



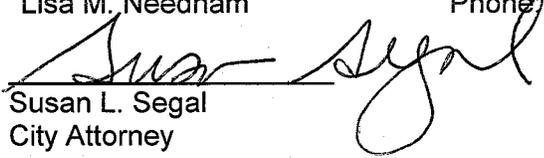
**Request for City Council Committee Action
From the City Attorney's Office**

Date: April 28, 2009
To: Honorable Betsy Hodges, Chair, Intergovernmental Relations Committee
Subject: Reinstating Partisan Primary in the Event the Supreme Court overturns IRV

Recommendation: IGR make a formal request to the Charter Commission that the Commission, at its May 6, 2009 meeting, recommend amendment, by ordinance, of the Charter to reinstate the City's partisan primary in the event of an adverse decision from the Minnesota Supreme Court in the case of *Minnesota Voters Alliance, et al. v. City of Minneapolis, et al.*

Previous Directives: None

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Approved by: 
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: None

Background/Supporting Information:

The City is currently in litigation over its adoption of Instant Runoff Voting (IRV). Although the City won at the district court level, Plaintiffs appealed. The City requested, and received, accelerated and expedited review so that the matter could be considered swiftly by the Minnesota Supreme Court. Oral argument in the lawsuit at the Minnesota Supreme Court is scheduled for May 13, 2009. We anticipate that the Court will issue its decision on or before June 11, 2009.

While this litigation is pending, the Elections Department and the City Attorney's Office have been directed by the Council to proceed on a dual track in preparing for the 2009 municipal elections, so that the City will be prepared both to conduct the election using IRV in the event of a favorable Minnesota Supreme Court decision or, in the event of an adverse decision, a traditional primary/general election system.

In the event of an adverse decision on IRV, the City will need to pass an ordinance providing for a primary election. Prior to the Charter amendments adopting IRV, the City Charter authorized a primary in which candidates were required to place the name of their political party or principle on the ballot. The state statute providing for municipal primaries does not allow political or principle designation on the primary ballot. The City could reinstate the pre-IRV partisan primary ballot designation system, but only through a charter amendment. A charter amendment by Council ordinance requires a timeline of at least four months. Thus, if the City desired this option, the process to amend the Charter must be initiated prior to the date we will receive a decision on the constitutionality of IRV from the Minnesota Supreme Court.

The first step in initiating a charter amendment process by ordinance is to obtain a recommendation from the Charter Commission for the amendment.

Minn. Stat. § 410.12 subd. 7, lays out the requirements for a Charter amendment:

Upon recommendation of the charter commission the city council may enact a charter amendment by ordinance. Within one month of receiving a recommendation to amend the charter by ordinance, the city must publish notice of a public hearing on the proposal and the notice must contain the text of the proposed amendment. The city council must hold the public hearing on the proposed charter amendment at least two weeks but not more than one month after the notice is published. Within one month of the public hearing, the city council must vote on the proposed charter amendment ordinance. The ordinance is enacted if it receives an affirmative vote of all members of the city council and is approved by the mayor and published as in the case of other ordinances. An ordinance amending a city charter shall not become effective until 90 days after passage and publication or at such later date as is fixed in the ordinance.

First, the Charter Commission must make a recommendation. The City then has one month to publish notice of a public hearing. A public hearing must be held at least two weeks, but not more than one month, after the notice. The Council must vote on the proposed ordinance within one month after the public hearing. The amending ordinance cannot become effective until at least 90 days after passage and publication of the ordinance. A Charter amendment requires, at a bare minimum, four months pursuant to statute (90 days to become effective plus at least 2 weeks between public notice and public hearing plus approximately 2 weeks to deal with scheduling multiple charter commission and Council meetings).

In order for a charter change reinstating a partisan primary to go into effect in time for a September primary, it would have to pass the Council unanimously no later than June 14, 2009. Prior to June 14, the City would have to have the Charter Commission introduce the recommendation and then hold a public hearing no sooner than 2 weeks after the introduction. This would require the Charter Commission to introduce the recommended revision at its May 6, 2009 meeting for the following timeframe to work:

- May 6, 2009: Charter Commission recommends amendment, by ordinance, of the Charter to reinstate partisan primary
- May 8, 2009: Council votes, at regularly scheduled Council meeting, to set notice of public hearing on amendment
- May 26, 2009 Specially-scheduled IGR public hearing on amendment [note: there is no regularly-scheduled IGR meeting that will work with this timetable]
- June 12, 2009 Council votes, 13-0, to change charter to reinstate partisan primary
- Sept. 12, 2009 Charter change becomes effective immediately prior to the primary scheduled for September 15, 2009

IGR should request that the Charter Commission propose the following amendment to the Charter:

Amend Charter Chapter 2 – Elections – to include the following new language:

Section 5C. Primary Elections. Notwithstanding the provisions of Minnesota Statutes, Section 205.17 subdivision 2, or any other provision of law, and superseding all other contrary provisions in this section, the City Primary Election and General Election for Mayor and City Council shall be conducted in the manner provided by law for elections for nonpartisan offices. All candidates for Mayor and City Council shall run for nomination in the city primary election. All such candidates shall, however, state the name of their political party or political principle, stated in three words or less, on their affidavits of candidacy. Affidavits of candidacy for Mayor and City Council shall otherwise conform with all requirements of the Minnesota general election laws pertaining to affidavits of candidacy for partisan office. The political party or political principle shall be placed on the Primary and General Election ballots with the names of the candidates for such offices.

This section shall become effective September 14, 2009 and shall expire December 31, 2009, unless the City Council certifies, by ordinance, that it shall continue.

The Charter Commission would need to vote on the proposed amendment at its May 6, 2009 meeting and refer the matter to the full Council for the Council's May 8, 2009 meeting, whereby the Council can set notice of the public hearing on the amendment. The proposed language substantially tracks the Charter language that existed prior to the IRV amendments. This time frame must be followed in order to ensure that a partisan primary is reinstated, should the Minnesota Supreme Court invalidate IRV.