



LAW OFFICES

ADKISON, NEED, ALLEN, & RENTROP

PROFESSIONAL LIMITED LIABILITY COMPANY

KELLY A. ALLEN
JESSICA A. HALLMARK
JOHN W. KUMMER
GREGORY K. NEED
G. HANS RENTROP
CHRISTOPHER J. TOWER

39572 Woodward, Suite 222
Bloomfield Hills, Michigan 48304
Telephone (248) 540-7400
Facsimile (248) 540-7401
www.ANAfirm.com

OF COUNSEL:
PHILLIP G. ADKISON
KEVIN M. CHUDLER
GARY R. RENTROP
KATHERINE A. TOMASIK

September 16, 2024

City Council
City of Dexter
3515 Broad Street
Dexter, Michigan 48130

Re: Friends of Mill Creek Park

Dear City of Dexter Council Members:

This office represents the Friends of Mill Creek Park and writes regarding the proposed amendment to the City Charter on the ballot at the November 5, 2024 general election.

As you know, the Charter amendment would require certain described City-owned land to be retained in public ownership in perpetuity and devoted to only active and/or passive recreation uses. I have been advised that some of that land currently houses the Dexter Area Fire Department's main fire station and that the City is actively pursuing reconstruction of the fire station on lands that would be preserved for only active and/or passive recreation uses. In our opinion, passage of the proposed Charter amendment and the related expansion of Mill Creek Park would require the relocation of the fire station, as that use would no longer be permissible because it is not an active and/or passive recreation use.

The City has been aware of the potential limitations of this land since at least May 2, 2023, when it received the charter amendment petition. It has continued to act in bad faith to delay a vote on the charter amendment, including voting against putting it on the ballot before November 5, 2024, and delaying submitting the charter amendment language to the Michigan Attorney General in time to allow consideration at an earlier election. The City has had more than adequate time to prepare and make contingency plans and should have understood the risk with dedicating resources to a project at this location.

Please be advised that, if the Charter amendment passes, the Friends of Mill Creek Park will demand that the fire station be relocated, and reserves the right to take whatever legal actions are necessary to require the City to do so.

Please feel free to contact me if you wish to discuss.

Very truly yours,

ADKISON, NEED, ALLEN, & RENTROP, PLLC



Gregory K. Need

/mms

CITY OF DEXTER

Charter Amendment Proposal Information

- NOVEMBER 5, 2024 BALLOT -

Below is information related to the charter amendment ballot question that can be found on the November 5th general election ballot.

1 What does the ballot question look like?

The current ballot proposal on the November 2024 General Election is a citizen-initiated Charter amendment proposal. The proposal was submitted by a group formed under the name "Friends of Mill Creek Park." The language on the ballot reads:

A proposal to amend the Dexter City Charter to insert language related to City-owned land bounded by Alpine Street, Main Street, Mill Creek, and the Railroad.

Shall the Dexter City Charter be amended to insert language relating to the City-owned land bounded by Alpine Street, Main Street, Mill Creek, and the railroad to retain the land in public ownership, in perpetuity, and devote the land to active recreation, passive recreation, or both?

[Yes]

[No]

2 Why am I receiving this educational mailer?

At its September 23, 2024 meeting, City Council directed staff to prepare an educational mailer regarding the citizen-initiated Charter amendment proposal (the Proposal) regarding the City-owned land referred to in the Proposal. The City is not allowed to encourage citizens to vote for or against the Proposal, but the City can provide factual information related to it. Most of the information presented below comes from past meeting minutes and actions taken by Council since August 2022 when the Council decided to ask the citizens to vote on a public safety millage at the November 2022 general election in the amount of \$8,423,890. That public safety facility millage was approved. This educational mailer presents information about the citizen-initiative proposal and a chronology of events since November, 2022.

3 How might the decision to amend the Charter impact the public safety facilities project?

The City Council received a letter on September 19, 2024 from an attorney representing the Friends of Mill Creek Park stating that “if the Charter amendment passes, the Friends of the Mill Creek Park will demand that the fire station be relocated, and reserves the right to take whatever legal actions are necessary to require the City to do so.” The letter from the attorney demonstrates that the intent of the Friends of Mill Creek Park is to limit the uses on the City property to only active or passive recreation, and that the City could face legal action seeking to force the City to relocate the fire station away from 8140 Main Street.

The proposed ballot language does not include the word “only” when referring to active or passive recreation that would be allowed on the City land, and does not mention the fire station at all. Because the letter from the attorney creates questions over what might happen if the Proposal passes, the City is providing information in order to educate citizens about what the impact might be.

If the Proposal does not pass, the Charter remains the same and the current plan to proceed with the fire station at 8140 Main Street will continue to move forward and the funds approved by the citizens will be spent to improve the City’s public safety facilities (i.e. new fire station and new sheriff’s office).

If the Proposal passes, and the Friends of Mill Creek Park decide to pursue legal action, the City is likely going to defend any challenge regarding the use of the City property and whether the approved ballot language is actually enforceable.

Fire stations are permitted uses under the Zoning Ordinance in the Central Business District (CBD) zoning designation. The City property described in the Proposal contains property zoned CBD and Public Facilities.

The Michigan Court of Appeals has ruled that a voter-enacted initiative to amend a city charter, whose practical effect is to amend the zoning ordinance, is invalid unless it complied with the procedural requirements of the Michigan Zoning Enabling Act. *Save Our Downtown v City of Traverse City*, 343 Mich App 523, 539 (2022); cert denied 512 Mich 908 (2023). The Friends of Mill Creek Park voter initiative limits the type of land uses permissible at 8140 Main Street just like the Zoning Ordinance, but it did not comply with the procedural requirements of the Michigan Zoning Enabling Act. If the Friends of Mill Creek Park sue, the City will likely rely on this case to defend, and seek to continue with the construction of the fire station at 8140 Main Street.

If the Proposal passes and construction activity then stops, the City will continue to incur costs under the contracts with the architect and construction manager. As one example, if the City terminates the contract with its Construction Manager, Cunningham-Limp, the City will still pay for work completed; costs incurred because of the termination (such as costs attributable to termination or re-assignment of subcontracts), which costs are unknown; and a termination fee of 3.6% of the balance of the entire contract, which termination fee as of September 23, 2024, would be \$121,906.00. Stopping the project will likely waste those funds.

4 Timeline of Events Relating to Decisions & Activity for the Charter Amendment Petition & Bond-Funded Public Safety Facilities Project

For general background, 8140 Main Street has been occupied by the Dexter Area Fire Department (DAFD) since the creation of the DAFD via Interlocal Agreement with Dexter Township and Webster Township in 1985. The existing lease between the Village of Dexter (now City of Dexter) and the DAFD States that the lease terminates when the DAFD ceases to exist or when the City of Dexter is no longer a member of the DAFD.

8/8/22 - City Council voted to approve the City of Dexter Resolution Submitting Bond Proposal for Public Safety Facilities for \$8,423,890. This approval directed staff to place a ballot proposal before the voters on the November 8, 2022 General Election related to a bond for public safety facilities.

10/13/22 - City Council held a public work session to answer questions regarding the City's bond proposal to fund public safety facilities.

11/8/22 - At the November 8, 2022 General Election, the citizens of the City of Dexter approved the following ballot proposal for bond issuance:

“Shall the City of Dexter, County of Washtenaw, Michigan, borrow the principal sum of not to exceed Eight Million Four Hundred Twenty-Three Thousand Eight Hundred Ninety Dollars (\$8,423,890) and issue its general obligation unlimited tax bonds, payable over a period not to exceed twenty (20) years from date of issuance, for the purpose of paying the cost of acquiring, designing, renovating and/or constructing public safety facilities in the City, which facilities may be used by the Dexter Area Fire Department and the Washtenaw County Sheriff's Office, including: site acquisition; design; related site improvements; and furnishing and equipping the facilities, including all appurtenances and attachments thereto? The estimated millage to be levied in 2023 is 2 mills (\$2 per \$1,000 of taxable value) and the estimated simple average annual millage rate required to retire the bonds is 2 mills (\$2 per \$1,000 of taxable value).

2/13/23 - A motion was introduced, then postponed, to “designate the current fire station location at 8140 Main Street as the continuing site of the fire station in the City of Dexter and directs staff and consultants to proceed with the renovation and enhancement of the current station at 8140 Main Street.”

2/16/23 - The Friends of the Mill Creek Park organization is formed by Council Member Michels and Council Member Griffin.

2/27/23 - City Council adopted a Resolution Authorizing Issuance of 2023 Unlimited Tax General Obligation Bonds in an amount of \$8,423,890 in accordance with the voter approved Public Safety Facilities Bond Proposal.

3/13/23 - City Council approved a proposal for architectural design services from Partners in Architecture not to exceed \$35,000.

3/13/23 - Council Member Semifero requested an amendment to the Resolution Authorizing Issuance of 2023 Unlimited Tax General Obligation Bonds to add language regarding applying addresses (8140 Main Street, 3515 Broad Street, and 3600 Central Street) to the bond resolution for the use of bond funds.

Timeline (continued)

3/27/23 - Council Member Aldag informed City Council of a potential petition effort by Friends of Mill Creek Park.

4/24/23 - City Council discussed the Friends of Mill Creek Park potential petition effort.

4/24/23 - City Council adopted an amended Resolution Authorizing Issuance of 2023 Unlimited Tax General Obligation Bonds for \$8,423,890, adding that bond funds may only be used at 8140 Main Street; 3515 Broad Street; and 3600 Central Street. The amended resolution as adopted on April 24, 2023 was filed with the City's bond counsel and published with the sale of \$8,423,890 in bonds.

5/2/23 - Friends of Mill Creek Park filed the Proposal with City Clerk, although the language was not in the form of a question, which is required by Michigan election law for placement on a ballot. After petition signatures were verified, City Council became statutorily required to adopt ballot language.

5/2/23 - Friends of Mill Creek Park Statement of Organization is amended such that two non-Council Members are assigned as organizers.

6/26/23 - City Council approved a motion to select Cunningham-Limp as the Public Safety Facilities Construction Manager.

8/28/23 - City Council voted to postpone consideration of the Proposal's language to the first regular meeting in December 2023.

10/23/23 - City Council approved a motion to enter into a contract with Partners in Architecture for Architectural and Engineering Design for Public Safety Facilities.

12/11/23 - At a City Council meeting, a motion was made to approve a resolution to adopt the draft ballot language related to the Friends of Mill Creek Park Charter amendment, but the motion failed due to the lack of a second person supporting the motion.

12/27/23 - City Council approved a motion to designate the permanent placement of Sheriff's Office facilities at 3515 Broad Street as part of the public safety facilities project.

2/12/24 - City Council approved a motion to enter into a contract with Cunningham-Limp for Construction Manager Services.

2/26/24 - City Council approved a resolution to adopt Charter amendment ballot proposal language and instructed staff to submit it to the Michigan Attorney General and Governor no sooner than May 14, 2024.

5/23/24 - The ballot proposal package was submitted to the Governor's Office and the Attorney General's Office consistent with Michigan election law.

Timeline (Continued)

6/10/24 and 8/12/24 - City Council has approved amendments to the Guaranteed Maximum Price (GMP) contract with Cunningham-Limp in an amount of \$3,386,278 associated with the following items:

- 6/10/24 - Construction of temporary facilities for the Dexter Area Fire Department and permanent facilities for the Washtenaw County Sheriff's Office at City Hall, 3515 Broad St. for a GMP of \$547,206
- 8/12/24 - Building demolition, asbestos abatement, earthwork, utilities, retaining walls, and ram piers for a GMP of \$2,839,072.

9/19/24 - The City of Dexter received the letter, dated September 16, 2024, addressed to City Council from an attorney representing the Friends of Mill Creek Park stating:

- That if the Charter amendment passes, the Friends of Mill Creek Park will demand that the fire station be relocated, and it reserves the right to take whatever legal actions are necessary to require the City to do so.
- That the City acted in bad faith by delaying placing the Friends of Mill Creek Park initiative on the ballot until November 5, 2024.
- That the City acted in bad faith by delaying submitting the Charter amendment language to the Michigan Attorney General to allow consideration of the initiative at an earlier election.

5 Has the City of Dexter followed the required process for placing the Proposal question on the ballot?

The City met all statutory time requirements under Michigan election law in processing the initiative, and November 5, 2024 was the first date, under Michigan election law, that the initiative could have been placed on a ballot.

Citizens that have questions regarding this information may contact the City Manager or any member of City Council.