



Memorandum

TO: Members of City Council

FROM: City Solicitor's Office

DATE: January 31, 2017

SUBJECT: Referendum to Amend the Home Rule Charter to Impose Term Limit on Office of the Mayor

1. Confirmation of the fee for putting the term limit on the ballot – estimated at \$10,000

Answer: There will be some cost to the City having the ballot question during the primary (whether it's \$10,000, that answer is not definite because it is based on actual costs to the County) because separate ballots would need to be printed for independents for just the ballot question since they do not otherwise vote in primaries. See 25 P.S. § 2645.

2. Confirmation of the time frame that the question needs to be submitted, including a veto and an override of a veto

Answer: The ordinance must be filed with the County Bureau of Elections by the 13th Tuesday preceding the election. The primary is on May 16, 2017. Counting backwards and not including May 16, 2017, the 13th Tuesday before would be February 14, 2017. See 53 Pa. C.S. §2943 and § 2944.

If City Council adopts the Ordinance for the ballot question at its Meeting on 2/1/17, under Section 221 of the Home Rule Charter (HRC), the Mayor will have, under the Statutory Construction Act rules on computation of time, until 11:59 pm on Monday, 2/13/17 to veto the Ordinance. Absent a Special Meeting of Council on Tuesday, 2/14/17, to override the veto and getting the Ordinance to the County Bureau of Election by the close of business that very day, Council would not make the 13th Tuesday deadline to get the question on the primary ballot on 5/16/17.

In view of the foregoing, should City Council decide to put the question on the 11/7/17 ballot, it is recommended that the 13th Tuesday, rather than the County 10th Tuesday deadline, be used to assure timeliness. The 13th Tuesday is no later than 8/8/17.

3. Would the timing in terms of the passage of the term limit question impact the Mayor that takes office in 2018 – i.e., would that person be grandfathered if the question was passed at the same time the person won the election in the fall.

Answer: There would be no grandfathering under the old (no term limit) provision. Section 1008. A of the HRC states initiatives put on the ballot are considered adopted upon certification of the election results, so, in either case, the amendment would be effective prior to the new mayoral term beginning in 2018.

4. Draft legislation for a term limit of two (2) terms only, with no ability to come back to serve as Mayor later

Answer: There are several options, depending if the intent of City Council is to have the amended Section 302 of the HRC in place for a long time and if Council wants to envision or plan for the eventuality of any future vacancies in the office of the Mayor. Council may also insert the intended effective date to avoid later concerns.

The current Section 302 of the HRC states: "The election of the Mayor shall be held in municipal elections in the manner provided by law. The term of office shall be four years commencing on the first Monday in January after the election."

Section 3-400 of the Philadelphia Home Rule Charter states, in relevant part: "The Mayor shall serve for a term of four years beginning on the first Monday of January following his election. He shall not be eligible for election for more than two successive terms..."

The Governor in the State of Delaware has a two (2) lifetime term limit: "The Governor shall hold his office during four years from the third Tuesday in January next ensuing his election; and shall not be elected a third time to said office."

The state of California's Constitution states: "... No Governor may serve more than two terms."

The 22nd Amendment to the United States Constitution relative to the US Presidency and several states, including Michigan, Mississippi, Missouri and Nevada, allow for the situation where an incumbent Mayor is serving out the term of another person.

The 22nd Amendment to the US Constitution states:

"Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of the President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term."

(Note: The three- fourths of the states had to ratify this amendment to the US Constitution in seven years, which they did.)

Similarly, in Missouri, the Governor has a two (2) lifetime term limit which states: "...nor shall any person be elected to the Office of Governor more than twice; and no person who has held the Office of Governor, or acted as Governor for more than two years of a term to which some other person was elected governor shall be elected to the Office of Governor more than once."

The Michigan Constitution has both the eventuality of a vacancy in the Governor's Office and an effective date:

"No person shall be elected more than two times to each office of the executive branch of government: governor... Any person appointed or elected to fill a vacancy in the office of governor... for a period greater than one half of a term of such office, shall be considered to have been elected to

serve one time in that office for purposes of this section. This limitation on the number of times a person shall be elected to office shall apply to terms of office beginning on or after January 1, 1993.”

As can be seen, the proposed amendment to the HRC imposing a term limit on the Office of the Mayor can be drafted to reflect Council's intent.

Thank you.