

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Ballot Omission  
Declaratory Judgment

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Bruce Clark, Peter Butler, and Ann Dolan,

Honorable Leonardo Castro

Petitioners,

v.

Case No. 62-cv-19-857

City of Saint Paul, Minnesota;

and

Shari Moore, in her official capacity  
Saint Paul City Clerk;

and

Joseph Mansky, in his official  
capacity Ramsey County Elections  
Manager,

Respondents.

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**RESPONDENTS'  
MEMORANDUM OF LAW IN  
SUPPORT OF MOTION TO  
STAY PENDING APPEAL**

**INTRODUCTION**

On May 30, 2019, this Court issued an Order suspending enforcement of Saint Paul City Ordinance 18-39 by June 30, 2019 and placing a Referendum of Ordinance 18-39 on the November 5, 2019 General Election Ballot. Given the significant legal issues involved in this case, the very real uncertainty and confusion this suspension will invite, and—most importantly—the uncertainty about when an appeal in this case will be decided, Respondents ask this Court to stay its decision pending an appeal. The City will file the appeal promptly and will also seek accelerated review by the Supreme Court and

an expedited briefing schedule from that Court if it accepts review or from the Court of Appeals if the Supreme Court does not accept review.

As detailed below, there are enormous obstacles to implementing the Court's Order pending appeal that were not before the Court when the Order was issued. These obstacles, and the associated costs, support the issuance of a stay.

### ARGUMENT

There are a variety of factors courts must weigh when deciding to stay a decision pending appeal, including, (A) whether the appeal raises substantial issues; (B) injury to the parties absent a stay; and (C) the public interest, including the effective administration of justice. *Webster v. Hennepin Cnty.*, 891 N.W.2d 290, 293 (Minn. 2017) (citing *State v. N. Pac. R. Co.*, 221 Minn. 400, 22 N.W.2d 569 (1946)). In weighing these factors, courts must “balance the appealing party’s interest in preserving the status quo, so that effective relief will be available if the appeal succeeds,” against the Petitioner’s interest in immediately enforcing the decision. *Id.* (citing *DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141 (Minn. App. 2007)). Respondents will discuss each factor below.

**A. This case involves substantial issues that are entitled to a full appellate review.**

An issue is considered substantial where “important questions of law are raised.” *N. Pac. Ry.*, 221 Minn. at 409, 22 N.W.2d at 574-55. This is undoubtedly true here. As this Court is well aware, the City of Saint Paul undertook a seismic shift in its approach to hauling waste. This shift reverberated citywide and affected approximately 74,000 households within the City. The new system required over 14 months of painstaking

negotiation with existing haulers, meticulous city-planning, and a concerted education and advertising campaign to implement. This was no small change.

Trash collection is a critical public health service. The City of Saint Paul is required to ensure that all of its residents have garbage collection service. Minn. Stat. § 115A.941(a). To meet this statutory obligation, the state permits cities to “[o]rganize collection, provide collection, or require by ordinance that every household and business has a contract for collection services.” *Id.* Minnesota Statute § 115A.94 governs organized collection and applies to all cities in Minnesota. Moreover, § 115A.94 sets forth the process cities “must follow” before it can organize collection. *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 462 (Minn. 2018).

The Minnesota Supreme Court has considered only one very narrow issue with regard to organized collection under Minnesota Statute § 115A.94, that is whether the field preemption doctrine applies. *Id.* at 460. *Jennissen* did not consider conflict preemption, which is the issue in the case at hand. *Id.* at 460, n. 2. Furthermore, *Jennissen* is distinguishable from this case because *Jennissen* involves a proposed charter provision with language specifically pertaining to organized collection; it does not involve general referendum or initiative provisions in a city charter.

It is important for Saint Paul and other cities throughout the state to have § 115A.94 and the required process clarified. The issues presented here of conflict preemption and contract impairment are important question for Saint Paul and other cities considering organized collection under § 115A.94.

**B. Granting the stay and preserving the status quo results in the least amount of injury to all parties.**

In balancing the level of harm, courts must examine whether either party “will sustain irreparable or disproportionate injury” should the stay be granted or denied. *Id.* Here, the calculus of granting the stay and preserving the status quo favors the City. If the stay is denied, the resulting suspension of the ordinance and holding of an election while the appeal is pending will cause irreparable and disproportionate injury to the City.

Although the Court’s Order suspending the Ordinance made it effective June 30, 2019, that deadline does not give residents sufficient time to obtain solid waste collection services and, as a result, will cause immediate harm to the City.

Since last year, 74,000 households have been assigned a selected hauler, uniform and City-owned trash carts have been distributed to these households, and haulers have been working in their contractually-agreed-upon areas of the city to effect a smooth collection of refuse.

Neither the City nor the residents have the ability to go back to the open hauling system as it was set up with haulers prior to implementation of organized collection. The licensed trash haulers in Saint Paul have consolidated dramatically (only seven of the 13 original haulers are left). (Klennert Decl., ¶ 6.) The individual consortium haulers have invested a tremendous amount of time and money to transition to organized collection within the City. (*Id.* at ¶ 7). For example, haulers have purchased updated equipment based on their new routes because different types of trucks work better in different geographic areas. Consequently, they may not have access now to equipment to service other parts of the City. (*Id.*).

To transition from open hauling to organized collection, at least ten months were needed to implement an organized collection system. (Klennert Decl., ¶ 8.) There was a robust public outreach campaign with several months of communications to educate the public on the new organized collection system and instructions for selecting carts and the new service methods. (*Id.*) This included seven months of direct communications to households, which began in March 2018 and continued through the launch of the program in October 2018. (Biales Decl. ¶ 3.) Reversing course and returning to open hauling would require a similar timeline.

For example, if approximately 74,000 households need to set up service on their own, this means that approximately 3,744 households need to sign up for service per day of the 30 days until June 30 (20 business days, with eight hour days, and 74,000 customers). Neither the City nor the haulers have call centers that could handle this type of call volume. (Klennert Decl., ¶ 9; Biales Decl. ¶ 6.) When the City was at the peak of its cart selection process in May of 2018, the City had nine staff people each responding to 20 to 30 calls per day (180 to 270 calls). (Biales Decl., ¶ 4.) In addition, consortium haulers were called upon to provide responses to residents about customer service and billing issues. (*Id.* at ¶ 4.) Haulers have varying capacity for handling calls. Some smaller haulers have one or two staff people to answer phones and provide customer service. (*Id.* at ¶ 5.) Regardless of the number of customer service staff available to haulers, the high volume of calls that would need to be made and responded to for there to be timely trash service for all residential households, would overwhelm any customer service system. (*Id.* at ¶ 6.)

Haulers also would need to adjust their billing and accounting systems to accept new customers, develop new routes to collect from these customers, switch or label carts to identify their carts for their drivers, and communicate to residents their particular collection day according to new routes. When transitioning to organized collection, where all customer information was provided to haulers up front, creating new routes within established collection zones took five months alone. (Biales Decl., ¶ 7.) It took the City eight weeks to physically deliver a garbage cart to each of the properties within the program. (*Id.*)

When switching from open collection to organized collection, residential households did not need to individually request service; they only needed to select a cart size. (Biales Decl., ¶ 8.) If they did not select a cart size, the City would give them a medium cart or the same size cart they had utilized in the past. (*Id.*) Every residential household was guaranteed trash service, whether they selected a cart size or not. (*Id.* at ¶ 9.) The same is not true in switching back to open hauling from organized collection. In that situation, if a household is not able to or does not arrange for individual service, they will not have garbage service. (*Id.*)

Finally, attempting to do this on a temporary basis, with the possibility of reverting back to organized collection if the appeal is successful or the referendum fails, is not feasible. For the reasons discussed above, haulers cannot set up service quickly enough to implement open collection in a short time frame and it would require a significant financial investment by haulers to create new accounts, routes and carts, all for a possibly temporary situation. Furthermore, it would be impossible to educate and

communicate these various scenarios to residential households so that all residents would act and be assured of garbage service.

Because the City must maintain garbage service and it is not possible to change that service in a short period of time, the City will be forced to take steps to ensure continued service. This is an extremely expensive proposition. For each of the 74,000 households, the average cost for trash cart service and administrative fees is \$82.43 per quarter. (McCarthy Decl., ¶ 3.) This equates to a total cost per quarter of approximately \$6,099,820.00. (*Id.* at ¶ 4.) The City would need to access its emergency reserves to cover them. (*Id.* at ¶ 5.)

On the other hand, a stay would not materially harm Petitioners or other St. Paul residents. Neither side in this case benefits from haulers see-sawing back-and-forth. Granting the stay would actually prevent unnecessary injury to Petitioners who would face the repercussions of suspending this ordinance. In practical terms, these are the very individuals who would face future uncertainty about who their hauler would be and the possible cavalcade of changing haulers at their doorsteps. Although Petitioners desire to see the matter go to election, it seems doubtful they desire to see multiple hauler changes in quick-succession. Petitioners' interests are fully served by allowing the appellate process to run its course.

Furthermore, if the Order to place the matter on the ballot for the November 5, 2019 election is not stayed pending appeal, the City will suffer additional irreparable harm. As this Court is aware, for the matter to be on the ballot in November, the ballot question must be provided to the county election official by August 23, 2019. (Minn. Stat. § 205.16, subd. 4, Tvedten Decl., ¶ 3.) Thereafter, ballots are prepared and printed

to be ready in time for absentee voting, which begins on September 20, 2019. (*Id.* at ¶ 2.) If there is no decision from appellate courts by August 23, 2019, without a stay, the City would be required to submit a ballot question and place the matter on the ballot. If a decision is issued after August 23, 2019 eliminating the need for an election, the City will be irreparably harmed because the election, and the cost expense associated with the election, cannot be undone.

**C. Granting the Motion to Stay would contribute to the effective administration of justice by allowing a significant legal issues to obtain appellate review.**

Lastly, “[e]ffective administration includes protecting appellate jurisdiction, avoiding multiple lawsuits, and preventing the defeat of ‘the objects of the appeal or writ of error.’” *Webster*, 891 N.W.2d at 293 (quoting *N. Pac. Ry.*, 221 Minn. at 409, 22 N.W.2d at 574). In other words, this factor examines whether “issuing a stay would preserve the court of appeals’ jurisdiction by preventing a significant legal issue from becoming moot during appeal.” *Id.* There is substantial risk that denying this request to stay will moot this case on appeal.

If the stay is denied and there is no final decision by August 23, 2019 (the deadline for putting a question on the ballot for the November 5, 2019 election), the City must place the matter on the ballot. In that situation, this appeal and its far-reaching legal implications become lost to the void of justiciability because the deadline for putting a question on the ballot for the November 5, 2019 election, or the election itself, may have passed prior to a decision by the appellate courts. If the referendum succeeds, the appeal will continue based on the claim that the referendum was not lawful and has no legal

effect. If the referendum fails, the appeal will become moot and the suspension of the ordinance will be lifted.

Importantly, granting a stay does not have the same negative impact on Petitioners. Petitioners could still have an election if there is a stay in place and there is no decision from the appellate courts prior to August 23, 2019. If the City does not prevail on its appeal, the City can hold a special election after November 5, 2019. Minn. Stat. § 205.10, subd. 6. Like the decision in *Webster*, a stay pending appeal would not deny Petitioners an election, it would only be a temporary delay. *Webster*, 891 N.W.2d at 293.

Respectfully submitted,

Dated: June 13, 2019

LYNDSEY M. OLSON  
SAINT PAUL CITY ATTORNEY

*s/ Megan D. Hafner*

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**MINN. STAT. § 549.211  
ACKNOWLEDGMENT**

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

*s/ Megan D. Hafner*  
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