed and to work with appropriate staff and agencies to develop an appropriate model that works for Allentown. The Community and Economic Development Department is always looking at public health and strategies to deal with such issues. We look forward to moving forward and exploring options on the issue. However, we see this an inappropriate vehicle for getting to our goals.

Background:

Under the Home Rule Charter, residents can propose an initiative and referendum. An initiative is the ability to introduce a bill. If council fails to approve the bill it will be submitted to the voters at the next available municipal election. A proposed initiative ordinance cannot be substantially changed by Council.

City Council has until June 19th to act on the initiative under consideration. If no action is taken, the proposal will be forwarded for the next municipal election. The Petitioner can withdraw its initiative petition at any time prior to the forty-fifth (45th) day preceding the day scheduled for a vote of the City.

After review of the petition with our solicitor, we have these observations:

1. Petition Process – the petition should have been circulated by the petitioner’s committee. *SECTION 1003. Initiative and referendum; petitioners committee; affidavit. Any five qualified voters of the City may file with the City Clerk an affidavit stating they will constitute the Petitioners Committee and be responsible for circulating the petition.*

2. Authority under the proposed Bill: The initiative is essentially a proposed ordinance directed to Council but it is not Council's proposed ordinance. If Council introduced a similar ordinance, it would fall short in a variety of ways:

- Abrogates the Strong Mayor Form of Government:
 - o Council cannot mandate the administration through legislative action to construct and let an RFP, evaluate responses, and establish programs based on this process.
 - o Council cannot mandate hiring.
 - o Council can only amend the budget under the budget provisions of the charter – they cannot introduce budget amendments during the year.

- Council cannot pass legislation and levy control over another municipal body.
 - o The city has no ability to pass legislation that would mandate how another entity, the County, should administer their affairs.
 - o 911 dispatchers fall under the county rubric, mandated by state legislation.
 - o The proposed ordinance would be ultra vires, i.e., beyond the scope, power, and authority of City Council.

3. Policy Issues: Costs, Redundancy, Procedure, Risk

- The \$4M price tag is extraordinary: To put this into perspective, the EMS 24/7 365 operation with 41 individuals has a \$6M budget; the total Health Bureau budget is just over \$5M – this would entail a tax increase or reduction of other city services.
- A Pilot Program already exists. The city has a program that is being developed based on collaboration with our partners, guided by data compiled by Cedar Crest College and the partners lived experience. We could double that program with an additional \$200,000.
- Lehigh County Mental Health Services under Crisis Intervention already has a crisis response team that is 24/7 365 for all county residents and can be reached at 610-782-3127. The Allentown Police CIT Officers and CIS workers work closely with county caseworkers in all capacities to ensure that the needs of our mental health community are met. Social Service agencies generally fall under the jurisdiction of the County. The County receives funding for providing such services.
- Only physicians and police have qualified immunity when commanding someone be remanded for mental health evaluations and only the police have powers to compel.

- Policy needs to be created through collaboration with vested interests including city staff, the county and other partners. The County has noted they will not dispatch social service workers as first responders.

4. Potential Compliance and Conflict Issues:

- The City is preempted from enacting legislation governing Emergency Medical Services by the Emergency Medical Services System Act, 35 Pa.C.S.A. Section 8101 et. seq. and Title 28 of the PA Code at Ch. 1021, Administration of the EMS System.
- Intermunicipal Reach - the proposed legislation is *ultra vires*, i.e., beyond the scope, authority, and power of Allentown City Council to enact. The City is preempted from enacting legislation governing Lehigh County 911 operators. This is an area preempted by State legislation under 35 Pa.C.S.A. Section 5301 et. seq. regarding 911 Emergency Communications Services. As a result of this legislation, enacted in 2015, the City's 911 Center was wholly merged into Lehigh County's 911 Center. The City does not have a 911 Center and all 911 dispatch for the City is handled by Lehigh County.
- City legislation is preempted and cannot mandate how a responder – Police Officer and EMS employees must respond and monitor situations based on state and federal law.
- The employment restrictions in the proposal unfairly discriminates against classes of individuals.
- The initiative and referendum process under the Home Rule Charter needs to be revised to be consistent with the Third-Class City Code (11 PaCSA Sections 11030, 11050).