



May 25, 2023

Todd Zehnder
2008 Lincoln Street South
Northfield, MN 55057

Gary Freking
1900 Lincoln Street South
Northfield, MN 55057

Norm Watt
2108 Lincoln Street South
Northfield, MN 55057

Joseph Grundhoefer
2106 Lincoln Street South
Northfield, MN 55057

Jim Dale
2010 Lincoln Street South
Northfield, MN 55057

Re: Reverse Referendum Petition

Dear Mr. Zehnder, Mr. Freking, Mr. Watt, Mr. Grundhoefer, and Mr. Dale:

As required by law, following our review of the reverse referendum petition filed with the City of Northfield ("City") City Clerk's Office, pursuant to Minn. Stat. § 475.58, subd. 3b(a)(2), on May 15, 2023 (the "Petition"), I am hereby officially notifying you that the Petition does not meet the legal requirements for a ballot question petition contained in Minnesota Rules, Chapter 8205 (the "Rules"). These Rules apply to all petition forms for any ballot election in the state of Minnesota.¹

The Petition's numerous deficiencies were previously identified for you in my letter to you dated May 16, 2023, which letter is incorporated herein by reference (the "initial response"). This initial response was provided to you in less than 24 hours after my receipt of your Petition in order to give you notice of the deficiencies in your Petition and the opportunity to correct the identified deficiencies in your Petition. The Petition I have now have on file that I have

¹ *In re Referendum to Amend City of Grand Rapids*, No. A05-2350, 2006 Minn. App. Unpub. LEXIS 782, at *5 (July 18, 2006).

analyzed, reviewed and evaluated remains the uncorrected Petition you filed with the City on May 15, 2023, as no new Petition was filed with my office within the statutorily defined and required period provided in Minn. Stat. § 475.58, subd. 3b(a)(2). Accordingly, as City Clerk, I have now finally found and determined that the filed Petition is insufficient under the Rules, and therefore, insufficient under the law to require a ballot election vote on the issuance of bonds for street reconstruction and bituminous overlays under Minn. Stat. § 475.58, subd. 3b(a)(2). The reasons and analysis supporting this determination of insufficiency and rejection of the Petition are discussed in detail herein below.

Minnesota Rules, Chapter 8205 Applies to this Petition

Minnesota Statutes, Chapter 204B, applies to “all elections held in this state except as otherwise provided by law.”² In this Chapter of law, the Minnesota Secretary of State is granted the authority to establish rules for all petitions in the State.³ The rules pertaining to petitions required for any election in the State can be found under Minn. R. Ch. 8205. As recently as 2019, the Minnesota Supreme Court dismissed the suggestion that Chapter 204B and Minn. R. 8205.1050 did not apply to a petition to place a charter amendment on a ballot and confirmed that the petition forms for “any Minnesota election” are governed by the Secretary of State’s Rules under Minn. R. Ch. 8205.⁴ The Rules under Minn. R. Ch. 8205, which set forth the required form of petitions, apply to this Petition for a reverse referendum.

Notably, the Secretary of State’s rules also apply to any petition of initiative, referendum, or recall submitted under the Northfield City Charter.⁵ However, as outlined below, the Northfield City Charter does not apply to a reverse referendum petition brought under Minn. Stat. § 475.58, subd. 3b(a)(2).

The Northfield City Charter Does Not Apply to this Reverse Referendum Petition

Northfield Charter, Chapter 6 addresses the powers of initiative, referendum, and recall.⁶ This Chapter of the City Charter applies to petitions for referenda only as defined in Chapter 6.⁷ Specifically, Northfield City Charter, Section 6.4 states, in part, the following regarding referenda under the City Charter:

With the exception of ordinances relating to land use planning, zoning and development, the appropriation of money, or the levy of taxes, if, prior to the date when an ordinance takes effect, a petition is filed with the city clerk that any such

² Minn. Stat. § 204B.02; *see also* *Butler v. City of Saint Paul*, 936 N.W.2d 478, 483 n.6 (Minn. 2019) (quoting Minn. Stat. § 204B.02).

³ Minn. Stat. § 204B.071 (“The secretary of state shall adopt rules governing the manner in which petitions required for any election in this state are circulated, signed, filed, and inspected.”).

⁴ *Butler v. City of Saint Paul*, 936 N.W.2d at 483 n.6. (quoting *In re Referend to Amend City of Grand Rapids*, No. A05-2350 at *5).

⁵ Northfield City Charter, Section 6.2 (“Any petition of initiative, referendum, or recall must comply with state law, rules, regulations and document forms promulgated by the Office of the Secretary of State, and this Charter. Registered voter as used herein is defined as a city resident who is registered to vote in the City of Northfield.”).

⁶ Northfield City Charter Section 6.1.

⁷ *Id.*

ordinance be repealed or be submitted to a vote of the electors, the ordinance shall thereby be prevented from going into operation.⁸

As stated above, the Charter only applies to ordinances and, even then, does not apply to ordinances relating to land use planning, zoning and development, the appropriation of money, or the levying of taxes. This Petition does not involve an ordinance as provided in Section 6.4. In fact, the action of the City Council on April 18, 2023 to approve general obligation bond financing under Minn. Stat. § 475.58 for the City's Street Reconstruction and Overlay Plan and Issuance of Street Reconstruction and Overlay Bonds was made by resolution of the City Council, Resolution No. 2023-038, dated April 18, 2023 (the "Resolution"). The Petition even includes a copy of the Resolution. A resolution is not an ordinance. A resolution is an administrative action. An ordinance is a legislative action to enact a law. Since the Charter referendum provisions only apply to ordinances, and only limited ordinances, and since the Council action to approve bond financing was by resolution and not an ordinance, then the Charter cannot apply to a reverse referendum sought under Minn. Stat. § 475.58, subd. 3b(a)(2).⁹

Northfield City Charter, Chapter 6 is consistent with the power granted by the State Legislature allowing the charter commission to provide for the submission of ordinances and petitions for the repeal of ordinances.¹⁰ The "power of referendum" under a City Charter is necessarily limited to "acts which are legislative in character" in the form of an ordinance.¹¹ To allow referenda on all municipal actions would "create a chaotic situation in city government."¹² Minnesota Courts have specifically noted that this chaos would result if referenda were permitted on the following actions: "the settlement of lawsuits, entering of contracts, acceptance or rejection of bids, sale of municipal bonds, appointment of city officials, levying of taxes, granting of licenses and permits, and the adoption of budgets."¹³

Instead of granting greater authority to home rule charter cities and the ability to regulate petitions and referenda related to municipal bonding, the Minnesota Legislature enacted specific provisions, which address the issuance of bond obligations as well as related to petitions and elections. Those are contained in Minnesota Statutes, section 475.58 and are the governing law in the case of this Petition along with the Rules.

Minnesota Statutes, Section 475.58

Minnesota's bond code is contained in Minnesota Statutes, Chapter 475. This chapter of law applies to all municipalities,¹⁴ and therein the State Legislature has provided a specific

⁸ Northfield City Charter Section 6.4.

⁹ Further, even if the Northfield City Charter were at all applicable, which it is not for the reasons already stated, the Petition fails as to its sufficiency and form as the Charter requires that "[a]ny petition of initiative, referendum, or recall *must comply with state law, rules, regulations and document forms promulgated by the Office of the Secretary of State, and this Charter.*" Northfield City Charter Section 6.2 (emphasis added).

¹⁰ Minn. Stat. § 410.20.

¹¹ *Hanson v. City of Granite Falls*, 529 N.W.2d 485, 487 (Minn. Ct. App. 1995).

¹² *Id.* at 488.

¹³ *Id.* (quoting *Hous. & Redevelopment Auth. v. Minneapolis*, 198 N.W.2d 531, 536 (Minn. 1972)) (internal quotations omitted).

¹⁴ Minn. Stat. § 475.753.

mechanism for the issuance of obligations for street reconstruction and bituminous overlays without holding an election.¹⁵ Under this statute, however, a petition requesting a vote on the issuance of obligations for street reconstruction and bituminous overlays may be submitted, and if successful, may require the issuance go before the voters. Such a petition must be signed by “voters equal to five percent of the votes cast in the last municipal general election” and must be submitted within 30 days of the hearing to the City Clerk.¹⁶ The statute does not clarify the process for verifying the petition.

In a case addressing a different statute,¹⁷ which permitted the filing of a petition for a referendum with the city clerk and which was also “silent as to a verification process for the petition,” the parties, the Office of the Minnesota Secretary of State, and the Minnesota Court of Appeals, turned to the Rules adopted by the Minnesota Secretary of State to confirm that the municipal clerk was responsible for verifying the petition.¹⁸ In doing so, the Court of Appeals stated that petition forms are governed by the Rules of the Office of the Secretary of State.¹⁹

Even a misplaced reliance on the Northfield City Charter, as the responsive letter indicates, cannot explain the failure to follow the petition form requirements under Minn. R. 8205.1010 as the Charter directs petitioners to the rules, regulations, and forms promulgated by the Secretary of State.²⁰ In fact, the Secretary of State’s Office provides an annotated form petition readily available on their website specifically for this purpose, which states the specific requirements for ballot question petitions in addition to the Rules.²¹

As filed, the Petition fails to meet the requirements contained in Minn. R. Ch. 8205, specifically Minn. R. 8205.1010, subp. 2, clauses A, C, F, G, H and I, and thus fails as a petition for a reverse referendum under Minn. Stat. § 475.58, subd. 3b(a)(2).

The Submitted Petition is Insufficient

The City Clerk is required to verify the Petition by first inspecting the Petition “to determine whether it complies with part 8205.1010.”²² Only if the Petition “satisfies the form requirements in part 8205.1010 and has been signed by the required number of qualified signatories during the applicable time period” shall the City Clerk notify the submitting parties that the Petition is sufficient.²³

Under Minn. R. 8205.1010, subp. 2, each petition “must be prepared in accordance” with nine criteria, which have also been described as “technical form requirements.”²⁴ The Rules are mandatory in this regard as evidenced by their use of the term “must”. As a result, the City

¹⁵ Minn. Stat. § 475.58, subd. 3b.

¹⁶ Minn. Stat. § 475.58, subd. 3b(a)(2).

¹⁷ Minn. Stat. § 205.07, subd. 3.

¹⁸ *In re Referend to Amend City of Grand Rapids*, No. A05-2350 at *5-7.

¹⁹ *Id.* at *5.

²⁰ Northfield City Charter, Section 6.2.

²¹ <https://www.sos.state.mn.us/media/1888/ballot-question-petition-example.pdf>

²² Minn. R. 8205.1050, subp. 2(A).

²³ Minn. R. 8205.1050, subp. 2(C).

²⁴ *In re Referend to Amend City of Grand Rapids*, No. A05-2350 at *5.

Clerk is required by law to follow the Rules as written, as are the petitioners, and the Rules have the force and effect of law.²⁵

In evaluating the Petition, I have found this Petition fails to meet five of the nine required criteria under Minn. R. 8205.1010, subp. 2. The criteria and the manner in which the Petition conforms or fails to conform to the Rules is as follows:

A. A petition must be prepared on paper no larger than 8-1/2 inches wide and 14 inches long. The signer's oath and the signature lines must be on the same side of the paper.

The Petition is prepared on paper, which meets these requirements; however, no signer's oath appears on the Petition. Thus, the Petition partially conforms and partially fails to comply with this criterion.

B. The language on the petition must be printed in no smaller than 10-point type.

The Petition satisfies this criterion.

C. Each petition page must have a short title describing the purpose of the petition.

The Petition does not have a title on each page. Thus, the Petition fails to comply with this criterion.

D. Each petition page must have a statement summarizing the purpose of the petition.

The Petition satisfies this criterion.

E. If the purpose of the petition is to put a question on the ballot, each petition page may have a statement of 75 words or less summarizing the ballot question.

The Petition meets this requirement to the extent that it is applicable.

F. Each petition page must have a signer's oath in no smaller than 12-point bold type. If the form of the signer's oath is not specified by statute, the following oath must be used: "I swear (or affirm) that I know the contents and purpose of this petition and that I signed this petition only once and of my own free will."

²⁵ *Comm'r of Revenue v. Enbridge Energy, LP*, 923 N.W.2d 17, 20 (Minn. 2019) ("An administrative rule promulgated pursuant to statutory authority 'is valid and is as binding upon a court as a statute if it is (a) within the granted power, (b) issued pursuant to proper procedure, and (c) reasonable.'") (quoting *State ex rel. Spannaus v. Hopf*, 323 N.W.2d 746, 752 (Minn. 1982)); see also Minn. Stat. § 14.38, subd. 1 (stating that "[e]very rule, regardless of whether it might be known as a substantive, procedural, or interpretive rule . . . shall have the force and effect of law" if it follows the notice requirements and procedure are followed).

The Petition does not have the required oath. Thus, the Petition fails to comply with this criterion.

G. Each petition page must include the following statement immediately above the signature lines: “All information must be filled in by person(s) signing the petition unless disability prevents the person(s) from doing so.”

The Petition does not have this statement on each page. Thus, the Petition fails to comply with this criterion.

H. Each petition page must have no more than ten signature lines. The signature lines must be consecutively numbered. Each signature line must have space for the date of signature; a signature; and each signatory’s year of birth; printed first, middle, and last name; and residence address, municipality, and county.

The Petition does not contain any of the signatory’s dates of birth, middle names, or county. Thus, the Petition fails to comply with this criterion. This failure of the Petition directly prevents, impedes and interferes with the City Clerk’s legal obligation and ability to verify the accuracy of eligible voter signatures.

I. Each petition page must include the following statement: “All information on this petition is subject to public inspection.”

The Petition does not contain this statement. Thus, the Petition fails to comply with this criterion.

In sum, the Petition is deficient in several material respects as it fails to meet legal requirements for a petition stated in clauses A, C, F, G, H and I of the Rules, as described above. The Petition lacks such information as an oath, middle names, birth years and counties of residence. These are not mere technical requirements that could be waived away as form over substance. They are in fact key facts necessary to determining the veracity of the Petition. This information is required by the Rules for the specific purpose of providing the facts needed for the City Clerk to properly verify the signatures on the Petition.²⁶ The Petition also lacks a signer’s oath attesting that the Petition was signed only once by each signer and was signed knowingly and voluntarily. These required, rule-based criteria go right to the heart of any petition process and cannot be ignored by the City Clerk. Further, the Petition fails to give notice that the information on the Petition is subject to public inspection.

The City Clerk is required to verify the Petition.²⁷ Even if the City Clerk were to ignore the law and the Petition form requirements, which the City Clerk cannot do, the Petition still lacks information sufficient to permit the City Clerk to verify that there are the requisite number of valid signatures on the Petition. In this case, the City Clerk would not be able to complete that work, and as direct result of the foregoing, the Petition is insufficient under the applicable law.

²⁶ See *Butler v. City of Saint Paul*, 936 N.W.2d at 483 (citing Minn. R. 8205.1050, subp. 2(B)).

²⁷ Minn. R. 8205.1050, subp. 2.

No Period for Correction Applies to this Petition

As outlined above, the Northfield City Charter does not apply to this reverse referendum Petition. Therefore, the City Clerk is neither obligated to bring this insufficient Petition before the City Council to determine sufficiency pursuant to Sec. 6.6 of the Charter, nor must the City Clerk grant the submitting parties 20 days to correct the Petition pursuant to Sec. 6.7 of the Charter. The applicable statute and Rules do not grant such authority to the City Clerk nor does the Charter under the present circumstances of a Petition filed under Minnesota Statutes, Section 475.58.

The Minnesota Legislature has provided a specific and more efficient timeline for petitions seeking a reverse referendum under Minn. Stat. § 475.58, subd. 3b(a)(2). The petitioners had 30 days to file a sufficient and valid petition to the City Clerk, and the City Clerk is given 10 working days to verify the Petition.²⁸ No corrective period is provided under the statute or the state Rules. Unlike a referendum on a legislative ordinance, which can be suspended indefinitely, a referendum on the issuance of bonds for street reconstruction and bituminous overlays must have a decisive deadline for resolution. Municipalities need finality and certainty with regard to the issuance of such bonds for such projects so that the city can bid the project, enter into contracts, and have a source of funding established for such projects. Any demand that additional process be provided where a petition so obviously fails to meet the basic requirements under the Rules would be contrary to the public policy underlying the process provided in Minn. Stat. § 475.58 and contrary to the applicable Rules.

Conclusion

The Petition fails to meet the requirements under Minn. R. 8205.1010, subp. 2. Therefore, the City Clerk is unable to verify the Petition under Minn. R. 8205.1050, subp. 2. As no sufficient petition has been filed with the City Clerk within 30 days of the public hearing held April 18, 2023, a vote on the issuance of bonds for street reconstruction and bituminous overlays is not required.

Sincerely,



Lynette R. Peterson, City Clerk
City of Northfield

cc: Ben Martig, City Administrator
David L. Ludescher, Attorney for Petitioners

²⁸ Minn. Stat. 475.58, subd. 3b(a)(2); Minn. R. 8205.1050, subp. 3.