



## **MEMORANDUM**

### **OVERVIEW**

The Charter Revision workgroup 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 Board of Health. With the exception of one current Charter provision (Chapter 14, Sec. 6, related to chief of police public health duties), the remainder of the current Charter provisions related to the Board of Health are eliminated from the Charter, and placed into ordinance, in the proposed Charter revision. This memorandum addresses impact of this proposal on the City.

### **ANALYSIS**

#### **Chapter 14, Section 1 - Generally**

Chapter 14, Section 1 of the current Charter states that the City Council shall exercise all powers of the Board of Health as provided by Minn. Stat. §145A, and those powers enumerated in this chapter. Article IV, Sec. 4.1(c) of the proposed Charter revision states that where the law provides for municipal action through a board, and this Charter does not reserve that authority to a board other than the City Council, the City Council must either itself serve as the board for which the law provides, or provide by ordinance for the board whose membership may partly or wholly consist of City Council members. The language of the current Charter and the proposed Charter revision appears to be different, and the proposed Charter revision appears to expand the options available to the City Council with regard to how it can provide for the operation and administration of the Board of Health. The language of Art. IV, Sec. 4.1(c) of the proposed Charter revision suggests that the City Council can either serve as the Board of Health itself, or, by ordinance, create a separate Board of Health. It is unclear if a Board of Health brought into existence by

ordinance pursuant to Art. IV, Sec. 4.1(c) of the proposed Charter revision would be governed by Art. IV, Sec. 4.1(c) of the proposed Charter revision, or if it would be governed by the ordinance that created it.

Chapter 14, Section 1 of the current Charter requires the City Council to exercise all powers of a board of health pursuant to Minn. Stat. §145A (2008), which prescribes the various duties and powers of a board of health. Chap. 14, Sec. 1 of the current Charter further requires the City Council as board of health to perform and exercise additional powers. The elimination of Chapter 14, Sec. 1 of the current Charter and other sections of Chapter 14 relieves and absolves the City Council of the responsibility and duty to exercise such powers. It may or may not act as a board of health or create a board of health. Under Minn. Stat. §145A.03, subd. 1(b) (2008), the City would have the option of asking the County to take all responsibility for the board of health. This is not permitted under the current Charter.

### **Chapter 14, Section 2 – General Powers Granted to City Council**

Chapter 14, Section 2 of the current Charter requires the City Council to have and exercise the supervision and administrative control of all activities and agencies carried on and maintained by the City for health-related matters and for the care, management and operation of City hospitals, dispensaries and clinics and furnishing of medical and dental service to persons of low income. The elimination of Chapter 14, Sec. 2 of the current Charter relieves the City Council of these duties. Although the City Council could still act and assume responsibility by ordinance to the extent that a board of health can act under Minn. Stat. §145A (2008), such decisions would be subject to change from time to time by ordinance. Conversely, pursuant to Minn. Stat. §145A.03, the City could ask the County or a joint powers board to undertake the responsibilities of a board of health for the City's jurisdiction.

### **Chapter 14, Section 3 – Special Powers and Duties of City Council**

Chapter 14, Section 3 of the current Charter grants to the City Council as a board of health various special powers and duties. As a result of the elimination of Chapter 14, Sec. 3 of the current Charter, if the City Council acts as or establishes a board of health, then Minn. Stat. §145A.04 (2008) would appear to provide the duties and powers. A comprehensive comparison of the provision of this section of the current Charter and this statute is needed in order to determine in what respects they may differ. However, the current Charter appears to include powers not found in the statute.

### **Chapter 14, Section 4 – Orders, Rules and Regulations to Be Issued**

The proposed Charter provision does not specifically provide for the power to enact ordinances for the preservation of public health and relief of those who are of low income, indigent, or aged. Art. I, Sec. 1.4 of the proposed Charter revision does however allow the City to exercise any power that a municipal corporation can lawfully exercise. As a rule, cities have those powers specified in their charter, state statutes, or those which are necessarily implied from the expressed powers, or those incidental powers necessary to the exercise of the express powers. Without Chapter 14, Section 4 of the current Charter, the City would look to the provisions enacted for statutory cities, and in particular, to Minn. Stat. §412.221, subd. 22 and 23 (2008) for its powers relating to the enactment of ordinances, rules and regulations related to public health. Those powers, however, are limited powers. It has not been determined whether there are any parallel statutory provisions empowering cities to provide aid to the aged and indigent.

**Chapter 14, Section 5 – Expenses to Be Paid for Quarantine**

Minn. Stat. §145A.04, subd. 9 (2008) authorizes a board of health to seek injunctive relief in court to enjoin a public health nuisance or the failure to act. Subdivision 6 provides that a board of health shall obey the instructions of the State Commissioner of Health on the control of communicable diseases. Minn. Stat. §145A.08 provides that a person who has or whose dependent or spouse has a communicable disease that is subject to control by the board of health is financially liable to the unit or agency of government that paid for the cost of care to control the disease under Minn. Stat. §145A.04, subd. 6. Minn. Rules, 4605.7400, provides in effect, that attending physicians are required to isolate persons who cause the spread of disease. As a result of the elimination of Chapter 14, Sec. 5 of the current Charter, if the City Council acts as or establishes a board of health, then Minn. Stat. §145A.04 (2008) would appear to provide the duties and powers related to expenses associated with the quarantine of persons with communicable diseases.

**Chapter 14, Section 6 – Duty of Police Department**

Article VIII, Sec. 8.3 of the proposed Charter revision provides that the Mayor regulates and commands the Police Department. However, Section 8.3(a)(1)(D) of the proposed Charter revision (currently Chapter 14, Sec. 6) provides that the Police Chief must obey the City Council’s orders regarding health matters. While these provisions may be in conflict and could cause confusion about whose direction the police chief must follow, the current Charter is worded substantially the same and has not led to confusion.

**Chapter 14, Section 8 – Officers to Be Appointed**

Under the proposed Charter revision, if the City decided to act as a board of health or designate a board of health, the City Council would determine pursuant to Art. IV, Sec. 4.1(c) whether to establish the office of commissioner of health, what other officers to appoint and whether they would be in the classified or unclassified service. Pursuant to Minn. Stat. §145A.04 (2008), a board of health can employ or contract with a medical consultant (as defined in Minn. Stat. §145A.02 (2008)) to provide medical advice. Under Article IX, Section 9.5 (b)(1)(F), the chief health officer would be in the unclassified service.

Following is a side-by-side comparison of current Charter provisions related to the Board of Health compared with the proposed Charter revisions.<sup>1</sup>

<b>Current Charter Provision</b>	<b>Proposed Charter Revision</b>
<p><i>§ 1. Generally</i>  <i>The Minneapolis City Council shall exercise all powers of the Board of Health as provided by Minnesota Statute Chapter 145A, and those powers enumerated in this chapter.</i></p>	<p>[§ 4.1(c)]  <b>Council as statutory board.</b>            (1) <b>Generally.</b> Where the law provides for municipal action through a board, and this charter does not reserve that authority to a board other than the Council, the Council must either—            (A) itself serve as the board for which the law provides, even if the board is a statutory rather than a municipal agency; or</p>
<p><i>§ 2. General Powers Granted to City Council</i>  <i>The City Council hereby created shall have and exercise general supervision and administrative control of all activities and agencies carried on and maintained by the city for:</i>            (1) <i>The promotion and preservation of health, and the</i></p>	

<sup>1</sup> Anything appearing in italics is recommended for reclassification as an ordinance under the proposed Charter revision.



<p><i>prevention and suppression of disease in the city;</i>  <i>(2) The care, conduct, management and operation of all hospitals, dispensaries, and clinics maintained by the city and the furnishing by the city of medical and dental service to the low income;</i>  <i>(3) Provided nothing herein contained shall be construed as limiting the present power of the Board of Education of the city to provide for the promotion of health of the public school children.</i></p>	
<p><b>§ 3. Special Powers and Duties of City Council</b></p>	
<p><i>In addition to the general powers herein granted the Board of Health shall have the following powers and duties:</i></p>	
<p><i>(a) To enforce all sanitary and public health laws of the State of Minnesota applicable to the City of Minneapolis, the provisions of this Charter and all city ordinances relating to the sanitary regulations of the city.</i></p>	
<p><i>(b) To make rules and ordinances as may seem necessary and proper for the purpose of compelling all physicians practicing within the limits of the City of Minneapolis to make reports of all cases of contagious diseases upon which they may be in attendance, and all keepers of boarding or lodging houses, and all innkeepers and hotel keepers to make reports of all cases of contagious diseases occurring within their respective houses and generally to make such rules and regulations as the City Council may deem necessary to carry into effect the provisions of this section. (c) To take such measures as the City Council may in good faith declare the public safety and health to demand in case of pestilential or epidemic diseases or all danger from anticipated or impending pestilences or diseases or in case the sanitary conditions of the city shall be of such a character as to warrant it. (d) To direct the Commissioner of Health or Director of Operations and Regulatory Services to inspect any part of the city which from its location or from any collateral circumstances may be deemed the cause of diseases and in all cases where the Commissioner or Director may discover any agent the existence of which will prove dangerous to the health of the city and there is no ordinance competent to the correction of the evil, the Commissioner or Director shall immediately report the same to the City Council accompanied with the Commissioner's or Director's opinion of the necessity of extraordinary or particular action.</i></p>	
<p><i>(e) To cause all nuisances in the city to be abated with reasonable promptness, and for such purposes the City Council and its officers and employees shall be permitted and are hereby authorized, at all reasonable times, to enter upon or into any premises, house or other building or structure in the city and make all necessary examinations to determine the sanitary conditions thereof, and to cause any and all nuisances existing there to be forthwith removed and abated, after giving notice to the owner, agent or occupant of such premises, house or other building or structure as herein provided. The notice to abate any such nuisance shall be served personally upon the owner, agent or occupant of the premises, house or other building or</i></p>	



<p><i>structure in or upon which said nuisance exists in all cases where such owner, agent or occupant can be readily ascertained and found in the city. Such notice may be served by mail in all cases where such owner, agent or occupant is not in the city or cannot be found therein and the post office address of the person is unknown. It may likewise be served by posting and keeping posted for 24 hours, a copy of such notice upon the premises, house, building or other structure in or upon which any such nuisance exists whenever the owner or agent thereof is not known or cannot be found, and the post office address of the person is unknown. If such nuisance is not abated within a reasonable time after the service or posting of said notice, such reasonable time to be stated in such notice, such nuisance may be abated by or under the direction of said City Council and the cost of such abatement may in the first instance be paid from any funds under the control of the City Council. The cost of the abatement of any such nuisance paid by the City Council and not reimbursed by the owner, occupant or agent, shall be reported to the City Council, and the City Council shall assess and levy, and cause to be collected, the amount of such cost as a special assessment upon and against the premises and property upon which such nuisance existed, in like manner as other special assessments, payable in one sum, and assessed, levied and collected in the city. Such assessments, when collected shall be paid over by the County Treasurer to the City Finance Officer of the city.</i></p>	
<p><i>(f) To authorize at all reasonable times the Director of Operations and Regulatory Services or any inspector to enter into any house, store, or other building, and to cause the opening of the floor, if the Director or inspector should deem it necessary, in order to have a thorough examination of cellars, vaults, sinks or drains, and to cause all privies to be cleaned and kept in good condition, and to cause all dead animals, or nauseous or unwholesome things or substances to be buried, or removed, or disposed of as the City Council may direct.</i></p>	
<p><i>(g) To select, purchase, lease and establish such sites, places and boundaries for quarantine stations and purposes and erect from time to time such buildings and hospitals upon such sites and places and to keep the same in repair as in the judgment of the City Council may be deemed necessary.</i></p>	
<p><i>(h) To order or cause any excavation, erection, vehicle, vessel, watercraft, room, building, place, sewer, pipe, passage, premises, ground, matter or thing in the City of Minneapolis, regarded by said City Council as in a condition dangerous or detrimental to life or health, to be purified, cleansed, disinfected, altered or improved, and may also order any substance, matter or thing being or left in any street, alley, water, excavation, building, erection, place or grounds (whether such place where the same may be is private or public) and which said City Council may regard dangerous or detrimental to life or health, to be speedily removed, and may designate or provide a place to which the same shall be removed, when no such adequate or proper place, in the</i></p>	



<p><i>judgment of said City Council is already provided.</i></p>	
<p><i>(i) To aid in the enforcement of, and, as far as practicable, to enforce all laws to this state applicable within the limits of the City of Minneapolis, to the preservation of human life or to the care, promotion or protection of health; and said City Council may exercise the authority given by the laws aforesaid, to enable them to discharge the duties herein imposed; and this section is intended to include all laws relative to cleanliness, and to the use or sale of poisonous, unwholesome, deleterious or adulterated drugs, medicines or foods. And said City Council is authorized to require reports and information at such times and of such facts, and generally of such nature and extent relating to the safety of life and the promotion of health, as its rules may provide, from all dispensaries, hospitals, asylums, infirmaries, prisons and schools from the managers, principals and officers thereof; and from all other institutions, their officers and managers, and from the proprietors, managers, lessees and occupants of all theaters and other places of public resort or amusement in said city; and it is hereby made the duty of the officers, institutions and persons so called on or referred to promptly to</i></p>	
<p><b>§ 4. Orders, Rules and Regulations to Be Issued</b>  <i>The City Council shall have authority to issue orders, adopt rules and regulations and pass ordinances for the promotion and preservation of public health and the relief of the low income, aged and indigent in the city, and for the management of the institutions under its care and control.</i></p>	
<p><b>5. Expenses to Be Paid for Quarantine</b>  <i>When practicable, each person taken into quarantine or stations and receiving the aid and care afforded thereby shall pay a sum of money sufficient to meet all expenses, labor and care incurred in that person's behalf, which money shall be faithfully kept, reported and accounted for by physicians, health officers or other persons in charge of said quarantine or station.</i></p>	
<p><b>§ 6. Duty of Police Department</b>  It shall be the duty of the Chief of Police to cause to be executed all orders of the City Council so far as they may relate to the preservation of the health of the city whenever requested to do so to the City Council, and the Police Officers of the City of Minneapolis shall promptly report to the City Council any violation of the rules that may become known to them while on duty.</p>	<p>[§ 8.3(a)(1)(D)]  <b>Public health.</b> The chief must execute the City Council's orders relating to the preservation of health.</p>
<p><b>7. Penalty for Violation of Ordinances and Rules</b>  <i>Any person who shall fail or neglect to comply with any clause, provision, requirement, duty or orders, or who shall interfere with or in any manner resist any officer or agent of the City of Minneapolis, in the discharge of such officer's or agent's duty, as herein contemplated, or who shall commit any such breach of peace or be guilty of any act or thing calculated to defeat or interfere with the carrying into effect of any part of this act, or any regulation or order of said City Council or ordinance of said city in relation to the public health shall, upon arrest and</i></p>	



<p><i>conviction by the District Court of the County of Hennepin, be subject to a fine of not to exceed the maximum fine as provided by Minnesota Statutes, Section 609.033, as amended, for each offense, together with costs of prosecution.</i></p>	
<p><b>§ 8. Officers to Be Appointed</b></p>	
<p><i>The Commissioner of Health shall be appointed as provided in Chapter 3 Section 4 of this Charter. The Commissioner of Health may appoint (1) seven bureau directors, (2) health physicians and (3) the assistant director of dentistry to perform the duties and services directed by the Commissioner. The Commissioner of Health and the above listed positions appointed by the Commissioner shall not be included in the classified service of the city, under the Civil Service Chapter of this Charter, and shall not subject to the provisions of such Chapter. All other employees of the Department of Health and Family Support shall be under the Civil Service Chapter.</i></p>	
<p><i>The Commissioner of Health shall be a qualified person who is trained and experienced in public health administration, preferably a physician. The Commissioner of Health shall have the management and control of all matters pertaining to the public health, as authorized by ordinance or as delegated by and under the supervision of the CityCouncil.</i></p>	

**Removal of Charter Powers to Ordinance**

With the exception of Chapter 14, sec. 6 of the current Charter, all other portions of the Charter related to the Board of Health will be removed to ordinance under the proposed Charter revision. 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 Board of Health provisions to ordinance will mean that those powers and duties can be much more easily changed, or even eliminated by the Council.

**CONCLUSION**

By removing Board of Health provisions from the Charter and placing them into ordinance, the City may effectively absolve itself of its powers to act as a board of health under Minnesota statutes (Minn. Stat. §145A). Under Minn. Stat. §145A, the City is not mandated 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 City Council decided to retain the powers of a Board of Health or create a Board of Health, it would determine by ordinance the manner of appointment and qualifications of a commissioner of



health. Under Article IX, Sec. 9.5(b) of the proposed Charter revision, a chief health officer of the City would be in the unclassified service, i.e. not subject to Civil Service Commission rules.

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

