FBT Gibbons

MEMORANDUM

To: Robyn Stewart, City Manager
Tom Lindsey, Law Director

From: Yaz Ashrawi
Thad Boggs

Date: October 20, 2026

Re: Analysis of Legal Issues Relative to Charter Amendment Ballot Issues and Colombo Letter

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The City of Worthington has four ballot issues in the upcoming general election related to the City's Charter. Three of these (Issues 35, 36, and 37) were recommended by the City's Charter Review Commission and placed on the ballot by City Council. The fourth, Issue 38, will be on the ballot as a result of a resident-initiated Charter amendment petition.

The City has published videos and written communications to inform the voters regarding the four ballot issues, including the Charter Review Commission's rationale for recommending Issues 35, 36, and 37 and the differences between Issues 36 and 38. Representatives of Our City Our Vote, which promoted Issue 38, have claimed the City's statements that Issue 38 could expand the types of Council actions that are submitted to referendum is false.

Issue 38's proposed Section 1.05 begins with the phrase "Notwithstanding any other provisions of this Charter the power of referendum on any ordinance or other measure passed by the Council may be exercised in the manner provided by the laws of the State of Ohio," before going on establish a new signature requirement.

The "notwithstanding any other provision of this Charter" language, when read with other provisions of the current Charter, creates such ambiguity to allow a fair inference that Issue 38 could expand, limit, or simply confuse the availability of referendum rights depending on the specific factual circumstances involved.

Potential expansion can be found by reviewing existing Sections 2.19 and 2.21. Section 2.19 of the Charter states "[o]rdinances raising revenue, those appropriating money for current operations, those directing an election or a question to the electorate, those authorizing annual tax levies, and those declared to be emergency ordinances . . . shall be effective upon passage and publication." Otherwise, ordinances shall take effect on the twentieth day following publication in order to provide an opportunity for circulation of referendum petitions.

If adopted, proposed Section 1.05 states that "ordinance or other measure" shall be subject to referendum, as provided by Ohio law, "[n]otwithstanding any other provision" of the Charter. But review of Section 731.30 of the Revised Code shows that its list of exceptions to referendum

is not co-extensive with Section 2.19 of the Charter. Indeed, Section 731.30 is also in tension with Charter Section 2.21, defining an "Ordinance Determining to Proceed" with public improvements as a necessary, referendum-able step in the public improvement authorization procedure in Worthington. If Section 1.05 is passed, do Charter Sections 2.19 and 2.21 still control? Or would Revised Code Section 731.30 now replace the voter approved language of Sections 2.19 and 2.21?

Section 2.16 of the Charter lists specific actions that must be taken by ordinance, and states the balance may be taken by resolution or motion. Resolutions and motions "may be adopted by a majority of a quorum" and "without notice or waiting period." Resolutions "take effect upon adoption or at such other time as the Council may provide." Under the current charter, a resolution would not be subject to referendum even if it involved legislative action. With proposed Section 1.05, it appears that legislative actions taken by resolution may now be subject to referendum under the laws of the State of Ohio contrary to the voter approved language of Section 2.16.

Based on our legal review, the accusations by Our City Our Vote that City representatives' statements about Issue 38 are "false" and "misinformation" are wrong themselves. At the very least, the City representatives' summation of Issue 38's effects represents a fair interpretation of the text read in relation to the rest of the Charter and Ohio law. The ambiguities created by proposed Section 1.05 are such that one could fairly characterize Section 1.05 as "expanding," "confusing," or "limiting" referendum rights depending on the factual questions involved.

Additionally, the Our City Our Vote representatives take issue with the City's dissemination of communications that Our City Our Vote subjectively characterizes as "advocacy". The City has home rule authority to communicate (and pay to communicate) its perspective on matters within its functions of governance, including promoting or opposing Charter amendment ballot issues. This was made abundantly clear by the U.S. Court of Appeals in the case of *Kidwell v. City of Union*, 462 F.3d 620 (6th Cir. 2006) which considered advocacy speech of an Ohio municipality, in the context of a tax levy. The Sixth Circuit noted that "expenditure of tax dollars by a governmental entity to advocate a position" had been held "perfectly constitutional" by the U.S. Supreme Court. *Id.* at 625, citing *Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550 (2005). The court stated that "a limit on government speech during elections would allow hecklers to silence the government on issues in which it has an interest and expertise—and on which citizens have an interest in hearing their government's perspective." *Id.*, citing *Ala. Libertarian Party v. City of Birmingham*, 694 F.Supp. 814, 817 (N.D. Ala. 1988).

In conclusion, the City's communications concerning the Charter amendment ballot issues, including Issue 38, are lawful and represent a fair characterization of Issue 38's proposed Section 1.05. The City has the prerogative to communicate its perspective of matters of local self-government, and within its governance functions, and Ohio law does not limit—and need not specifically bless—the City's exercise of a power of local self-government.