

**Staff Report**  
**Re: Charter Department Heads and Stages of Employment**

**Direction**

At the Executive Committee meeting on January 9, 2008, the City Attorney's Office and Human Resources were directed to report back regarding the authority and processes to address personnel issues surrounding Charter department heads. They were also asked to identify gaps in those processes and to provide options for the Executive Committee to consider when dealing with personnel issues pertaining to charter department heads. Pursuant to the direction, staff reviewed the current processes and legal structure for the appointment, review and removal of department heads subject to its authority, and prepared this report for the Committee's review.

**Background Information**

The City of Minneapolis has language in a variety of locations that prescribes processes which enable the City to manage the "stages of employment" for a Charter department head. The model used by the City recognizes three stages of employment:

1. Hiring (recruitment, selection, nomination, appointment, approval)
2. Performance management (expectations, development, appraisal, corrective action/discipline, reward/recognition)
3. Departure (resignation, retirement, removal)

Charter language, ordinances and resolutions were drafted at different times for different purposes. Combined they create difficult management systems, particularly as they relate to performance evaluation, managing personnel-related issues or concerns, removal during term, removal at the end of term, and rights to return to a previously-held classified position. Additionally, it is unclear who is responsible for addressing performance-related concerns, if they arise.

This document identifies the existing legal requirements, policies or procedures relating to the three stages of employment and identifies the gaps that exist within this framework.

**1. HIRING**

**Nomination, Appointment and Approval**

The Minneapolis City Charter imposes a specific procedure for the appointment of charter department heads. The authority and process for the appointment and removal of most City department heads is set forth in Charter Chapter 3, Section 4 which states in relevant part:

Notwithstanding any other provision of this Charter or special law to the contrary, the executive committee shall have the exclusive power to appoint and remove during their terms of office the Police Chief, Fire Chief, Director of Public Works, Commissioner of Health, City Attorney,

City Assessor, City Coordinator, Civil Service Commissioner, and any office 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. An appointment or removal shall be effective only upon approval by action of the City Council taken in compliance with the requirements of Chapter 2, section 2, and Chapter 3, section 1 of this Charter. When considering an appointment or removal the executive committee shall follow procedures prescribed by ordinance or resolution of the City Council which may include provision for participation by members and committee of the City Council, but in the case of an appointment such procedures may not impose a limitation on the candidates to be considered by the executive committee.

Charter department heads are all appointed through the same process:

1. The Mayor nominates a candidate for appointment at an official meeting of the Executive Committee. Charter Chapter 3, Section 4.
2. If the Executive Committee appoints the Mayor's nominee (Charter Chapter 3, Section 4), the appointment is referred to a public hearing in the appropriate home committee. City Council Rules, Rule 19.
3. At a meeting of the home committee, the chair gives public notice that a public hearing will be held at an upcoming meeting of the committee. City Council Rules, Rule 19
4. The home committee holds a public hearing (City Council Rules, Rule 19) on the appointment and then refers the appointment to the City Council for approval. Charter Chapter 3, Section 4.
5. The City Council votes to approve the Executive Committee's appointment. Charter Chapter 3, Section 4. This vote requires an affirmative vote of the majority of all members of the City Council. Charter Chapter 4, Section 9.
6. Before the appointment is effective, the appointment action must be approved and signed by the Mayor (Charter Chapter 3, Section 1), published in Finance and Commerce (Minn. Stat § 331A.03), and the person appointed must be "qualified" which typically means officially sworn into the position. Charter Chapter 2, Section 2.
7. If after three nominations by the Mayor or if within 90 days after a position becomes vacant the Mayor has failed to gain an Executive Committee appointment and Council approval to fill the position, a majority of the Executive Committee may submit in writing to the Mayor a list of at least three qualified persons from which the Mayor shall nominate a person to fill the position. If that nomination fails City Council approval, the

Executive Committee may submit a new list of three qualified persons and the Mayor shall again nominate from such list, and these steps shall be repeated until a nomination results in an appointment and is approved by the Council. If the Mayor fails to nominate from a list of the Executive Committee within 20 days after receipt thereof, then a majority of the Executive Committee may appoint from such a list. Charter Chapter 3, Section 4.

The Director of the Department of Civil Rights and the Director of CPED are appointed through the same process as charter department heads, even though the Civil Rights department and CPED are established by ordinance (M.C.O § 141.80 and M.C.O § 415.10) and not by City Charter.

The appointment process for the police chief has additional steps. After the Mayor nominates a candidate for police chief, the Executive Committee, at least 10 days prior to an appointment, files with the City Clerk the names of all persons the Executive Committee is then considering for the appointment. After 10 days have lapsed from the filing of a list of all persons that the Executive Committee was considering for the appointment, if the Executive Committee appoints the Mayor's nominee, the appointment will be referred to a public hearing in the appropriate home committee. Charter Chapter 6, Section 1.

Recent processes leading to a mayoral nomination range from full-scale recruitment efforts involving search firms and large advisory committees to the Mayor identifying a potential candidate and then taking the necessary steps to present the candidate to council members to gain support for the nomination.

### **Selection and Recruitment**

The Mayor's office proactively follows these recommendations made by Human Resources before selecting a nominee for appointment.

- Verify with Human Resources the minimum job requirements for the position.
- Identify the key competencies (knowledge, skills, abilities, traits and characteristics) that are necessary for successfully leading a particular department.
- Identify the key challenges and opportunities facing the department and significant expectations of the position.
- Conduct interview(s) with the candidate(s) that are structured around the competencies, challenges, opportunities, and expectations, and assess the candidate's suitability for the position.
- Conduct background, reference, education, credit checks, and medical evaluations (if required) prior to making a nomination decision/job offer.
- If an internal candidate, check for prior and outstanding complaints and lawsuits and review prior performance appraisals.

- Conduct a management assessment on the finalist(s) and review results with the Mayor, City Coordinator, consulting firm, HR Director and Council President or committee chair
- Ensure that members of the Executive Committee and department home committee have enough information about the candidate (whether through documentation, meetings, etc.) so that they will be comfortable making an informed decision and the process can move smoothly with enough votes for approval.
- Once hired, a formal orientation process to the City of Minneapolis and the position take place.

## **2. PERFORMANCE MANAGEMENT**

### **Expectations and Development**

All activities in an organization that involve managing people on the job are “performance management” and usually take place between a supervisor and a direct report. The “performance appraisal” is only one part of the “performance management” process, but these terms are not interchangeable. Other examples of performance management include:

- Clarification of expectations, objectives, and goals
- Development of individual competencies, assignments & learning opportunities
- Ongoing performance discussions, celebrating successes, reinforcing effective behaviors
- Addressing performance issues and taking corrective actions
- Discipline

Over the past several years, the City of Minneapolis has implemented a number of performance management systems to clarify, measure and manage the work and expectations of city departments and department heads. The five-year business planning process provides the framework for departments to establish goals, objectives and tactics within the five-year financial direction. *Results Minneapolis* is a management approach Minneapolis city leaders use to encourage and monitor progress toward realizing the City’s recently adopted five-year goals and 20-year vision. The Coordinator’s office and Human Resources developed the following set of leadership characteristics, which were approved by the Executive Committee, that express the competencies the City expects of each department head.

- Leadership and Organizational Development
- Honoring and Respecting Diversity
- Human Resource Development and Management
- Customer and Partner Focus
- Strategic and Business Planning
- Information and Financial Analysis

- Performance Measures, Business Results and Financial Management
- Ethics and Integrity

All of these tools and systems inform the performance appraisal process.

### **Performance Appraisal**

The performance appraisal is the formal process of evaluating an employee's performance based on established expectations. The appraisal process documents how well an employee has achieved agreed upon goals and expectations during an established time period. Additionally, the performance appraisal is a time to develop an individual development plan for the future. .

In 2007, Executive Committee members agreed to implement a performance appraisal process focused on leadership development for charter department heads. The process includes a meeting between the Mayor, Council President or Vice President, the home committee chair, and the Charter department head to review and discuss the feedback the Charter department head received in a 360 degree evaluation. The 360 degree feedback tool is built on the set of aforementioned leadership characteristics and involves community stakeholders, employees, and peers in the evaluation of each charter department head. This process focuses on individual performance and provides a forum for open dialogue between parties who are most informed about that individual's performance. Because this performance appraisal process does not involve a committee of the City Council, the Minnesota Open Meeting Law is not implicated.

The City Charter, ordinances and resolutions do not specifically outline a process to be used in appraising performance of Charter department heads. Historically, it has been assumed that the Executive Committee has the authority to determine how Charter department heads will be evaluated since it is the appointing authority and the process has varied as elected officials and administrations change. The Charter Chapter 3, Section 4 provides that the Executive Committee shall establish its own rules and procedures and also provides further duties of the executive committee to be only as prescribed by ordinance or resolution of the City Council. Since there is no formal action by either the Council or Executive Committee regarding the process to be used in appraising performance, the role of the Executive Committee is unclear.

The City, as a policy matter, needs to decide if it wants to appraise the performance of Charter department heads. An argument can be made that since the Charter department heads are appointed for term, and because of the relative brevity of the term, that performance appraisals are not necessary and can be handled at the time of the reappointment process.

On the other hand, a well-defined process aligns and measures employee performance against the City's strategic vision, values and goals. Performance appraisals can also serve as an early-warning system for addressing performance concerns so they can be managed without resorting to corrective action.

## **Official Council Processes – Discipline**

The authority to discipline charter department heads is found in the City Charter, Council resolutions and Executive Committee rules. Charter Chapter 3, Section 4 allows the Executive Committee to suspend any officer appointed by it for a period not to exceed five working days at a time, and for longer periods with approval of the City Council. The Charter is silent with respect to the imposition of discipline other than a suspension. Further disciplinary authority is found in Resolution 85R-052, which was amended by Resolution 87R-364 and prescribes the procedures the Executive Committee shall follow regarding discipline in excess of five days and removal of a Charter department head:

- (b) Discipline and Removal. The Executive Committee shall follow the following procedure prior to submitting to the City Council for approval the discipline or removal of any officer it has appointed under this section:
  - (1) Investigate all relevant facts by examining documents, interviewing witnesses or reading their signed statements, and interviewing the officer.
  - (2) Prepare specific allegations of misconduct and list all rules, regulations, standards, or laws involved.
  - (3) Permit the officer involved a reasonable amount of time to review those allegations and to respond to them.
  - (4) Prepare and forward to the same City Council Committee that has been designated to consider the appointment of the officer written findings of fact and conclusions. That committee shall recommend its approval or disapproval to the City Council.

Rule 6 of the Executive Committee Rules, entitled “Discipline; Removal” substantially incorporates the language from Resolution 87R-364.

The performance management of the Police Chief and the Director of the Department of Civil Rights are complicated by other Charter provisions and ordinances. With respect to the Chief of Police, Charter, Chapter 6, Section 1 enumerates the powers of the Mayor over the Police Department. That section states in part:

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 in the provisions of the Civil Service Chapter of this Charter, and may make all mutual rules and regulations for the efficiency and discipline, and promulgate the enforcement of 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.

This Charter provision implies that the Mayor has the authority to discipline and supervise the Police Department including the Chief of Police. However, Charter, Chapter 6, Section 1 also has to be read in conjunction with Charter, Chapter 3, Section 4 which grants the Executive Committee the power to appoint and remove the Police Chief but also grants the Executive Committee the power to suspend without pay any officer appointed by it for a period not to exceed five working days. The control of the Mayor over the Police Chief is therefore subject to certain powers granted to the Executive Committee. The precise interplay between these two Charter provisions is not entirely clear and creates both legal and policy questions.

With respect to the Civil Rights Department, a similar situation occurs. Minneapolis Code of Ordinances Section 141.80 creates a “department of the City of Minneapolis which shall be known as the Department of Civil Rights, which department shall be under the direction of and responsible to the Mayor.” However, here too, the authority granted to the Mayor under the ordinance is constrained by the aforementioned language of Charter, Chapter 3, Section 4.

### **Impact of Open Meeting Laws on Discipline and Performance**

State law may have significant implications in any process involving discipline or the performance review of charter department heads. Minnesota’s Open Meeting Law generally provides that meetings in which public bodies transact business must be open to the public. This law poses a conflict with the Minnesota Government Data Practices Act which adopts a contrary presumption that personnel data is not accessible to the public. See, Minn. Stat. § 13.4 et. seq.

The Open Meeting Law distinguishes between disciplinary and performance issues. The law also lays out certain guidelines for a public body to consider regarding an individual subject to its authority. Disciplinary issues are addressed in Minn. Stat. 13D.05, subd. 2 entitled “When meetings must be closed” and which provides:

- (b) A public body shall close one or more meetings for preliminary consideration of allegations or charges against an individual subject to its authority. If the members conclude that discipline of any nature may be warranted as a result of those specific charges or allegations, further meetings or hearings relating to those specific charges or allegations held after that conclusion is reached must be open. A meeting must also be open at the request of the individual who is the subject of the meeting.

Performance issues are addressed in Minn. Stat. 13D.05, subd. 3 entitled “When meetings may be closed” and which provides:

- (a) A public body may close the meeting to evaluate the performance of an individual who is subject to its authority. The public body shall identify the individual to be evaluated prior to closing a meeting. At its next open meeting, the public body shall summarize its conclusions regarding the evaluation. A meeting must be open at the request of the individual who is the subject of the meeting.

The intersection of these laws and resolutions potentially creates a public and disruptive process for appraising, disciplining or removing an official during term. However, the current performance appraisal process described earlier does not implicate subdivision 3 because there is no meeting of the public body or any of its committees. A performance review process involving a committee of the City would require compliance with this subdivision.

### **3. DEPARTURE**

#### **Removal During Term**

Charter department head positions are key positions that require stability and continuity for the successful operation of City businesses. The Charter and the above-mentioned resolutions identify the process to be used by the Executive Committee and Council in the removal process. In addition to the language found in Charter Chapter 3, Section 4, (“the executive committee shall have the exclusive power to appoint and remove during their terms of office...”), language regarding the removal of officers is found in other sections of the Charter. For example Charter, Chapter 4, Section 4 provides:

The executive committee shall have power to remove from office any officer of the city appointed by it subject to the provisions of Chapter 3, section 4 of this Charter, except that members of the civil service commission may only be removed during their term for cause.

Specific language regarding the appointment or removal of the Chief of Police is found in Charter Chapter 6, Section 1. That section provides in relevant part:

The executive committee shall, by and with the consent of a majority of all of the members of the city council, appoint for a term of three (3) years commencing January 2, 1980, some suitable person as Chief of Police, subject to the removal upon the recommendation of the Executive Committee by a vote of a majority of all of the members of the city council.

Charter Chapter 2, Section 2 provides, in part, that “All officers shall ... unless in this Charter otherwise provided, hold their respective offices for the term of two years...”

These various Charter provisions have an internal conflict. Chapter 4, Section 4 states that members of the civil service commission can only be removed for cause and, if read in a vacuum, implies that a different standard would apply for other executive committee appointees or even that they are “at will” employees. However, Chapter 3, Section 4, Chapter 6, Section 1 and Chapter 2, Section 2 all state that the appointment is for a term. In effect, the term language in the Charter creates a contract whereby the term of employment is for a specific duration. The term language also likely creates a “property interest” in continued employment which would require cause (and satisfaction of the appointee’s due process rights) before removal. The tension between these provisions should be clarified, i.e., does the City want these appointees to be at will employees who can be removed at the discretion of the appointing authority or should they be removed only for cause.

This internal conflict is perpetuated by Council resolutions. As directed by Charter Chapter 3, Section 4, the City Council has prescribed certain procedures to be followed by the Executive Committee in the event of a removal of a department head. Resolution 85R-052 states in relevant part:

4. That the Executive Committee shall appoint and remove, with the approval of the City Council, the Police Chief, the Fire Chief, the City Engineer, the City Coordinator, the Commissioner of Health, the City Attorney, the City Assessor, and the Civil Service Commissioners. With the approval of the City Council, all City officers listed above can be removed at the pleasure of the appointing authority except the Civil Service Commissioners, who may be removed only during their term for “cause”. The City Council, by ordinance or resolution shall establish the procedure to be used by the Executive Committee when considering the appointment or removal of City officers. The procedure may not impose a limitation on the candidates to be considered by the Executive Committee.

Resolution 85R-052 was amended in 1987. Resolution 87R-364 states in relevant part:

Amending Resolution 85R-052 “Establishing Membership and duties of the Executive Committee”. The City Council of the City of Minneapolis do ordain as follows:

“That Section 4 of the above-entitled resolution be amended to read as follows:

4. That the Executive Committee shall appoint and remove, with the approval of the City Council, the Police Chief, the Fire Chief, the City Engineer, the City Coordinator, the Commissioner of Health, the City Attorney, the City Assessor, and the Civil Service Commissioners. With the approval of the City Council, all City officers listed above can be removed at the pleasure of the appointing authority except the Civil

Service Commissioners, who may be removed only during their term for “cause”. “

Both resolutions state that all executive committee appointees, other than civil service commissioners, can be removed at the pleasure of the appointing authority. This language is not found in the Charter, and based upon the above discussion is in conflict with the term language of a number of Charter provisions which would control.

The resolutions are also internally inconsistent. As discussed earlier, the resolutions detail a lengthy process to be followed before an appointee can be removed. The process described is consistent with the process commonly used in removal for cause situations and to satisfy due process. If appointees were truly serving at the pleasure of the executive committee, then the described process is unnecessary. The resolutions should be amended to bring them into conformity with the Charter. Under the Charter, the Executive Committee has the exclusive power to remove Charter department heads from their appointed positions during their terms of office. The removal is effective upon approval by City Council. In order to remove a Charter department head prior to the expiration of the term the Executive Committee would need “cause” to effectuate the removal.

In *State ex. rel. Hart, et al. v. Common Council of City of Duluth*, 53 Minn. 238, 244, 55 N.W.2d 118, 120 (1893), the Minnesota Supreme Court defined the meaning of “cause” in the context of an officer’s removal from office:

“Cause” or “sufficient cause,” means “legal cause,” and not any cause which the council may think sufficient. The cause must be one which specifically relates to and affects the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. The cause must be one touching the qualifications of the officer or his performance of its duties, showing that he is not a fit or proper person to hold the office. An attempt to remove an officer for any cause not affecting his competency or fitness would be an excess of power, and equivalent to an arbitrary removal. In the absence of any statutory specification the sufficiency of the cause should be determined with reference to the character of the office, and the qualifications necessary to fill it.

Under this definition it appears that the cause or reason for dismissal must relate to the manner in which the employee performs his duties, and the evidence showing the existence of reasons for dismissal must be substantial.

### **Removal at the end of Term**

Charter department heads, not including the Chief of Police, hold their respective offices for a period of two years from and after the first business day in January of even numbered years. Charter Chapter 2, Section 2. Two sections of the City Charter address charter department heads that remain in the position or “hold over” upon the

expiration of a term and when a position becomes “vacant” (and therefore able to be filled on a temporary basis while a search takes place).

Absent appointment of a new Charter department head, a Charter department head that has not been reappointed and approved by the City Council may remain in the position or “hold over” for up to six months after expiration of the term. Charter Chapter 2, Section 2 states:

All officers required to be appointed by the City Council shall, unless in this Charter otherwise provided, hold their respective offices for the term of two years from and after the first business day in January of even numbered years, and all officers elected by the people, or appointed by the City Council or otherwise *shall continue in office until their successors are elected or appointed and have qualified* (italics added).

Charter Chapter 3, Section 4 states:

A person holding an office or seat filled by appointment by the executive committee who has not been reappointed and approved by the City Council within six months after expiration of his or her term shall vacate the office or seat and shall remain vacant until a new appointment is made and confirmed. The executive committee may designate someone to fill the vacated office on a temporary basis for a period not to exceed ninety days.

Thus, if there is not a qualified candidate approved for appointment prior to the end of the incumbent’s term, the incumbent can remain in their office for up to six months or until a new appointment is confirmed.

The value of this holdover is that it allows for consistency during a search and transition process. However, this can make for a cumbersome and awkward process in situations where the Executive Committee wants the incumbent to vacate the position.

The Police Chief, Fire Chief and Director of Public Works have rights under the Charter to return to their previously-held classified position, if not reappointed. Others may have bump-back rights as prescribed by state law, contract Civil Service rules, and/or collective bargaining agreements.

### **Term or At-Will Employment**

The City Charter provides that Charter department heads are appointed for terms. However, Resolutions 85R-052 and 87R-364 suggest that Charter department heads are at-will appointments. The resolutions provide that Charter department heads can only “be removed at the pleasure of the appointing authority”. The resolutions therefore clearly conflict with the Charter which, in any event, preempts the resolutions. Additionally, an appointment for term by definition is not an at-will appointment. The severance pay ordinance more accurately reflects the intent of the Charter in that the severance pay ordinance distinguishes between term and at will employees. The severance pay ordinance requires that employment contracts, “except for those

employees who are appointed for a term” contain a provision that the employee is at will.

For the purpose of clarifying term versus at-will employment, either the two resolutions should be amended to bring them into conformity with the Charter or, if the City Council desires to have Charter department heads serve “at will” the Charter should be amended to remove the “term” language and to incorporate the “at will” language.

### **Severance Pay**

Appointed Charter department heads are also entitled to severance pay under certain circumstances. Minneapolis Code of Ordinances Section 20.455 governs appointed employees after January 1, 1999. In addition to provisions that Charter department heads be appointed for a term, their contracts include provisions for severance pay. Section 20.455 provides in relevant part:

The employment contract shall provide that if the employee is removed from the employee’s position, other than for malfeasance, misfeasance or nonfeasance in office, the employee shall receive a lump sum payment equal to fifty (50) percent of the employee’s annual salary. The payment of the severance pay is pursuant to Minnesota Statute Sections 465.72 and 465.722 and is conditioned upon the employee agreeing to release the city from any and all causes of action or claims the employee may have against the city and complying with all applicable notice, waiver and rescission provisions in federal and state law and is in addition to any contribution to the health care savings plan authorized by Section 22.440. ... Employees who elect not to execute a general release of causes of actions or claims have no right to any severance payment under this section.

Minneapolis Code of Ordinances Section 20.456 governs severance pay for those employees appointed beginning September 1, 2005. That section has different language regarding severance pay:

The employment contract shall provide that if the employee is removed from the employee’s position, other than for malfeasance, misfeasance, or nonfeasance in office during his/her first three (3) years, he/she shall receive a lump sum equal to six (6) months annual salary. The lump sum payment shall be reduced by one month for each additional year of service in the position beyond the third year with the minimum lump sum payment equal to three (3) month of the employee’s annual salary.

In addition, Section 20.456(c) provides:

If the executive committee does not intend to reappoint a department head who is appointed for a term, the executive committee shall provide notice of its decision to that department head [sic] at three (3) months prior to

the end of the department head's current term. If the executive committee fails to provide such notice, the department head shall receive, at the sole discretion of the executive committee, either an additional three months of severance pay or outplacement assistance in an amount equal to three (3) months of severance pay.

Severance pay may be denied in situations where the City can establish malfeasance, misfeasance and nonfeasance. The terms are used in a variety of context and are not susceptible of an exact definition. A survey of relevant case law in complementary statutory provisions, however, provides a general outline of how these concepts have been applied in Minnesota. Generally, if no definition for a term is provided, the correct strategy of interpretation is to begin with the presumption that the term does not have some specific or unique meaning but rather should invoke its common connotation. Black's Law Dictionary defines the terms as follows:

Malfeasance: A wrongful or unlawful act; especially wrongdoing or misconduct by a public official; (*mifseasance in office*).

Misfeasance in public office: The tort of excessive, malicious, or negligent exercise of statutory powers by a public officer. – Also termed *malfeasance*.

Misfeasance: 1. A lawful act performed in a wrongful manner. 2. More broadly, a transgression or trespass.

Nonfeasance: The failure to act when a duty to act existed.

In finding a public official or other public employee guilty of malfeasance, misfeasance or nonfeasance, some jurisdictions require an element of bad faith. Minnesota appears to be among the jurisdictions that require this element of culpable mental state in applying the basic definitions presented above. See *Jacobsen v. Nagel*, 96 N.W.2d 569 (Minn. 1959).

Charter department heads are eligible for one of two forms of severance pay (if they release the city from claims and are removed in good standing), but only if they finish their term (to include a holdover period, if applicable) or are replaced by a qualified candidate. The interpretation of the severance ordinance has been that if after receiving notice that they will not be reappointed a charter department head leaves the City before a replacement is selected, he/she is *not* eligible for severance pay – thus creating a disincentive to locate other employment before the end of the term or the holdover period.

## **Summary/Recommendations**

There are several opportunities for addressing and improving some of the gaps in the “stages of employment” for Charter department heads. Below are issues that could be

discussed and decided on by the Executive Committee. Where applicable there are staff recommendations at the end of each section.

## **1. HIRING**

Unless there is a desire to change the nomination and appointment process through the City Charter, no recommendations on this issue are made with this report.

The Mayor's office has already adopted model steps for selection and recruitment so no further recommendations are necessary.

## **2. PERFORMANCE MANAGEMENT**

Staff recommendations:

- The Executive Committee continue the practice adopted in 2007 in which the Mayor, Council President or Vice President, and the home committee chair conduct the performance appraisal of Charter department heads. At minimum the performance appraisal process should be conducted prior to the end of an incumbent's term (assuming term vs. at-will employment) to inform the re-appointment decision.
- The Executive Committee extends to the above group the authority to receive and address complaints against Charter department heads, except for the Chief of Police and Civil Rights Director, which can first go to the Mayor.

## **3. DEPARTURE**

Staff Recommendations:

- If the decision is to leave the term language for Charter department heads, the two resolutions should be amended to bring them into conformity with the Charter. Conversely, if the City Council desires to have charter department heads serve "at will" the Charter should be amended to remove the "term" language and to incorporate the "at will" language. If changes are made to Charter or ordinance, the impact of existing contracts with CDHs will need to be considered.
- The severance ordinance should be clarified so that a Charter department head may be eligible for severance pay after they are notified that they will not be reappointed and they depart before the end of their term or holdover period, regardless of when they leave.
- The Charter language regarding holdover periods should be revised to allow the appointing authority to decide if an incumbent's term will be extended instead of leaving that solely to the decision of the incumbent.