

TO: Mayor Betsy Hodges
City Council President Barbara Johnson
Members of the City Council

CC: Casey Joe Carl
City Clerk

FROM: Susan Segal
Erik Nilsson
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City Attorney's Office

DATE: July 28, 2016

RE: Charter Amendment Petition Regarding \$15 Minimum Wage

MEMORANDUM

A citizen petition for a proposed charter amendment relating to \$15 minimum wage has been transmitted to the City Council. The citizen petition proposes to add the following subsection (g) to the Minneapolis City Charter § 4.1:

(g) Minimum Wage. The City of Minneapolis is dedicated to improving its residents' quality of life. Income inequality, low wages, and a high cost of living relative to other parts of the state are serious economic and social problems facing the City. Many City residents work long hours but cannot afford housing, food, medical care, and other basic necessities. The City has an interest in promoting the health, safety, and welfare of workers, their families, and their communities by ensuring they can support themselves through work. When workers in the City earn decent wages, such wages can also boost the local economy. Therefore, the City chooses to establish a minimum wage to better enable workers to afford the minimum necessities. This minimum wage will be phased in gradually.

(1) Definitions. Terms used in this section 4.1(g) have the same meaning as in the Minnesota Fair Labor Standards Act except as modified herein.

(A) For the purposes of subsection (2) of this section 4.1 (g), the number of employees employed by an employer includes the total number of employees (full-time or part-time) working for the employer anywhere in the United States, including, in the case where the employer is a franchisee, all employees employed by other franchisees of the same franchisor.

(B) "Cost of living" shall be measured by the percentage increase, if any, of the non-seasonally adjusted consumer price index (Urban Wage Earners and Clerical Workers, U.S. City Average for all items) or its successor index as published by the U.S. Department of Labor or its successor agency, for the most recent twelve-month period for which data is available at the time the cost of living adjustment is calculated.

(2) Minimum Wage.

(A) Employers with 500 or more employees shall pay each employee expected to work 25 or more hours in a calendar year within the geographic boundaries of the City for each hour worked within the geographic boundaries of the City an hourly minimum wage of no less than:

(I) Starting August 1, 2017: \$10.00,

(II) Starting August 1, 2018: \$11.75,

(III) Starting August 1, 2019: \$13.50,

(IV) Starting August 1, 2020: \$15.00,

(V) Starting August 1, 2021 and each August 1 thereafter, the hourly minimum wage shall be adjusted to keep pace with the rising cost of living.

(B) Employers with fewer than 500 employees shall pay each employee expected to work 25 or more hours in a calendar year within the geographic boundaries of the City for each hour worked within the geographic boundaries of the City an hourly minimum wage of no less than:

(I) Starting August 1, 2017: \$10.00,

(II) Starting August 1, 2018: \$11.00,

(III) Starting August 1, 2019: \$12.00,

(IV) Starting August 1, 2020: \$13.00,

(V) Starting August 1, 2021: \$14.00,

(VI) Starting August 1, 2022: \$15.00,

(VII) Starting August 1, 2023 and each August 1 thereafter, the hourly minimum wage will not be less than the minimum wage set by subsection (2)(A)(V) of this section 4.1(g).

(C) Gratuities not applied. No employer may directly or indirectly credit, apply, or utilize gratuities towards payment of the minimum wage set by this section 4.1(g).

(D) Sharing of gratuities. The Minnesota Fair Labor Standards Act will govern the sharing of gratuities under this section 4.1(g).

(3) Interpretation. Nothing in this charter shall discourage or prohibit ordinances, rules, or policies providing for higher or supplemental wages or benefits or extending such protections to persons not covered by this section 4.1 (g). Case law and standards developed under the Minnesota Fair Labor Standards Act shall guide the construction of this section 4.1 (g) and any implementing ordinances or rules.

(4) Enforcement. The City shall enforce this section 4.1(g) and any implementing ordinances or rules. Where an employee or person has been paid less than the hourly minimum wage required under this section 4.1 (g), or been subject to any other violation of their rights under this section 4.1 (g) or implementing ordinances or rules, including, but not limited to, retaliation for asserting or attempting to assert their rights, the employee or person may bring an administrative complaint with the City, or the employee, person, or City may bring a civil action in a court of competent jurisdiction, and, upon prevailing in either proceeding, shall be awarded the full amount of any back wages unlawfully withheld and an additional two times that amount as damages, together with reasonable attorney's fees and costs, as well as interest on all amounts due and unpaid, and may be awarded an administrative penalty and any additional appropriate legal or equitable relief. Implementing legislation is not required to enforce this section 4.1 (g). The City shall enact penalties designed to effectively deter violations of this section 4.1 (g), including, but not limited to, penalties that will increase for repeat offenses and will deter employers from engaging in any form of retaliation against persons asserting or attempting to assert rights under this section 4.1(g).

(5) Public Outreach and Education. The City shall implement multilingual and culturally-specific outreach and education programs, including collaboration with and grants to community organizations, to educate employees regarding rights under this section 4.1 (g) and any implementing ordinances or rules, or to provide assistance or support to employees or the City in filing and resolving complaints or pursuing other enforcement actions.

(6) Severability. If any portion of this section 4.1(g) is held invalid, in whole or in part, or in its application, by a court of competent jurisdiction, such portion or application shall be severable, and such invalidity shall not affect the validity of the remaining portions or applications of this section 4.1(g).

QUESTION PRESENTED

Chapter 410 of the Minnesota Statutes governs the charter process for home rule charter cities such as Minneapolis. When a citizen petition has been presented with the requisite number of signatures of registered voters, the City Council has a ministerial duty to place the measure on the ballot unless the proposed amendment contravenes the public policy of the state, is preempted by state or federal law, is in conflict with any statutory or constitutional provision, or contains subjects that are not proper subjects for a charter under Chapter 410. The question of whether the Council favors the proposed amendment is not relevant.

The sole question before the Council is whether the proposal satisfies this legal standard. If the Council determines that it does, the Council must craft a ballot question and transmit the proposal to the County Auditor prior to the August 26, 2016, deadline for this year's general election ballot. If the Council determines that it does not meet the legal test, then the Council should vote to withhold the proposed amendment from the ballot.

SUMMARY CONCLUSION

Minnesota Statutes Chapter 410 sets out the parameters and process for framing, enacting and amending a municipal charter. The chapter specifies that city charters are to include provisions for the “establishment[.]. . . administration. . .and. . . regulation of all local municipal functions.” Minn. Stat. § 410.07. Section 410.20 of that chapter allows a charter to provide for “submitting ordinances to the council by petition of the electors of such city and for the repeal of ordinances in like manner.” The Minneapolis City Charter does not provide for voter initiatives for the passage of ordinances by a ballot referendum.

The citizen petition for a \$15 minimum wage does not relate to the establishment, administration or regulation of city government. It is legislative in nature, setting a minimum wage for all individuals who work within the geographic boundaries of the City and establishing a detailed scheme for enforcement. As such, the proposed amendment is a ballot initiative to submit an ordinance to Council by petition of the

electorate within the meaning of Minnesota Statutes Section 410.20. The Minneapolis City Charter does not provide for such ballot initiatives. Consequently, the proposed amendment is not a proper subject for a charter amendment and the Council should decline to place the provision on the ballot.¹

ANALYSIS

I. MINNESOTA STATUTES CHAPTER 410 CONTROLS THE SUBJECTS THAT MAY BE INCLUDED IN A CITY CHARTER.

Under the Minnesota Constitution, the state legislature is imbued with the exclusive authority to create, organize, administer, consolidate, divide and dissolve local governmental units. Minnesota Constitution, Article XII, Section 3. The Minnesota legislature has administered this authority through statutes providing for two types of cities, statutory cities organized under Chapter 412 of the Minnesota Statutes, and home rule charter cities, such as Minneapolis. Minnesota Statutes Chapter 410 prescribes the method for the adoption and amendment of home rule charters and controls the subjects that may be included in such a charter. Section 410.07 of that chapter sets out the following parameters for the proper content of city charters:

Such draft shall fix the corporate name and the boundaries of the proposed city, and provide for a mayor, and for a council to be elected by the people. Subject to the limitations in this chapter provided, it may provide for any scheme of municipal government not inconsistent with the constitution, and may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions It may prescribe methods of procedure in respect to the operation of the government thereby created

(emphasis added). Other sections of Chapter 410 specify that a charter may incorporate any constitutional form of city government, including mayor-council or council-manager; provide that the administrative powers, authority and duties in a city may be distributed into and among departments; and may grant to the

¹ Note that this memorandum does *not* address the question of whether the City has the authority through legislative action of the Council to adopt an ordinance establishing a minimum wage that is higher than that set by state law. The question of authority of the Council is addressed in a separate memorandum subject to the attorney-client privilege. This memorandum also does not address whether the City has the authority to impose other elements of the amendment such as creating a private right of action. The sole question addressed in this memorandum is whether the citizen petition proposal is a proper subject for a charter amendment.

council the authority to determine and assign those powers to departments and employees and to select department heads. Minn. Stat. §§ 410.16 and 410.18. Another section of Chapter 410 provides that a charter may incorporate provisions:

[D]efining the powers and duties of the mayor and each member of the council, and may provide that each member of the council shall perform such administrative duties as may be designated in such charter.

Minn. Stat. §410.19.

All of these sections have one thing in common – they all relate to the governance structure, scope of authority and procedures for operation of the municipal governmental unit. This is the generally accepted purpose and nature of a municipal charter:

Generally speaking, the municipal charter creates the body politic and corporate, contains the municipal powers and gives the form of municipal organization, locates the corporate boundaries and wards or other subdivisions, classifies, and distributes the powers and duties of the various departments, boards and officers, and provides the manner in which the several powers shall be exercised.

2A McQuillin Mun. Corp. § 9:3 (3d ed.).

II. WHILE CHAPTER 410 ALLOWS CITIES TO PROVIDE FOR CITIZEN INITIATIVES AND REFERENDA IN THEIR CHARTERS, THE MINNEAPOLIS CHARTER CONTAINS NO SUCH PROVISION.

In addition to the more general provisions cited above relating to the form, structure and distribution of power within a municipal government, Chapter 410 also contains a section that allows a city to provide for citizen initiative and referendum powers as part of its home rule charter:

Such commission may also provide for the recall of any elective municipal officer and for removal of the officer by vote of the electors of such city, and *may also provide for submitting ordinances to the council by petition of the electors of such city and for the repeal of ordinances in like manner*; and may also provide that no ordinance passed by the council, except an emergency ordinance, shall take effect within a certain time after its passage, and that if, during such time, a petition be made by a certain percentage of the electors of the city protesting against the passage of such ordinance until the same be voted on at an election held for such purpose, and then such ordinance to take effect or not as determined by such vote.

Minn. Stat. § 410.20 (emphasis added). This section of Chapter 410 allows charters to provide for citizen petitions for ordinance proposals – legislation – to be placed on the ballot to be decided by a popular vote and for the repeal of an existing ordinance. These powers are referred to as the powers of “initiative” and “referendum,” respectively. The procedure for a citizen petition to place a proposed ordinance on the ballot, is similar to the citizen petition process for proposing a charter amendment, but applies to legislative, ordinance proposals not charter amendments that are designed to change how a city is organized and structured. *See, e.g.*, 1 Local Government Law § 9:3 (May 2016).

Some charter cities in Minnesota have provided the powers of initiative and referendum in their charters, as allowed under Section 410.20. For example, the Bloomington City Charter contains a chapter titled, “Initiative, Referendum and Recall.” Bloomington City Charter, Ch. 5.

Section 5.01 of that chapter provides as follows:

§ 5.01 POWERS RESERVED BY THE PEOPLE.

The people of the city can initiate and adopt any ordinance, except an ordinance appropriating money or authorizing the levy of taxes. When the council passes an ordinance, the people of the city can require referral to the registered voters for approval or disapproval, and they can recall elected public officials. These powers are called the initiative, the referendum, and the recall, respectively.

The chapter includes ten additional sections that detail the procedures for placing proposed ordinances on the ballot.

Similarly, Chapter 5 of the City of Winona’s Charter, titled “Initiative, Referendum and Recall,” provides for the power of citizen petition initiated ordinances:

5.01 POWERS RESERVED BY THE PEOPLE. The people of Winona reserve to themselves the power, in accordance with the provisions of this Charter, to initiate and adopt any ordinance, to require an ordinance when passed by the council to be referred to the electors for approval or disapproval, except, in either case, an ordinance appropriating money or authorizing the levy of taxes; and to recall elected public officials. These powers shall be called the initiative, the referendum, and the recall, respectively.

Sections 5.04 through 5.19 of that chapter detail the specific requirements and procedures that are to be followed for an initiation of an ordinance, including: the form of the petition and signature page; the time period for filing the petition and action of the council; and, the percentage of voters needed to pass an initiative. Additional sections set forth the procedures for repealing an ordinance or recalling an elected official.

All other city charters in the State of Minnesota that provide for citizen-initiated ballot measures for ordinance provisions contain similar, distinct sections expressly setting out this right and applicable process.

By contrast, the City of Minneapolis Charter contains no such section and contains no such rights. There is no chapter, article, section or clause in the Minneapolis Charter recognizing a right or process for citizen petition ballot initiatives for the adoption of legislation or ordinances. To the contrary, the Minneapolis Charter vests the power to adopt ordinances exclusively in the City Council. Section 4.1(a) of the Charter provides:

Governing body. The governing body is the City Council, in which the City's general legislative and policymaking authority resides.

Moreover, the Minnesota Court of Appeals affirmed this fact in *Haumant v. Griffin*, 699 N.W. 2d 774, 781 (Minn. Ct. App. 2005).

The *Haumant* case involved a citizen petition for a charter amendment to authorize medical marijuana dispensaries in the City of Minneapolis “to the extent allowed by State and Federal law.” The Minneapolis City Council declined to put the proposal on the ballot. The Minnesota Court of Appeals affirmed the decision of the City Council, among other grounds, on the fact that the proposal constituted “an initiative cloaked as a charter amendment.” *Id.* The court stated:

[T]he City of Minneapolis elected not to include initiative powers as part of its home rule charter. Minneapolis residents are not permitted to directly implement legislation by petition. By his actions, appellant is furthering a cause that his elected representatives, so far, have refused to: namely, to lay the groundwork for the use of marijuana for medicinal purposes in Minnesota.

Appellant makes some interesting legal arguments and has spent considerable resources in furthering this cause, but we see appellant's proposed charter amendment as an attempt to circumvent Minneapolis' bar on legislation by initiative.

Id.

In line with the reasoning of the *Haumant* court, courts in other jurisdictions have scrutinized proposed charter amendments to determine if, in fact, they are permissible amendments or, in reality, unauthorized initiatives or referendum proposals disguised as charter amendments. For example, in *Berent v. City of Iowa City*, the Iowa Supreme Court ruled that “amendments to city charters must, as a matter of law relate to ‘form of government’” finding that a proposal to establish a police review board did relate to “form of government” but that a community policing proposal did not fall within the ambit of form of government. 738 N.W.2d 193, 210-13 (Iowa 2007).

Similarly, courts across the country have ruled that charter amendment proposals that are legislative in nature, and do not relate to the form of government, are impermissible charter amendment proposals. *See, e.g., Mayor & City Council of Ocean City v. Bunting*, 895 A.2d 1068, 1075–76 (Md. Ct. Spec. App. 2006) (holding proposed charter amendment permitting police department employees to engage in collective bargaining not related to broad organizational framework of government); *In re Initiative Petition No. 1 of Midwest City*, 465 P.2d 470, 472 (Okla. 1970) (holding proposed charter amendment requiring voter approval of ordinances affecting sale or transfer of real estate held too specific to be valid charter amendment). *Appeal of Barry*, 720 A.2d 977, 979 (N.H. 1998) (holding retirement plan provisions not appropriate charter amendments).

The Minneapolis City Charter not only lacks a section setting out a right of initiative and referendum, but affirmatively vests the exclusive power to adopt ordinances with the City Council. Minneapolis Charter, §4.1(a). It is established law that Minneapolis “residents are not permitted to directly implement legislation by petition.” *Haumant*, 699 N.W.2d at 781.

III. THE PROPOSED CHARTER AMENDMENT IS INVALID BECAUSE THE PETITION IS AN ORDINANCE PROPOSAL CLOAKED AS A CHARTER AMENDMENT.

Like the proposed amendment in the *Haumant* case, the proposed minimum wage charter amendment here is a legislative proposal. The proposal seeks to increase the minimum wage to \$15 for all employees working within the Minneapolis geographic boundaries. It contains a detailed schedule of annual increases over a four year time period for employers with 500 or more employees and over a six year time period for employers with fewer than 500 employees. It provides for a cost of living increase in subsequent years and specifies the measure to be used: the *Urban Wage Earners and Clerical Workers U.S. City Average* published by the U.S. Department of Labor. The proposal also sets out a detailed scheme for enforcement, including a provision for liquidated damages and administrative penalties and a requirement for the city to implement “multilingual and culturally-specific outreach and education programs.” (Sections (g)(4) and (5) of the proposed amendment). These are legislative provisions, not provisions that prescribe the governance structure, scope of authority, or procedures for the operation of a municipal government.

Moreover, existing minimum wage requirements, historically, have been established through legislation. Congress initially established a federal minimum wage as part of the Fair Labor Standards Act in 1938. 29 U.S.C.A. § 201 *et seq.* Minnesota adopted minimum wage statutes in 1913 and its own Fair Labor Standards Act in 1973. Minn. Stat. § 177.21 *et seq.*

The advocates for the \$15 minimum wage (National Employment Law Project (NELP) and 15Now Minnesota) do not really dispute that they are legislating by charter amendment. The advocates are campaigning to change the minimum wage in many jurisdictions.² In the absence of legislative action in Minneapolis on this issue, the advocates are seeking to achieve the same goal through the charter amendment process. *See* 15 Now Minnesota (@15NowMN), Twitter (July 15, 2016), <https://twitter.com/15nowmn?eng=en> (“We can’t keep waiting on politicians to act on #15Now, need to

² *See* <http://15nowmn.nationbuilder.com/> and <http://www.raisetheminimumwage.com/pages/campaigns/>.

continue fighting to #LetMplsVote on #15forMpls”). Tellingly, none of the cities listed on NELP’s website as having adopted a \$15 minimum wage have done so through charter amendments. <http://www.raisetheminimumwage.com/pages/local-minimum-wage>.

The minimum wage petition at issue here is an initiative – submission of an ordinance by petition of the electors – within the meaning of Minnesota Statutes Section 410.20. The proposal is a regulation of employers in the City of Minneapolis. It does not in any way relate to the form, structure or distribution of powers within the municipal enterprise. Similar to the proposal in the *Haumant* case, this is an ordinance proposal “cloaked as a charter amendment.”

IV. THE ARGUMENTS SET OUT IN THE MEMORANDUM PROVIDED BY NELP DO NOT ALTER THE CONCLUSION THAT THE MINIMUM WAGE CHARTER PROPOSAL IS AN INVALID ORDINANCE INITIATIVE.

NELP’s June 24, 2016 memorandum, in support of the citizen petition for the charter amendment, sets out several arguments to support its claim that the proposal is a proper subject for a charter amendment. None of the arguments alter the above analysis and conclusion.

NELP posits that a phrase from Minnesota Statutes Section 410.07 stating that a city charter may provide for “all *local municipal functions*” establishes the authority for the minimum wage amendment to be placed on the ballot. (emphasis added as it appears in NELP’s memorandum). This quote, however, does nothing to bolster their case because the phrase relates to municipal functions – the functioning of the city government – not the authority to legislate through a charter. This is made all the more clear when the phrase is read in the context of the full sentence, the whole of which relates to the form, establishment and administration of the municipality:

Subject to the limitations in this chapter provided, [a charter] may provide for any scheme of municipal government not inconsistent with the constitution, and may provide for the establishment and administration of all departments of a city government, and for the regulation of all local municipal functions...

Minn. Stat. §410.07.

It is also significant that the very first phrase in the sentence states that it is “subject to the limitations in this chapter.” One of the “limitations” of Chapter 410 is found in Section 410.20. That section makes it permissible to include the power of initiative and referendum in a municipal charter, but requires that the charter must “*provide*” for it, affirmatively include the provision in the charter, like the charters for the cities of Bloomington and Winona referenced earlier in this memorandum.³ The Minneapolis Charter does not include this power. The *Haumant* case applies here – the proposal is an improper petition for an ordinance initiative. 699.N.W.2d at 781.

A. *Haumant* Is Controlling Law Because the Revised Charter Simply Modernized the Language of the Charter and Made No Substantive Changes in the Scope of Powers Claimed.

NELP seeks to distinguish the *Haumant* ruling by pointing out that the City’s charter has been revised since the case was decided and that the new charter claims broader powers than the previous charter. This is not accurate. The revised charter simply translated the previous charter into more modern “plain language” and reorganized sections, with the express intent to make no substantive changes in the powers claimed in the charter or otherwise.⁴ Indeed, the current, revised charter contains the very same claim of municipal powers as the previous charter in virtually identical language. The previous charter stated in Chapter 1, Section 2, that the City “shall have all the general powers possessed by municipal corporations at common law....” Minneapolis City Charter, Ch.1, § 2 (2014). The current, revised charter provides in Section 1.4(a) that the City “may exercise any power that a municipal corporation can lawfully exercise at common law.” The revised charter also states that settled interpretations of any term or provision from a

³ The use of the word “provide” in Section 410.20 cannot be ignored. The Minnesota Statutes and applicable case law dictate that statutes should be interpreted to give effect to all of its provisions and should assume that no word, phrase or sentence is superfluous. See Minn. Stat. §645.16 (2015). It should also be noted that the Minneapolis Charter states that the “canons of construction and other principles of interpretation in the Minnesota Statutes apply to this charter.” Minneapolis City Charter §1.3(d)(2).

⁴ See *Minneapolis Charter Commission Plain-Language Charter Revision Report*, submitted to the Minneapolis City Council, May 2013
<http://www.ci.minneapolis.mn.us/www/groups/public/@clerk/documents/webcontent/wcms1p-109178.pdf>.

prior version of the charter is valid in interpreting the similar term or provision in the revised charter. Minneapolis City Charter §1.3(d)(4). Thus, the *Haumant* decision remains binding under the revised charter.

NELP's reliance on the phrase in the revised charter that the "mention of certain powers does not limit the City's powers to those mentioned," is misplaced. The question of whether this is a proper subject for a charter amendment does not turn on the scope of powers that could be exercised by the Council acting as a legislative body. The question turns on the fact that the Minneapolis Charter does not in its current iteration or in previous versions "*provide for*" citizen ordinance initiatives as required in Minnesota Statutes Section 410.20.

As part of its argument to justify the minimum wage citizen proposal, the NELP memo also cites to established case law concerning the authority of home rule charter cities to enact legislation. Specifically, the NELP memo includes the following quote, that "in matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld." NELP Memo p. 3, citing *Dean v. City of Winona*, 843 N.W.2d 249, 256 (Minn. Ct. App. 2014), *appeal dismissed* 868 N.W.2d 1 (Minn. 2015). This quote, however, applies to the scope of a city's *legislative* authority, the authority to pass ordinances. It is not relevant to the question of whether a city has "provided" in its charter the power for citizen ordinance initiatives. Indeed, the very case quoted in the NELP Memo, the *Dean* case, involved a challenge to the authority of the Winona City Council to pass an *ordinance* restricting the number of property rental licenses. The *Dean* case involved no proposal for a citizen petition for either a charter amendment or an ordinance initiative.⁵

⁵ It is also interesting to note that the City of Winona Charter happens to provide for citizen petition ordinance initiatives. Winona City Charter, Chapter 5, referenced above.

B. Inclusion of Liquor Provisions in the City’s Charter Does Not Equate to Authority to Legislate by Initiative.

Finally, the NELP memorandum cites to Minneapolis Charter provisions regarding liquor to rationalize inclusion of a minimum wage ordinance in the Minneapolis Charter. There are substantial differences in the statutory and historic regulation of liquor that rebut this argument. The existence of liquor-related provisions in the City’s Charter reflects this history. In addition, liquor restrictions are referenced specifically in two different sections of Chapter 410: Sections 410.04 and 410.121. Consequently, the reference to liquor restrictions in the Minneapolis Charter does not justify the logical leap that the minimum wage proposal is a proper subject for a charter amendment.

Provisions related to liquor have been in the City’s Charter since at least 1884 when the City created the “liquor patrol limits.” In contrast to the outright bans prevalent in most other communities, Minneapolis allowed, but concentrated liquor sales (on and off-sale) within what were called “patrol limits” established in the Charter. The boundaries of the original liquor patrol limits centered on the City’s core along the riverfront and parts of two neighborhoods (Northeast and Cedar-Riverside). The predecessor to Minnesota Statutes Chapter 410, adopted in 1905, not only recognized the existence of these liquor patrol limits in city charters, but also heightened the vote requirement to alter preexisting patrol limits in a city charter. Minn. Rev. L. § 748 (1905). Minnesota Statutes Section 410.04 states:

Any city in the state may frame a city charter for its own government in the manner hereinafter prescribed; provided, that in such cities having patrol limits established by charter, such limits shall not be altered unless the charter proposing such alteration be adopted by a three-fourths majority.

In 1969, the state legislature continued to acknowledge the presence and propriety of liquor regulations in municipal charters when it passed Minnesota Statutes Section 410.121. This section states:

If the charter which is to be amended or replaced contains provisions which prohibit the sale of intoxicating liquor or wine in certain areas, such provisions shall not be amended or removed unless 55 percent of the votes cast on the proposition shall be in favor thereof.

Minn. Stat. §410.121.

Functioning somewhat like a rudimentary “zoning code” for liquor, the patrol limits allowed certain uses (saloons and liquor stores) to operate in delineated locations (the City’s first Zoning Code wasn’t adopted until 1924). The presence of liquor-related provisions in the City Charter stems from the 1884 inclusion of the liquor patrol limits. After voters eliminated the liquor patrol limits in the November 1974 election, the Charter “grandfathered-in” locations within those former limits from the requirements for acreage and food consumption, which are still in effect to date. Minneapolis City Charter Section 4.1(f)(1)(D) states that the “Council may grant a liquor license without regard to this [Charter’s] requirements for acreage or food consumption if . . . the charter or any other applicable law permitted such a license *as of November 1, 1974.*” (emphasis added).

More recently, in November 2014, in a charter amendment ballot proposal, the voters approved the elimination of the “70/30 rule” requiring a 70% to 30% ratio for food to alcohol sales for neighborhood restaurants. The City Council placed this amendment on the ballot with approval of the Charter Commission. The proposal was submitted to the voters in accordance with Chapter 410, which requires such liquor-related provisions to be submitted to the voters and requires a 55% majority for passage.

Even setting aside the historical justification, the explicit references to liquor-related provisions in Sections 410.04 and 410.121 of current state law make clear that the liquor restrictions in the City Charter are proper charter subjects under Chapter 410. The 70/30 ballot provision for a charter amendment was appropriate and did not open the door to charter amendments for an ordinance initiative such as the \$15 minimum wage citizen proposal.

CONCLUSION

The proposed minimum wage charter amendment is an ordinance disguised as a charter amendment. The City's Charter does not permit legislation by initiative. Accordingly, the City Council should not place the proposed charter amendment adopting a \$15 minimum wage on the November 2016 municipal ballot.