

Memorandum

To: Mayor Jacob Frey
Council President Lisa Bender
Members of the City Council

cc: Casey Joe Carl, City Clerk

From: James R. Rowader, Jr., City Attorney
Caroline Bachun, Assistant City Attorney

Date: July 21, 2021

Subject: City Council's Proposed Rent Stabilization Charter Amendments

I. PROPOSED CHARTER AMENDMENTS TO MINNEAPOLIS CHARTER

The City Council proposed amendments to Section 1.4 and 4.1 of the Minneapolis Charter. A copy of those amendments can be found in LIMS 2021-00104 and are attached as Attachments A and B, respectively.

II. PROCESS

The City Council may propose amendments to the City Charter by ordinance. Any ordinance proposing such an amendment shall be submitted to the Charter Commission. The Charter Commission shall review the proposed amendment within 60 days. This time for review may be extended at the Charter Commission's sole discretion for an additional 90 days. After reviewing the

proposed amendment, the Charter Commission shall approve or reject the proposed amendment or suggest a substitute amendment. See Minn. Stat. § 410.12, subd. 5 (2020).

Once the City Council is notified of the Charter Commission's action, the City Council has three options:

1. Submit its original amendment to the voters.
2. Submit the substitute amendment proposed by the Charter Commission to the voters.
3. Do not submit an amendment to the voters.

See Minn. Stat. § 410.12, subd. 5 (2020).

If the City Council will submit an amendment to the voters, the City Council must craft the ballot language for that amendment. See Minn. Stat. § 410.12, subd. 4 (2020). That ballot question must be transmitted to the County Auditor prior to the August 20, 2021, deadline for this year's general election ballot. See Minn. Stat. § 205.16, subd. 4 (2020).

The City Council submitted its proposed amendments on rent stabilization to the Charter Commission for its consideration via letter from the City Clerk dated February 26, 2021. The City Council proposed amendments to Sections 1.4 and 4.1. A copy of those amendments can be found in LIMS 2021-00104 and are attached as Attachments A and B, respectively.

In accordance with Minnesota Statutes, Section 410.12, the Charter Commission considered the proposed amendments within the timeframe allowed by state law. Further, the Charter Commission issued a *Report of the Minneapolis Charter Commission on City Council Proposal to Amend Sections 1.4 and 4.1 of the Minneapolis City Charter*. A copy of that report can be found at LIMS CH2021-00013.

At its July 7, 2021 meeting, the Charter Commission rejected the voter initiative amendment of Section 1.4, and suggested the following substitute to Section 4.1, which is a substitute to the City Council's proposed clause (g), as follows:

(g) Rent stabilization.

- (1) Council adoption.** The Council may adopt a rent control or rent stabilization ordinance (subject to sec. 4.4(c)) to regulate rents on private residential property in the City of Minneapolis.
- (2) Submission to voters.** Before the ordinance can take effect, the Council must submit the rent control or rent stabilization ordinance to voters in a ballot question at a general election. If 51 percent or more of the votes cast on the ballot question are in favor of its adoption, the ordinance will take effect 30 days from the date of the election or at such other time as is fixed in the ordinance.

III. LEGAL ANALYSIS

A. Amendment to Minneapolis Charter, Section 1.4

The City Council must decide whether it will place the proposed amendment to Section 1.4 (voter initiative) on the ballot. The City Council cannot change the language of that amendment.

The Charter Commission rejected the voter initiative designed to implement rent control or rent stabilization ordinances in Minneapolis. Further, the Charter Commission issued its *Report of the Minneapolis Charter Commission on City Council Proposal to Amend Sections 1.4 and 4.1 of the Minneapolis City Charter*. The Charter Commission's *Report* includes several policy arguments against the use of initiative, including that the legislative and policy-making forum of the City Council is the proper place for a full discussion on rent stabilization because it is a complicated and significant topic.

In that *Report*, the Charter Commission stated as follows:

One particular criticism of citizen initiative is that it often ends up in a badly drafted law since, if passed by the voters, the petition ends as law. It is argued that government officials who are experienced in legislative drafting will provide a better and more defensible law than those who do not have such experience.

Drafting an ordinance to implement rent control and rent stabilization would require considering legal parameters and policy decisions within those legal parameters. The City Council is better equipped to make these policy decisions, potentially after input from stakeholders, legal and non-legal staff, and after considering the law at the time of the ordinance drafting. This policymaking process will usually result in the creation of a legislative record, which can include a City staff report, findings of fact, written public input, and relevant empirical study. When faced with a lawsuit challenging the provision at issue, courts give deference to the City in terms of their standard of review because of this legislative record. The record is typically lacking in the case of initiative and courts may not afford the same deference in terms of standard of review.

There are also drafting errors in the amendment of Section 1.4. These drafting errors are described below:

1. The City Council's proposed amendment to Section 1.4 of the Charter provides that ballot questions must be submitted to the voters at a general or special election. However, under Minnesota Statutes, Section 471.9996, such ballot questions must be submitted only at a general election, and not at a special election.
2. The City Council's proposed amendments to Section 1.4 provides the City with three options when it receives an initiative ordinance that meets the technical requirements. One of those options is to enact the ordinance without change. However, under Minnesota Statutes, Section 471.9996, a proposed ordinance must be submitted to a general election.

Based on these drafting errors and legal considerations related to the complexity of drafting rent control and rent stabilization ordinances, plus the necessity of establishing a robust legislative record during the deliberative process to withstand potential legal challenges, the City Attorney recommends that the amendment to Section 1.4 not be placed on the ballot at the general election on Tuesday, November 2, 2021. The City Attorney concurs with the analysis of the Charter Commission contained in its *Report*.

B. Amendment to Minneapolis Charter, Section 4.1

The City Council must decide whether it will place the amendment to Section 4.1 on the ballot, and if so, whether it will place its original amendment or the Charter Commission's proposed substitute amendment on the ballot. The City Council cannot change the language of the original amendment or the substitute amendment.

Minnesota Statutes, Section 471.9996, which dictates when the City can utilize rent control, provides as follows:

471.9996 RENT CONTROL PROHIBITED.

Subdivision 1. **In general.** No statutory or home rule charter city, county, or town may adopt or renew by ordinance or otherwise any law to control rents on private residential property except as provided in subdivision 2. This section does not impair the right of any statutory or home rule charter city, county, or town:

- (1) to manage or control property in which it has a financial interest through a housing authority or similar agency;
- (2) to contract with a property owner;
- (3) to act as required or authorized by laws or regulations of the United States government or this state; or
- (4) to mediate between property owners and tenants for the purpose of negotiating rents.

Subd. 2. **Exception.** Subdivision 1 does not preclude a statutory or home rule charter city, county, or town from controlling rents on private residential property to the extent that the city, county, or town has the power to adopt an ordinance, charter amendment, or law to control these rents if the ordinance, charter amendment, or law that controls rents is approved in a general election. Subdivision 1 does not limit any power or authority of the voters of a statutory or home rule charter city, county, or town to petition for an ordinance or charter amendment to control rents on private residential property to the extent that the power or authority is otherwise provided for by law, and if the ordinance or charter amendment is approved in a general election. This subdivision does not grant any additional power or authority to the citizens of a statutory or home rule charter city, county, or town to vote on any question beyond that contained in other law.

Subdivision 1 does not apply to any statutory city unless the citizens of the statutory city have the authority to vote on the issue of rent control granted by other law.

This statute is not drafted clearly and could be subject to various interpretations. The statute has not been the subject of a legal challenge to date. In particular, the following language is not clear: “to the extent that the city, county, or town has the **power to adopt** an ordinance, charter amendment, or law to control these rents **if the ordinance, charter amendment, or law that controls rents is approved** in a general election.”

The Charter Commission has interpreted this language to mean that there is a two-step process for the City Council to implement rent control / stabilization within the City. Under this interpretation, the first step is that the City Council must have the power to adopt a rent control ordinance. For example, this could be accomplished by the voters approving a Charter amendment on the ballot this year that would authorize the City Council to adopt a rent control / stabilization ordinance through voter adoption at a general election. Then, the second step is that the City Council would have to submit the “ordinance that controls rents” to the voters for approval at a general election before the ordinance could be effective. For example, this could be accomplished by the City Council drafting the details of rent control / stabilization into an ordinance, then submitting that ordinance to the voters at a general election. In essence, the Charter Commission’s interpretation would ultimately enable voters to know the provisions that would be enacted to implement rent control / stabilization, such as, for example, the process for determining rent caps, allowed rent increases, exemptions, etc., when voting on this second-step ballot question at a general election.

The Charter Commission’s interpretation is reasonable and plausible. Although there is no case law that specifically addresses the interpretation of this language, a reviewing court is likely to give

some degree of weight to the analysis provided by the Charter Commission in its Report. Charter Commissioners, including a former Minneapolis Deputy City Attorney and an attorney with the League of Minnesota Cities, have provided their reasoned interpretation of the statute. The Charter Commission's interpretation of the statute likely indicates the manner a reviewing court would view the issues here.

There is also a drafting error in the amendment of Section 4.1. This drafting error is described below:

1. The City Council's proposed amendment to Section 4.1 of the Charter provides that ballot questions must be submitted to the voters at a general or special election. However, under Minnesota Statutes, Section 471.9996, such ballot questions must be submitted only at a general election, and not at a special election.

Based in small part on the drafting error, but more importantly based on the unclear language in the statute and the Charter Commission's reasoned statutory interpretation, the City Attorney recommends that the City Council place the Charter Commission's proposed substitute amendment for Section 4.1 on the ballot. The City Attorney concurs with the analysis and recommendation contained in the Charter Commission's *Report*.

IV. PROPOSED BALLOT QUESTION

Based on the analysis above, the City Attorney recommends that the amendments to Section 1.4 (voter initiative) not be placed on the ballot and that the Charter Commission's substitute amendment for Section 4.1 be placed on the ballot at the general election on Tuesday, November 2, 2021. For the Charter Commission's proposed substitute amendment, the City Attorney recommends the following ballot language to be placed on the ballot at the general election on Tuesday, November 2, 2021:

City Question #

Authorizing Rent Control in Minneapolis When Ordinance Approved by Voters

Shall the Minneapolis City Charter be amended to authorize the City Council to propose an ordinance that would regulate rents on private residential property in the City of Minneapolis, where that proposed ordinance would only take effect after the City Council submits that proposed ordinance to voters in a ballot question at a general election and 51% or more of the votes cast on the ballot question are in favor of its adoption?

Yes _____

No _____

ATTACHMENT A

ORDINANCE

By Gordon, Ellison, and Bender

Amending Article I of the City Charter relating to General Provisions: Powers, to be submitted to the voters at the November 2, 2021, municipal election, pertaining to adding authority for registered voters of the City of Minneapolis to propose, by initiative, a rent stabilization ordinance to regulate rents on private residential property in the City of Minneapolis.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Article I, Section 1.4 of the Minneapolis City Charter be amended to read as follows:

§ 1.4. - Powers.

(a) **Powers plenary.** The City, acting through the boards, commissions, committees, departments, and officers for which this charter or an ordinance provides, may exercise any power that a municipal corporation can lawfully exercise at common law.

(1) **Eminent domain.** The City Council may, and any other authorized board may, establish the procedure by which the City exercises through that board its power of eminent domain, including the procedure for any appeal from an award in condemnation.

(2) **Infrastructure.** The City may establish, plan, build, maintain, regulate, and otherwise provide for public ways and works and any other infrastructure necessary or convenient for its residential and economic development; for the comfort, convenience, health, safety, or welfare of its residents; or for the efficient delivery of municipal services.

(b) **Laws excepting home-rule cities.** Whenever a law grants a power or an option to cities generally or to cities of a certain class, but excepts cities having adopted a home-rule charter, the City may nevertheless exercise the power or option if that exercise is not inconsistent with this charter, notwithstanding its having adopted this charter.

(c) **Immunity.** The City enjoys immunity from suit and liability for any injury resulting from—

(1) the defective condition of an ungraded street;

(2) the ground's insufficiency where a sidewalk can go but no sidewalk has been built; and

(3) any other act, omission, or condition for which a municipal corporation enjoys immunity at common law or by general or special law.

(d) **Unmentioned powers.** This charter's mention of certain powers does not limit the City's powers to those mentioned.

(e) **Rent stabilization initiative.** Registered voters of the City have the right to propose a rent stabilization ordinance by initiative.

(1) **Petition initiation.** A rent stabilization initiative may be initiated by a petition signed by registered voters of the City equal in number to five (5) percent of the total votes cast at the last previous state general election in the City.

(2) **Contents and timeline for petition; ballot formatting.** The City Clerk is responsible for creating and maintaining rent stabilization initiative petition processes, which must include, at a minimum: (1) the requirements for the contents of the petition; (2) the timeline for submitting a petition to the City Clerk; (3) the timeline for curing an insufficient petition; (4) the timeline for the City Clerk to submit the petition to the City Council; and (5) the technical formatting requirements for ballot questions. The City Clerk must ensure these petition processes comply with applicable Minnesota Statutes and Minnesota Rules, and may consider, as a guide, petition requirements and processes for amendments to this charter. The City Clerk may amend these petition processes from time to time, including as needed to comply with applicable Minnesota election law, other laws, and interpretations of laws.

(3) Full petition filed with City Clerk. A rent stabilization initiative petition may consist of one or more papers, but they must be assembled and filed with the City Clerk as one instrument. Any rent stabilization initiative petition will be deemed received by the City Council when it is timely filed with the City Clerk. There is no filing fee for filing such a petition.

(4) City Clerk and City Attorney requirements. Once the rent stabilization initiative petition is timely filed with the City Clerk, the City Clerk and City Attorney must do the following:

(A) City Clerk technical review. The City Clerk must determine whether the petition is signed by registered voters of the City equal in number to five (5) percent of the total votes cast at the last previous state general election in the City. The City Clerk must ensure other technical petition requirements, including those in the City Clerk's rent stabilization initiative petition processes, are met. The results of this technical review must be provided to the City Council.

(B) City Attorney legal analysis. If all of the technical petition requirements are met, the City Attorney must analyze if the proposed ordinance complies with constitutional, federal, state, and other law. The results of this legal analysis must be provided to the City Council.

(5) City Council action on petition. Within 150 days of receiving the rent stabilization initiative petition, the City Council must take action as follows:

(A) If the City Clerk reports that the petition meets all of the technical requirements, do one of the following:

(i) Enact the ordinance without change.

(ii) Direct the City Clerk to submit a ballot question on the ordinance to the qualified voters at a general or special election on a date allowed under Minnesota election law.

(iii) Direct the City Clerk to not submit a ballot question on the ordinance to the qualified voters at a general or special election on a date allowed under Minnesota election law. A direction not to submit the ballot question must be based on the results of the legal analysis.

(B) If the City Clerk reports that the petition does not meet all of the technical requirements, file the results of the technical review of the City Clerk.

(6) Ballot question.

(A) The form of the ballot must be fixed by the City Council.

(B) If more than half of the votes cast on the ballot question are in favor of its adoption, the ordinance will take effect in 30 days from the date of the election or at such other time as is fixed in the ordinance.

ATTACHMENT B

ORDINANCE

By Gordon, Ellison, and Bender

Amending Article IV of the City Charter relating to City Council: Function, to be submitted to the voters at the November 2, 2021, municipal election, pertaining to adding authority for the Council to adopt a rent control ordinance or a rent stabilization ordinance to regulate rents on private residential property in the City of Minneapolis and to submit a rent control or rent stabilization ballot question to qualified voters to regulate rents on private residential property in the City of Minneapolis.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Article IV, Section 4.1 of the Minneapolis City Charter be amended to read as follows:

§ 4.1. - Function.

(a) **Governing body.** The governing body is the City Council, in which the City's general legislative and policymaking authority resides.

(b) **Scope.** The Council may act on the City's behalf in any matter, except where—

- (1) this charter reserves the action for a different board, commission, or committee; or
- (2) the action is inconsistent with this charter or otherwise unlawful.

(c) **Council as statutory board.**

(1) **Generally.** Where the law provides for municipal action through a board or commission, and this charter does not reserve that authority to a board or commission other than the Council, the Council must either—

(A) itself serve as the board or commission for which the law provides, even if the board or commission is a statutory rather than a municipal agency; or

(B) provide by ordinance for the board or commission, in which case—

- (i) the board's or commission's membership may (but need not) consist partly or wholly of Council members, and
- (ii) the Council may (but need not) organize the board or commission as a municipal department.

(2) **Board of appeal and equalization.** The Council may provide under this section 4.1(c) for a board of appeal and equalization, in which case it may also provide that any such board must return to the Council the assessment rolls that the board has revised, in which case the Council may confirm the board's revisions or return the rolls to the board for further revision.

(d) **Franchises.** The Council may grant and regulate any lawful franchise.

(e) **Licenses.** The Council may grant a license only if the license expires within one year.

(f) **Liquor licenses.** Subject to any other applicable law, the Council may grant a license for the sale of liquor.

(1) **Zoning.** The Council may grant a liquor license only in an area zoned for commercial or industrial use, not for residence or office use.

(2) **Wine licenses.** The Council may grant a license for the on-sale of wine, which may include the on-sale of intoxicating malt beverages, to a restaurant which otherwise qualifies for the license under each applicable law or ordinance.

(3) **On-site consumption.** The Council must by ordinance establish standards for a restaurant holding a liquor license.

(4) **Other limits.** The Council may by ordinance impose additional limits on granting a liquor license.

(5) **Other laws and ordinances apply.** All laws and ordinances that otherwise apply to a licensed site remain applicable after the Council has granted a liquor license.

(g) Rent stabilization.

(1) Council adoption. The Council may adopt a rent control ordinance or a rent stabilization ordinance to regulate rents on private residential property in the City of Minneapolis.

(2) Submission to voters. The Council may submit a rent control or rent stabilization ballot question to qualified voters to regulate rents on private residential property in the City of Minneapolis. It must be submitted at a general or special election on a date allowed under Minnesota election law. If more than half of the votes cast on the ballot question are in favor of its adoption, the ordinance will take effect in 30 days from the date of the election or at such other time as is fixed in the ordinance.