



February 12, 2016

Mayor Donald D. Lyons  
City Council Members

Dear Mayor Lyons and City Council Members:

Next meeting: None

The following report has been prepared to provide you with an update on current issues or projects in progress:

**Goerlich lot:**

The debris from demolition has been cleared and all equipment will be removed by the end of the day. The fencing will be removed today and Monday. City crews will be installing top soil once the weather breaks. DPS, Director, Jim Bradford, anticipates the contractor to continue grinding the rubble materials hauled to the property next to the fire station, to be complete in a couple of weeks.

**Airport Terminal Building**

A meeting was held with the architects for the Airport terminal building today. Much progress was made on the many details that are necessary so a complete bid package can be prepared. Follow up meetings have been scheduled so that we remain a course for construction to occur during the 2016 construction season. 95% of the project cost will be funded through MDOT aviation funding sources.

**Student Artwork on the Wayfinding Signs** – Nearly 100 Dowagiac students submitted original works of art vying for 12 spots on the City's wayfinding signs. Works of every type were submitted: geometrical designs, landscapes, portraits, and fanciful scenes. The art is at the printers for review. Nine members of the community are serving as the selection committee for the student artwork. I've seen the artwork and I can attest that this will be a very, very difficult decision for them to make.

**March 8, 2016 Ballot Question Regarding Charter Amendment Question**

Late last Friday afternoon a Federal Court placed an injunction on the law preventing local governments from sharing factual information with the public regarding ballot questions. A flyer has been produced that will be included with the utility bills that will be mailed soon. No additional postage is required for this information to be mailed.

The information is in a question and answer format and has been reviewed by the City's legal counsel for compliance with election law. Attached you will see the flyer and the legal opinion.

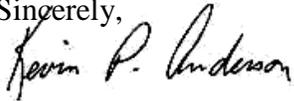
## **2015 Staff Reports**

Each year staff prepares a report of department activities that is shared with City Council. Those reports have been completed and during the next several Friday Letters highlights of these reports will be shared for further review. This week's highlight comes from Steve Arseneau's report on the museum.

**Dowagiac Area History Museum** - Overall, the Dowagiac Area History Museum had a positive year. The museum was an active partner in city events, hosted popular programs, had good walk-in attendance, served as the site of the Farm and Artisan Market and provided a volunteer environment for over thirty area residents. The renovation of the second floor was the museum's primary project throughout most of the year.

Looking ahead, the museum will implement a temporary exhibit schedule for the future to help spur additional interest in the museum from the community. The museum director and Museum Advisory Committee will complete a long-term strategic plan and are looking forward to the institution's future.

Sincerely,

A handwritten signature in black ink that reads "Kevin P. Anderson". The signature is written in a cursive style with a large initial 'K'.

Kevin P. Anderson  
City Manager



**Information Flyer**  
**City of Dowagiac Charter Amendment, March 8, 2016 Ballot**

The City Charter of Dowagiac defines every aspect of municipal government, what the city shall and shall not do and how it shall perform those duties.

**How long has Dowagiac had a Charter?**

- Dowagiac’s City Charter was approved by a vote of the people on November 3, 1964 and became effective April 12, 1965. In the last 50 years, technology and other efficiencies have dramatically streamlined the work place and State and federal laws have changed the legal landscape.

**Why is an amendment to the Dowagiac City Charter being proposed?**

- All of the City Clerk’s responsibilities are administrative in nature. The amendment is being proposed because the City Clerk is an elected position for which there are no minimum educational, work experience or skills requirements.
- The amendment proposes to appoint the City Clerk in a manner identical to the appointment of City Administrative Officers, as such officers are selected with reference to their qualifications for a position.
- An elected Clerk’s administrative responsibilities are independent of supervision and is responsible only to the electorate every four (4) years.
- By unanimous vote City Council requested that a proposed amendment be placed on the March 8, 2016 ballot, asking voters to decide whether future City Clerks should be elected or appointed.

**PROPOSED AMENDMENT TO THE  
DOWAGIAC CITY CHARTER TO  
CHANGE THE OFFICE OF CITY CLERK  
TO AN APPOINTED ADMINISTRATIVE  
OFFICE**

The Charter states that the City Clerk is elected to a 4 year term. The proposed amendment requires the City Manager, with Council approval, to appoint the Clerk and set compensation.

Shall Sections 4.1, 4.3, and 5.11 of the Charter be amended and a new Section 7.9A added to provide for appointment of the City Clerk, effective at the end of the current Clerk’s term of office or upon a vacancy in office, whichever occurs first?

A “Yes” vote is a vote in favor of the proposed amendment.

A “No” vote is a vote against the proposed amendment.

**YES** ←

**NO** ←

### **What does the City Clerk do?**

- The City Clerk has two primary duties:
  1. Serve as secretary to the city council.
    - a) Attend all city council meetings and keep an accurate record of those meetings.
    - b) State law and City Ordinance determine primary responsibilities.
  2. Conduct all elections.
    - a) Hire and train election workers, oversee the printing of ballots and count votes as necessary.
    - b) Election law determines how elections are conducted.

### **What happens to the current City Clerk if the proposed amendment passes?**

- If this resolution passes, the currently serving City Clerk will serve out the balance of the term, which is about 3 ½ years, after which the City Clerk will be appointed in the same manner as other department heads.

### **What happens if the proposed amendment does not pass?**

- If the resolution does not pass, the City Clerk will continue to be elected as defined by the existing charter language.

### **Will other amendments to the City Charter will be considered?**

- Not on the March 8, 2016 ballot. However, Council has expressed the intent to ask voters to consider additional potential Charter updates to the voters over the next several election cycles including the following:
  1. Should the City Treasurer be elected or appointed?
  2. Should the positions of Justice of the Peace be abolished?
  3. Should the positions of Supervisor be abolished?
  4. Should the positions of Constable be abolished?
  5. Should Dowagiac have its own local court system?
  6. State law prohibits a residency requirement for appointed staff members. Dowagiac's charter residency requirement should be made consistent with state law.
  7. The charter requires that certain boards must meet quarterly. That would seem to be excessive. Each board should be allowed to set a meeting schedule that it feels best suits its needs.
  8. Should the Library Board be abolished since the library is now a regional library independent from the City and has its own board?
  9. The charter requires an Electrical Facilities Board. Since the city no longer generates its own electricity and that electrical generating facility was taken down a number years ago, should that board be abolished?
- As an election approaches each question will be dealt with in detail and in enough time prior to the election to give each voter time to consider each proposal carefully

The following legal opinion on the informational flyer regarding the March 8, 2016 ballot question was received on Thursday, February 11 from Matt Derby, Attorney, Kotz Sangster Wysocki P.C.

Distribution of the proposed Information Flyer is subject to review for compliance with the Michigan Campaign Finance Act (MCFA).

The MCFA prohibits a public body, or an individual acting on its behalf, from using or authorizing the use of public funds or other resources to make an election contribution or expenditure. MCL 169.257(1). The words "contribution" and "expenditure" are defined to include anything of monetary value that is used to influence or assist the qualification, passage or defeat of a ballot question. MCL 169.204(1); 169.206(1). Under the MCFA, a communication is not treated as an expenditure unless it "support[ s] or oppose[ s] a ballot question or candidate by name or clear inference" or unless it contains "express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for governor,' 'vote against,' 'defeat,' or 'reject.'" MCL 169.206(2)(b), G).

In its current form, the MCFA prohibits a public body from using public funds or resources to direct communications about ballot questions to the affected electorate during the period 60 days before an election. MCL 169.257(3). The Section 57(3) prohibition, dubbed the "gag order," is the subject of pending litigation in the United States District Court-Eastern District of Michigan, as mentioned in your e-mail.

Finally, Section 47 of the MCFA requires that an election-related communication contain an identification of the party issuing the communication, if the communication references a clearly identified ballot question and is sent within 60 days before the election in which the ballot question appears on a ballot, where the communication is targeted at the relevant electorate before whom the ballot question will appear. MCL 169.247(5)(a).

Applying the above requirements, the Information Flyer is neutral and contains no language of support or opposition to the ballot issue, as defined in the MCFA. The ballot contains a factual statement of the issues involved. The stated reasons for the proposal factually report the reasons listed in the Council resolution that initiated the Charter amendment process, which culminated in the City Clerk ballot proposal. As such, it is our opinion that the Flyer does not constitute a contribution or expenditure by a public body prohibited by the MCFA.

As to the Section 57(3) prohibition, the Federal litigation mentioned above has produced a February 5, 2016 Preliminary Injunction that prohibits the State from enforcing Section 57(3). Thus, as you indicated, the 60 day communication ban is not currently enforceable and does not ban distribution of the Flyer at this point in time before the March 8 election.

Finally, the Section 47 identification requirement was not affected by the Federal Court Preliminary Injunction. Although Section 47 is plainly aimed at political action or other committees, the definitions of subject entities under the MCFA is sufficiently broad to cover a municipal corporation. Accordingly, the Flyer should state that the City of Dowagiac is paying for the Flyer. More specifically, a statement may be placed at the bottom of the second page of the Flyer in the same font as all other printing and state, "This Information Flyer is paid for by the City of Dowagiac."