

August 11, 2004

Council President Paul Ostrow
Minneapolis City Council
c/o City Clerk
304 City Hall
350 S 5th Street
Minneapolis, MN 55415

Scott Benson, Intergovernmental Relations Committee Chair
c/o City Clerk
304 City Hall
350 S 5th Street
Minneapolis, MN 55415

Re: Minneapolis Charter Commission Transmittal of Petition for Proposed Amendment
to the Charter of the City of Minneapolis

Dear Council President Ostrow and IGR Committee Chair Benson:

On August 11, 2004, the Charter Commission met at a special meeting. Pursuant to the requirements of Minnesota Statutes, Section 410.12, Subd. 1 and Subd. 3, the Charter Commission hereby transmits to the City Council a petition to amend the City Charter. Said petition is for an amendment to Chapter 14, Section 3, to add subsection (j) to the Charter of the City of Minneapolis

The petition, consisting of 1,80³~~2~~ pages, was filed with the Charter Commission on August 10, 2004, by members of the committee of petitioners responsible for the circulation and filing of the petition. A copy of the receipt given to Jason Samuels and Aaron Marcus, two of the committee of electors, is attached for your reference.

Sincerely,


Charter Commission Chairperson


Charter Commission Coordinator
City Clerk's Office

Cc: Members of the Minneapolis City Council

CITY OF MINNEAPOLIS
CHARTER COMMISSION
 SPECIAL MEETING
 AUGUST 11, 2004 - 4:00 PM

	Present	Absent	Yeas	Nays	Declining to Vote
BUJOLD		✓			
CLEGG			✓		
COLLIER			✓		
DOLAN			✓		
DZIEDZIC			✓		
FERRARA			✓		
LAZARUS			✓		
MELENDEZ			✓		
METGE			✓		
PONSFORD			✓		
THADEN		✓			
THEURER			✓		
BERNSTEIN			✓		
TOTALS			11		

Roll call for transmittal of citizen petition to the Intergovernmental Relations Committee.

Quorum is 8.

To: Paul Ostrow, President
Minneapolis City Council
Councilmembers for the City of Minneapolis
City Hall
350 South 5th Street, Rm 307
Minneapolis, MN 55415

The Minneapolis Charter Commission has transmitted to you, the Minneapolis City Council, a citizen petition to place on this November's ballot the following:

To require that the City Council shall authorize, license and regulate a reasonable number of medicinal marijuana distribution centers in the City of Minneapolis as is necessary to provide services to patients who have been recommended medicinal marijuana by a medical or osteopathic doctor licensed to practice in the State of Minnesota *to the extent permitted by State and Federal law* (emphasis added).

The Commission was compelled to forward this proposed amendment by reason of Minn. Stat. §410.12 -- there was no discretion. However in forwarding this proposed amendment to you, the Commission requests your consideration of the following comments and conclude the Council is not compelled to place this matter on the November ballot.

The Commission asks the Council to consider the following:

- The use of marijuana is strictly regulated under federal law, including a prohibition on distributing, manufacturing and processing with the intent to distribute through the Controlled Substances Act, 21 U.S.C. §841(a). The proposed amendment also violates Minnesota law, specifically Chapter 152 which prohibits the distribution of controlled substances, including marijuana.
- The adoption of a Charter provision which is contrary to public policy of Minnesota is forbidden under the Minnesota Constitution.
- Litigation will result in any event since it is very likely, if the proposed amendment passes, someone will apply for a license to then challenge either the state or federal laws or, conversely, ask a federal or state court for a declaratory judgment declaring the amendment as unconstitutional.
- The Charter is intended as the governing document for the City of Minneapolis. The proposed amendment is inconsistent with the purpose of the Charter. Under current municipal law, the proposed amendment to the Charter is an attempt to use the Charter amendment process as an alternative to initiative or referendum which has not been adopted. This is also an attempt to bypass the Council for what should properly be an ordinance by reason of the fact that the Council has the wisdom not to pass such an ordinance.
- The FDA does allow use of the active element of marijuana (THC) in synthetic form. This drug, Dronabinol (also known by its brand name, Marinol) is legally available by prescription for two uses: (1) anorexia associated with weight loss in patients with AIDS;

and (2) nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional antiemetic treatments.

The Commission quotes from Acting Deputy City Attorney Peter Ginder's letter dated July 27, 2004. Deputy City Attorney Ginder refers to State v. Beach, 191 N.W.1012 (Minn. 1923) "in which the Minnesota Supreme Court stated that a Charter amendment that is inharmonious with the Constitution and the laws of Minnesota need not be submitted to voters. Citing Beach with approval and as authority, the Minnesota Supreme Court in Hous. and Redevelopment Auth. of Minneapolis v. City of Minneapolis, 198 N.W.2d 531, 536 (Minn. 1972) affirmed the principal that proposed Charter amendments that appear to be inharmonious with the Constitution or the laws of Minnesota need not be submitted to the voters. Moreover, the Court noted that it is proper for a court to enjoin the election of a proposed Charter amendment "to save the trouble and expense" of voting on a measure which, if adopted, the courts would be compelled to set aside. Id. at 536. Both cases state that the decision not to submit a Charter amendment that appears inharmonious with the Constitution and the laws of Minnesota to the voters is a decision that is to be made by the City Council, not the Charter Commission."

A.C.E. Equipment Co. v. Erickson, 152 N.W.2d 739 (Minn. 1967) states "The power conferred upon cities to frame and adopt home-rule Charters is limited by the provision that 'such Charter shall always be in harmony with and subject to the constitution and laws of the state.'" Minn. Const. Art. 4, Sec. 36. Erickson also notes that the general laws and the penal code evidence the public policy of Minnesota and points out a Charter provision contrary to the public policy of Minnesota is forbidden.

The Commission believes it is in the best interest of the City of Minneapolis that you find the proposed Charter amendment inharmonious with the Constitution and the laws of Minnesota, and therefore not place the proposed amendment to the Charter on the November ballot.

The Commission also requests the Council petition the Minnesota Legislature to amend Minnesota Statute Section 410.12 in order to allow the Commission concurrent power with the Council to reject ballot measures which are inharmonious with the Constitution and the laws of Minnesota, subject to being overridden by vote of the Council.

Dated: Aug. 11, 2004

Respectfully submitted,

Jim Bernstein

Jim Bernstein, Chairperson
Minneapolis Charter Commission

by Jan Tracie
Charter Commission
Coordinator

cc: Mayor R. T. Rybak
Commissioners of the Minneapolis
Charter Commission
Suzanne Griffin, Director Elections Department
Burt Osborne, Assistant City Attorney

Jan Hrnecir, Chief Council Committee Coordinator

701814v2

CITY OF MINNEAPOLIS
CHARTER COMMISSION
 SPECIAL MEETING
 AUGUST 11, 2004 - 4:00 PM

	Present	Absent	Yeas	Nays	Declining to Vote
BUJOLD		✓			
CLEGG			✓		
COLLIER			✓		
DOLAN			✓		
DZIEDZIC			✓		
FERRARA			✓		
LAZARUS			✓		
MELENDEZ			✓		
METGE			✓		
PONSFORD			✓		
THADEN		✓			
THEURER			✓		
BERNSTEIN			✓		
TOTALS			11		

Roll call for letter to Council President Ostrow and Council Members.

Quorum is 8.