
Memorandum

The City of Traverse City



TO: Mayor Estes and City Commissioners

CC: R. Ben Bifoss, City Manager

FROM: Lauren Tribble-Laucht, City Attorney *LL*

DATE: October 11, 2012

SUBJECT: Division Street Ballot Proposal

I am aware of some outstanding questions regarding the Division Street ballot proposal which will appear on the November ballot and thought it might be helpful to offer some clarifying information.

The first question is whether the ballot proposal, if approved would automatically transfer City parkland to MDOT. The answer is no. The ballot proposal authorizes the City Commission to dispose of the designated parkland. The language of the ballot proposal as presented could not automatically transfer the property, as it does not specify to whom the property would be transferred or any other specifics which would be necessary to effectuate a transfer of property. The City Charter requires that the electors approve disposal of parks or portions of parks. By authorizing the City Commission to dispose of parkland, the ballot proposal, if approved would fulfill this requirement under the Charter.

The second question is whether the ballot proposal requires a simple majority or a supermajority in order to pass. The answer is a simple majority. Section 128 of the City Charter states that the electors by a three-fifths (3/5) majority vote may approve the disposal of parkland. This requirement originated in the Home Rule Cities Act (HRCA). In 1966 the provision of the HRCA which required a 3/5 majority was amended to require a simple majority. In City of Lansing v. Board of Canvassers, 380 Mich 496 (1968) the Michigan Supreme Court held that the charter of the city of Lansing was automatically amended to require a simple majority for the passage of a bond issue when the HRCA was amended to require a simple majority. Although City of Lansing involved a bond sale and not a park sale, both activities are prohibited without voter approval by the same section and sentence of the HRCA. Therefore under City of Lansing it is clear that a simple majority is required for passage of the Division Street ballot proposal and not a 3/5 majority.

Please feel free to contact me if you have any questions.