



Zach Klein

CITY ATTORNEY

CITY ATTORNEY'S OFFICE • COLUMBUS OHIO

MEMORANDUM

TO: All Members of City Council
Andrea Blevins, City Clerk

FROM: Zach Klein, City Attorney *ZK/TC*

DATE: July 26, 2019

RE: Legal Sufficiency of Initiative Petition—"Clean Energy" (REVISED)

As required by the City Charter, I previously advised City Council regarding the initiative petition filed with the City Clerk on June 12, 2019 that is generally referred to as the "Clean Energy" petition. After noting that the lack of clarity in the petition limited my ability to render a definitive opinion, I concluded at that time that the petition appeared to be legally sufficient as to form for purposes of Section 42-9 of the City Charter. Following that memorandum and a report from the Franklin County Board of Elections that the petition met the valid signature requirement in Section 43 of the City Charter, City Council passed an ordinance finding the petition legally sufficient on July 15, 2019 (Ord. No. 2007-2019).

In the course of further review of the petition for City Council's consideration of whether to adopt the proposed ordinance or submit it to the Board of Elections for placement on the ballot, it was discovered that the version of the petition that had been reviewed by my Chief Counsel, and upon which the legal sufficiency review memorandum was based, was not the version that was filed with City Clerk on June 12, 2019, but rather a version previously filed in 2017. While identical in most respects to the 2017 version, the 2019 version was filed by a different petition committee, contains additional provisions in the body of the proposed ordinance, and most importantly for purposes of this memorandum, contains significant errors in the form of the petition that were not contained in the 2017 version.

Given that the legal sufficiency review memorandum previously provided to City Council was premised upon the Chief Counsel's review of the wrong petition, I am providing this revised memorandum so that City Council can have the benefit of this office's review of the correct petition and revised opinion on the petition's legal sufficiency.

Civil Division
77 N. Front Street
Columbus, Ohio 43215
614-645-7385
Fax 614-645-6949

Claims Division
77 N. Front Street
Columbus, Ohio 43215
614-645-7717
Fax 614-724-6503

Prosecutor Division
375 S. High Street
Columbus, Ohio 43215
614-645-7483
Fax 614-645-8902

Real Estate Division
77 N. Front Street
Columbus, Ohio 43215
614-645-7712
Fax 614-645-3913

Police Legal Advisor
120 Marconi Blvd.
Columbus, Ohio 43215
614-645-4530
Fax 614-645-4551

Section 42-2 of the City Charter contains the requirements as to form for an initiated ordinance petition. Section 42-2(e) provides: “The title of the proposal shall clearly and without argument describe the proposed ordinance, referendum, recall, or charter amendment, and such title shall be placed, in at least fourteen-point font, on the top of each page of a part-petition, which pages shall be numbered sequentially.” For the following reasons, the petition filed with the City Clerk on June 12, 2019 (copy attached) is not in compliance with Section 42-2(e):

- The title of the proposed ordinance as stated on the first page of the petition does not match the title on the top of each subsequent page. Specifically, the last provision of the title on the first page states: “to **waive** the competitive bidding provisions of the Columbus City Codes.” (Emphasis added.) The last provision of the title on all the subsequent pages of the petition states: “to **encourage** the competitive bidding provisions of the Columbus City Codes.” (Emphasis added.)
- Section 6 of the proposed ordinance states: “That it is **not** in the best interest of the City of Columbus to waive the competitive bidding provisions of the Columbus City Code Chapter 329 for the allocation of funds from the [sic] mentioned in sections 1, 2, and 3.” (Emphasis added.) Thus, neither the title on the first page nor the title on the subsequent pages clearly describes the proposed ordinance with respect to the issue of competitive bidding. And to the extent the title on the subsequent pages describes the proposal as “encourag[ing]” competitive bidding, it is inaccurate and misleading and/or argumentative.
- Section 11 of the proposed ordinance states: “That this Ordinance is declared to be an emergency measure and shall take effect and be in force from and after is [sic] passage.” Because neither of the titles used in the petition makes any reference to the proposed ordinance being declared an emergency measure, the effect of this omission is that the title does not accurately describe the proposed ordinance.

Section 42-11 of the City Charter provides, in pertinent part, that “[a]ny petition and any signatures upon the part-petitions thereof found to be sufficient as provided herein shall be presumed to be in all respects sufficient, **unless not later than forty-five days before the election, it shall be otherwise proven.**” (Emphasis added.) As noted above, City Council previously passed Ord. No. 2007-2019 finding the petition legally sufficient. However, the petition remains before City Council for further consideration, and City Council has not yet adopted the proposed ordinance or provided for the submission of such proposed ordinance in its original form to a vote of the electors of the city.

Based on the petition’s patent noncompliance with the form requirements of Section 42-2(e) of the City Charter, I am revising my previous memorandum to City Council as to legal sufficiency and advising City Council that the petition filed with the City Clerk on June 12, 2019 is **not** legally sufficient. Further, based on this noncompliance and in accordance with Section 42-11 of the City Charter, I am recommending that City Council repeal Ord. No. 2007-2019 and pass a new ordinance finding the petition not legally sufficient.

INITIATIVE PETITION

Columbus City Charter Sections 42 and 43,
Ohio Revised Code Sections 3501.38, 3503.06

NOTE: Prior to circulation of an initiative petition, a certified copy of the petition must be filed with the City Clerk.

NOTICE: Whoever knowingly signs this petition more than once; signs a name other than one's own on this petition, except as provided by general laws of the state; or signs this petition when not a qualified elector of the City of Columbus, is liable to prosecution

To the City Clerk of the city of Columbus, Ohio:

We, the undersigned, electors of the city of Columbus, Ohio respectfully request that the ordinance proposed herein be adopted by the Council or submitted to a vote of the electors of this city for their approval or rejection at the next regular municipal election to be held not less than 60 days nor more than 120 days thereafter;

The following is a full and correct copy of the title and text of the proposed Ordinance:

To authorize and direct the City Auditor to establish an Energy Conservation and Energy Efficiency Fund, a Clean Energy Education and Training Fund, a Minority Business Enterprise Clean Energy Development Fund and to transfer \$5,000,000 to each of these funds for a total of \$15,000,000 for the appropriate purposes; to establish a Columbus Clean Energy Partnership Fund and to authorize the expenditure of \$42,000,000 for the purpose of funding a electricity subsidy program for residents of the City of Columbus; to establish a transparency and accountability reporting requirement for the City Auditor for all uses of funds in section 1,2,3, and 4; to waive the competitive bidding provisions of the Columbus City Codes.

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF COLUMBUS:

SECTION 1. That the City Auditor is hereby authorized and directed to establish an Energy Conservation and Energy Efficiency Fund and to transfer \$5,000,000 (Five million dollars) from the City of Columbus General Operating Fund (Fund No. 1000) to the Energy Conservation and Energy Efficiency Fund. The purpose of the Energy Conservation and Energy Efficiency Fund is to promote and fund energy conservation and energy efficiency initiatives in the City of Columbus. City Council shall, by appropriate ordinance, provide for the use of the funds of the Energy Conservation and Energy Efficiency Fund, which shall be used for the purpose stated in this section and for no other purpose whatsoever.

SECTION 2. That the City Auditor is hereby authorized and directed to establish a Clean Energy Education and Training Fund and to transfer \$5,000,000 (Five million dollars) from the City of Columbus General Operating Fund (Fund No. 1000) to the Clean Energy Education and Training Fund. The purpose of the Clean Energy Education and Training Fund is to promote and fund Clean Energy Education and Training Fund initiatives in the City of Columbus. City Council shall, by appropriate ordinance, provide for the use of the funds of the Clean Energy Education and Training Fund, which shall be used for the purpose stated in this section and for no other purpose whatsoever.

To authorize and direct the City Auditor to establish an Energy Conservation and Energy Efficiency Fund, a Clean Energy Education and Training Fund, a Minority Business Enterprise Clean Energy Development Fund and to transfer \$5,000,000 to each of these funds for a total of \$15,000,000 for the appropriate purposes; to establish a Columbus Clean Energy Partnership Fund and to authorize the expenditure of \$42,000,000 for the purpose of funding a electricity subsidy program for residents of the City of Columbus; to establish a transparency and accountability reporting requirement for the City Auditor for all uses of funds in section 1,2,3, and 4; to encourage the competitive bidding provisions of the Columbus City Codes.

NOTICE: Whoever knowingly signs this petition more than once; signs a name other than one's own on this petition, except as provided by general laws of the state; or signs this petition when not a qualified elector of the City of Columbus, is liable to prosecution.

SECTION 3. That the City Auditor is hereby authorized and directed to establish a Minority Business Enterprise Clean Energy Development Fund and to transfer \$5,000,000 (Five million dollars) from the City of Columbus General Operating Fund (Fund No. 1000) to the Minority Business Enterprise Clean Energy Development Fund. The purpose of the Minority Business Enterprise Clean Energy Development Fund is to promote and fund Minority Business Enterprise Clean Energy Development Fund initiatives in the City of Columbus. City Council shall, by appropriate ordinance, provide for the use of the funds of the Minority Business Enterprise Clean Energy Development Fund, which shall be used for the purpose stated in this section and for no other purpose whatsoever.

SECTION 4. That the City Auditor is hereby authorized and directed to establish a Columbus Clean Energy Partnership Fund and to transfer \$42,000,000 (Forty-two million dollars) from the City of Columbus General Operating Fund (Fund No. 1000) to the entity designated by the committee of petitioners filing this petition, which may include the New York Green Bank, 1359 Broadway, 19th Floor, New York, NY 10018-7842 or the Ohio Energy Initiative Commission, 4499 Easton Way, Columbus, OH 43219, or any other entity designated by the committee of petitioners filing this petition. The City Auditor, in consultation with the City Attorney, is hereby directed to negotiate and enter into an agreement, subject to the approval of City Council, with the entity designated by the committee of petitioners filing this petition to provide for the use and management of the funds from the Columbus Clean Energy Partnership Fund, the terms of which shall be commercially reasonable in all respects and shall further the purpose of offsetting the cost of electricity for Columbus electricity customers with a subsidy from the Columbus Clean Energy Partnership Fund.

SECTION 5. That the Director of Public Utilities is hereby authorized and directed to determine a uniform monthly subsidy and to use funds from the Columbus Clean Energy Partnership Fund to distribute said subsidy to all Columbus electricity customers; that the Director of Public Utilities is hereby authorized to use a portion of the funds from the Columbus Clean Energy Partnership Fund to pay for the administration and cost for distribution of the aforementioned subsidy in this section. The purpose of the Columbus Clean Energy Partnership Fund is to offset the cost of electricity for Columbus electricity customers with a subsidy from the Columbus Clean Energy Partnership Fund.

SECTION 6. That it is not in the best interest of the City of Columbus to waive the competitive bidding provisions of Columbus City Code Chapter 329 for the allocation of funds from the mentioned in sections 1, 2, and 3.

To authorize and direct the City Auditor to establish an Energy Conservation and Energy Efficiency Fund, a Clean Energy Education and Training Fund, a Minority Business Enterprise Clean Energy Development Fund and to transfer \$5,000,000 to each of these funds for a total of \$15,000,000 for the appropriate purposes; to establish a Columbus Clean Energy Partnership Fund and to authorize the expenditure of \$42,000,000 for the purpose of funding a electricity subsidy program for residents of the City of Columbus; to establish a transparency and accountability reporting requirement for the City Auditor for all uses of funds in section 1,2,3, and 4; to encourage the competitive bidding provisions of the Columbus City Codes.

NOTICE: Whoever knowingly signs this petition more than once; signs a name other than one's own on this petition, except as provided by general laws of the state; or signs this petition when not a qualified elector of the City of Columbus, is liable to prosecution.

SECTION 7. That the funds necessary to carry out the purpose of this ordinance are hereby deemed appropriated, and the City Auditor shall establish such accounting codes as necessary.

SECTION 8. That the City Auditor is authorized to make any accounting changes to revise the funding source for all contracts or contract modifications associated with this ordinance.

SECTION 9. That the City Auditor is directed to publish a Quarterly Transparency and Accountability Report of the uses of all funds from the expenditures of this ordinance until all funds have been exhausted.

SECTION 10. That the City Auditor is hereby authorized to transfer any portion balance of the funds mentioned in sections 1, 2, 3, and 4 for the purposes mentioned in those sections, to any appropriate project account, upon request of the Council of the City of Columbus.

SECTION 11. That this Ordinance is declared to be an emergency measure and shall take effect and be in force from and after is passage.


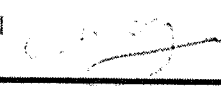



We hereby designate the following petitioners as a committee to be regarded as filing this petition.

COMMITTEE OF NOT LESS THAN FIVE PETITIONERS	ADDRESS
Christina L. Gonzaga	945 Lynbrook Road, Columbus Ohio 43235
Tyrone Spence	529 Sawyer Boulevard, Columbus Ohio 43203
Udell Hollins	3032 Melville Street, Columbus Ohio 43219
Dolores A. Williams	1515 Franklin Park, Apartment F4, Columbus Ohio 43205
Irene Gil Llamas	91 Hamilton Park, Columbus Ohio 43203
Jabarisidiki Gregg	23 S Monroe Ave, Apartment 5, Columbus Ohio 43205
Charles Dickerson	947 Kelton Ave, Columbus Ohio 43206

To authorize and direct the City Auditor to establish an Energy Conservation and Energy Efficiency Fund, a Clean Energy Education and Training Fund, a Minority Business Enterprise Clean Energy Development Fund and to transfer \$5,000,000 to each of these funds for a total of \$15,000,000 for the appropriate purposes; to establish a Columbus Clean Energy Partnership Fund and to authorize the expenditure of \$42,000,000 for the purpose of funding a electricity subsidy program for residents of the City of Columbus; to establish a transparency and accountability reporting requirement for the City Auditor for all uses of funds in section 1,2,3, and 4; to encourage the competitive bidding provisions of the Columbus City Codes.

NOTICE: Whoever knowingly signs this petition more than once; signs a name other than one's own on this petition, except as provided by general laws of the state; or signs this petition when not a qualified elector of the City of Columbus, is liable to prosecution.

Signatures on this petition must be from only one county and must be written in ink.

1. Signature 		Print First Name Lauren	Initial
		Print Last Name Carlson	
Address on file with the Board of Election (i.e. W - West) and Street (i.e. Ave - Avenue) 35 Northmoor Pl.			
City Columbus	Ward/Precinct	Zip Code 43214	County Franklin
		Date of Signing 3/18/19	
2. Signature 		Print First Name Christopher	Initial CG
		Print Last Name Greathouse	
Address on file with the Board of Election (i.e. W - West) and Street (i.e. Ave - Avenue) 232 W. Pacemont Rd			
City Columbus	Ward/Precinct	Zip Code 43202	County Franklin
		Date of Signing 3/18/19	
3. Signature 		Print First Name CHARLES	Initial
		Print Last Name SMITH	
Address on file with the Board of Election (i.e. W - West) and Street (i.e. Ave - Avenue) 121 INDIAN SPRINGS			
City Columbus	Ward/Precinct	Zip Code 43214	County Franklin
		Date of Signing 3/20/19	
4. Signature 		Print First Name Penny D Winkle	Initial PDW
		Print Last Name Winkle	
Address on file with the Board of Election (i.e. W - West) and Street (i.e. Ave - Avenue) 256 Monrose Way			
City Columbus	Ward/Precinct	Zip Code 43214	County Franklin
		Date of Signing 3/20/19	
5. Signature 		Print First Name CHARLES	Initial R
		Print Last Name ZALAC	
Address on file with the Board of Election (i.e. W - West) and Street (i.e. Ave - Avenue) 256 Monrose Way			
City Columbus	Ward/Precinct	Zip Code 43214	County FRANKLIN
		Date of Signing 3/20/19	