Request for City Council Committee Action
From the City Attorney's Office

Date: March 24, 2011
To: Intergovernmental Relations Committee
Referral to:

Subject: Minneapolis Charter Commission's Plain Language Charter Revision

Recommendation: Receive and File

Previous Directives: December 15, 2009, staff direction from the Intergovernmental Relations Committee to draft amendments to Charter Commission's proposed draft charter.

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Approved by: Susan L. Segal
City Attorney

Presenter in Committee: Susan L. Segal, City Attorney

Financial Impact (Check those that apply)

_X_ No financial impact (If checked, go directly to Background/Supporting Information).
___ Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
___ Action provides increased revenue for appropriation increase.
___ Action requires use of contingency or reserves.
___ Business Plan: ____ Action is within the plan. _____ Action requires a change to plan.
___ Other financial impact (Explain):
___ Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact
Neighborhood Notification
City Goal(s):
Comprehensive Plan
Zoning Code
Other

Background/Supporting Information

I. History

In 2003, the Minneapolis Charter Commission, noting that the Charter had not gone through an extensive revision since its original adoption, proposed an extensive revision to the City of Minneapolis Charter. The Charter Commission characterized its effort as a "plain language" revision ("PLCR ") that would be

clear, brief and concise. The Charter Commission established as its guiding principle that the revision was not to result in any "substantive" or structural governance changes to the City Charter.

The PLCR has been through numerous drafts and revisions, with input from reviews by the City Attorney's Office ("CAO") as well as outside sources. As noted in the Charter Commission's cover report accompanying the current draft of the PLCR, elected officials, members of the City's boards and commissions, and "outside readers" experienced in city government reviewed and commented on the multiple drafts. Brian Melendez, a member of the Charter Commission at the time, undertook the lead role in drafting the proposed "plain language" revision to the Charter and the subsequent drafts. Charter Commission members and Mr. Melendez, in particular, have devoted untold volunteer hours on this initiative.

The CAO conducted several major reviews of various drafts of the PLCR, beginning with a comprehensive analysis of the Charter Commission's 5th draft of the PLCR in 2004. Each of these reviews uncovered a number of areas where the PLCR contained both substantive and potential structural governance changes from the status quo in the City Charter. The CAO provided lengthy memoranda to the Charter Commission highlighting these sections and the CAO's concerns. The Charter Commission responded to stakeholder feedback and revised PLCR provisions in an attempt to eliminate identified issues.

II. City's Charter Revision Work Group/ IGR Staff Direction

In March 2009, the Charter Commission submitted a "final" draft of the PLCR to the City (identified as its 12th draft), for the City's review and feedback. In May 2009, in response to this submittal, the City Council formed a Charter Revision Work Group (the "Work Group"), consisting of the Chair of the Council's Intergovernmental Relations Committee ("IGR") and representatives from several key City departments. The Work Group was tasked with conducting a complete and thorough review of the PLCR with input from city subject matter experts. The Work Group was to analyze the impact that the proposed revisions may have on specific City functions, organizational structure and departments. Additionally, the Work Group was to consult with the Park Board and the Board of Estimate and Taxation for their input. The CAO was responsible for performing a high-level review of the proposed changes, creating a guide for the Work Group broken down by topic, and assigning review duties to appropriate departments.

The Work Group met a number of times in May, June and July, 2009. In September and October, 2009, the Work Group presented a number of memoranda to the Council discussing the impact of the proposed revisions. The memoranda discussed topics broken down by department, including Park Board, Regulatory Services, Police, Fire, Health, Clerk, CPED and CAO, as well as memoranda discussing Mayor and Council Powers, Appointments/Removal and the Civil Service Commission. After considering the results of the Charter Revision Work Group, the IGR Committee passed a staff direction on December 15, 2009, directing staff to amend the PLCR in 48 specific areas. In addition, staff was directed to identify any other amendments deemed necessary to conform the PLCR to substantive provisions in the City Charter as it reviewed the PLCR. Staff was also directed to meet with the City's Director of Labor Relations in regard to "rule of 3" and "rule of the list" for hiring and promotions. The City Council approved the IGR staff direction on December 15, 2009.

In responding to the IGR staff direction, the CAO obtained additional input from department subject matter experts and the Park Board and performed another thorough cover to cover review with the purpose of not only correcting the items identified in the staff direction but to try to catch errors and oversights in the PLCR that would work substantive changes or have other unintended consequences. For example, the CAO identified in this review period that the PLCR eliminated the Charter section that provides for the hold over of current elected officials until their successor is qualified and issued an election certificate. The oversight in the PLCR would have resulted in an office being vacant in the event of an election contest extending beyond the start of the new term of elected office. This could cause

significant problems in the continuity of city operations. The CAO "red-line" version of the PLCR addresses the issues identified in the staff direction as well as issues identified in its subsequent review.

A. Amendments Proposed Pursuant to the December 15, 2009, IGR Staff Direction

The following examples of substantive or structural governance changes were identified by the Work Group during its review of the PLCR (12th Draft). Pursuant to the December 15, 2009, IGR Staff Direction, amendments have been proposed in the CAO's red-line version of the PLCR to address the identified issues.

1. Denominating the Park Board as a body corporate and politic

The PLCR contains significant changes in the section governing the Park Board. The PLCR seeks to grant the Park Board all of the City's lawful powers. The PLCR denominates the City and the Park Board as co-equal "bodies corporate and politic," granting the Park Board the power to exercise any power that a municipal corporation could exercise.

The PLCR also grants the Park Board the power to sue and be sued. The City Charter allows the Park Board to sue and be sued in the name of the City, but does not allow the Park Board to sue in its own name.

Each of these are significant changes from the City Charter in which the Park Board is defined as a department of the City of Minneapolis. The PLCR provision creating the Park Board as a co-equal independent local governmental unit violates the Minnesota constitution. Only the legislature has the power to create a new local unit of government. The ability to create the Park Board as a separate legal entity through charter amendment was the subject of *Fraser, et al. v. City of Minneapolis, et al.*, Hennepin County District Court File No. 27-CV-09-21704, (holding only State can create a legal entity and cannot be done via charter amendment). As noted above, the CAO has drafted an amendment to the PLCR restoring the City Charter provisions.

2. Appointment Powers of the Executive Committee

Another significant change is found in the PLCR's approach to the appointment powers of the Executive Committee. Chapter 3, Section 4 of the City Charter limits the appointment role of the Executive Committee to certain specific officers and "any officer in a department or agency who, by statute, charter or ordinance is appointed by the Mayor, the City Council or any board, the majority of whose members are members of the City Council." In contrast, the PLCR provides that "where a general law, special law, ordinance, rule or other law provides for an officer's appointment by the Mayor, by the City Council ... and does not explicitly override this Section 9.4(b), then the appointment is vested collectively in the Mayor, Executive Committee and Council ...". The PLCR defines an officer to include "each board's members and officers for which this charter or a general law, special law or ordinance provides". PLCR 9.1(a)(1). The effect of this provision would make the Mayor the nominating individual and the Executive Committee the appointing authority for the dozens of boards in the City that have been created by ordinance. This would be a significant expansion of the role of the Mayor and the Executive Committee in the appointment process.

3. Liquor License Provisions

The PLCR has eliminated a section from the City Charter relating to liquor licenses. While the Charter Commission's intent was to migrate the provision from the charter to ordinance, state law requires a voter referendum to make the proposed change. The Council cannot make the change on a 13-0 vote. Minnesota Statute § 410.121 states "if a charter which is to be amended or replaced contains provisions which prohibit the sale of intoxicating liquor or wine in certain areas, such provisions shall not be

amended or removed unless fifty-five percent of the votes cast on the proposition shall be in favor thereof." The CAO therefore recommends that the City Charter language on these provisions be added to the PLCR and has included this change in the attached red-lined draft of the PLCR.

While not all detailed here, other amendments proposed pursuant to the December 15, 2009 staff direction are included in the attached red-lined draft of the PLCR, except as noted in Sec. II D. below.

B. Impact of Removing Charter Provisions to Ordinance

One of the central ways that the PLCR seeks to shorten the City Charter is by eliminating some provisions from the Charter with the intent that they be covered by ordinance. Specifically, the Charter Commission has suggested reclassifying into ordinance significant parts or all of approximately 175 sections of the City Charter. In some of the 175 relevant sections, there are multiple topics addressed. As the CAO has advised since the 5th Draft, the deletion of provisions from the Charter with the intent that they be addressed in ordinance to the extent needed, does constitute a change. The process to adopt and amend ordinances is a relatively flexible, quick process compared to amending the Charter. Ordinance changes require only a majority vote of the Council and nine votes to override a mayoral veto. As set out above, a charter amendment requires a unanimous 13-0 vote by the City Council. As stated in the Charter Commission Plain-Language Charter Revision Report of March, 2009, "[A] right protected only by ordinance is less protected than a right enshrined in the Charter." While there may be good policy reasons for removing some of these provisions from the Charter and allowing greater flexibility we are expressing no opinion on that policy question, we are simply noting the change.

A few examples of the types of provisions that are removed from charter in the PLCR with the intent that they be incorporated in an ordinance, include:

1. **City Powers to Enact Ordinances:** One example is Chapter 4, §5 of the City Charter lists the 42 different matters upon which the City Council is authorized to enact ordinances. The Charter Commission has recommended that those 42 powers be enacted as City ordinances and taken out of the Charter.

2. **Finance Department:** The finance officer's ability or obligation to appoint an assistant finance officer, countersign bonds or contracts, keep records and accounts, furnish an annual report or deliver city property to successors are all recommended for reclassification to ordinance.

3. **Health Department:** The position of Commissioner of Health, the positions qualifications and ability to appoint directors are recommended for enactment as ordinance.

4. **Park Board:** The lengthy process for appraisal of property during condemnation and its assessment are proposed to be removed to ordinance. The City's power to lay watermains and sewers along parkways and to specially assess their costs is recommended for removal to ordinance.

The other multiple sections and topics recommended for placement in ordinance will need to be analyzed as to the necessity of enacting the topics into City ordinances. The sections that have been recommended for inclusion in City ordinances roughly can be categorized as:

1) Entire section needs to be added to City ordinances (10%);

2) Part of section needs to be added to City ordinances after an analysis of existing ordinances (70%);

3) The section or topic should have been redlined and does not need to be added to City ordinances because the proposed plain language revision adequately embodies the section or topic (10%);

4) No part of the section or topic needs to be added to City ordinances, because the provision is outdated or unnecessary, or the topic is already adequately covered in City ordinances (10%).

This is a rough estimate based on a review of the Charter sections that the Charter Commission recommends for inclusion in the City's Code of Ordinances. The majority of work that needs to be accomplished will involve meeting with the subject matter departments and evaluating existing ordinances in detail to determine what, if any, eliminated charter language needs to be added to existing ordinances to preserve governmental authority and current operations. Once staff has developed recommended language, the City Council will then have its policy debate about the proposed language and any amendments that it may deem as appropriate.

It is difficult to estimate the hours required to accomplish the necessary ordinance work, except to state that it would be substantial. We would recommend at least one year to allow staff time to complete the proposed revisions and to allow them to move through the council adoption process. Thus, if the PLCR were to be adopted, it should have an effective date of at least one year from final passage to allow for the ordinance review and adoption. Again, we express no opinion on the advisability of this change.

C. Significant Changes in the Plain-Language Charter Revision Discovered During Latest Review

The following is a summary of those areas where the CAO identified substantive or structural governance changes that would result from the PLCR, despite the prior reviews by the CAO and the best efforts of the Charter Commission to avoid such changes. Even though the CAO had conducted a thorough review of this draft of the PLCR during the Charter Revision Work Group process, a number of additional significant changes were discovered during this latest review. There may be yet additional changes that are contained in the PLCR that we have not yet identified even with these reviews. The redlined PLCR draft includes amendments seeking to conform the PLCR to the City Charter for the new items noted below.

1. Provisions Related to Removal of Elected Officeholders

The PLCR, in a section entitled "Meetings," provides that the Council may compel the attendance of absent members and may remove a member for persistent or recurring nonattendance. This is the only provision in the PLCR relating to removal of elected officials.

Chapter 4, Section 3 of the City Charter provides that the City Council shall have the power to compel attendance and to "provide for the punishment" of absent members. In addition, however, the City Charter, in Chapter 4, Section 4, titled "City Council-Power to Remove Officers-Place and Manner of Trial," provides that the Council has the power to remove any officer of the City, whether appointed or elected, for "good cause" after an opportunity to be heard. The section further provides "[c]ontinued absence from the meetings of the Council in the case of Council Members, and neglect of duty in case of other officers, unless for good reason, shall be deemed a good cause of removal." There is no corresponding provision in the PLCR.

2. Mayoral Succession Plan

The PLCR changes the City Charter by providing that the mayoral succession plan be done by ordinance (not resolution as is provided in the City Charter) and provides that it can include other elected or appointed persons after council members. While the change from resolution to ordinance is not of any real significance, the City Charter does not allow for succession by anyone but Council members. The

PLCR provision allowing succession by other elected or appointed persons would constitute a change of substance from the City Charter.

A second change relating to mayoral succession is the provision in the PLCR requiring the Council to define in ordinance the circumstances when the Mayor will be subject to removal for inability to discharge his or her duties. The City Charter does not require the Council to define in advance those situations that would justify removal of the Mayor for "inability to discharge his or her duties." It will be difficult to anticipate in an ordinance all of the situations that might cause inability to discharge mayoral duties and at the same time to draft the ordinance so that it is not overly broad, risking removal when it is not warranted. The approach of the City Charter of leaving this task to the Council to make this determination at the time based upon the actual circumstances presented, seems the preferable approach.

3. Votes Needed for Council Actions

Another change can be found in how the PLCR handles the passage of Council actions. Under the City Charter, as interpreted by the City Attorney's Office, an act of the City Council, such as a motion for the adoption of a Committee Report, does not require a majority vote of the Council membership but only a majority vote of those voting. In contrast, in Section 4.4 of the PLCR, the passage of an ordinance, resolution, appropriation and "any lawful act of a legislative nature" would require a majority of the Council's membership, i.e., seven votes. In addition to not defining what constitutes an act of a legislative nature, the proposal also leaves unclear the voting requirements for the passage of quasi judicial matters. Further, the City Charter states that no City Council action, City Council resolution or ordinance is valid or effective until it is published. The proposed PLCR would make a legislative act effective upon signature by the Mayor. (Section 4.4).

4. Option to Change Length of Terms for Appointed Department Heads by Ordinance

The City Charter specifies that the terms of department heads (other than the Chief of Police) are for two years and that those individuals will hold their offices from the first business day in January of even numbered years. The PLCR proposes that the terms shall be for two years 'unless established otherwise by ordinance.' (PLCR Section 9.2(c)). The ability to change a department head's term of office by ordinance constitutes a potential structural governance change in the balance of powers between the Council and the Mayor. For example, the Council on a simple majority vote could extend the term of office for the City Coordinator from two years to three or more years, limiting an incoming Mayor's ability to nominate his or her candidate for this position. A mayoral veto can be overridden by only nine votes compared to the thirteen votes required to amend the City Charter.

5. Limit on Funding for Sports Facilities

The Charter states the "City of Minneapolis, Minneapolis Community Development Agency, or any city department, agency, commission, or board, shall use no city resources over $10 million dollars for the financing of professional sports facilities" without the approval of the voters. The provision goes on to include a lengthy list of the specific types of "financing" that would be prohibited, including loans, public works improvements and other tools. This was a voter-initiated amendment to the Charter. The PLCR revises the wording of this section and states "[N]either the City, nor any governmental body whose territorial jurisdiction is coextensive with or falls wholly within the City, may finance any professional sports facility in an amount greater than $10 million dollars" unless the voters otherwise approve. Since the Park Board owns or governs property outside the City limits, arguably the PLCR would not prohibit it from expending in excess of $10 million for a sports facility.

The CAO's redlined PLCR draft reinserts the actual Charter language for this section, deleting the PLCR revision.

6. Charter Guidelines for Redistricting

Another change in the PLCR is found in Article II governing ward boundaries and redistricting. A section was added governing the characteristics of a ward, to include that a ward not dilute the voting strength of a racial or linguistic minority or other cohesive community of interest and, where possible increase the probability that a member of such minority or community will be elected ..." This requirement is not contained in the City Charter with regard to City wards. There is a special law which imposes such a requirement on the Minneapolis Park Board but that requirement does not exist for City wards. The City Charter requires that the wards be as equal in population as practicable (not deviate more than five percent of the average) and consist of a compact, contiguous area, not longer than twice its width, whose boundaries wherever possible, lie along the centerline of public ways and, as far as practicable run north-south or east-west. The City Charter leaves to court guidance, which evolves over time, the other bedrock principles governing redistricting.

7. Redistricting Commission

Since the submission of the PLCR for Council review, the Charter has been amended to change the composition of the Redistricting Commission so that it is to be comprised of the Charter Commission. The CAO "red-line" captures that change.

D. Certain Amendments Not Made to PLCR

As indicated above, on December 15, 2009, the IGR Committee directed staff to make 48 amendments to the PLCR. During the course of the continued review of the PLCR, and in discussion with Council leadership, it was determined not to include certain of the proposed amendment changes at this time. For example, Council in its staff direction, number 16, directed that the PLCR be amended to "include the City Clerk as one of the department heads appointed pursuant to the Executive Committee process." After discussion with Council leadership, and viewing this as a "substantive" change to the Charter, staff has recommended that the City Clerk continued to be elected by the City Council and no change was made in the PLCR draft.

In addition, IGR recommended that staff amend the PLCR relating to "holding over" to provide for the appointment of interim department heads; amend the PLCR to provide greater clarity regarding the standard of cause necessary to remove officers other than Civil Service Commissioners; and amend the PLCR to clarify charter language regarding returning the appointee to his or her former Civil Service position if individuals service as an appointed person is terminated for cause, misconduct, misfeasance, malfeasance, etc. (Staff Direction Nos. 34, 40 and 44). While these may be meritorious changes, they constitute substantive changes. Consequently, following discussion with Council leadership, the changes were not included as part of the PLCR process. The conclusion was that these changes, if desired, could be brought forward as independent amendments, rather than as part of the City response to the PLCR draft.

III. GENERAL COMMENTS.

A. Changes in Charter Language Opens Potential for Changes in Interpretation

The PLCR rephrases all provisions of the charter. The change in wording requires a new review of charter sections as issues arise. The review could result in substantive changes in interpretation. While this is an obvious result, it warrants recognition. The City has decades of CAO opinions and a number of court decisions informing the City of the proper interpretation of Charter provisions. As the CAO was advised by a city attorney from another major city that had undergone a substantial revision of its charter,

the City will spend the next couple of decades interpreting the language of the PLCR, if adopted, despite the stated intention of the Charter Commission that the PLCR result in no changes of substance.

B. Impact of Errors/ Oversights in PLCR Draft

Although errors and oversights in the PLCR can be corrected through subsequent charter amendments, the amendment process is arduous, takes significant time, assumes unanimity among Council members, and further assumes that the change is deemed appropriate by the Council and the Charter Commission for a Council amendment as opposed to placing the proposed change on the ballot for a voter referendum on the issue. A city charter is the equivalent of a city's constitution. By design, the law establishes significant process and time-consuming hurdles to amend a city charter.

The process for amending a city charter is governed by state statute. Chapter 410 outlines four amendment processes applicable to the City The first three involve submission of the proposed amendment to the voters: (1) the Charter Commission may propose amendments by submission to the voters at a general or special election (if a special election there will be attendant extra costs) which requires 51% voter approval; (2) an amendment may be proposed upon petition of five percent of the voters of the total votes cast in the last general election for submission to the voters, which also requires 51% approval; and, (3) the City Council may propose amendment to the voters by ordinance. Any such ordinance first goes to the Charter Commission. The Commission must approve or reject the proposed ordinance or suggest an amendment. The Council then may submit either its proposed amendment or the Commission substitute to the voters in the same fashion as described above for approval. For all three methods, the amendment takes effect in 30 days or at such other time as specified in the amendment.

The fourth method involves a 13-0 vote by the City Council to amend the Charter. The amendment must first be recommended to the City Council by the Charter Commission. Within one month of receipt of the Charter Commission's recommendation, the City must publish a notice of a public hearing, which must be held at least two weeks but not more than one month after the notice is published. The Council must vote on the proposed amendment within one month of the hearing and passage requires a unanimous vote of all thirteen Council Members. An amendment passed this way does not become effective until ninety days after passage and publication or such later date as is fixed in the ordinance.

Because of the arduousness of this process, an unintended change, error or oversight that has been missed in the PLCR review, could cause substantial difficulties that would take months to correct assuming unanimity of opinion among all thirteen members of the Council along with a majority of the Charter Commission.