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January 9, 2019

Honorable Melvin Carter
Mayor – City of Saint Paul
15 Kellogg Blvd. west
St. Paul, MN 55102

RE: Unlawful Denial of Referendum on Ordinance 18-39

Dear Mayor Carter:

I have been retained by a group of Saint Paul residents because the council and city attorney have ignored their responsibility under the city charter. A valid petition for a referendum (“Referendum”) on Ordinance 18-39 concerning organized collection of solid waste in Saint Paul was certified as procedurally sufficient on October 31, 2018. Consequently, the city council was called upon to do its duty under §8.05 of the St. Paul City Charter on November 14, 2018. Rather than suspending operation of the ordinance pending placement of the question on the ballot as required by the Charter, however, the 5,541 voices were roundly ignored by the council. Three grounds were cited for this decision: preemption by state law, unconstitutional contract impairment, and a vague conflict with public policy. None of these has any legal merit.

First, the Referendum is not preempted by state law. It is a valid exercise of citizen rights under the Charter. This very issue was exhaustively litigated in two separate Minnesota lawsuits spanning more than three years, so it’s especially bewildering that binding precedent directly on point has been either disregarded or missed entirely by the Saint Paul City Attorney.

For your convenience, I have attached *Jennissen v. Bloomington*, 913 N.W.2d 456 (2018). In that case, the Minnesota Supreme Court recognized the unmistakable language in §115A.94, Subdivision 6: that a city "...may exercise any authority granted by any other law, including a home rule charter, to govern collection of solid waste." The defining characteristics of a home rule charter city like Saint Paul are the voter powers of initiative, referendum, recall, and charter amendment under Minnesota Statutes §410.12. *Jennissen* concerns precisely the same subject matter as the present issue, and the City Attorney is doubling down on the failed argument advanced by the City of Bloomington.

Second, in the decision to deny the referendum as "inappropriate," Minnesota Statute §443.28 was cited as preemptive of local authority in the waste collection arena. This antiquated law concerning disposal facilities like landfills and incinerators has nothing to do with a city's authority to organize collection of solid waste under §115A.94, and certainly does not serve as a basis to eradicate the right of referendum on a city ordinance. The notion that the legislature would spell out the precise steps necessary to organize collection under the Waste Management Act, but elsewhere simultaneously reserve unreferenced and unfettered authority for the city council to dictate prices, is nonsensical.

Third, the Referendum does not unconstitutionally impair the contract with the Consortium of haulers. Impairment of a contract and termination are not the same thing. As you are aware, the contract contains a force majeure clause in §13.6 that excuses performance by either party in the event of a legislative act beyond that party's reasonable control. The Referendum on organized collection falls squarely within this definition. There are several reasons why the Referendum is constitutional, but the underlying point is that the concept of unconstitutional contract impairment was developed as a shield to protect private parties to a contract, or third parties, from government abuse. The Saint Paul City Council is using this legal construct as a sword to prevent the exercise of voter authority at the ballot box.

The final reason cited by the City Council in rejecting the Referendum on Ordinance 18-39 was that it presented a conflict with public policy. This is truly a strange contention. A referendum petition on Ordinance 18-40, which also concerned organized collection in the city, was submitted to the council just a few weeks earlier. Somehow this was not contrary to public policy, was not preempted, and in fact ended with Resolution 18-1760 which directed the repeal of the ordinance.

Case law and statutes establish in no uncertain terms that the legislature expresses no preference for organized collection. While the goals of the Waste Management Act may be served either by open hauling or an organized system, the scheme concocted by the City of Saint Paul actually rewards those who create more solid waste. Perversely, responsible stewards of the environment who create less waste for landfills and further the goals of the Waste Management Act are

punished with higher rates for a service they do not need and cannot opt out of. This is terrible public policy.

The City of Saint Paul has long recognized the value and importance of voter participation in the legislative process. Voter authority is enshrined in the Charter and its exercise is not subject to the approval of the City Council, largely because referendums inherently conflict with the ambitions of the council. Exclusion from the ballot is only justified in extraordinary cases, and this is not one. The Referendum on Ordinance 18-39 must be placed on the municipal election ballot so the voters may decide the fate of organized collection in Saint Paul.

The City has ample time to reverse course before the November election and perform its duty under the Charter. We do wish to avoid litigation and would be open to meeting with any representative of the city who may assist in a resolution. Thank you for your prompt attention to this issue, and I look forward to hearing from you before Friday, January 26, 2019.

Best Regards,



Gregory J Joseph

cc: (via Electronic Mail and US Mail):
Councilmember Dai Thao
Councilmember Rebecca Noecker
Councilmember Chris Tolbert
Councilmember Samantha Henningson
Councilmember Amy Brendmoen
Councilmember Dan Bostrom
Councilmember Jane Prince
St. Paul City Attorney Lyndsey Olson