



**Minneapolis**

*City of Lakes*

**Office of the City Attorney**

Susan L. Segal  
City Attorney

350 South 5<sup>th</sup> Street – Room 210  
Minneapolis, MN 55415

Office 612 673-2010  
Civil Division Fax 612 673-3362  
Criminal Division Fax 612 673-2189  
CPED Fax 612 673-5112  
TTY 612 673-2157

**TO:** Chair Betsy Hodges and Members of the  
Intergovernmental Relations Committee

**FROM:** Dana Banwer, Assistant City Attorney

**DATE:** October 27, 2009

**RE:** Proposed Charter Revision – Summary of  
Changes Related to the Park Board

## **MEMORANDUM**

### **Overview**

The Charter Revision Work Group plan required this office to review the proposed Charter revisions and provide an overview to the Charter Revision Work Group as to specific proposed Charter amendments that would affect various City departments. Over the course of the past several months, we reviewed the proposed Charter amendments with the Charter Revision Work Group. This memorandum summarizes the impact of this proposal on the City and the Minneapolis Park and Recreation Board (“Park Board”).

### **Park Board Issues**

The current Charter contains provisions related to the Park Board primarily in Chapter 16. The proposed Charter revision provisions related to the Park Board are located in Chapter 7 (Park and Recreation Board) of the proposed Charter. In brief, the major changes affecting the Park Board are as follows:

#### **I. Park Board as a “Body Corporate and Politic”**

Under the current Charter, the Park Board is explicitly a “department” of the City of Minneapolis, while the proposed Charter revision specifically declares that the Park Board is now a “body corporate and politic”. Since the proposed Charter that the City is also a “body corporate and politic”, it seemingly places the Park Board on equal footing with the City. If approved by the City council, the proposed Charter revision also appears to result in the City of Minneapolis creating a separate and independent unit of government.

This proposal is similar to a recent attempt by a group of citizens to place a proposed Charter amendment on the November ballot making the Park Board “a separate and independent government unit of the state of



Minnesota”. Following advice from this Office about the proposed amendment’s legality and the City Council’s refusal to place the amendment on the November ballot, the citizen group sued to force the City to place the amendment on the ballot. In finding for the City, the Honorable Cara Lee Neville of the Fourth Judicial District ruled that the proposed Charter amendment is unconstitutional because under the Minnesota Constitution, only the legislature is authorized to create state governmental subdivisions or units. The court also ruled that because this authority is reserved to the legislature, the City is preempted from acting where the state has occupied the field, and to do so contrary to the Constitution and to state law, is against public policy.

Were the City to approve the proposed Charter amendment, it appears that the City would be removing a department of the City and effectively creating a separate unit of government, in violation of the Minnesota Constitution. In addition, because the proposed Charter revision establishes the Park Board as a “body corporate and politic”, it is preempted by state law because only the legislature may create units of state and local government, and the legislature has not delegated to home rule charter cities the authority to create state governmental units. Finally, because the Charter proposal establishes the Park Board as a “body corporate and politic” and as discussed above, this is unconstitutional and preempted by state law, it is therefore contrary to public policy. These issues are discussed more fully in the office’s Charter Work Group memorandum.

## **II. Park Board Assessments**

As discussed below, the proposed Charter revision contemplates removing several sections of the current Charter related to the Park Board to ordinance, including all language regarding appraisers and assessments. The reasons for removing provisions from the Charter to ordinance are discussed in the office’s memo to the Work Group and below. Because the proposed Charter revision does not define the term “local improvement” for which the City Council and the Park Board are empowered to enact assessment ordinances, this change could result in an expansion of the categories of costs that may be assessed, and in the delegation of additional taxing powers to the Park Board relating to assessments.

## **III. Removal of Certain Provisions to Ordinance**

In keeping with the philosophy of the Model Charter for Minnesota Cities, several Charter provisions are recommended for removal to ordinance. Moving provisions to ordinance results in a significant difference as to how easily those provisions may be altered. Amending a Charter provision requires either a 13-0 vote of the City Council or a majority popular vote in favor of the ballot question. Amending an ordinance, however, requires only a majority vote of all council members present.