

CITY OF MINNEAPOLIS

Minneapolis City Attorney's Office

Citizen Petition Proposals for Charter Amendments

- Minimum Wage
- Police Liability Insurance

Committee of the Whole

August 3, 2016

Process/ Council Role

- The role of the Council at this stage of the process:
 - Legal determination: Is it a legal proposal?
 - Question of whether Council Favors the Proposal is **NOT** Relevant



Process/ Council Role

- If Council finds the proposal is Legal, Council **MUST** transmit the proposal to the County Auditor to place on the ballot
 - Council must also craft the question to be placed on the ballot
 - Council cannot alter the proposal in any way; the duty to craft a question is simply to provide an accurate summary of the proposal for voters
- If Council finds that the proposal does not meet the Legal Standard, the Council should decline to transmit the proposal

Legal Standard

- Is the proposal:
 - Preempted by or in conflict with any state or federal law or constitutional provision?
 - In conflict with the public policy of the state?
 - Not a proper subject for a charter amendment under (in conflict with) Chapter 410?



Minimum Wage Proposal

- Sets increases in minimum wage beginning with \$10 per hour and increasing to \$15 by 2020 or 2022 depending on size of employer
- Annual cost of living increases thereafter measured by the U.S. Dept. of Labor's *Urban Wage Earners and Clerical Workers U.S. City Average*
- City to enforce proposal
- Provides for liquidated damages and administrative penalties
- Creates Private Right of Action in District Court
- Requires City to provide multilingual and culturally-specific outreach and education programs
- Adopts definitions set out in the Minnesota Fair Labor Standards Act

Chapter 410 Governs Home Rule Charters

- The Minnesota Constitution gives the State Legislature exclusive authority to create and prescribe powers for municipalities
- State legislation provides for 2 kinds of cities:
 - Statutory
 - Home Rule Charter, like Minneapolis
- Minnesota Statutes Chapter 410 governs the process for adopting and amending city charters and prescribes the provisions allowed in charters



Charters establish the powers, form and organization of a municipality

- Chapter 410 allows charters to include provisions for the governance structure (Mayor-Council, Council- City Manager, etc.), scope of authority, division of powers and organization of the municipality

(Minn. Stat. §§410.07, 410.16, 410.18 and 410.19)

- Chapter 410 allows charters to “provide for” citizen petitions for legislation – “Initiative and Referendum”

(Minn. Stat. §410.20)



Minneapolis' Charter Does Not Provide for Citizen Petitions for Legislation

- The Minneapolis Charter contains no provision for citizen petitions for ordinance initiatives or referenda
- The Minneapolis Charter §4.1(a) vests exclusive legislative authority in the City Council
- Minnesota Court of Appeals: Minneapolis “residents are not permitted to directly implement legislation by petition.”

Haumant v. Griffin, 699 N.W.2d 774, 781 (Minn. Ct. App. 2005)

Other cities who have initiative and referendum have charter sections setting out the right and the related process

Examples:

- City of Bloomington City Charter Chapter 5: “Initiative, Referendum and Recall”
 - Sections 5.01 – 5.18 set out the rights and process for citizen petitions for ordinance initiatives and referenda and for recall elections
- City of Winona City Charter Chapter 5: “Initiative, Referendum and Recall”
 - Sections 5.01 – 5.19 set out the rights and process for citizen petitions for ordinance initiatives and referenda and for recall elections



New “Plain Language Charter” Did Not Change Scope of City’s Powers

- The new “plain language” charter modernized provisions of the charter and eliminated outdated provisions; it contained no substantive changes
- The new Charter did not expand not expand the scope of the City’s powers
- New charter contains same claim of general powers “possessed by municipal corporations at common law.”
- New charter expressly preserves settled interpretations of provisions under prior charter

Minimum Wage Amendment is a Legislative Proposal in Conflict with Chapter 410

- The proposed charter amendment is legislative:
 - It does not relate to the form, structure, authority or distribution of powers within the city government
 - It is a detailed legislative proposal very similar to minimum wage statutes and ordinances enacted by states and in other cities
 - None of the cities cited on NELP's website as having adopted municipal minimum wage ordinances have done so by Charter Amendment



Provision in Charter relating to liquor and provisions in the prior charter enumerating specific powers do not alter the result

- State general statutes, such as Chapter 410, **supersede** any provisions of a municipal charter
- Liquor restrictions are a proper subject for charters and is expressly referenced in both §§410.04 and 410.121 of Chapter 410
- The list of enumerated powers in the prior charter relate to the authority of the Council to enact **ordinances** on the listed subjects, not for voters to place ordinance provisions on the ballot.

See, *prior* Charter Ch. 4, Sec. 5, titled:

“City Council – Power to Make Ordinances”

Conclusion – Minimum Wage Proposal

- The Minimum Wage proposal constitutes a citizen petition for an ordinance initiative within the meaning of Minn. Stat. §410.20
- The Minneapolis Charter contains no provision for citizen petitions for ordinance initiatives
- The proposal is therefore in conflict with Minnesota Statutes Chapter 410 and is not a proper subject for a charter amendment



Police Liability Insurance Proposal

- Requires Officers to obtain and maintain continuous professional liability insurance coverage
- Must be the *primary* insurance
- Must “include” coverage of willful or malicious acts and acts outside the scope of the officer’s employment
- City *may* reimburse officers for the base rate of coverage, but is prohibited from reimbursing officers for “any additional costs due to personal or claims history”

Defense and Indemnity Obligations under Minnesota Statutes: §466.07

- State law imposes a duty on cities to defend and indemnify their employees
- Minn. Stat. §466.07: cities “shall defend and indemnify” their employees provided that they were:
 - Acting in performance of the duties of the position; and
 - Not guilty of malfeasance, willful neglect of duty or bad faith



Defense and Indemnity Obligations under Minnesota Statutes: §471.44

- Minn. Stat. §471.44:
 - Imposes a duty on counties, cities and towns to “furnish legal counsel” to defend law enforcement officers against lawsuits for false arrest or other damages when arrest was in:
 - Good faith and
 - The performance of official duties
 - Duty of defense includes paying all costs of and expenses of defending the suit including witness fees and costs of legal counsel



§466.07 and §471.44 Preempt Home Rule Charter Provisions

- Both §466.07 and §471.44 preempt and supersede home rule charter provisions:
 - §466.11 states that Chapter 466: is “exclusive of and supersede[s] all home rule charter provisions”
 - §471.44 states that it governs: “notwithstanding any contrary provisions in the laws of this state or in the charter of any such governmental subdivision”



The Proposed Amendment is Preempted by and Conflicts with §466.07 and §471.44

- Minn. Stat. §466.07 and §471.44 require the City to provide defense (both require this) and indemnity (466.07) for police officers
 - Defense and indemnity = insurance
 - City could choose to provide individual policies now without charter amendment; City has chosen to self-insure;
- Conflicts with State Law to require officers to obtain and maintain their own policies for liability within City's statutory defense and indemnity obligation

Proposal not saved by allowing City to reimburse for base rate of coverage

- Conflict with state law is further exacerbated by the requirement in the proposal that prohibits the City from reimbursing officers for and requires officers to be personally “responsible for any additional costs due to personal or claims history”
- Professional Liability Premiums – like auto insurance – can increase by making a claim regardless of whether the insured is at fault



Proposal not saved by allowing City to reimburse for base rate of coverage

- Many suits are filed where the officer has engaged in no unlawful conduct:
 - Close to half of all lawsuits filed against City's police officers are dismissed in the officer's favor
 - 95% judgment in officer's favor of cases not settled
- Lawsuits are settled for a variety of reasons and does not prove that an officer engaged in malfeasance, willful neglect or bad faith
- But, can result in "additional costs due to personal or claims history"
- This conflicts with Minnesota Statutes §466.07 and §471.44

Conflict with Minnesota Public Employment Labor Relations Act (PELRA)

- City's Police Officers are represented by a Union – Police Officers Federation
- PELRA requires employers to “negotiate in good faith” over mandatory subjects of bargaining
- Unilateral changes in a Union Contract violate PELRA



Conflict with Minnesota Public Employment Labor Relations Act (PELRA)

- **Article 26 of Police Contract provides:**

Section 26.1 - Legal Counsel. The City shall provide legal counsel to defend any employee against any action or claim for damages, including punitive damages, subject to limitations set forth in Minnesota Statutes §466.07, based on allegations relating to any arrest or other act or omission by the employee provided: the employee was acting in the performance of the duties of his or her position; and was not guilty of malfeasance in office, willful neglect of duty or bad faith.

* * * *

Section 26.3 - Liability Insurance. The City may, at its option, maintain a standard policy of liability insurance covering employees against the actions and claims referenced in Section [26.1] above. The City shall pay all premiums for such coverage.

Conflict with Minnesota Public Employment Labor Relations Act (PELRA)

- Article 26 restates existing state law requirements and is a longstanding provision of the Union Contract
- The Police Liability Insurance proposal is in direct conflict with the City's obligations under PELRA



Conclusion – Police Liability Insurance Proposal

- The Police Liability Insurance proposal is preempted by and in conflict with:
 - Minnesota Statutes §466.07 and §471.44
 - Minnesota Public Employment Relations Act
- As such, it is not a proper subject to be placed on the ballot

