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MEMO

TO: Chair VanMoorlehem and Members of the Charter Commission
FROM: Kori Land, City Attorney
DATE: January 19, 2021
RE: Initiatives and Referenda

BACKGROUND:

A question was raised about whether there is a conflict in the requirements for initiatives and referenda under the City Charter and Minnesota State law. There is no conflict.

ANALYSIS:

The Charter:

Under Charter Sections 5.05-5.09, an initiative, which is a request to *initiate* an ordinance, requires a petition signed by at least 10% of the total number of votes in the last election. Once the signatures on the petition are verified, the Council must hold a public hearing and vote upon the petition no more than 65 days after the verified petition is received by Council. If Council does not adopt the ordinance, then it goes on a ballot to be voted on by the electors at the next regular municipal election.¹

Pursuant to Charter Sections 5.10-5.12, a referendum is a request to *repeal* an ordinance that the Council recently adopted. If a petition signed by at least 10% of the total number of votes in the last election is submitted within 30 days of an ordinance's effective date, the ordinance does not go into effect and the Council must reconsider it at the next Council meeting. If the Council does not repeal the ordinance, then the question goes to the ballot, either at the next municipal election or at a special election.

State Law:

Under Minnesota State Statute §205.10, electors are also given the right to initiate or repeal an ordinance. On first blush, it appears that the state law is intended to cover the same subject matter as the Charter provision. However, that is not the case. Under the Charter, when a petition is

¹ However, if the petition is signed by 15% of the votes, then the Council must hold a special election to consider the ballot question.

submitted, the question is immediately given to the Council for consideration and potential adoption or repeal without the need to go to a special election. In this provision in state law, the only course of action is for the question to go to a special election. There is no opportunity under this statute for Council reconsideration on either an initiative or a referendum. This is an important distinction because special elections can be expensive and time consuming for cities, can delay implementation and often confuse voters. Realistically, when a petition submitted by 10% of voters is handed to the Council, the Council pays attention and may be moved to consider or reconsider the issue. Allowing the Council to re-think the issue or address an issue first, is practical, logical and the most efficient process.

The Charter is not in violation of state law because these two provisions are not identical. In the Charter, initiative and referenda can be addressed at the Council table first, and then if it fails, at the ballot box. State law, on the other hand, requires petition questions to go straight to the ballot box, without the opportunity to take the more logical, faster and realistic approach of asking the Council directly. Therefore, it is irrelevant that the exact percentage of signatures on a petition is different in the Charter than state law. State law requires 20%; the Charter requires 10%.

If the overall question is which percentage on a petition is more protective of its citizens, the answer is the smaller one. A lower percentage of required signatures allows for easier participation in the legislative process, which in the end, is better protection for the residents. Requiring a higher percentage of signatures, makes the process more difficult and onerous and provides less of an opportunity to be heard. The Constitution protects the people's right to be heard more. Not less.

RECOMMENDATION:

Discussion – no action needed

ATTACHMENTS:

None