



Minneapolis  
City of Lakes

**Office of the City Attorney**

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TO: Chair Betsy Hodges and Members of the  
Intergovernmental Relations Committee

FROM: Dana Banwer, Assistant City Attorney

DATE: October 27, 2009

RE: Charter Revision – City Attorney’s Office

**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 Minneapolis City Attorney’s Office. This memorandum addresses the impact of this proposal on the City and the City Attorney’s Office.

**ANALYSIS**

**I. City Attorney’s Office Duties**

- A. Chapter 8, Section 8.2(a)(5) of the proposed Charter revision provides that the “city attorney, and legal department” is one of the departments that the City Council “must establish, organize, and otherwise provide for . . . a city attorney and legal department” by ordinance. Section 8.2(b) of the proposed Charter revision further provides that “the ordinance establishing each department must provide for an officer or a board as its head, for any other necessary officer, and for appropriate staff and other resources.” *See* p. 3.
- B. The proposed Charter provision related to the deputies (§ 8.2(c)), is essentially the same as in the current Charter provision; however, Chap. 3, Sec. 7 of the current Charter contains specific language about the City Attorney’s authority “by and with the consent of the City Council [to] appoint such other assistants and clerical force as may be necessary.” Neither this nor similar language is contained in the proposed Charter revision. Presumably, this authority will be restated in the ordinance establishing the City Attorney’s Office. *See* p. 3.



- C. The specific language contained in the current Charter stating that the “City Attorney shall personally, or by deputy or assistant designated by the City Attorney attend the stated and special meetings of the Council, and when requested, the meetings of the committees or any of the above named boards,” is not present in the proposed Charter revision. Despite removing this from the Charter, the City Attorney’s Office would retain the authority to continue its staffing of such meetings.
- D. The proposed Charter revision eliminates the language in the current Charter Chap. 3, Section 7 that provides “[t]he Deputy City Attorneys and assistants shall assist in the legal department of the city as the City Attorney may direct and indicate, and shall be under the City Attorney’s supervision and direction in the performance of their duties. The City Attorney shall designate a deputy to act as the City Attorney in the absence or inability of the City Attorney to act.” The proposed Charter revision proposes that this language be reclassified as an ordinance. See discussion below related to the effect of removal of Charter powers to ordinance. *See p. 4.*
- E. The language contained in the proposed Charter Revision related to the duties of the City Attorney’s Office to act as the legal advisor to the Mayor, City Council, its committees, and all other officers of the city and of the boards referenced in this section is less clear than the language contained in the current Charter. The proposed revision states: the City Attorney “must counsel each board, department, and officer, and deliver an opinion on any legal question from any such board, department, or officer, who must consult only the city attorney for any necessary legal advice”

The current Charter provides:

The City Attorney shall be the head of such legal department and shall have the control, supervision and direction of all matters of such department. The City Attorney shall be the legal advisor of the Mayor, City Council, its committees, and all other officers of the city and of the boards hereinabove named. The City Attorney shall, either personally or by such deputies or assistants as he or she may designate, render and perform all the legal services incident to the legal department, when required, furnish opinions on legal questions submitted to him or her by the Mayor and other officers, the City Council or its committees, or by any of the above named boards.

Charter Chap. 3, Sec. 7.

Additional current Charter language provides:

The above named boards shall in no case employ, retain or pay any attorney for legal services in their boards or departments, and it is hereby made a duty of said boards and each of them, whenever the advice, opinion or services of an attorney are required, to call upon the City Attorney for such advice, opinion or services, and the same shall be given by the City Attorney or by an assistant designated by the City Attorney.

Charter Chap. 3, Sec. 7.

The proposed Charter revision language is less clear than the current charter with respect to the scope of representation by the City Attorney. The proposed Charter revision states that the City Attorney “must counsel each board, department, and officer...” (§8.2(c)). The current Charter states that “the City Attorney shall be the legal advisor of the Mayor, City Council, its committees, and all other officers of the City and of the City’s boards...”

The proposed revision language is also arguably less clear in stating that the City Attorney is the sole counsel for the City and that the City’s boards and commissions have no authority to hire their own counsel. The current Charter states that in “no case” shall the boards “retain or employ any attorney for legal services” and must “call upon” the City Attorney for legal counsel and advice. The proposed Charter revision states that they “must consult only the City Attorney for any necessary legal advice.” (§8.2(c)(1)(B)).

In addition, given that the definition of “officers” found in the proposed Charter revision includes “each board’s members and officers for which this charter or a general law, special law, or ordinance provides,” (§ 9.1(a)(2)),<sup>1</sup> the proposed Charter revision language appears to authorize individual board and commission members to seek opinions from the City Attorney. The current Charter requires the City Attorney to provide legal opinions when requested by the boards and commissions, but not in response to requests by single members of such boards and commissions through their chairs. *See pp. 4-5.*

Following is a side-by-side comparison of current Charter provisions related to the Minneapolis City Attorney’s Office compared with the proposed Charter revisions.<sup>2</sup>

Current Charter Provision	Proposed Charter Revision
<b>Chapter 3</b> <b>Powers and Duties of Officers</b>	
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, City Engineer, Commissioner of Health, City Attorney, City Assessor, City Coordinator, Civil Service Commissioner, and 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. 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	[§ 9.4(b)] <b>Appointment by Mayor or Council.</b> 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 whose membership mostly consists of Council members, or by any combination of them, and does not explicitly override this section 9.4(b), then the appointment is vested collectively in the Mayor, Executive Committee, and Council as this section provides. The Council may prescribe the Executive Committee’s process, and may require consultation with any interested Council committee or member, but may not limit the candidates that the Mayor may nominate or the

<sup>1</sup> The current Charter does not contain a definition of the word “officer.” The proposed Charter revision contains a definition that appears broader than the use of the term in the current Charter. The City Attorney’s Office has not yet undertaken an analysis of the proposed Charter revision with respect to this broader use of the term “officer” and any substantive impact that might have.

<sup>2</sup> Anything appearing in italics is recommended for reclassification as an ordinance under the proposed Charter revision.



Chapter 3, section 1 of this Charter.	<p>Committee may review. This section 9.4(b) does not apply to any appointment for which another provision within this charter provides unless the other provision explicitly refers to this section.</p> <p>(1) <b>Nomination by Mayor.</b> The Mayor enjoys the exclusive power of nominating the officer in the first instance.</p> <p>(2) <b>Recommendation by Executive Committee.</b> The Executive Committee must review the Mayor’s nomination, which it may forward to the City Council with recommendation that the candidate be appointed.</p> <p>(3) <b>Appointment by City Council.</b> The City Council may appoint a candidate that the Executive Committee has recommended. The Council may not appoint a candidate that the Executive Committee has not recommended. If the Council does not accept or reject a recommendation by its first meeting held at least 60 days after the Mayor’s nomination, then the nominee is appointed.</p>
	<p>[§ 9.4(b)(6)]</p> <p><b>Removal.</b> The City Council may not remove an officer appointed under this section 9.4(b) unless the Executive Committee so recommends, and may not remove a Civil Service commissioner except for cause.</p>
<p><b>§ 7. City Attorney—Appointment—Powers and Duties</b></p>	
<p>The City Council shall at the time and in the manner specified in this chapter for the appointment of other city officers elect and appoint a City Attorney.</p>	<p>[§ 8.2(a)]</p> <p><b>The departments generally.</b> The City Council must establish, organize, and otherwise provide for—</p> <p>....</p> <p>(5) a city attorney and legal department;</p> <p>[§ 8.2 (b)] <b>Departmental organization.</b> The ordinance establishing each department must provide for an officer or a board as its head, for any other necessary officer, and for appropriate staff and other resources. . . .</p>
<p>The City Attorney may appoint two Deputy City Attorneys, who shall be in the unclassified service, and the City Attorney may, by and with the consent of the City Council, appoint such other assistants and clerical force as may be necessary. Deputy City Attorneys shall have the same employee benefits, except as to appointment and removal, as persons in the classified service and any person appointed as a deputy who has a permanent civil service classification shall be deemed to be on leave of absence from such classified position while serving in such appointive position and upon termination of such service shall be returned to the permanent civil service classification from which such leave was taken and if no vacancy is available in such civil service classified position, seniority shall prevail and the person most recently certified to such position shall be returned to the civil service classification held by that person prior to such certification.</p>	<p>[§ 8.2(c)]</p> <p>(2) <b>Deputy city attorneys.</b> The city attorney may appoint two deputies, who serve in the unclassified service, but with the same employee benefits (except as to hiring and removal) as an officer in the classified service. If a deputy is appointed from the classified service, then he or she is treated as taking a leave of absence while serving as a deputy, after which he or she is entitled to return to his or her permanent grade in the classified service. If no vacancy is available in that grade, then the least senior employee so classified returns to his or her grade before being so classified.</p> <p>[§ 8.2]</p> <p>(a) <b>The departments generally.</b> The City Council must establish, organize, and otherwise provide for—</p> <p>....</p> <p>(5) a city attorney and legal department;</p>
<p>The City Attorney, the City Attorney’s deputies and assistants shall constitute the legal department of the City of Minneapolis, and shall have charge of all legal matters connected with the</p>	<p>[§ 8.2(c)]</p> <p><b>City attorney.</b></p> <p>(1) <b>Function.</b> Except as this charter otherwise provides, the city</p>



<p>city government and all the several heads and departments of the same, and of the several boards of said city which now exist or are hereafter established in connection with the city government. The City Attorney shall be the head of such legal department and shall have the control, supervision and direction of all matters of such department. The City Attorney shall be the legal advisor of the Mayor, City Council, its committees, and all other officers of the city and of the boards hereinabove named. The City Attorney shall, either personally or by such deputies or assistants as he or she may designate, render and perform all the legal services incident to the legal department, when required, furnish opinions on legal questions submitted to him or her by the Mayor and other officers, the City Council or its committees, or by any of the above named boards. The City Attorney shall personally, or by deputy or assistant designated by the City Attorney attend the stated and special meetings of the Council, and when requested, the meetings of the committees or any of the above named boards.</p>	<p>attorney and the legal department under his or her direction— (A) have full charge of all legal matters in connection with the City’s government; and (B) must counsel each board, department, and officer, and deliver an opinion on any legal question from any such board, department, or officer, who must consult only the city attorney for any necessary legal advice.</p>
<p>The Deputy City Attorneys and assistants shall assist in the legal department of the city as the City Attorney may direct and indicate, and shall be under the City Attorney’s supervision and direction in the performance of their duties. The City Attorney shall designate a deputy to act as the City Attorney in the absence or inability of the City Attorney to act.</p>	
<p>The above named boards shall in no case employ, retain or pay any attorney for legal services in their boards or departments, and it is hereby made the duty of said boards and each of them, whenever the advice, opinion or services of an attorney are required, to call upon the City Attorney for such advice, opinion or services, and the same shall be given by the City Attorney or by an assistant designated by the City Attorney.</p>	<p>[§ 8.2(c)(1)(B)] who must consult only the city attorney for any necessary legal advice</p>
<p>Provided, that the provisions of this section shall not apply to the Board of Park Commissioners of the City of Minneapolis.</p>	<p>[§ 7.3(e)] <b>Attorney.</b> The Board may appoint its own attorney at law.</p>

## II. Removal of Charter Powers to Ordinance

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”, several current Charter provisions are recommended for removal to ordinance. Moving provisions to ordinance 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 City Attorney’s Office 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 is provided as 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.

