



**Request for City Council Committee Action
From the City Attorney's Office**

Date: July 30, 2013
To: Intergovernmental Relations Committee
Referral to:

Subject: Minneapolis Charter Commission's Plain Language Charter Submission and Proposed Ballot Questions

Recommendation: That the City Council approve the ballot language and title as prepared by the City Attorney's Office for placement on the November general election ballot.

Previous Directives: December 15, 2009, staff direction from the Intergovernmental Relations Committee to draft amendments to Charter Commission's proposed draft charter.

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Approved by: *Susan Segal*
Susan L. Segal
City Attorney

Presenter in Committee: Susan L. Segal, City Attorney

Financial Impact (Check those that apply)

- No financial impact (If checked, go directly to Background/Supporting Information).
 Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
 Action provides increased revenue for appropriation increase.
 Action requires use of contingency or reserves.
 Business Plan: _____ Action is within the plan. _____ Action requires a change to plan.
 Other financial impact (Explain):
 Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact

Neighborhood Notification
City Goal(s):
Comprehensive Plan
Zoning Code
Other

Background/Supporting Information

On May 21, 2013, the Minneapolis Charter Commission, pursuant to Minn. Stat. §410.12, subd. 1, submitted to the City a proposed Plain Language Charter ("PLC") for submission to the electorate as a ballot question for the 2013 general election. The purpose of this RCA is to update the City Council on changes made to the PLC since it was last discussed before the Intergovernmental Relations Committee in 2011. On April 14, 2011, the City Attorney's Office ("CAO") orally presented on the Charter

Commission's proposed complete revision of the Minneapolis City Charter and provided written information in a Request for Council Action dated March 24, 2011. In that presentation, the CAO discussed the history of the Charter Commission's efforts to revise and complete its proposed "Plain Language" revision. In addition to detailing the history of the drafts of the Charter Commission's Plain Language Charter, the CAO described the efforts of the Charter Revision Workgroup (the "WorkGroup") which consisted of the chair of the Council's Intergovernmental Relations Committee and representatives of several key City departments. The March 24, 2011, CAO RCA described a number of examples of substantive or structural government changes identified during its review of the PLC (12th Draft). The identified issues included significant changes in the article governing the Park Board; changes regarding the appointing powers of the Executive Committee; the elimination of a section of the City Charter relating to liquor licenses; changed provisions related to removal of elected office holders and the mayoral succession plan; inaccurately described the voting process used for Council actions; and required changes to proposed charter guidelines for redistricting.

In June, 2011, the CAO again filed an RCA on this topic dated June 14, 2011. The second presentation was a result of the postponement of the matter in order to receive additional comments from affected departments, boards or other interested reviewers. The June 14, 2011, RCA recommended additional changes to the PLC after receiving and discussing input from other affected parties. Those recommendations included certain clarifications regarding the Board of Equalization; additional changes proposed by the Minneapolis Park Board; removal of provisions regarding the redistricting of Minneapolis school district boundaries; and, changes related to the City Planning Department and Planning Commission.

In addition to the specific items raised in the two CAO RCAs, the CAO discussed several larger issues regarding the proposed PLC. Those general concerns included the possible impact of removing Charter provisions to ordinances as described in the March 24, 2011, memo since the process to adopt and amend ordinances is a relatively flexible and quick process compared to amending the charter. Approximately 175 sections of the current Charter were contemplated to be moved from the Charter and to be passed as ordinances. At that time the CAO estimated that that would require approximately a year to allow staff time to complete the review of the items removed from the Charter, redraft them and, as necessary, move them through the Council adoption process as ordinances. At that time the CAO further recommended that there should be an effective date of at least one year from possible final passage to allow for this ordinance review and adoption. Additionally, in the general comments, the CAO discussed the impact that a complete revision might have on the Charter. As noted in the RCA, the City has numerous CAO opinions and a number of court decisions which have informed the City of the proper interpretation of the Charter. Although the Charter Commission has stated the complete revision of the Charter as proposed in the PLC is not intended to be substantive, the changes are likely to have significant impacts on interpretation of provisions as specific fact situations arise. An additional concern raised in the March 24, 2011, RCA was the concern that despite the time and effort spent on the review of the PLC, that errors or oversights might not be captured during the review. Because of the difficulty in changing the Charter, unintended changes or oversights that have been missed in the PLC could cause substantial difficulties that would take months to correct by a subsequent Charter amendment.

Since the presentation to the City Council in June 2011, the CAO has worked closely with the Charter Commission, the Park Board, the Minneapolis Board of Business Agents and City departments to address the concerns identified in the two RCAs and the redlined drafts. In addition, during this time frame, the CAO and the other parties identified a number of additional issues that needed to be addressed. Since June 2011, the PLCR has gone through a number of iterations to achieve the version that was submitted for placement on the ballot this fall. The issues in the PLC that were identified since June 2011 have been addressed with changes to the PLC. Examples of the issues identified and addressed include, but are not limited to:

- Deleted Article 5 governing Boards in the 12th version and inserted relevant parts of that article into sections governing the Park Board.

- Made changes to the special assessment process in Article 9 to more closely conform with the current Charter and current practice of the City.
- Changed Park Board language that addressed certain Park Board ability to tax and levy for its purposes; clarified general powers of the Park Board and employment and compensation for its employees.
- Specified that the Charter would not take effect until January 1, 2015.
- Changed references to "citizen" to "resident" to reflect actual language used in the charter.
- Clarified definitions of taxable valuation of property in Article 9.5.
- Removed archaic references to work house in Article 1.5.
- Made significant changes to Article 2 governing redistricting to conform to current law and practice.
- Clarified Council authority when it acts as a statutory Board or Commission in Article 4.
- In Sections 4.3 and 4.4, clarified the operation of Council meetings and Council proceedings to match the Charter and current procedure including the Clerk's obligation for records and publication.
- Clarified Board of Estimate and Taxation taxing power in Article 5.6.
- In Article 7.2, added Police Department, Fire Department, Budget Office, Civil Rights Commission as departments that must be created by the City.
- Clarified Mayor's role in regard to the Police Department in 7.3 to align with current Charter.
- Modified language regarding senior management positions in the Fire Department in Article 7.4.
- Corrected language regarding duties of the City Attorney in Articles 7.2.
- Removed language restricting levy limits for the general fund and clarified the finance officer's role in Article 9.

Since the submission of the two RCAs in 2011, the Charter Commission has worked with the CAO, City departments and other stakeholders to accommodate and incorporate all changes requested by the affected parties. While some of the issues discovered in the last year and identified above have been relatively minor; others have been quite significant. For example, during the summer of 2012, the Park Board discovered issues related to maximum tax levies allowed under the PLC. Similarly, City staff discovered issues relating to its levy capacities including the incorporation of incorrect special law language regarding general fund levy limits. While these issues have been corrected after significant staff review, it is disconcerting that these issues were identified so late even though the wording had been in previous drafts for years.

One of the purported detriments of the Charter is that "it cannot be read without reference to contradictory provisions in the Charter itself and State special laws, which supersede the Charter". However, the PLC does not affect any special law affecting the City except to the extent that the special law is inconsistent with the PLC. Any reader of the PLC, whether a lawyer or not, still will be required to review the hundreds of special laws for the City to determine their applicability to the particular question and whether they are in conflict with the PLC.

PROPOSED BALLOT QUESTION

When the Charter Commission submitted the proposed PLC to the City for placement on the ballot, it also submitted two proposed ballot questions:

Plain-Language Charter Revision

Shall the Minneapolis City Charter be amended in the form of a revision whose purposes are (1) modernizing, simplifying, and uncluttering the Charter; (2) redrafting its provisions

for clarity, brevity, and consistency, in plain modern language; (3) reorganizing the charter into nine articles, with each article covering a single subject, and grouping related provisions together; (4) removing from the Charter detailed provisions better suited to ordinance; and (5) retaining a provision in the charter if it affects a citizen's rights, or the relationship among governmental officers or bodies, particularly including (but not limited to) the independence of municipal boards?

Plain-Language Charter Revision: Liquor-Licensing Provisions

The Minneapolis Charter Commission has proposed, in a companion amendment, that the Minneapolis City Charter be amended in the form of a thorough revision. This additional amendment is necessary because the liquor-licensing provisions are the subject of a statute that requires a different vote for amendment than other charter provisions. Shall the Charter be amended by reorganizing and rewriting the liquor licensing provisions in plain modern language?

Two questions were submitted because the liquor-licensing provisions of the Charter are subject to statute that requires a different percentage of affirmative votes to be successful.

The questions to be placed on the ballot are determined by the governing body. Applicable law for home rule charter amendments requires that "[t]he statement of the question on the ballot shall be sufficient to identify the amendment clearly and to distinguish the question from every other question on the ballot at the same time". Minn. Stat. §410.12, subd. 4. More general ballot question law also requires that a "concise statement of the nature of the question shall be printed on the ballot". Minn. Stat. §204B.36, subd. 3. An example of a concise statement of question is found in the statutorily required language for a new charter which states: "Shall the proposed new charter be adopted?". Minn. Stat. §410.10, subd 3. The CAO believes that the following language presents a neutral concise statement of the two questions and recommends that the Council adopt them for placement on the ballot.

Proposal to Amend the Minneapolis City Charter

Shall the Minneapolis City Charter be amended in the form of a complete revision which reorganizes the Charter into nine articles, and removes certain provisions for possible enactment by ordinance?

Proposal to Amend the Minneapolis City Charter Liquor-Licensing Provisions

Shall the Minneapolis City Charter provisions relating to the prohibition of the sale of intoxicating liquor or wine in certain areas be amended by rewriting and organizing in one article?

In addition, each question must have a title which may not be more than ten words and must be approved by the City Attorney as accurately describing the question. Minn. Rule 8250.0390, subd. 2.