July 18, 2004

Mary Ann Bernardi
Troy, MI

Dear Mr. Szerlag:

On behalf of the SIN Coalition, I would like to request that the acceptance of the SIN Coalition's petitions (requesting that an advisory vote on the I-75 project be put on the November ballot) be placed on the city council meeting agenda of August 23, 2004 under *Reports and Communications* for discussion by city council members.

Thank you in advance,

Mary Ann Bernardi

Mary Ann Bernardi

Memorandum

To: Honorable Mayor and City Council
From: John Szerlag, City Manager
John M. Lamerato, Assistant City Manager/Finance and Administration
Barbara A. Holmes, Deputy City Clerk
Susan M. Lancaster, Assistant City Attorney
Date: August 19, 2004
Subject: City Management Response to Citizen's Request for Ballot Advisory Question on Long Lake/Crooks Road/I-75 Interchange Project for the State General Election Scheduled for November 2, 2004

This memo addresses issues that must be considered regarding the citizen's request that City Council reconsider their Resolution #2004-07-368 that denies further research and drafting of proposed ballot language for the Long Lake/Crooks Road/I-75 interchange project that would allow voters to provide input on this project.

- The City Attorney has provided City Council with a legal opinion in memos dated November 26, 2002 and July 8, 2004 indicating that cities are limited to referendums or initiatives which do not include advisory questions of an administrative or executive nature. The City Charter does not provide for the placement of an advisory question on the ballot. This opinion was provided in relationship to the resolution concerning placing an advisory question on the ballot for the Long Lake/Crooks Road/I-75 interchange project at the July 12, 2004 Regular City Council meeting.

- The City Clerk has provided a memorandum addressing the submittal of ballot language for local proposals and the election schedule established by the State of Michigan in accordance with State Election Law.

- In order for City Council to consider the citizen's request, action must be taken to suspend Council Rules and Procedures. A simple majority may waive the Rules of Procedure.

- Pursuant to Section 5.6 (b) (7) of the City Charter, an affirmative vote of a majority of the members elect of the Council is required to reconsider or rescind any vote of the Council. At the Regular City Council meeting on Monday, July 12, 2004, City Council took action to deny further research and

drafting of proposed ballot language. City Council's motion to direct the City Attorney to research and draft ballot language for the I-75 Interchange Project failed in a vote of 4-3. Therefore, a motion to reconsider this action must be brought forward before this action can be considered.

- If the resolution to reconsider is successful, then ballot language must be approved by City Council at the August 23, 2004 meeting. On August 24, 2004, the City Clerk must schedule a meeting of the Election Commission which requires eighteen hours notice pursuant to Section 4 of the Open Meetings Act, (MCLA 15.261 et seq.). A quorum of the Election Commission is required to certify the proposed ballot language. The Election Commission meeting must take place no later than August 25, 2004 to meet the Oakland County filing deadline of August 26, 2004. The Election Commission has the authority to disapprove the ballot language at which point City Council must reconsider the ballot language.

If you have any further questions or concerns, please contact the City Attorney's Office.

H-1 Research Regarding Advisory Ballot Question – Council Member Lambert

Resolution #2004-07-368
Moved by Lambert
Seconded by Howrylak

RESOLVED, That Troy City Council **DIRECTS** the City Attorney to research and draft ballot language for the Long Lake/Crooks Road/I-75 Interchange project that will allow voters to provide input on this project.

Yes: Eisenbacher, Howrylak, Lambert
No: Broomfield, Stine, Schilling, Beltramini

MOTION FAILED

TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney LGB
DATE: July 8, 2004
SUBJECT: Submitting ballot questions to the voters

In response to a recent inquiry from Councilmember Lambert, enclosed please find a memorandum that was previously submitted to City Council for the December 2, 2002 agenda. The memo addresses an inquiry about placing a question on the ballot.

Michigan law has long provided that only legislative actions are properly placed before the voters in an election. As early as 1919, in *Scovill v. City of Ypsilanti,*[1] the Michigan courts have prohibited a city council from "reliev(ing) itself of the duties imposed upon it by the fundamental law of the municipality." (p. 296) More recently, in *West v. Portage,*[2] the Court focused on the "historical meaning of the word referendum... because referendum, by definition, only has application to legislative action." The *West* Court reasoned that allowing initiative or referendums on administrative or executive matters could lead to a vote on "whether a particular secretary or clerk is to be hired or terminated, whether garbage is to be collected or Monday or Tuesday, and whether male municipal employees may wear shortsleeved shirts in summer time and female employees wear pantsuits at any time." The *West* Court went on to state "We recently had occasion to observe that 'for practical reasons, the people's power or right of referendum has usually been subjected to certain constitutional restrictions.' For reasons historical and practical and in implementation of the apparent intent of the Legislature, the rights of initiative and referendum under the home-rule act are limited to legislative measures."

In *Rollingwood Homeowners Corp. Inc. v. City of* Flint, [3] the Court adopted the *West* holding, and held that "There is nothing inherently legislative about a decision to acquire real estate." Similarly, In *Beach v. City of Saline,*[4] the Court precluded ballot questions on the City's decision to purchase land, holding that this was an administrative, as opposed to legislative, action. More recently in *Green Oak Township v. Munzel,*[5] the Court held that there was no authority to challenge a consent judgment through the referendum process. In *Green Oak* Township, the Court also rejected the equitable right of referendum theory, even where there is an alleged circumvention of a zoning ordinance, which is a legislative action subject to a right of referendum.

Under Michigan law, the right of referendum does not extend to administrative or executive decisions. The power is limited to legislative actions, which are usually defined as ordinances or resolutions. If you have any questions or concerns, please let me know.

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[1] 207 Mich. 288, 174 NW 139 (1919),
[2] 392 Mich. 458, 221 NW2d 303 (1974)
[3] 386 Mich. 258, 268, 191 NW2d 325 (1971)
[4] 101 Mich. App. 795, 300 NW2d 698 (1980)
[5] 255 Mich. App. 235, 661 NW2d 243 (2003)

City of Troy

TO: Mayor and Members of Troy City Council
FROM: John Szerlag, City Manager
John Lamerato, Assistant City Manager- Finance/Administration
Tonni L. Bartholomew, City Clerk
Lori Grigg Bluhm, City Attorney
DATE: November 26, 2002
SUBJECT: Initiatory/Referendary Petitions

In the City of Troy, there are only two mechanisms for voters to place an item on the ballot without action by City Council. The first mechanism is explicitly provided for in our Charter, in Section 5.11. Under this provision, voters can submit a petition, signed by not less than 10% of the registered electors of the City (approximately 5,500 signatures required), which can either challenge an existing ordinance (referendary petition) or seek to enact a new ordinance (initiatory petition). Last year, the Charter Revision Committee reviewed the issue of reducing the required amount of signatures in this provision, and recommended no action be taken at that time.

State law also allows for initiatory petitions to amend the City Charter. (MCL 117.21) Under this statute, voters can submit a petition for a Charter amendment, which must be signed by not less than 5% of the registered electors of the City (approximately 2,750 signatures).

City Council can also submit an ordinance change or a Charter amendment to the voters with a 3/5 vote of the members elect. If Council desires to submit an issue for the election, action should be taken as soon as possible to allow for the approval of the Attorney General's Office and the Governor's Office prior to the printing of the ballot. Last year, the City received many complaints about the late delivery of ballots, which was tied directly to time delays incurred in obtaining the required approvals of the ballot language. Therefore, it is our strong recommendation that any item for the April election be approved no later than the December 16, 2002 City Council meeting.

Although there have been some requests to submit advisory questions to the voters, the Michigan Attorney General has opined that governmental bodies should not be expending resources to place advisory questions on the ballots. (1983-1984 OAG, No. 6143; 1985-1986 OAG no. 6411).

If you have any questions concerning the above, please let us know.

G-11

Memorandum

To: John Szerlag, City Manager
From: John M. Lamerato, Assistant City Manager/Finance and Administration
Barbara A. Holmes, Deputy City Clerk
Date: August 19, 2004
Subject: State of Michigan Election Schedule for the Submittal of Ballot Language for Local Proposals for the General Election Scheduled for Tuesday, November 2, 2004

Attached is the *"Election Schedule for the November 2, 2004 State General Election"* established by the State of Michigan in accordance with State Election Law. Outlined in the schedule are deadlines relevant to the submittal of petitions and ballot language for local questions and/or local proposals. At this time, the schedule clearly specifies that the dates for submittal have past. Conservatively speaking, the entire process for submitting ballot language is approximately 10-12 weeks. During that time frame, specific ballot language must be drafted meeting specific state guidelines. The language must be approved by the local jurisdiction's governing body and its Election Commission, and then forwarded to the County Clerk within two days of its approval.

Therefore, in order to meet ballot language deadlines and insure that the additional deadlines for the election process are met in a timely manner, it is recommended that ballot language for local questions and/or local proposals be prepared no later than the candidate filing deadline. The candidate filing deadline for the General Election scheduled for Tuesday, November 2, 2004 election was Thursday, July 15, 2004.

In addition, note that the absentee ballots are scheduled for delivery from Oakland County on September 18, 2004. Any delays in the printing of ballots may delay the delivery of absent voter ballots.

ELECTION SCHEDULE FOR

11/02/2004 - GENERAL - STATE GENERAL ELECTION

07/15/2004 4:00:00 PM	By 4 p.m., candidates without party affiliation file qualifying petitions for the election. (168.590c)
07/19/2004 4:00:00 PM	By 4 p.m. candidates without party affiliation withdrawal deadline. (168.590c)
08/03/2004	Minor parties hold county caucuses; notify county clerk of nominated candidates within 1 business day after the caucus. (168.686a)
08/03/2004	Minor parties hold state conventions; notify Secretary of State of nominated candidates within 1 business day of the convention. (168.686a)
08/10/2004	Last date petitions to place county and local questions on the election ballot can be filed with county and local clerks. (168.646a)
08/11/2004	Beginning of the period for major political parties to hold fall county conventions. (168.592)
08/24/2004	Ballot wording of county and local proposals to be presented at the election certified to county and local clerks; local clerks receiving ballot wording forward to county clerk within two days. (168.646a)
08/28/2004	End of the period for major political parties to hold fall county conventions. (168.592)
09/03/2004	Candidates without party affiliation certified to the election ballot. (168.590f)
09/03/2004	Major political parties hold fall state conventions. (168.591)
09/03/2004	Deadline for changing polling places. (168.662)
09/18/2004	County clerk delivers absent voter ballots to the local clerk deadline (168.714)
09/23/2004	Election inspector appointments for election begin. (168.674)
09/24/2004	First notice of close of registration for the election is published. (168.498)
10/04/2004	Last day to register for the election. (168.498)
10/12/2004	Election inspector appointment for election end. (168.674)
10/17/2004	Close of books for Pre-General Campaign Statement. (169.233)
10/22/2004	Pre-General Campaign Statements filed. (169.233)
10/23/2004	First notice of the election is published. (168.653a)
10/28/2004	A public accuracy test must be conducted at least 5 days before the election. (Rule 168.778) Notice must be given 48 hours (2 days) before the public accuracy test. (168.641)
10/29/2004 4:00:00 PM	By 4 p.m. write-in candidates file Declaration of Intent forms. (168.737a)
10/30/2004 2:00:00 PM	By 2 p.m. electors who wish to receive an absentee ballot for the election by mail submit absent voter applications. (168.759)
11/01/2004 4:00:00 PM	Up to 4 p.m. electors qualified to obtain an absentee ballot for the election may vote in person in the clerk's office. (168.761)
11/02/2004	Up to 4 p.m. emergency absentee voting for the election. (168.759b)
11/02/2004	November General Election date. (168.641)
11/03/2004 1:00:00 PM	1 p.m. the board of county canvassers meet to iniate the canvass of the election. (168.821)
11/16/2004	Board of county canvassers complete canvass of election; county clerks forward results to Secretary of State within 24 hours. (168.822, 168.828)
11/22/2004	Board of State canvassers meet to initiate the canvass of the election. (168.842)
11/22/2004	Close of books for Post-General Campaign Statements. (169.233)
12/02/2004	Post General Campaign Statements filed. (169.233)

TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney LGB
DATE: July 8, 2004
SUBJECT: Submitting ballot questions to the voters

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G-11

August 18, 2004

TO: John Szerlag, City Manager

FROM: Laura Fitzpatrick, Assistant to the City Manager LF

SUBJECT: SIN Petitions

Attached is one page from the SIN petitions. A batch of these petitions was presented to the City Clerk by Richard Hughes at the August 9, 2004 City Council meeting. This is the petition that Mary Ann Bernardi references in her letter. She explained to me that the remainder of the petitions will be given to the City Council at the August 23, 2004 meeting.

Advisory Petition

R (1)

We the undersigned registered and qualiified voters of the City of Troy, County of Oakland, State of Michigan do hereby, by our signatures, petition our Mayor/Council allow us a vote on the approving the I-75 Long Lake Proposed Interchange, as soon as possible.

	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	POST OFFICE ZIP	DATE OF SIGNING Month	Day	Year
1	Richard Hughes	Richard Hughes	1321 Roger Ct	48083	6	7	04
2	Andrea Ann Zembrzuski	Andrea Ann Zembrzuski	2847 Shadywood	48098	6	7	04
3	[illegible]	STEVE VOILES	5330 ABINGTON	48085	6	7	04
4	Emil Kaczmar	EMIL G. KACZMAR	415 LANGE	48098	6	8	04
5	Helen Kaczmar	HELEN KACZMAR	415 LANGE	48098	6	8	04
6	Frank J. Hourylak	FRANK J. HOURYLAK	3035 Newport CT.	48084	6	8	04
7	Ira M Shamberger	IRA M SHAMBARGER	1151 Bradley	48085	6	8	04
8	Raymond H. Kuhn	RAYMOND H. KUHN	5165 Buckingham Place Dr.	48098	6	9	04
9	Patrick H. Caldwell	PATRICK H. CALDWELL	6430 VERNMOOR	48098-1845	6	18	04
10	Ivan R. Johnson	IVAN R. JOHNSON	6100 WINDRUSH	48098	6	18	04
11	Zoe R. Johnson	ZOE R. JOHNSON	6100 Windrush	48098	6	18	04
12	William Richards	WILLIAM D. RICHARDS	3750 BEACH RD	48084	6	18	04
13	Mary Ann Bernardi	Mary Ann Bernardi	384 Lawson Ct	48084	6	18	04
14	Joyce Manke	JOYCE ANNE MANKE	244 LESDALE	48085	6	24	04
15	Mike Sowers	Mike Sowers	7525 TOWNHILL RD	48084	6	24	04
16	Alice Najarian	ALICE NAJARIAN	3980 WHITFIELD	48098	6	21	04
17	Deborah Ann DeBacker	Deborah Ann DeBacker	1879 Knoll Ct	48098	6	30	04
18	[illegible]	James Tennell	5309 Wright	48098	6	30	04
19	Nancy Thomas	NANCY THOMAS	2291 W. WATTLES	48098	6	30	04
20	Michael J. Baron	MICHAEL J. BARON	5620 WRIGHT DR	48098	7	2	04

20 Signatures

Signatire of Circulator, and address Richard Hughes Richard Hughes **Date** 7-2-04

1321 Roger Ct Troy, Mi. 48083 689-2528 1-248