

**Minneapolis**  
*City of Lakes*

**Office of the City Attorney**

Jay M. Heffern  
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August 31, 2006

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Jim Bernstein, Chair  
Charter Commission  
and all Charter Commission Members  
City Hall  
350 South 5<sup>th</sup> Street, Suite 304  
Minneapolis, MN 55415

Re: Proposed Revisions to the City Charter

Dear Mr. Bernstein:

Enclosed is a letter from Mr. Barret W.S. Lane with his analysis of the 9<sup>th</sup> Draft of the proposed revisions to the City Charter. Earlier this year, the City Attorney's Office retained Mr. Lane to assist us in providing legal advice on the proposed City Charter revisions.

Mr. Lane has concluded that Draft 9 recommends substantive changes, both in terms of policy and legal context, to the City's Charter. Mr. Lane will be at the Charter Commission's meeting on Wednesday, September 6, to review his analysis and answer any questions you might have.

Very truly yours

JAY M. HEFFERN  
City Attorney  
(612) 673-3272

cc: Council President Barb Johnson, w/enclosure  
Council Member Betsy Hodges, Chair, Intergovernmental Relations Committee, w/enclosure  
Steven Bosacker, City Coordinator, w/enclosure

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**BARRET W.S. LANE**

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August 30, 2006

Mr. Jay M. Heffern  
City Attorney  
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Minneapolis, Minnesota 55402-2453

Re: Minneapolis Charter Commission  
Our Client: City of Minneapolis  
Our File: 060224

At your request, I have prepared the attached Annotations to the Ninth Draft of the City Attorney's Analysis of the Sixth Draft of the Charter Revision. The annotation builds on the analysis of the Ninth Draft (Draft 9) done to date, but looks in greater detail at the issues raised by legal analysis of the Sixth Draft.

You also asked for my opinion on the issue of whether Draft 9 represents any "substantive" change from the Charter. For the purposes of this analysis, a "substantive" change is one which would normally require policy-level judgment and decision and/or changes an existing legal relationship.

**SUMMARY**

Based on my review of the relevant documents and previous City Attorney analysis and opinion, it is my opinion that Draft 9 continues to recommend substantive changes, both in terms of policy and legal context, basically consistent with those changes identified in Draft 6.

**BACKGROUND**

For the purposes of this analysis, I have reviewed the following:

1. Charter Commission Draft 9;
2. Charter Commission Side-by-Side Comparison (Draft 9);
3. Charter Commission Draft 8E;
4. The Minneapolis City Charter (Municipal Code Corporation);

5. Report with Recommendation: Charter Revision;
6. Minneapolis City Attorney's Office Analysis of the Minneapolis Charter Commission's Fifth Draft . . . Annotated to Sixth Draft;
7. Minneapolis City Attorney's Office Analysis of the Sixth Draft; and
8. Statutes and other legal authorities.

My review of the Ninth Draft began with the May 30, 2006 receipt of the side-by-side. This document follows the order of the Draft, while previous City Attorney analysis followed the order of the Charter. Thus, it was necessary to code the side-by-side paragraphs and re-sort the references by Charter chapters and sections.<sup>1</sup> Based on this, I have begin the work of reviewing the previous City Attorney opinions in light of any changes made between Draft 6 and Draft 9. As you know, the paragraph-by-paragraph review is underway. I completed an initial survey of all of the relevant Charter and Draft paragraphs by mid-July, 2006, but advised that much more time would be needed to complete work at that level of detail.

In the meantime, the Charter Commission has asked for an update on my review at the September Commission meeting. In order to respond to the Commission in a timely manner, we agreed that the best approach would be to focus on the issues raised by the Analysis of the Sixth Draft.

The Commission has produced a draft Report with Recommendation which also helps frame this analysis. According to the Report, the "revision's purpose is not restructuring the City government or otherwise effecting any substantive change." The Report further states that the "revision reorganizes and rewrites the entire charter . . . while preserving intact its substance."

### ANALYSIS

Rather than restate the entire existing City Attorney analysis, I have annotated the Analysis of the Sixth Draft to correspond to Draft 9. For each issue raised by your office under Draft 6, I have reviewed and identified the corresponding provisions in Draft 9. If the current Draft language still supported the concern raised for Draft 6, I have indicated that I "concur" with the previous analysis. That document, entitled Annotations to the Ninth Draft is incorporated into this analysis by reference.

This process cannot and did not produce an exhaustive list of changes, substantive or otherwise, between the Charter and Draft 9. It did, however, bring up to date those issues which were identified during the last City Attorney review.

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<sup>1</sup> The Draft is organized by paragraphs with various levels of Arabic and Roman numbering. Some provisions require citation at the fifth or sixth outline level. Coding the draft allowed each discrete paragraph to be identified by a simple, unique number and I use that system here. Numbers in bold face and brackets, e.g., [00] are paragraph references to the Coded Draft 9.

Based on my review, almost all of the concerns raised by the City Attorney in the Analysis of the Sixth Draft remain viable concerns under Draft 9. Several issues may be reviewed by way of overview and example:

**Issue 1. Power:** As noted in the analysis of previous drafts, There are instances in Draft 9 in which express Charter powers or procedural provisions have been eliminated but for which the City may exercise substantially the same powers pursuant to state statutes governing statutory cities (i.e., cities having no charter). In other instances, Charter powers have parallel provisions under state law, but with different wording. Key limitations on power are omitted, significantly increasing the Council's scope of action. Omission of existing limitations, such as those pertaining to liquor licenses, amounts to a substantive change in the scope of the City's power.

At a minimum, the Draft's approach of defining City powers, in whole or in part, by reference to state statutes represents a substantive surrender of Charter authority to the Legislature.

**Issue 2. Executive Committee:** Executive Committee practice is substantially different under Draft 9 than under the Charter. The Charter vests in the Executive Committee the exclusive power to appoint and remove specific officers. The treatment of these officers varies under Draft 9. Two offices (City Engineer and Commissioner of Health) are simply eliminated. Several are referred to the Draft's unified appointment procedure, including Executive Committee review, under Draft 9 Section 10.4(b). The remaining offices are provided for but are not referred to appointment under section 10.4 (b) and thus are no longer subject to Executive Committee processes. Under Draft 9 the Executive Committee has new jurisdiction over the Mayor's staff and the Emergency Preparedness Director. These are all policy-level changes and are therefore substantive.

**Issue 3. Redistricting:** Draft 9 makes a number of changes to the way the Redistricting Commission is chosen and the way it operates. The issues raised by the City Attorney in the Analysis of Sixth Draft, continue to be concerns with Draft 9. Issues identified in my review of Charter Chapter 1 include:

- Under the Draft, major political parties are no longer required to nominate no fewer than six and no more than ten persons. Nomination under the Draft is permissive as compared to the mandatory language of under Charter Chapter 1, Section 3, paragraph B(2). [72]
- A sixty-day action deadline not currently in the Charter applies to redistricting triggered by "general or special law" and changes in the number of wards. [84, 85]
- A ninety-day limit on the redistricting process not currently in the Charter. [95]

- Deletion of the requirement in Charter Chapter 1, Section 3, paragraph C that a majority of members of the Redistricting Commission sign the completed plan when it is filed with the City Clerk.
- Deletion of language in Charter Chapter 1, Section 3, paragraph C which defines when the plan is deemed complete.
- Deletion of restrictions on District Court relief now in Charter Chapter 1, Section 3, paragraph E, broadening the scope of potential court action arising out of a redistricting dispute.

The changes in the Redistricting Commission's nomination and process represent different policy options. For instance, a policy maker may prefer a clear definition of when the plan is deemed complete as opposed to no Charter definition. As such, (and to the extent the time limitations are not duplicative of State law requirements) the proposed changes represent substantive change to the process under the Charter.

**Issue 4. Public Works, Water Works, and Special Assessments:** The Draft omits a number of current provisions with respect to Public Works, Water Works and Special Assessments. These changes include:

- Elimination of the City Engineer;
- Elimination of assessment provisions which "in effect, delegates additional taxing power to the City Council and Park [B]oard" as was noted in the City Attorney Analysis of Draft 6;
- Continues ambiguity as to whether assessments made pursuant to ordinance rather than the charter itself would be considered an assessment under the City's home rule charter for the purposes of Minn. Laws 1969, Chapter 499;
- Elimination of various powers and limitations on governmental authority relating to the Water Works; and
- Elimination of the Permanent Improvement Revolving Fund.

I concur with previous opinions that these changes are substantive on the basis that they either represent policy choices other than those expressed in the Charter, expand city authority beyond that which currently exists or has a legal impact on legislation which pertains to the City.

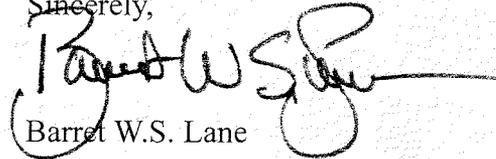
**Issue 5. Powers of Park and Library Boards:** The Draft significantly expands the powers of the Park and Recreation Board and the Library Board. For example, the Draft 9 provides that the Library Board “may act on the City’s behalf and enjoys all of the City’s lawful powers, including eminent domain.” [302] Under the Charter, the Library Board is one of limited and specific powers. This expansion of power is a substantive change.

**CONCLUSION**

Based on my review of the documents listed above, it is my opinion that Draft 9 recommends substantive changes to city government as currently constituted under the Charter.

I would also note that if the Commission intends to proceed, there remain significant issues as to how the new Charter would be implemented. For instance, to the extent that the Commission will recommend that provisions currently in Charter be recast as ordinances, such ordinances would need to be drafted. Issues with respect to the legal implementation of the charter and adoption of any supporting ordinances would need to be clarified so as to avoid any gap in power or operational authority.

Sincerely,

A handwritten signature in black ink, appearing to read "Barret W.S. Lane", with a long horizontal flourish extending to the right.

Barret W.S. Lane

Encl.

BWSL/slf