




COUNTY of LUZERNE
P E N N S Y L V A N I A
ESTABLISHED 1786

MEMO

TO: Tim McGinley, Council Chair
FROM: Shannon Crake Lapsansky, Esq. 
DATE: August 8, 2019
RE: Proposed Ordinance to Amend Administrative Code

This memo is in response to a proposed Ordinance to amend the Luzerne County Administrative Code at Section 2.07. Section 2.07 of the Luzerne County Administrative Code specifically deals with the advertisement requirements when filling vacancies in elected offices. The proposed amendment to the Administrative Code seeks to amend the advertisement requirements by adding an additional qualification/prohibition for potential applicants for a vacancy on Luzerne County Council. The proposed amendments (in bold) read:

“C. The aforesaid advertisement notice shall include a statement of the qualifications enumerated by the Charter, **Administrative Code and County Ordinances**, and a date for application to be received by County Council.

D. The statement of qualifications must include a provision which prohibits any person, which is currently a Certified Candidate by the Luzerne County Board of Elections, for the vacant Elected Office, from applying for the Vacant Elected Position by Luzerne County Council.”

The qualifications and prohibitions for holding the elected office of County Council (as well as other elected offices) are clearly set forth in the Home Rule Charter. Section 2.07.A. of the Administrative Code states “County Council shall fill vacancies in elected offices pursuant to Section 11.05 and 11.06 of the Luzerne County Charter.”

Section 11.05.G. of the Luzerne County Home Rule Charter states “Any person appointed to fill a vacancy on County Council or in the office of Controller or District Attorney shall possess the qualifications set forth in this Charter...”. Section 11.05.G. goes on to set forth qualifications related to political party affiliations.

Section 11.05.E., although not specifically related to this situation, also makes reference to County Council, the Controller and the District Attorney possessing “qualifications prescribed by this Charter...”.

Additionally, qualifications and prohibitions specifically related to the elected office of County Council are set forth in Sections 2.02 through 2.04 of the Home Rule Charter.

More importantly, with respect to the specific language of the proposed amendment, language prohibiting an individual from being appointed to a vacant County Council seat when that individual is candidate on the ballot for County Council also directly conflicts with the Home Rule Charter at Section 2.03.C. which reads:

“No member of County Council shall be eligible to be elected or appointed to serve in all or part of more than three consecutive terms.”

By that language, the drafters of Charter, in instituting term limits, clearly envisioned and did not prohibit the possibility of an individual being appointed to fill a vacancy on County Council and then consecutively serving two elected terms as a Council Member. As the Home Rule Charter at Section 2.03.C. allows for an individual to be appointed to fill a vacancy and then immediately serve no more than two subsequent consecutive terms, the proposed amendment to the Administrative Code cannot lawfully prohibit a candidate on the ballot for County Council from being appointed to fill a vacant County Council seat. The concept behind the proposed amendment to the Administrative Code is most appropriately addressed at Sections 2.02 through 2.04 of the Home Rule Charter (or at Section 11.05 if it is to be a provision common to all elected offices).

In summary, although likely well-intentioned, placing a qualification/prohibition on eligibility for a vacant County Council seat in the Section of the Administrative Code dealing with notice and advertisement is inappropriate and in contradiction of the Charter. In addition to the cited language at section 2.03.C., multiple sections of the Home Rule Charter indicate that elected office holders or applicants to fill vacancies in elected officers “shall possess qualifications set forth in the Charter.” If there is to be a change in the qualifications/prohibitions for holding the elected offices of County Council, Controller or District Attorney, a question must be placed on the ballot for the electors of Luzerne County to vote to amend the appropriate section(s) of the Home Rule Charter in that regard. To allow County Council to change the qualifications and/or prohibitions for elected office by merely passing an Ordinance would give Council the ability to easily change the qualifications and/or prohibitions for elected office any time Council is faced with a political situation they do not like or to either prohibit an applicant/candidate they do not like from obtaining an appointment on County Council or conversely providing additional support to an applicant/candidate that is favored.

Section 2.07 - Filling Vacancies in Elected Offices.

- A. County Council shall fill vacancies in elected offices pursuant to Section 11.05 and 11.06 of the Luzerne County Charter.
- B. Upon notification of a vacancy in elected offices, County Council shall seek applications by placing a notice in at least one newspaper of general circulation by distributing a notice to all relevant professional organizations, by publication on the County website, and by complying with the process in Section 7.05 of the Luzerne County Charter.
- C. The aforesaid advertisement notice shall include a statement of the qualifications enumerated by the Charter and a date for applications to be received by County Council.

Section 2.08 - County Council Investigations and Inquiries.

- A. The County Council shall have the power by resolution adopted by a majority plus one of the seated members to authorize inquiries and investigations to be conducted by the entire body or by any of its committees in aid of its legislative powers.
- B. The County Council shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents and other evidence at any meeting of County Council or any of its committees. All subpoenas shall be issued in the name of the County and shall be signed by Chair of County Council or the chair of the applicable committee.
- C. The Chair of County Council, the chair of any of its committees, or the County Council Clerk shall have the power to administer oaths to witnesses.
- D. All inquiries and investigations conducted by County Council or any of its committees shall be open to the public unless otherwise provided by applicable law or unless a majority of County Council or its committee conducting the inquiry or investigation determines that an executive session is required.
- E. Any witness or other person appearing before County Council or any of its committees may be represented by legal counsel. Any person whose actions or conduct is the subject of any inquiry or investigation shall be given the opportunity to appear before County Council or any of its committees with or without legal counsel to respond to charges or criticisms made during the inquiry or investigation.
- F. The conduct of proceedings at County Council inquiries and investigations shall be subject to such rules as the majority of County Council members may prescribe. Any and all costs associated with any County Council inquiry or investigation shall

- P. *Public hearing* shall mean a special meeting at which time there will be only one order of business, and at which the public shall be permitted to speak on the subject specified. For required public hearings, public notice must be given as provided for in this Charter, the Administrative Code, or applicable law.
- Q. *Public office, public official, public employee, and public employment* shall mean any paid or unpaid federal, state, county, municipal, or school district position that is not elective.
- R. *Registered voter* shall mean a person who is lawfully registered and eligible to vote in Luzerne County having met the residency, registration, and other requirements as set forth in applicable law.
- S. *Technical codes* are standard or nationally recognized codes or technical rules, regulations, or specifications, such as building, electrical, health and safety codes, etc.

Section 11.05—Common Provisions Relating to Elective Officials.

- A. No individual may simultaneously be a candidate for more than one elective County office.
- B. Except as may otherwise be provided for in this Charter or applicable law, the terms of office of the members of County Council, the Controller, and the District Attorney shall begin on the first Monday of January in the year following their election and shall end when their successors take the oath or affirmation of fidelity. The terms of office of those elected or appointed to fill a vacancy in an elective office shall begin upon taking the oath or affirmation of fidelity.
- C. Upon beginning his/her term of office, each member of County Council, the Controller, and the District Attorney shall execute an oath or affirmation of fidelity to this Charter and the laws of the Commonwealth of Pennsylvania and the United States of America, or such other oath or affirmation as prescribed in the Administrative Code or applicable law. Any person appointed or elected to fill a vacancy on County Council shall take the oath or affirmation prior to the next regular or special meeting of County Council following his/her appointment or election, and any person appointed or elected to fill a vacancy in the office of Controller or District Attorney shall take the oath or affirmation within five days after his/her appointment or election.
- D. The office of a member of County Council, the Controller, and District Attorney shall become vacant upon the officeholder's death, resignation, forfeiture, or removal in accordance with the Pennsylvania Constitution or other applicable law, or if the person elected or appointed to the office fails to assume the office within 30 days after the scheduled beginning of the term.
- E. Any member of County Council, the Controller, and the District Attorney shall forfeit office if, during his/her term, County Council determines he/she lacks any qualification prescribed by this Charter or applicable law, has been found to be

incapacitated or incompetent by a court with appropriate jurisdiction, has been convicted of or pleads no contest to a charge constituting misbehavior in office, embezzlement or theft of public monies, bribery, perjury, any felony, or other infamous crime as provided for in the Pennsylvania Constitution or applicable law, or is disqualified from holding office as provided for in this Charter. Further, the offices of the District Attorney and Controller shall be declared vacant if the officeholder files a petition for nomination or election or becomes a candidate for any elective public office other than the one he/she holds at that time.

F. When a position on County Council or the office of Controller or District Attorney is declared vacant by County Council pursuant to Section 11.06 of this Charter, County Council, at a regularly scheduled or special meeting held within 60 days after the declaration of that vacancy, shall fill the vacancy by resolution adopted by an affirmative vote of at least a majority of its current members. If County Council fails to do so, the Office of Clerk of County Council within five days after the expiration of County Council's 60-day opportunity to fill the vacancy, shall officially file a request with the Court of Common Pleas of Luzerne County to fill the vacancy. In such cases, the Court of Common Pleas by a majority vote of its members shall appoint a person to fill the vacancy within 30 days after receiving the request from the Office of Clerk of County Council.

G. Any person appointed to fill a vacancy on County Council or in the office of Controller or District Attorney shall possess the qualifications set forth in this Charter and applicable law and shall be a member of the same political party as the person he/she is to succeed and shall have been a member of that party continuously from the time the person whose office is to be filled was most recently elected or appointed to the office. In the event the vacant position was filled by a person of no political party affiliation, the person appointed to fill the vacancy shall have no political party affiliation and shall have had no political party affiliation at the time the person whose office is to be filled was most recently elected or appointed to the office.

H. If a vacancy on County Council or in the office of Controller or District Attorney is declared during the first 18 months of a term, the appointee shall serve until the voters of the County fill the unexpired term at the next scheduled municipal primary or municipal general election occurring no sooner than the 13th Tuesday after the vacancy was declared. If the vacancy on County Council is declared on or after the first day of the 19th month of a term, the appointee shall serve the full unexpired term of his/her predecessor.

Section 11.06—Declaration of a Vacancy. Whenever facts or circumstances result in a vacancy as defined in this Charter or applicable law in any elective office or on any County authority, board, or commission, County Council at its next regularly scheduled or special meeting shall declare such office vacant by resolution adopted by an affirmative vote of at least a majority of its current members. The vacancy shall then be filled as provided for in this Charter. In the event County Council fails to declare the existence of a vacancy when one is believed to exist, any resident of Luzerne County may bring an action in the Court of Common Pleas of Luzerne County to determine whether

or not a vacancy exists. In the event the Court determines a vacancy exists, the vacancy shall be filled as provided for in this Charter.

Section 11.07—Citizens’ Right to be Heard. A reasonable opportunity shall be provided for the residents and taxpayers of Luzerne County to provide public comment to County Council at its regular and special meetings prior to Council taking official action. County Council shall adopt procedures for citizen participation not inconsistent with the provisions, spirit, and purpose of this Charter and applicable law.

Section 11.08—Severability. If any Article, Section, Subsection, sentence, clause, or phrase in this Charter shall be held unconstitutional, invalid, or inapplicable by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder of this Charter.

ARTICLE II—LEGISLATIVE BRANCH/COUNTY COUNCIL

Section 2.01—County Council. There shall be a County Council composed of 11 members which shall serve as the Legislative Branch of government.

Section 2.02—Qualifications. At the time of election or appointment and throughout his/her term of office, each member of the County Council shall be a registered voter in Luzerne County and meet all other requirements as may be set forth in this Charter or applicable law. Each member of County Council shall have been a resident of the County continuously for at least one year immediately preceding the date of his/her election or appointment.

Section 2.03—Election and Term.

- A. All members of County Council shall be elected at-large by the voters of the County.
- B. The 11 members of County Council shall be elected at the municipal general election in 2011. In order to produce staggered terms, the six candidates receiving the highest numbers of votes shall be elected for terms of four years, and the five candidates receiving the next highest numbers of votes shall be elected for terms of two years. Thereafter, except as may otherwise be provided for in this Charter or applicable law, all terms shall be four years.
- C. No member of County Council shall be eligible to be elected or appointed to serve in all or part of more than three consecutive terms. However, any member of County Council who has served in all or part of three consecutive terms may become eligible to serve additional terms after remaining out of office from the end of the final term to which he/she was elected or appointed until at least the first Monday in January following the next scheduled municipal general election. The initial two-year terms to which five members of Council will be elected in 2011 shall be considered a term of office for purposes of the three term limit.

Section 2.04—Prohibitions.

- A. During his/her term of office, no member of County Council shall hold any other elective public office, serve as a County employee, serve as a member of any County authority, board, or commission except as may be provided for in this Charter or applicable law, be employed or compensated by any individual or business serving as a contractor to the County or any County authority, board, or commission, or serve as a paid consultant for the County or any County authority, board, or commission.
- B. For a period of one year after leaving office, no member of County Council may be appointed to any County authority, board, or commission except as may specifically be provided for in this Charter or applicable law, serve as a County employee, be employed or compensated by any individual or business that served as a contractor to the County or any County authority, board, or commission during the time he/she served as a member of County Council, or serve as a paid consultant for the County or any County authority, board, or commission.