



Township of Montclair

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MONTCLAIR TWP. CLERK
23 JUL '21 PM 3:00

MEMORANDUM

Date: July 23, 2021
To: Committee of Petitioners
From: Ira Karasick, Township Attorney
Re: Petition to Change Day of Non-Partisan Municipal Election from May to November

The Petition submitted on July 6, 2021 is not, and cannot be, accepted by the Township Clerk, for the following reasons:

1. Because the petition is an initiative submitted pursuant to N.J.S.A. 40:69A-184, the petition paper is required to contain the full text of the proposed ordinance. N.J.S.A. 40:69A-186. The text of the proposed ordinance was not part of the petition.
2. The Ballot Question incorrectly states that November municipal non-partisan elections will be starting in November 2023. Actually, such an election cannot be held before November 2024.
3. The Interpretive Statement incorrectly states that the “first” November election will be held on November 7, 2023. Actually, the terms of the present Mayor and Councilors do not expire until June 30, 2024. Consequently, pursuant to N.J.S.A. 40:45-7.1(c), the terms of the present governing body members would be extended to December 31, 2024, with the first November municipal non-partisan election occurring in November, 2024.
4. The reference to amending the charter at the beginning of the ballot question is incorrect. The petition purports to change the timing of the municipal non-partisan election by initiating an ordinance authorized by the Uniform Nonpartisan Election Law. A formal charter amendment to provide for alternate elections pursuant to N.J.S.A. 40:69A-25.1 is a different process. The reference to amending the charter is not a fatal flaw in this submission but should be corrected if there is a future submission.
5. Executive Order 244 ended the public health emergency in the State of New Jersey. Consequently, Executive Order 132, which suspended the requirement of N.J.S.A. 40:69A-186 that petitions be submitted with an affidavit of the circulator, during the pendency of the public health emergency, is no longer in force. Executive Order 216 provides in paragraph 3 that the Clerk “shall develop the procedures for the electronic submission and signing of petitions, and of any required oaths, certifications and affidavits, which documents shall be submitted to such filing officers as are designated under law, notwithstanding any provision of P.L.2020, c.55 to the contrary. Executive Order 216 in paragraph 7 provides that “[p]aragraph 3 of Executive Order No. 132 (2020), to the extent inconsistent with this Order, is superseded.” Read together, the Executive Orders mean that the affidavit of circulator requirement is in effect and said affidavit(s) must be submitted with the petition. We would work with you on this requirement, except that the deficiencies identified above are not remediable without initiating a new petition.