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NEBRASKA DEPARTMENT OF JUSTICE

Opinion No. 26-005— August 24, 2026

OPINION FOR SENATOR BALLARD

**Obligation of Home-Rule City to Submit a
Proposed Charter Amendment to the Ballot**

Summary: The Nebraska Constitution requires municipal officials to submit charter-amendment petitions that satisfy the Constitution's signature requirement to a vote "at the next general or special election not held within thirty days after such petition is filed." Thus, assuming a charter-amendment petition satisfies the signature requirement and is submitted in advance of 30 days prior to the November 3 general election, the Constitution requires municipal officials to submit the proposal for the November 3 ballot. A municipality has no discretion to impose additional procedures that would delay such a proposal to a subsequent election.

You have asked for an Attorney General opinion regarding the constitutional obligation of city officials with respect to charter-amendment petitions. Specifically, you have asked, "Under existing state law, if a petition to amend a home-rule charter satisfies the signature and timeliness requirements of Neb. Const. art. XI, section 4, does the home-rule city have any discretion to impose additional procedural requirements or processes that could keep such petition off the ballot for the next election not within 30 days of when the petition was submitted?" If so, you have asked whether the State Legislature could "pass a statute limiting that discretion." Your request is made in the context of three proposed amendments to the Lincoln City Charter that were recently submitted to Lincoln city officials for the November 3 election.

We conclude that the City has no discretion to establish or implement any procedure that would cause an otherwise compliant charter-amendment petition to be excluded from the ballot at the next general or special election. The Constitution gives city officials a ministerial duty when a petition to amend a municipal charter obtains the requisite signatures: City officials “shall submit the same to a vote of the qualified electors at the next general or special election not held within thirty days after such petition is filed.” That language leaves no room for municipalities to impose additional hurdles that could keep such a petition from a vote at the next election outside of 30 days. While the City of Lincoln may be a home-rule-charter city, this does not give city officials license to disobey a direct command of the State Constitution. Thus, we conclude that existing law gives the City no discretion to keep the three proposed charter amendments off the November 3 ballot, so long as the Constitution’s signature requirement is met. No additional legislation is needed to give effect to the Constitution’s command to city officials.

Section I of our opinion provides the relevant constitutional backdrop. Section II provides an analysis of your question. Section III explains why the City of Lincoln’s home-rule status does not affect our analysis. Section IV summarizes our opinion.

I.

A.

We start with a constitutional background of State and municipal authority. Nebraska municipalities are creatures of the State. *Pro. Firefighters of Omaha v. City of Omaha*, 243 Neb. 166, 174 (1993). They are thus entirely subject to the State—they may exercise only those powers the State gives them. *Johnson v. Vill. of Polk*, 319 Neb. 352, 361 (2025); *Obitz v. Airport Auth. of City of Red Cloud*, 181

*Obligation of Home-Rule City to Submit a Proposed
Charter Amendment to the Ballot*

Neb. 410, 418 (1967). And the power they do exercise is subject to the Nebraska Constitution and Nebraska Revised Statutes. *Id.*

The State Constitution gives cities with a population of more than 5,000 inhabitants authority to frame a charter creating a municipal government. Neb. Const. art. XI, § 2. And cities of over 100,000 people may adopt a "home rule charter." Neb. Const. art. XI, § 5. A "home rule charter" "render[s] cities independent of state legislation as to all subjects of strictly municipal concern." *State ex rel. Martin v. Cunningham*, 158 Neb. 708, 710 (1954). In other words, home-rule charters can regulate local matters even without express authority from the Legislature. But home-rule charters are not without limits. They are ultimately "subject to the Constitution and laws of the State." Neb. Const. art. XI, § 5. The City of Lincoln has adopted a home-rule charter.

B.

The State Constitution also lays out the process to amend a home-rule charter. Home-rule charters are amended like any other municipal charter—according to the procedures of Neb. Const. art. XI, § 4. *See* Neb. Const. art. XI, § 5. The charter amendment process begins with a proposed amendment made by (1) a charter convention, (2) the municipal law-making body (i.e., city council), or (3) "by the qualified electors in number not less than five per cent of the next preceding gubernatorial vote in such city, by petition filed with the council or governing authorities." Neb. Const. art. XI, § 4; *accord* Lincoln Charter art. XI, § 4. Under option (3), when a petition satisfies the 5% signature requirement, "[t]he council or governing authorities shall submit" such a proposal "to a vote of the

qualified electors at the next general or special election not held within thirty days after such petition is filed.” *Id.*

II.

You have inquired about whether the Constitution leaves room for the City of Lincoln to establish or implement procedures that could keep the three subject proposals off the November 3 ballot, assuming the requisite signatures are obtained. You give as example a provision of the Lincoln City Charter that requires money-related ordinances “be fully and distinctly read on three different days” before the City Council can pass them. Lincoln Charter art. V, § 3; *see also* Neb. Rev. Stat. § 15-404 (Reissue 2022) (same). We conclude that the Constitution does not permit the City to cause a timely charter-amendment petition with sufficient signatures to be kept off the November ballot for any reason, including the three-readings charter provision.

A petition seeking to amend a home-rule charter must clear two obstacles to be placed on the ballot for the next election: (1) it must obtain signatures of 5% of the qualified voters of the previous gubernatorial vote in the home-rule city, and (2) it must be filed before 30 days prior to the election. If both hurdles are cleared, the Constitution affords the City’s “council or governing authorities” no discretion: They “*shall* submit [the proposal] to a vote of the qualified electors at the next general or special election.” Neb. Const. art. XI, § 4 (emphasis added).

That language leaves no room for the City to create additional procedural hurdles. In terms of statutory interpretation, Nebraska statute provides that “[w]hen the word shall appears,” “mandatory or ministerial action is presumed.” Neb. Rev. Stat. § 49-802 (Reissue 2021). And the Nebraska Supreme Court has explained that “the general rule is that in the construction of statutes, the word

*Obligation of Home-Rule City to Submit a Proposed
Charter Amendment to the Ballot*

'shall' is considered mandatory and inconsistent with the idea of discretion." *State ex rel. Shepherd v. Neb. Equal Opportunity Comm'n*, 251 Neb. 517, 526 (1997). "It is particularly so considered when the statute is addressed to public officials." *Id.*

This interpretive principle also applies to the Constitution. See, e.g., *Weinberger v. Bd. of Pub. Instruction of St. Johns Cnty.*, 112 So. 253, 256 (Fla. 1927) ("[T]he fact that [the Constitution] has prescribed the manner in which the thing shall be done is itself a prohibition against a different manner of doing it."). Thus, Article XI, § 4's command that city officials "shall submit" a compliant petition to a vote at the next general election is "mandatory and inconsistent with the idea of discretion." *Shepherd*, 251 Neb. at 526. The provision leaves no room for the City to withhold or delay the proposal.

The City cannot, therefore, apply its three-readings procedure in a manner that would keep a compliant charter-amendment petition off the November ballot. For one, the three-readings provision does not apply to charter amendments, but only to "ordinances, resolutions, or orders for the appropriation or payment of money." Lincoln Charter art. V, § 3. But even if it did apply to charter amendments, no municipal (or statutory) procedure can displace the Constitution's command that the City submit compliant charter-amendment petitions for a vote at the next election not within 30 days after the petition is filed.

III.

The City's status as a home-rule-charter city does not convey any constitutional discretion to impose additional procedural requirements that could delay the vote of an otherwise compliant proposal. The City may contend that its procedural requirements satisfy the

Nebraska Supreme Court's two-part test for determining whether a local ordinance is consistent with "the Constitution and laws of the State." Neb. Const. art. XI, § 5. That two-part test asks (1) whether the ordinance is actually "inconsistent with[] State law," and (2) whether the ordinance regulates a "matter[] of statewide concern." *State v. Albarenga*, 313 Neb. 72, 84 (2022). But that test would not apply here.

The two-part test would not apply because the City has no discretion to disobey a direct constitutional command. The Nebraska Supreme Court has applied the two-part preemption test in cases where state law and municipal law both regulate *citizens* on a similar matter. *See, e.g., Albarenga*, 313 Neb. at 84; *Van Patten v. City of Omaha*, 167 Neb. 741, 747–48 (1959). Here, the Constitution (not merely a statute) commands the *City* to submit eligible petitions for the ballot of the next election. So, the issue here is not whether the City can regulate something the State has already regulated; it is whether the City can disobey a direct constitutional command. We find that no level of municipal concern could permit the City to disobey the Constitution's direct command.¹

¹ Even if the two-part test applied, which it does not, the City would fail to meet it. Any procedure that requires the City to delay a petition that the Constitution requires it to submit for the November election would be inconsistent with the Constitution under conflict-preemption principles. *See Malone v. City of Omaha*, 294 Neb. 516, 530 (2016). And if laws regulating traffic signals, street congestion, and gambling are all matters of statewide concern, *see Albarenga*, 313 Neb. at 84; *Van Patten v. City of Omaha*, 167 Neb. 741, 747–48 (1959); *State ex rel. Hunter v. The Araho*, 137 Neb. 389 (1940), then surely so is Nebraskans' constitutional right to direct democracy in their municipalities.

*Obligation of Home-Rule City to Submit a Proposed
Charter Amendment to the Ballot*

Finally, the Lincoln City Charter incorporates the Constitution's requirement that the City submit a compliant petition "to a vote of the qualified electors at the next general or special election not held within thirty days after such petition is filed." Lincoln Charter art. XI, § 4. So even under municipal law, the City has no discretion keep a timely and compliant petition off the November ballot.

In sum, the Constitution's language is clear. City officials "shall submit" a compliant petition to a vote at the next election outside of 30 days. It simply does not give the City discretion to delay a petition that satisfies the requirements of Neb. Const. art. XI, § 4.

IV.

Where petitions are submitted, and the requisite signatures certified, in advance of 30 days before the November general election, the City has a ministerial duty to submit them for the ballot for such election. The City has no discretion to implement any procedure that would delay the proposals for a subsequent election.

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