

**MINNEAPOLIS CITY ATTORNEY'S OFFICE
ANALYSIS OF THE MINNEAPOLIS
CHARTER COMMISSION'S FIFTH DRAFT
OF ITS PROPOSED CHARTER REVISION**

CURRENT CHARTER CHAPTER 1

CITY & WARD BOUNDARIES

Analysis of Proposed Charter Revisions, Chapter 1 – City and Ward Boundaries

Chap. 1, Sec. 1 – Municipal Corporation Continued

The proposed charter revision does not mention the location or boundaries of the City. The current charter mentions the boundaries as being “the same as now are or may be hereafter established.” It also states that the City of Minneapolis is in the County of Hennepin in the State of Minnesota. Although the proposed charter revision does not make any change in location or boundaries, it eliminates reference to the fact that the City operates within a defined geographical area.

Chap. 1, Sec. 2 – Powers

Art. I, Sec. 1.3(c)(2) of the proposed charter revision preserves laws that provide a power, right or role in addition to those set forth in the proposed charter revision. It is not clear whether this refers only to special laws. The reason is that Art. I, Sec. 1.3(d)(3) of the proposed charter revision states that headings are part of the charter, and the heading of subsection 1.3(c) is “Special laws.” Art. I, Sec. 1.3(c)(2) of the proposed charter revision also creates an issue as follows: Would the proposed charter be held to supersede a special law that inconsistently provides additional powers, rights or roles? In other words, a limitation of powers set forth in the proposed charter might be inconsistent with powers conferred by an existing law.

Art. I, Sec. 1.4(c) of the proposed charter revision is similar to MINN. STAT. § 410.33 (2004) insofar as it would permit the City (a charter city) to exercise the powers granted by statute to non-home rule charter cities, i.e. statutory cities. Home rule charter cities are permitted by statute (MINN. STAT. § 410.33 (2004)) to exercise the powers of statutory cities if such powers are consistent with the charter. However, this section also purports to allow the City to exercise those powers reserved for second, third and fourth class cities. No similar authority presently exists in the city charter or in state law.

Art. I, Sec. 1.5 of the proposed charter revision refers to jurisdiction of the “district court”. The term “district court” is not defined in the proposed charter revision. It is unclear whether the reference to “district court” in the proposed charter revision means “District Court Hennepin County” as it appears in the current charter.

Art. II, Sec. 2.3 of the proposed charter revision pertains to the redistricting of the 6 Park Districts. The Park Board Attorney will comment on this section.

Art. II, Sec. 2.4 of the proposed charter revision pertains to annexed territory. Similar language does not appear in the current charter.

Chap. 1, Sec. 3 – Thirteen Wards

Art. II, Sec. 2.2 of the proposed charter revision makes a number of changes to the current charter with respect to the method whereby the Redistricting Commission is chosen and the way in which the Redistricting Commission operates.

Art. II, Sec. 2.2 (C)(ii) of the proposed charter revision changes the language from the current charter from, “Each party list shall contain at least six, but not more than ten, names of persons broadly representative of the city population,” to “Each major political party may nominate six to ten members for commissioner.” This change from “shall” to “may” could be construed to allow a political party discretion to be able nominate a number of names fewer than six, possibly just one or two. The current charter language appears to mandate that parties nominate not fewer than six and not more than ten, with the discretion to choose how many nominees there will be within six and ten. Later language in this same section of the proposed charter revision seems to be congruent with the notion that a party could nominate as few as zero names and then the Charter Commission would be empowered to elect a commissioner from the party without regard to the party’s nomination list.

The proposed charter revision appears to change a number of the time deadlines that govern the selection of commissioners to the Redistricting Commission and/or the timetables for accomplishing the business of the Redistricting Commission. *See* Art. II, Sec. 2.2 (c)(3)(C), Art. II, Sec. 2.2 (c)(3)(D), Art. II, Sec. 2.2 (c)(3)(E), Art. II, Sec. 2.2 (c)(3)(F), Art. II, Sec. 2.2 (c)(3)(G), Art. II, Sec. 2.2 (c)(3)(H).

As noted above, the proposed charter revision does not include a provision that mandates that a majority of the members of the Redistricting Commission sign the completed plan at the time it is filed with the City Clerk. The signature requirement that exists in the current charter appears to operate as a way to ensure that the completed plan that is delivered to the City Clerk has received the approval of at least a majority of the members of the Redistricting Commission. By removing the signature requirement, issues of authority to deliver the “completed plan” may arise in a way that does not exist under the current charter language.

Art. II, Sec. 2.2 (c)(3)(I) of the proposed charter revision states that, “the final plan takes effect upon...its adoption,” although the proposed charter revision does not define what constitutes “adoption” other than to state that, “within 90 days after the process begins, the Commission must adopt a final plan redistricting the wards and delineating each redistricted ward’s boundaries and stating its population, and file the plan with the City Clerk.” (Art. II, Sec. 2.2 (c)(3)(H)) Chap. 1, Sec. 3(C) of the current charter states that the plan, “shall be deemed completed when filed with the City Clerk with the signatures of a majority of the members of the commission.” As noted above, the proposed charter revision eliminates the “majority of signatures” requirement from the current charter, and appears to leave open the question of what constitutes adoption of the final plan.

The proposed charter revision changes the way district court can fashion relief to a party who brings a suit arising out of the redistricting process. Chap. 1 Sec. 3(E)(2),(3) of the current charter defines and limits the relief available to a party bringing a suit arising out of the redistricting process by stating:

If a redistricting plan is questioned in a proceeding before the Court, and insufficient time remains to determine the issue, the Court may either postpone

the effective date of the plan, or if the proposed plan appears to more closely reflect the distribution of population than the existing Ward apportionment, order that the proposed apportionment be effective for the next election without prejudice to the issue with respect to subsequent elections. If a redistricting plan is questioned in a proceeding before the Court, and the Court finds the plan is improper, the Court shall return the plan to the commission for revision and readoption.”

By eliminating the defining and limiting language of the current charter with respect to what sort of relief a court can/may grant to a party, the proposed charter revision may allow courts to consider and grant forms of equitable and legal relief that are not available as forms of relief under the current charter. While it may be argued that the defining and limiting language of the current charter with respect to what sort of relief a court can grant to a party is not binding on courts based on the doctrine of separation of powers, the argument that the charter is a social contract amongst peoples with preconceived remedies built into it is likely lost if the defining and limiting language is eliminated.

In addition to those changes, the proposed charter revision adds language governing the redistricting of park districts, the creation of precincts within park districts, the addition of annexed territory into wards and park districts, and the creation of special districts which may exist outside of the city’s boundaries. Similar language does not appear to exist in Chap. 1 of the current charter.

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CURRENT CHARTER CHAPTER 2

OFFICERS - ELECTIONS

Analysis of Proposed Charter Revisions, Chapter 2 – Officers – Elections

Chap. 2, Sec. 1 – Elective Officers

Chap. 2, Sec. 1 of the current charter states that the elective officers of the City are the Mayor and Council Members and other board or commission members as elsewhere provided in the Charter. The language of the proposed charter revision is similar.

Chap. 2, Sec. 2 – Council to Appoint City Officers--Terms of Office.

Chap. 2 Sec. 2 of the current charter provides for the appointment of City officers. The issue as to who is an officer has been the subject of Minneapolis City Attorney Opinions. Chap. 2 Sec. 2 of the current charter refers to the appointed officers as those provided for in the charter and others deemed necessary for the proper management of the City. By contrast, Art. VII, Sec. 7, defines officer to include each employee in the unclassified service and each employee designated as an officer by the charter or by ordinance. This is an expansion of the term “officer” as used in the charter. The Minneapolis City Attorney Opinions referred to above examined the common law meaning of the word as referring to one who is given authority to independently exercise judgment and discretion in carrying out prescribed duties. Persons employed in the unclassified service are not necessarily given such discretion. For example, under Chap.19, Sec. 4 of the current charter, all librarians and assistants of the library are in the unclassified service. Also, the Minnesota Legislature has placed numerous employees in the unclassified service. Further, the power in this section to appoint “all other officers deemed necessary for the proper management of ...the City” was not construed in prior Minneapolis City Attorney Opinions to permit the City Council to appoint persons outside of the classified service without first obtaining legislative or charter authority. *See* Chap. 19, Sec. 4 of the current charter. Under Art. VII, Sec. 7.3(a) of the proposed charter revision, the City Council could establish any necessary office providing for its appointment, term, compensation and duties. Thus, it could, under Art. VI, Sec. 6.2(e) of the proposed charter revision, establish a department and, under Art. VII, Sec. 7.4(b)(2)(E) of the proposed charter revision, designate a department head and senior deputies in the unclassified service.

Chap. 2 Sec. 2 of the current charter must be read in conjunction with Chap. 3, Sec. 4 of the current charter, which provides that whenever the City Council is designated in the charter as the appointing authority, the appointment shall instead be made by the Executive Committee, from nominees submitted by the Mayor and ratified by the City Council. This provision is replicated in substance in Art. VII, Sec. 7.3(b) of the proposed charter revision.

The current charter now provides for a term of two years for officers. Art. VII, 7.1(c)(3) of the proposed charter revision provides that the City Council can prescribe the term by ordinance for any office created by ordinance. This will apply to most city officers because the proposed charter revision has eliminated the officers designated specifically in Chap. 3 of the current charter and designates only that the Council must provide for a City Clerk, City Attorney and City assessor. *See* Art. VI, Sec. 6.2 of the proposed charter revision.

Chap. 2, Sec. 3 – Terms of Office of Mayor and Council Members

There does not appear to be a meaningful change in the proposed charter revision from the current charter with respect to the terms of office for the City Council and the Mayor. Chap. 2, Sec. 3 of the current charter states that the terms of office of the Mayor and Council Members shall be for four years commencing on the first business day of January of the year following their election. Art. IV, Sec. 4.2(b) of the proposed charter revision states that each City Council member's term is four years, and Art. VI, Sec. 6.1 states that the Mayor's term is four years.

Chap. 2, Sec. 4 – Election

Chap. 2, Sec. 4 of the current charter provides that the general city election is held on the first Tuesday after the First Monday in November of each odd-numbered year. Art. III, Sec. 3.2 of the proposed charter revision states that the regular general election is to be held on the uniform municipal election day for which the Minnesota Election Law provides. The proposed charter revision therefore incorporates the Minnesota Election Law and any changes that are made in that law by the State Legislature. The specification in the present language would prevail over any changes in the general law unless the Legislature specifically preempted charter cities. *See* MINN. STAT. § 410.21 (2004).

Chap. 2, Sec. 4A – Presidential Preference Poll

Chap. 2 Sec. 4A is eliminated from the charter by the proposed charter revision. It is unclear what ramifications, if any, that eliminating this section would have on the City.

Chap. 2, Sec. 5 – Primary Elections

Chap. 2, Sec. 5 of the current charter provides that City Council shall, prior to January first of election years, set date for the primary election and the date for the opening and closing of filings. By contrast, Art. III, Sec. 3.2 of the proposed charter revision states that no act scheduling a primary election or filing period applies to any regular election held in the same calendar year. While the language of the current charter appears to be directory (so that a court would not be likely to set aside a non-conforming act), the language of the proposed charter revision appears to make expressly invalid an act setting the date for an election held in the same calendar year.

Chap. 2, Sec. 6 – Election Judges – Council to Fix Compensation

Chap. 2, Sec. 6 of the current charter requires the City Council to appoint election judges at least 14 days before any special, primary, or general city election. Chap. 2, Sec. 6 of the current charter also requires payment to be no less than 40 percent greater than the prevailing minimum wage. These requirements, together with specific procedures regarding these appointments, are found in MINN. STAT. § 204B (2004). Elimination of this provision will result in the application of state law. State law only requires municipal councils to pay election judges the state prevailing minimum wage. Therefore, the elimination of this section could result in the compensation of the election judges being reduced.

Chap. 2, Sec. 7 – City Council to Designate Election Precincts and Places of Holding Elections

Chap. 2, Sec. 7 of the current charter and Art. II, Sec. 2.4(a)(b) of the proposed charter revision appear to be meaningfully similar with regard to the general establishment of precincts within wards and the establishment of polling places within the precincts. That said, there does appear to be a difference with the permissive versus mandatory nature of those establishment clauses between Chap. 2, Sec. 7 of the current charter which uses the language “as deemed necessary” versus Art. II, Sec. 2.4(a)(b) of the proposed charter revision which uses the language “must”.

Moreover, Art. II, Sec. 2.4(a)(b) of the proposed charter revision does not appear to address the possibility of inaction by the City Council with any contingency language. Chap. 2, Sec. 7 of the current charter states that in case the City Council shall neglect or refuse to provide such election precincts and places of holding election as herein provided, and in all cases of special elections, the election precincts and places of holding elections shall continue to be the same as at the general election next preceding said election, provided, that when it may be necessary to designate any other place for holding a special election than the place where was held the last general election in any precinct, the City Council may so designate some other place in such precinct for holding said special election.

Art. II, Sec. 2.4 of the proposed charter revision requires that an act establishing precincts or designating polling places takes effect after 90 days or at a later time as the act provides. This 90-day period is substantially a reiteration of MINN. STAT. § 204B.14, subd. 4 (2004), however the statute also contains specific requirements as to the posting and publication of notice of precinct changes and a June 1st deadline for reestablishing precincts in the year of the State General Election.

Chap. 2, Sec. 8 – City Council to Provide Ballots and Ballot Boxes

The elimination of Chap. 2, Sec. 8 of the current charter by the proposed charter revision does not appear to represent any change in the law. MINN. STAT. § 205.17 (2004) requires the City Clerk to provide ballots for elections.

Chap. 2, Sec. 9 – Ballot at City Election

The elimination of Chap. 2, Sec. 9 of the current charter by the proposed charter revision could arguably change the requirement that all city office candidate names be placed on a single ballot. *See* MINN. STAT. § 205.17, subd.2 (2004), requiring a partisan and a non-partisan ballot in first class cities. Although Art. III, Sec.3.1(d)(1) of the proposed charter revision requires that the ballot for each office be a non-partisan ballot, it does not specify a single ballot.

Chap. 2, Sec. 10 – Council to Call Special Election

The elimination of Chap. 2, Sec. 10 of the current charter raises a question as to whether the elimination of the power to call a special election for any purpose makes a change in existing law. The City Council may need to call a special election not only to fill a vacancy, but also to

submit a ballot question to the voters. With regard to charter amendment questions, MINN. STAT. § 410.10 (2004) appears to give the City Council the same power to call elections as Chap. 2, Sec. 10 of the current charter provides. However, there might also be elections on bond issues. *See* Art. VIII, Sec. 8.4(d) and Chap.15, Sec. 9 of the current charter.

Chap. 2, Sec. 11 – City Clerk to Give Notice of Time and Places of Holding Elections

There does not appear to be a meaningful change in the proposed charter revision from the current charter with respect to the amount of time required for notice of an election. That said, the proposed charter revision does not appear to include the specific procedural language of Chap. 2, Sec. 11 of the current charter pertaining to the delivery of notice of elections that states in pertinent part that the City Clerk shall give notice of the time and places of holding general city elections and at the same time and in the same notice give notice of the time and places of holding primary elections. It is unclear what ramifications, if any, that eliminating this section would have on the City.

MINN. STAT. § 205.16 subd. 1 (2004) states that in every municipality, the municipal clerk shall, except as otherwise provided in this section, give two weeks' published notice, and may also give ten days' posted notice, of the election, stating the time of the election, the location of each polling place, the offices to be filled, and all propositions or questions to be voted upon at the election.

Chap. 2, Sec. 12 – In Case of Tie Votes

The provision in Art. III, Sec. 3.1(e) of the proposed charter revision is substantially the same as the language of Chap. 2, Sec. 12 of the current charter. The terms “primary” and “general election” include special elections under Art. III, Sec. 3.2 of the current charter.

Chap. 2, Sec. 13 – Filing for Nominations

Although certain language pertaining to the City Clerk and the County Auditor is eliminated from the current city charter by the proposed charter revision, there does not appear to be a meaningful change with regard to the election officer designated/authorized to receive a candidate's affidavit for nomination and associated fee. Chap. 2 Sec. 13 of the current charter states that the affidavit for nomination and associated fee should be delivered to the City Clerk, while the proposed charter revision states that Minnesota election law will control. The default provision of Minnesota election law that appears to govern this issue is MINN. STAT. § 205.13 subd. 1 (2004) which states that an individual who is eligible and desires to become a candidate for an office to be voted for at the municipal general election shall file an affidavit of candidacy with the municipal clerk. The current charter's language directing nominations and fees to be filed with the City Clerk rather than the County Auditor appears to be a reference to MINN. STAT. § 204B.09 subd. 1(d) (2004) which states that affidavits and petitions for offices to be voted on in only one county shall be filed with the county auditor of that county.

Chap. 2, Sec. 14 – Election Returns

The elimination of Chap. 2, Sec. 14 of the current charter eliminates the 14 day period allowed for the City Council to canvass election returns. This results in the application of General Election Law, MINN. STAT. § 205.185 (2004), which allows only 7 days. This is important in calculating the deadline for demand of recounts and for election contests.

Chap. 2, Sec. 15 – General Law to Govern Elections – Exceptions

The language of Chap. 2, Sec. 15 of the current charter appears to be very similar to the language of Art. III, Sec 3.1(a) of the proposed charter revision. Chap. 2, Sec. 15 of the current charter states that all general laws of the State of Minnesota relating to primaries and elections and the preliminaries thereto, unless this charter otherwise specifically provides, shall, so far as applicable, apply and govern all elections under this charter and the same are hereby adopted and made part of this charter, while Art. III, Sec. 3.1(a) states that unless it is inconsistent with this charter, the Minnesota election law applies to each municipal election.

Chap. 2, Sec. 16 – Vacancy in Office of Mayor and Council Members – How Filled

There is inconsistency between Art. IV, Sec. 4.2(d) of the proposed charter revision and Art. VI, Sec. 6.1(e) of the proposed charter revision as to the date of March 1st. In Art. IV, Sec. 4.2 of the proposed charter revision with respect to City Council members, a special election is held if the vacancy occurs “by” March 1st of the year of the next regular election. By contrast, in Art. VI, Sec. 6.1 of the proposed charter revision with respect to the Mayor, a special election is held if the vacancy occurs “on or before” March 1st. In the current charter, it is a question of whether the vacancy for either office occurs “prior to” March 1st.

Under the current charter, if a person is appointed to fill a City Council vacancy occurring after March 1st, the person elected at the following election would not begin to serve until the first business day of January. However, under Art. IV, Sec. 4.2 (d)(3) of the proposed charter revision, it appears that the City Council member-elect would begin to serve as soon as the election results were certified. Also, under Art. VI, Sec. 6.1(e)(2) of the proposed charter revision, if there is a vacancy in the office of Mayor after March 1st, such that the City Council President is Acting Mayor, the person elected Mayor at the next election would begin to serve immediately upon election. Under the current charter, such Mayor-elect would not begin to serve until the following January.

Chap. 2, Sec. 16A – Special Election Process May Commence Upon Submission of Notice of Resignation by Mayor or Council Member

MINN. STAT. § 351.01 (2004) provides that except as a charter or statute otherwise provides, a resignation is effective when received by the officer, body or board authorized to receive such resignations. Subd. 3 of MINN. STAT. § 351.01 (2004) states that a resignation may be made to be effective on a future date. The elimination from the charter of the authority to make a resignation effective in the future probably does not preclude a future resignation from being made pursuant to the statute. However, the statute differs from the proposed charter provision because the Art. VII, Sec. 7.2(c) of the proposed charter revision states that the resignation is

effective upon tender while the statute states that it is effective upon receipt. In this case, the statute defers to the charter.

Chap. 2, Sec. 17 – Removal from City – Neglect, etc

MINN. STAT. § 351.02 (2004) lists circumstances in which an office becomes vacant. The statute differs from the language of the existing charter. There is no provision in the statute regarding neglect or failure to enter upon the discharge of duties.

Chap. 2, Sec. 18 – Oath of Office – Bonds of City Officers – Approval of Bonds

Chap. 2, Sec. 18 of the current charter appears to be similar to the language of the proposed charter revision with respect to oath of office and bonds of certain officers.

Chap. 2, Sec. 19 – Violations by Officers – Penalty; Forfeiture

Chap. 2, Sec. 19 of the current charter is eliminated. It is questionable whether an ordinance alone can effect the forfeiture of office by one who converts public property or commits fraud. The subject of eligibility to hold office is a proper subject for the charter. There is a legal question as to whether an officer's right to hold office by fulfilling the qualifications prescribed in the charter or state law can be defeated by an ordinance. Therefore, the provision regarding forfeiture of office may be necessary to effect a forfeiture of office in the cases provided for in this charter provision. MINN. STAT. § 351.02 (2004) provides that conviction of an "infamous crime" or an offense involving a violation of the official oath of office results in a vacancy. The charter in its present form provides grounds for removal in addition to the statutory provisions, but the proposed charter revision does not.

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CURRENT CHARTER CHAPTER 3

POWERS & DUTIES OF OFFICERS

Analysis of Proposed Charter Revisions, Chapter 3 – Powers and Duties of Officers

Chap. 3, Sec. 1 - Powers and Duties of Mayor

Art. VI, Sec. 6.1(a) of the proposed charter revision states that the Mayor is the “chief executive officer”. The term “chief executive officer” does not appear in the current charter. Moreover, the term “chief executive officer” does not appear to be defined in the proposed charter revision. *Black’s Law Dictionary* (8th Ed. 2004) defines “chief executive officer” as a corporation’s highest-ranking administrator, who manages the firm day by day and reports to the board of directors. *McQuillin’s Law of Municipal Corporations* (February 2004) states that the chief officer or executive and administrative head of a municipal corporation is commonly the mayor. It is unclear if the inclusion of the term “chief executive officer” to the definition of the Mayor in the proposed charter revision is an expansion or diminution of the powers that the Mayor possesses vis-à-vis the City Council in the current charter.

Art. VI, Sec. 6.1(c)(4) of the proposed charter revision states that the Mayor must “report” annually to the City Council on the state of the City, while Chap. 3, Sec. 1 of the current charter states that the Mayor shall “address” the City Council annually on the state of the City. The change from the term “address” to “report” could be construed to allow/limit the Mayor to deliver a written document to the City Council rather than appearing physically and addressing the City Council personally.

A paragraph of language pertaining to who may sign contracts in the Mayor’s stead from the current city charter is suggested to be eliminated by the proposed charter revision. The proposed charter revision suggests that the language pertaining to who may sign contracts in the Mayor’s stead should be reclassified as an ordinance. It is unclear what the legal consequence of removing this language from the current city charter would be on how or who signs contracts on behalf of the city.

The proposed charter revision eliminates the requirement that all contracts be signed by the Mayor or the Mayor’s designee. It is suggested that this provision be replaced by an ordinance. This change would diminish the power of the Mayor with respect to contracts, because any City Council could pass an ordinance changing the necessary signatories of contracts. The current charter, on the other hand, reserves the power to the Mayor.

Art. VI, Sec. 6.1 of the proposed charter revision provides that the Mayor may attend by proxy any board, committee or other public body of which he or she is a member. This could be construed to mean that the Mayor could merely appoint one of the members of the board or body to vote on behalf of the Mayor. This would constitute a change from the current charter provision that the Mayor may appoint a representative to serve in his or her place on the board or public body.

Art. IV, Sec. 4.4 (c) of the proposed charter revision eliminates the requirement of Chap. 3, Sec. 1 of the current charter, which states that the Mayor’s veto be presented to the City Council at their next meeting thereafter. By contrast, the proposed charter revision sets no time limit within

which the City Council may override a veto. Art. V, Sec. 5.5(b)(4) of the proposed charter revision eliminates the same requirement with respect to Park Board actions.

Chap. 3, Sec. 2A - City Council – Election of President and Vice-President – Their Duties

The proposed charter revision appears to make a meaningful change with regard to the existing language of the current charter by seemingly eliminating the requirement that the City Council elect a Vice-President. Art. V, Sec. 5.1(e)(1)(2) states that the City Council must elect a president and a secretary, but does not require that the City Council elect a Vice-President.

The provision in the current charter specifying the succession if the President of the City Council is absent from any meeting of the Council or both the President and Vice-President are absent is eliminated from the proposed charter revision. This provision is subject to change by ordinance.

Chap. 3, Sec. 2B - Succession – Mayor and Council President – Duties and Succession

The proposed charter revision appears to make meaningful changes with regard to mayoral succession from the current charter. The changes include 1) a requirement that the City Council adopt an ordinance that defines the circumstances under which a Mayor shall be deemed to be unable to perform his or her duties; 2) a requirement that the City Council establish a longer and more detailed line of mayoral succession that includes all City Council members as well as other city officials; 3) the elimination of a provision in the current charter that calls for an election of a Chair pro-tem under Robert’s Rules of Order to fill the vacancy of the Vice-President. These proposed changes appear to strengthen the organizational integrity of the Office of the Mayor and the City Council in the event that numerous members become unable to perform their duties.

Chap. 3, Sec. 3 - City Coordinator – Compensation

The proposed charter revision eliminates the language of Chap. 3 Sec. 3 of the current charter, and recommends that that language be reclassified as an ordinance. The City Coordinator provided for in Chap. 3, Sec. 3 of the current charter is not mentioned as a required office in the proposed charter revision.

Under 1988 Minn. Law 433, the City Coordinator appoints the director of regulatory services, director of communications and information services, director of neighborhood services, and other officers. This raises an issue as to how those offices would be appointed if the City Council chooses to eliminate the City Coordinator’s office.

Chap. 3, Sec. 4 - Executive Committee

Chap. 3, Sec. 4 of the current charter limits the appointment role of the Executive Committee to certain specific officers and “any officer in a department or agency who, by statute, charter or ordinance is appointed by the Mayor, the City Council or any board, the majority of whose members are members of the City Council.” In contrast, Art. VII, Sec. 7.3(b) of the proposed charter revision provides for appointment by the Executive Committee “where the charter, a statute, ordinance, rule or other authority provides for appointment by the Mayor, the City

Council, any board...or by any combination of them.” The proposed charter would therefore expand the number of persons appointed by the Executive Committee, so that not only officers in a “department or agency” are included, but also “any officer appointed by the Mayor, City Council or board...” For example, the Mayor and City Council now each appoint one library trustee. Under the current charter, the Executive Committee is not involved in making the appointment arguably, because a library board trustee is not an officer in a department or agency. However, under the proposed charter revision, the Executive Committee would make the appointment.

Art. VII, Sec. 7.3(b) of the proposed charter revision adds a provision that the City Council “prescribe the Executive Committee process” and may require the Executive Committee to consult with an “interested City Council committee or member.” This is a change from the current charter, which provides in Chap. 3, Sec. 4, that the Executive Committee shall establish its own rules and procedures. The current charter also provides that additional duties of the Executive Committee may be prescribed only by ordinance or resolution. There is no parallel provision in the proposed charter revision.

Art. VII, Sec. 7.3(b) of the proposed charter revision changes the procedures of the current charter by providing that if the Executive Committee fails to act on a Mayor’s nomination for 60 days, the candidate is automatically recommended.

Art. VII, Sec. 7.3(b)(7) of the proposed charter revision changes the procedure pertaining to officers holding over. Art. VII, Sec. 7.3(b)(7) of the proposed charter revision provides that the “Mayor may continue in office for up to 180 days any officer subject to appointment.” Chap. 2, Sec. 2 of the current charter states that officers hold over until their successors are appointed and qualify. Under Chap. 3, Sec. 4 of the current charter, an officer who has not been re-appointed and approved 6 months after the expiration of the term of office shall vacate the office. The proposed charter revision appears to make holding over subject to the will of the Mayor.

Chap. 3, Sec. 5 – City Clerk – Election – Duties

Although this section would be eliminated in the proposed charter revision, Art. VI, Sec. 6.2 and Art. VII, Sec. 7.3 of the proposed charter revision provides that the City Council must appoint a City Clerk and prescribe by ordinance the duties of the office. Under the proposed charter revision, an ordinance establishing the office of City Clerk would determine whether the City Clerk would continue to be the officer authorized to use the City Seal, to administer oaths, and to record City Council meetings. These matters would be subject to change from time to time as the City Council may determine by ordinance.

An opinion of the City Attorney dated Jan. 20, 2002 concluded that the city charter did not require the City Clerk to sign City contracts.

Chap. 3, Sec. 6 – Assistant City Clerk – Powers and Duties

Chap. 3 Sec. 6 of the current charter authorizing the City Clerk to appoint an Assistant City Clerk is eliminated in the proposed charter revision, which does make any specific provision for

an Assistant City Clerk. The effect would be that the City Council, if it desires, would determine the position and duties.

Chap. 3, Sec. 7 – City Attorney – Appointment – Powers and Duties

Chap. 3, Sec. 7 of the current charter provides for the appointment of the City Attorney and prescribes the duties of the office. It also provides for the appointment of Deputy City Attorneys. Under Art. VI, Sec. 6.2 and Art. VII, Sec. 7.3 of the proposed charter revision, the City Council would be required to appoint a City Attorney and define the duties. Art. VI, Sec. 6.2 of the proposed charter revision provides that the City and each board, department and officer must “consult” the City Attorney for any necessary legal advice. This is a change from the present language that “the City Attorney, the City Attorney’s deputies and assistants shall constitute the legal department of the City of Minneapolis, and shall have charge of all legal matters connected with the city government and all the several boards of the City.” The proposed charter revision eliminates the current language that imposes a duty on the City Attorney to “render and perform all legal services incident to the legal department” and to “furnish opinions on legal questions submitted ...by the Mayor ... other officers, the City Council...or by any of the above named boards.” The change in language appears to open the door to a reduction in the scope of the City Attorney’s powers and duties. It appears to abrogate the exclusive power of the City Attorney over legal matters of city government. Although the language of the proposed charter revision would require consultation with the City Attorney, it could be construed to permit the City Council, City boards, and officers also to consult with and hire attorneys outside of the City Attorney’s Office.

The proposed charter revision also eliminates the current language authorizing the City Attorney to appoint deputies, preserving the rights of appointees to return to their classified service positions at the end of their appointments, and prescribing their rights to employee benefits. The elimination of this language could result in a change by ordinance in the deputies’ status and rights not otherwise permissible under the current charter language.

1969 Minn. Law 790 authorizes the City Council, upon recommendation of the City Attorney, to engage outside counsel to represent the City, its boards, commissions, officers, or employees in proceedings in which they may be a party and which arise from the duties, activities or functions of city government.

Chap. 3, Sec. 8 – City Engineer – Assistant Engineer – Compensation

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance. The elimination of this section providing for a city engineer and assistants might make it possible for the City Council to create an office not requiring a professional engineer.

Presently special laws permit the City Engineer to appoint a deputy city engineer. (e.g. 1969 Minn. Law 937 as amended.) It is unclear how this law would apply to a position comparable to the City Engineer, created by ordinance or other City Council action.

Chap. 3, Sec. 9 – The City Engineer – Duties and Powers

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance. The proposed charter revision's elimination of the provisions giving the City Engineer broad powers with regard to street and bridge works, including the power to suspend work and enforce contracts, might make it possible for City Council action to modify the duties of the office and diminish those powers.

Chap. 3, Sec. 10 – City Engineer – Plans and Surveys Made by City Engineer – City Property

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

Chap. 3, Sec. 11 – Finance Officer – Powers and Duties – Assistant Finance Officer

1983 Minn. Law 160 authorizes the City Council, by ordinance, to provide the manner of appointment and prescribe the functions, duties and responsibilities of the Finance Officer. It also provides that the Finance Officer shall continue to provide the function of treasurer for the various boards and commissions served by the previous comptroller-treasurer. The 1983 legislation implies that the City Council would be required to establish an office of Finance Officer.

By eliminating Chap. 3, Sec. 11 of the current charter, the proposed charter revision would thus eliminate the provision authorizing the Finance Officer, with the consent of the City Council, to appoint an Assistant Finance Officer. The City Council is already empowered by the above special law to initiate and direct a reorganization of the functions, duties and responsibilities of the office, and, therefore, the elimination of this provision would not affect any change.

Chap. 3, Sec. 12 – Finance Officer to Countersign Bonds, Etc.

Chap. 3, Sec. 13 – Finance Officer to Keep Records and Accounts

Chap. 3, Sec. 14 – Finance Officer to Keep Accounts with Other Officers

Chap. 3, Sec. 15 – Finance Officer to Render Yearly Financial Statement

Chap. 3, Sec. 16 – Finance Officer to Countersign Contracts

Chap. 3, Sec. 17 – Finance Officer to Audit Claims Against the City and Board

Chap. 3, Sec. 18 – Finance Officer – Received – Keep Accounts – Ex Officio Treasurer of Boards

Chap. 3, Sec. 19 – Finance Officer – Give Bonds

Chap. 3, Sec. 20 – Finance Officer – Furnish Annual Report

These sections of the current charter, which are eliminated in the proposed charter revision, specify detailed duties of the Finance Officer, such as signing bonds; signing City contracts and real estate conveyances; keeping accounts and records of transactions of City business including that of the City boards; accounting for monies and property received and disbursed by City

officers; preparing financial statements; executing City contracts; using an official City seal; and auditing claims.

1983 Minn. Law 160 authorized the City Council by ordinance to initiate and direct any reorganization, consolidation, or delegation of the functions, duties, and responsibilities of the comptroller-treasurer, and other fiscal management functions which the City may exercise. The duties and responsibilities of the Finance Officer in the city charter were formerly the duties and responsibilities of the comptroller-treasurer. After the enactment of the 1983 legislation, the city charter was amended to substitute the name Finance Officer for comptroller-treasurer. Therefore, the elimination of Chap. 3, Secs. 12-20 of the current charter will expand the power of the City Council to prescribe or add or remove powers, duties and responsibilities of the office of the Finance Officer. For example, the City Council might decide not to require that the Finance Officer countersign deeds and contracts as the current charter presently requires.

Chap. 3, Sec. 23 - May Prescribe Additional Duties for City Officers – Appoint Additional Officers

The proposed charter revision appears to make a meaningful change with regard to the power of the City Council to appoint other officers. Chap. 3, Sec. 23 of the current charter states that the City Council shall have the power to appoint such other officers as may be necessary to carry into effect the provisions of Chapter 3, while Art. VII, Sec. 7.1(d) of the proposed charter revision states that each officer must perform the duties that this charter or any other applicable statute, ordinance or rule or the appointing body prescribes. The difference between the current charter and the proposed charter revision appears to be with respect to the City Council’s ability to appoint “such other officers”. The proposed charter revisions seems to eliminate this power in keeping with the process of nomination, recommendation, and appointment process set forth in Art. VII, Sec. 7.3(b).

Analysis of Chap. 3, Sec. 24 - Council to Fix Compensation of Officers

The proposed charter revision eliminates this section from the current charter.

Chap. 3, Sec. 25 - Officers to Take Yearly Inventory of City Property

The proposed charter revision eliminates this section from the current charter, and recommends that it be reclassified as an ordinance. The elimination of this section will empower the City Council to determine by ordinance whether or not to continue in force the requirement that officers make a yearly inventory of property in their hands.

Chap. 3, Sec. 26 - Appointments in Classified Service

Chap. 3, Sec. 26 of the current charter appears to restate the principle of civil service expressed in Chapter 19, Sec. 4 of the current charter, which defines the classified service as including all officers and employees not specifically classified as being in the unclassified service. The elimination of this section alone would not appear to affect the classification of city employees.

However, the proposed charter revision would affect the classification of officers and employees as will be analyzed in our discussion of Chapter 19 of the current charter.

Chap. 3, Sec. 27 - Board Defined

The proposed charter revision does not appear to make a meaningful change to Chap. 3, Sec. 27 of the current charter except to distinguish “boards” from “departments” in Art. 5, Sec. 5.1(a) of the proposed charter revision.

**MINNEAPOLIS CITY ATTORNEY'S OFFICE
ANALYSIS OF THE MINNEAPOLIS
CHARTER COMMISSION'S FIFTH DRAFT
OF ITS PROPOSED CHARTER REVISION**

CURRENT CHARTER CHAPTER 4

CITY COUNCIL – POWERS – DUTIES, ETC.

Analysis of Proposed Charter Revisions, Chapter 4 – City Council – Powers – Duties, Etc.

Chap. 4, Sec. 1 – City Council – Quorum – Officers

Chap. 4, Sec. 1 of the current charter now provides that a majority of Council Members shall constitute a quorum. Art. V, Sec 5.1 of the proposed charter revision specifies that a majority of the members of any board constitutes a quorum. Therefore, since the City Council is a “board” as defined in the proposed charter revision, there is no change in this section.

Part of Chap. 4, Sec. 1 of the current charter provides that the President or Vice-president presides at City Council meetings, and in their absence the City Council elects a President pro tem. This is very similar to the provision in Chap. 3, Sec. 2, of the present charter. The proposed charter revision changes this by eliminating the provision. Presumably it would have the City Council provide for this in its rules pursuant to Art. IV, Sec. 4.4(a) of the proposed charter revision.

Chap. 4, Sec. 2 – City Council – Meetings – Regular and Special

The provision that the Mayor may call a special meeting by notice to each of the members delivered personally or left at their usual places of abode is modified Art. V, Sec. 5.1(i) of the proposed charter revision by stating that notice of a meeting to a “board” (including the City Council) must comply with the Minnesota Open Meeting Law. The Minnesota Open Meeting Law, MINN. STAT. § 13D.04 (2004), contains somewhat different requirements than the charter. It does not require personal delivery to the members of the public body.

The provisions of Chap. 4, Sec. 2 of the current charter pertaining to adjourned sessions of a meeting appear to be covered by MINN. STAT. § 13D.04 (2004), except with respect to the designation of the first and subsequent portions of an adjourned meeting as “sessions.” Therefore, the elimination of these provisions does not appear to constitute a meaningful change.

Chap. 4, Sec. 3 – Council Judge of Election of Members

The proposed charter revision’s elimination of the language in Chap. 4, Sec. 3 of the current charter that the City Council may “send for persons and papers” may constitute a change, if the language is construed to be tantamount to subpoena power. If it is not, then its elimination is not significant.

Chap. 4, Sec. 4 – City Council – Power to Remove Officers – Place and Manner of Trial

Art. VII, Sec. 7.1 (e)(3) of the current charter is substantially identical to Chap. 4, Sec 4 of the current charter with respect to providing that the City Council may remove elected officers after notice and hearing and may compel testimony and the production of documents for that purpose. However, there appears to be a change in the matter of the removal of appointed officers.

Art. VII, Sec. 7.1(e)(3) of the proposed charter revision authorizes **the electing or appointing body** to remove any officer appointed by it after notice and hearing. However, under Art. VII, Sec. 7.3(b) it is unclear who the appointing authority is. Art. VII, Sec. 7.3(b) of the proposed

charter revision provides, “Where this charter or a statute, ordinance, rule or other authority provides for an officer's appointment by the Mayor, by the City Council, by any board whose membership ... then the appointment is vested collectively in the mayor, Executive Committee, and Council as this section 7.3(b) provides.” The matter is further complicated by Art. VII, Sec. 7.3(b)(6) of the proposed charter revision which provides for removal only upon recommendation of the Executive Committee of officers who have been appointed by the City Council. Under Chap. 4, Sec. 4, of the current charter, “The executive committee shall have power to remove from office any officer of the city appointed by it subject to the provisions of Chap. 3, Sec. 4 of this charter....” Under Chap. 3, Sec. 4 of the current charter, a removal by the Executive Committee is only effective if approved by the City Council.

There might also be a change insofar as Art. VII, Sec. 7.1(e)(3) of the proposed charter revision authorizes the “electing or appointing body” to hold the removal hearing. Under Chap. 4, Sec. 4, of the current charter, the City Council holds the hearing. Under Art. VII, Sec. 7.1 of the proposed charter revision, the “appointing authority” holds the hearing, however, as indicated above the term “appointing authority” is ambiguous.

Chap. 4, Sec. 5 – Power to Make Ordinances

Art. IV, Sec. 4.4 of the proposed charter revision provides that the City may enact or adopt any necessary or prudent ordinance, resolution or other act and that an ordinance may provide for a fine, imprisonment or other penalty for its violation. This is a change from the current charter’s language that the City Council shall have full power to make...all ...ordinances for the government and good order of the City, for the suppression of vice and intemperance, and for the prevention of crime, as it shall deem expedient, and in and by the same to declare and impose penalties and punishments, and enforce the same.... This is generally recognized in the case law to be the General Welfare Clause of the charter, and has been construed in many court decisions to give the City broad police powers. Although the proposed charter revision omits this language, Art. I, Sec. 1.4 of the proposed charter revision provides that the City may exercise any power that a municipal corporation can lawfully exercise. MINN. STAT. § 412.221 (2004) includes a “general welfare clause” for statutory cities. The City Council could therefore exercise the same powers pursuant to the statute and, accordingly, the proposed charter revision language results in no actual change.

The proposed charter revision omits the list of specific kinds of regulation that may be enacted. In some cases, limitations on the City Council’s power to regulate are omitted. For example, the paragraph entitled “*First*” provides that no license shall be issued for any longer time than one year. This omission may empower the City Council to issue licenses for more than one year.

The proposed charter revision omits the limitations on the City Council’s power to issue liquor licenses. The current charter, for example, requires that an off-sale license can only be granted if the licensed premises are in an area zoned to permit such sales and then only if the area together with other areas contiguous thereto wherein such sales are permitted contain at least five acres. Similarly, there is a seven-acre limitation for on-sale licenses as well as a requirement that a substantial portion of the sales include the sale of food to be consumed on the premises. There are also references to liquor licenses in territory where issuance of a license was permitted by the

law or charter on November 1, 1974. There is a prohibition against liquor licenses in residence or office residence districts or outside of areas zoned for commercial or industrial uses. There are specific provisions relating to on-sale wine licenses. The omission of these limitations in the proposed charter revision will change the current charter by empowering the City Council to ignore the previous prohibitions in the issuance of licenses.

Chap. 4, Sec. 5 of the current contains a recital of forty-two paragraphs detailing the powers of the City Council. Some of the listed powers are obvious powers of a municipal corporation having the power to regulate for the general welfare of the community. However, some of the listed powers are less obvious, so that their omission may raise questions of municipal power. One example is the power “to compel the owner or occupant of buildings or grounds to remove snow and ice from the sidewalk, street or alley opposite thereto...and in the person’s default to authorize the removal... at the expense of such owner or occupant.” Also, there is the power to compel owners of low grounds to fill or drain such low places and in their default to authorize such filling or draining at the expense of such owners. The same paragraph authorizes the City Council to require snow and ice to be removed from streets and sidewalks, and low places to be filled and drained, to make the expenses of doing so a lien against the properties in question and to levy a special assessment against the respective properties. The omission of these provisions would call into question the City Council’s power to exercise these powers. In the absence of specific legislative or charter authority, a municipal corporation does not have power to impose liens upon private property nor to impose special assessments.

MINN. STAT. § 412.221 (2004) authorizes statutory cities (i.e. cities which have not adopted a charter) to enact ordinances on many subjects. The provisions of this statute duplicate most of the specific powers listed in Chap. 4, Sec. 5 of the current charter. Consequently, pursuant to MINN. STAT. § 410.33 (2004), the omission of these powers in the city charter would enable the City Council to exercise the powers in MINN. STAT. § 412.221 (2004). Although, under MINN. STAT. § 412.221 (2004), many private activities are made subject to municipal regulation, there is no specific reference to the power to license various activities. Chap. 4, Sec. 5 of the current charter, on the other hand, makes specific reference to licensing. It remains unclear as to whether there would be any difference in authority as a result in the change of language between the parallel provisions of Chap. 4, Sec. 5 of the current charter and MINN. STAT. § 412.221 (2004).

Chap. 4, Sec. 6 – City Council May Impose Penalties for Breach of Ordinance

The proposed charter revision omits the statement of authority contained in this section authorizing the City Council to prescribe punishment for the violation of an ordinance. However, Art. IV, Sec. 4.4 of the proposed charter revision provides that ordinances may prescribe penalties for ordinance violation. Also, the City Council could resort to the authority set forth in MINN. STAT. § 412.231 (2004), which authorizes statutory cities to prescribe penalties for ordinance violations. Therefore the omission of this section should not result in any change.

Chap. 4, Sec. 7 – City Council May Provide for Confinement in Workhouse

The proposed charter revision omits the provisions of Chap. 4, Sec. 7 of the current charter. As a result, the City Council would no longer have authority to require city prisoners to work upon City improvement projects. It is doubtful whether similar authority exists under state statutes.

The proposed charter revision omits the provisions of Chap. 4, Sec. 7 of the current charter authorizing incarceration for nonpayment of fines. There does not appear to be any similar authority under state law.

MINN. STAT. § 383B.121 (2004) authorizes Hennepin County to charge each municipality for the maintenance costs of inmates convicted of misdemeanors.

Chap. 4, Sec. 8 – Style of Ordinances – Subject and Title

The omission of Chap. 4, Sec. 8 of the current charter by the proposed charter revision would empower the City Council to pass an ordinance changing the style of ordinances from that prescribed in Chap. 4, Sec. 8 of the current charter. *See* 1959 Minn. Laws 234.

Chap. 4, Sec. 9 – Ordinances and Resolutions – How Passed

The language of the current charter and the proposed charter revision appears to be similar, with the exception of the phrase “other act” that appears in Art. IV, Sec. 4.4(a)(2) of the proposed charter revision. Under the current charter as interpreted by the Minneapolis City Attorney Opinions, an act of the City Council, such as the adoption of a committee report, does not require a majority vote of the Council membership, but only a majority vote of those voting. The adoption of a committee report by a majority vote of the Council has the same effect as a resolution, but only requires majority of those voting on the question. Art. IV, Sec. 4.4 of the proposed charter revision defines an “act” requiring a majority of all of the membership to be “an ordinance, resolution, appropriation, and any other lawful act of a legislative nature.” There is no change as to ordinances and resolutions which, under the current charter require a majority of all of the members of the City Council. However, it is not clear what other acts would be deemed to be legislative under the proposed charter revision so as to require seven votes. On this basis, it is unclear whether or not Chap. 4, Sec. 9 of the current charter would be changed.

The requirement that an ordinance cannot be passed at the same session or any session less than one week after its first reading, unless its subject matter has been previously referred to a committee at a previous session, appears to be addressed in Art. IV, Sec. 4.4(b) of the proposed charter revision. However, the wording seems to be permissive rather than limiting. This ambiguity of the language might empower the City Council to authorize the passage of ordinances at the same meeting at which they are first introduced, even if the subject matter of the ordinance has never been previously referred to a committee. Art. V, Sec. 5.1(g) of the proposed charter revision states that the City Council’s secretary must carefully and faithfully record its proceedings, including each action taken and each member’s vote on each such action, which the secretary must promptly file with the city clerk or in the board’s office. The language of the current charter and the proposed charter revision appears to be similar, although there appears to be a possible difference as to where the record of the votes is to be entered/filed.

Notably, the language that appears in Chap. 4 Sec. 9 of the current charter limiting when an ordinance can be passed after its first reading appears to be eliminated from the proposed charter revision. Moreover, the proposed charter revision eliminates Chap. 4 Sec. 9 of the current charter pertaining to publication of newly passed ordinances, and recommends that that language be reclassified as an ordinance. Under the current charter, no City Council action is valid or effective until it is published. The omission of the requirements of publication of ordinances and other council actions would empower the City Council to change or eliminate these requirements. The City Council's failure to agree to an ordinance on this subject would raise questions as to the effective date of ordinances and other actions.

Chap. 4, Sec. 10 – Copy of Record of Ordinance – Prima Facie Evidence – Compilation of Ordinances – Judicial Notice

The omission of the provisions of Chap. 4, Sec. 10 of the current charter eliminates the prima facie validity of published ordinances in State court. City charter provisions have all of the force of law and are equivalent to state statutes with respect to matters of local concern. In the absence of a charter provision or state law, the City Council does not have the power to pass a city ordinance having the weight of law on this matter. Therefore, the elimination of this provision might result in an additional burden in court proceedings of having the City Clerk testify to the validity and due enactment of City ordinances.

MINN. STAT. § 415.02 (2004) provides for the admission of codified ordinances of any city into evidence in court as prima facie evidence of their validity. However, this would not apply to ordinances passed and published but not yet included in the city code.

1959 Minn. Laws 234 authorizes the city to codify its ordinances.

Chap. 4, Sec. 11 – Majority Vote for Appropriations

Chap. 4, Sec. 11 of the current charter is omitted in the proposed charter revision. Under the current charter, the only City Council actions that require a majority vote of all of the City Council members are resolutions and ordinances. Art. IV, Sec. 4.4 of the proposed charter would create a change so that all of the City Council's legislative acts, which are defined to include appropriations, would require a majority vote of the entire City Council. Therefore, Chap. 4, Sec. 11 of the current charter will not be necessary if the change embodied in the proposed charter revision is adopted.

Chap. 4, Sec. 12 – Council May Abate Nuisance

The omission of Chap. 4, Sec. 12 would not change or impair the City's ability to maintain suits and prosecutions if the proposed charter revision is adopted. Art. I, Sec. 1.4(d) of the proposed charter revision contains a provision having the same effect as this section. Art. I, Sec. 1.4(d) of the proposed charter revision provides that the charter's mention of certain powers does not limit the City's powers to those mentioned.

Chap. 4, Sec. 13 – City Council to Audit Accounts of Officers – Examination of Books

The elimination of the provisions of Chap. 4, Sec. 13 of the current charter gives the City Council the power it wouldn't otherwise have to modify its own duties from those mandated in Chap. 4, Sec. 13 of the current charter. Chap. 4, Sec. 13 of the current charter gives the City Council the power and the duty to declare a vacancy in office for failure of an officer to properly disclose the books and accounts of the office. Although the failure to properly provide an accounting may arguably constitute a violation of the oath of office, there is no other comparable provision in state law specifically requiring the forfeiture of office for the failure to provide an accounting. It is unclear to what extent the City Council's duty to declare a vacancy might be compromised by the omission of this section.

MINN. STAT. § 6.49 (2004) provides that the State Auditor shall audit the financial condition and accounts of cities of the first class. If the audit discloses malfeasance, misfeasance or nonfeasance in office, the City Attorney or County Attorney are required to institute such legal proceedings as the law and the public interest require.

MINN. STAT. § 351.02 (2004) provides, inter alia, that a violation of the official oath of office gives rise to a vacancy. However, there is no other specific provision regarding the failure to keep and produce accounts.

Chap. 4, Sec. 14 – City Council to Have Control of City Finances and Property

There does not appear to be a difference between the current charter and the proposed charter revision with respect to Chap. 4, Sec. 14.

Chap. 4, Sec. 15 – City Council Shall Have Power to Acquire Property for Public Buildings and Public Streets

Pursuant to 1973 Minn. Laws 629, the City may condemn and acquire private property under its charter or MINN. STAT. § 630 (2004), notwithstanding the provisions of MINN. STAT. § 117 (2004). Therefore, the deletion of this Chap. 4, Sec. 15 of the current charter could be interpreted to require that the City utilize either Chapter 117 or Chapter 630 of Minnesota Statutes rather than this charter provision.

See MINN. STAT. § 465.01 (2004) as to the power of cities to acquire private property for the same purposes as cities may acquire property by purchase, gift or devise and for such purposes may exercise the power of eminent domain.

See MINN. STAT. § 465.03 (2004) as to power of municipalities to accept gifts of real or personal property and maintain such property for the benefit of their citizens.

See MINN. STAT. § 412.221 (2004) as to various powers of statutory cities to establish streets, construct public buildings, and purchase property.

Chap. 4, Sec. 16 – Licenses May Be Revoked

Chap. 4, Sec. 16 of the current charter contains grounds and procedures for the revocation of licenses. The proposed charter revision authorizes the City to exercise any municipal power; this would presumably include licensing power. The City Council can prescribe the grounds for issuance and for revocation. However, although the provisions it enacts are likely to be the same as those set forth in Chap. 4, Sec. 16 of the current charter, there is no assurance that they will be. Also, as to licenses in effect at the time the proposed charter revision is effective, there may be an issue as to whether they would be subject to Chap. 4, Sec. 16, rather than the provisions of ordinances subsequently enacted.

Chap. 4, Sec. 17 – Council May Exercise Power by Resolution – When

The proposed charter revision would render these provisions obsolete, because the proposed charter would eliminate the provisions of Chap. 4, Sec. 5 of the current charter. Additionally, under Chap. IV, Sec. 4.4 of the proposed charter revision, there is no meaningful distinction between ordinances and resolutions, with the exception of violations and penal provisions, which must be enacted by ordinance.

Chap. 4, Sec. 18 – Current Expense Fund

There is no longer a current expense fund, and the elimination of Chap. 4, Sec. 18 of the current charter in the proposed charter revision would not therefore effect a change in current law.

Chap. 4, Sec. 19 – City Council May Establish Purchasing Department

The elimination of Chap. 4, Sec. 19 of the current charter does not change the power of the City Council to establish a purchasing department. *See* Art. VI, Sec. 6.2 of the proposed charter revision. However, Chap. 4, Sec. 4 of the current charter empowered the purchasing department established by the City Council to have charge of purchases by the Park Board and the Library Board. The omission of these provisions would abrogate the power of the City Council to require that the named boards utilize the purchasing department. The City Council would also be empowered to change the manner of appointment of the head of the Purchasing Department.

Chap. 4, Sec. 20 – Payment of All Current Bills Authorized

There does not appear to be a provision in the proposed charter revision authorizing the payment of bills and claims. In the absence of such a provision, it is doubtful that the City Council would have the power to pass an ordinance providing for the routine payment of claims. Consequently, it is arguable that, with few exceptions, no disbursement of funds could be made without City Council approval. It is also doubtful that the City Council would have authority to duplicate by ordinance the current charter provision calling for double damages for submitting a false claim and failing upon demand to reimburse the City.

MINN. STAT. § 412.271 (2004), which pertains to statutory cities, requires the approval of the city council before the city officers are authorized to disburse city funds. In the absence of a charter provision authorizing the city council to authorize by ordinance the payment of funds, the City might, pursuant to MINN. STAT. § 410.33 (2004), be able to resort to Minnesota Statutes Chapter

412, relating to statutory cities. However, MINN. STAT. § 412.271 (2004) is far more limiting than the current charter with regard to the disbursement of funds without council approval.

Chap. 4, Sec. 21 – Deletion of Housing Act from Charter

Chap. 4, Sec. 21 of the current charter preserves ordinances that reference the deleted portion of the city charter relating to housing. Chap. 4, Sec. 21 of the current charter also requires a two-thirds (2/3) vote of all members of the City Council to amend or repeal ordinances incorporating the deleted portion of the charter by reference. The elimination of Chap. 4, Sec. 21 of the current charter would change the charter only if there are presently any ordinances in effect that incorporate the repealed charter provisions. It is unclear whether any such ordinances exist.

Chap. 4, Sec. 22 – [Untitled]

Chap. 4, Sec. 22 of the current charter has a parallel provision in Art. VII, Sec. 7.3(b)(3) of the proposed charter revision which provides that if the City Council does not accept or reject an Executive Committee recommendation within 60 days after the Mayor's nomination, then the nominee is appointed. Chap. 4, Sec. 22 of the current charter is not consistent with the Executive Committee appointment process. It appears not to have been amended at the time the Executive Committee appointment process in Chap. 3, Sec. 4, of the current charter was adopted. Since mayoral appointments are to be made by the Executive Committee under the current charter, subject to City Council approval, this section should have been amended to reflect the changed process. Art. VII, Sec. 7.3(b) of the proposed charter revision appears to rectify the inconsistency.

Chap. 4, Sec. 23 – Authorization for Industrial Development Commission – Plans and recommendations of Such Commission

Chap. 4, Sec. 23 of the current charter authorizes the City Council to establish the Industrial Development Commission. There is an ordinance, Minneapolis Code, Chap. 416, authorizing the Commission. Chap. 4, Sec. 23 of the current charter would be omitted from the proposed charter revision. Even so, the proposed charter would not affect the validity of an ordinance previously adopted. Furthermore, this would not constitute a change if the Commission is no longer viable.

Chap. 4, Sec. 24 – Council May Establish Size of Mayor's Staff

In pertinent part, Chap. 4, Sec. 24 of the current charter states that the minimum size of the Mayor's staff shall be one administrative deputy, two administrative aides, one administrative assistant and one executive secretary. Art. VI, Sec. 6.2(g)(1) of the proposed charter revision states that the City Council must provide at least one administrative deputy, two administrative aides, one administrative assistant and one executive secretary for the Mayor's support along with any other appropriate staff. The language of the current charter and the proposed charter revision appears similar with the exception of the language "along with any other appropriate staff" that is included in the proposed charter revision. It is not clear who or what would make the determination that additional staff is appropriate.

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ANALYSIS OF THE MINNEAPOLIS
CHARTER COMMISSION'S FIFTH DRAFT
OF ITS PROPOSED CHARTER REVISION**

CURRENT CHARTER CHAPTER 5

TAXATION & FINANCE

Analysis of Proposed Charter Revisions, Chapter 5 – Taxation and Finance

Chap. 5, Sec. 1 – City Assessor

The City Assessor is an officer required under Art. VI, Sec. 6.2 of the proposed charter revision. However, the proposed charter contains no specific provisions relating to the appointment of deputy assessors or their powers and duties. This change would empower the City Council to specify a different appointing authority with respect to deputy assessors. Also, Art. VII, Sec. 7.1(c) proposed charter revision empowers the City Council to change the term from the 2-year term specified in this Chap. 5, Sec. 1 of the current charter to a different term of office.

Chap. 5, Sec. 2 – Laws to Govern Assessors

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance. The elimination of this section should not result in a change because state law controls the listing and assessing of properties and other duties of assessors whether or not the charter so provides.

Chap. 5, Sec. 3 – Board of Equalization

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance. The elimination of this section might change the composition of the Board of Equalization and Appeals. This section provides that the Committee on Taxes of the City Council shall constitute Board. If not otherwise provided by charter, the City Council becomes the Board pursuant to MINN. STAT. § 274.01 (2004).

This section of the current charter also provides that the Board of Equalization is not to be restricted by limitations of state law in the aggregate amount of property value that may be reduced. This provision is not included in the proposed charter revision.

Chap. 5, Sec. 4 – Meetings of the Board

MINN. STAT. § 274.01 (2004) supersedes this section of the current charter as to the dates when the Board of Equalization must meet. However, although MINN. STAT. § 274.01 (2004) specifies other details regarding the place of meeting and notice procedures, it does not include any requirement that the City Attorney be present to advise the Board. MINN. STAT. § 274.01 (2004) does, however, contain provisions regarding the procedure for increasing the assessment of particular properties found to be undervalued. As such, the elimination of this section would not significantly change the present requirements with regard to the proceedings of the Board of Equalization.

Chap. 5, Sec. 5 – Duty of City Clerk

Chap. 5, Sec. 5 of the current charter provides for the City Council to confirm or return the assessment rolls to the Board of Equalization for further revision. This power of the City Council to affect a change in the property tax assessment rolls would be eliminated under the

proposed charter revision. This is a power that cannot be enacted by ordinance, because of the state statutes that specify assessment review procedures. These statutes permit cities to have certain contrary charter provisions, but not ordinance provisions.

Chap. 5, Sec. 6 – Salary of Assessors

The elimination of this section regarding the power to set salaries would not affect any change in the law.

Chap. 5, Sec. 7 – Fiscal Year

Art. VIII, Sec. 8.1 of the proposed charter revision continues Chap. 5, Sec. 7 of the current charter with respect to the fiscal year with no change.

Chap. 5, Sec. 8 – Budget Participation of Mayor – Office of Budget

The proposed charter revision does not provide for a Budget Director as a charter-required officer. Prior to 1984, the Budget Director was appointed exclusively by the Mayor. In 1984 the voters passed a charter amendment creating the Executive Committee, establishing the City Coordinator as a charter-required office, and providing for the appointment of the Budget Director by the Coordinator. Under the proposed charter revision, there is no requirement that the City Council provide for a Budget Director, nor any requirement of a Coordinator. *See* Art. VI, Sec. 6.2 of the proposed charter revision. Under this Chap. 5, Sec. 8 of the current charter, the employees of the Budget Office, other than the Director, are in the classified service. There is, however, no similar requirement in the proposed charter revision. Although the City Council is not required by Art. VI, Sec. 6.2 of the proposed charter revision to provide for a Budget Director, there is a reference made to the Budget Director in Art. VIII, Sec. 8.3(d) of the proposed charter revision.

1983 Minn. Laws 160, Sec. 2, provides that the City Council may reorganize, consolidate and delegate the functions, duties and responsibilities of the comptroller-treasurer (predecessor of the Finance Officer) and other fiscal management functions of the City, except, the establishment and functions of the office of the budget as provided in Chap. 5, Sec. 8, of the Minneapolis city charter.

Art. VIII, Sec. 8.3(a) of the proposed charter revision requires the Mayor to establish the City's goals and priorities for the next fiscal year by April 1st. Chap. 3, Sec. 1 of the current charter states that this duty is a required part of the "state of the city address", but the "state of the city address" not required to be given by April 1st. In the current charter, no deadline is specified, except that it provides that the City Council must have time to review and amend it prior to the August 15th deadline for the Mayor's recommended budget. The requirement of Art. VIII, Sec. 8.3(a) of the proposed charter revision that the City Council must review, amend and approve such goals by August 15th is consistent with Chap. 3, Sec. 1, of the current charter.

Additionally, there are a number of other differences in language between Chap. 5, Sec. 8 of the current charter and the proposed charter revision. For example, Chap. 5, Sec. 8 of the current

charter states that the Mayor's budget message must include "recommendations for legislation and for other actions by other governmental bodies which actions would assist the financial programs of the City." In contrast, Art. VIII, Sec 8.3 of the proposed charter revision provides that the budget recommendations by the Mayor must include "...any necessary or prudent legislation or other action affecting the City's finances." Also, Chap. 5, Sec. 8 of the current charter provides that the budget message include the Mayor's "...review and comment on taxes imposed on property in the City by all other taxing authorities and the effect of such total tax obligations." In contrast, Art. VIII, Sec. 8.3 of the proposed charter revision states that the Mayor's budget message must "summarize all taxes applicable to property in the City and their effect."

The provision of Chap. 5, Sec 8 of the current charter regarding the Mayor and Budget Director's access to all records and information possessed by the City Council and any other board or agency is somewhat different in the proposed charter revision. Art. VIII, Sec. 8.3(d) of the proposed charter revision requires the cooperation of each officer, board, or department with the Mayor, Board of Estimate and Budget Director and requires them to furnish the Mayor, Board of Estimate and Budget Director information that they request.

Chap. 5, Sec. 9 – Revenue from Licenses, Fines, Etc.

By eliminating Chap. 5, Sec. 9 of the current charter, the proposed charter revision changes the requirement that receipts from sales of municipal property be placed in the Permanent Improvement Fund. Art. VIII, Sec. 8.6 of the proposed charter revision provides for this fund and specifies what revenues go into the fund, but it does not include the receipts from sales of property. The Permanent Improvement Fund can be use only for permanent improvements. 1983 Minn. Laws Chap. 160 authorizes the City Council to reorganize the fiscal functions of the City by ordinance. As such, the elimination of Chap. 5, Sec. 9 of the current charter would result in a change only if the City Council failed to reenact it by ordinance.

Chap. 5, Sec. 10 – City Council to Levy Tax and Make Appropriations

Chap. 5, Sec. 10 of the current charter provides that the City Council shall levy a tax on the taxable property in the City for the current expenses of the City in the next fiscal year. The corresponding statement in the proposed charter revision is not quite as clear. Art, VIII, Sec. 8.3(a)(5) of the proposed charter revision states that the City Council and each board must adopt a budget appropriating money for its operations; for payment of debt service, by taxation if necessary; and tax the property in the City an amount that will satisfy any judgment against the City. Art. VIII, Sec 8.3(a)(4) of the proposed charter revision provides that the board of Estimate and Taxation shall set a maximum amount that City Council and other boards can levy in taxes. Art. VIII, Sec. 8.3 of the proposed charter revision fails to state that the City Council and each board shall levy a tax to pay for each department's, board's, and officer's operations. This should be clarified.

Another change from Chap. 5, Sec. 10 of the current charter appears to be that Art. VIII, Sec. 8.3 of the proposed charter revision requires a public hearing before a budget is approved and taxes are levied. There does not appear to be any such requirement in the current charter.

Chap. 5, Sec. 10 of the current charter prohibits the expenditure of more money than appropriated for any fiscal year for any department of City government. There does not appear to be any such express prohibition in the proposed charter revision.

Chap. 5, Sec. 11 – Taxes for Streets

Chap. 5, Sec. 11 of the current charter authorizes the costs of various street maintenance services to be paid from the tax levy made for the City's General Fund. However, Chap. 5, Sec. 11 of the current charter also allows payment to be made from the General Fund for the expenses of equipment, construction of street crosswalks, traffic signs and signals and street signs notwithstanding other provisions of the charter. Chap. 5, Sec. 16 of the current charter requires permanent improvements to be paid for from the Permanent Improvement Fund. Art. VIII, Sec. 8.6 of the proposed charter revision also provides for a permanent improvement fund into which must go all taxes levied for permanent improvements and which must not be diverted for other purposes. The elimination of Chap. 5 Sec. 11 of the current charter and the provision relating to the costs of crosswalks, signs and signals therefore raises a question as to whether crosswalks, signs and signals are permanent improvements and, if so, whether they can be paid for from general fund appropriations under the proposed charter revision.

Pursuant to 1983 Minn. Laws 160, the City Council is authorized to reorganize the City's fiscal management functions by ordinance.

Chap. 5, Sec. 12 – Interest on Bonded Indebtedness

Chap. 5, Sec. 12 of the current charter requires a tax levy sufficient to pay interest on all bonds and indebtedness of the City due in the next fiscal year, together with an additional three-mill tax levy to pay the principal. Art. VIII, Sec. 8.3(a)(5)(b) of the proposed charter revision changes this by requiring a tax levy sufficient to pay the debt service on all general obligation debt of the City, without requiring any minimum tax levy to retire the principal.

Chap. 5, Sec. 13 – Transfer of Unused Funds

Chap. 5, Sec. 13 of the current charter authorizes the City Council to transfer unused bond proceeds from completed or abandoned projects, as well as unused funds in the permanent improvement fund and permanent improvement revolving fund, and other unused funds, to investment and use for the payment and redemption of City bonds as they mature and become payable. Art. VIII, Sec. 8.4(b) of the proposed charter revision relating to the sinking fund contains substantially the same language, but it is not clear whether it would include authorization for the transfer of funds in the permanent improvement fund.

Pursuant to 1983 Minn. Laws 160, the City Council is authorized to reorganize the City's fiscal management functions by ordinance.

Chap. 5, Sec. 14 – Sinking Fund

Part of Chap. 5, Sec. 14 of the current charter refers to the three-mill levy required in Chap. 5, Sec. 12 of the current charter to make bond principal payments. That part of Chap. 5, Sec. 14 of the current charter is eliminated from the proposed charter revision. Art. VIII, Sec. 8.4(b) of the proposed charter revision makes a change from Chap. 5, Sec. 14 of the current charter by providing that “[a]ny other revenue not otherwise appropriated... may go into the sinking fund.” In contrast, Chap. 5, Sec. 14 of the current charter provides that “...all revenues of the city not otherwise appropriated, shall be applied to the increase of such sinking fund.” [emphasis added].

The part of Chap. 5, Sec. 14 of the current charter detailing how the money in the sinking fund can be invested is omitted in the proposed charter revision. Likewise, the provisions allowing investment of the fund in City bonds is omitted. In the absence of any charter provision on the subject, the investment of funds is controlled by MINN. STAT. § 118A.04 (2004). A 1968 Attorney General’s Opinion held that the city charter of St. Paul prevailed over the general law of the state with respect to the categories of collateral that would be acceptable as security in lieu of the bond required of depositories of city funds. (Op. Atty. Gen. 140b-8, 6/17/68). A Minneapolis City Attorney’s Opinion dated June 5, 1980 also held that city charter provisions prevailed over general statutes, in particular certain provisions of Chapter 118 of Minnesota Statutes, 1978, relating to the collateral depositories may deposit in lieu of a bond.

Chap. 5, Sec. 14 of the current charter also provides that the maintenance of the sinking fund in accordance with this section is part of the contract with the City bondholders and shall be held inviolate. This provision is omitted in the proposed charter revision. It is suggested that the City’s bond counsel be consulted as to the effect of this omission on the security and marketability of City bonds.

Chap. 5, Sec. 15 – Bonds for Interest

Chap. 5, Sec. 15 of the current charter permits the City Council to issue new bonds of the City, with terms of up to thirty years, to pay the principal and interest as due on outstanding bonds or to redeem and refund or repurchase outstanding bonds. That said, the interest rate on the refunding bonds cannot exceed the interest rate on the bonds that are redeemed or repurchased. Art. VIII, Sec. 8.4 of the proposed charter revision is the exclusive authority for issuance of bonds under the proposed charter revision. The bonding provision of Art. VIII, Sec. 8.4 of the proposed charter revision is significantly more restrictive than Chap. 5, Sec. 15 of the current charter. Other authority to issue and sell bonds by any municipality is provided in MINN. STAT. § 475 (2004) generally. However, those provisions include other limitations and procedures not required in the charter. (See for example, MINN. STAT. § 475.28, Subd. 2 (2004), as to refunding bonds and election requirements in certain circumstances.) The elimination of Chap. 5, Sec. 15 of the current charter may compromise the debt-issuing authority of the City.

Chap. 5, Sec. 16 – Permanent Improvement Fund

Chap. 5, Sec. 16 of the current charter provides that the Permanent Improvement Fund consists of the proceeds of bonds issued and sold, special assessments against benefited properties, and taxes levied for permanent improvements. In contrast, Art. VIII, Sec. 8.6 of the proposed charter

revision states that the Permanent Improvement Fund consists of the proceeds of bonds issued and taxes levied for permanent improvements, but does not list special assessment proceeds.

Chap. 5, Sec. 16 of the current charter mandates that the expenses of the assessable and non-assessable portions of permanent improvements be paid from the Permanent Improvement Fund. The proposed charter revision does not include this requirement.

Chap. 5, Sec. 16 of the current charter mandates an annual tax levy in an amount to replace all expenditures not recovered from special assessments, in an amount not to exceed 2.5 mills for permanent improvements. Art. VIII, Sec 8.6 of the proposed charter revision has a levy limit for permanent improvements of 0.02993 percent of total taxable property value. That said, the proposed charter revision does not mandate a tax levy. As such, the proposed charter revision does not prohibit a shortfall, or a decrease of the Permanent Improvement Fund in the same way that the current charter does.

Chap. 5, Sec. 17 – City Council of Minneapolis Authorized to Issue Certain Bonds

Chap. 5, Sec. 17 of the current charter authorizes the City and City Council to exercise bond issuing powers provided in state law applicable to the City prior to the adoption of the current charter and not fully exercised prior to the current charter's adoption. The proposed charter revision eliminates this provision. It is not clear whether this provision remains viable considering the passage of time since the original adoption of the current charter in 1920. It is therefore unclear whether its elimination would have any impact as to the City's powers to issue bonds. Art. I, Sec. 1.3(b) of the proposed charter revision states that the proposed charter revision is not intended to affect the powers of any board, department or other public body.

Chap. 5, Sec. 17 of the current charter also authorizes the City Council, when it is authorized by law to sell bonds, to sell them at private sales, through agencies and in such manner and at such time and place and with or without giving published notice of sale as the City Council shall determine, but requires that the bonds sold at such private sales be in denominations of \$100, but not exceeding \$1000. MINN. STAT. § 475.60 (2004) requires bonds to be sold at a competitive sale upon notice as provided in the statute. MINN. STAT. § 475.60 (2004) contains an exception for bonds issued and sold in accordance with the provisions of a home rule charter. Therefore, the elimination of this section might necessitate the application of MINN. STAT. § 475.60 (2004), which requires competitive sales in certain cases.

It should be noted that, under Chap. 15, Sec. 8 of the current charter, the Board of Estimate and Taxation is the bond issuing authority. This provision only applies when a statute authorizes the City Council, as opposed to the Board of Estimate and Tax, to issue and sell bonds. In those cases, the statute itself often contains provisions specifying the issuance and sale procedures. *See* MINN. STAT. § 469.158 (2004).

Chap. 5, Sec. 18 – Portion of Cost to be Defrayed by Special Assessment

Chap. 5, Sec. 18 of the current charter authorizes the City Council to determine what portion of the expenses of an arterial street-paving project must be recovered by special assessments. It

requires the assessment of at least one-half the cost of paving from the center-line to the abutting property. In contrast, Art. VIII, Sec. 8.6(c) of the proposed charter revision permits the City Council to determine the portion to be assessed without specifying any minimum portion to be assessed.

Chap. 5, Sec. 18 of the current charter also permits the City Council to pay for the non-assessed portion of the arterial street paving out of any available funds and to impose a general tax for such paving expenses to be paid into any fund. This appears to be an exception to the provisions requiring taxes levied for improvements to be paid into, and expenses to be paid out of, the Permanent Improvement Fund. The proposed charter revision does not include any parallel provisions pertaining specifically to arterial street paving. Therefore, the proposed charter revision might be construed to impose a requirement to pay for such paving out of the Permanent Improvement Fund.

Chap. 5, Sec. 19 – Finance Officer to Notify Council When Funds Deficient

Chap. 5, Sec. 19 of the current charter provides restrictions and fiscal controls with respect to contracts in order to ensure that expenditures will not exceed available funds and levied taxes. It prohibits the Finance Officer from signing contracts and orders for payment when funds are insufficient. The proposed charter revision does not require the appointment of a Finance Officer. It does not appear to contain any parallel or similar restrictions and controls. 1983 Minn. Laws 160, gives the City Council the power to reorganize the fiscal management functions of the City by ordinance.

Chap. 5, Sec. 20 – Taxes to be Levied by Resolution

Chap. 5, Sec. 20 of the current charter requires taxes to be levied by resolution and provides for the validity of tax levies, notwithstanding “informalities” in the manner of levying, nor due to the taxes levied exceeding the amount required to be raised for any special purpose. The proposed charter revision does not specify any procedure for the levy of taxes, except as Art. VIII, Sec. 8.6(a) provides regarding permanent improvements. Otherwise, the proposed charter revision only appears to provide for the adoption of a budget. Please see discussion under Chap. 5, Sec. 10.

Chap. 5, Sec. 21 – Statement of Tax Levy

Chap. 5, Sec. 21 of the current charter requires the tax levy to be submitted to County Auditor on or before October 10th. This provision is superseded by MINN. STAT. § 275.065 (2004), which requires the proposed levy to be certified on or before September 15th and also provides that notification of the Board of Estimate and Taxation’s determination of the maximum levy satisfies that requirement. State law appears also to provide for the collection, payment and enforcement of taxes. Therefore, elimination of this section should have no effect.

Chap. 5, Sec. 22 – County Treasurer to Pay Over Taxes & Chap. 5, Sec. 23 – County Auditor’s Tax Statement

Chap. 5 Secs. 22 & 23 of the current charter pertain to the collection of property taxes by the County and settlement with the City. State statutes now provide for the procedures in regard to the collection and settlement of taxes. We believe that the state statutes (*See generally* MINN. STAT. § 276 (2004)) may be intended to control the field with regard to this subject. If so, the elimination of these sections by the proposed charter revision should not affect the current law on this subject. However, the statutes do not appear to entirely duplicate the provisions requiring the payment of interest to the City for funds in County bank accounts; authorizing the County to pay the City prior to the settlement dates funds necessary due to deficiencies in City accounts; and requiring the Finance Officer to apportion tax receipts to the funds of the City. It therefore unclear whether the elimination of these specific provisions would change current law or practice.

Chap. 5, Sec. 24 – City Orders – When Issued

The proposed charter eliminates the language of Chap. 5, Sec. 24 with regard to the requirement that all payments be authorized by the City Council. Art. VIII, Sec. 8.2 of the proposed charter revision requires that payments, except bond payments, be made pursuant to an appropriation and that appropriations be made by the City Council. This is not the same as the current requirement of this section that each payment, except payroll payments, be authorized by the City Council. The proposed charter revision eliminates the requirement as to the auditing of payrolls to be performed by the Finance Officer. That said, the internal audit function has been delegated to the Board of Estimate and Taxation pursuant to Mpls. Code 17.80, by authority of 1983 Minn. Laws 160.

Chap. 5, Sec. 25 – Orders to be Cancelled & Chap. 5, Sec. 26 – Destruction of Cancelled Bonds

Chap. 5, Secs. 25 & 26 of the current charter specify certain ministerial duties of the Finance Officer relating to the filing of orders for the payment of money and the cancellation of bonds. Elimination of these requirements by the proposed charter revision would not likely have any effect, and would be a proper subject for regulation by ordinance pursuant 1983 Minn. Laws 160.

Chap. 5, Sec. 27 – Depositories of City Funds & Chap. 5, Sec. 28 – Designated Banks – Deposits

In summary, Chap. 5 Secs. 27 & 28 of the current charter require that all funds of the City be deposited in depositories selected by the City Council. The depositories are required to post surety bonds equal to double the funds to be deposited and interest thereon, or in lieu thereof must deposit certain specified kinds of collateral. The Finance Officer is authorized to return the collateral to the depository when the trust is terminated and to permit the exchange of securities for securities of equal value.

The elimination of Chap. 5 Secs. 27 & 28 of the current charter will result in the application of various provisions of Minnesota Statutes, which are different than the Charter. MINN. STAT. § 427.02 (2004) applies to cities not governed under a charter or in which the charter does not provide for the matter of designating depositories. This statute makes reference to MINN. STAT.

§ 118A.03 (2004) as providing for the kinds of acceptable collateral. MINN. STAT. § 118A.03 (2004) differs from the City Charter in respect to the amount of collateral security required. Banks having Federal Deposit Insurance are only required to post security to the extent the deposits exceed the amount of the insurance.

Chap. 5, Sec. 29 – Statement of Deposits

The proposed charter revision eliminates the requirements of Chap. 5, Sec 29 of the current charter that state that the Finance Officer must make a monthly statement of deposits specifying the nature of the deposit in each depository. The City Council can legislate such a requirement by ordinance pursuant to 1983 Minn. Laws 160, notwithstanding the current charter provision. However, the elimination of this section may eliminate this duty to make monthly statements, until such time as the City Council enacts the requirement or modifies it by ordinance.

Chap. 5, Sec. 30 – City Finance Officer Exempt From Liability

Chap. 5, Sec. 30 of the current charter exempts the Finance Officer from liability when City funds are deposited in accordance with the charter. It also provides that the City Council's failure to designate depositories does not exempt the Finance Officer or the sureties on the Finance Officer's official bond from liability. The proposed charter revision does not make the Finance Officer a charter officer, and provides that the City Council can determine the officers and departments of city government by ordinance. Because Chap. 5, Sec. 30 of the current charter is not included in the proposed charter revision, the provisions of MINN. STAT. § 118A.02 (2004) would apply. This statute provides immunity to finance officers of government entities for the investment and deposit of funds when done in accordance with MINN. STAT. § 118A (2004). Therefore, there would be no change in liability with respect to a chief financial officer or treasurer who invests and deposits City funds. However, the elimination of the provision regarding the liability of the finance officer and surety when the council fails to designate depositories does not appear in state statutes. It is unclear what the legal consequence of eliminating this provision might be.

Chap. 5, Sec. 31 – City Finance Officer to Secure Interest

Chap. 5, Sec. 31 of the current charter creates a duty of the Finance Officer to secure interest on public funds and to prudently manage the funds, to make an annual statement of interest received and to credit the funds that the City Council directs. Under the proposed charter revision, the City Council would designate the officer and department to manage the City's funds and provide by ordinance the duties of the office. While the City Council might not require an annual statement of interest, it would be necessary to prescribe duties for the officer who is to manage city finances, and, therefore, no significant change is to be expected.

Chap. 5, Sec. 32 – Council May Require New Bonds

Chap. 5, Sec. 32 of the current charter empowers the City Council to declare the securities or bonds posted by a depository insufficient and to require new bonds or securities as collateral. The proposed charter revision would eliminate this provision. Therefore, the statutory provisions would apply. It is not clear whether, under the statutes, the City Council would retain the power

to decide when the securities would be insufficient. MINN STAT. § 427.02 (2004) provides that the Council may demand good and sufficient bonds, or collateral in lieu thereof. MINN. STAT. § 118A.03 (2004) specifies the bonds and securities that government entities must demand. The issue would be whether the statutory language would be construed to give the City Council the same power as the current charter. This is not clear.

Chap. 5, Sec. 33 – Bonds to Continue in Force

Chap. 5, Sec. 33 of the current charter requires the City Council to examine bonds and securities given by depositories to determine if they are sufficient, and requires that the bonds and securities remain in force as long as City funds are unpaid by the depository. It also specifies duties of the Finance Officer as to the recording of such bonds and provides that such records shall be competent and prima facie evidence of the contents and tenor of the bonds and securities. The elimination of this section would not, in our opinion, result in any significant change as long as the City Council acts pursuant to 1983 Minn. Laws 160, to provide for these matters by ordinance. The City Council may, under 1983 Minn. Laws 160, delegate the task of examining the bonds and securities and enact ordinances specifying the records to be kept. The Finance Office records should be admissible as official records, even after the elimination of this provision.

Chap. 5, Sec. 34 – Orders Paid from Current General Fund

Chap. 5, Sec. 34 of the current charter provides that all appropriations and expenses not otherwise provided for shall be paid from the general fund. Under the proposed charter revision, the general fund is not mentioned, but the City Council can apparently designate the funds of the City, except that it must provide for a sinking fund for bonds and a Permanent Improvement Fund and certain other specified funds. The elimination of this section by the proposed charter revision would not result in a change, because the City Council would, in any event, be compelled to provide a funding source from which such payments are to be made.

Chap. 5, Sec. 35 – Judgments Against City

Chap. 5, Sec. 35 of the current charter provides for taxes to be levied, without limitations, to pay judgments against the City. This is substantially provided for in Art. VIII, Sec. 8.3(a)(5)(C) of the proposed charter revision. However, Chap. 5, Sec. 35 of the current charter also contains an obsolete reference to taxes to be levied only in the ward responsible for the judgment. This reference is eliminated in the proposed charter revision.

**MINNEAPOLIS CITY ATTORNEY'S OFFICE
ANALYSIS OF THE MINNEAPOLIS
CHARTER COMMISSION'S FIFTH DRAFT
OF ITS PROPOSED CHARTER REVISION**

CURRENT CHARTER CHAPTER 6

POLICE DEPARTMENT

Analysis Proposed Charter Revisions, Chapter 6 – Police Department

Chap. 6, Sec. 1 – Powers of Mayor over Police – Chief

The first part of Chap. 6, Sec. 1 of the current charter states that the Mayor shall be vested with all the powers of said city connected with and incident to the establishment, maintenance, appointment, removal, discipline, control and supervision of its police force, subject to the limitations herein contained and the provisions of the civil service chapter of this charter, and may make all needful rules and regulations for the efficiency and discipline, and promulgate and enforce general and special orders for the government of the same, and have the care and custody of all public property connected with the police department of the city. Art. VI, Sec. 6.3(a) of the proposed charter revision states that the Mayor regulates and commands the police department. Art. VI, Sec. 6.3(a) of the proposed charter revision also states that except where the law vests an appointment in the police department, the Mayor appoints and may discipline or discharge any police officer, subject to the Civil Service Commission's rules. Art. VI, Sec. 6.3(a) of the proposed charter revision also states the Mayor may appoint any such officer, other than the police chief, without regard to section 7.3(b).

The language of the current charter and the proposed charter revision appear to have some similarities and some differences. The current charter states that the Mayor is vested with all the powers of the city with respect to the establishment, maintenance, appointment, removal, discipline, control and supervision of its police force, while the proposed charter revision states that the Mayor regulates and commands the police department. It is unclear if the language of the proposed charter revision is an expansion or diminution of the Mayor's power over the police department from the language of the current charter. It is also unclear if the appointment power that the Mayor possesses under the current charter with regard to non-officer employees is different under the proposed charter revision given the language in Art. VII, Sec. 7.3(b) of the proposed charter revision.

The proposed charter revision eliminates the second part of Chap. 6, Sec. 1 of the current charter that pertains to the appointment of the chief of police, and recommends that that part of Chap. 6, Sec. 1 of the current charter be reclassified as an ordinance.

The third part of Chap. 6, Sec. 1 of the current charter states that the chief of police may be reappointed by a majority of all members of the City Council. Chap. 6, Sec. 1 of the current charter also states that in the event that the City Council does not reappoint within thirty (30) days of the termination of the term, the executive committee shall within sixty (60) days thereafter make a new appointment. Art. VII, Sec. 7.3(b)(4) of the proposed charter revision states that if an office has been vacant for at least 90 days (or 30 days in the case of the police chief), or if the Mayor has nominated three candidates that the Executive Committee or the Council has rejected, then the Executive Committee may name three or more candidates, from whom the Mayor must nominate one. Art. VII, Sec. 7.3(b)(4) of the proposed charter revision also states that if the Mayor has not, after 20 days, nominated a candidate so named, then the Executive Committee may recommend one such candidate to the Council, and the Council may appoint the recommended candidate, without the Mayor's nomination. Art. VII, Sec. 7.3(b)(4) of the proposed charter revision states that this process recurs until an officer is appointed.

Without detailed elaboration, it suffices to say that Art. VII, Sec. 7.3(b)(4) of the proposed charter revision appears to make a noteworthy change to the appointment/reappointment process pertaining to the chief of police from the current charter.

The proposed charter revision eliminates the fourth part of Chap. 6, Sec. 1 of the current charter that pertains to the appointment by the Mayor of all other members of the police force, and recommends that that part of Chap. 6, Sec. 1 of the current charter be reclassified as an ordinance.

The fifth part of Chap. 6, Sec. 1 of the current charter states that the personnel of the police department shall be established and maintained at a ratio, or as closely thereto as is possible within the limits of section 2 hereof, of not less than one and seven-tenths (1.7) employees per one thousand (1,000) of population of the city according to the latest United States official census. Art. VI, Sec. 6.3(f) of the proposed charter revision states that the City Council must fund a police force of at least 0.0017 officers per resident, for which purpose it may annually tax up to 0.03591 percent of the total value of the City's taxable property, in addition to any other tax. The language of the current charter differs from the language of the proposed charter revision with respect to the difference in term from "employees" in the current charter to "officers" in the proposed charter revision.

The sixth part of Chap. 6, Sec. 1 of the current charter states that each and every person so appointed shall be subject to removal by the Mayor when the Mayor shall deem the same necessary after proper investigation in accordance with the civil service chapter of this charter. Art. VI, Sec. 6.3(a) of the proposed charter revision states that the Mayor appoints and may discipline or discharge any police officer, subject to the Civil Service Commission's rules. The language of the current charter differs from the language of the proposed charter revision with respect to the difference in term from "person" in the current charter to "officer" in the proposed charter revision.

The seventh part of Chap. 6, Sec. 1 of the current charter states that the Mayor may also, in case of riot, large public gatherings or other unusual occasions demanding the same, appoint such number of temporary police as may be needed but not for a period of more than one (1) week, without the consent of the City Council. Chap. 6, Sec. 1 of the current charter also states that all police officers so appointed shall be licensed as required by law and shall possess all the common law and statutory powers of peace officers, and any warrant for search or arrest issued by any magistrate or court of record in Hennepin County may be executed in any part of said county by any member of said police force. Art. VI, Sec. 6.3(b) of the proposed charter revision states that the Mayor may, in case of riot or other emergency, appoint any necessary temporary police officer for up to one (1) week. Art. VI, Sec. 6.3(b) of the proposed charter revision also states that each such officer must be a licensed peace officer, and the Mayor may appoint any such officer without regard to section 7.3(b) of the proposed charter revision. The language of the current charter appears to differ from the language of the proposed charter revision with respect to when and under what circumstances the Mayor can appoint temporary police officers, and with regard to what powers the temporary police officers possess.

Chap. 6, Sec. 2 – Buildings, Etc., Salaries and Bonds of Police Officers

The first part of Chapter 6, Sec.2 of the current charter requires the City Council to provide all building, facilities, property, salaries, etc. of the police department. The proposed charter recommends that portion of Sec. 2 for codification in ordinance and reverts to the broad language of section 6.3(f) of the proposed charter requiring the police department be funded at a minimum level based on population.

Chapter 6, Sec. 2 of the current charter requires the City Council to fix a bond amount for each police officer to pay at the beginning of their employment and sets the minimum levy for the police department based on the sum used for the police department in 1961. Although those two provisions are likely obsolete, those two provisions are recommended for codification in ordinance.

The latter portion of Chapter 6, section 2 of the current charter requires that the financing of the police department be calculated at a minimum level and forbids any reductions in the funding formula for the police department by the Board of Estimate & Taxation and the City Council. The proposed charter eliminates those restrictions and, as stated above, requires the City Council to fund the police department at a minimum level.

Chap. 6, Sec. 3 – Special Police

Chap. 6, Sec. 3 of the current charter states that the Mayor may at any time, at the request of any person, firm, society or organization, or several thereof, appoint special police officers or guards who shall serve without expense to the City and have police powers to preserve the peace and protect the property at such places and within such limits as may be designated in such appointment for the term therein mentioned, but such special police officers or guards shall not exercise any authority or wear any badge of office outside the limits so designated. Art. VI, Sec. 6.3(e) of the proposed charter revision states that the Mayor may appoint special police for a limited place and time at the request and expense of any organization, business, individual, or other person. The language of the current charter appears to differ from the language of the proposed charter revision with respect to of the powers that the special police officers possess.

Chap. 6, Sec. 4 – Oath and Bonds of Police Officers

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

Chap. 6, Sec. 5 – Community Services Bureau (Crime Prevention) – Appointment of Director

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

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CURRENT CHARTER CHAPTER 7

FIRE DEPARTMENT

Analysis of Proposed Charter Revisions, Chapter 7 – Fire Department

Introduction

The proposed charter revision eliminates Chapter 7 of the current charter, and recommends that the entire chapter be reclassified into ordinance. It should be noted that, while it requires 13 votes on the Minneapolis City Council (and possibly a public election) to change the language of the charter, it only takes 7 votes on the Minneapolis City Council to change the language of an ordinance.

Chap. 7, Sec. 1 – Fire Limits – Wooden Buildings – When and How Prohibited

Chap. 7, Sec. 2 – City Council – Powers to Guard Against Fires

The proposed charter revision eliminates Chap. 7, Secs. 1 & 2 of the current charter, and recommends that those sections be reclassified as an ordinance. Those sections of the current charter outline specific powers of the City Council to prescribe how buildings in the city are constructed. Despite the recommended elimination of this section, there is independent authority in state law (MINN. STAT. § 299F, et seq. (2004)) that gives all political subdivisions in Minnesota the authority to enact a fire code based on, or more stringent than, the state's Uniform Fire Code. The statutory authority for a fire code also allows such code to be adopted by ordinance.

Chap. 7, Sec. 3 – Fire Apparatus – Houses – Fire Alarm Systems

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance. There is no independent authority in state law for the construction of fire houses and alarm systems.

Chap. 7, Sec. 4 – Fire Department Rules – Water Pressure During Fire – Punishment of Offenders

The proposed charter revision eliminates Chap. 7, Sec. 4 of the current charter, and recommends that it be reclassified as an ordinance. To the extent that state law would provide distinct criminal penalties for interfering with fire ground operations and for destruction of public property such as fire hydrants, the proposed elimination of this section would likely have little practical effect.

Chap. 7, Sec. 5 – Chief Engineer – How Appointed – Officers and Personnel

The proposed charter revision eliminates Chap. 7, Sec. 5 of the current charter, and recommends that it be reclassified as an ordinance. Section 5 provides for the appointment of the "chief engineer" (fire chief) pursuant to Chap. 3, Sec. 4 of the current charter. The proposed charter revision would substantially retain the process of appointment of the fire chief at Art. VII, Sec. 7.3(b). However, the provisions in the current charter pertaining to the rights of the fire chief to the same benefits as employees in the classified service under certain circumstances is not included in the proposed charter revision.

Chap. 7, Sec. 6 – Chief Engineer to Nominate Officers and Staff – Removals, Discharges, Etc.

The proposed charter revision eliminates Chap. 7, Sec. 6 of the current charter, and recommends that it be reclassified as an ordinance. Section 6 of the current charter pertains to the appointment by the fire chief of numerous other appointed officers of the fire department, including all of the deputy fire chiefs. Section 6 also provides for the rights of appointed personnel to the same benefits as employees in the classified service. The proposed charter revision would provide for appointment of officers to fire department appointed positions pursuant to Art. VII, Sec. 7.3(a).

Chap. 7, Sec. 7 – Fire Marshall – Duties, Etc.

The proposed charter revision eliminates Chap. 7, Sec. 7 of the current charter, and recommends that it be reclassified as an ordinance. Section 7 pertains to the power of the city council to designate an officer of the fire department to act as Fire Marshal, and outlines the duties of the Fire Marshal. Even though the charter authority for the appointment of the Fire Marshal and the duties of the Fire Marshal are proposed to be eliminated, independent authority exists in state statute at MINN. STAT. § 299F (2004) for the fire marshal position and the duties of the fire marshal in enforcing the fire code.

Chap. 7, Sec. 8 – Fire Police – Duty of Regular Police

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

Chap. 7, Sec. 9 – Authority of Chief Engineer – Punishment for Refusing to Obey

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

Chap. 7, Sec. 10 – Expenses – From What Funds Paid

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

Chap. 7, Sec. 11 – [Reserved]

The proposed charter revision eliminates this section of the current charter.

Chap. 7, Sec. 12 – Council to Adopt Measures for Enforcement of Same and Chief of Fire Department Given Extraordinary Powers in Case of Emergency

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

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CURRENT CHARTER CHAPTER 8

PUBLIC HIGHWAYS & BRIDGES

Analysis of Proposed Charter Revisions, Chapter 8 – Highways and Bridges

Introduction

Most of the provisions of Chapter 8 of the current charter are eliminated from the proposed charter revision. Chapter 8 of the current charter pertains primarily to the City's control over streets and highways. As a result of the omissions of Chapter 8 of the current charter from the proposed charter revision, the City's powers, duties, and obligations with regard to its streets and highways would be those set forth in Minnesota Statutes and special laws. MINN. STAT. § 410.33 (2004) provides that a home rule charter city whose charter is silent as to a particular matter addressed by MINN. STAT. § 412 (2004) for statutory cities or by other general law, the City may then apply the general law on the matter. The change that would occur would be that the City's powers, duties and obligations would be determined by the State Legislature rather than the home rule option. This would not preclude subsequent amendments to the charter that would change the provisions of state law as they may apply to the City of Minneapolis.

The analysis of the changes that would result from the elimination of the Chapter 8 provisions is, therefore, a matter of comparing Chapter 8 of the current charter to the comparable statutory provisions, if any, that might be applicable to the City. Although this is an attempt to identify some of the general statutes that may apply to the subject matter of Chapter 8, a complete analysis would be too complex to complete within the scope of this comment.

The Minneapolis Charter Commission suggests that the provisions of Chapter 8 of the current charter be enacted by ordinance. The problem with that approach is that the City Council cannot enact an ordinance dealing with streets and highways, unless it has the power under the State Constitution, the laws of the State, or the City Charter. For example, Chapter 8 of the current charter includes provisions authorizing special assessments. Taxation and the imposition of assessments are not inherent municipal powers. *See* 2A McQuillin Mun. Corp. § 4.08 (3rd ed.) Cities cannot enact assessments by ordinance unless they have express charter or statutory authority. 13A Dunnell Minn. Digest 2d, Municipal Corps. §§9.00-9.03. Furthermore, the current charter includes limitations on the power of the City Council. In the absence of such charter limitations, the City Council would be free to enact ordinances that would expand its powers.

Chap. 8, Sec. 1 – City Council to Control Streets

Chap. 8, Sec. 1 of the current charter is, with a few exceptions, duplicated in MINN. STAT. § 412.221, Subd. 6 (2004), which pertains to statutory cities. The deletion of these provisions of the current charter from the proposed charter revision means that the City may utilize this statute as a source of power. The statute, however, does not give power to construct and maintain bridges, and does not duplicate the limitation in the Chap. 8, Sec. 1 of the current charter precluding the City from making changes to the Mississippi River. There does not appear to be any other statutory provisions that would duplicate these omissions, and, therefore this might constitute a change in the City's powers.

Chap. 8, Sec. 2 – Street Grades

Chap. 8, Sec. 2 of the current charter provides a procedure for the City Council to establish or change the grade of a street. Chap. 8, Sec. 2 of the current charter provides that the City Council may establish a street grade. This would be done by a simple majority vote of the City Council because no other vote is provided. Art. IV, Sec. 4.4 of the proposed charter revision would change the vote to a majority of the City Council's membership. Art. IV, Sec. 4.4 of the proposed charter revision duplicates Chap. 8, Sec. 2 of the current charter as to the vote necessary to change an existing street grade (i.e. two-thirds vote of City Council membership).

Chap. 8, Sec. 2 of the current charter also provides a detailed procedure whereby an abutting owner can claim damages for a change of street grade. An owner has twenty (20) days after the City Council action to make such claim. If such claim is made, the City Council may, by a majority of all of its members, reconsider the original vote to change or establish the grade. If reconsidered, two-thirds vote of all City Council members is required to so establish or change the grade. These provisions would be omitted from the proposed charter revision. Pursuant to 1973 Minn. Laws. 629, the City of Minneapolis is authorized to acquire private property for public purposes pursuant to its charter of MINN. STAT. § 630 (2004), notwithstanding MINN. STAT. § 117 (2004). The elimination of Chap. 8, Sec. 2 of the current charter by the proposed charter revision thus eliminates an option of the City to utilize a charter provision in order to acquire property and determine damages.

A special law, 1969 Minn. Laws 499, permits the City of Minneapolis to utilize the special assessment procedures for improvements authorized under MINN. STAT. § 429 (2004). MINN. STAT. § 429.071 (2004) provides a procedure for the City to make supplemental assessments for errors and omissions.

Chap. 8, Sec. 3 – Vacation of Streets

Chap. 8, Sec. 3 of the current charter provides for the vacation of streets, highways, lanes and alleys. Art. IV, Sec. 4.4(a)(3)(d) of the proposed charter revision provides for the vacation of streets only. This may therefore change the authority and procedure to provide for the vacation of alleys and other public ways. MINN. STAT. § 412.851 (2004) authorizes statutory cities to vacate streets, alleys and other public ways, however, the procedure is more involved than that specified in the charter.

MINN. STAT. § 505.14 (2004) provides a procedure for petitioning the District Court for the vacation of streets, alleys and public grounds, but it prohibits the Court from vacating or altering any street, alley or public ground dedicated to public use on any plat in a city organized under a charter which provides a procedure for vacation of streets and public grounds by the city. The proposed charter revision's omission of the words "alley" or "public grounds" could arguably permit the District Court to vacate alleys, which would be a change from the current charter's provision that no court shall have such power.

Chap. 8, Sec. 4 – Street Cleaning

The elimination of Chap. 8, Sec. 4 of the current charter would not change the powers or duties of the City Council.

Chap. 8, Sec. 5 – Contract Work

Chap. 8, Sec. 5 of the current charter permits the City Council to do construction and other public works by contracting or by day labor. The elimination of Chap. 8, Sec. 5 of the current charter by the proposed charter revision should not change the power of the City Council to contract for public works. That said, it is not clear whether the City Council can authorize work to be done by day labor without charter or statutory authority or whether statutory authority exists.

Chap. 8, Sec. 6 – City Engineer to Superintend All Grading and Construction of Public Ways

The elimination of Chap. 8, Sec. 6 of the current charter by the proposed charter revision increases the power of the City Council to specify by ordinance the duties of the City Engineer or other officers with respect to work that is done to streets, sidewalks and other public ways. The proposed charter revision also eliminates certain accounting responsibilities of the Finance Officer, thereby empowering the City Council to determine by ordinance what records of accounts and expenses must be kept and by whom.

Chap. 8, Sec. 7 – Engineers to Have No Interest in Contracts

The elimination of Chap. 8, Sec. 7 of the current charter by the proposed charter revision will increase the power of the City Council to determine whether or not this provision or similar legislation shall be enacted by ordinance. If Chap. 8, Sec. 7 of the current charter is eliminated, MINN. STAT. § 471.89 (2004) will be the only similar provision applicable to such conflicts by the City Engineer and his or her employees. MINN. STAT. § 471.89 (2004) prohibits any officer or employee having any part in the making of a contract or lease from having a personal pecuniary interest therein.

Chap. 8, Sec. 8 – Acceptance of Bribes

The elimination of the provisions of Chap. 8, Sec. 8 of the current charter by the proposed charter revision will increase the power of the City Council to determine by ordinance whether the provisions of this section or other provisions will apply with respect to gifts and bribes, and the validity of contracts made by persons having such contracts.

Chap. 8, Sec. 9 – Bridges City Charge

Chap. 8, Sec. 9 of the current charter provides that certain bridges be built and maintained by the City as a general City charge. The elimination of Chap. 8, Sec. 9 of the current charter could result in a change in present law by allowing the City to assess the costs of such bridges against benefited properties, rather than paying for them out of general fund. It seems unlikely, however, that the City would ever levy special assessments for such bridges over rivers or streams, and therefore, no practical change is likely to result from the elimination of this section.

Chap. 8, Sec. 10 – Opening of Streets – Drainage

The elimination of Chap. 8, Sec. 10 of the current charter, together with various other provisions of this Chapter and Chapter 10 of the current charter, will change the procedures required for the City Council to levy assessments pursuant to the current city charter. As stated above, absent specific charter or statutory authority, cities have no power to levy special assessments. Art. IV, Sec. 4.4(a)(4) of the proposed charter revision would authorize the City Council, by two-thirds of its membership to make local improvements (other than sidewalks) subject to special assessment, and may authorize a special assessment in connection with an improvement by a majority of its membership. Art. VIII, Sec. 8.6 of the proposed charter revision authorizes assessments for local improvements. The proposed charter revision, however, does not define “local improvement”, nor does the proposed charter revision provide any procedure for levying special assessments. The term “improvement” has been variously interpreted by the courts. There may be authority to levy under the procedures set forth in Minnesota Statutes, but further analysis needs to be performed to determine what procedures state law provides that would be applicable to the City of Minneapolis and would be comparable to the procedures set forth in the current charter. Absent clear statutory authority, the elimination of Chap. 8, Sec. 10 of the current charter would constitute a significant change from the current charter.

Chap. 8, Sec. 11 – [Reserved]

The proposed charter revision eliminates this section of the current charter.

Chap. 8, Sec. 12 – Owners to Build and Repair Sidewalks

Chap. 8, Sec. 13 – Sidewalk Repairs

Chap. 8, Secs. 12 & 13 of the current charter require owners to construct, repair and maintain City sidewalks abutting their properties in accordance with specifications prescribed by the City Council. It also authorizes the City Council to assess the costs of constructing and repairing sidewalks against benefited properties in accordance with the assessment procedures specified in Chapter 10 of the current charter.

The proposed charter revision does include authority to make assessments, but does not specify procedures as the current charter does, nor does proposed charter revision specify how the City Council is to determine what the procedures are. As is the case with Chap. 8, Sec.11 of the current charter (above), further analysis may be necessary to identify the procedural requirements.

The imposition of specific duties upon owners of abutting properties, of construction, repair and maintenance of sidewalks in accordance with City specifications is not duplicated in the proposed charter. In the absence of such a charter provision, it is unclear as to whether the City Council would have power by ordinance to impose this duty upon such owners.

Chap. 8, Sec. 14 – Funds for Sidewalks

The requirement that money for sidewalk construction or repair be paid out of the Permanent Improvement Fund is not included in the proposed charter revision, which also does not make provision for a Permanent Improvement Fund. This would change the powers of the City Council in that it would have the power and discretion to provide for payment in such manner as it may determine. Under the current charter, when special assessment installments are received they are placed into the Permanent Improvement Revolving Fund. *See* Chap. 10, Sec. 27 of the current charter. The costs of improvements for which assessments are levied are paid out of the Permanent Improvement Fund. These strict accounting practices would be eliminated in the proposed charter revision. As such, the City Council would no longer be bound by the strict accounting practices currently in place in the current charter. This appears to be a considerable change in the City Council's powers.

Chap. 8, Sec. 15 – Ground to Be Graded

The duty to grade the ground on which sidewalks are built is eliminated under the proposed charter revision.

Chap. 8, Sec. 16 – Street Sprinkling

Chap. 8, Sec. 16 of the current charter pertains to the sprinkling of streets. The proposed charter revision does not duplicate the three-year limitation on contracts for sprinkling. As such, that provision would no longer apply.

The power to assess the costs of street sprinkling appears to be replicated by Art. VIII, 8.6(c) (3) of the proposed charter revision as a municipal service to a street for which the City may assess.

A City Attorney Opinion dated May 27, 2003 stated that 1973 Minn. Laws 393 abrogated the City's power to levy assessments for street maintenance. Art. VIII, Sec. 8.6(c) (3) of the proposed charter revision would constitute a change in the law so as to reestablish the power to assess for street maintenance services, were it not for the apparent saving language of Art. I, Sec. 1.3(b) which provides that the charter does not affect the powers or duties of any board (including the City Council).

The elimination of Chap. 8, Sec. 16 of the current charter would also remove the obligation of the water works to provide free water.

Chap. 8, Sec. 17 – Obstruction of Streets

Chap. 8, Sec. 17 of the current charter purports to establish a substantive principle of tort law regarding the respective liability of the City and persons who create unauthorized excavations or obstructions in the street. Assuming the validity of this provision in the current charter, but not opining thereon, its elimination in the proposed charter revision would constitute a change. The City Council has no power to enact such a provision by ordinance. It is questionable whether a court would uphold this as a valid charter provision, because it may have been preempted by the Municipal Tort Liability Act, MINN. STAT. § 466 (2004).

Chap. 8, Sec. 18 – [Reserved]

The proposed charter revision eliminates this section of the current charter.

Chap. 8, Sec. 19 – Action for Injuries

See Chap. 8, Sec. 17 – Obstruction of Streets above.

Chap. 8, Sec. 20 – Railways Not to Pile Up Snow

Chap. 8, Sec. 20 of the current charter prohibits railway companies from piling snow in a manner that encumbers the traveled portion of the street. It purports to create liability for damages sustained as a result of such obstructions. Because the City has control of its streets, it probably has the power to prohibit this by ordinance. However, the portion of Chap. 8, Sec. 20 of the current charter, which purports to create liability for damages, is of questionable validity for the reasons set forth in Chap. 8, Sec. 17 – Obstruction of Streets above.

Chap. 8, Sec. 21 – City Districts – How Designed

Chap. 8, Sec. 21 of the current charter is duplicated by Art. II, Sec. 2.6 of the proposed charter revision. However, while Chap. 8, Sec. 21 of the current charter states that the “City Council shall have the control of ... the acceptance of plats and additions and the dedication of property for streets and public grounds therein...”, Art. II, Sec. 2.6(b) of the proposed charter revision states that the City may “accept or dedicate property for streets or any other public purpose...” There is a change of language from the current charter in which the City controls the acceptance of dedications and the proposed charter revision in which the City dedicates property.

Chap. 8, Sec. 22 – Council to Accept or Reject Plats

The elimination of Chap. 8, Sec. 22 of the current charter will change the requirements for submission of subdivision plats to those requirements contained in Minnesota Statutes. It is not clear as to what the difference is between this charter provision and state law.

Cap. 13, Sec. 5 of the current charter requires that all plats and replats be submitted to the Planning Commission for approval. MINN. STAT. §§ 505.165 and 505.173 (2004) regarding corrective plats do not apply to cities whose charters provide for the approval of such plats. MINN. STAT. § 462.358 (2004) authorizes cities to adopt subdivision regulations.

Chap. 8, Sec. 23 – Liability of City in City District

The disclaimer of liability contained in Chap. 8, Sec. 23 of the current charter is eliminated from the proposed charter revision. Such a disclaimer is more likely to be given effect if provided in a charter, rather than a city ordinance. City charters have been held to have all the force of state statutes insofar as they pertain to local affairs.

Chap. 8, Sec. 24 – Contracts Not to Be Awarded to Persons in Default

Chap. 8, Sec. 24 of the current charter is a limitation upon the powers of the City Council to award contracts. It has equal standing with state statutes that require that contracts be awarded on competitive bidding. It could certainly be enacted as an ordinance, but it is unclear as to whether its application would be as effective as it is as a charter provision.

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CURRENT CHARTER CHAPTER 9

WATER WORKS

Analysis of Proposed Charter Revisions, Chapter 9 – Water Works

Chap. 9, Sections 1-7 & 10-13.

Chap. 9, Secs. 1-7 & 10-13 of the current charter are eliminated from the proposed charter revision. Those sections of Chapter 9 of the current charter pertain to the City's powers to build, maintain, repair and assess for the City's water and sewer systems. While the proposed charter revision at Art VIII, Sec. 8.6 provides that the City Council has the right to make assessments for local improvements, it is silent as to the definition of local improvement, the method of spreading the assessments, and the procedures to be followed. Additionally, the City Council cannot enact an ordinance dealing with special assessments unless it has the power under the State Constitution, the laws of the State, or the City Charter. Taxation and the imposition of assessments are not inherent municipal powers. *See* 2A McQuillin Mun. Corp. § 4.08 (3rd ed.). Cities cannot enact assessments by ordinance unless they have express charter or statutory authority. 13A Dunnell Minn. Digest 2d, Municipal Corps. §§ 9.00-9.03.

MINN. STAT. § 410.33 (2004) provides that a home rule charter city whose charter is silent as to a particular matter addressed by other general law may then apply the general law on the matter. MINN. STAT. § 429.111 (2004) provides that home rule charter cities may make improvements and assess the costs thereof either under their charters or under MINN. STAT. § 429 (2004) . As a result of the elimination of the charter procedures, the City might lose the option to proceed under its own charter, so that the City's powers, duties and obligations would be determined by the State Legislature via MINN. STAT. § 429 (2004) rather than the home rule option.

Chap. 9, Sec. 8 – Water Works Fund

Chap. 9, Sec. 9 – Duties of City Finance Officer

The proposed charter revision eliminates Chap. 9, Secs. 8 & 9 of the current charter, and recommends that they be reclassified as an ordinance. Sections 8 & 9 pertain to the City Finance Officer's duties to collect and manage all revenue related to water works in the City, including revenue from bonds, in a special Water Works Fund. If those sections were eliminated and identical ordinances were not enacted, the City Council and the Mayor would have greatly increased power over the savings and expenditures of those funds, as opposed to the current restrictions contained in Chap. 9, Secs. 8 & 9 of the current charter.

Chap. 9, Sec. 14 – Water Rates

Chap. 9, Sec. 15 – Owners of Property Responsible for Rents

The proposed charter revision eliminates Chap. 9, Secs. 14 & 15 of the current charter, and recommends that they be reclassified as an ordinance. Because of the operation of MINN. STAT. § 456 (2004) pertaining to Water From First Class or Charter Cities, the elimination of Chap. 9, Sec. 14 of the current charter would not likely have an effect on the City's water works operations, including billing.

Chap. 9, Sec. 16 – Damage to Water Works or Property

The proposed charter revision eliminates Chap. 9, Sec. 16 of the current charter, and recommends that it be reclassified as an ordinance. Section 16 pertains to criminal prosecution for anyone who intentionally damages or interference with water works property or operations. Due to several criminal statutes that allow misdemeanor, gross misdemeanor and felony level prosecution for damage to property and interference with the use of public property, the elimination of section 16 would not likely have an effect on the City's authority to prosecute people who violate the provisions of the current section 16.

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CURRENT CHARTER CHAPTER 10

LOCAL IMPROVEMENTS – ASSESSMENTS

Analysis of Proposed Charter Revisions, Chapter 10 – Local Improvements – Assessments

Introduction

Most of the provisions of Chapter 10 of the current charter are eliminated from the proposed charter revision. Chapter 10 pertains primarily to the City's right to make assessments for local improvements and contains specific procedures for doing so. While Art. VIII, Sec. 8.6 of the proposed charter revision provides that the City Council has the right to make assessments for local improvements, it is silent as to the definition of local improvement, the method of spreading the assessments, and the procedures to be followed.

The proposed charter revision contains no provision authorizing the City Council to determine the applicable procedures or the relation of the charter to state statutes on the subject of special assessments. It has been suggested that the provisions of Chapter 10 of the current charter can be enacted by ordinance. That said, the proposed charter revision does not contain any provision authorizing the City Council to enact such ordinances, nor does the proposed charter revision specify the parameters of such power. Furthermore, the City Council cannot enact an ordinance dealing with special assessments unless it has the power under the State Constitution, the laws of the State or the city charter. Taxation and the imposition of assessments are not inherent municipal powers. See 2A McQuillin Mun. Corp. § 4.08 (3rd ed.). Cities cannot enact assessments by ordinance unless they have express charter or statutory authority. 13A Dunnell Minn. Digest 2d, Municipal Corps. §§ 9.00-9.03. MINN. STAT. § 429.021, subd. 3 (2004) provides as follows:

Subd. 3. Relation to charter and other laws. When any portion of the cost of an improvement is defrayed by special assessments, the procedure prescribed in this chapter shall be followed unless the council determines to proceed under charter provisions....

Based upon this Statute, the City Council arguably has authority to proceed under charter provisions, but not ordinance provisions.

The current charter includes limitations on the assessment power and other powers of the City Council. As a result of eliminating such charter limitations in the proposed charter revision, the City Council might be free to enact ordinances that would expand its powers.

MINN. STAT. § 410.33 (2004) provides that a home rule charter city whose charter is silent as to a particular matter addressed by MINN. STAT. § 412 (2004) for statutory cities or by other general law, the City may then apply the general law on the matter. MINN. STAT. § 429.111 (2004) provides that home rule charter cities may make improvements and assess the costs thereof either under their charters or under MINN. STAT. § 429 (2004). As a result of the elimination of the current charter procedures in Chapter 10, the City might lose the option, so that the City's powers, duties and obligations would be determined by the State Legislature rather than the home rule option. This would not preclude subsequent amendments to the charter that would change the provisions of state law as they may apply to the City of Minneapolis.

Chap. 10, Sec. 1 – Grounds for Public Improvements

Chap. 10, Sec. 2 – City Clerk to Give Notice of Action on Report

Chap. 10, Sec. 3 – Plat and Survey

Chap. 10, Sec. 4 – Bonds, Abstract of Title and Compensation

The proposed charter revision eliminates Chap. 10, Secs. 1-4. These sections prescribe a procedure for taking private or public property for various public purposes. Section 1 provides for the taking of property for public buildings, public grounds, markets, and water works; the right to take water from any dam or pond, reservoir or part of the waters of the Mississippi River, and to lay intake pipes; to construct dams and reservoirs in the River or its islands; and other purposes. Section 1 also provides for the appointment of a City Council committee of three members who, together with the City Engineer, are to determine and recommend to the City Council what property is necessary to be taken.

Section 2 provides a procedure for notice, hearing, and consideration of the report of the committee, and the City Council's action on the report.

Section 3 provides for the City Council to designate the property to be taken on a plat or survey. Section 3 also provides for the qualifications and appointment of commissioners who are to determine the compensation due the owners of the property to be taken. Section 3 provides for notice and a meeting in which the commissioners are to view the property and determine an award of damages or compensation for the property to be taken. The commissioners then report to the City Council, which may either confirm the award of the commissioners, or return the matter for further consideration or revision by commissioners. The City Council's award is final, but subject to appeal.

Section 4 specifies the procedure for owners of the properties taken under the above-described procedure to prove their ownership and claim the awards. If nobody is able to establish ownership, then the award is paid into court and the court determines who is entitled to it.

1973 Minn. Laws 629, provides as follows:

Notwithstanding the provisions of Minnesota Statutes 1971, Chapter 117, except those provisions which relate to relocation assistance, the City of Minneapolis when exercising its right of eminent domain in connection with, and as part of an improvement project, may condemn and acquire interest in real estate for public use, pursuant to the condemnation procedures contained in its home rule charter or Minnesota Statutes 1971, Chapter 430.

The elimination of Chap. 10, Secs. 1-4 of the current charter, therefore, may remove one of the procedural options the City has with regard to its exercise of the powers of eminent domain. A comprehensive study of MINN. STAT. § 117 (2004) will need to be performed to determine in what respects it differs from the procedures specified in Chap. 10, Secs. 1-4 of the current charter.

Chap. 10, Sec. 5 – Street Improvements

Chap. 10, Sec. 5 of the current charter sets forth a procedure for compensating the owners of property taken or injured when the City opens, widens, or extends a new street or alley, or raises, lowers, or alters the course of any stream, ditch, or drain. Chap. 10, Sec. 5 of the current charter provides for the appointment of commissioners who are to ascertain the damages and compensation to be paid to the owners of the property taken or injured by the improvements. Chap. 10, Sec. 5 of the current charter also provides for the assessment of the costs, including damage awards against benefited properties where the improvement consists in lowering, raising, changing the course of, or diverting any stream, ditch or drain.

The commissioners appointed under Chap. 10, Sec. 5 of the current charter are to assess the damages and compensation paid and the costs of the improvement against benefited property in proportion to the benefits. A procedure is specified whereby the City Clerk gives published notice of a hearing and the City Council meets to hear objections of interested parties. The City Council then can confirm or modifying the awards and assessments, or refer the matter back to the commissioners for further consideration before taking final action to confirm the awards and levy the assessments.

[N.B. This subject is also treated in Chap. 8, Sec. 10, of the current charter, and should be read in conjunction with that section.]

See 1973 Minn. Laws 629, which authorizes the City to condemn and acquire interests in real estate pursuant to the condemnation procedures contained in its charter or MINN. STAT. § 430 (2004), notwithstanding MINN. STAT. § 117 (2004). The elimination of Chap. 10, Sec. 5 and Chap. 8, Sec 10 of the current charter by the proposed charter revision, therefore, may remove one of the procedural options the City has with regard to its exercise of the powers of eminent domain. A comprehensive study of Minn. Stat. § 117 (2004) will need to be performed to determine in what respects it differs from the procedures specified in this section of the current charter.

The elimination of Chap. 10, Sec. 5 of the current charter would remove an option of the City with respect to the assessment of the costs of raising, lowering, changing the course of, or diverting any stream of water, ditch or drain. There may be alternative procedures for such assessments in Minnesota Statutes, however, a comprehensive study will need to be performed to compare the statutory procedures with those contained in the current charter.

See Meadowbrook Manor v. City of St. Louis Park, 104 N.W. 2d 540 (Minn. 1960). *Meadowbrook Manor* holds that in order to satisfy the constitutional requirements of due process, notice must be reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The provisions for notice in Chap. 10, Secs. Of the current charter 1-4 probably would not satisfy these requirements.

MINN. STAT. § 429.021, subd. 3 (2004) requires the observance of certain notice requirements when municipalities proceed to assess for local improvements pursuant to their charters.

Chap. 10, Sec. 6 – Appeal of Assessments

Chap. 10 Sec. 6 of the current charter specifies the procedures for appealing from condemnation awards and the levy of special assessments. These appeal procedures apply to all special assessments and awards made under Chapter 10 of the current charter.

The proposed charter revision eliminates Chap. 10 Sec. 6 of the current charter together with the other condemnation and assessment provisions of Chapter 10. Therefore, under the proposed charter revision, the City would have to follow the condemnation and assessment procedures including appeal procedures specified by Minnesota Statutes.

Chap. 10, Sec. 7 – Council May Abandon Proceedings – Limitations

Chap. 10, Sec. 7 of the current charter allows for the abandonment of improvement proceedings. That said, such abandonment of improvement proceedings are limited to proceedings existing under Chapter 10 of the current charter. In light of the elimination of Chapter 10 by the proposed charter revision, any improvement proceedings held after the adoption of the proposed charter revision would be governed by state statute.

Chap. 10, Sec. 8 – Pavements, Water Mains, Sewers, Etc.

The elimination of Chap. 10, Sec. 8 of the current charter by the proposed charter will likely result in a significant change in assessment procedure. Chap. 10, Sec. 8 of the current charter is the provision under which the City Council has been assessing the costs of street improvements, including street paving, water mains, sewer pipes, street lighting and other improvements. Chap. 10, Sec. 8 of the current charter was amended in 1979 to streamline the process of making improvements and assessing the costs to benefited properties.

Chap. 10, Sec. 8 of the current charter provides that assessments can be levied either before or after contracting for or commencing with the construction of the improvements based upon the City Engineer's estimates of the cost. Chap. 10, Sec. 8 of the current charter also provides for a single notice and hearing process in which the City Council both approves the improvement project and levies the assessments. Chap. 10, Sec. 8 of the current charter also provides that assessments can be made on the basis of benefit whether or not the benefited property abuts the street that is improved. If the City is forced to make assessments under MINN. STAT. § 429 (2004) or other state statutes, it will lose the flexibility that has been built into the current charter process.

It has been suggested that the provisions of Chapter 10 can be enacted by ordinance. Despite that suggestion, the City Council cannot enact an ordinance dealing with streets and highways unless it has the power under the State Constitution, the laws of the State, or the city charter. For example, Chap. 10 of the current charter includes provisions authorizing special assessments. Taxation and the imposition of assessments are not inherent municipal powers. *See* 2A McQuillin Mun. Corp. § 4.08 (3rd ed.). Cities cannot enact assessments by ordinance unless they have express charter or statutory authority. 13A Dunnell Minn. Digest 2d, Municipal Corps. §§ 9.00-9.03.

Chap. 10, Sec. 9 – Discretion as to Corner Lots

Please refer to the comments in the introduction to Chapter 10 as to the effect of eliminating this and other procedural provisions of the current charter.

Chap. 10, Sec. 10 – Neglect to Build Sidewalks

Chap. 10, Sec. 10 is similar to and should be read in conjunction with Chap. 8, Sec. 12 of the current charter. Art. VI, Sec. 8.6 of the proposed charter revision authorizes the City Council to impose special assessments, but it does not specify any procedure. The elimination of Chap. 10, Sec. 10 of the current charter would create an issue as to what the applicable procedural provisions of law apply to the making of such assessments. Please also refer to the comments with respect to Chap. 8 Sec. 12 of the current charter.

Chap. 10, Sec. 10 – Neglect to Build Sidewalks

Chap. 10, Sec. 11 – Repairs of Sidewalks

Chap. 10, Sec. 12 – Sprinkling Streets

Chap. 10, Secs. 10-12 of the current charter provide a suggested form for the resolution by which the City Council adopts assessments for sidewalk construction and repair and street sprinkling. The proposed charter revision eliminates these sections. The proposed charter revision does not specify any forms or procedures for making special assessments. The elimination of these sections is not significant because, under the current charter, these particular forms are optional.

Chap. 10, Sec. 13 – Proceedings When Awarded Annulled

Chap. 10, Sec. 13 of the current charter is part of the condemnation and award procedure set forth in Chap. 10, Secs. 3 and 5 above. Therefore, the comments made above as to Chap. 10, Secs. 3 and 5 apply to describe the changes resulting from the elimination of Chap. 10, Sec. 13 by the proposed charter revision.

Chap. 10, Sec. 14 – Proceedings When Assessments Annulled

Chap. 10, Sec. 14 of the current charter deals with the procedures to be followed in making a reassessment after an assessment has been annulled, vacated, or set aside by a court. Chap. 10, Sec. 14 of the current charter applies to reassessments with respect to assessments made under all assessment provisions of the current charter. The proposed charter revision does not specify any assessment or reassessment procedures, nor does it contain any language authorizing the City Council to adopt procedures. Please refer to the introduction to Chapter 10 with regard to the effect of the elimination of this and other procedural provisions.

MINN. STAT. § 429.071 (2004) provides for the reassessment of certain special assessments that have been annulled, vacated or set aside.

Chap. 10, Sec. 15 – Assessment Rolls

Chap. 10, Sec. 15 of the current charter specifies procedures for the recording of assessments, transmittal to the County Auditor for collection, direction to Auditor to cancel assessments in certain cases and authority to refund excessive assessments. Please refer to the introduction to Chapter 10 with regard to the effect of the elimination of this and other procedural provisions.

Chap. 10, Sec. 16 – Irregularities Not to Affect Validity of Assessments

Chap. 10, Sec. 16 of the current charter provides that assessments duly adopted by the City Council are valid notwithstanding irregularities in recording, delivery to County Auditor or immaterial variances in proceedings. The introduction to Chapter 10 applies as to the effect of the elimination of this section. Also, it is doubtful that the City Council would have the power by ordinance to render as immaterial variances in its own proceedings. In any event, a court would not be likely to give such a disclaimer by ordinance as much weight as if the disclaimer were made by a city charter, which has all of the weight of a state statute.

Chap. 10, Sec. 17 – Invalid Assessment

Chap. 10, Sec. 17 of the current charter is very similar to Chap. 10, Sec. 14 of the current charter. Chap. 10, Sec. 17 of the current charter specifies procedures to rectify assessments for which a suit has been brought questioning their validity or which have been held by a court to be invalid. Please refer to the comments on Chap. 10, Sec. 14 of the current charter above as to the effect of eliminating this section.

Chap. 10, Sec. 18 – Deficiency Paid from Permanent Improvement Fund

Please refer to the introduction to Chapter 10 as to the effect of the elimination of this section. Please also refer to the comments on Chap. 10, Sec. 16 of the current charter above.

Chap. 10, Sec. 19 – Two-thirds of Council to Order Improvement

Chap. 10, Sec. 19 of the current charter states that it shall require a two-thirds (2/3) vote of the members elect of the City Council to determine in the first instance to make any improvement for which a special assessment may be levied, except in respect to sidewalks, when a majority vote shall suffice. Chap. 10, Sec. 19 of the current charter also states that the aforementioned restriction shall not apply to any subsequent act of the City Council touching such improvement, or the special assessment to provide means therefor. Art. IV, Sec. 4.4(a)(4) of the proposed charter revision states that the City Council may by a majority of its membership authorize a sidewalk, with or without a special assessment. Art. IV, Sec. 4.4(a)(4) of the proposed charter revision also states that the City Council may, by two-thirds (2/3) of its membership, authorize any other improvement subject to a special assessment. Art. IV, Sec. 4.4(a)(4) of the proposed charter revision also states that the City Council may by a majority of its membership act with respect to an improvement already authorized or to a special assessment in connection with such an improvement.

The language of the current charter and the language of the proposed charter revision appear to be similar with respect to the need of a two-thirds (2/3) super-majority for special assessments other than assessments for sidewalks. Under this Chap. 10, Sec. 19 of the current charter, a

majority vote for sidewalk improvements is required, whereas, in contrast, Art. IV, Sec. 4.4(a)(4) of the proposed charter revision requires a majority of all the members of the City Council. There is a difference between a majority vote of all of the members of the Council, on the one hand, and a majority vote of the City Council, on the other.

Chap. 10, Sec. 20 – Improvements Made by Contract or City

Chap. 10, Sec. 20 of the current charter gives the City the power to make improvements, when subject to assessment, either by contract or by city labor forces. It also allows the City Council to delay the assessments until the improvements are completed and the costs ascertained.

MINN. STAT. § 429.021 subd. 3 (2004) provides as follows:

Relation to charter and other laws. When any portion of the cost of an improvement is defrayed by special assessments, the procedure prescribed in this chapter shall be followed unless the council determines to proceed under charter provisions.... Charter provisions shall also be deemed to require that when the council determines to make any improvement, it shall let the contract for all or part of the work, or order all or part of the work done by day labor or otherwise as may be authorized by the charter, no later than one year after the adoption of the resolution ordering such improvement, unless a different time limit is specifically stated in the resolution ordering the improvement.

Chap. 10, Sec. 20 of the current charter is only applicable if the charter continues to provide the procedure for special assessment. Under the proposed charter revision, the City would abandon its previous charter procedures and follow state law. In that case, Chap. 10, Sec. 20 of the current charter will be unnecessary. In any event, based upon MINN. STAT. § 429.021 subd. 3 (2004), the elimination of Chap. 10, Sec. 20 of the current charter should not effect a significant change in government.

Chap. 10, Sec. 21 – Council May Await Collection

Chap. 10, Sec. 21 of the current charter applies only if the charter continues to provide a procedure for special assessments. Chap. 10, Sec. 21 of the current charter authorizes the City Council to wait before proceeding to construct improvements until special assessments are collected.

MINN. STAT. § 429.031, subd. 3 (2004), provides, in part, as follows:

Charter provisions shall also be deemed to require that when the council determines to make any improvement, it shall let the contract for all or part of the work, or order all or part of the work done by day labor or otherwise as may be authorized by the charter, no later than one year after the adoption of the resolution ordering such improvement, unless a different time limit is specifically stated in the resolution ordering the improvement.

The elimination of Chap. 10, Sec. 21 of the current charter would likely make the timing of the improvement work and special assessments subject to Minnesota Statutes. That said, a comprehensive comparison will need to be performed to determine the extent of the change in authority from the broad discretion provided for in Chap. 10, Sec. 21 of the current charter.

Chap. 10, Sec. 22 – Special Assessment Funds to Be Kept Separate

Chap. 10, Sec. 22 of the current charter requires that assessment revenues be segregated from other funds prior to making the improvement. 1983 Minn. Laws 160, provides that the City Council may initiate and direct any reorganization, consolidation, or delegation of the functions, duties, and responsibilities of the comptroller treasurer, and other fiscal management functions. This statute could be construed to give the City Council the power to confirm or modify these provisions by ordinance. With the statute construed in that manner, the elimination of this section by the proposed charter revision would not constitute a significant change in city government.

Chap. 10, Sec. 23 – Assessments May be Paid to City Finance Officer

Chap. 10, Sec. 23 of the current charter authorizes owners of assessed properties to pay the assessments directly to the City Finance Officer, who then cancels the assessment. The elimination of Chap. 10, Sec. 23 of the current charter may result in the application of state law as to the detailed procedures for payment of assessments. A comprehensive analysis of state law will need to be performed to determine what state law provides in this regard.

Chap. 10, Sec. 24 – Prior Assessments Not Affected

The elimination of Chap. 10, Sec 24 of the current charter by the proposed charter revision would not result in any significant change in city government. *See* Art. I, Sec. 1.3(b) of the proposed charter revision.

Chap. 10, Sec. 25 – Assessment Lien to Have Priority

Please refer to the comments in the introduction to Chapter 10 with regard to the effect of the elimination of this Chap. 10, Sec. 25 of the current charter. It has been suggested that Chap. 10, Sec. 25 could be enacted by ordinance. Despite that suggestion, it does not appear that that city councils (generally) have any inherent power under the Minnesota Constitution or state law to enact ordinances prescribing the priority of liens, including the lien of assessments. Such power must be derived from the charter or state law.

Chap. 10, Sec. 26 – Assessments for Improvements

Chap. 10, Sec 26 of the current charter provides that special assessments authorized under Chap. 10, Sec. 8 above (for street paving, water mains and sewers) be paid for in not more than 20 annual installments, and that the City Council shall determine the interest rate not to exceed the prevailing maximum in MINN. STAT. § 429.061 (2004). The elimination of Chap. 10, Sec 26 of the current charter may result in the installment being paid in up to 30 installments as specified

in MINN. STAT. § 429.061 (2004). This would therefore be a change in the limitations prescribed by the current charter.

Chap. 10, Sec 26 of the current charter also contains provisions allowing owners to pay assessments within 30 days without interest, authorizing the pro rata cancellation and of assessments that are in excess of the actual cost of the improvements, and refunding of such amounts, except refundable amounts of \$20 or less. Please refer to the introduction to Chapter 10 as to the effect of eliminating these provisions.

Chap. 10, Sec. 27 – Permanent Improvement Revolving Fund

Chap. 10, Sec. 27 of the current charter provides that the Permanent Improvement Revolving Fund shall consist of municipal bond proceeds issued to pay the assessed portion of the cost of local improvements (excluding water mains) in advance of collection and, when collected, the revenues of special assessments. The payment out of the Permanent Improvement Fund is to be only the assessed portions of the improvement costs. Chap. 10, Sec. 27 of the current charter is similar to, but different from Chap. 5, Sec. 16 of the current charter, which provides for the Permanent Improvement Fund. A comparison of the two sections leads to the conclusion that they are actually the same fund. As such, the comments with respect to Chap. 5, Sec. 16 also apply here. 1983 Minn. Laws 160 may authorize the City Council to reorganize the City's management functions and therefore the City Council may already have the power to modify these provisions. Nevertheless, Chap. 10, Sec. 27 Chap. 5, Sec. 16 of the current charter appear to state necessary principles and practices of fiscal management. Their elimination may lead to inadequate accounting practices. The failure to segregate special assessment revenues and to direct their application to the specific projects for which levies are made may create grounds for the legal challenge of such assessments.

Chap. 10, Sec. 28 – Procedure When City's Right to Enter Land, Etc.

Chap. 10, Sec. 28 of the current charter pertains to the situation where the City's right to occupy real estate is challenged. The City may then concede to a taking and agree to pay just compensation, but the claimant may attempt to recover the land, claiming that the City has no right to take it. If the Court determines there is a taking, but the owner had acquiesced in or consented to the appropriation, no compensation or damages were payable prior to a demand for compensation.

Please refer to the comments in Chap. 10, Secs. 1-4 of the current charter above. 1973 Minn. Laws 629, provides that, in eminent domain proceedings, the City may be entitled to proceed under its charter or MINN. STAT. § 430 (2004) rather than MINN. STAT. § 117 (2004). Although a comprehensive analysis of the differences between Chap. 10, Sec. 28 of the current charter and MINN. STAT. § 117 (2004), or MINN. STAT. § 430 (2004) has not been performed, the elimination of Chap. 10, Sec. 28 of the current charter may result in the elimination of the procedural advantages of the current charter provisions.

Chap. 10, Sec. 29 – City Engineer to Request Descriptions

Chap. 10, Sec. 29 of the current charter, among other things, imposes a duty upon the Hennepin County Auditor to furnish a list of descriptions of parcels and blocks on which assessments are to be made together with the names of the owners of the parcels lying along streets on which improvements are to be made. The City is required to pay five cents per entry to the county. In the absence of this section, it is unclear where the duty of the County Auditor to furnish the required list would be found in the law or what the applicable compensation would be. A comprehensive analysis of statutory or special laws has not been performed to determine whether there are parallel provisions in state law.

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CURRENT CHARTER CHAPTER 11

MISCELLANEOUS PROVISIONS

Analysis of Proposed Charter Revisions, Chapter 11 – Miscellaneous Provisions

Chap. 11, Sec. 1 – Continuation of the City as a Municipal Corporation

Chap. 11, Sec. 1 of the current charter states that the City of Minneapolis shall continue and be a municipal corporation under this charter and shall continue to be vested with all property, franchises, rights and immunities formerly vested in the City of Minneapolis under its former charter, and it shall be subject to all obligations and duties resting upon said city at the time this charter goes into effect. Chap. 11, Sec. 1 of the current charter also states that the government of the City of Minneapolis and its several boards and departments existing at the time this charter goes into effect shall continue as the government of said city and its several boards and departments under this charter and all ordinances and regulations then existing and in force shall continue to exist and be in force unless otherwise provided in this charter.

Art. I, Sec. 1.1 of the proposed charter revision states that the body corporate and politic that this charter (the proposed charter revision) governs is named the “City of Minneapolis.” Art. I, Sec. 1.1 of the proposed charter revision also states that, for this charter’s purposes, the “City” means the City of Minneapolis, and its terms refer to the City unless the context clearly indicates otherwise. Art. I, Sec. 1.3(b) of the proposed charter revision states that the proposed charter revision fully restates and supersedes every prior version of, and any ordinance or other municipal act inconsistent with, this charter. Art. I, Sec. 1.3(b) of the proposed charter revision also states that, but except as this charter or an amendment explicitly provides otherwise, the charter does not affect any ordinance or other municipal act adopted before its adoption or its latest revision or amendment; the existence, status, function, composition, powers, or duties of any board, department, or other public body; or the office, tenure, powers, or duties of any officer.

The language of the current charter appears to differ from the language of the proposed charter revision inasmuch as the current charter appears to continue the vested rights of the previous charter, while the proposed charter revision appears to both supercede and retain some of the previous charter.

Chap. 11, Sec. 2 – City Council to Set Aside Funds for Use of Mayor

Chap. 11, Sec. 2 of the current charter states that the City Council is hereby authorized and directed annually to appropriate and set aside from the general fund of said city a sum of not less than five thousand dollars (\$5,000), as a contingent fund, for the use of the Mayor. Chap. 11, Sec. 2 of the current charter also states that the Mayor shall have sole control over such fund, and may use and expend the same as the Mayor may deem best and for the interests of the City; provided, however, that no money from said fund be used as a campaign contribution to any person seeking elected office. Chap. 11, Sec. 2 of the current charter states that he Mayor shall tender to the City Council detailed statements of all expenditures made under authority of this provision.

Art. VI, 6.1(g)(2) of the proposed charter revision states that the [City] Council must annually appropriate a fund of not less than \$5000 for use at the Mayor’s discretion. Art. VI, 6.1(g)(2) of

the proposed charter revision also states that the Mayor may not contribute from this fund to any individual's political campaign, and that the Mayor must report each expense from this fund to the [City] Council.

The language of the current charter and the proposed charter revision appear to be similar with respect to the issue of the City Council's responsibility to appropriate money for the Mayor to use, and the limitations and reporting requirements that are associated that that money.

Chap. 11, Sec. 3 – Evidence

The proposed charter revision eliminates Chapter 11, section 3 of the current charter, and recommends that it be reclassified as an ordinance. Section 3 of Chapter 11 contains a declaration that City documents that are properly certified by the City Clerk constitute "competent and prima facie evidence" that the documents are what they say and were properly passed by the City Council. Because of the operation of the modern rules of evidence, both state and federal, the elimination of this section of the current charter would likely have no affect on the City's ability to authenticate or otherwise substantiate City documents in any judicial or quasi-judicial forum.

Chap. 11, Sec. 4 – Compilation of Ordinances

The proposed charter revision eliminates Chapter 11, section 4 of the current charter, and recommends that it be reclassified as an ordinance. Section 4 pertains to the authority of the City Council to provide for the compilation and publication of the City's Code of Ordinances. Minn. Laws, Ch. 234 grants the City identical powers irrespective of the City's charter. The elimination of section 4 would likely not affect the City's authority to codify its ordinances unless the legislature chose, for some unforeseen reason, to repeal the special law.

Chap. 11, Sec. 5 – Inhabitants Not Incompetent as Judges

The proposed charter revision eliminates this section of the current charter. Due to the modern rules of civil and criminal procedure, and the general rules of practice for the district courts, the elimination of section 5 from the current charter would not likely have any affect on the City's interests.

Chap. 11, Sec. 6 – Action Against City, Service, etc.

Chap. 11, Sec. 7 – Actions in Name of City

The proposed charter revision eliminates Chapter 11, sections 6 & 7 of the current charter, and recommends that those sections be reclassified as ordinances. Due to the modern rules of civil and criminal procedure, and the general rules of practice for the district courts, the elimination of sections 6 & 7 from the current charter would not likely have any affect on the City's legal interests.

Chap. 11, Sec. 8 – Violation of Charter, Ordinances, Etc. – Warrant

The proposed charter revision eliminates Chapter 11, section 8 of the current charter, and recommends that it be reclassified as an ordinance. Because the terms of the current section 8 no longer have any known legal affect, the elimination of section 8 from the charter will likely have no affect on the City's legal interests.

Chap. 11, Sec. 9 – Jurisdiction, Powers, Etc., of District Court

Chap. 11, Sec. 9 of the current charter has a detailed description of how and when the District Court of Hennepin County shall preside over a case or controversy arising out of an alleged breach of the charter, regulation or ordinance of the City. Art. I, Sec. 1.5 of the proposed charter revision states that the district court has jurisdiction over any case arising under the charter or an ordinance, including the prosecution for any violation. A portion of Chap. 11, Sec. 9 of the current charter pertaining to specific penalties is eliminated by the proposed charter revision, and is recommended for reclassification as an ordinance.

The language of the current charter differs from the language of the proposed charter revision with regard to the scope and detail with which they address the issue of what court is empowered to hear cases and controversies that arise from the charter and City ordinances.

Chap. 11, Sec. 10 – Penalty of Fine in District Court

Chap. 11, Sec. 11 – City Not Liable for Board

The proposed charter revision eliminates Chapter 11, sections 10 & 11 of the current charter, and recommends that those sections be reclassified as ordinances. Based on the enactment of the rules of criminal procedure and the state sentencing guidelines, the elimination of those sections from the current charter would not likely have an affect on the City's legal interests or its ability to successfully prosecute and incarcerate criminal offenders.

Chap. 11, Sec. 12 – Penalty, Etc., – How Remitted

Section 4.4(a)(3)(E) of the proposed charter substantially retains the terms and provisions of Chapter 11, section 12 of the current charter pertaining to a 2/3 vote of the City Council to discharge judgments or penalties owed to it by another party.

Chap. 11, Sec. 13 – City Property Not to Be Converted

The proposed charter revision eliminates Chapter 11, section 13 of the current charter, and recommends that it be reclassified as an ordinance. Section 13 contains a prohibition on city officers and employees selling, disposing or converting to their own use any city property. Based on the operation of current state criminal statutes and the City's current ethics ordinances, it is not likely that the elimination of section 13 would adversely affect the City's interests in any way.

Chap. 11, Sec. 14 – Official Advertising

Chap. 11, Sec. 15 – Affidavit of Publication

The proposed charter revision eliminates Chapter 11, sections 14 & 15 of the current charter pertaining to the City Clerk's duty to seek competitive bids at least every 5 years for publications to act as the City's official publisher of City actions. Based on the City's current policies and state law regarding competitive bidding and other competitive pricing processes, the elimination of section 14 from the current charter would not likely affect the City's interests or obligations in any way.

Chap. 11, Sec. 16 – [Reserved]

The proposed charter revision eliminates this section of the current charter.

Chap. 11, Sec. 17 – Masculine, Feminine or Neuter

Section 1.3(d)(2) substantially retains the provisions of Chapter 11, section 17 of the current charter pertaining to statutory construction and interpretation of the current charter.

Chap. 11, Sec. 18 – Civil Rights

The proposed charter revision eliminates Chapter 11, Section 18 of the current charter. Section 18 pertains to the jurisdiction of the Minneapolis Civil Rights Commission over the various boards, departments, etc. of the City of Minneapolis, and declares that no exemptions to such jurisdiction shall be granted. The jurisdiction of the Civil Rights Commission was originally conferred by special law and mirrors the jurisdiction of the State Department of Human Rights. As such, the elimination of Section 18 from the proposed charter would not have any immediate affect on the jurisdiction and authority of the Civil Rights Commission. However, a later special law or general legislation may affect such jurisdiction and authority.

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CURRENT CHARTER CHAPTER 12

**POWER OF CITY COUNCIL TO GRANT
FRANCHISES**

Analysis of Proposed Charter Revisions, Chapter 12 – Power of City Council to Grant Franchises

Chap. 12, Sec. 1 – Council May Grant Franchises

Chap. 12, Sec. 1 of the current charter states that the City Council is authorized to grant franchises by the passage of ordinances. Art. IV, Sec. 4.1(d) of the proposed charter revision states that the City Council may grant and regulate any lawful franchise. While appearing somewhat similar, the two sections appear to differ in two respects. First, the language of the proposed charter revision makes no mention of how franchises will be granted, whereas the current charter states that franchises can be granted by ordinance. Second, the language of the proposed charter revision expands the scope of the language of the current charter by stating that the City Council is empowered to also regulate franchises in addition to simply granting franchises.

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CURRENT CHARTER CHAPTER 13

CITY PLANNING DEPARTMENT

Analysis of Proposed Charter Revisions, Chapter 13 – City Planning Department

In 2003, the Minnesota Legislature passed a special law codified at S.F. No. 1505 authorizing the City to transfer the functions and positions of the former Minneapolis Community Development Agency (MCDA) to a new city department designated as the Community Planning and Economic Development Department (CPED). Among other things, S.F. No. 1505 authorized the City to transfer to CPED the City Planning Department and all of the City's planning duties and functions.

Chapter 13 of the current charter establishes the City's Planning Department and the Planning Commission. The Planning Commission is staffed by the Planning Department, and the Commission is comprised of various members of city boards and other governmental agencies including a city council member, the Mayor and several mayoral appointees. Chapter 13 of the current charter specifies the duties of the Planning Department and the Planning Commission.

By ordinance, the City established CPED on August 8, 2003 and transferred the City's Planning Department and planning functions to CPED. See M.C.O. § 415.10, et seq. Because the special law was silent on the issue of the Planning Commission, the ordinance is also silent, and the Planning Commission continues to perform its duties pursuant to Chapter 13 of the current charter.

Chap. 13, Sec. 1 – City Planning Department – Commission and Membership

The proposed charter revision eliminates Chap. 13, Sec. 1 of the current charter, and recommends that it be reclassified as an ordinance. If this provision were codified as an ordinance rather than a charter provision, the City Council would have the power to change the composition of the Planning Commission to include or exclude boards and other governmental agencies, and alter the mayoral appointments contained in this provision. Such an ordinance, subject to approval by 7 council members, would be consistent with state law. See MINN. STAT. § 462, et seq. (2004).

Chap. 13, Sec. 1A – Planning Director

The proposed charter revision eliminates Chap. 13, Sec. 1A of the current charter, and recommends that it be reclassified as an ordinance. The special law and the resulting ordinance creating CPED (see above) specifically made the Planning Director a deputy director to, and appointee of, the Director of CPED. As such, the Planning Director is no longer subject to the appointment process contained in Chap. 3, Sec. 4 of the current charter.

Chap. 13, Sec. 2 – Powers of Commission

The proposed charter revision eliminates Chap. 13, Sec. 2 of the current charter, and recommends that it be reclassified as an ordinance. If this provision were codified as an ordinance rather than a charter provision, the City Council could change the powers of the commission, as long as such changes were consistent with MINN. STAT. § 462 (2004). MINN.

STAT. § 462 (2004) authorizes the commission's powers to be codified in either ordinance or charter.

Chap. 13, Sec. 3 – City Council May Grant Certain Powers

The proposed charter revision eliminates Chap. 13, Sec. 3 of the current charter, and recommends that it be reclassified as an ordinance. Special law S.F. 1505 and the resulting CPED ordinance (see above) transferred the functions, duties and staff of the Planning Department to CPED. The provision of the current charter authorizing the City Council to make ordinances pertaining to the functions of the Planning Department was likely nullified by the CPED legislation and resulting ordinance.

Chap. 13, Sec. 4 – Commission to Approve Public Improvements and Indebtedness for Same

Chap. 13, Sec. 5 – Plans, Plats, Etc., to Be Submitted to Commission for Approval or Rejection

Chap. 13, Sec. 6 – Proposals for Development Districts or Redevelopment Projects to Be Submitted to Planning Commission and Mayor

The proposed charter revision eliminates Chap. 13, Secs. 4-6 of the current charter, and recommends that they be reclassified as ordinances. If these provisions were codified as ordinances rather than charter provisions, the City Council could change these enumerated charter powers of the commission, as long as the City Council had 7 votes to make the change and as long as such changes were consistent with MINN. STAT. § 462 (2004). MINN. STAT. § 462 (2004) authorizes the commission's powers to be codified in either ordinance or charter.

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CURRENT CHARTER CHAPTER 14

BOARD OF HEALTH

Analysis of Proposed Charter Revisions, Chapter 14 – Board of Health

Chap. 14, Sec. 1 – Generally

Chap. 14, Sec. 1 of the current charter states that the City Council shall exercise all powers of the Board of Health as provided by MINN. STAT. § 145A, and those powers enumerated in this chapter. Art. IV, Sec. 4.1(c) of the proposed charter revision states that where the law provides for municipal action through a board, and this charter does not reserve that authority to a board other than the City Council, the City Council must either itself serve as the board for which the law provides, or provide by ordinance for the board whose membership may partly or wholly consist of City Council members. The language of the current charter and the proposed charter revision appears to be different, and the proposed charter revision appears to expand the options available to the City Council with regard to how it can provide for the operation and administration of the Board of Health. The language of Art. IV, Sec. 4.1(c) of the proposed charter revision suggests that the City Council can either serve as the Board of Health itself, or by ordinance, create a separate Board of Health. It is unclear if a Board of Health brought into existence by ordinance pursuant to Art. IV, Sec. 4.1(c) of the proposed charter revision would be governed by Art. V of the proposed charter revision, or if it would be governed by the ordinance that created it.

Chap. 14, Sec. 1 of the current charter requires the City Council to exercise all powers of a board of health pursuant to MINN. STAT. § 145A (2004), which prescribes the various duties and powers of a board of health. Chap. 14, Sec. 1 of the current charter further requires the City Council as board of health to perform and exercise additional powers.

The elimination of Chap. 14, Sec. 1 of the current charter and other sections of this Chapter 14 relieves and absolves the City Council of the responsibility and duty to exercise such powers. It may or may not act as a board of health or create a board of health. Under MINN. STAT. § 145A.03, subd. 1(b) (2004), the City would have the option of asking the County to take all responsibility for the board of health. This is not allowed under the current charter.

Art. IV, Sec. 4.1 of the proposed charter revision provides that where the law provides for municipal action through a board, and this charter does not reserve that authority to a board other than the City Council, the City Council must either itself serve as the board for which the law provides; or provide by ordinance for the board whose membership may partly or wholly consist of Council members. Because MINN. STAT. § 145A (2004) does not require a city to create a board of health, it does not appear that Art. IV, Sec. 4.1 of the proposed charter revision would apply.

Chap. 14, Sec. 2 – General Powers Granted to City Council

Chap. 14, Sec. 2 of the current charter requires the City Council to have and exercise the supervision and administrative control of all activities and agencies carried on and maintained by the City for health-related matters and for the care, management and operation of City hospitals, dispensaries and clinics and furnishing of medical and dental service to persons of low income.

The elimination of Chap. 14, Sec. 2 of the current charter relieves the City Council of these duties.

Although the City Council could still act and assume responsibility by ordinance to the extent that a board of health can act under MINN. STAT. § 145A (2004), such decisions would be subject to change from time to time by ordinance. Conversely, pursuant to MINN. STAT. §145A.03, the City could ask the County or a joint powers board to undertake the responsibilities of a board of health for the City's jurisdiction.

Chap. 14, Sec. 3 – Special Powers and Duties of City Council

Chap. 14, Sec. 3 of the current charter grants to the City Council as a board of health various special powers and duties. As a result of the elimination of Chap. 14, Sec. 3 of the current charter, if the City Council acts as or establishes a board of health, then MINN. STAT. § 145A.04 (2004) would appear to provide the duties and powers. A comprehensive comparison of the provisions of this section of the current charter and this statute are need in order to determine in what respects they may differ. However, the current charter appears to include powers not found in the statutory provision.

Chap. 14, Sec. 4 – Orders, Rules and Regulations to Be Issued

The proposed charter revision does not specifically provide for the power to enact ordinances for the preservation of public health and relief of those who are of low income, indigent, or aged. Art. I, Sec. 1.4 of the proposed charter revision does however allow the City to exercise any power that a municipal corporation can lawfully exercise. As a rule, cities have those powers specified in their charters, state statutes, or those which are necessarily implied from the expressed powers, or those incidental powers necessary to the exercise of the express powers. Without Chap. 14, Sec. 4 of the current charter, the City would look to the provisions enacted for statutory cities, and in particular, MINN. STAT. § 412.221, subd. 22 and 23 (2004) for its powers relating to the enactment of ordinances, rules and regulations relating to public health. Those powers, however, are limited powers. It has not been determined whether there are any parallel statutory provisions empowering cities to provide aid to the aged and indigent.

Chap. 14, Sec. 5 – Expenses to Be Paid for Quarantine

MINN. STAT. § 145A.04, subd. 9 (2004) authorizes a board of health to seek injunctive relief in court to enjoin a public health nuisance or the failure to act. Subd. 6 provides that a board of health shall obey the instructions of the State Commissioner of Health on the control of communicable diseases.

MINN. STAT. § 145A.08 provides that a person who has or whose dependent or spouse has a communicable disease that is subject to control by the board of health is financially liable to the unit or agency of government that paid for the cost of care to control the disease under MINN. STAT. § 145A.04, subd. 6.

Minn. Rules, 4605.7400, provides in effect that attending physicians are required to isolate persons who may cause the spread of disease.

Chap. 14, Sec. 6 – Duty of Police Department

Chap. 14, Sec. 6 of the current charter is an exception to the provisions of Chap. 6, Sec. 1 of the current charter that vests the Mayor with the control and supervision of the police force. Likewise, Art. VI, Sec. 6.3(a) of the proposed charter revision provides that the Mayor regulates and commands the Police Department. The elimination of Chap. 14, Sec. 6 of the current charter providing that the Police Chief must obey the City Council's orders regarding health matters could result in a change in the powers of the City Council or other designated city board of health to issue orders to the police chief.

Chap. 14, Sec. 7 – Penalty for Violation of Ordinances and Rules

Please refer to Art. IV, Sec. 4.4(d) (2004) which authorizes the City Council to provide for a fine, imprisonment or other penalties for violations.

Chap. 14, Sec. 8 – Officers to Be Appointed

Under the proposed charter revision, if the City decided to act as a board of health or designate a board of health, the City Council would determine pursuant to Art. VII, Sec. 7.3 whether to establish the office of commissioner of health, what other officers to appoint and whether they would be in the classified or unclassified service. (See P.C. 7.4(b)(2) as to classified or unclassified service designations.) Pursuant to MINN. STAT. § 145A.04 (2004), a board of health can employ or contract with a medical consultant (as defined in MINN. STAT. § 145A.02 (2004)) to provide medical advice.

Chap. 14, Sec. 9 – [Omitted]

The proposed charter revision eliminates this section of the current charter.

Chap. 14, Sec. 10 – [Reserved]

The proposed charter revision eliminates this section of the current charter.

Chap. 14, Sec. 11 – [Reserved]

The proposed charter revision eliminates this section of the current charter.

Chap. 14, Sec. 12 – [Reserved]

The proposed charter revision eliminates this section of the current charter.

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OF ITS PROPOSED CHARTER REVISION**

CURRENT CHARTER CHAPTER 15

BOARD OF ESTIMATE & TAXATION

Analysis Proposed Charter Revisions, Chapter 15 – Board of Estimation & Taxation

Introduction

Art. V, Sec. 5.3(b) of the proposed charter revision states that the Board of Estimate & Taxation enjoys the powers and performs the duties prescribed by this charter or by ordinance. This language of the proposed charter revision gives the City Council the power to prescribe by ordinance the powers and duties of the Board of Estimate & Taxation. This is a power that is not given to the City Council by the current charter. This change could compromise the independent nature of the Board of Estimate & Taxation.

Chap. 15, Sec. 1 – Composition of Board of Estimate & Taxation

Under Chap. 15, Sec. 1 of the current charter, one of the Board of Estimate & Taxation's members is an elected Library Board member who is elected by the Library Board at its annual meeting by a majority vote of all of the Library Board members. Art. V, Sec. 5.3(c)(1)(D) of the proposed charter revision eliminates the reference to the annual meeting and does not specify a majority vote of all of the members. Instead, Art. V, Sec. 5.1(c) of the proposed charter revision provides that any board of the City acts by a majority vote of a quorum.

Under Chap. 15, Sec. 1 of the current charter, the President of the Park and Recreation Board or another member of the Park Board is designated at its annual meeting to serve as a member of the Board of Estimate & Taxation. The proposed charter revision eliminates the requirement that the designation be made at the Park Board's annual meeting.

Under Chap. 15, Sec. 1 of the current charter, vacancies in the office of the elected members of the Board of Estimate & Taxation are filled by a mayoral appointment which must be confirmed by the City Council. In contrast, Art. V, Sec. 5.3(c) (2) of the proposed charter revision provides that the Mayor nominates, the Executive Committee recommends, and the City Council appoints the person to fill the vacancy pursuant to Art. VII, Sec. 7.3(b) of the proposed charter revision.

Under the current charter, Chap. 15, Sec. 1 requires the Board of Estimate & Taxation to elect from the Board of Estimate & Taxation's members a President and a Vice-president. In contrast, Art. V, Sec. 5.1(e) of the proposed charter revision requires the Board of Estimate & Taxation to have a President and Secretary who may or may not be selected from among the members of the Board of Estimate & Taxation as the Board of Estimate & Taxation's rules provide.

Under Chap. 15, Sec. 1 of the current charter, the Finance Officer is the accounting officer of the Board of Estimate & Taxation. This provision is eliminated in the proposed charter revision. Instead, Art. V, Sec. 5.1(e) of the proposed charter revision provides that the Board of Estimate & Taxation shall designate other officers who may or may not be members of the Board of Estimate & Taxation, and Art. V, Sec. 5.1(j) of the proposed charter revision provides that the City Council can provide the general accounting and auditing functions of the Board of Estimate & Taxation.

Under Chap. 15, Sec. 1 of the current charter, the Board of Estimate & Taxation has power to appoint a secretary and employees in the classified service. In contrast, Art. VII, Sec. 7.4(b)(2) of the proposed charter revision states that the unclassified service includes any senior manager or other employee that any board designates for unclassified status. Therefore, the proposed charter revision would empower to the Board of Estimate & Taxation to designate its secretary and other employees as unclassified, i.e. not subject to civil service requirements.

Chap. 15, Sec. 1 of the current charter requires Board of Estimate & Taxation to meet at least once a month; the proposed charter revision leaves the frequency of meetings to be decided under the Board of Estimate & Taxation's rules.

Chap. 15, Sec. 1 of the current charter specifies the compensation of Board of Estimate & Taxation members who are not otherwise compensated by the City. *See* 1965 Minn. Laws 848.

Chap. 15, Sec. 2 – Budgets to Be Submitted to Board

There does not appear to be any significant change with regard to Chap. 15, Sec. 2 of the current charter and the proposed charter revision. Art. VIII, Sec. 8.3 of the proposed charter revision changes the date for fixing the maximum rate of tax for each department and board from October 5th to September 15th to comply with state law. (*See* MINN. STAT. § 275.065 (2004)). The proposed charter revision also eliminates language providing that the City Council determines the forms and classifications of titles to be used by each department in submitting its budget estimates. However, this power of the City Council can be inferred from other provisions, e.g. Art. V, Sec. 5.1(j) of the proposed charter revision.

A 1997 Minneapolis City Attorney Opinion stated that the Board of Estimate & Taxation's power to set a maximum Library Board tax levy was not abolished by 1993 Minn. Laws of 1993 375, Art. 7, Sec. 21.

Chap. 15, Sec. 3 – Certificates of Indebtedness Authorized to Cover Preliminary Expenses

There does not appear to be a significant change with respect to Chap. 15, Sec. 3 of the current charter.

Chap. 15, Sec. 4 – Exceeding of Appropriation a Misdemeanor

Chap. 15, Sec. 4 of the current charter is eliminated from the proposed charter revision. Chap. 15, Sec. 4 of the current charter prohibits the Finance Officer from making any payments chargeable against fully encumbered appropriations or funds, and makes it a misdemeanor for an officer of the City to knowingly vote for a contract or appropriation or order any work or purchase or sign a warrant or check, the effect of which is to exceed the appropriation or fund. It also imposes liability on any officer who does any of the foregoing acts. It also prohibits the Purchasing Agent from making contracts or purchases so as to exceed or over encumber a fund or appropriation.

Although the City Council could enact this by ordinance as to City Council appropriations and provide for a penalty under Art. IV, Sec. 4.4(d) of the proposed charter revision, there is no authority in the proposed charter revision for an ordinance imposing liability as Chap. 15, Sec. 4 of the current charter does. There appears to be no authority in the proposed charter revision for the City Council to pass a penal ordinance that would govern the independent boards such as the Park Board and Library Board. Also, the elimination of Chap. 15, Sec. 4 of the current charter raises a question of what fiscal controls and duties are in place in the interim before an ordinance is enacted. An ordinance cannot control conduct done prior to its effective date. Also there is no assurance that an ordinance in this form would be adopted.

Chap. 15, Sec. 5 – Transfer of Funds Authorized

There does not appear to be a significant change with respect to Chap. 15, Sec. 5 of the current charter. *See* Minneapolis City Attorney Opinion 5/24/79 as to the interpretation of this provision.

Chap. 15, Sec. 6 – Certain Proceedings May Be Set Aside

The elimination of Chap. 15, Sec. 6 of the current charter abrogates the power of the Board of Estimate & Taxation to set aside an action of the City Council or the Park and Recreation Board to confirm awards and assessments for the taking of property for streets, parks and parkways or making improvements pursuant to the Elwell Law, MINN. STAT. § 430 (2004), when assessments do not cover the entire cost of the property or improvements. There is no comparable provision in the proposed charter revision.

Chap. 15, Sec. 7 – Levying and Collection of Taxes

Chap. 15, Sec. 7 of the current charter provides in effect that the only tax levies that are to be considered in determining the maximum levies fixed by statute and by the Board of Estimate & Taxation are the levies of the City Council, the City departments and boards governed by the city charter. In other words, levies of other funds and districts, e.g. watershed districts, retirement funds and other special levy funds are not to be considered as part of the City's levy. Although a comprehensive analysis of this matter has not been performed, it appears that this is a matter that is now controlled by state statute as to the maximum tax levies that may from time to time be fixed by statute. *See* MINN. STAT. § 275.066 (2004). Therefore, it does not appear that the proposed charter revision will effect a significant change from the elimination of this section.

Chap. 15, Sec. 8 – Board to Employ Assistance

Chap. 15, Sec. 8 provides that the Board of Estimate & Taxation may employ assistance and have access to all records of departments and boards of the City and to their assistance in furnishing information to the Board of Estimate & Taxation. Art. VIII, Sec. 8.3(b) of the proposed charter revision requires other boards and departments to cooperate and furnish information. However, there does not appear to be any specific provision authorizing the Board of Estimate & Taxation to employ assistance. Art. V, Sec 5.3(b) of the proposed charter revision provides that the Board of Estimate & Taxation has the powers and duties prescribed by charter

or ordinance. Art. V, Sec. 5.1(j) of the proposed charter revision provides that each board with taxing power may employ the proceeds for its own purposes and controls its own finances. Based upon these provisions, there does not appear to be significant change with regard to these provisions, except with respect to the City Council's power to prescribe the Board of Estimate & Taxation's powers and duties by ordinance.

Chap. 15, Sec. 9 – To Incur Indebtedness for Municipal Purposes on Request of Council

Chap. 15, Sec. 9 of the current charter provides that the Board of Estimate & Taxation may not incur indebtedness on behalf of the City for the purpose of purchasing public utilities. There does not appear to be any parallel provision of the proposed charter revision.

Chap. 15, Sec. 9 of the current charter requires that bonds or other forms of obligation be sold only in the manner provided by Section 1356, General Statutes 1913 to the purchaser who will pay the highest price. This statute requires the City to invite bids by published notice and accept only the most favorable offer. There is no such requirement in the proposed charter revision. MINN. STAT. § 475.60 (2004) requires a public sale of bonds subject to specified exceptions. If the charter is silent as to the sale procedures, the statute will control.

Chap. 15, Sec. 9 of the current charter requires voter approval at a general or special election to sell bonds or incur indebtedness for any improvement where the aggregate amount of any obligations or indebtedness to be issued or incurred for the improvement in all phases from inception to completion exceeds \$15,000,000. By contrast, Art. VIII, Sec. 8.4(d) of the proposed charter revision provides that bonds and indebtedness cannot be incurred without voter approval for a capital improvement whose total cost exceeds \$15,000,000. This is a significant change.

Chap. 15, Sec. 9 of the current charter provides that any premium from the sale of bonds under this section shall go into the sinking fund. Art. VIII, Sec. 8.4 of the proposed charter revision provides that premium must "service" those bonds. It is not clear what the latter provision means. It may permit the use of premiums for a purpose other than the redemption of the bonds as Chap. 15, Sec. 9 of the current charter now requires.

Chap. 15, Sec. 9 of the current charter provides that the Board of Estimate & Taxation can issue bonds or obligations for the use of a board or department the expenditures of which are not controlled by the City Council. This requires a request by the City Council, and additionally, the request of the board or department in question made by two-thirds (2/3) of its members. Art. VIII, Sec. 8.4(a) of the proposed charter revision authorizes the issuance of bonds or obligations for a board, but only if "this charter vests the borrowing power" in the board. Art. V, Sec. 5.1(j) of the proposed charter revision provides that "Each board with borrowing power may apply the proceeds for its own purposes and controls its own finances." Art. V, Sec. 5.1(j)(1) of the proposed charter revision then goes on to specify what the borrowing power includes. The significant change appears to be that the proposed charter revision must specifically grant borrowing power, or else a board, such as the Library Board, will arguably not have the power to make a request to the Board of Estimate & Taxation to issue bonds. There is no specific borrowing power in the Art. V, Sec. 5.4 of the proposed charter revision which pertains to the Library Board. Therefore, concern exists that the failure of the proposed charter

to make clear the borrowing power of the Library Board will result in a significant and deleterious change.

The proposed charter revision does not carry forward the provision of Chap. 15, Sec. 9 of the current charter requiring the bonds to be signed by the Finance Officer, and the President of the Board, under the City seal.

Chap. 15, Sec. 10 – Issuance and Sale of Bonds

Art. VIII, Sec. 8.4 of the proposed charter revision eliminates the net debt limit set forth in this section (10% of the assessed valuation of the City). MINN. STAT. § 475.753 (2004) now provides the debt limit for all municipalities notwithstanding any home rule charter provision adopted prior to April 1, 1951. As such, no change in government operations is anticipated as a result of eliminating this provision.

The proposed charter revision eliminates the provision of Chap. 15, Sec. 10 that the bonds issued by the Board of Estimate & Taxation constitutes a pledge of the full faith and credit of the City. This provision has been cited in City Attorney opinions as the reason that the Board of Estimate & Taxation is not authorized to issue industrial development bonds for which are payable only from the revenues of a project and not from City general revenues. *See* Minneapolis City Attorney Opinions 5/23/72 and 4/29/74.

Chap. 15, Sec. 11 – Meetings to Be Open to the Public

The requirements of Chap. 15, Sec. 11 of the current charter have now been substantially enacted into statutory law. *See* MINN. STAT. § 13D.01 (2004). However, the requirement that Board of Estimate & Taxation proceedings and actions be filed at the Municipal Library and all City of Minneapolis Libraries is eliminated by the proposed charter revision.

Chap. 15, Sec. 12 – Promissory Notes; Certificates of Indebtedness; Tax Anticipation Bonds

Chap. 15, Sec. 12 of the current charter allows the Board of Estimate & Taxation to issue and sell promissory notes and certificates in anticipation of the receipt of the taxes that have previously been levied in the current year. Chap. 15, Sec. 12 of the current charter limits the amount of these bonds to 50% of anticipated tax revenues. MINN. STAT. § 475.753 (2004) provides that municipalities are subject to Chapter 475. MINN. STAT. § 475.52, subd. 2 (2004), provides that a home rule charter city may issue bonds for the purposes its charter authorizes, in addition to the specific purposes authorized in that section of the statute. Upon the elimination of this provision by the proposed charter revision, the issuance of tax anticipation certificates would be controlled by MINN. STAT. § 412.261 (2004). A comprehensive comparison of all of the provisions of this statute which applies to statutory cities to determine how it might differ from this section of the current charter has not been performed.

Chap. 15, Sec. 13 – Putting Professional Sports Facility Financing Before the Voters

There does not appear to be a significant change with respect to Chap. 15, Sec. 13 of the current charter. *See* Art. VIII, Sec. 8.4(e) of the proposed charter revision.

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CURRENT CHARTER CHAPTER 16

PARKS & PARKWAYS

Analysis of Proposed Charter Revisions, Chapter 16 – Parks and Parkways

** Note: The attorney for the Park Board has/will analyze and comment on this chapter.*

Chap. 16, Sec. 1 – Park and Recreation Board – Election – Terms of Office

Chap. 16, Sec. 2 – Parks and Parkways

Chap. 16, Sec. 3 – Authority to Condemn Land – Appraisers

Chap. 16, Sec. 4 – Assessment of Benefits – Appointment of Park Assessors

Chap. 16, Sec. 5 – Issuance of Bonds

Chap. 16, Sec. 6 – Tax Levy – Park and Recreation Fund

Chap. 16, Sec. 7 – Board Authorized to Accept Gifts, Etc.

Chap. 16, Sec. 8 – Vacation and Closing of Streets

Chap. 16, Sec. 9 – Construction of Bridges and Viaducts

Chap. 16, Sec. 10 – Expenditures of Money Received for Benefits

Chap. 16, Sec. 11 – Shore Rights

Chap. 16, Sec. 12 – Lands Acquired Subject to Lien for Bonds Issued

Chap. 16, Sec. 13 – Sale of Lands Available for Park Purposes

Chap. 16, Sec. 14 – Rules and Penalties

Chap. 16, Sec. 15 – Opening, Improving and Vacation of Streets

Chap. 16, Sec. 16 – Planting of Trees

Chap. 16, Sec. 17 – Shade Trees

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CURRENT CHARTER CHAPTER 17

LIBRARY BOARD

Analysis of Proposed Charter Revisions, Chapter 17 – Library Board

Introduction

The following analysis of the proposed charter revision with respect to Chapter 17 of the current charter is designed to identify differences in the language of the proposed charter revision and the current charter. Such differences in language may create issues of interpretation as to whether the language of the proposed charter revision continues or changes the meaning of the language in the current charter.

In a number of areas, the proposed charter revision eliminates certain language in the current charter, and recommends that such language be reclassified into ordinance. It should be noted that, while it requires 13 votes on the Minneapolis City Council (and possibly a public election) to change the language of the charter, it only takes 7 votes on the Minneapolis City Council to change the language of an ordinance. Moreover, an ordinance cannot restore power to an independent board where the charter has removed that power, and an ordinance cannot remove power from an independent board where the charter has provided that power.

Analysis of Chapter 17, Section 1 – General and Special Powers

The proposed charter revision states that the Library Board “maintains” the City’s libraries museums and galleries, while the current charter states that the Library Board “has full power to establish and maintain” public libraries, reading rooms, galleries of art and museums.

The proposed charter revision eliminates the long list of enumerated powers and prohibitions on powers and instead states that “the Library Board may act on the City’s behalf and enjoys all the City’s lawful powers.” It is unclear whether the language of the proposed charter revision actually continues the language of the current charter with respect to the powers of the Library Board. Some issues that appear unresolved by the language of the proposed charter revision include the power to enact ordinances, the power to tax, and the power to engage in eminent domain. By contrast, these sorts of powers are enumerated in Art. V, Sec. 5.5 Park & Recreation Board.

The proposed charter revision eliminates the language of the current charter that pertains to a common seal, power to sue or be sued, and power to adopt by-laws. While these are inherent powers, it is unclear how they are to be exercised under the language of the proposed charter revision (e.g. which seal, who is sued – city or board, etc.)

The proposed charter revision omits the language of the current charter that pertains to the prohibition of erecting buildings on land that the Library Board does not have title in fee simple.

The proposed charter revision omits the language of the current charter that pertains to employees being in the classified service. Art. VII, Sec. 7.4(b)(2)(A) of the proposed charter revision states that a board may provide for employment in the unclassified service.

Analysis of Chapter 17, Section 2 – Composition of the Board – Elections

The current composition of the Library Board is controlled by Special Law Chap. 818, Sec. 1 of 1965, which states that the Minneapolis Library Board shall consist of eight (8) library board trustees. Six (6) of those trustees shall be elected by the legal voters of Minneapolis. One (1) of those trustees shall be appointed by the Mayor of Minneapolis, and one (1) of those trustees shall be appointed by a majority vote of the Minneapolis City Council. The election of Library Board trustees is controlled by Special Law Chap. 433, Sec. 4 of 1986, which states that the terms of office for the six (6) elected members of the Library Board shall be four years, and the elected members of the Library Board shall be elected at the general municipal election.

Art. VII, Sec. 7.3(b) of the proposed charter revision states that whenever the charter provides for the Mayor or the City Council to appoint an officer, the Mayor nominates a candidate, the Executive Committee reviews and recommends the nominated candidate, and the City Council appoints the candidate. A Library Board Trustee is defined as an officer in Art. VII, Sec. 7.0 of the proposed charter revision. As such, it appears that the two Library Board Trustees appointed by the Mayor and the City Council respectively must go through the aforementioned process. In keeping with that process, it appears that the Mayor appoints both of the Library Board Trustee candidates, the Executive Committee reviews and recommends the nominated candidates and the City Council appoints the candidates. This is a change from the current charter since the Library Board Trustees are not members of a “department or agency” of the city. As such, under Chap. 3 Sec. 4 of the current charter, Library Board Trustees are not subject to the Executive Committee appointment process that is set forth in Chap. 3, Sec. 4 of the current charter.

In 1963, the Minneapolis City Attorney’s Office issued an opinion stating that the Minnesota Legislature possesses the power to change the composition of the Library Board by statute.

Analysis of Chapter 17, Section 3 – Vacancies

The proposed charter revision states that the Library Board must fill the vacancy in the office of any trustee elected by the voters.

Analysis of Chapter 17, Section 4 – Elections

Art. III, Sec. 3.1(d)(2) of the proposed charter revision states that a candidate for an elected office may state, in up to three words, his or her political party or principal, which shall appear on the ballot. This is a change from Chap. 2, Sec. 3 of the current charter in which the designation of a political party or principle is only permitted for City Council and Mayoral candidates.

In looking at Chap. 17, Sec. 4 of the current charter, Chap. 2, Sec. 4 of the current charter, Art. V, Sec. 5.4(c)(1)(c) of the proposed charter revision, Art. III, Sec. 3.2(a) of the proposed charter

revision, and Art. III, Sec. 3.2(c) of the proposed charter revision, it does not appear that the proposed charter revision would change the timetable for electing Library Board Trustees.

Analysis of Chapter 17, Section 5 – Oath of Office – Officers of the Board – Secretary and Treasurer to Furnish Bonds

The language of the proposed charter revision omits the Finance Officer as the Treasurer of the Library Board. Therefore, the Finance Officer has no further obligations to the Library Board except as provided elsewhere in the proposed charter revision or in ordinance.

The language of the proposed charter revision omits the requirement that the secretary and Finance Officer provide fidelity bonds.

Analysis of Chapter 17, Section 6 – Duties of Officers – Orders – How Drawn – Depositories of Funds

The proposed charter revision eliminates Chap. 17, Sec. 6 from the current charter, and recommends that it should be reclassified as an ordinance. Chap. 17, Sec. 6 of the current charter pertains to who shall preside at Library Board meetings, how such meeting shall be run, and how the Library Board treasurer (City Finance Officer) shall take care of deposits.

Analysis of Chapter 17, Section 7 – Tax Levy and Proceeds – County Auditor’s Duties

The first part of Chap. 17, Sec. 7 of the current charter states that the Library Board may levy a tax to support its mission. This is further authorized by 1993 Minn. Law 375. Although Art. V, Sec. 5.4(b) of the proposed charter revision states that the Library Board enjoys all the City’s lawful powers, it is unclear what the impact of the language of the proposed charter revision would be with respect to the Library Board’s ability to levy a tax. Arguably, such power might be inferred from Art. I, Sec. 1.3(c)(2) of the proposed charter revision which continues the existing powers of any city board, department or officer.

In 1997, the Minneapolis City Attorney’s Office issued an opinion stating that the Board of Estimate & Taxation’s power to set the maximum Library tax levy was not abolished by 1993 Minn. Laws 375, Art. 7, Sec. 21.

Analysis of Chapter 17, Section 8 – Real Estate – How Purchased and Sold – Donations, Bequests, Etc. – How Accepted

The first part of Chap. 17, Sec. 7 of the current charter states that the Library Board may purchase and sell real estate for the purposes of fulfilling its mission so long as no fewer than six (6) of the Trustees vote for a purchase, and so long as no fewer than five (5) of the Trustees vote for a sale. Art. V, Sec. 5.4(b)(2) states that the Library Board may buy realty with a majority of at least six (6) Trustees, and may sell realty with a majority of at least five (5) Trustees. It is unclear whether the proposed charter revision’s use of the term “majority” changes the minimum number of Trustees needed to approve a purchase or sale of real estate/realty.

The second part of Chap. 17, Sec. 8 of the current charter describes the manner in which the purchase or sale of realty is to be administered. The proposed charter revision eliminates this language from the current charter, and recommends that such language should be reclassified as an ordinance.

1967 Minn. Law Chap. 480, Sec. 1 states in pertinent part that the Library Board, by a majority vote of all of its members may invest monies received as gifts, devises or bequests into as provided in MINN. STAT. § 501B.151 (2004).

In 1955, the Minneapolis City Attorney's Office issued an opinion stating that the Library Board was empowered to act as a trustee with regard to the administration of a gift.

Analysis of Chapter 17, Section 9 – Regular and Special Meetings

Chap. 17, Sec. 9 of the current charter states that the Library Board shall meet for its initial meeting of the year on the first business day in January, and sets forth the manner in which meetings will be called for and held. Art. V, Sec. 5.4(d)(1)(2) of the proposed charter revision states that the Library Board shall meet for its initial meeting of the year on the first weekday after January 1, and sets forth the manner in which special meetings will be called. It is unclear whether the change from first business day in the current charter to first weekday in the proposed charter revision will create an inconvenience due to seasonal holidays occurring at or around that time.

Analysis of Chapter 17, Section 10 – Board May Associate With Independent Societies Owning Libraries, Etc.

The proposed charter revision eliminates the language of Chap. 17, Sec 10 from the current charter.

Analysis of Chapter 17, Section 11 – Libraries and Museums to Be Forever Free – Rules and Regulations

Chap. 17, Sec. 11 of the current charter essentially states that all libraries, museums and all other collections under the administration of the Library Board must be free to city residents, but also subject to reasonable rules and regulations necessary for their effective administration. 1965 Minn Law 408, Sec. 1 states in pertinent part that the Library Board may charge a rental fee for publications that experience an unusually high demand, services rendered in connection with the museum or planetarium, and for private rental of public rooms and devices. Art. V, Sec. 5.4(a) of the proposed charter revision states in pertinent part that libraries, museums, galleries, and other cultural and educational institutions shall be free to city residents. Art. V, Sec. 5.4(b)(1) of the proposed charter revision states in pertinent part that the Library Board may charge a fee for a specified service that is offered at one of its facilities. In looking at Chap. 17, Sec. 11 of the current charter, 1965 Minn Law 408, Sec. 1, Art. V, Sec. 5.4(a) of the proposed charter revision, and Art. V, Sec. 5.4(b)(1) of the proposed charter revision, it appears that the proposed charter revision expands the scope of services for which the Library Board can charge fees.

Analysis of Chapter 17, Section 12 – Library Board May Enter Into Arrangements With Certain Counties, Cities, Towns and Villages

The proposed charter revision eliminates the language of Chap. 17, Sec. 12 from the current charter.

Chap. 17, Sec. 12 of the current charter provides that non-residents can be allowed to use the libraries on terms as the Library Board may prescribe. It also allows the Library Board to contract with Hennepin County or another adjacent county or a neighboring town, city or village to loan books to its residents upon agreed upon terms. 1965 Minn. Law 897 provides that additional members from a political subdivision contracted with pursuant to Chap. 17, Sec. 12 of the current charter can be admitted onto the Library Board to deliberate and decide matters involving such a contract. This special law would be in effect nullified by the repeal of Chap. 17, Sec. 12 of the current charter.

MINN. STAT. § 471.59 (2004) entitled the "Joint Exercise of Powers Act" provides that two or more governmental units may jointly exercise any power common to them or similar powers. Therefore, under MINN. STAT. § 471.59 (2004), the Library Board would still have the power to contract with other governmental units. However, the elimination of Chap. 17, Sec. 12 of the current charter would mean that the Library Board may not have the broader power to allow non-residents to use the libraries.

1965 Minn. Law 897 provides that when the Library Board acts as the Library Board of Hennepin County, the County Commissioners shall appoint 6 members to serve on the Library Board along with the 6 elected Minneapolis members. This special law does not appear to have any present application.

Analysis of Chapter 17, Section 13 – Library Board Authorized to Accept Certain Gifts

The proposed charter revision eliminates the language of Chap. 17, Sec. 13 from the current charter.

1967 Minn. Law Chap. 480, Sec. 1 states in pertinent part that the Library Board, by a majority vote of all of its members may invest monies received as gifts, devises or bequests into as provided in MINN. STAT. § 501B.151 (2004).

MINN. STAT. § 134.08 (2004) provides as follows: "Nothing in sections 134.08 to 134.15 shall be construed as abridging any power or duty in respect to libraries conferred by any city charter. If a charter does not address matters provided for in this chapter, the provisions of this chapter apply." The elimination of Chap. 17, Sec. 13 of the current charter would result in the application of MINN. STAT. §§ 134.14 and 134.15 (2004) with respect to gifts. MINN. STAT. § 134.14 (2004) provides as follows:

All property given, granted, conveyed, donated, devised, or bequeathed to, or otherwise acquired by, any city or county for a public library shall vest in, and be held in the name of, the city or county and any conveyance, grant, donation,

devise, bequest, or gift made to, or in the name of, any public library or library board shall be deemed to have been made directly to the city or county to be used as provided in section 134.11. Every public library established under sections 134.07 to 134.15 shall be forever free to the use of the inhabitants of the city or county subject to reasonable regulations the library board may adopt.

MINN. STAT. § 134.15 (2004) provides as follows:

With the consent of the governing body of any city or county, expressed by ordinance or resolution, the library board may accept any gift, grant, devise, or bequest made or offered by any person for public library purposes, or for the establishment, enlargement, or maintenance of an art gallery or museum in connection with its library, and may carry out the conditions of the donation. The city or county in all such cases is authorized to acquire a site, levy a tax, and pledge itself by ordinance or resolution to a perpetual compliance with all the terms and conditions of the gift, grant, devise, or bequest so accepted.

The omission of Chap. 17, Sec. 13 would therefore vest donated property in the name of the city, rather than the Library Board. Also, the consent of the City Council would be required for the acceptance of gifts. The Library Board would no longer be able to specify the terms upon which gifts are to be accepted.

Under Art. V, Sec. 5.4(b) of the proposed charter revision, the Library Board is authorized to exercise any of the powers of the City with respect to the maintenance of libraries. However, the power of a city to accept gifts is controlled by MINN. STAT. § 465.03 (2004), which provides as follows:

Any city...may accept a grant or devise of real or personal property and maintain such property for the benefit of its citizens in accordance with the terms prescribed by the donor....Every such acceptance shall be by resolution of the governing body adopted by a two-thirds majority of its members.

The statute requires a two-thirds vote of all the members of the governing body. Chap. 17, Sec. 13 of the current charter only requires a majority vote of the Library Board. Therefore, assuming that the Library Board could act as the “governing body” under MINN. STAT. § 465.03 (2004), six votes would be required in order to accept a gift.

Analysis of Chapter 17, Section 14 – Previous Gifts of Land, Etc., Ratified and Confirmed

The proposed charter revision eliminates the language of Chap. 17, Sec. 14 from the current charter.

Chap. 17, Sec. 14 of the current charter authorizes the Library Board to keep and perform the terms and conditions of deeds, conveyances and gifts and to enter into agreements for that purpose. It empowers the Library Board to establish a commission to have care and custody of

its property (other than land). It provides the procedure for the appointment and filling of vacancies on the commission.

MINN. STAT. § 410.15 (2004) provides as follows:

The new city so organized shall be in all respects the legal successor of the former corporation, and no charter so adopted, nor any amendment thereof, shall prejudice any subsisting right, lien, or demand against the city superseded, or affect any pending action or proceeding to enforce the same. All rights, penalties, and forfeitures accrued or accruing to such former corporation, all property vested therein or held in trust therefor, all taxes and assessments levied in its behalf, and all its privileges and immunities not inconsistent with the new charter, shall pass to its successor. All ordinances, resolutions, and bylaws in force at the adoption of such new charter, and not in conflict with its provisions, shall continue in force until duly altered or repealed.

1967 Minn. Law Chap. 480, Sec. 1 provides that the Library Board, by a majority vote of all of its members, may invest monies received as gifts, devises, or bequests, as provided by MINN. STAT. § 501.125 (1967) (renumbered as MINN. STAT. § 501B.151 (2004)).

Art. I, Sec. 1.3 of the proposed charter revision also provides that the proposed charter's adoption will not affect any municipal act previously adopted or the "existence, status, function, composition, powers, or duties of any board..."

The elimination of Chap. 17, Sec. 14 of the current charter will result in the elimination of the procedures specified with respect to the commission that is authorized in that section.

Analysis of Chapter 17, Section 15 – Library Board Permitted to Erect Buildings on Land Acquired

The proposed charter revision eliminates the language of Chap. 17, Sec. 15 from the current charter.

Chap. 17, Sec. 15 gives the Library Board the power to erect buildings on land it has acquired. Although the proposed charter empowers the Board to acquire real estate, it does not contain any express provision empowering it to erect buildings. The power specified in Art. V, Sec. 5.4 of the proposed charter revision is only to "maintain" the City's libraries.

If the proposed charter revision is adopted, it will be necessary to refer to the present charter and to argue that, under Art. I, Sec. 1.3 of the proposed charter revision, it was not intended that the Library Board's power to erect buildings be eliminated as part of the charter revision. It is not clear whether this argument would prevail given the fact that the proposed charter only grants power to "maintain" not to "establish" libraries.

Analysis of Chapter 17, Section 16 – \$500,000 Bond Issue Authorized

The proposed charter revision eliminates Chap. 17, Sec. 16 of the current charter.

Chap. 17, Sec. 16 of the current charter gives the Library Board the power to request the City Council to sell up to \$500,000 in bonds for the acquisition of land and construction of libraries. Chap. 17, Sec. 16 of the current charter authorizes \$250,000 to be sold prior to May 31, 1921, and \$250,000 to be issued and sold after June 1, 1921. It is presumed that the authority of this section has been fully exercised and is no longer necessary.

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CURRENT CHARTER CHAPTER 18

[RESERVED]

** Note: Chapter 18 of the current charter formerly provided for a board of education and a special school district. That language was repealed in 1975. Chapter 18 of the current charter does not currently contain any language.*

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CURRENT CHARTER CHAPTER 19

CIVIL SERVICE

** Note: As of September 20, 2004, it is believed that a further revision of the 5th draft of the proposed charter revision by the Minneapolis Charter Commission is in progress, and that portions or all of the following analysis (below) may change based on that revision.*

Analysis Proposed Charter Revisions, Chapter 19 – Civil Service

Chap. 19, Sec. 1 – Civil Service Commissioners of Minneapolis to Be Appointed by Mayor with Approval of a Majority of City Council and To Receive Salary To Be Set by City Council – Mayor to File Names of Prospective Appointees

Chapter 19, section 1 of the current charter pertains to the establishment of the civil service commission and the appointment of three civil service commissioners that preside over the commission. Although the current charter is silent on the appointment process of the commissioners, the proposed charter revision suggests that the appointment of the three commissioners should be done pursuant to the appointment process for all officers contained in Art. VII, Sec. 7.3(b) of the proposed charter revision. The suggested process is consistent with the appointment process for all officers, including civil service commissioners, located in Chap. 3, Sec. 4 of the current charter.

The proposed charter revision removes obsolete language pertaining to the terms of the original civil service commissioners and establishes terms consistent with the current charter's establishment of three staggered three-year terms, one term expiring on March 1 of each year.

The proposed charter revision eliminates the minimal salary requirements for the civil service commissioners and suggests that the language be codified in city ordinances. The proposed charter revision also eliminates an obsolete filing requirement pertaining to the Mayor's filing nominees' names with the city clerk's office.

Chap. 19, Sec. 2 – Civil Service Fund Authorized

Chap. 19, Sec. 2 of the current charter pertains to the establishment of the civil service fund to be used by the civil service commission. The proposed charter revision substantially retains the provisions of the current charter. However, the proposed charter revision removes the requirement that all unexpended funds be returned to the general fund of the city. Without such a requirement, the civil service commission would have the authority to retain any unspent funds in the civil service account.

Chap. 19, Sec. 3 – Commission To Meet on Second Monday of August for Organizational and All Employees to Be in Classified Service

Chap. 19, Sec. 3 of the current charter sets the date for a required annual organization meeting, requires that the civil service commission elect officers for its own organization and provides for the commission to pass meeting schedules, internal procedures, etc. The proposed charter revision removes the specificity contained in Chap. 19, Sec. 3 of the current charter and provides only for the annual organizational meeting.

The last sentence of Chap. 19, Sec. 3 of the current charter designates all employees of the commission as being in the classified service. That provision has been substantially retained and is addressed in the proposed charter revision at Section 7.4(c)(1)(E).

Chap. 19, Sec. 4 – Powers of Commission To Extend Only To Classified Service

Chap. 19, Sec. 4 of the current charter defines the “classified” service as all employees except a designated group of employees that are deemed “unclassified.” The current charter provides that unclassified employees are not subject to examination, appointment, discharge or removal pursuant to civil service rules. It should be noted that there are currently numerous unclassified employees, some authorized in special laws, in various city departments that are not listed in Chap. 19, Sec. 4 of the current charter.

At Art. VII, Sec. 7.4(b)(1)&(2), the proposed charter revision excludes some previously listed unclassified employees and broadens other categories of unclassified employees aside from department heads and their senior deputies. For instance, the current charter only provides for the Mayor’s secretary to be in the unclassified service, while the proposed revised charter provides that the entire Mayor’s staff be in the unclassified service. Additionally, the proposed charter revision would provide for a city board such as the library board to establish positions in the unclassified service as it sees fit.

The proposed charter revision provides for unclassified status for each department head and the senior deputies of each department if an ordinance provides for such status. To that extent, the proposed charter revision is consistent with M.C.O. 20.1000, et seq., pertaining to the establishment of unclassified positions in any city department that meet the 5 criteria set forth in the ordinance. However, M.C.O. 20.1000 by its own terms does not apply to any department head listed in the charter. If the proposed charter revision is adopted, that ordinance and the enabling state legislation, would likely need to be amended to be consistent with the revised charter.

Chap. 19, Sec. 5 – “Employee” Designated

Chapter 19, section 5 of the current charter provides that for the purposes of Chapter 19, an “employee” includes every officer, agent, employee and other person in the classified service of the City.

The proposed charter revision distinguishes “officer” from “employee” by making all “officers” including all unclassified employees, a sub-category of the broader group of “employees.” That distinction is unimportant in the proposed charter revision because the revised charter refers only to “classified” and “unclassified” positions and while the proposed charter revision defines “employee” broadly to include both groups, the word “employee” is not used in the sections pertaining to the classified service rules.

Chap. 19, Sec. 6 – Listing, Grading and Classifying Employees

Article 7.4(c)(1)(E) of the proposed charter revision substantially retains the provisions of Chapter 19, section 6 of the current charter.

Chap. 19, Sec. 7 – Commission to Make, Alter and Change Rules

Chap. 19, Sec. 7 of the current charter provides that the civil service commission shall enact rules to promote efficiency in the City service and to carry out the purposes of the civil service chapter. Chap. 19, Sec. 7 of the current charter then goes on to require that the rules specifically provide for classification rules, public competitive examinations, public advertisement of exams, eligibility lists, rejection of applicants or eligibles, certification of qualified eligibles to the hiring authorities, temporary employment, transfers, promotions, suspension and removal from the service register upon termination of service.

Art. VII, Sec. 7.4(c)(1)(E) of the proposed charter revision states that the business of the civil service commission includes broad categories of tasks that include some, but not all, of the specific categories listed in Chap. 19, Sec. 7 of the current charter. However, the proposed charter revision does not require that those tasks be codified in a set of civil service rules, but instead provides for a broad category of rules pertaining to “hiring, evaluation, discipline, and discharge that promote an efficient and effective classified service.

Chap. 19, Sec. 8 – Commission to Give Notice of Change of Rules

Chap. 19, Sec. 9 – Application Register to Be Kept

Chap. 19, Sec. 10 – Mayor to Be Notified of Rules and Amendments

The proposed charter revision eliminates these sections of the current charter, and recommends that they be reclassified as ordinances.

Chap. 19, Sec. 11 – Officers or Employees Not to Be Removed After Six Months Except for Cause – Investigation of Charges

Chap. 19, Sec. 11 of the current charter provides for a six-month probationary period for all classified employees except for police officers, firefighter and assistant city attorneys, who all have one-year probationary periods. Chap. 19, Sec. 11 of the current charter provides that after the expiration of the probationary periods, classified employees can only be removed for just cause after notice and opportunity to present evidence at a hearing. Chap. 19, Sec. 11 of the current charter also provides for the commissioners to act as hearing officers and the final decision makers, and provides the commissioners with the power to issue subpoenas for witnesses and other types of evidence.

The proposed charter revision recommends that Chap. 19, Sec. 11 of the current charter be reclassified as an ordinance. If Chap. 19, Sec. 11 of the current charter were enacted as an ordinance, the terms of that ordinance could be changed by 7 votes of the City Council and the City Council could theoretically repeal the ordinance entirely. If that occurred, a large group of employees who aren't members of collective bargaining units with just cause termination provisions, or who don't enjoy some other sort of job protection such as veterans' job protections, could become at-will employees who could be discharged without just cause.

Additionally, the civil service commissioners could lose the power to issue subpoenas and preside over discipline and termination proceedings. Finally, all employees could theoretically be subjected to longer or shorter probationary periods, and the proposed charter revision removes the difference in probationary periods between police officers, firefighters, city attorneys and all other classified employees.

Chap. 19, Sec. 12 – Duties of Each Office to Be Ascertained and Class and Grade Established

Art. VII, Sec. 7.4(c)(1)(E) of the proposed charter revision substantially retains the provisions of Chap. 19, Sec. 12 of the current charter pertaining to the classification, study of and examinations for all positions in the classified service.

Chap. 19, Sec. 13 – Conduct of Examinations

Art. VII, Sec. 7.4(a) of the proposed charter revision substantially retains the provisions of Chap. 19, Sec. 13 of the current charter pertaining to the conduct of examinations for classified positions.

Chap. 19, Sec. 14 – Notice of Examination

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

Chap. 19, Sec. 15 – Filling of Vacancies

Chap. 19, Sec. 15 of the current charter provides that the highest ranking person on the eligibility list be certified to the hiring authority for employment in the classified service. Art. VII, Sec. 7.4(a) substantially retains the provisions of Chap. 19, Sec. 15 of the current charter.

It should be noted that a special state law requires that the top three names on the eligibility list be certified to the hiring authority for each open position, and several collective bargaining agreements and human resources practices provide for or result in deviations from the current charter requirement and the special state law.

Chap. 19, Sec. 16 – Filling of Certain Positions Without Examination

Art. VII, Sec. 7.4(c)(1)(G) of the proposed revised charter substantially retains the provisions of Chap. 19, Sec. 16 of the current charter pertaining to the suspension of the competitive examination process in certain specified situations.

Chap. 19, Sec. 17 – Restrictions on City Finance Officer in Payment of Salaries

Chap. 19, Sec. 17 of the current charter provides for accurate payments of payroll wages to employees who appear on the current service register of active employees, and provides for penalties for the City Finance Officer who violates Chap. 19, Sec 17 of the current charter.

Chap. 19, Sec. 17 of the current charter also provides for a cause of action for any aggrieved taxpayer for violation of this provision. The proposed charter revision recommends this section for reclassification as a city ordinance.

Chap. 19, Sec. 18 – Commission to Make a Report on or Before January 30 of Each Year

Chap. 19, Sec. 18 of the current charter requires that on or before January 30 of each year, the civil service commission provide a detailed report to the Mayor and the City Council on all of the commission’s activities, including any amended rules, the effect of any rule and the monetary disbursements of the commission in the prior year. The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

Chap. 19, Sec. 19 – Investigation by Commission or Individual Commissioner and Trial of Accused

Chap. 19, Sec. 19 of the current charter grants the power and the obligation to the commission or an individual commissioner to initiate and conduct periodic investigations into the conduct of examiners in the competitive testing process, the duties of any position in the classified service and any other matter covered by Chapter 19. The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

Chap. 19, Sec. 20 – False Answers or Statements Cause for Forfeiture of Right to Be Entered Upon Register

Chap. 19, Sec. 20 of the current charter provides for the removal from the eligible register or the service register of any classified employee who gives any false information on any competitive examination. Chap. 19, Sec. 20 of the current charter also provides that the offending person is restricted from participating in any civil service process or holding any unclassified position for a period of three years. The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

Chap. 19, Sec. 21 – Giving or Taking of Money or Service for Position a Misdemeanor

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

Chap. 19, Sec. 22 – [Reserved]

Chap. 19, Sec. 23 – [Reserved]

Chap. 19, Sec. 24 – Action of Superior Officers or Employees Declared a Misdemeanor in Certain Cases

The proposed charter revision eliminates this section of the current charter, and recommends that it be reclassified as an ordinance.

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CURRENT CHARTER CHAPTER 20

**LAWS MADE PART OF THE CHARTER BY
REFERENCE, ETC.**

Analysis of Proposed Charter Revisions, Chapter 20 – Laws Made Part of the Charter by Reference, Etc.

Chap. 20, Sec. 1 – Laws to Continue in Force

The proposed charter revision eliminates this section of the current charter.

Chap. 20, Sec. 2 – Existing Powers, Etc., to Continue

Chap. 20, Sec. 2 of the current charter states that the City of Minneapolis and the several boards and departments of the city, in addition to the rights, powers duties, functions privileges and immunities expressly conferred upon and vested in them under and by virtue of the provisions of this charter shall under this charter also have, possess, perform, exercise and enjoy all other rights, powers duties, functions privileges and immunities held, possessed, performed, exercised or enjoyed by the city and its several departments and boards respectively at the time of adoption of this charter. Art. I, Sec. 1.3(b) of the proposed charter revision states that the proposed charter revision fully restates and supersedes every prior version of, and any ordinance or other municipal act inconsistent with, the proposed charter revision. Art. I, Sec. 1.3(b) of the proposed charter revision also states that except as the proposed charter revision or an amendment explicitly provides otherwise, the charter does not affect any ordinance or other municipal act adopted before its adoption or its latest revision or amendment; the existence, status, function, composition, powers, or duties of any board, department, or other public body; or the office, tenure, powers, or duties of any officer.

The language of the current charter and the proposed charter revision appears to be similar in some parts and different in some parts. The language of the current charter and the proposed charter revision appears to be similar with respect to the idea that the City retains the powers, structure and organization of the previous charter(s) to the extent that such is not expressly changed by the superceding charter. That said the proposed charter revision states that it restates and fully supercedes any and all versions of it, ordinances and municipal acts that are inconsistent with it. This language appears to be different from the language in the current charter, and may give rise to questions pertaining to what qualifies as an inconsistent version, ordinance or municipal act.

Chap. 20, Sec. 3 – Certain Laws Excluded

Chap. 20, Sec. 3 of the current charter states that no law heretofore passed by the Legislature of the State of Minnesota and expressly made applicable only to cities of the first class having a home-rule charter or governed by a charter adopted pursuant to Section 36, Article 4 of the State Constitution and in force at the time of the adoption of this charter shall apply to the City of Minneapolis or any of its departments, boards or officers, and no such law shall confer or impose upon or vest in the City of Minneapolis or any of its departments, boards, or officers any right, powers duties, functions, privileges or immunities whatever. Art. I, Sec. 1.4 (c) of the proposed charter revision states that whenever a law grants a power or an option to cities generally or to cities of a certain class, but excepts cities having adopted a home-rule charter, the City of

Minneapolis may nevertheless exercise the power or option if that exercise is not inconsistent with this charter, notwithstanding its having adopted this charter.

The language of the current charter and the proposed charter revision appears to be different. The language of the current charter suggests that all laws passed by the Minnesota Legislature before the adoption of that charter will not apply to the current charter. The language of the proposed charter revisions suggests that that the City of Minneapolis can “opt-in” to certain laws that are passed by the Minnesota Legislature even though those laws except cities that have adopted a home-rule charter.