

Issues Identified During Charter Review Process

I. Inconsistencies

A. There are differences as to which department heads are mandated by the Charter as between the current Charter and the proposed Charter revision. The Council must decide which department heads, if any should be referenced in the revised Charter.

The following department heads or departments are either mandated in the current Charter, and/or are appointed through the “Executive Committee” process in Charter Chapter 3, section 4:

Current Charter

Police Chief

Fire Chief

Public Works Director

Health Commissioner

City Attorney

City Assessor

City Coordinator

Civil Service Commissioner

“Any officer in a department or agency who, by statute, Charter or ordinance, is appointed by the Mayor or City Council or by any public board the majority of whose members are members of the City Council”.

The following department heads and departments are either mandated in the proposed Charter revision and/or are appointed through the Executive Committee process:

Proposed Charter Revision

City Coordinator

City Clerk

City Assessor

Finance Officer

City Attorney

Civil Rights Department

Planning Commission

Purchasing Department

Police Chief¹

Fire Chief²

¹ The proposed Charter revision does not specifically list the police chief as one of the departments or department heads for which the “City Council must provide”, but that could be inferred from the fact that the Police Department is mentioned in the Article 8 of the proposed Charter revision, which mandates the creation of the other City departments listed above.

“Any other department necessary or convenient for the efficient delivery of municipal services”.

B. State Law Preempts Charter

There are certain Charter provisions (current Charter and proposed Charter revision) that may be preempted by state law. Additional research is needed to determine whether this is the case related to the following areas:

1. Both versions of Charter allow the Fire Marshal to inspect buildings, including dwellings, without a warrant, contrary to the U.S. Constitution and Minn. Stat. § 299F.08 (limits on authority of state fire marshal to enter premises without either administrative or criminal search warrant);

2. Both versions of the Charter specify that City Council may impose penalties for ordinance violations, include criminal penalties, when in fact, the courts impose penalties for all misdemeanor violations, whether ordinance or statute;

3. Charter Chapter 4, section 5 regulates the sale of liquor in the city. Minn. Stat. §410.121 provides that a charter provision prohibiting the sale of intoxicating liquor or wine in certain areas may not be amended or removed unless approved by at least 55% of the voters on a referendum. Since the proposed Charter revision contemplates moving this provision to ordinance, the Council would either need to put this language back into the Charter prior to adoption, or put the issue to the voters if the Council wishes to remove this language from the Charter;

4. The provision regarding probationary periods for City employees is preempted by Minnesota PELRA, under which the City has a mandatory duty to negotiate terms and conditions of employment. This provision should be eliminated from a revised Charter;

5. Designating the Park Board as a “body corporate and politic” effectively results in the City creating a separate unit of government, in violation of the Minnesota Constitution.

C. Other Provisions of Charter Inconsistent

1. The proposed Charter revision inadvertently omitted the provision contained in the current Charter (Chapter 2, sec. 2) that provides that all officers (elected and appointed) shall continue in office until their successors are elected or appointed and have been qualified. This provision needs to be reinserted into the proposed Charter revision to avoid any gap representation.

² See footnote 1.

2. The proposed Charter revision is confusing with respect to in which rule applies when hiring or promoting: the rule of 3 vs. rule of the list vs. the rule of 1.

II. Changes Identified by the Workgroup that would Significantly Alter How the City Functions:

While the drafters of the proposed Charter revision may not have intended to make significant changes to the City Charter that would alter the manner in which the City functions, our review of the proposed Charter revision found that some of the proposed changes may result in such changes as follows:

1. The proposed Charter revision designates the City of Minneapolis as a “body corporate and politic” as opposed to the current Charter’s designation of the City as a “municipal corporation”, which is the more widely used and commonly accepted term to denote a Charter city.

2. Since most of the provisions related to the Public Works Department are removed from Charter in favor of ordinances, the City can only conduct special assessments pursuant to Minn. Stat. § 429, rather than Charter. The City will be required to follow the procedures laid out in Minn. Stat. § 429, which requires additional hearings and notices, in some cases. In addition, should the state change its policies and procedures, the city would have to change as well;

3. The proposed Charter revision appears to significantly alter the way the City handles certain “unused funds” by requiring Public Works to transfer all unused funds to the City’s sinking fund, instead of the current practice whereby Public Works transfers funds between projects once a project is closed. This will likely cause difficulty for Public Works in balancing the City’s capital projects program;

4. By removing to ordinance Charter Chapter 16, sec. 15 (Park Board), the proposed Charter revision potentially results in a significant impact on the City’s ability to maintain its entire water and sewer network. This provision does not affect only Park Board property;

5. The proposed Charter revision expands the jurisdiction of the Executive Committee to include appointments to all of the boards and commissions to which appointments are routinely made by the Mayor and Council;

6. Under the proposed Charter revision, the City Council must prescribe the Executive Committee process by ordinance or resolution vs. the current Charter provision that says the Executive Committee establishes its own rules and procedures, and that further duties of the Executive Committee shall be only as prescribed by ordinance or City Council resolution;

7. Under the proposed Charter revision, if the City Council has not approved or rejected a candidate nominated by the Mayor and recommended for appointment by the Executive Committee by its first meeting held at least 60 days of the Mayor's nomination, the nominee is appointed;

8. Under proposed Charter revision, Mayor is required to "report" to the City Council annually on the state of the City vs. "address" the City Council as provided in the current Charter;

9. Under proposed Charter revision, the City Clerk is appointed pursuant to the Executive Committee process vs. "elected" by the City Council under the current Charter;

10. Unspent monies from the "civil service fund" need not be returned to the City's general fund at year's end under the proposed Charter revision;

11. Under proposed Charter revision, the Mayor's entire staff is in the unclassified services vs. only the Mayor's secretary in the current Charter;

12. Since the drafter used an old version of the Charter in drafting the proposed Charter revision, the composition of the Planning Commission is incorrect in that it only includes 9 members, instead of 10, and needs to be changed;

13. The proposed Charter revision converts the Park Board from a department of the City into a "body corporate and politic", placing the Park Board on equal footing with the City, and effectively resulting in the City creating a separate and independent unit of government. This is contrary to the Minnesota Constitution;

14. The proposed Charter revision appears to grant the Park Board additional powers, e.g., the right to sue and be sued, and all the powers of a municipality.

III. Changes Identified by the Workgroup that do not Significantly Alter the Manner in which the City Functions:

1. We must go back through the proposed Charter revision and make changes due to the drafter using the wrong version of the current Charter, resulting in outdated references such as the Planning Commission membership (Charter amended following transfer of Library Board to County) and "City Engineer" (now referred to as Director of Public Works);

2. Uniform use of titles, terms, etc. (“chief engineer” vs. “fire chief”, “city engineer” vs. “public works director”, etc.
3. Delete some of the 42 powers granted to the City by Charter, Chapter 4 that have been superseded, are obsolete, etc.
4. Define or redefine additional terms, including “chief executive officer” as applied to the Mayor, “acts of a legislative nature”, “officer”, and other terms;
5. Amend the language of proposed Charter revision regarding the prohibition against passing an ordinance at the same session of the Council at which it is introduced. The proposed Charter language appears to be permissive, rather than the restrictive language found in the current Charter;
6. Reinsert the term of the police chief’s appointment, as it is not stated in the proposed Charter revision;
7. Reinsert language regarding the term of a chief’s appointment if a new appointee is filling out the remainder of the former chief’s term;
8. Delete the provisions in the proposed Charter revision (also contained in the current Charter) related to Mayor’s power to appoint “temporary” and “special police”;
9. Delete the reference to the MPD Crime Prevention Bureau from the Charter (contained in current Charter and proposed Charter revision) because the Bureau no longer exists as contemplated by Charter, nor does the director of the Bureau have the same responsibility that the director had prior to decentralization to the precincts;
10. Eliminate reference(s) to the City Planning Department, as it no longer exists in the form contemplated by the Charter since the formation of CPED;
11. Clarify to whom the Mayor must return an action s/he has vetoed (currently it is City Clerk), to avoid confusion;
12. Clarify the scope of representation provided by the City Attorney to provide greater specificity regarding who the City Attorney represents, the exclusive nature of the City Attorney’s representation of the City and the City’s boards and commissions, and the prohibition against individual board and commission members accessing City Attorney advice, as opposed as through the chairs of the boards and commissions;

V. Changes Suggested during Charter Revision Workgroup & IGR Process:

1. Amend “holding over” concept to avoid the situation where a department head or other appointed person who is not reappointed continues to hold his/her office until a successor is appointed or until up to 6 months after the person’s term has expired, and/or insert provision making it easier to make an interim department head appointment;
2. Budget Office and Budget Director should report to Finance Officer, not the City Coordinator;
3. Change references to “Comptroller-Treasurer” and “Treasurer” to “Finance Officer” throughout Charter and ordinances;
4. Eliminate the requirement that City Council authorize employee payroll, in favor of the Finance Officer;
5. Change Fire Department Charter-mandated staffing to reflect reality, including “3 assistant chiefs of training”;
6. Change proposed Charter revision language that authorizes the fire chief to appoint a “deputy chief” vs. “deputy chiefs”;
7. Delete reference to MFD “fire police”, as the MFD has no such position;
8. Delete reference to MFD “double platoon” staffing system, as it is not the staffing system used by the MFD today;
9. Both current Charter and proposed Charter revision lack clarity regarding standard of cause necessary to remove officers other than Civil Service Commissioners (“cause”);
10. Insert language about what happens in the event the Mayor misses the April 1st deadline to establish the City’s goals and priorities;
11. Clarify the language related to the powers delegated to anyone who attends a board, committee, or other public body of which the Mayor is a member, by proxy;
12. Change or eliminate the requirement that “eligibility” lists are good for two years;
13. Replace the “Rule of 3” requirement with “rule of the list”;
14. Clarify/amend Charter language (current and proposed) regarding returning an appointee to his or her former civil services position if his or her

service as an appointed person is terminated for cause, misconduct, misfeasance, malfeasance, etc.

15. Eliminate or amend the Charter provision related to penalties for bribery, as it is inaccurate;

16. Eliminate certain provisions related to the Planning Commission that have never been complied with and/or used, including the requirement that the Commission submit an annual report each year, and the Commission's authority to "employ engineers or other persons and incur such other expenses as are deemed necessary";

17. Under the proposed Charter revision, the only reference to the Civil Rights Commission is changed to the Civil Right Department. While the ordinance establishing the Civil Rights Department specifies over whom the Civil Rights Department has jurisdiction, the Charter language should be clarified to avoid confusion.