

CHARTER COMMISSION

PROPOSED AGENDA FOR MARCH 14, 2017, MEETING

4:30 P.M. – ROOM 104 OF CITY HALL

- A. Administrative Business
 - a. Call Meeting to Order
 - b. Recording of Attendance
 - c. Approve Minutes of February 15, 2017 meeting
 - d. Set Order of Agenda
 - e. Communications
 - Initiative and Referendum (“I&R”) materials including state law with notes and decisions and a copy of St. Paul’s I&R provisions
 - St. Paul Citizens versus City Council
 - March 10, 2017 letter from Bob Hauessinger
- B. Open Comment Period
- C. Committee Reports
- D. Unfinished and Deferred Business
 - Update on council action on proposed charter amendments
- E. New Business
 - Should the charter be used to lessen the burden on councilmembers by increasing the number of wards, requiring support staff, etc.?
 - Is there any reason to consider an initiative and referendum process in the charter?
- F. Other business - as may be brought up by members
- G. Adjourn

CHARTER COMMISSION

MINUTES FOR FEBRUARY 15, 2017

4:30 P.M. – ROOM 104 CITY HALL

A. Administrative Business

- a. Call Meeting to Order: The meeting of the Commission was held in Room 104 of City Hall and was called to order by President Vince Barry at approximately 4:30 p.m.
- b. Swearing in of re-appointed member: Eileen Schneider of the City Clerk's office was present to administer Oath of re-appointment to Dave Senjem.
- c. Recording of Attendance: Present were commission members Kathy Meyerle, Jane Belau, Fred Suhler, Vince Barry, Kellie Mueller, Ray Schmitz, Dick Hall, John Eckerman, Stephanie Podulke, Dave Senjem, and Marcia Marcoux. Absent were commission members Robert Haeussinger, Fran Bradley, Carol Kamper and Leigh Johnson.
- c. Approval of Minutes: The minutes of January 10, 2017 were approved as submitted.
- d. Set Order of Agenda: Agenda as ordered.
- e. Communications:
 - Joint memo from the City Administrator, Asst. City Administrator and Mayor Brede relative to proposed changes to Section 4.00, 8.05, 8.06 & 9.00
 - Proposed changes in Word format

B. Open Comment Period:

Jessica Schmitt addressed the Commission in opposition to the proposed changes submitted by the City Administrator and Mayor. She hopes that in the future, Rochester can find a Mayor that can fulfill the true duties as outlined in the Charter as she feels that the citizens of Rochester lose a lot by weakening the Mayors role. Ms. Schmitt agreed that by shifting more responsibility to the Administrator position, it does increase the attraction for those who may be applying. However, Schmitt also felt that if more responsibility is transferred to the City Administrator, this is not an elected role and the voters lose accountability in voting for a representative to fulfill the community's best interests. She feels the Mayor, as an elected official, has a far greater duty to represent the best interest of the community than someone who is not an elected official.

Dennis Davey, resident of the historic southwest neighborhood, spoke on behalf of himself. Mr. Davey agreed with Ms. Schmitt's previous comments and feels that Rochester needs elected officials to be accountable as to the goals/aspirations of the community and if those responsibilities are taken out of the hands of the elected officials, it won't serve the community well.

Dave Deo, resident of Rochester also addressed the Commission. He too, agreed with the previous comments made by Ms. Schmitt. He was surprised at the changes being offered and where the changes were coming from and has been disappointed to know that the series of Mayors Rochester has had are not exercising their authority. Deo feels that this is a good discussion to be having and feels that there should be more discussions so that the citizens can fully understand what the changes and ramifications are. He agreed that elected officials are much more accountable and would like to see an elected Mayor have the authority given to them in the Charter and the City Administrator needs to be hired to do the job of an administrator. Deo hopes that now that this matter has been brought to the citizen's attention, he encourages more citizens to attend future meetings.

Dave Goslee addressed all the citizens in the audience and indicated that the recommendations brought forth by the City Administrator, Asst. City Administrator and the Mayor were at the request of the Charter Commission. Goslee made clear that the City Administrator did not initiate this conversation.

There were no other comments.

C. Committee Reports: None

D. Unfinished and Deferred Business:

- a. President Vince Barry referred to the communication submission with the proposed changes to the City Administrator duties and opened the floor for discussion.

Kellie Mueller wanted to start off by praising the fact that the proposed language was worded to be gender neutral and hopes that as the Commission goes forward that will remain the same.

Commission member Kathy Meyerle spoke and wanted to reiterate to the members of the audience in attendance that the reason the Commission asked the administrative staff to look at this was because of the inconsistencies within the Charter and the ordinance. Ray Schmitz asked why the duties of the City Administrator, who is an at-will employee, are outlined in the Charter and not just left to Ordinance. Marcia Marcoux addressed that question to say that to some degree, those duties are but the ordinance and the charter do not agree in terms of explanation of duties. Discussion amongst the Commission ensued relative to the various changes that were submitted. Dave Senjem felt that by only giving the Mayor a general oversight of operations, he really has no power except for veto power. John Eckerman asked if the Mayor would hire/fire City Administrator based on proposed changes. David Goslee clarified that the Council would have that authority as there are only two positions that can be fired by City Council; one is City Administrator and the other is the City Attorney; both of these duties are outlined in the Charter. Goslee went on to say that effectively what would happen

with the amendments is that authorities that Mayor has right now would go to City Council. Goslee gave a brief history and said that over 20+ years ago, the Commission recognized the difference on how Charter read and how the City operated. They wanted to recognize the duties of the City Administrator as he has been the person every department head goes to if there is an issue. Without speaking for the Administration office, Goslee felt the intent of the proposed changes were to reflect how things currently operate. Goslee indicated that should there be opposition by Council as to the Charter Commission recommendations, are they willing to take this to referendum?

Questions arose as to what the current status was of finding the City Administrator replacement. Gary Neumann, the Assistant City Administrator was in attendance and indicated that the Human Resources department hired a search firm that will modify the job description with the minimum amount of requirements including a bachelor's degree and experience working in urban government. Neumann indicated that the hope is to have the position filled within 5-7 months.

Many concerns were addressed by various commission members: 1) should the Charter reflect the way the City currently works; 2) should the City operate the way the Charter says; 3) would it be a good idea to give the City Administrator so much control when they are not an elected official? Kellie Mueller felt that over the course of the last year, the discussions have been such as to give the Mayor more responsibility and the proposed changes are a complete opposite of that. Mueller feels that the Mayor should have more accountability.

Members continued on reviewing the proposed changes and suggested revisions so that a recommendation could be brought before the February 22, 2017 council meeting. The following was recommended by motion:

- Kathy Meyerle moved approval of proposed section 8.05; seconded by Marcia Marcoux. A motion to amend to delete the word "general" before supervisions was made by Dave Senjem, seconded by Kathy Meyerle and approved. The original motion was approved with 9 ayes, 1 nay and 1 dissention.
- Fred Suhler moved approval of proposed section 8.06; Kathy Meyerle seconded but then moved to amend the motion to strike subparts 7 & 8 and that motion was later withdrawn. Kathy Meyerle moved approval of proposed section 8.06 as presented, seconded by Marcia Marcoux and approved with 10 ayes and 1 nay.
- Kathy Meyerle moved to repeal section 11.02, 11.03, and 11.04 of the Rochester Code Of Ordinances, seconded by Dave Senjem. Approved 11-0.

Dave Goslee explained the process in that these recommendations will go under one action item to ask the council for a public hearing; after the public hearings, the proposed ordinance changes will take two readings before it's effective. If rejected, Goslee will bring this back to Commission to take to referendum, which can be a general or special election. The Council would prepare the necessary language that would go on ballot.

E. New Business: None

F. Other business: None

G. Adjourn: The meeting was adjourned at 6:10 p.m. The next scheduled meeting will be held on March 14, 2017 at 4:30 p.m. in conference room 104.

410.20. Recall and removal of officers; ordinances

Currentness

Such commission may also provide for the recall of any elective municipal officer and for removal of the officer by vote of the electors of such city, and may also provide for submitting ordinances to the council by petition of the electors of such city and for the repeal of ordinances in like manner; and may also provide that no ordinance passed by the council, except an emergency ordinance, shall take effect within a certain time after its passage, and that if, during such time, a petition be made by a certain percentage of the electors of the city protesting against the passage of such ordinance until the same be voted on at an election held for such purpose, and then such ordinance to take effect or not as determined by such vote.

Notes and Decisions:

1.In general

Where city charter did not specify what the grounds for recall of elective officers of the city were, wilful failure of councilmen to advertise for bids, as required by city charter, in making contracts for work and material, might constitute grounds for recall. Op.Atty.Gen. 707-B-5, August 30, 1949.

City charter may not provide for removal of council member by the council without a vote of the electorate as grounds for removal of elected local official must amount to malfeasance or nonfeasance in office, only as defined by state law. Op.Atty.Gen. 59a-30 (July 24, 1996) 1996 WL 421225.

2, 3.Initiative and referendum, generally

2.Initiative and referendum, generally - What constitutes

Also listed as **What constitutes, initiative and referendum, generally**

"Initiative" is the process by which a small percentage of voters may propose legislation and compel officials to submit proposed legislation to voters; "referendum," on the other hand, is process by which a small percentage of voters may delay effective day of legislation and compel officials to submit it to voters for approval or rejection. St. Paul Citizens for Human Rights v. City Council of City of St. Paul, 1979, 289 N.W.2d 402. Statutes § 1741; Statutes § 1771

2.What constitutes, initiative and referendum, generally

See Initiative and referendum, generally - What constitutes

3.Initiative and referendum, generally - Validity

Also listed as **Validity, initiative and referendum, generally**

Proposed city charter amendment that would establish a local minimum-wage standard constituted an exercise of general legislative authority, and thus was not a proper subject for voter initiative under plain language of city charter, which placed the responsibility for the general welfare of city residents in the city council; amendment was expressly

sought to "protect the welfare of city residents," and nothing in city charter authorized an exercise of legislative action through a citizen petition that circumvented city council's authority for legislation and policymaking. *Vasseur v. City of Minneapolis*, 2016, 2016 WL 6901660. *Municipal Corporations* ¶46

A proposed charter amendment which merely confers the right of initiative and referendum respecting ordinances is valid. *Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis*, 1972, 293 Minn. 227, 198 N.W.2d 531. *Municipal Corporations* ¶46

3.Validity, initiative and referendum, generally

See Initiative and referendum, generally - Validity

4.Initiative, repeal of ordinances

This section granting to municipalities the powers of initiative and referendum permits the repeal of existing ordinances by the initiative process. *St. Paul Citizens for Human Rights v. City Council of City of St. Paul*, 1979, 289 N.W.2d 402. *Municipal Corporations* ¶108.2

City charter provisions granting the people "the right to propose ordinances, to require ordinances to be submitted to a vote, and to recall elective officials by processes known respectively as initiative, referendum, and recall" and further providing that "any ordinance may be proposed by [initiative] petition" indicated that city charter commission intended voters of city to be able to repeal or amend existing ordinances by initiative. *St. Paul Citizens for Human Rights v. City Council of City of St. Paul*, 1979, 289 N.W.2d 402. *Municipal Corporations* ¶108.2

5-9.Referendum

5.Referendum - In general

Power of referendum is limited to acts which are legislative in character. *Hanson v. City of Granite Falls*, App.1995, 529 N.W.2d 485. *Municipal Corporations* ¶108.8

Proposed charter amendment which would confer right of referendum with respect to "any action" taken by city council, not limited to adoption of ordinances, was invalid. *Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis*, 1972, 293 Minn. 227, 198 N.W.2d 531. *Municipal Corporations* ¶46

Proposed charter amendment under which no urban renewal project "heretofore proposed or to be proposed in the future" may be initiated or undertaken without approval by majority vote of residents in area to be redeveloped was fatally defective where it purported to require approval after the fact in terms which rendered it unconstitutionally vague and confined participation in the referendum to residents of the immediate area affected. *Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis*, 1972, 293 Minn. 227, 198 N.W.2d 531. *Municipal Corporations* ¶46

6.Petition, referendum

Also listed as **Referendum - Petition**

Where original petition for referendum was found insufficient, amendment or additional parts, filed after ordinance had gone into effect, were of no validity, and did not suspend ordinance. *Aad Temple Bldg. Ass'n v. City of Duluth*, 1916, 135 Minn. 221, 160 N.W. 682. *Municipal Corporations* ¶117

6.Referendum - Petition

See Petition, referendum

7.Enforcement, referendum

Also listed as **Referendum - Enforcement**

Application for writ of mandamus to compel city council to submit proposed ordinance to vote pursuant to charter will not be denied because ordinance binds city only. *Oakman v. City of Eveleth*, 1925, 163 Minn. 100, 203 N.W. 514. Mandamus § 74(2)

7.Referendum - Enforcement

See Enforcement, referendum

8.Reenactment after referendum

Also listed as **Referendum - Reenactment after referendum**

A jitney ordinance differed in its essential features from one protested against by a referendum petition and repealed, so that there was no attempt to evade the referendum provisions of the city charter. *In re Megnella*, 1916, 133 Minn. 98, 157 N.W. 991. Municipal Corporations § 108.11

Where city ordinance is repealed on referendum petition, the council cannot pass the same ordinance again, or one like it in all essential features, but may pass an ordinance on the same subject-matter provided it acts in good faith and not for purpose of evading the referendum. *In re Megnella*, 1916, 133 Minn. 98, 157 N.W. 991.

8.Referendum - Reenactment after referendum

See Reenactment after referendum

9.Ordinances, referendum

Also listed as **Referendum - Ordinances**

Under statute allowing home rule charters of cities to provide that ordinances be subject to referendum, term "ordinance" is limited to legislative acts involving permanent or uniform rule of law. *Hanson v. City of Granite Falls*, App.1995, 529 N.W.2d 485. Municipal Corporations § 108.8

City council resolution approving airport layout plan was not legislative act entitled to referendum, but was more in nature of administrative act relating to daily administration of municipal affairs. *Hanson v. City of Granite Falls*, App.1995, 529 N.W.2d 485. Municipal Corporations § 108.8

• CHAPTER 8. - INITIATIVE, REFERENDUM, AND RECALL

• Sec. 8.01. - Initiative, referendum and recall.

The people shall have the right to propose ordinances, to require ordinances to be submitted to a vote, and to recall elective officials by processes known respectively as initiative, referendum and recall.

• Sec. 8.02. - Petition.

Initiative, referendum or recall shall be initiated by a petition

- (1) signed by registered voters of the city equal in number to eight (8) percent of those who voted for the office of mayor in the last preceding city election in the case of initiative or referendum, or
- (2) signed by registered voters of the city equal in number to twenty (20) percent of those who voted for the office of mayor in the last preceding city election in the case of recall of the office of mayor, or
- (3) signed by registered voters of the relevant council ward equal in number to twenty (20) percent of those who voted for the relevant office of councilmember in the last preceding city election or fifteen (15) percent of the registered voters in the relevant council ward, whichever number is greater.

(C.F. No. 10-635, § 2, 7-21-10; Ord. No. 12-9, § 2, 3-28-12)

- **Sec. 8.02.1.**

A petition may consist of one or more papers, but each paper circulated separately shall contain at its head or attached to it the statement required by Section 8.04, Section 8.05 or Section 8.07, as the case may be.

- **Sec. 8.02.2.**

Each signer of the petition shall write thereon the petitioner's name and the street number and council ward or legislative district and precinct designation of the petitioner's residence.

(Ord. No. 17665, § 6, 6-29-89; Ord. No. 12-9, § 2, 3-28-12)

- **Sec. 8.02.3.**

Each separate page of the petition shall have appended thereto a certificate, verified by oath, that each signature was affixed by the person purporting to have signed the same in the presence of the person making the certificate. The person making the certificate shall be a resident of the city.

- **Sec. 8.02.4.**

Any person whose name appears on a petition may withdraw his or her name by a statement in writing filed with the city clerk before the clerk advises the council as to the sufficiency of the petition. Any name appearing on any petition which does not comply with the foregoing requirements, except as to council ward or legislative district and precinct designation, shall be stricken, and no names shall be counted which have not been verified.

(Ord. No. 17665, § 6, 6-29-89; Ord. No. 12-9, § 2, 3-28-12)

- **Sec. 8.03. - Determination of sufficiency.**

Any petition seeking initiative, referendum and recall hereunder shall be deemed received by the council when it is filed with the city clerk, for which filing there shall be no fee. Immediately upon receipt of the petition the city clerk shall examine the petition as to its sufficiency and report to the council within twenty (20) calendar days, except that in the case of a recall petition it shall be thirty (30) calendar days. Upon receiving the report, the council shall determine by resolution the sufficiency of the petition.

- **Sec. 8.04. - Initiative.**

Any ordinance may be proposed by a petition which shall state at the head of each page or attached thereto the exact text of the ordinance sought to be proposed. If the council fails to enact the ordinance without change within sixty (60) days after the filing of the petition with the city clerk, it shall be placed on the ballot at the next general election in the city which occurs on or after the 120th day from the filing of the petition with the city clerk. If a majority of those voting on the ordinance vote in its favor, it shall become effective immediately.

Editor's note— Section 8.04 amended by Ord. No. 17339, C.F. 86-320, adopted by city council April 10, 1986, pursuant to Minnesota Statutes, Section 410.12.

- **Sec. 8.05. - Referendum.**

Any ordinance or resolution passed pursuant to subdivisions (5) or (6) of Section 6.03.3 of this Charter may be subjected to referendum by a petition filed within forty-five (45) days after its publication. The petition shall state, at the head of each page or in an attached paper, a description of the ordinance or resolution involved. Any ordinance or resolution upon which a petition is filed, other than an emergency ordinance, shall be suspended in its operation as soon as the petition is found sufficient. If the ordinance or resolution is not thereafter entirely repealed, it shall be placed on the ballot at the next election, or at a special election called for that purpose, as the council shall determine. The ordinance or resolution shall not become operative until a majority of those voting on the ordinance or resolution vote in its favor.

If a petition is filed against an emergency ordinance, the ordinance shall remain in effect, but shall be placed on the ballot at the next election or a special election called for that purpose, and shall be repealed if a majority of those voting on the ordinance vote to repeal it.

Editor's note— Section 8.05 amended by Ord. No. 16213, C.F. 26813, C.F. 268534, adopted by the city council Mar. 24, 1977, pursuant to Minnesota Statutes, Section 410.12.

- **Sec. 8.06. - Repeal of ordinances or resolutions submitted to voters.**

No ordinance adopted by the voters on initiative or ordinance or resolution approved by referendum shall be repealed within one year after its approval.

Editor's note— Section 8.06 amended by Ord. No. 16213, C.F. 268534, adopted by the city council March 24, 1977, pursuant to Minnesota Statutes, Section 410.12.

- **Sec. 8.07. - Recall.**

Any person holding an elective office, other than an office created by special law, may be removed by recall. The petition shall state at the head of each page a demand for the removal of the officer, the office held, and a brief description of the grounds for recall.

(Ord. No. 17665, § 6, 6-29-89)

- **Sec. 8.07.1.**

If the council finds a recall petition to be sufficient, it shall notify the officer involved and announce the same at its next meeting. Any officer so named may resign within five (5) calendar days after being notified as to the sufficiency of the petition. If the officer does not resign, a recall election shall be held.

(Ord. No. 17665, § 6, 6-29-89)

- **Sec. 8.07.2.**

Within ten (10) days after the council has found the petition to be sufficient, it shall order a special election to be held within sixty (60) days to determine whether the officer shall be removed. If a majority of those voting on the question shall vote in favor of removal, the office shall be deemed vacant and filled as provided in this Charter.

(Ord. No. 17665, § 6, 6-29-89)

- **Sec. 8.07.3.**

If any election is to be held within ninety (90) days and not less than thirty (30) days after filing of the petition, the council shall postpone the recall election until that time.

- **Sec. 8.07.4.**

No recall petition shall be filed against any officer during the first or the last six (6) months of the officer's term.

(Ord. No. 17665, § 6, 6-29-89)

- **Sec. 8.07.5.**

In the published notice of any recall election there shall be printed in not more than two hundred (200) words the grounds for recall stated in the petition, and the officer sought to be recalled may respond in not more than two hundred (200) words.

- **Sec. 8.08. - Disposition of insufficient petitions.**

If the council determines that the petition is insufficient or irregular, the city clerk shall deliver a copy of the petition to the person or persons therein named to receive it, together with a written statement of its defects. The persons circulating the petition shall be given thirty (30) days in which to file additional signature papers and to correct the petition in all other particulars. If at the end of that period the council finds that the

petition is still insufficient or irregular, the city clerk shall file the petition in the clerk's office and notify the persons previously notified of the defects. The final finding of insufficiency or irregularity shall not prejudice the filing of a new petition for the same purpose nor, in the case of an initiated or referred ordinance or resolution, shall it prevent the council from referring the ordinance or resolution to the voters at the next regular or special election at its option.

(Ord. No. 17665, § 6, 6-29-89)

Editor's note— Section 8.08 amended by Ord. No. 16213, C.F. 268534, adopted by the city council March 24, 1977, pursuant to Minnesota Statutes, Section 410.12.

St. Paul Citizens, Etc. v. City Council, Etc.

289 N.W.2d 402 (1979)

ST. PAUL CITIZENS FOR HUMAN RIGHTS, Appellant, Carla Messman and Craig Anderson, Plaintiffs, v. The CITY COUNCIL OF the CITY OF ST. PAUL, et al., Respondents, and Citizens Alert for Morality (CAM), Intervenor, Respondent.

Nos. 48919, 48939.

Supreme Court of Minnesota.

August 10, 1979.

*404 Connelly & Heffernan, Donald J. Heffernan, Scott F. Tilsen, and Carolyn F. Rusch, St. Paul, for appellant.

Suzanne Flinsch, City Atty., and Terry Sullivan, Asst. City Atty., St. Paul, for the City Council.

Dorsey, Windhorst, Hannaford, Whitney & Halladay and Roger J. Magnuson, Minneapolis, for Citizens Alert for Morality.

Heard, considered, and decided by the court en banc.

TODD, Justice.

Plaintiffs appeal from a judgment of the Ramsey County District Court refusing to enjoin the St. Paul City Council from placing an initiative question repealing the St. Paul Gay Rights Ordinance on the ballot of the April 25, 1978, election. The issues raised by this appeal are: (1) Whether St. Paul voters can repeal an ordinance by initiative; (2) whether the ballot question was improperly drafted; (3) whether the St. Paul Human Rights Ordinance as amended conflicts with the Minnesota Human Rights Act; and (4) whether plaintiffs are

deprived of their constitutional rights to due process and equal protection by repeal of the St. Paul Gay Rights Ordinance. We affirm.

In July 1974, the St. Paul Human Rights Ordinance was amended to prohibit discrimination based on "affectional or sexual preference." [1] St. Paul Legislative Code, chapter 74. In late 1977, a group of St. Paul residents circulated an initiative petition to repeal the St. Paul Gay Rights Ordinance by deleting from the St. Paul Human Rights Ordinance all reference to "affectional or sexual preference" and the provision that the requirement of religious membership be applied to all applicants by religious institutions. The petition was filed with the St. Paul City Clerk on January 17, 1978. The city clerk certified the petition to the city council which determined that the petition was sufficient and voted to place the petition on the April 25 election ballot.

Plaintiffs, an unincorporated association, filed suit on March 8, 1978, seeking to enjoin defendants from placing the petition question on the ballot and for a declaratory judgment that the petition was insufficient and that the ordinance could not be repealed by initiative. The district court denied plaintiffs' motion for summary judgment and granted defendants' motion for summary judgment on March 27, 1978. We denied plaintiffs' petition for temporary relief, pending appeal on March 31, 1978.

The amended ordinance was approved at the April 25 election. Plaintiffs' motion for a temporary restraining order preventing the city council from certifying the election results was denied on April 28, and this appeal followed.

1. Plaintiffs contend that voters in St. Paul cannot use the initiative process [2]*405 to repeal an ordinance; they claim that council action or a referendum are the only means by which an ordinance can be repealed. Defendants argue that the power to legislate includes the power to repeal, that there are no restrictions on the power of initiative, and, thus, that an initiative can be used to repeal an existing ordinance. Whether or not voters have the power to repeal an existing ordinance by initiative is a question of first impression in Minnesota.

Municipal ordinances are enacted either by action of the city council or by the initiative process. 5 McQuillan, Municipal Corporations (3d ed. 1969 rev. vol.), § 16.01. The power to enact ordinances generally implies the power to repeal them. 6 McQuillan, Municipal Corporations (3d ed. 1969 rev. vol.), § 21.10. The city council repeals existing ordinances by enacting new ordinances. See, 6 McQuillan, Municipal Corporations (3d ed. 1969 rev. vol.), § 21.09. The voters of St. Paul are, therefore, also able to repeal existing ordinances by enacting new ordinances through the initiative process unless the grant of authority

provides otherwise. See, 6 McQuillan, Municipal Corporations (3d ed. 1969 rev. vol.), § 21.11.

The St. Paul City Charter[3] grants the people "the right to propose ordinances, to require ordinances to be submitted to a vote, and to recall elective officials by processes known respectively as initiative, referendum, and recall." St. Paul City Charter, § 8.01. It also provides that "[a]ny ordinance may be proposed by [initiative] petition * * *." St. Paul City Charter, § 8.04. These two provisions indicate that the city charter commission intended the voters to be able to repeal or amend existing ordinances by initiative.[4] See, *State v. City of Wheeling*, 146 W.Va. 467, 120 S.E.2d 389 (1961), in which the court emphasized that the term "any proposed ordinance" must include a repealing ordinance.

2. Plaintiffs allege that repealing the clause relating to religious institutions in the provision regarding discrimination in education would allow the membership requirement to be used to discriminate on the basis of race, sex, or any other protected classification. Plaintiffs claim that under this interpretation the ordinance conflicts with the Minnesota Human Rights Act, Minn.St. c. 363, and is, therefore, invalid. A municipal ordinance will be upheld unless it is inconsistent with the Federal or State Constitution or state statute. We have established four general principles for determining if a municipal ordinance conflicts with a state statute:

"(a) As a general rule, conflicts which would render an ordinance invalid exist only when both the ordinance and the statute contain express or implied terms that are irreconcilable with each other. *406 "(b) More specifically, it has been said that conflict exists where the ordinance permits what the statute forbids. *Power v. Nordstrom*, 150 Minn. 228, 184 N.W. 967, 18 A.L.R. 733. "(c) Conversely, a conflict exists where the ordinance forbids what the statute expressly permits. *Power v. Nordstrom*, supra. A part of the holding of that case was that an ordinance requiring the closing of movie theaters on Sunday was not inconsistent with the state Sunday closing statute since the latter, while not specifically forbidding theaters to open, did not expressly permit them to either. "(d) It is generally said that no conflict exists where the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute. This rule is illustrated in *State v. Clarke Plumbing & Heating, Inc.*, 238 Minn. 192, 56 N.W.2d 667. That case dealt with an ordinance requiring a license and permits to install heating systems. Defendant was denied a permit because his plans were not prepared by a registered engineer, as required by the ordinance. The court held the ordinance valid despite the existence of a similar statute that did not have as broad a coverage as the ordinance, saying that the city could well have determined that greater restriction was necessary in a community of its size. This was

consistent with the statute." *Mangold Midwest Co. v. Village of Richfield*, 274 Minn. 347, 352, 143 N.W.2d 813, 816-817 (1966).

In the present case, the Minnesota Human Rights Act forbids discrimination in education because of race, color, creed, etc. Minn.St. 363.03, subd. 5. The act, however, also provides that "[i]t is not an unfair discriminatory practice for a religious or denominational institution to limit admission or give preference to applicants of the same religion." Minn.St. 363.02, subd. 3.

The St. Paul Human Rights Ordinance as amended appears on its face to be the same as the state statute. It does not forbid what the statute permits or permit what the statute forbids; nor does it contain express or implied terms that are irreconcilable with the statute. *Mangold Midwest Co. v. Village of Richfield*, supra. We do not believe that the state statute or the ordinance as amended would be construed so as to permit discrimination by a religious institution on the basis of race, sex, or any other protected classification. We therefore find no inconsistency between the state statute and the ordinance as amended.

3. Plaintiffs also claim that the ballot question repealing the St. Paul Gay Rights Ordinance was improperly drawn because it actually contained two questions.[5] The first question dealt with deleting all reference to "affectional or sexual preference" from the St. Paul Human Rights Ordinance, and the second question dealt with deleting the clause "provided such requirement is placed upon all applicants" from the provision which permits a religious institution to require membership in its denomination as a condition of enrollment.[6]

A municipal ordinance must contain only a single subject. See, *St. Paul City Charter*, § 6.04. An ordinance violates this proscription only when it contains subjects which are so dissimilar as to have no legitimate connection. See, *City of Duluth v. Cervený*, 218 Minn. 511, 16 N.W.2d 779 (1944), where we held that an ordinance providing for the forfeiture of intoxicating liquor did not violate the Duluth Charter provision that no law shall embrace more than one subject because the question of forfeiture had a logical and material connection to the subject of regulating the sale of intoxicating liquor. The purpose of such *407 a charter provision is to avoid the possibility of logrolling, deceit, or voter confusion. See, *Bogen v. Sheedy*, 304 Minn. 62, 229 N.W.2d 19 (1975), where we held that a referendum petition concerning two ordinances was valid despite the fact that it contained two questions, because the ordinances had been debated together, considered together, were passed at the same council meeting, and dealt with the same subject matter.

In the instant case, both questions concerned the same subject matter the St. Paul Human Rights Ordinance. Given the public debate on the initiative, there was little possibility of

deceit, voter confusion, or logrolling. Because the St. Paul City Council could have deleted all reference to "affectional or sexual preference" and the clause relating to religious institutions by enacting one ordinance, there is no reason that the voters could not do the same through the initiative process.

4. Plaintiffs argue that repealing the St. Paul Gay Rights Ordinance deprives them of due process and equal protection. These arguments were not presented to the trial court; thus, they will not be considered for the first time on appeal. See, *Bache & Co. Inc. v. Wahlgren*, 306 Minn. 238, 235 N.W.2d 839 (1975); *Morton v. Board of Com'rs of Ramsey County*, 301 Minn. 415, 223 N.W.2d 764 (1974); *Tourville v. Tourville*, 292 Minn. 489, 198 N.W.2d 138 (1972).

Affirmed.

ROGOSHESKE, J., took no part in the consideration or decision of this case.

WAHL, Justice (dissenting).

I respectfully dissent from the majority holding that the voters of St. Paul can repeal an existing ordinance by the initiative process. Few courts have addressed this issue, and the case is one of the first impression in Minnesota. We must consider this decision in terms of its long-range implications and not on the basis of any one issue brought before the voters by the initiative process. Whether an existing ordinance can be repealed through the initiative process depends on the constitutional and/or statutory grant of authority.[1] See, 6 McQuillan, *Municipal Corporations* (3d ed. 1969 rev. vol.) § 21.11.

Initiative and referendum provisions were introduced in this country early in this century by reformers who hoped that these processes would (1) increase voter involvement in the legislative process, (2) provide a check on the domination of legislatures by special interest groups, and (3) permit voters to act more objectively by considering issues rather than personalities so that there would be greater accuracy in expressing the public will. See, Note, 5 Fla.St.U.L. Rev. 925.

The experience with initiative and referendum provisions has indicated that these hopes have been frustrated. First, ordinances enacted through the initiative process may be poorly drafted because only one person or a small group drafts the ordinance to be placed on the initiative petition. There is no review to ensure that the ordinance is internally consistent, not in conflict with existing laws or policies, or based on inaccurate factual premises. Further, there is no critical evaluation, input, or feedback from those in society who may be affected by the legislation; nor is there the refining process that occurs in the legislature.

Second, the fact that the issues may be very complex necessitates long, detailed explanations and perhaps specialized knowledge in order that voters may make an informed choice. An election campaign does not lend itself to such explanations but to simple fact statements or slogans. As a result voters may be confused and make decisions, not on a factual or philosophical basis, but for emotional or political reasons. Third, the initiative process does not necessarily *408 avoid domination of the legislature or council by special interest groups, because small groups, e. g., only eight percent of the voters of the City of St. Paul, can place an initiative question on the ballot. Because of the small voter turnout, a well-organized minority can secure or block passage of an ordinance. Thus, the initiative process is not always the voice of the people. See, Note, 48 So. Cal. L. Rev. 922; Note, 5 Fla. St. U. L. Rev. 925.

Because of these grave problems, I believe that statutory and charter provisions providing for initiative and referendum must be narrowly construed. I am confirmed in this belief by the fact that neither the framers of the state constitution nor the legislature has seen fit to provide for initiative and referendum on a statewide level. In Minnesota, the powers of initiative and referendum are confined by statute to the municipal level of government. The statute provides that municipalities "may also provide for submitting ordinances to the council by petition of the electors of such city and for the repeal of ordinances in like manner." Minn. St. 410.20. Instead of using the statutory language, however, the St. Paul City Charter grants the people "the right to propose ordinances, to require ordinances to be submitted to a vote, and to recall elective officials by processes known respectively as initiative, referendum, and recall." St. Paul City Charter, § 8.01. The St. Paul City Charter permits voters to vote on emergency ordinances by referendum, and all ordinances submitted to the voters by initiative or referendum can be repealed in one year.

Although the repeal of an ordinance may be considered an act of proposing legislation in a broad sense, there is a recognized distinction between an initiative, which is designed to propose new legislation, and a referendum, which is designed to review existing legislation. See, *Landt v. City of Wisconsin Dells*, 30 Wis. 2d 470, 141 N.W. 2d 245 (1966). Under Chapter 8 of the St. Paul City Charter, the only distinction between the initiative and the referendum is the time limit in which a petition must be filed. To hold that the St. Paul voters can repeal an existing ordinance by initiative would be to render the referendum provision meaningless, because it would eliminate the need to file the referendum petition within 45 days. It is not reasonable to suppose that the St. Paul City Charter Commission intended such a result. On this ground I would reverse the decision of the trial court.

OTIS, Justice (dissenting).

I join in the dissent of Justice Wahl for the reasons stated therein and for the further reason that the proposed ordinance embraces two unrelated subjects in violation of the city charter.

SCOTT, Justice (dissenting).

I join in the dissent of Justice Wahl.

NOTES

[1] This amendment, which is part of the St. Paul Human Rights Ordinance, is referred to as the St. Paul Gay Rights Ordinance.

[2] Initiative is the process by which a small percentage of voters may propose legislation and compel officials to submit the proposed legislation to the voters. Referendum, on the other hand, is the process by which a small percentage of voters may delay the effective date of legislation and compel officials to submit it to the voters for approval or rejection. See, Fordham and Prendergast, *The Initiative and Referendum at the Municipal Level in Ohio*, 20 U.Cin.L.Rev. 313; 5 McQuillan, *Municipal Corporations* (3d ed. 1969 rev. vol.), §§ 16.52, 16.53.

[3] The powers of initiative and referendum are granted to municipalities in Minnesota by Minn.St. 410.20 which provides: "RECALL AND REMOVAL OF OFFICERS; ORDINANCES. [The city charter] commission may also provide for the recall of any elective municipal officer and for his removal by vote of the electors of such city, and may also provide for submitting ordinances to the council by petition of the electors of such city and for the repeal of ordinances in like manner; and may also provide that no ordinance passed by the council, except an emergency ordinance, shall take effect within a certain time after its passage, and that if, during such time, a petition be made by a certain percentage of the electors of the city protesting against the passage of such ordinance until the same be voted on at an election held for such purpose, and then such ordinance to take effect or not as determined by such vote."

This statute clearly permits the repeal of existing ordinances by the initiative process.

[4] The majority of courts that have faced this issue have held that municipal voters can repeal existing ordinances by initiative. See, *Duran v. Cassidy*, 28 Cal. App. 3d 574, 104 Cal. Rptr. 793 (1972); *State ex rel. Boyer v. Grady*, 201 Neb. 360, 269 N.W.2d 73 (1978); *Smith v. Township of Livingston*, 106 N.J.Super. 444, 256 A.2d 85, affirmed, 54 N.J. 525, 257 A.2d 698 (1969); *State ex rel. Sharpe v. Hitt*, 155 Ohio St. 529, 99 N.E.2d 659 (1951). But, see,

Batten v. Hambley, 400 S.W.2d 683 (Ky.1966); Wyatt v. Clark, 299 P.2d 799 (Okl.1956); Landt v. City of Wisconsin Dells, 30 Wis.2d 470, 141 N.W.2d 245 (1966).

[5] Contrary to plaintiffs' contention, the city attorney did not violate the doctrine of separation of powers by drafting the ballot question. Drafting the ballot question was clearly within the duties of the city attorney as delineated in the St. Paul City Charter and the St. Paul Administrative Code.

[6] As we stated above, the language of the religious exemption provision as amended is identical to the state statute and would not be construed so as to permit discrimination on the basis of race, sex, or any other protected classification.

[1] Thus, those cases which have permitted such a repeal do not control the instant case. See, e. g., Duran v. Cassidy, 28 Cal. App. 3d 574, 104 Cal. Rptr. 793 (1972); Smith v. Township of Livingston, 106 N.J.Super. 444, 256 A.2d 85, affirmed 54 N.J. 525, 257 A.2d 698 (1969); State ex rel. Sharpe v. Hitt, 155 Ohio St. 529, 99 N.E.2d 659 (1951).

THINGS FOR THE CHARTER COMMISSION TO CONSIDER SHORT AND LONG TERM

Let me begin by apologizing for missing the February meeting, I was on vacation.

FACTS AS I PERCEIVE THEM TO BE

The City Council will not approve, by unanimous vote, anything that affirms the duties and/or practices the present City Administrator now performs, merely by changing language in the current Charter; a change that would severely limit the role of the Mayor in overseeing affairs of the city;

The City Council will not approve, by unanimous vote, an amendment to the Charter which provides for two additional wards for the city, i.e. Wards 7&8;

Adoption of one or both of the above provisions must be approved by an affirmative vote in either a general or special election.

THINGS THE COMMISSION NEEDS TO CONSIDER

Does the Commission truly wish to reduce or severely limit the role (authority) of the Mayor, given what several people (I presume citizens) expressed at the February meeting?

Was the vote taken by the Commission in February merely a vote to have the language of the Charter match what occurs in the everyday practice of managing our city?

Finally, is the Commission's thinking long term or is it reacting to the moment?

After all isn't it the young people that will manage future affairs. Do we wish to burden them with decisions that reflect the past and not necessarily the future? We have to consider the tomorrow as well as today. If we decide to put one or both of the above items before the voters, we must be resolved to do it. There will be the critics along with our supporters. The city is not the exclusive domain of this body or the City Council, it's the people in our community; they are the important ones and we should listen to them.

Bob Haeussinger March 10, 2017.