



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 Minneapolis Fire Department. This memorandum addresses impact of this proposal on the City.

ANALYSIS

- A. The proposed Charter revision eliminates Charter Chap. 7, Sec. 1-4, of the current Charter and recommends that those sections be reclassified as an ordinance. Those sections of the current Charter outline specific powers of the City Council to prescribe how buildings in the city are constructed (Sections 1 and 2), the construction of fire houses and alarm systems (Section 3), and punishment of offenders for interfering with fire ground operations and for destruction of public property such as fire hydrants (Section 4). Although the proposed Charter revision does not contemplate changes to these provisions other than removing the provisions from the Charter and placing them into ordinances, see the discussion below regarding the removal of Charter powers into ordinance. *See pages 3-4.*
- B. Chapter 7, Sec. 5 of the current Charter provides for the appointment of the “chief engineer” (fire chief) pursuant to Chap. 3, Sec. 4 of the current Charter. The proposed Charter revision would substantially retain the process of appointment of the fire chief at Chapter 8, Sec. 8.4(a)(1), of the proposed Charter revision. See the City Attorney’s Office memorandum related to appointments,

removals, and the Executive Committee process for additional information about the appointment and removal of the fire chief and other appointed positions within the fire department. *See pages 4-5.*

- C. Chapter 7, Sec. 6 of the current Charter relates to the appointment by the fire chief of other appointed officers of the fire department, including all of the deputy fire chiefs. Section 6 also provides for the rights of appointed personnel to the same benefits as employees in the classified service. Both the current Charter and the proposed Charter revision speak of only one assistant chief. In practice, the fire department created one additional assistant chief position pursuant to the authority granted to the City to create appointed positions by special law and codified in City ordinance (MCO § 20.1000 et seq. and Minn. Laws 2003, Ch. 15). In addition, both the current Charter and proposed Charter revision mandate that there be three (3) assistant chiefs of training and “an” engineering officer. The MFD feels this is too restrictive both in terms of being required to have three assistant chiefs of training as opposed to a more generic “assistant chiefs” designation, and in terms of being required to maintain three assistant chiefs of training, even if the department concluded that it needed to cut one or more of these positions due to budget cuts. In addition, the current Charter provides for the fire chief to appoint deputy chiefs, while the proposed Charter revision, provides for the fire chief to appoint “a deputy chief” (8.4(a)(2)(ii)). As with the current Charter, the proposed Charter revision also provides for “layoffs” of officers to the fire department appointed positions, pursuant to Chapter 8.4(a)(3), but “only such layoffs as will not impair the department’s operations”. While the language in the proposed Charter revision is somewhat different than the language in the current Charter (“layoff of such officers or staff as can be released without impairing the working efficiency of such department” versus “such layoffs as will not impair the department’s operations”), it is not clear who makes the determination as to whether the layoffs will “impair the department’s operations”. *See pages 5-6.*
- D. Current Charter Chap. 7, Sec. 7 pertains to the power of the City Council to designate an officer of the fire department to act as fire marshal, and outlines the duties of the fire marshal. Even though the proposed Charter revision is substantially similar to the current Charter provision, we recommend that the language related to the fire marshal’s power to “enter and inspect any building (including a dwelling) at any reasonable time” be reviewed for compliance with the search and seizure requirements of the Fourth Amendment of the US Constitution. *See Minn. Stat. §299F.08 (2008), for limits on the authority of the state fire marshal to enter premises without either an administrative warrant or a criminal search warrant. See page 6.*
- E. Current Charter Cap. 7, Sec. 8 provides for a “fire police” within the fire department and imbued with police powers, or for police officers to be assigned to fire department who are “subject to the direction of the officers of the Fire Department present at such fires”. The proposed Charter revision states the City Council “. . .may provide for fire police within wither the fire department or the police department. The fire department may command the police officers at any fire.” In practice, this provision may be unnecessary, as no such position exists within the fire department currently. The fire department “fire investigators” currently investigate all fires, and the arson investigators of the police department investigate fires that appear to be arson. *See p. 6.*

- F. Current Charter Chap. 7, Sec. 10 provides that all operating expenses of the fire department be paid out of the general fund and permits the costs of fire house construction, fire apparatus or equipment or personal property to be paid out of the permanent improvement fund or bond fund. The proposed Charter revision, however, provides that fire department operating expenses be paid from the general fund and that capital expenses may be paid out of the permanent improvement funds or out of bond funds, or out of the general fund. It is unclear whether this is a significant change to current City funding practices. *See p. 6.*

- G. Current Charter Chap. 7, Sec. 12 and proposed Charter revision Chap. 8, Sec. 8.4(e), specify that the fire department must be funded at a level sufficient to maintain the “double platoon system”. While it appears that this provision was intended to ensure that the fire department is funded at the appropriate level, we believe that this is too restrictive in that it appears to mandate that the fire department use a double platoon staffing system as opposed to another staffing system, such as a “triple platoon” system.. We recommend that this provision be amended to either move this section to ordinance, or to provide more flexibility to the fire department to maximize its staffing at the level it deems appropriate. *See pages 6-7.*

- H. Proposed Charter revision Chap. 8.4(d) provides for the fire chief’s powers to compel the attendance of fire department employees (including off duty firefighters) if “necessary for the protection of life or property from an unusual fire, riot, or a like emergency.” This section also gives the fire chief the power to appoint additional officers or other firefighters for temporary service during the emergency, without regard to civil service rules. In contrast to Chap. 7, Sec. 12, of the current Charter the proposed Charter revision allows the fire chief to use his or her emergency powers to cancel firefighters’ vacations, in effect. *See p. 6.*

Following is a side-by-side comparison of current Charter provisions related to the Minneapolis Fire Department compared with the proposed Charter revisions.¹

Current Charter Provision	Proposed Charter Revision
Chapter 7 Fire Department	
<p><i>§ 1. Fire Limits—Wooden Buildings—When and How Prohibited</i></p> <p><i>The City Council for the purpose of guarding against the calamities of fire, shall have power to prescribe the limits within which wooden buildings, or buildings of all other materials that shall not be considered fire-proof, shall not be erected, placed or repaired, and to direct that all and any buildings within the limits prescribed, shall be made and constructed of fire-proof materials, or of such materials and with such precaution against fire as the City Council shall by ordinance prescribe, and to prohibit the repairing or rebuilding of wooden buildings within the fire limits when the same shall be damaged to the extent of fifty (50) percent or more of the value thereof, and to prescribe the manner of obtaining the</i></p>	

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



<p><i>consent to make repairs in such fire limits and of ascertaining the extent of damages.</i></p>	
<p>§ 2. City Council—Powers to Guard Against Fires</p>	
<p><i>The City Council shall have the power, for the purposes of fire safety and prevention, to prescribe building construction and maintenance requirements; to require fire safety devices in connection with the construction and maintenance of buildings and appliances; to regulate and prohibit industries and practices it deems dangerous in causing and promoting fires; to regulate and prohibit the storing of flammable and explosive materials and the use of firearms; to regulate and prevent the use, sale or keeping for sale or use of fireworks or other explosive devices and to provide for their seizure and destruction; and to make any other provisions to guard against fire or to prevent the spreading of fires, which the City Council may deem proper.</i></p>	
<p>§ 3. Fire Apparatus—Houses—Fire Alarm Systems <i>The City Council shall have power to keep and maintain fire engines and other fire apparatus, and for those purposes, to build and maintain such buildings as may be necessary or convenient, and also to erect and maintain fire-alarm systems and every other means of giving notice of fires.</i></p>	
<p>§ 4. Fire Department Rules—Water Pressure During Fire—Punishment of Offenders <i>The City Council shall have power and authority to make by ordinance all needful rules for the government of the fire department and for the protection and use of all engine houses, telegraph lines, and other property and apparatus pertaining thereto, and of the water works, mains, pipes, cisterns and hydrants in said city, as used in connection with said department, and to determine the highest limit of pressure to be placed on the force used to force water through the said mains during a fire; and by such ordinance provide for the punishment of persons injuring or interfering with such property or any portion thereof, and may also by such ordinance make provision to keep away from the vicinity of any fire all idlers and suspected persons, and to compel all bystanders to aid in the preservation of property exposed to danger by such fire.</i></p>	
<p>§ 5. Chief Engineer—How Appointed—Officers and Personnel Pursuant to Chapter 3, section 4 of this Charter the executive committee shall appoint, subject to the approval of a majority of all the members of the City Council, a chief engineer of the fire department, subject to removal by the executive committee upon approval of a majority of all of the members of the City Council. The City Council shall provide by ordinance for such other officers and personnel as may be deemed necessary for such department, and define the respective ranks and duties of such chief engineer and other officers and personnel and their compensation. Such position shall be in the unclassified service. The person holding the position of chief engineer shall be entitled to the same employee benefits as persons in the</p>	<p>[§ 8.4(a)(1)] Fire chief. (A) Appointment. The Mayor nominates and the City Council appoints a fire chief under section 9.4(b). (B) Civil service. The chief serves in the unclassified service, but with the same employee benefits (except as to hiring and discharge) as an officer in the classified service. If a chief is appointed from the classified service, then he or she is treated as taking a leave of absence while serving as chief, 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>classified service except as to appointment and removal. If the person appointed chief engineer is a member of this classified service, such person shall be deemed to be on leave of absence during tenure as chief engineer, and upon the termination of service as chief engineer, shall be returned to the person's permanent civil service classification. If no vacancy is available in the permanent civil service classified position held by the chief engineer at the time of appointment as chief, seniority shall prevail and the person most recently certified to such position shall be returned to the permanent civil service classification which the person held prior to such certification.</p>	
<p>§ 6. Chief Engineer to Nominate Officers and Staff— Removals, Discharges, Etc.</p>	
<p>The Chief Engineer shall with the approval of the City Council, appoint, subject to the provisions of the Civil Service Chapter of this Charter, all other officers and staff connected with such department, and may at any time, as provided by the Civil Service Chapter of this Charter, remove or discharge such officers or staff as the Chief Engineer may deem it for the interest of the city to discharge, and whenever the City Council shall deem it necessary to reduce the number of staff employed, said Chief Engineer, shall, upon the direction of the City Council, recommend the layoff of such officers or staff as can be released without impairing the working efficiency of such department.</p>	<p>[§ 8.4(a)(3)] Officers and staff. (A) Appointment. The fire chief, with the City Council's assent, appoints (subject to the Civil Service Commission's rules) the department's other officers and other employees. (B) Layoffs. The fire chief may (subject to the Civil Service Commission's rules) discharge an employee in the City's interest. If the City Council directs that the department reduce its force, then the chief must recommend only such layoffs as will not impair the department's operations.</p>
<p>The Chief Engineer shall appoint competent officers, holding the rank of at least captain, to serve as the assistant chief, deputy chiefs, fire marshal, three (3) assistant chiefs of training and the engineering officer. The assistant chief, deputy chiefs, fire marshal, assistant chiefs of training and the engineering officer shall be appointed by the Chief Engineer, without examination, and such appointees may be removed by the Chief Engineer at will.</p>	<p>[§ 8.4(a)(2)] Senior management. (A) Appointment. The fire chief, with the City Council's assent, appoints as the department's senior managers— (i) an assistant chief, (ii) a deputy chief, (iii) a fire marshal, (iv) three assistant chiefs of training, and (v) an engineering officer. (B) Civil service. The fire chief appoints, without examination, a senior manager from the department's firefighters with the rank of captain or higher; and may discharge him or her at will, without regard to the Civil Service Commission's rules. An officer who accepts such an appointment is treated as taking a leave of absence, retains his or her grade and seniority in the classified service, and earns seniority in that grade while serving as a senior manager, 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>An officer of the Fire Department accepting appointment to one of the positions enumerated in this section shall retain the officer's civil service status and seniority, and time served in such appointed position shall be credited in computing the officer's seniority in the permanent civil service classification held by the officer immediately prior to accepting the appointment. An officer of the Fire Department accepting</p>	



<p>appointment to one of the positions enumerated in this section shall be deemed to be on leave of absence from the officer's permanent civil service classification. Upon termination of such appointed service, the officer shall be returned to the permanent civil service classification for 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>§ 7. Fire Marshal—Duties, Etc. The City Council may, subject to the provisions of the Civil Service Chapter of this Charter, designate such officer of the Fire Department as it may select to act as Fire Marshal of the city to see that the ordinances of the city relating to precautions against danger from fire are not violated, and who shall have power and be fully authorized to enter and inspect any dwelling house or other building at all reasonable times to see that such ordinances are enforced and, if entry be refused, the fire marshal shall have recourse to every remedy provided by law to secure such entry. It shall further be the duty of such Fire Marshal to examine particularly into the cause of every fire which shall happen within the city, and to make and keep a brief record of the same.</p>	<p>[§ 8.4(b)] Fire marshal. The fire marshal must take care that all laws and ordinances against danger from fire are faithfully observed and enforced, for which purpose the marshal may enter and inspect any building (including a dwelling) at any reasonable time. The marshal must examine and record the cause of any fire.</p>
<p>§ 8. Fire Police—Duty of Regular Police Whenever the City Council shall deem it necessary it may provide for a Fire Police of such numbers and with such powers as it may determine, and for that purpose it may either give police powers to such of the officers or staff of the Fire Department as may be necessary, or authorize the appointment of the necessary Police Officers in the same manner as other Police Officers are appointed. In all cases, all Police Officers present at any fire shall be subject to the direction of the officers of the Fire Department present at such fires.</p>	<p>[§ 8.4(c)] Fire police. The City Council may provide for fire police within either the fire department or the police department. The fire department may command the police officers at any fire.</p>
<p>§ 9. Authority of Chief Engineer—Punishment for Refusing to Obey <i>Any person who, at any fire, shall refuse to obey the orders of the Chief Engineer of the Fire Department, or other officer vested with authority at such fires, shall be guilty of a misdemeanor.</i></p>	
<p>§ 10. Expenses—From What Funds Paid All operating expenses of the Fire Department shall be paid out of the general fund. The construction of engine houses or other buildings and purchase of fire apparatus or property for the use of such department may be paid for out of the permanent improvement or other bond fund of the city.</p>	<p>[§ 8.4(e)] Funding. The City Council must fund a fire department that can maintain the double platoon system. (1) Operating expenses. The department's operating expenses are paid out of the general fund. (2) Capital expenses. The department's capital expenses are paid out of the permanent improvement fund, or the proceeds from bonds issued for the purpose, or out of the general fund.</p>
<p>§ 11. [Reserved]</p>	
<p>§ 12. Council to Adopt Measures for Enforcement of Same and Chief of Fire Department Given Extraordinary Powers in Case of Emergency The City Council shall take such steps as are necessary to provide means and money to meet the expenditures which shall</p>	<p>[§ 8.4(d)] Fire emergencies. If necessary for the protection of life or property from an unusual fire, a riot, or a like emergency, the fire chief may— (1) compel the attendance of any employee in the fire</p>



<p>be necessary to establish and maintain the double platoon system. Provided, however, that the Chief of the Fire Department may establish such rules as may be necessary to insure the attendance of members of the Department in case of a great conflagration or unusual fire or fires, and in such cases, the Chief of the Fire Department may require each and every member of the Department to assist in the protection of life and property, notwithstanding said member or firefighter is off duty. Provided, further, that nothing herein contained shall be construed to apply to any vacation now, or hereafter granted to any firefighters by the city. In case of riot or other like emergency, the Chief of the Fire Department may appoint additional firefighters and officers for temporary service, who need not be in the classified list of the Department. Such additional firefighters or officers shall be employed only for the time during which the emergency exists.</p>	<p>department (including an off-duty firefighter), for which purpose the chief may make any necessary or prudent rule; and (2) appoint additional officers or other firefighters for temporary service during the emergency, without regard to the Civil Service Commission's rules.</p>
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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 fire department 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 Revised Charter and to assist the Work Group in its discussion of those changes.

