



TO: Charter Commission
FROM: Kori Land, City Attorney
DATE: October 6, 2022
RE: Charter Questions Submitted by Andrew Olson

At the last Charter Commission meeting, Andrew Olson, one of the applicants for the Commission, stated there were several provisions in the City Charter that he identified as concerning. The Charter Commission requested it be given the opportunity to review his questions at the next meeting. I provide the following analysis to each of Mr. Olson's question:

Question 1:

Part 1 - I would like the Charter Commission to consider clarifying portions of the City Charter that explain what constitutes a quorum of the Council.

Part 2 - My concern is that Sections 3.03 and 3.04 do not specify whether the threshold for what constitutes a quorum is modified if one or more councilmembers is legally disqualified from participating in a meeting or voting on a matter.

Part 3 - Those sections likewise do not specify whether the decision of a councilmember to recuse herself or himself or abstain from voting on a matter, when not legally required to do so, alters that threshold.

Response 1:

Part 1 – What constitutes a quorum?

Charter Section 3.03 defines a quorum as: “A majority of all members elected shall constitute a quorum to do business, but a smaller number may adjourn from time to time.” Charter Section 2.03 defines the Council as: “The Council shall be composed of a Mayor and six (6) Councilpersons.” Since there are 7 elected members, a quorum is 4 members of the Council.

Part 2 - What constitutes a quorum when there is a legally disqualified conflict?

The question of what constitutes a “conflict of interest” and how it affected the number of the Council members was addressed in my January 4, 2021, memo to the Charter Commission (see attached memo). If there is a legal disqualification, then that Councilmember is not counted for purposes of determining the number of elected members of the Council. It is as if there is a vacancy on the Council, thereby reducing the number of Council members, and the coinciding number for a quorum. If one member has a legal conflict, then there are 6 elected members, but since a majority is still 4, the quorum number does not change. If 2 members recuse themselves for a legal disqualification, there are 5 elected members and now a quorum is 3, so only 3 members are required to conduct business.

The number of non-conflicted members of the Council is important because the Charter requires that in order to pass an ordinance or resolution, it requires: “An affirmative vote of a majority of all the members of the Council...” (Section 3.04 subd. 1). If we have reduced the number on the Council, then the number for a majority of votes required also changes. For example, if there are 5 Council members because of a legal conflict, there must be 3 present to conduct business (for a quorum) and 3 affirmative votes to pass.

Following receipt of this conflict of interest memo, the Charter Commission initiated a Charter Amendment to Section 3.04, which the Council already enacted. This following provision was added at Section 3.04 Subdivision 3:

Subdivision 3. Only the number of council members eligible to vote will be counted when this Charter provides a voting requirement, such as “a majority of all the members of the Council.” The total number of council members eligible to vote on a matter does not include vacancies that exist under the provisions of section 2.05 and council members who cannot vote because of a legally recognized conflict of interest on the matter.

This new section of the Charter clarifies how a legal conflict impacts the number of council members.

Part 3 – Does recusal without a legal disqualification alter the quorum threshold:

This new Charter language also addresses the situation when there is no legal conflict, because conversely, if there is no legal conflict, the number of council members eligible to vote *would not change*. For example, if 4 Council members abstain but not for a legal disqualification, the Council is still made up of 7 members, requiring 4 votes to pass any motion. However, with 4 abstentions and only 2 members to vote, the vote will inevitably fail because 4 votes are still required. If 3 Council members abstain and the remaining 3 Council members vote yes, then this motion appears it too would fail, but there is a provision in the Charter that allows the Mayor to vote in this situation. Section 2.06 subd. 1.b. states that if there are 3 affirmative votes that would result in a failed motion, the Mayor is eligible to vote.

Question 2:

Section 3.03 refers to elected members, which could be problematic if the vote of an appointed councilmember would change the outcome of a decision.

Response 2:

Section 3.03 states: “A majority of all members elected shall constitute a quorum to do business, but a smaller number may adjourn from time to time.” (emphasis added)

Appointed members were never intended to be treated as if they do not count. The Charter should be changed to add “elected or appointed” to include all members of the Council. We recommend initiating this Charter Amendment.

Question 3:

I would like the Charter Commission to consider proposing revisions to various aspects of Chapter V, regarding initiatives and referenda, which conflict with Minnesota Statutes section 205.10. For example, the petition signature threshold set forth in state statute is 20% of the number of votes cast in the previous municipal election, while the threshold set forth in Sections 5.05, 5.06, 5.10 and 5.11 of the City Charter is 10%.

Response 3:

Minn. Stat. Section 205.10 does require a petition to be signed by 20% of the number of votes cast in the last municipal election in order to be submitted for a special election ballot question. However, Minn. Stat. Section 205.02 states: “In all statutory and home rule charter cities, the primary, general and special elections held for choosing city officials and deciding public questions relating to the city shall be held as provided in this chapter, *except that sections...205.10...do not apply to a city whose charter provides the manner of holding its primary, general or special elections.*” (emphasis added). Thus, Section 205.10 provides default rules that are overruled if a City Charter provision addresses the same issue. So, the law does not require the City to amend its threshold requirements. The City can remain at 10%.¹

Question 4:

I think the Charter Commission should consider proposing the modification of the City Charter to provide that a special election held for the purpose of voting on an initiative will not be held between 30 and 45 days after final action on a proposed ordinance, as is currently required, unless a uniform election date set forth in Minnesota Statutes Section 205.10, subd. 3a, happens to fall within that 15-day time period. The date of a special election generally must be one of the dates specified in Minn. Stat. Section 205.10, subd. 3a, pursuant to Minn. Stat. Section 205.02 subd. 2.

It is important to note that this provision on special election dates in the Charter only applies to Initiatives, not Referenda, *and only if* 15% of the voters actually sign the petition. If it only meets 10% of the required signatures, the special election is held at the next regular municipal election.

City Charter Section 5.07 states:

Action of Council on Petition. When the petition is found to be sufficient, the City Clerk shall so certify to the Council at its next meeting, stating the number of petitions and the percentage of the total number of electors which they constitute, and the Council shall at once read the ordinance and refer it to an appropriate committee, which may be a committee of the whole. The committee or Council shall thereupon provide for public hearings upon the ordinance, after the holding of which the ordinance shall be finally acted upon by the Council not later than sixty-five (65) days after the date upon which it was submitted to the Council by the City Clerk. If the Council fails to pass the proposed ordinance, or passes it in a form different from that set forth in the petition and unsatisfactory to the petitioners, the proposed ordinance shall be submitted by the Council to the vote of the electors at the next regular municipal election; but if the number of signers of the petition is equal to at least fifteen percent (15%) of the total number of electors voting at the last regular municipal election, the Council shall call a special election upon

¹ In the last 25 years, there has been only one referendum initiated by 10% of the voters, and that was for the recall of an ordinance relating to the construction of the Dakota County Northern Service Center. There was a special election on the ballot question, which ultimately upheld the decision of the Council and allowed the project to proceed.

the measure. Such special election shall be held not less than thirty (30) days nor more than forty-five (45) days from the date of final action on the ordinance by the Council or after the expiration of sixty-five (65) days from the date of submission to the Council when there has been no final action; but if a regular election is to occur within three (3) months, the Council may submit the ordinance at that election.

Minn. Stat. 205.10 states:

Subd. 3a. Uniform election dates.

(a) Except as allowed in paragraph (b) and subdivision 4, a special election held in a city or town must be held on one of the following dates: the second Tuesday in February, the second Tuesday in April, the second Tuesday in May, the second Tuesday in August, or the first Tuesday after the first Monday in November. A home rule charter city must not designate additional dates in its charter.

However, as was stated in Response 3 above, Minn. Stat. 205.10 provides statutory default rules which the City is not obliged to follow, per Minn. Stat. Section 205.02. Thus, the law does not require that the City amend its Charter to adjust its election date provisions. Given the complexity of trying to hold a special election pursuant to the Charter dates, it may be worthwhile to consider amending the Charter to default to the statutory dates.

Question 5:

I would like the Charter Commission to recommend repealing Section 5.02, which prohibits compensation paid to petition circulators. That provision is unconstitutional pursuant to Meyer v. Grant, a 1988 US Supreme Court decision in which the Court struck down a Colorado statute prohibiting the payment of petition circulators on First Amendment grounds.

Attached is a legal memorandum prepared by a law clerk in my office who also concluded that the Charter prohibition is likely unconstitutional. We recommend initiating a Charter Amendment that repeals Charter Section 5.02.

Conclusion

The Charter is a living document that does need to be poked, reviewed, and questioned from time to time. We appreciate Mr. Olson's attention and interest in the City's Charter because it will serve the citizens well. If the Charter commission so directs, we will prepare the amendments for its next meeting, and we specifically recommend the following:

- Amend Section 3.03 (to add "appointed")
- Repeal Section 5.02 (the prohibition on compensation to petition circulators)
- Discuss amending Section 5.07 (dates of a special election if the petition for an initiative contains signatures of more than 15% of the total number of electors in the last election)

Attachments:

Page from Andrew Olson application

Memo regarding Compensation to Petition Circulators

List your past and present civic activities or memberships which may be helpful to this committee.*

I have been a member of the League of Women Voters (LWV) of Dakota County since February 2017 and have served in volunteer leadership roles including as the Advocacy/Program Coordinator and later as the Visibility Coordinator. Throughout that time I have helped organize multiple candidate forums, forums concerning various public policy issues, and meetings featuring speakers addressing issues of concern to members and the general public. I have helped monitor proposals being considered by the Dakota County Board, the Metropolitan Council, the Minnesota Legislature, and various city councils and school boards, in order to help LWV of Dakota County and members of the public take advantage of opportunities to provide input. For the past few years I have been primarily responsible for external communications including the LWV of Dakota County website and social media accounts. I have also served as an election judge in Minneapolis since 2018.

List two or three goals that you would like to see accomplished during your term on a commission.*

1. I would like the Charter Commission to consider clarifying portions of the City Charter that explain what constitutes a quorum of the Council. My concern is that Sections 3.03 and 3.04 do not specify whether the threshold for what constitutes a quorum is modified if one or more councilmembers is legally disqualified from participating in a meeting or voting on a matter. Those sections likewise do not specify whether the decision of a councilmember to recuse herself or himself or abstain from voting on a matter, when not legally required to do so, alters that threshold. Also, Section 3.03 refers to elected members, which could be problematic if the vote of an appointed councilmember would change the outcome of a decision. 2. I would like the Charter Commission to consider proposing revisions to various aspects of Chapter V, regarding initiatives and referenda, which conflict with Minnesota Statutes section 205.10. For example, the petition signature threshold set forth in state statute is 20 percent of the number of votes cast in the previous municipal election, while the threshold set forth in Sections 5.05, 5.06, 5.10, and 5.11 of the City Charter is 10 percent. Similarly, I think the Charter Commission should consider proposing the modification of section 5.07 of the City Charter to provide that a special election held for the purpose of voting on an initiative will not be held between 30 and 45 days after final action on a proposed ordinance, as is currently required, unless a uniform election date set forth in Minnesota Statutes section 205.10, subdivision 3a, happens to fall within that 15-day time period. The date of a special election generally must be one of the dates specified in Minnesota Statutes section 205.10, subdivision 3a, pursuant to Minnesota Statutes section 205.02, subdivision 2. 3. I would like the Charter Commission to recommend repealing Section 5.02, which prohibits compensation paid to petition circulators. That provision is unconstitutional pursuant to Meyer v. Grant, a 1988 United States Supreme Court decision in which the Court struck down a Colorado statute prohibiting the payment of petition circulators on First Amendment grounds.

How did you become interested in serving on a committee?*

I am interested in serving on the Charter Commission for two primary reasons. First, I am generally interested in the mechanics of good governance. I feel that my experience, skills, and knowledge as an attorney and engaged citizen would help me to be a productive member of the Commission. Second, in the time that I have lived in West St. Paul there have been instances in which I feel that a lack of clarity within the City Charter has made it more difficult for residents to understand the functioning of the Council and other aspects of city governance.

TO: Kori Land
FROM: Michael Hirak
DATE: August 26, 2022
RE: Compensation to Petition Circulators

ISSUE: Whether the City may prohibit compensation paid to petition circulators, pursuant to West St. Paul Charter Section 5.02?

ANSWER: The prohibition in West St. Paul Charter Section 5.02 against paying petition circulators is likely unconstitutional.

ANALYSIS

A. The Supreme Court held in *Meyer v. Grant* that a prohibition against paying petition circulators violates the First Amendment.

1. Facts

Meyer v. Grant involved a Colorado statute (Colo. Rev. Stat. § 1-40-110) that allowed a proposed state constitutional amendment to be placed on a general election ballot, provided at least five percent of the total number of qualified voters signed an “initiative petition” within a six-month period.¹ This law also made it a felony to pay petition circulators.² Appellees in this case proposed an amendment to the Colorado Constitution that would have removed motor carriers from the jurisdiction of the Colorado Public Utilities Commission.³ Appellees determined that they would need the assistance of paid circulators to obtain the necessary number of signatures, so they sought a declaratory judgment that Colo. Rev. Stat § 1-40-110 violated their First Amendment rights.⁴

2. Analysis

i. Judgment

In *Meyer*, the Court unanimously determined that a prohibition against paying petition circulators is a “limitation on political expression subject to exacting scrutiny.”⁵ This is because the circulation of a petition necessarily involves “both the expression of a desire for political change and a

¹ *Meyer v. Grant*, 108 S. Ct. 1886, 1889 100 L. Ed. 2d 425 (1988).

² *Id.*

³ *Id.*

⁴ *Id.* at 417, 108 S. Ct. at 1890.

⁵ *Id.* at 420, 108 S. Ct. at 1891.

discussion of the merits of the proposed change.”⁶ Thus, “circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as “core political speech.””⁷ The Court goes on to conclude that a prohibition on paying circulators abridges political expression in two ways: 1) it limits the number of voices who can convey a particular message, the hours they can speak, and thus the size of the audience that can be reached, and 2) it makes it less likely that the appellees can garner the required number of signatures needed to get their proposed agenda on the ballot.⁸ For these reasons, the burden the State must overcome to justify such a law is “well-nigh insurmountable,”⁹ and the Court ultimately determined that Colorado’s purported justification of “protecting the integrity of the initiative process” was insufficient.¹⁰

ii. Application

West St. Paul Charter Section 5.02 (“the Section”) states, in relevant part:

...no circulator or a signature paper, and no signer of any such paper, or any other person, shall accept or offer any reward, pecuniary or otherwise, for service rendered in connection with the circulation thereof...Any violation of the provisions of this section is a misdemeanor.

This Section likely abridges political expression in at least one of the two ways identified by the Court in *Meyer*, because it limits the number of voices who can convey a message, limits the hours a particular group can attempt to persuade others on that message, and thus limits the size of the audience that can be reached, in the same way as Colo. Rev. Stat. § 1-40-110. If West St. Paul has a similar initiative petitioning process, the Section also limits political expression in the second way the Court identifies, because it makes it less likely that a particular group will be able to get their proposal on the ballot. For these reasons, West St. Paul would have to meet “exacting scrutiny,” in order for the Section to be constitutional. Whether exacting scrutiny is met depends on West St. Paul’s purported justification for the Section, but to meet such a standard is extremely improbable.

The U.S. Supreme Court has not challenged or distinguished its decision in *Meyer*. Even the federal courts that have distinguished it acknowledge the basic principle that exacting scrutiny applies to laws that ban compensating circulators, because petition circulation involves core political speech.¹¹

One of the few distinguishing fact patterns here is that the Section imposes only a misdemeanor, while Colo. Rev. Stat. § 1-40-110 imposed a felony. However, federal courts have determined

⁶ *Meyer*, 486 U.S. at 421, 108 S. Ct. at 1891.

⁷ *Id.* at 422, 108 S. Ct. at 1892.

⁸ *Id.*

⁹ *Id.* at 425, 108 S. Ct. at 1894.

¹⁰ *Id.*

¹¹ See, e.g., *Dobrovolny v. Moore*, 126 F.3d 1111, 1112 (8th Cir. 1997); *Cecelia Packing Corp. v. U.S. Dep't of Agric./Agric. Mktg. Serv.*, 10 F.3d 616, 622 (9th Cir. 1993).

that “*Meyer* did not turn on the fact that Colorado enforced its provision by criminal statute,”¹² and have applied *Meyer* to laws that imposed only civil penalties.¹³

In conclusion, the Court’s decision in *Meyer* likely renders the Section unconstitutional.

¹² *Bernbeck v. Moore*, 936 F. Supp. 1543, 1559 (D. Neb. 1996), aff’d, 126 F.3d 1114 (8th Cir. 1997).

¹³ See, e.g., *American Const. L. Found., Inc. v. Meyer*, 870 F.Supp.995, 1001-02 (D. Colo. 1994) (applying *Meyer* to a Colorado statute that required circulators to wear ID badges and finding the statute unconstitutional).