Lane Analysis	Response
Draft 6 Comment: Previously, the City Attorney's Office submitted an analysis of the Fifth Draft of the Charter Commission's proposed charter revision. The Charter Commission has now prepared a Sixth Draft. The City Attorney's Office annotated its previous *Minneapolis City Attorney's Office Analysis of the Charter Commission's Fifth Draft* to indicate whether or not the issues raised were resolved. This document analyzes the more significant matters that were raised in the City Attorney's Office analysis of the Fifth Draft that persist in the Sixth Draft. This document should be read together with the City Attorney's Office annotated Analysis of the Charter Commission's Fifth Draft. In addition, this document identifies provisions added to the Sixth Draft that could change the City government either expressly or by interpretation. **Draft 9 Comment:** At the request of the City Attorney, this Analysis has been annotated to Charter Commission Draft 9. Bold-faced numbers in brackets [00] are references to paragraph numbers in the Coded Draft 9. A Draft 9 Comment that I "concur" indicates that the issue raised by the Draft 6 Comment remains a valid concern under Draft 9, subject to any noted exception, explanation or additional comment. This document should be read in conjunction with my August 30, 2006 opinion letter directed to the City Attorney. – BWSL	This column lists the Charter Commission's response to Mr. Lane's analysis. The response refers to the revision's ninth draft unless otherwise noted. The revision generally follows the style of the League of Minnesota Cities' model charter (whose numbering system is similar to the Minnesota Statutes): > **Numbering System.** Under the decimal numbering system used in this charter, each section in a particular chapter has the number of the chapter followed by a decimal system and the section number . . . . This has the advantage not only of indicating to what chapter a section belongs but of allowing amendments to be placed more easily in their logical position in the charter . . . To facilitate easy reference, it is best to avoid the older practice of starting each chapter with section 1. Federal statutes have followed the same system since the 19th century, and the Supreme Court of the United States recently adopted a similar system for all federal court rules.

Draft 6 Comment: There are instances in the proposed Charter Revision in which express Charter powers or procedural provisions have been eliminated, but for which the City has the power to exercise substantially the same powers pursuant to applicable state statutes governing statutory cities (i.e. cities having no charter). One example is the elimination of the provisions of Chapter 4, Section 5, of the City Charter specifying the police (regulatory) powers of the City. The City could, in our opinion look to Minn. Stat. Ch. 412 for such powers. However, the removal of such provisions strikes us as a surrender of home rule powers to the will of the Legislature. Draft 9 Comment: Concur. Chapter 4, Section 5 represents a comprehensive and detailed list of powers which the Council may exercise as well as a General Welfare Clause which has been construed in many court decisions to give the City broad police powers. The Draft takes a different approach. Rather than rely on the Charter itself, the Draft allows the City to "exercise any power that a municipal corporation can lawfully exercise." [20] Interpretation of this provision thus turns on Minnesota law.	Mr. Lane's analysis is substantially correct. The revision claims powers as broadly as possible in the City's favor, in keeping with the approach that the League of Minnesota Cities' model charter recommends: > Older charters relied on a long list of specific grants in vesting power in the city, but almost all charters recently adopted in this state have included only a broad general grant . . . . Such a grant is based on the theory that the city should lay claim in its charter to all powers which the home rule provision of the constitution permit the city to assume. It thus permits the city to meet new problems as they arise without the need for a charter amendment granting the specific needed power and it avoids the possibility that by inadvertent omission or ambiguity, more specific grants would be held to deny to the city power which it might lawfully have assumed.

Minnesota Statutes provide for the powers of statutory cities. There is a general grant of municipal power, Minn. Stat. 412.211 (2006) and a list of specific powers of the Council, Minn. Stat. 421.221 (2006). As noted in previous city attorney opinions, the general welfare clauses under the Charter and Minn. Stat. 421.221, subdivision 32 likely amount the same scope of power. However, it makes the scope of City power expressly dependent on Minnesota statutes, an authority over which the City has no direct control.	
Draft 6 Comment: Under the Minnesota Constitution as implemented by state statute, city charters are a source of power, as well as, a limitation on the powers of home rule cities. The present City Charter sets forth specific powers. It also limits those powers. For example, the Charter limits the term for which licenses can be issued to one year. It also includes certain limitations on the power of the City Council to issue liquor licenses. Not only does the proposed revision eliminate these limitations and others, but also it provides that the City's powers are "plenary" and that the City can exercise "any power that a municipal corporation can lawfully exercise." See Rev. Charter §1.4(a)-(d). [20] Such provisions are inconsistent with the present Charter and City government. Draft 9 Comment: Concur in part. Draft 9 now limits the Council's power to grant licenses to one year. [171] The balance of these concerns remain valid. For instance, the Charter restrictions on the issuance of liquor licenses are not found in Draft 9.	The revision claims powers as broadly as possible in the City's favor, in keeping with the approach that the League of Minnesota Cities' model charter recommends: > Older charters relied on a long list of specific grants in vesting power in the city, but almost all charters recently adopted in this state have included only a broad general grant . . . . Such a grant is based on the theory that the city should lay claim in its charter to all powers which the home rule provision of the constitution permit the city to assume. It thus permits the city to meet new problems as they arise without the need for a charter amendment granting the specific needed power and it avoids the possibility that by inadvertent omission or ambiguity, more specific grants would be held to deny to the city power which it might lawfully have assumed.

Draft 6 Comment: Section 1.4(c) [24] permits the City to exercise powers granted to cities of any class even though the enabling legislation is specifically made inapplicable to charter cities. This would constitute a change in charter powers and raises an issue as to whether such an exercise of power would be inconsistent with the state statute and, therefore, prohibited. Draft 9 Comment: Concur.	This issue is largely theoretical. But the revision claims powers as broadly as possible in the City's favor, in keeping with the approach that the League of Minnesota Cities' model charter recommends: > Older charters relied on a long list of specific grants in vesting power in the city, but almost all charters recently adopted in this state have included only a broad general grant . . . . Such a grant is based on the theory that the city should lay claim in its charter to all powers which the home rule provision of the constitution permit the city to assume. It thus permits the city to meet new problems as they arise without the need for a charter amendment granting the specific needed power and it avoids the possibility that by inadvertent omission or ambiguity, more specific grants would be held to deny to the city power which it might lawfully have assumed.

Draft 6 Comment: Section 2.2 (c)(2)(A)(iii) [61] provides that the Charter Commission elects two redistricting commissioners from each major political party, at least one of whom was nominated by a political party. However, (C)(iii) [79] of the same subdivision provides that if a political party fails to nominate by the deadline or the nomination is not in compliance, the Charter Commission appoints one commissioner from the party without regard to the party list. This is inconsistent and ambiguous. Another change is that the present Charter mandates each major political party nominate six to ten persons, while the proposed revision, 2.2 (C)(ii) [72], states that each major political party "may" nominate six to ten members. Draft 9 Comment: Concur.	The revision is neither inconsistent nor ambiguous. Revision § 2.2(c)(2)(A)(iii) refers to commissioners "nominated by" each major political party. Revision § 2.2(c)(2)(C)(ii) (not (c)(iii), to which the Lane analysis refers) provides how that nomination occurs and, in default of such a nomination, how the Charter Commission may cure the default. The latter provision provides for what exception applies when the general rule is not followed. This approach is consistent with the applicable canon of construction in the Minnesota Statutes: ""When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision . . . ." Minn. Stat. § 645.26, subd. 1 (particular controls general). That canon of construction applies to the revision. Revision § 1.3(d)(2).

Draft 6 Comment: Under the present Charter Chapter 2, Sec. 2, all officers appointed by the City Council hold office for a term of two years, unless the Charter otherwise provides. In contrast, Sec. 10.2 [534] of the Revised Charter provides that the Council can, in an ordinance establishing an office, provide for a term other than two years. Under Chap. 2, Sec. 2, the term is two years from the first business day of January in even numbered years. Under Section 10.2 of the Sixth Draft, however, the term unless otherwise provided by ordinance, is two years, but no definite date is specified. [532] Therefore, unless provided by an ordinance, terms of officers might not commence and expire on a single date. Draft 9 Comment: Concur.	Mr. Lane's analysis is correct. Minneapolis's charter is 70,905 words long; printed, it runs 192 single-spaced pages. (By way of contrast, the U.S. Constitution of 1787 runs 4,543 words.) The revision is 13,616 words long — less than one-fifth the current Charter's length. The revision generally follows the style of the League of Minnesota Cities' model charter, a model of brevity at barely 13 pages, whose philosophy is that "the model charter is based on the modern drafting principles that a charter should deal only with fundamentals, leaving to the council by ordinance the authority to provide more detailed regulations as they are needed. It is, therefore, much briefer than many older charters." The charter is "cluttered with detail better suited to ordinances," and the revision "demotes" many such provisions — including this one — from charter to ordinance, without changing the underlying rule.
Draft 6 Comment: The Sixth Draft continues to change the manner in which vacancies are filled in the offices of Council Member and Mayor. Under the present Charter, Ch. 2, Sec. 16, when a vacancy occurs on or after March 1 in an election year, but before filings are opened, the person appointed by the Council would serve out the remainder of the term. Likewise, the Council President fills a vacancy in the office of Mayor occurring on or after March 1 in an election year and serves out the remainder of the Mayor's term. In contrast, under Sections 4.2(d) [182] and 9.1(e) [426] of the Revised Charter, the person elected at the general election would take office upon election. Draft 9 Comment: Concur.	Mr. Lane's analysis is correct. But the Charter Commission takes the view that an officer elected by the people holds a title superior to that of an officer appointed to fill a vacancy, and thus an appointee should surrender the office to an elected officer as early as possible after an election.

Executive Committee Process: There appears to be a conflict in Section 10.4(b) [See, 562] of the Sixth Draft. On one hand it states that "where a statute, ordinance, rule, <u>or other authority</u> provides for an officer's appointment by the Mayor, by the City Council, by any board...and does not explicitly override this section 10.4(b)," then the Executive Committee appointment process specified in Section 10.4 applies. On the other hand, it states that "section 10.4(b) does not apply to any appointment for which another provision within this charter provides unless the other provision explicitly refers to this section." [562] If the words, "or other authority" were construed to include the City Charter, then there would be a conflict between the two provisions. Because the intended effect of this provision might ultimately be frustrated by an unintended judicial construction, the section should be re-written so as to avoid that possibility. Draft 9 Comment: Concur. While [562] has been modified between Draft 6 and Draft 9, the modifications do not appear to address the conflict raised in the comment. Section 10.4(b) [562] now states, "Where a general law, special law, ordinance, rule, or other authority provides for an officer's appointment by the Mayor, by the City Council, by any board . . . and does not explicitly override this section 10.4(b). . . ." The potential sources of authority have been modified. However, the key words "or other authority" remain in place and therefore possibility of unintended judicial construction remains valid.	Mr. Lane's analysis is correct: the term "other authority" is subject to construction. On the other hand, "a general law, special law, ordinance, [or] rule" are not the entire universe of "authority" that can "provide[] for an officer's appointment." For example, theoretically, a City Council resolution could provide for filling a vacant office, at least on a temporary basis. Rather than attempt an exhaustive list of the relevant kinds of "authority," and likely omit some, the revision uses the phrase "other authority" as a catch-all term.

Draft 6 Comment: Under Chapter 3, Sec. 4, of the present Charter, the Executive Committee appoints and the City Council approves the appointment of the Police Chief, Fire Chief, City Engineer, Health Commissioner, City Attorney, City Assessor, City Coordinator and the Civil Service Commissioners. However, in Sec. 9.2 of the Sixth Draft, The City Coordinator, [444] City Clerk [445], City Assessor [446], Finance Officer [447], and City Attorney [448], are designated as city departments to be established, organized and provided for by the City Council. [443] It does not state that these officers are to be appointed pursuant to the Executive Committee process of Section 10.4. Therefore, Section 10.4, by its terms does not apply to their appointment and the City Council would have power to determine the manner of appointment. The Police Chief, Fire Chief, and Civil Service Commissioners, however, in Sections 9.3, [480 et seq.] 9.4 [491 et seq.] and 10.5 [570 et seq.], respectively, are required to be appointed under 10.4. This constitutes a significant change in the City Charter appointment process. Draft 9 Comment: Concur. See chart for a summary of changes. Two offices are omitted, three are subject to the Executive Committee process, and the others are appointed by the Council.	***

For offices which are not specifically referred to the Section 10.4(b) [562]appointment process (those offices for which some authority provides for an officer's "appointment"), the process is apparently covered under section 10.4(a) which empowers the Council to "establish any other necessary office, in which case the Council must provide for its title, appointment, term, compensation and duties." [561] As indicated above, this provision apparently takes several offices out of the Executive Committee process and leaves them subject solely to council action.	
Draft 6 Comment: Sec. 10.4(b)(5) [567] of the Sixth Draft provides that the Executive Committee may suspend without pay any officer in the Unclassified Service. This is a significant change from Charter Chapter 3, Sec. 4, of the present Charter, which only authorizes the Executive Committee to suspend officers whom it appoints. Draft 9 Comment: Concur.	This point is well taken. The revision has been amended accordingly.

Draft 6 Comment: In Sec. 9.1(g) [433 et seq.] of the Sixth Draft, the Council must provide for the Mayor's deputy, aides, assistant and executive secretary. It does not state that how these appointments are made. Under the special act authorizing the positions, (e.g. Laws 1969, Ch. 937 and Laws 1974, Ch. 105) the Mayor appoints them. However, the Sixth Draft, Sec. 10.4(b), provides that where a statute provides for appointment by the Mayor, the City Council, or a combination of them, and does not expressly override Sec. 10.4(b), the appointment is vested collectively in the Mayor, the Council and the Executive Committee. [562] Similarly, Laws 1974, Ch. 105, authorizes the City Council to appoint Council Aides and Laws of 1987, Ch. 99, authorizes the Mayor, with advice and consent of the City Council to appoint the Emergency Preparedness Director. Sec. 10.4(b) would effectively change these provisions by vesting these appointment powers collectively in the Mayor, Council and Executive Committee. This is a change in the appointment provisions. Draft 9 Comment: Concur. Draft 9 also requires that the Council provide the Mayor with "any other appropriate staff." [439] The appointment issue would pertain to these staff members as well.	This point is well taken. The revision has been amended accordingly.

Draft 6 Comment: Under [Charter] Chapter 3, Sec. 4, further duties of the Executive Committee may be prescribed by City Council ordinance or resolution. In contrast, Section 4.5 of the Sixth Draft merely provides that the Executive Committee powers may be prescribed by the City Council. [212] An ordinance or resolution would require a majority vote of all of the members of the Council. [191] If this were changed to make it consistent with the present practice of passing motions or adopting committee reports by a simple majority vote, there could be a change from the current 7-vote requirement for ordinances and resolutions prescribing Executive Committee duties. Draft 9 Comment: Concur. The Draft also provides that the "Council may prescribe the Executive Committee's process, and may require consultation with with any interested Council committee or member . . . ." [562] It also provides that the Committee "enjoys the powers and performs the duties that this Charter or the City Council prescribes." [212] This is a change from the Charter which provides that the Executive Committee shall establish its own rules and procedures. Chapter 3, Section 4. The "further duties" clause of Chapter 3, Section 4 should be read in conjunction with the rest of the section which specifies the Committee's base-line duties. Draft 9 [212] also allows the Council much broader authority to set the Executive Committee's powers and duties as the base-line duties are omitted from this section and modified under [562 et seq.].	***

Draft 6 Comment: Charter Chapter 3, Sec. 7, requires the City Attorney to deliver an opinion on legal questions from a board or department "when required." The condition "when required" was omitted in Section 9.2 of the Sixth Draft. [454 et seq.] Also omitted is the requirement that the City Attorney or assistant attorneys attend meetings of the City Council, and, when requested, its committees, and City boards. It also eliminates the power to designate a deputy to act as City Attorney in the City Attorney's absence or inability to act. Although it requires the City's officers, board, and departments to consult only with the City Attorney, it does not specifically prohibit them from hiring outside counsel to perform legal services in the terms of the present Charter. (This is, however subject to Laws 1969, Ch. 790, allowing the City Council to hire outside counsel upon the recommendation of the City Attorney.) Draft 9 Comment: Concur. While Draft 9 provides for Deputy City Attorneys [458], it does not specify their authority to act as City Attorney, nor does it require the City Attorney to make such a designation as under the Charter.	The revision generally follows the style of the League of Minnesota Cities' model charter, a model of brevity at barely 13 pages, whose philosophy is that "the model charter is based on the modern drafting principles that a charter should deal only with fundamentals, leaving to the council by ordinance the authority to provide more detailed regulations as they are needed. It is, therefore, much briefer than many older charters." The charter is "cluttered with detail better suited to ordinances," and the revision "demotes" many such provisions — including this one — from charter to ordinance, without changing the underlying rule. This provision will remain in force as an ordinance.

The Park Board's exception to the prohibition on outside counsel is not mentioned in the Draft's definition of the City Attorney's jurisdiction, which is stated to apply to "each board, department, and officer . . . ." [457] This would appear to conflict with the provision under the Park Board section which states that the Board may "appoint its own attorney at law." [403]	The latter provision provides for what exception applies when the general rule is not followed. This approach is consistent with the applicable canon of construction in the Minnesota Statutes: "When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision . . . ." Minn. Stat. § 645.26, subd. 1 (particular controls general). That canon of construction applies to the revision. Revision § 1.3(d)(2)

Draft 6 Comment: Charter Chapter 4, Sec. 9, ordinances and resolutions require a majority vote of the Council members, i.e., 7 votes. In contrast, the Sixth Draft, Sec. 4.4, applies to "acts of a legislative nature" and would require 7 votes for "any other act" of the Council. One problem here is that there is no definition of the phrase "legislative nature." The City Council presently acts on a variety of matters by a majority vote of those voting, a quorum being present. In fact, Sec. 5.3(c) of the Sixth Draft specifically authorizes such a vote with respect to boards in general. Draft 9 Comment: Concur. The Section 4.4 [188 et seq.] provision related to "acts of a legislative nature" discussed above appears to have been omitted in Section 4 of Draft 9. The majority vote of the membership under Draft 9 applies to all "acts". [191] The term "Act" is now defined in Section 5.3, as part of the section on "Boards": . . . [241-244]. All "acts" require a majority of the body except as the charter may otherwise provide. See Section 4.4 [191]. Committee reports would need to be interpreted as a "vote that relations to a board's internal organization or procedure" [244] in order to continue existing practice.	???

Draft 6 Comment: Charter Chapter. 4, Sec. 9, requires ordinances and resolutions to be published in an official newspaper to be effective. The Sixth Draft, Sec. 4.4(c) [207-210], however, specifies when an act is effective and contains no publication requirement. **Draft 9 Comment:** Concur that there is no publication requirement in [207-210]. The Draft 9 section related to "Boards" which provides that "any board that can adopt an act must provide for each such act's certification, publication and codification" [245] However, this seems to be a predicate for various evidentiary purposes [246-248] rather than a mandatory prerequisite to being "in force" under Chapter 4, Section 9.	The provision that a board "must provide for each . . . act's certification, publication, and codification" (Revision § 5.3(f)(2)) is "a predicate for various evidentiary purposes," but it also applies for purposes other than evidentiary reasons. The requirement of publication "in an official newspaper" will remain in force as an ordinance. But this requirement is a perfect example of how the charter is "cluttered with detail better suited to ordinances." And "an official newspaper" may not be as effective, or as efficient, a medium of communication in the 21st century as it was in the 20th century, so "demoting" it from charter to ordinance will give the City the flexibility that it needs to deal with evolving mediums of technology and communications without the need for a charter amendment in order to keep up.

Draft 6 Comment: Charter Chapter 4, Sec. 15, authorizes the City Council to acquire private property for streets alleys and public buildings. Section 1.5 [26 et seq.] of the Sixth Draft contains similar authority. Although it does not specifically refer to the power to purchase, we believe such power to be implied. It also authorizes the City Council to establish the eminent domain procedures. Thus the City could proceed in eminent domain under its charter rather than state law. On the other hand, however, Section 1.5 contains authority for "any authorized board" to exercise the power of eminent domain. It is not clear what constitutes an "authorized board," i.e. does it have to be authorized by virtue of another provision of the Charter or state law? **Draft 9 Comment:** Concur with the caveat that this provision is now in Section 1.4 [21]. While authorizing establishment of a procedure, it assumes that City has power of eminent domain, rather than explicitly claiming the power to acquire property "by purchase or condemnation" as under the Charter.	Mr. Lane's analysis is correct. But state law already confers the power of eminent domain, so the charter doesn't need to: > All cities may exercise the power of eminent domain for the purpose of acquiring private property within or without the corporate limits thereof for any purpose for which it is authorized by law to take or hold the same by purchase or gift and may exercise the power of eminent domain for the purpose of acquiring a right-of-way for sewerage or drainage purposes and an outlet for sewerage or drainage within or without the corporate limits thereof. The procedure in the event of condemnation shall be that prescribed by chapter 117, or that prescribed by the charter of such city. Minn. Stat. § 465.01 (power of eminent domain).
Draft 6 Comment: Charter Chapter 5, Section 14 provides that this section and the preceding section (13) constitute a contract with City bondholders and must be kept inviolate. This is omitted from the Sixth Draft. Draft 9 Comment: Concur.	***

Draft 6 Comment: [Charter Chapter 5,] Section 13 is changed in that the Sixth Draft in that 11.6(b), does not clearly allow unused permanent improvement funds to be paid out for debt service on bonds. **Draft 9 Comment:** Concur. According to the Side-by-Side, this section is now in Draft 9, Section 11.4 [704]	***
Draft 6 Comment: Also, the restrictions of [Charter Chapter 5,] Section 14 relating to the investment of bond funds are eliminated from the Revised Charter. Draft 9 Comment: Concur.	***

Draft 6 Comment: Charter Chapter 5, Section 16, mandates that the assessable and non-assessable portions of improvements be paid from the Permanent Improvement Fund. The provisions of 11.6(b) [722] do not include specific authority to pay money out of the Fund for the non-assessed portion of the improvements. Although it gives authority to levy a tax, the provisions are inconsistent with the current charter and internally inconsistent. For example, Section 11.6(a) [717] authorizes a permanent improvement tax of .02993 percent of the value of all property in the city. Section 11.6(b)(3) [723] authorizes a permanent improvement tax of .0025 percent of the value of the property in the City. Furthermore, in Chapter 5, Section 16 of the current Charter, the 2.5 mill tax is mandatory, while it is not mandatory in Section 11.6(a) [717] of the Sixth Draft. Further, in Charter Chapter 5, Sec. 16, a tax of 2.5 mills is authorized but not mandatory for sewage and waste treatment facilities. There appears to be no reference to this in the Sixth Draft. Draft 9 Comment: Concur. Draft 9 provides that the Council may "pay out of the fund . . . in anticipation of revenue from a special assessment . . . ." [722], so there is no specific authority to pay for non-assessed portions out of the fund. It is not clear how the [717] tax and the [723] tax are meant to relate to one another. The former is apparently for permanent improvements generally while the latter is for the portion of a "permanent improvement not defrayed by a special assessment."	***

Draft 6 Comment: Chapter 5, Section 24, requires that no funds be drawn out of the treasury unless the City Council has authorized payment. The Council can do so by approving contracts and taking other authorizing actions. The elimination of this section could result in a loss of control by the City Council over City finances. The Sixth Draft, Section. 5.6, [261] provides that each board controls its own finances. However, Section 5.6 of the Sixth Draft does not prohibit the Council from allowing funds to be expended without its authorization as Charter Chapter 5, Sec. 24 does. The elimination of this section could, in our opinion, result in a significant change in government. Draft 9 Comment: Concur. The distinction here is that the Council acts at the <u>payment</u> level under the Charter but at the <u>appropriation</u> level under Draft 9 [667-668].	***

Draft 6 Comment: The current Charter, Chapter 6, Sec. 1, gives the Mayor powers over the Police Dept. that are stronger and more complete than those contained in the Sixth Draft, Section 9.3. [481] Also, the second sentence of Section 9.3(a) states that "Except where the law vests an appointment in the department itself, the Mayor appoints and may discipline any employee in the department (subject to …Civil Service…rules in the case of an employee in the unclassified service). [481] This reference should be to the "classified service" rather than the "unclassified service." Also, the Chief's term in Chapter 6, Sec. 1, of the Charter is "three years from and after the second day of January of the year of appointment." Sec. 9.3(a)(1)(B) of the Sixth Draft specifies a three-year term without specifying any commencement or termination date. [484] Also there is no provision in the Sixth Draft similar to the current Charter Chap. 6, Sec. 1, providing that when vacancies are filled the appointment is for the remainder of the term. Draft 9 Comment: Concur. Draft 9 corrects the reference to "unclassified service" noted above. [481]	***

Draft 6 Comment: Charter Chapter 6, Sec. 2, requires the City Council to levy a tax annually to maintain the Police personnel ratio to the extent that such amount is in excess of the sum used to maintain the number of employees in the police Department in 1961, but not to exceed 3 mills (adjusted in accordance with state statutes.) This tax is not subject to Board of Estimate and Taxation approval or limitations. The Sixth Draft, Sec. 9.3(d) [490] includes this tax but states "...the City Council may annually tax...." It is permissive rather than mandatory as in the current charter. It also eliminates the current requirement of Charter Chapter 6, Sec. 2, that the tax be only that amount in excess of the sum used to maintain the number of employees constituting the Police Dept. on January 1, 1961. Draft 9 Comment: Concur.	***
Draft 6 Comment: Charter Chapter 7, Sec. 6, requires that persons being appointed to Assistant Chief, Deputy Chief, Fire Marshal, Assistant Chief of Training and Engineering Officer must hold, at least, the rank of captain. The Sixth Draft, 9.4(a)(2) [496 et seq.] contains no such requirement. **Draft 9 Comment:** Concur in part. [503] provides that the "fire chief may . . . appoint a senior manager . . . with the rank of captain or higher . . . ." This appears to be permissive rather than mandatory, although the language could be construed to make the appointment of senior management permissive and, if such management is appointed, require candidates to hold at least the rank of captain. In any event, the requirement under the Draft is less clearly stated than in the Charter.	This point is well taken. The revision has been amended accordingly.

Draft 6 Comment: Charter Chapter 7, Sec. 10, permits the costs of fire house construction, fire apparatus or equipment or personal property to be paid out of the Permanent Improvement Fund or bond fund. The Sixth Draft, Sec. 9.4(e), [514] however, mandates that all capital expenses be paid out of the permanent improvement fund or out of bond funds. In our opinion, the cost of fire apparatus, fire equipment, and personal property would constitute a capital expenditure, mandated by Section 9.4(e) [514] to be paid for from bond funds or permanent improvement funds. Because 9.4(e) [514] would prohibit the City from paying these costs from the general fund, it would constitute a significant change in funding requirements. **Draft 9 Comment:** Concur. Charter Chapter 7, Section 10 provides that Fire Department operating expenses be paid from the general fund and that capital expenses <u>may</u> be paid from the Permanent Improvement or bond funds.	***

Draft 6 Comment: The Sixth Draft omits the requirement that a City Engineer be appointed or that a Public Works Department be established. (See Sec. 9.2 [443-452] of the Sixth Draft). Section 10.5 [592], however, provides that a "chief engineer" would be in the unclassified service. **Draft 9 Comment:** Concur with the caveat that the Charter also does not appear to mandate that a Public Works Department be created. Charter Chapter 8, section 6, provides that the "City Engineer . . . personally and through the assistants and employees under the City Engineer in the Engineering Department of the City" shall perform various public works functions. Thus the Charter appears to assume that an "Engineering Department" exists.	***

Draft 6 Comment: The Sixth Draft of the Revised Charter adds a provision (Section 11.6(c) [724-732]) requiring the City Council and the Park Board to adopt ordinances establishing special assessment procedures including the procedure for appeals. This provision satisfies one of the objections in our comments to the Fifth Draft as to the absence of authority of the Council to enact such ordinance. Nevertheless, Laws of 1969, Ch. 499, provides that the provisions of Minnesota Statutes 1967, Chapter 429, are made applicable to the City of Minneapolis and that the City, at its option, may make any special assessment either under its home rule charter, or under Minn. Stat., Chapter 429, or under other existing statutory authority. Based on this special law, there still appears to be an issue as to whether the City assessments made pursuant to ordinance would be considered to be an assessment "under its home rule charter" authorized in the special act. Draft 9 Comment: Concur.	***

Draft 6 Comment: The elimination of the current Charter's assessment provisions (Chapters 8-10) in the Revised Charter and their relegation to ordinance, in effect, delegates additional taxing powers to the City Council and Park board. For one example, a 1973 special law, (L. 1973, C.393) provided that once the City Council acted to pay for all street lighting maintenance and operations from general tax revenues, the City was thereafter forbidden to recover such costs from special assessments. An issue is therefore raised as to whether the authority of the City Council under the Revised Charter to enact special assessment ordinances would supersede the special law prohibiting such assessments. Furthermore, the Revised Charter does not define the term "local improvement" for which the City Council and Park Board are empowered to enact assessment ordinances. This opens the door to an expansion of the categories of costs that may be assessed. Another change resulting from the omission of the Charter's assessment procedures is that the City Council and Park Board would be empowered to enact and change the ordinance provisions without the stringent requirements necessary to amend a charter. Draft 9 Comment: Concur. There has been no specific information from the Charter Commission as to which provisions omitted from the Charter in Draft 9 are to be recast as ordinances or simply omitted altogether. Assuming that the recommendation would be the same as for Draft 6, these concerns remain valid.	***

Draft 6 Comment: The elimination of Charter Chapter 9 relating to the Water Works results in the removal of various limitations on governmental authority relating to the Water Works, as well as, various powers. For example, Charter Chapter 9, Sections 3 and 4 require the City to assess the costs of water mains up to 6 inches in diameter and sewers up to 2 ft. in diameter and Section 5 requires the assessments for branch lines. The cost of watermains not assessed must be paid from the Water Works Fund. This is significant because it reflects an intention that the Fund, which is derived from water rents paid by consumers and bond proceeds, be used to pay for the water system, except a portion of the system is to be paid by the owners of benefited properties. Similarly the cost of sewers to the extent they exceed 2 ft. are to be paid from the general fund, and the remaining cost by the owner of benefited properties. Other significant provisions of Charter Chapter 9 eliminated from the Sixth Draft include the provision that the City need not make water and sewer connections beyond the front lot lines of properties; that all water rents (revenues) and bond proceeds of bonds issued for the water works be paid into the Water Works Fund; that general fund may be used to pay for repairs only if there are insufficient funds in the water Works Fund; that the owners of marsh or wetlands can be compelled to pay costs of sewers the Council requires to be extended onto their properties; that wetlands can be assessed the costs of such improvements as set forth in Charter Chapter 10, Sec. 8; that specified water and sewer projects can be constructed in advance of the receipt of assessment revenues. The above-mentioned requirements that ensure that the Water Works be accounted for as a utility separate for financial purposes from other City cost centers, is a restriction that cannot be guaranteed to continue if these provisions eliminated from the charter. Draft 9 Comment: Concur.	***

Draft 6 Comment: Charter Chapter 10, Sec. 27 provides for a "Permanent Improvement Revolving Fund" into which are paid the proceeds of bonds issued for the purpose of paying the assessed portion of the cost of local improvements (except watermains) in advance of the collection of the special assessments and the proceeds of the special assessment installments when paid. Only the assessed portion of the costs of local improvements must be paid from this fund. The Sixth Draft, does not make any reference to the "Permanent Improvement Revolving Fund". Draft 9 Comment: Concur. Draft 9 provides for a Permanent improvement fund. [718-723]. However, as noted in the annotation to the Fifth Draft for Charter Chapter 10, Section 27, "although there is some overlap between the Permanent Improvement Fund and the Revolving Fund, it is not clear that they are the same fund."	***

Draft 6 Comment: Section 5.1(a)(3) [226] of the Sixth Draft authorizes the City Council to create boards and commissions by ordinance. Sec. 5.3(f) [241-248] implies that the ordinance creating the board or commission can give it the power to pass ordinances or other legislative acts. This would be a significant change in the structure of City government. Draft 9 Comment: Concur. Under [226], a "board' includes "any other body that . . . an ordinance calls a 'board' or a 'commission' . . . ." Thus, a board can be called into existence by ordinance. The board would enjoy "all the powers for which this charter . . . or ordinance provides, including any power necessary and proper for exercising its enumerated powers or for performing its lawful functions." [250] This appears to include legislative powers. [243]	***
Draft 6 Comment: Sec. 5.4 (c) [254] would permit a board (including the City Council) to delegate its authority to a committee or officer under its direction. In our understanding, the current law is that an elected or political body may not delegate matters involving the exercise of their discretion. This provision is a significant departure from existing municipal law. Draft 9 Comment: Concur.	The point is well taken. The revision has been amended accordingly.

Draft 6 Comment: Sec 5.4(b)(1) [252] of the Sixth Draft makes employees hired in the "unclassified" service subject to Civil Service Rules. It is believed that this is a typographical error, which should be corrected to refer instead to the "classified" service. **Draft 9 Comment:** This issue has been resolved. [252] refers to the "classified" service.	Mr. Lane's analysis is correct. This issue has been resolved.

Draft 6 Comment: The Sixth Draft, Sec. 7.2, states that the Library Board ..."may act on the City's behalf and enjoys all the City's lawful powers, including eminent domain." [302] This language is a significant expansion of the Library Board's powers. The present Charter contains no power of eminent domain for the Board, nor is the Board authorized to exercise all lawful powers of a City. For example, the Board has no power to pass ordinances, sell bonds, or establish a police force. It is a Board of limited and specific powers. Sec. 7.2(a)(2) [303] of the Sixth Draft also adds the power, without regard to the Charter, to ["]exercise any power, right, or role for which the law provides in addition to those for which this charter provides.["] This is an expansion of power. Similarly, Section 7.2(b)(5) [310] provides that the Library board may "exercise any other lawful power that a municipal corporation enjoys at common law or by statute["] is an expansion of charter powers and a possible usurpation of the City Council's powers. As a general rule, if a general statute is in conflict with the Charter, the Charter prevails, unless the statute clearly expresses a legislative intent that the statute is to prevail. In the absence of any conflict, however, the Board would be entitled to avail itself of the powers in the general law without the necessity of a statement such as that in Sec. 7.2(a)(2) [303] entitled "Statutory powers." Draft 9 Comment: Concur. The provision discussed above as Section 7.2(b)(5) is now at 7.2(b)(6) [310] and has been modified: "exercise any other lawful power that a municipal corporation enjoys a common law or by general or special law." If anything, this is an even greater expansion of the Library Board's power. The provision discussed above as Section 7.2(a)(2) [303] has been retitled "Legislatively granted powers' in Draft 9.	The revision does not provide that the library board "is . . . authorized to exercise all lawful powers of a City." The revision provides only that the library board may exercise those powers for the limited purposes for which the charter provides: "The Board establishes, governs, administers, and maintains the City's libraries, museums, galleries, and reading rooms, *for which purpose* it may act on the City's behalf and enjoys all the City's lawful powers, including eminent domain. The Board may likewise design, develop, or improve any property under its control or acquired for its purposes." (Revision § 7.2(a)(1) (9th draft) (emphasis added).) This approach is consistent with the philosophy behind the independent boards, which essentially carves out certain municipal functions (libraries, parks, and taxation) from the City Council's general functions and assigns them to other publicly elected bodies with their own regulatory and taxing powers. This issue may be moot with respect to the library board because the legislature has merged the Minneapolis Public Library into the Hennepin County library system. *See* 2007 Minn. Laws ch. 121.

Draft 6 Comment: Section 7.2(f) [320-322] provides that the "Director" and "Librarians" are in the unclassified service. Chap. 19, Sec. 4, provides that the "Librarian" and "Assistants" are in the unclassified service. Although these terms may have specific meaning to the Library Department or Civil Service department, there is no charter definition of the terms "librarian" or "assistants." Draft 9 Comment: Concur. Charter Chapter 19, Section 4 as reported on the Municipal Code Corporation web service refers to "the director and librarians of the public library." However, according to the City Attorney's office, the City Attorney's opinion in Draft 6 is based on changes to this section which have apparently not yet been codified by that service.	*** This issue may be moot with respect to the library board because the legislature has merged the Minneapolis Public Library into the Hennepin County library system. *See* 2007 Minn. Laws ch. 121.
Draft 6 Comment: Section 7.2 [300 et seq.] of the Sixth Draft does not specify the terms of office of the library trustee elected by the City Council and the trustee appointed by the Mayor. The default provision would be Sec. 10.2(c), which appears to call for a two-year term unless otherwise specified. [534] This provision should be changed to specify the terms called for in Laws 1986, Ch. 433. Draft 9 Comment: Concur.	*** This issue may be moot with respect to the library board because the legislature has merged the Minneapolis Public Library into the Hennepin County library system. *See* 2007 Minn. Laws ch. 121.

Draft 6 Comment: Section 7.3(c) [335] provides that the Library Board fills vacancies in the office of the elected trustees. This is not in accordance with the current Charter Chapter 17, Sec. 3, which provides that if a vacancy occurs more than one year before the term expires, the office is to be filled at the next city election. (Under the present charter, there is a city election every 2 years, but only if there is an office to be filled. See Chap. 2, Sec. 4, of the present Charter.) Draft 9 Comment: Concur.	*** This issue may be moot with respect to the library board because the legislature has merged the Minneapolis Public Library into the Hennepin County library system. *See* 2007 Minn. Laws ch. 121.
Draft 6 Comment: Under the Sixth Draft, the City Council could absolve itself of its powers to act as a board of health under Minnesota Statutes, which do not mandate the City to create a Board of Health. It could appoint a separate board or commission to act or it could allow all of the functions of a health board to be performed by the County. If the Council decided to retain the powers of a Health Board or create a Board of Health, it would determine by ordinance the manner of appointment and qualifications of a commissioner of health. Under Section 10.5 [593] of the Sixth Draft, a chief health officer of the City would be in the unclassified service, i.e. not subject to Civil Service Commission rules. **Draft 9 Comment:** Concur. Charter Chapter 14, Section 1 mandates that "The Minneapolis City Council shall exercise all powers of the Board of Health . . . ."	***

Draft 6 Comment: Sections 8.2(a)(2) [354-357] and 8.2(b)(6) [366] of the Sixth Draft appear to expand the powers of the Park and Recreation Board in a similar manner to that of the Library Board, which is discussed above in the first paragraph under the heading Library Board. Draft 9 Comment: Concur.	Please see the response to the referenced analysis above.
Draft 6 Comment: The issues raised above under the heading "Boards in General" as to Sections 5.4(b)(1) and 5.4(c) also apply to the Park and Recreation Board. **Draft 9 Comment:** See above comments.	Please see the response to the referenced analysis above.
Draft 6 Comment: Please refer to the issue raised as to the Park and Recreation Board's borrowing power under the heading "Board of Estimate and Taxation."	Please see the response to the referenced analysis above.
Draft 6 Comment: Charter Chapter 13, Sec. 1, provides for 9 members, one of whom is elected by the City Council from among its members. In contrast, the Sixth Draft, Sec .9.2(e), [460-467] omits the City Council member. Draft 9 Comment: Concur.	***

Draft 6 Comment: Charter Chapter 13, Sec. 3, provides that the City Council may pass ordinances requiring the Planning Department to administer and enforce planning ordinances. In contrast, Sec. 9.2(e)(2) [468-472] authorizes the City Council to pass ordinances imposing additional duties upon the Planning Commission. Draft 9 Comment: Concur.	***

Draft 6 Comment: The Revised Charter eliminates certain required reviews and approvals of the Planning Commission set forth in Charter Chapter 13, Sec. 4-6 of the Charter, which include: (1) the requirement that the Commission approve public improvements before their construction is authorized by the City Council; (2) the required approval of building lot or street plans or plats, or re-plats of land before they can be publicly recorded and providing that the approval of the Commission is considered acceptance by the City of the dedications on the plat and disapproval constitutes rejection thereof; and (3) the provision that development district or redevelopment project proposals be first submitted to Planning Commission and Mayor for review, recommendation and comment before the City Council acts on them. **Draft 9 Comment:** The relevant provisions have apparently been modified in Draft 9 [474-478]. However, the issues raised above have not been completely addressed. Approval of Public Improvements. While the Charter makes it clear that if the Commission fails to submit its "reasons for disapproval to the City Council within thirty (30) days . . . said plan shall be deemed to be approved by the City Planning Commission . . . .", the draft leaves the rule subject to inference. Compare Charter Chapter 14, Section 4 with Draft 9 [475-478]. The Draft also eliminates the definition of the term "public improvements" in Section 4. Approval of Plans or Plats: [474] now deals with plats and plans. [474] extends the Planning Commission's authority to "any street or other realty in the City, intended for ~~the~~ dedication to public use or for the benefit of the fronting or adjacent property . . . ." The Charter's statement of scope is more detailed and it is uncertain what impact loss of this detail would have on the application of this provision. While the Charter makes it mandatory that covered "plans, plats or replats" must be	***

Draft 6 Comment: Under Charter Chapter 15, Sec. 9, a board or department of City government not controlled by the City Council may request the Board of Estimate and Taxation to issue and sell bonds for a municipal purpose. To make a request the governing body of the board or department must pass a resolution by a two-thirds vote of its membership. The City Council's concurrence also is required before the Board of Estimate and Taxation can act. The Sixth Draft, Section 11.4 [697 et seq.], on the other hand, does not permit bonds to be issued for a board unless the Charter vests borrowing power in that board. The problem is that the Charter vests very limited independent borrowing power in any of the boards. If they need to incur significant debt, they need to make the request to the Board of Estimate and Taxation. For example, the borrowing power of the Library Board is limited to indebtedness that becomes due in the same year in which the debt is issued and is payable out of the regular revenues of the Library Board for the same year (See: Charter Chapter 17, Sec.6). The other boards have similar restrictions. The Sixth Draft includes very limited borrowing power. For example, the Park and Recreation Board is limited to independently borrowing $35,000 over 50 years. (See: Sixth Draft, Section 8.5 [408]) **Draft 9 Comment:** This issue appears to have been resolved. Borrowing may be done only with the concurrence of the board in which "this charter vests the borrowing power." [701] Thus, any borrowing power would at least require board concurrence.	Mr. Lane's analysis is correct. This issue has been resolved.

Draft 6 Comment: The Sixth Draft also includes a significant change in the $15 Million limitation on the debt issued for a capital improvements. The limitation applies with respect to all debt of a capital improvement in all phases from inception to completion. (See: Charter Chapter 15, Sec. 9.) The Sixth Draft omits the language "in all phases from inception to completion." [710] Draft 9 Comment: Concur.	This point is well taken. The revision has been amended accordingly.
Draft 6 Comment: Chapter 19, Sec. 19, of the current Charter provides that each individual Civil Service Commissioner has the right to conduct investigations with regard to matters involving the Civil Service Chapter of the Charter, and each Commissioner may issue subpoenas, administer oaths and compel testimony and the production of books and documents. The Sixth Draft bestows these powers on the Commission in 10.5(e) [649], but not on the commissioners individually. Draft 9 Comment: Concur.	This point is well taken. The revision has been amended accordingly.

Draft 6 Comment: Charter Chapter 19, Sec. 19 provides that a person who falsifies an application for employment forfeits the right to hold a position in the "unclassified service" for three years, while the Sixth Draft Sec. 10.5((e)(3) [654-657] states that the person forfeits the right to hold employment in the classified service for three years. It is possible that the Sixth Draft states the proposition as it was intended in the current Charter, and that the current Charter reference to the "unclassified service" may be a typographical error. If not, this would constitute a charter change. **Draft 9 Comment:** Concur with the caveat that Charter section discussed is in Charter Chapter 19, Section 20.	Mr. Lane's analysis is correct. The Charter Commission believes that the current charter's reference to the "unclassified service" is a typographical error, since a reference to the "classified service" makes sense while a reference to the "unclassified service" does not.
Draft 6 Comment: Charter Chapter 19, Sec. 24, prohibits an officer or employee from discharging, promoting or demoting another employee or threatening to do so, for giving, withholding or neglecting to make political contributions or providing political services. The Sixth Draft omits this provision. Draft 9 Comment: Concur.	This provision will remain in force as an ordinance.

Draft 6 Comment: Charter Chapter 20, Section 1, of the current Charter continues in effect certain listed statutes, which applied to Minneapolis before the Charter was adopted. Charter Chapter 20, Sec. 2, provides that the City of Minneapolis, its boards and departments shall continue to possess, perform and enjoy all other rights, powers, duties, functions privileges and immunities held, possessed, performed, exercised or enjoyed by the City at the time of the adoption of the Charter. The Sixth Draft in Sec. 1.3(c) [9-13], preserves any special or other law conferring upon the City, or …any board, department, or officer for which it provides a right, or role in addition to those for which the charter or ordinance provides. However, Section 1.3(c) [9-13] also states that the Revised Charter supersedes special laws that are inconsistent with the Revised Charter. Therefore, it is not clear whether or not the intent of the Revised Charter is to supersede the laws specifically referenced in Chap. 20, Sec. 1. Draft 9 Comment: Concur.	The Charter Commission compiled all the listed laws in July 2003 as an appendix to the revision's second draft. The laws range from 88 to 118 years old. Each such law either is obsolete, or has been codified elsewhere.