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To: Marguerite I. Harkness  
Right to Vote Committee

From: Donald J. McTigue, Esq. 

Re: Legal Opinion as meaning of “approved by a majority vote of the electors of the City of Lakewood at a general election”

Date: September 21, 2015

You have requested a legal opinion as to whether the phrase “until such ordinance is approved by a majority vote of the electors of the City of Lakewood,” as used in a proposed Lakewood City Charter amendment, means a majority of all electors of the city or a majority of the electors voting on the ordinance? It is my legal opinion that the language means a majority of electors actually voting on the ballot question.

The language used in the charter amendment is not vague or uncertain. It requires a majority vote “of electors” of the city “at a general election.” Those electors who choose not to vote at the election are not electors at the election. They are simply electors, meaning they have the qualifications to vote. See, Revised Code 3501.01(N). For this reason, the language is clearly referring to electors at the election, meaning those casting votes, not simply to electors. Further, even if the phrase could be subject to more than one valid construction, rules of construction used by the courts would decidedly resolve the question in favor of the more reasonable interpretation that the phrase means a majority of those electors who actually voted.

It is well established that election laws are to be liberally construed when subject to more than one valid interpretation. See, *State ex rel. Colvin v. Brunner*, 120 Ohio St. 3d 110, 122-123 (Ohio 2008). Statutory rules of construction also provide guidance, including that in construing language, it is presumed that a reasonable result and a result feasible of execution is intended, and that all language used is intended to have effect. See, Revised Code 1.47. This criteria supports the construction that the amendment is referring to the electors at the election, not all electors which would include those not voting at the election.

In Ohio we have the opportunity to vote on many issues at the local level and the default criterion for passage is a majority of the votes cast. Otherwise, those persons who choose not to exercise their right, could control the outcome of the election by staying home. If only half of the registered voters cast ballots (not an unusual scenario today), then the ordinance would not be approved even if 100% of those casting votes all voted to approve the ordinance, effectively disenfranchising all voters who cast votes. This would pose serious First Amendment issues. It

is also antithetical to the American concept of democratic majority rule, which is based on a majority of those who choose to participate. Indeed, the irony of the alternative interpretation is that it sets a higher threshold to approve an ordinance than is required to approve to amend the Charter, the fundamental governing document of the City. See, Ohio Const. Art. XVIII, sec. 9. It is also inconsistent with state law with respect to the vote necessary to approve a municipal ordinance at referendum elections on other city ordinances. See, Revised Code 731.29. Further, requiring a majority of all electors to be necessary for approval of the ordinance would be impractical to impossible in implementation. While it is possible to know how many persons are registered as electors at a given time, many of these persons may no longer be electors of the City due to having moved without changing their voter registration. Therefore, it would not be possible to determine how many electors of the City there are at the time of the election without contacting each registered elector who did not vote to determine if they are still qualified electors of the city. Being registered to vote and being an elector are not the same thing. These arguments demonstrate that an interpretation that the language requires approval by a majority of all electors is not intended because it produces an unreasonable result and one that is not feasible of execution. It also fails to give effect to the words of the proposed amendment “at a general election” that qualify the words “majority vote of the electors.”

For all of the above reasons, it is my legal opinion that the phrase “until such ordinance is approved by a majority vote of the electors of the City of Lakewood at a general election,” as used in the proposed Lakewood City Charter amendment, means a majority of all voters voting on the ordinance.