

COUNCIL REFERRALS

A)

City Management received a request from Council Members Howrylak and Lambert to reconsider Council Resolution #2004-07-368, which reads as follows:

RESOLVED, That City Council resolution 2004-07-368 is reconsidered:

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

Previous memoranda pertaining to this matter is enclosed.

On a related matter, an item under J-2 includes a letter dated September 8, 2004 from the Stop Interchange Now (SIN) Coalition requesting an advisory vote on the proposed I-75/Crooks/Long Lake Interchange project.



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Troy, Michigan 48084
Fax: (248) 524-0851
www.ci.troy.mi.us

Area code (248)

Assessing
524-3311

Bldg. Inspections
524-3344

Bldg. Operations
524-3368

City Clerk
524-3316

City Manager
524-3330

Community Affairs
524-1147

Engineering
524-3383

Finance
524-3411

Fire-Administration
524-3419

Human Resources
524-3339

Information Technology
619-7279

Law
524-3320

Library
524-3545

Parks & Recreation
524-3484

Planning
524-3364

Police-Administration
524-3443

Public Works
524-3370

Purchasing
524-3338

Real Estate & Development
524-3498

Treasurer
524-3334

General Information
524-3300

September 1, 2004

Linda Thielfoldt
646 E Long Lake Road
Troy, MI 48085

Dear Ms. Thielfoldt:

The Troy City Clerk's Office has reviewed the petitions filed by the SIN group at the Special City Council meeting on Monday, August 30, 2004. The petition forms are found to be insufficient, as they do not contain a sworn statement of the circulator on each page as required by both Michigan Election Law, MCL 168.544c, and the City of Troy Charter Section 5.11.

As directed by the Bureau of Elections, I have reviewed both the Troy City Charter and Michigan Election Law and am unable to find a provision, which allows for the placement of an advisory question on a ballot. Additionally, I have talked with Mr. Christopher Thomas, Director of the State of Michigan Bureau of Elections, and Ellen Halsey, Oakland County Director of Elections, and they have both informed me that we cannot place an advisory question on the ballot.

At this time I will file the petitions with the Special Council Meeting of August 30, 2004 documents and notify the City Council of the insufficiency of the petitions.

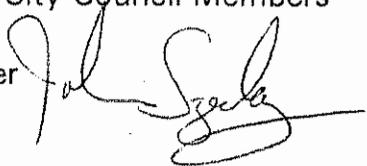
While I recognized the efforts extended by the SIN group, I am unable to forward this matter on for ballot placement.

Sincerely,

Tonni L. Bartholomew, MMC
City Clerk

CC: Troy City Council
John Szerlag, Troy City Manager
Lori Grigg-Bluhm, Troy City Attorney
Ellen Halsey, Oakland County Elections
Christopher Thomas, State of Michigan Bureau of Elections

May 27, 2004

TO: The Honorable Mayor and City Council Members
FROM: John Szerlag, City Manager 
SUBJECT: Call For Special Meeting

Council Members Lambert and Eisenbacher called for a special meeting of the Troy City Council for 7:30 p.m. on Monday, August 30, 2004 in the City Council Chamber to take action on agenda items carried over from the Regular City Council Meeting held on Monday, August 23, 2004.

An agenda for these remaining items will be distributed today. In addition, attached is supplemental information relative to the communication from Mrs. Mary Ann Bernardi requesting that City Council place the issue of the Proposed I-75/Crooks Road/Long Lake Interchange improvement project as an advisory ballot question for the November, 2004 election. Succinctly, all deadlines for the submittal of local ballot questions for the November general election have passed.

c: Tonni Bartholomew, City Clerk
Lori Bluhm, City Attorney
Peggy Clifton, Human Resources Director
Charles Craft, Chief of Police
John Lamerato, Assistant City Manager/Finance
William Nelson, Fire Chief
Doug Smith, Real Estate and Development Director
Steve Vandette, Acting Assistant City Manager/Services



TO: Mayor and Members of Troy City Council
FROM: John Szerlag, City Manager
John Lamerato, Assistant City Manager- Finance and Administration
Tonni Bartholomew, City Clerk
Lori Grigg Bluhm, City Attorney
DATE: August 25, 2004
SUBJECT: SIN Request for Ballot Question

On Tuesday, August 24, 2004 at approximately 4:00 pm, the City received a letter from the Stop Interchange Now Citizen's Coalition (SIN Coalition), alleging that the failure to convene a Special Meeting on Wednesday August 25, 2004 was a denial of due process. In response to the very unusual circumstance in having an early adjournment to the Monday, August 23, 2004 Regular City Council meeting, the following information is provided for your convenience.

On July 12, 2004, City Council failed a resolution requiring research and the drafting of ballot language for the Long Lake/ Crooks Road/ I-75 Interchange project (2004-07-368). Contained in the July 12, 2004 meeting packet were several items, including two memorandums from the City Attorney advising that only legislative issues should be submitted to the voters. In addition, the documents included in the August 23, 2004 City Council packet are also included for your convenience. These items are attached, and still reflect the recommendations and concerns of City Administration.

Prior to the August Primary Election, both the City Clerk and the City Attorney were contacted by a member of the SIN Coalition about petition circulation and other potential avenues for placing this issue before the voters. Although City Administration was able to respond to the questions concerning the election process and provided the statutory references, both the Clerk and the Attorney encouraged consultation with an attorney.

At the August 9, 2004 City Council meeting, a citizen presented copies of some petitions to City Council, which are held by the City Clerk. As of today's date, there have been no original petitions filed with the City Clerk, as required by State Statute (MCL 168.646a). However, on August 18, 2004, City Administration received a fax which stated:

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.

The statutory date for submittal of petitions for placement of local ballot questions on the November General Election was August 10, 2004, based on the state statute deadlines (MCL 168.646a(2)). It should be noted that as of the receipt of the fax, the statutory deadline had already passed.

However, with four affirmative votes (majority of the members elect, as required by City Charter, Section 5.6), City Council could have reconsidered the July 12, 2004 resolution (2004-07-368) and directed the attorney to draft proposed ballot language, affording time to meet the stringent requirements for ballot proposals, including but not limited to the 100 word limit and to assure neutrality of the proposed ballot language. This could have been done at the August 23, 2004 Regular City Council meeting. However, the ballot language would have to had been drafted AND approved by City Council on or before August 24, 2004 in order to meet the 70-day State Statutory filing deadline (MCL 168.646a(2)).

To date, the SIN Coalition has only referenced the submittal of petitions and not ballot language. The copies of the petitions in the Clerk's possession do not contain the required ballot language (MCL 168.646a), and do not otherwise meet the City Charter petition submittal requirements. (City Charter, Section 5.11)

At this time, all deadlines for the submittal of local ballot questions for the November General Election have passed.



Memorandum

To: Honorable Mayor and City Council
From: John Szerlag, City Manager *JS*
John M. Lamerato, Assistant City Manager/Finance and Administration *JML*
Barbara A. Holmes, Deputy City Clerk *BH*
Susan M. Lancaster, Assistant City Attorney *SL*
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 *LG*
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 on 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.

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)



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

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

Governor Jennifer M. Granholm
P.O. Box 30013
Lansing, Michigan 48909



Dear Governor Granholm:

The proposed new interchange at I-75 and Long Lake Road is a bad idea for Troy! It is not too late to stop this expensive and unwanted project. Because the mayor of Troy and a majority of Troy City Council members have disregarded the ongoing public outcry, **Stop Interchange Now!** (SIN) is launching a petition drive to put this issue to a public advisory vote on the November general election ballot.

SIN opposes this project for the following reasons:

- **Not necessary!** We already have an interchange just one-half mile north of Long Lake at Crooks Road.
- **Costs too much!** This project will cost the City of Troy \$2 million this year, and *at least* another \$13 million in future years. Estimated cost to the state is at least \$40 million!
- **Troy doesn't have the money!** The city administration admits that it will have to dip into reserves to pay for the project.
- **Tax hike!** Reserves won't be enough. An August 2003 memo from City Manager John Szerlag confirms that a tax increase will be necessary to cover costs for the project. Assistant City Manager John Lamerato recently disclosed that Troy citizens could face a tax increase within one year.
- **Increased traffic, congestion, noise and safety hazards!** The widening of Long Lake Road and the increased traffic will impact Long Lake Road and many nearby streets, creating increased congestion, noise and safety hazards.
- **Loss of green space!** If Troy is truly to become a "Cool City," then why did council cut \$500,000 from the parks budget while spending money on an unnecessary road project? This project will take away green space on the east side of I-75.
- **Troy City Council ignores the will of the people!** Why are Mayor Louise Schilling and Council members Jeanne Stine, Robin Beltramini, Cristina Broomfield and David Eisenbacher turning deaf ears to the voice of the people? The outcry against this project is long and loud! Perhaps you will heed the results of an advisory vote in November. It is the *people* that matter most, not the businesses in Northfield Hills! Councilmen Martin Howrylak and David Lambert should be commended for their opposition to this wasteful project.

Please urge M-DOT and the Michigan Legislature to stop this unnecessary and unwanted project. I am sure that the \$40 million it will cost the State of Michigan to build this interchange could be put to better use elsewhere in the state where the need for traffic improvements is much greater! I don't want to see my taxes go up, and I don't want more traffic and noise in Troy.

Respectfully,

Jim C. Angell, CIA

Address & Phone:

ANGELL & COMPANY, P.L.L.C.
3250 W. Big Beaver, Suite 139
Troy, MI 48084

248 649870

CC: GTV NE TR 1