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TO: Charter Revision Work Group Members

FROM: Dana Banwer, Assistant City Attorney

DATE: October 27, 2009

RE: Charter Revision – CPED/Planning

MEMORANDUM

Overview

The Charter Revision Work Group plan requires this office to review the proposed Charter revisions and provide an overview as to specific changes in the Charter that would affect various City departments. Among the changes in the proposed Charter revision are changes in how the Charter treats the Community Planning and Economic Development Department (CPED) and City planning function. This memorandum addresses impact of this proposal on the City and CPED/Planning.

Analysis

I. City Planning Department No Longer Exists

In 2003, the Minnesota Legislature passed a special law (Minn. Laws 2003, Ch 127), and approved by the City Council pursuant to Resolution 2003R-301, 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, the special law 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 the 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 (MCO §415.10, et seq.), the City established CPED on August 8, 2003 and transferred the City’s Planning Department and planning functions to CPED. 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.

The proposed Charter revision eliminates Chapter 13, Sec. 1A (Planning Director) 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. The ordinance also gave the director of CPED the power to exercise any authority granted by statute, charter or ordinance to the Planning Director. As such, the Planning Director now reports to and is appointed by the CPED director and is no longer subject to the appointment process contained in Chap. 3, Sec. 4 of the current Charter. Accordingly, there would be no need to remove the provision related to the Planning Director from the Charter to ordinance, unless it is drafted within the context of the CPED department ordinance.

II. CPED as a City Department

Neither CPED nor the director of CPED are specifically enumerated in the proposed Charter revision under Chapter 8, Sec. 8.2(a); however, subsection (9) of that section provides that the “City Council must establish, organize, and otherwise provide for . . . any other department necessary or convenient for the efficient delivery of municipal services.” Accordingly, in considering the proposed Charter revision, the City Council would have the option of specifically including the CPED director in §8.2(a), or it could establish CPED as a department under §8.2(9).

III. Planning Commission

The proposed Charter revision recommends that certain provisions related to the Planning Commission remain in the Charter, and that certain others provisions be removed to ordinance. Please see discussion below for the effect of removing Charter provisions to ordinance. In addition to the impact of removing provisions to ordinance, prior to adopting a new Charter and drafting new ordinances, these provisions must be thoroughly reviewed to replace references to the Planning Department with references to CPED, if necessary and appropriate.

Following is a side-by-side comparison of current Charter provisions related to the CPED Department and Planning functions compared with the proposed Charter revisions.¹

Current Charter Provision	Proposed Charter Revision
Chapter 13 City Planning Department	
<i>§ 1. City Planning Department—Commission and Membership</i>	
There shall be in the City of Minneapolis an executive department of the City to be known as the “City Planning Department,” which shall serve as the staff of a City planning commission consisting of nine (9) persons. One shall be the	[§ 8.2(e)] Planning commission. (1) Commission. The commission consists of— (A) the Mayor;

¹ Language appearing in italics is recommended for reclassification as an ordinance under the proposed Charter revision.



<p>Mayor; one shall be a person selected by the County Board of the County of Hennepin as its representative; the City Council, the School Board, and the Park Board shall each select one of its own members, as a member of the Commission, <i>in January of each evennumbered year</i>; and four (4) legal voters of the municipality not members of any of the above bodies or boards shall be appointed by the Mayor with the approval of the City Council. The first Library Board Representative shall be appointed for a one-year term commencing January, 1995, thereafter the Library Board Representative shall be appointed as are the other Representative Commission members. <i>Each year the Mayor shall appoint two (2) members to serve for terms of two (2) years each, commencing on the first day of February of the year of their appointment.</i> The terms of appointed members serving for terms to expire in July, 1978, and July 1979, shall each terminate on January 31, 1978, and the terms of members appointed for terms to expire in July 1980, and July 1981, shall each terminate on January 31, 1979. <i>Vacancies for any unexpired term shall be filled by appointments or selection as in the first instance.</i></p>	<p>(B) a representative from the board of county commissioners; (C) a commissioner elected by and from the City Council; (D) a commissioner elected by and from the Park & Recreation Board; (E) a director elected by and from the Minneapolis Public Schools board of education; and (F) four citizens who are not members of any board otherwise represented on the commission, appointed under section 9.4(b).</p>
<p><i>The members or the representative of a member of the Commission except those who are paid by the City or any other public body or agency for attending or serving on the Commission shall be paid for each official meeting attended such amount as the City Council shall establish from time to time by ordinance, with a limitation of one (1) meeting per day and four (4) meetings per month; the Commission may with the approval of the Mayor, employ engineers or other persons and incur such other expenses as are deemed necessary.</i></p>	
<p>The Commission shall make and alter rules and regulations for its own organization and procedure.</p>	<p>[§ 5.3(d)] Rules. Each board may adopt rules of order for the conduct of its own business.</p>
<p>It shall, not later than January 31st of each year, submit an annual report of its activities, plans, and proposals for future action. Said report shall be forwarded to the Mayor and, within fifteen (15) days of receipt thereof, transmitted by the Mayor to the City Council with the Mayor's comments and recommendations.</p>	<p>[§ 8.2(e)(3)] Annual report. The commission must annually report in January to the Mayor about its activities, plans, and recommendations. The Mayor must within 15 days transmit the report, together with his or her comments and recommendations, to the City Council.</p>
<p>§ 1A. Planning Director <i>The City Planning Department shall be administered by a planning director who shall perform such duties and functions as directed by the City Council and Mayor. The Planning Director shall be appointed and removed by the City Council and Mayor as provided for in Chapter 3, Section 4, of this Charter and may appoint a deputy planning director to assist the Planning Director and act as planning director in his or her absence or inability to act. The Planning Director and the Deputy Planning Director shall each serve at the pleasure of their respective appointing authority, and neither position shall be in the classified service nor subject to the provisions of Chapter 19 of this Charter.</i></p>	
<p>§ 2. Powers of Commission The city planning commission shall have power, except as</p>	<p>[§ 8.2(e)(2)] (2) Function. The commission must—</p>



<p>otherwise provided by law:</p> <ol style="list-style-type: none"> 1. To acquire or prepare a comprehensive city plan for the future physical development and improvement of the city, based primarily upon public utility, convenience and general welfare, which plan shall be known and designated as the official city plan. 2. To prepare and recommend to the proper officers of the municipality, specific plans for public improvements consistent with the comprehensive plan for the city. 3. To recommend to the City Council, ordinances regulating the height, location and ground areas of buildings and structures, and ordinances providing for the division of the city into districts or zones based upon the height, ground areas and use of all buildings and structures. 	<p>(A) prepare a comprehensive plan for the City’s physical development and improvement, with particular regard to public utility and convenience and the general welfare; (B) recommend to any appropriate board, department, or officer specific plans for public improvements, consistent with the comprehensive plan; (C) recommend to the City Council ordinances regulating the zoning of buildings and other structures with respect to their size, location, and use; and</p>
<p>§ 3. City Council May Grant Certain Powers The City Council may pass ordinances authorizing the city planning department to administer and enforce ordinances relative to city planning.</p>	<p>[§ 8.2(e)(2)(D)] perform any other duties for which an ordinance provides.</p>
<p>§ 4. Commission to Approve Public Improvements and Indebtedness for Same No public improvements shall be approved or authorized to be constructed in the City, nor indebtedness incurred therefor, until the location and design of the same have been approved by the City Planning Commission, provided in case of disapproval the Commission shall communicate its reason to the City Council, and the majority vote of such body shall be sufficient to overrule such disapproval. If the reasons for disapproval are not given to the City Council within thirty (30) days after the plans for the public improvements are submitted to the City Planning Commission, said plan shall be deemed to be approved by the City Planning Commission, provided, that the term “public improvements” shall include all paintings, mural decorations, stained glass, statues, bas-reliefs, or other sculptures, monuments, fountain arches, gates, gateways or other structures of permanent character intended for ornament or commemoration.</p>	<p>[§ 8.2(e)(5)] Public improvements. The City may not authorize or incur debt for any public improvement, including (but not limited to) any structure of permanent character intended for ornament or commemoration, unless— (A) the planning commission approves the location and design; (B) the commission, within 30 days after receiving a plan for a proposed improvement’s location and design, notifies the City Council of particular objections, and the Council approves over the commission’s objections; or (C) the commission does not notify the Council of particular objections within 30 days.</p>
<p>§ 5. Plans, Plats, Etc., to Be Submitted to Commission for Approval or Rejection</p>	
<p>All plans, plats or replats of land hereafter laid out in building lots and streets, alleys or other portions of the same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon, or adjacent thereto, and located within the city limits, shall be submitted to the City Planning Commission for its approval; and it shall be unlawful to receive or record such plans in any public office unless the same shall bear thereon by endorsement or otherwise, the approval of the City Planning Commission. The disapproval of such plan, plats or replats by the City Planning Commission shall be deemed a refusal by the City of the proposed dedication shown thereon. The approval of the Commission shall be deemed an acceptance by the City of the proposed dedication; but shall not impose any duty upon the City concerning the maintenance or improvements of any such dedicated parts, until the proper</p>	<p>[§ 8.2(e)(4)] Plans and plats. No public office may receive or record any plan, plat, or replat of any street or other realty in the City, intended for dedication to public use or for the benefit of the fronting or adjacent property, unless the planning commission has endorsed its approval on the plan, plat, or replat. The commission’s disapproval rejects, and its approval accepts, the proposed dedication on the City’s behalf. But accepting such a dedication does not subject the City to any duty to maintain the dedicated property until the City has entered, used, or improved upon it.</p>



authorities of the City shall have made actual appropriations of the same by entry, use or improvements.	
<i>The duty of the City Planning Commission in accepting or rejecting a plat shall be deemed legislative and discretionary and not administrative. The City Council by ordinance may direct that the City Planning Commission approve or reject all plans, plats, replats, applications for subdivision and variances from subdivision regulations, subject to the right of appeal to the City Council.</i>	[§ 8.2(e)(2)(D)] perform any other duties for which an ordinance provides.
§ 6. Proposals for Development Districts or Redevelopment Projects To Be Submitted to Planning Commission and Mayor	
<i>Any proposal that the City adopt or create any development district or similar redevelopment project shall first be submitted to the Planning Commission and to the Mayor for review. Within forty-five (45) days after the receipt of any such proposal, the Mayor and the Planning Commission shall each transmit the same to the City Council with their respective recommendations and comments. No development district or project shall be established, nor development program adopted, except by resolution of the City Council.</i>	
<i>The Planning Department shall plan and administer all existing and future development districts or similar redevelopment projects, and no transfer of such functions may be made except by resolution of the City Council.</i>	

IV. Removal of Charter Powers to Ordinance

Under the proposed Charter revision, portions of the Charter related to CPED/Planning will be removed to ordinance. This is in keeping with the philosophy of the Model Charter for Minnesota Cities, which, according to the comments, “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.”

Moving provisions to ordinance, however, results in a significant difference as to how easily those provisions may be altered. Amending a Charter provision requires either a 13-0 vote of the City Council or a majority popular vote in favor of a ballot questions. Amending an ordinance, however, requires only a majority vote of all Council Members present. Shifting the specific CPED/Planning provisions to ordinance will mean that those powers and duties can be much more easily changed, or even eliminated by the Council.

CONCLUSION

This memorandum exists only to provide a guide as to the suggested changes contained in the proposed Charter revision and to assist the Work Group in its discussion of those changes.





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