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To: The Honorable Ray O'Connell, Council President
And Members of City Council

From: Mayor Ed Pawlowski *E.P.*

Re: Amended Bill No. 5-2017

Date: Friday, June 16, 2017

City voters adopted a Home Rule Charter that placed no limits on the terms of any of their elected offices. This action of City Council puts the issue before the voters again, but asks them only to decide on terms limits for the executive branch.

I am not in favor of term limits for the many reasons I have stated publically, but in the interest of compromise, I would be happy to sign a measure that would place the question of term limits for all city elected positions together; the mayor, city council and the controller; on the ballot.

Therefore, absent the inclusion of all city elected offices, I am vetoing Amended Bill No. 5 – 2017.

FILE OF CITY COUNCIL

BILL NO. 5 - 2017

INTRODUCED BY COUNCIL

JANUARY 418, 2017

AN ORDINANCE

DIRECTING THE LEHIGH COUNTY BOARD OF ELECTIONS TO PLACE A REFERENDUM QUESTION BEFORE THE CITY OF ALLENTOWN VOTERS ON THE ~~MAY 16,~~ November 7, 2017 PRIMARY ELECTION BALLOT TO AMEND THE CITY OF ALLENTOWN HOME RULE CHARTER TO LIMIT THE TERM OF THE OFFICE OF MAYOR TO TWO (2) TERMS

Whereas, Article IX, Section 2 of the Pennsylvania Constitution provides that municipalities shall have the right and power to frame and adopt Home Rule Charters;

Whereas, the voters of the City of Allentown adopted a Home Rule Charter on April 23, 1996, which became effective in January, 1997;

Whereas, Article III (The Mayor), Section 302 (Election and Terms) of the City Home Rule Charter states that the term of the Mayor shall be four (4) years commencing the first Monday in January after the election;

Whereas, the Home Rule Charter does not limit the number of terms the Mayor may serve;

Whereas, Section 2942 of the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2942, authorizes the governing body of a Home Rule municipality to initiate a referendum to amend its Home Rule Charter by the enactment of an Ordinance; and

Whereas, the City Council of the City of Allentown seeks an amendment to the Home Rule Charter to be voted upon by the City of Allentown electorate through referendum to establish a term limit for the Office of the Mayor of two (2) terms.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN

SECTION ONE: The Lehigh County Board of Elections is directed to place the following referendum question to the voters of the City of Allentown on the ~~May 16, 2017~~ November 7, 2017 election ballot:

Article III (The Executive Branch), Section 302 (Election and Terms)

"Shall Section 302 of the City of Allentown Home Rule Charter be amended to add a term limitation for the Office of the Mayor by adding the following provision?

~~The Mayor shall be eligible to succeed himself for only one additional term. The time served to fill in for the remainder of an unexpired term shall not be deemed a "term" for the purposes of this limitation.~~

No person shall be elected to the office of Mayor more than twice. The time served to fill in for the remainder of an unexpired term shall not be deemed a "term" for the purposes of this limitation.

SECTION TWO: This Ordinance shall take effect ten (10) days after final passage.

SECTION THREE: All Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

SECTION FOUR: Pursuant to the Home Rule Charter, if adopted by the voters of Allentown, these provisions shall be considered adopted and effective upon certification by the Election Board.

The amendments were approved by all council members present/common consent on May 31, 2017 – Mr. MacLean was absent.

NOTES: This bill was introduced on January 18 and discussed on January 25. There were a few issues raised at that meeting and subsequently answered by the Solicitor's office. First, it was noted there was a cost for putting the question on the May primary - a separate ballot would have needed to be printed for the independents for just the ballot question – independents do not vote in a primary. The City would have incurred that cost – for this reason the bill was deferred. Second, there was a question of effective date: the solicitor's office has noted, if approved in November, the limit would be effective when certified and would be in effect when a Mayor takes office is 2018. They suggest adding such a provision to the legislation for clarification. Third, there was uncertainty about time frame – does the legislation need to be submitted 13 or 10 Tuesdays prior to the election; the solicitor's office recommend 13 Tuesdays prior to the November election to the safe, this takes you to 8/8/17. Fourth, and this is the critical one: Council wanted some certainty about the language in the amendment – the initial bill allowed for two terms but you could sit out a term and run again; after discussion there was approval of a motion to limit the office to only two terms that were consecutive and to have the solicitor's office draft the appropriate language. I understood your motion to mean that if a Mayor ran for a second term and lost, that is it – they can't not run again. After speaking to a few of you I am not sure everyone is on that page – three options are scoped out below in the form of amendments.

FILE OF CITY COUNCIL

BILL NO. 5 - 2017

INTRODUCED BY COUNCIL

JANUARY 4~~18~~, 2017

AN ORDINANCE

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Whereas, Article IX, Section 2 of the Pennsylvania Constitution provides that municipalities shall have the right and power to frame and adopt Home Rule Charters;

Whereas, the voters of the City of Allentown adopted a Home Rule Charter on April 23, 1996, which became effective in January, 1997;

Whereas, Article III (The Mayor), Section 302 (Election and Terms) of the City Home Rule Charter states that the term of the Mayor shall be four (4) years commencing the first Monday in January after the election;

Whereas, the Home Rule Charter does not limit the number of terms the Mayor may serve;

Whereas, Section 2942 of the Home Rule Charter and Optional Plans Law, 53 Pa.C.S. § 2942, authorizes the governing body of a Home Rule municipality to initiate a referendum to amend its Home Rule Charter by the enactment of an Ordinance; and

Whereas, the City Council of the City of Allentown seeks an amendment to the Home Rule Charter to be voted upon by the City of Allentown electorate through referendum to establish a term limit for the Office of the Mayor of two (2) terms.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ALLENTOWN

SECTION ONE: The Lehigh County Board of Elections is directed to place the following referendum question to the voters of the City of Allentown on the ~~May 16, 2017~~ November 7, 2017 election ballot:

Article III (The Executive Branch), Section 302 (Election and Terms)

"Shall Section 302 of the City of Allentown Home Rule Charter be amended to add a term limitation for the Office of the Mayor by adding the following provision?

THIS IS WHAT WAS IN THE ORIGINAL ORDINANCE: (Added underline for clarification.)

Option 1. The Mayor shall be eligible to succeed himself for only one additional term. The Mayor shall be eligible to run for the office after sitting out a complete term of office. The time served to fill in for the remainder of an unexpired term shall not be deemed a "term" for the purposes of this limitation. (Mimics Bethlehem, this would allow a person to sit out a term, and run again; reminder that Charter provides for filling a vacancy and is subject to the position being on the next municipal election which creates an inherent limitation – see below.)

Option 2 The Mayor shall be eligible for two terms only, provided that the terms follow one another. The Mayor shall not be eligible for election for more than two successive terms. The time served to fill in for the remainder of an unexpired term shall not be deemed a "term" for the purposes of this limitation. (Mimics Philadelphia, this had the appearance of being a potential consensus at the last meeting.)

Option 3: No person shall be elected to the office of Mayor more than twice. The time served to fill in for the remainder of an unexpired term shall not be deemed a "term" for the purposes of this limitation. (Mimics 22nd amendment)

SECTION TWO: This Ordinance shall take effect ten (10) days after final passage.

SECTION THREE: All Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

SECTION FOUR: Pursuant to the Home Rule Charter, if adopted by the voters of Allentown, these provisions shall be considered adopted and effective upon certification by the Election Board. (Suggestion from Solicitor to avoid any concerns about effective date.)

SECTION 304 VACANCY

A. If the office of the Mayor becomes vacant for any reason, Council shall appoint an interim Mayor of the same political party who shall serve until the next Municipal election.

B. If the Council fails to act within thirty days following the occurrence of the vacancy, the Court of Common Pleas of Lehigh County shall, upon petition of three members of Council or ten qualified electors of the City, fill the vacancy in such office by the appointment of a qualified resident of the City. 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.

C. If the vacancy occurs more than ninety (90) days before the next general municipal election, the appointee as selected in the preceding paragraph shall serve until the first Monday of January next following said election. If a portion of the term remains beyond said date, an individual shall be elected at said general municipal election to serve from the first Monday of January following said election to the end of the term as provided in Section 302.

D. Until the vacancy is filled, the President of Council shall act as Mayor. If the President of Council should resign or be unable to act, the Acting Mayor shall be chosen by a majority vote of the remaining members of Council to serve as Acting Mayor until the vacancy is filled by election.



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.