

Could city change rent cap if passed?

Council, city attorneys discuss possibility of refining voter initiative

By Frederick Melo

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St. Paul Mayor Melvin Carter has publicly stated he'll vote "Yes" in favor of a rent initiative next week, while also promising key changes to "make it better, quickly."



Melvin Carter

Proponents of the ballot measure, which would cap residential rent increases at 3 percent annually, have said if any problems arise, the city council could always tweak the ordinance down the

line.

That's raised a question at City Hall: Would swift changes even be legal? For that matter, would any changes be legal?

It's possible that the city council cannot legally pursue a major change — such as exempting new construction — without first returning to voters with new language at the ballot box.

"I think that's (the question that has) been circulating and confusing people," said City Council President Amy Brendmoen on Wednesday.

ABILITY OF COUNCIL

The case law — or previous court cases that provide a clear legal prec-

› Rent ballot measure

edent — is “skinny” at best, said Deputy City Attorney Rachel Tierney, addressing

the city council on Wednesday morning. State law doesn’t allow cities to enact rent control without voter approval, seemingly removing the entire process from the council’s jurisdiction unless voters choose otherwise. A major council amendment to the ballot language

could be construed as the council writing its own law — maybe.

Under the city charter, “we can repeal it (in a year), but that doesn’t speak to whether we can amend it,” Tierney said. “We likely have the ability to amend the ordinance or supplement the ordinance, but the more substantive changes we make, the more likely we are to have a risk of litigation, and the more likely a court is to overturn that action ... to make sure we haven’t altered the will of the voters.”

Said City Council Member Jane Prince: “I’ve had other lawyers call me about it and say, ‘Have you read the statute? There’s nothing in there about being able to amend the will of the voters.’ This is an initiative that is coming to us in full form, written out. Any substantive change is likely to be (legally) challenged.”

Critics have called for altering a central aspect of the ballot proposal — its universal application. Most, if not all cities that implement rent control measures exempt new construction for 15 to 20 years to keep investors, real estate developers and landlords engaged until the new building has filled up with tenants and paid off substantial debt, allowing for passive income.

The St. Paul proposal would not exempt new construction.

INVESTOR PULLBACK?

Some in the development community say investors are

already expressing concern. If they give the city a wide berth, that would reduce future housing supply, which helps no one.

Officials with the Ryan Cos., the master developer behind Highland Bridge — the former Twin Cities Ford Motor Co. campus in Highland Park — have said that any investment complications for the planned market-rate buildings would undermine the construction of more than 760 affordable units at the site.

“The affordable housing that is planned at the development relies on funding that is provided by the taxes from market rate-buildings,” said Tony Barranco, a vice president with the Ryan Cos., in a statement. “If market rate units are delayed, so are the affordable units.”

Proponents say rent control’s universal application is a feature, not a bug, that will fix problems that have arisen in other cities where property owners have gotten around rent limits by redeveloping their properties. And real estate development in a hot housing market is unlikely to be deterred for long, especially at attractive locations such as the former Ford site.

If voters approve the 3 percent cap on residential rents on Nov. 2, it’s unclear how quickly the council or mayor’s office could legally alter details. A complete repeal is unlikely within the first year under the language of the city charter: “No ordinance adopted by the voters on initiative or ordinance or resolution

adopted by referendum shall be repealed within one year after its approval.”

Council Member Mitra Jalali, a rent control proponent, said she didn’t hear anything during Wednesday’s presentation that would alter her vote at a time when low-income renters face pandemic-proof rent increases.

“There’s a freeze period for a year, and then there’s an opportunity to amend, within the confines of the law,” said Jalali, in an interview. “That’s my understanding.”

Beyond that, the ballot proposal clearly calls for the city council and city staff to create a process by which landlords could seek exemptions for unique circumstances, such as a heavy property tax increase or a major remodel. But any administrative rule-making to make that happen has to support the ordinance, not undermine it or water it down, Tierney said.

Carter’s campaign did not have an immediate reaction to the presentation from the city attorney’s office on Wednesday. A spokesman for the mayor’s office said the administration would continue working to explore how the measure would be implemented if approved by voters Tuesday.

START DATE ALSO AT ISSUE

The U.S. Supreme Court supported the legality of rent control measures in the 1921 case *Block v. Hirsh*, which arose from a temporary rent limit in Washington D.C., and

lesser courts have also supported rent control’s constitutionality. Nevertheless, opponents and supporters of the St. Paul ballot initiative could go to court over a start date, among other particulars.

That’s because hiring new city staff and organizing the exemption process could take months.

The ordinance on the ballot indicates the effective date for rent control would be May 1, 2022, but under the city’s charter, “it is likely that a court would find this ordinance took effect immediately,” Tierney said. “We don’t have any case law to guide us. We only have what our charter says.”

Also unclear is how an appeals process for landlords who request exemptions would be staffed and budgeted, and how the ordinance would be enforced. The mayor’s Office of Financial Empowerment is studying the experience of other cities, such as Oakland, Calif., which have created appeals offices.

“Administration doesn’t know the answers to those questions at this time,” Brendmoen said. “They’re working on it ... but that is one of the questions that has come up that we didn’t have an answer to, and we still don’t.”

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