

MEMORANDUM

TO: City Council

FROM: Joseph J. Langel
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RE: Charter Election Provisions

The presence of language that is inconsistent with state law has the potential to create confusion and uncertainty in the administration of the City's elections. Therefore, we were asked to provide revisions to the election administration portion of the City Charter, removing language or provisions that conflict with state law.

This memorandum describes proposed changes to these provisions of the Charter and sets forth the legal issues underlying those changes. We also provide a redlined version of Chapter Four of the Charter that reflects the changes identified here, as well as a clean copy that incorporates those changes.

Background

Through their charters, cities have general authority to “provide for any scheme of municipal government not inconsistent with the constitution” and “for the regulation of all local municipal functions, as fully as the legislature might have done before home rule charters for cities were authorized.” Minn. Stat. § 410.07. However, “[c]ities have no power to regulate in a manner that conflicts with state law or invades subjects that have been preempted by state law.” *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 459 (Minn. 2018). Thus, a city “cannot enact a local regulation that conflicts with state law or enact a regulation when state law fully occupies a particular field of legislation.” *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 313 (Minn. 2017).

Since 1959, state law has dictated that municipal elections are controlled by state election law. Minn. Stat. § 205.02, subd. 1. Since then, the legislature further clarified that, “[i]n 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 [chapter 205.]” *Id.*, subd. 2. In addition to the city-specific election chapter, other election statutes that apply to municipalities will generally control in the City, regardless of the charter. *See, e.g.*, Minn. Stat. § 204B.16, subd. 1 (requiring that each “municipality” designate polling places according to a certain schedule); *see*

Minn. Stat. § 200.02, subs. 8, 9 (defining the term “municipality” to include charter cities). Further, state law identifies only a handful of statutory exceptions that do not apply to charter cities. Minn. Stat. § 205.02, subd. 2 (“[S]ections 205.065, subdivisions 4 to 6; 205.07, subdivision 3; 205.10; 205.121; and 205.17, subdivision 3, do not apply to a city whose charter provides the manner of holding its primary, general or special elections.”).

Given the specificity of these exceptions and the blanket statement that charter cities must conduct their elections in accordance with Minnesota Election Law,¹ it is possible that a court would determine that state law “fully occupies [the] particular field of” municipal election law. In light of the strong potential that state law may be determined to preempt the provisions of the City Charter related to City elections, the safest course of action is to presume that the City Charter may not deviate from state law unless there is specific authorization to do so. Therefore, where there are potential conflicts between the City Charter and provisions of state law, the safest course is to resolve those conflicts in favor of state law.

The following pages go through Chapter 4 of the Charter section by section, showing the proposed changes and providing comments on the rationale for those changes.

¹ See Minn. Stat. § 200.015 (“The Minnesota Election Law applies to all elections held in this state unless otherwise specifically provided by law.”); *see also* Minn. Stat. § 200.01 (defining “Minnesota Election Law” to include chapters 200 through 211C).

Specific Provisions

Sec. 4.1. - The regular municipal election.

A regular municipal election shall be held on the first Tuesday after the first Monday in November of each even-numbered year, ~~commencing in 1984~~, at such places as the city council shall designate. At least 15 days prior notice shall be given by the city clerk by posting a notice thereof in at least one public place in each election precinct, and by publishing a notice thereof at least once in the official newspaper of the city stating the time and the places of holding such election and of the officers to be elected. Failure to give such notice shall not invalidate such election. Elected and qualified officers provided for by this Charter shall assume the duties of office to which they were elected on the first ~~business day~~ Monday in January following such election.

Commentary:

The final sentence of this section, related to the date a council member assumes office, is inconsistent with state law. State law dictates that city council members elected at regular elections assume office on the first Monday in January following their election. Minn. Stat. § 205.07, subd. 1a.

The balance of this paragraph is not necessarily inconsistent with state law. The reference to 1984 was removed as unnecessary.

4.1.1 Primary elections.

~~The regular p~~Primary elections shall be held on the same date as prescribed by ~~the~~ Minnesota ~~Statute~~Election Law, which establishes the statewide primary election date. The primary election shall be for the selection of two nominees for each elective office at the regular municipal election.~~;~~ ~~If~~unless two ~~nominees~~candidates or fewer file for ~~each~~any elective office, that office shall not appear on the primary ballot and the candidates shall appear on the municipal general election ballot as the nominees for that office.

Commentary:

The first sentence is inconsistent with state law because, as written, it applies to both regular and special elections, but the “statewide primary election date” only concerns the regular election. Furthermore, primary elections for special elections are addressed in section 4.5.

As for the second clause of the second sentence (“unless two nominees or fewer file for each elective office”), under state law, if there are not more than twice the number of filers as seats (e.g. if there are one or two filers for one seat), the seat does not appear on the primary election ballot. Instead, the candidates simply proceed to the general election. The proposed language is consistent with state law while retaining as much of the present language as possible.

Sec. 4.2. - Filing for office.

All persons who shall desire to be elected to any elected office shall file an affidavit not more than ~~ten weeks~~ 84 days nor less than ~~eight weeks~~ 70 days before the primary election with the city clerk, paying a filing fee to the city clerk in an amount as set by ordinance or filing a nominating petition. The clerk shall also accept an application for candidacy as authorized by state law.

The city clerk shall prepare and have printed at the expense of the city the necessary ballots or other required material for such election.

The ballots or other material shall contain no political party designation of any candidate and the names of the candidates for each office shall be rotated in the manner provided by state law ~~may be arranged on the ballot alphabetically according to the surname of each candidate.~~ Consistent with state law, ~~T~~he ballots or the results shall be counted and preserved and the city clerk shall be the final custodian of such ballots or returns for the city.

A sample ballot or a facsimile representation of the ballot shall be posted at the place of election at least one week before such election by the city clerk, whose duty it is to preserve such sample ballots.

Commentary:

The first clause of the first sentence, related to the timing of the filing of an affidavit, conflicts with state law related to certain filing deadlines. State law sets the filing period for “a city nominating candidates at a primary, . . . for a city office voted on in November.” Minn. Stat. § 205.13, subd. 1a. In that case, “an affidavit of candidacy for a city office voted on in November must be filed no more than 84 days nor less than 70 days before the city primary.” *See id.*² Thus, to the extent that the first clause of the

² Note that, while the statute sets the filing period for non-November elections for “municipalities that do not hold a primary,” the statute does not address any non-November elections for municipalities that do hold a primary. Minn. Stat. § 205.13, subd. 1a. This suggests that the City could set its own deadlines for non-November elections. The Secretary of State’s election guide does not explicitly recognize this authority for cities, however, so there may be some risk in taking this position.

first sentence applies to “a city office voted on in November,” the timing set out in that clause of the Charter is inconsistent with state law.

The second portion of the first sentence, related to paying a fee with the affidavit of candidacy, is inconsistent with state law that permits candidates for office to file a nominating petition in place of the filing fee. Minn. Stat. § 205.13, subd. 4; *see also* Minn. Stat. § 204B.11, subd. 2 (d) (setting the required number of signatures for a petition for an office with a filing fee set by charter). That language also ignores the potential for voters to apply for the candidacy of another voter. Minn. Stat. § 205.13, subd. 1. The proposed language simply adds language recognizing the potential for an application for candidacy or a nominating petition in place of a filing fee. Language permitting the filing fee to be set by ordinance must be retained in order for the City to have that authority. *See id.*, subd. 3(c) (“A home rule charter city that sets filing fees by authority provided in city charter is not subject to the fee limits in this section.”). In order to retain that authority for all elections, if the first clause is clarified to apply to only non-November special elections, the second clause should be separated into a separate sentence. If the first clause is remade in a different manner, the council could also append a clause at the end of the sentence recognizing the potential for a petition to be filed in lieu of a fee.

The second sentence is not inconsistent with state law. “The municipal clerk shall prepare and have printed the necessary election materials, including ballots, for a municipal election.” Minn. Stat. § 205.185, subd. 1; *see also* Minn. Stat. § 205.17, subd. 1 (“In all statutory and home rule charter cities, and in all towns, the municipal clerk shall have printed the official ballot containing the names of all candidates for municipal offices and municipal ballot questions.”).

The second clause of the third sentence, regarding the arranging of the candidate names on the ballots, conflicts with state law. State statute requires that “[t]he names shall be arranged on city ballots in the manner provided for the state elections.” Minn. Stat. § 205.17, subd. 1. For state elections, the names are rotated along precinct lines. *Id.*, subd. 2; *see also* Minn. R. 8220.0825 and 8250.1810.

The fourth sentence, related to counting and preserving ballots or returns, treads on an area that is fully controlled by state law. If the Charter contained specifics on how ballots should be counted, for example, that language could conflict with state law. Given its general nature, however, this language could be clarified as a direction of policy rather than a statement on a topic already covered by state law. For example, this sentence directs the preservation of ballots, but does not indicate the form that they must be preserved in or how long they must be preserved. The Minnesota records retention schedule requires that voted ballots be preserved for 22 months except in the case of a challenge, and unvoted ballots destroyed after certification. In order to avoid any

potential conflict with state law, this sentence can merely incorporate state law into this general statement of policy.

The final sentence of this section, relating to posting sample ballots, adds a requirement on top of statutory language but does not replace the statutory requirement. *See* Minn. Stat. § 205.16, subds. 2 and 3. This language therefore does not conflict with state law.

Sec. 4.3. - Procedure at elections.

Consistent with the provisions of this Charter and applicable state statutes, the council may by ordinance further regulate the conduct of municipal elections. Except as otherwise provided by this Charter and supplementary ordinances, general state statutes on elections shall apply to municipal elections.

Commentary:

This section is not inconsistent with state law.

Sec. 4.4. - Special and advisory elections except for elected office.

The council may by resolution order ~~any a~~ special or advisory election on a question on which the voters are authorized to pass judgment under this Charter by law. The council may also, by resolution, order an advisory election to be held on a question that the city council has sole authority to resolve. The results of the advisory election are advisory to the council and have no binding effect. Special and advisory elections shall be held in the manner set forth for special elections in statutory cities under Minnesota Election Law. This section does not apply to special elections to fill vacancies in municipal offices.~~deemed appropriate by the council, for any reason authorized by law or this Charter, and provide all means for holding it. At least 15 days' prior notice shall be given by the city clerk by posting a notice thereof in at least one public place in each election precinct, and by publishing a notice thereof at least once in the official newspaper of the city stating the time and the places of holding such election.~~

Commentary:

The existing language indicates that the Council can determine how to hold special and advisory elections by resolution and provides notice requirements. This language is not consistent with state law. The revised language retains authority for these elections while referring to state law for the appropriate procedures.

Sec. 4.5. - Vacancy of municipal elected office.

4.5.1 When a vacancy in an elected office of the city occurs with 365 days or more remaining in the term of the vacated office, ~~there shall be a special election held within 90 days after the vacancy occurs to elect~~ a successor shall be elected by special primary and special election on the next practicable election dates to serve ~~for~~ the remainder of the unexpired term of the office vacated.

4.5.1.1 When a vacancy in an elected office of the city occurs when there is less than eight weeks prior to a regular primary election, the special primary election to fill the vacancy shall coincide with the regular Municipal Election, the election to fill the vacancy shall be held on the next election date thereafter, and the notice of such vacancy shall be published as soon as is practicable.

Commentary:

The requirement that a special election occur within 90 days in this scenario conflicts with state law. The 90-day election timing ignores the need for a primary and ignores the limitations on certain election dates specified by state law. The easiest way to ensure that this language is compliant with state law is to remove the 90-day timeline while retaining the requirement that a successor be elected to fill the vacancy.

Paragraph 4.5.1.1 is the former 4.5.5.1, as modified to provide for a primary election. It was moved to this location because it is a subset of the circumstances in 4.5.1 (vacancy when more than a year remaining in the term).

~~4.5.2 The city clerk shall give at least 60 days published prior notice of such special election, except as set forth under 4.5.5 of this section.~~

Commentary:

The notice required here would be in addition to statutory notice. There is no purpose served by an extra notice, so it was deleted.

~~4.5.3-2~~ The procedure at such election and assumption of duties of elected officers following such election shall conform as nearly as practicable to that prescribed for other municipal elections under this Charter.

Commentary:

The language of section 4.5.2 is not inconsistent with state law and was therefore retained.

~~4.5.4-3~~ In the case of a vacancy where there remains less than 365 days in the unexpired term, the council shall, by a majority vote, appoint a successor to serve for the remainder of said term. In the case of a tie vote of the council, the mayor, or acting mayor if the office of mayor be vacant, shall make the appointment from the candidates involved in the tie vote.

Commentary:

The language of section 4.5.3 is not inconsistent with state law and was therefore retained.

~~4.5.5 Office vacancy when less than eight weeks prior to primary election.~~

~~4.5.5.1 Special election. When a vacancy in an elected office of the city occurs when there is less than eight weeks prior to a primary election there shall be no primary election, except as provided in section 4.5.5.3 below. The special election to fill the vacancy shall coincide with the regular Municipal Election and the notice of such vacancy shall be published as soon as is practicable.~~

Commentary:

As noted above, this provision was modified and moved up to below 4.4.1

~~4.5.5.2 Vacancy in offices to be voted on in the regular Municipal Election. If a vacancy occurs less than eight weeks prior to the primary election, in the office of the mayor or the council members whose seats are to be voted on in the regular Municipal Election, said vacancy shall be considered not to exist for the purpose of the regular Municipal Election. The person elected to fill the vacancy in the regular Municipal Election, if approved by unanimous vote of the sitting council, may assume the duties of the office to which elected on the first business day following the city clerk's issuance of a certificate of election to said person.~~

Commentary:

This provision has no application because this situation is controlled by 4.5.3. An office will only be voted on in the regular City election at the regular election in the November prior to the expiration of the term for that office. A vacancy that occurs less than eight weeks prior to the primary election for that regular election will necessarily occur with less than one year remaining in the term. In that case, the Council is required to appoint a person to the office under 4.5.3.

~~4.5.5.3 Vacancy in an office not to be voted on in the regular Municipal Election. If a vacancy occurs in the office of the mayor or a councilmember not standing for election in the regular Municipal Election, a special primary election and a special election shall be held in January of the subsequent year following the vacancy to fill said vacancy. The election procedures for the special primary election and the special election shall be those election procedures for municipal office candidates as prescribed in Minnesota Statutes and this Charter. Notwithstanding section 2.3.1 of this Charter, which provides for a four year term for the mayor and council members, the term of the mayor and/or a councilmember elected pursuant to this subsection will be for the remainder of the vacant term.~~

Commentary:

This provision overlaps and conflicts with section 4.5.5.1. If the office is not on the ballot at the next regular election and the vacancy occurs less than eight weeks before the primary election for that regular election, the vacancy can only have occurred in the second year of the term. In that case, 4.5.5.1 dictates the result. The last sentence of this section is duplicative of the term language in 4.5.1.

~~4.5.6 If there are insufficient numbers of candidates in a regular or special election to fill expiring or vacated municipal offices, the city council shall fill said offices by appointment until the next regular municipal election. In the case of a tie vote of the council, the mayor shall make said appointment from the candidates under consideration.~~

Commentary:

This provision is inconsistent with state law. The City does not have authority to cancel an election because of insufficient candidates. Even if the City did not receive any affidavits of candidacy for an office, a resident could be elected as a write-in candidate.