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*City of Lakes*

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**TO:** Charter Revision Work Group Members

**FROM:** Dana Banwer, Assistant City Attorney

**DATE:** October 27, 2009

**RE:** Charter Revision – City Clerk’s Office  
and Duties

## **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 City Clerk’s Office and duties. This memorandum addresses impact of this proposal on the City and the City Clerk’s Office and duties.

### **Analysis**

#### **I. City Clerk’s Office and Department**

Under the current Charter, the City Clerk is elected by the City Council. Charter Chap.3, Sec. 5. The proposed Charter revision treats the City Clerk and the City Clerk Department as it does several other departments, including the requirement that the City Council “must establish, organize, and otherwise provide for – a city clerk, and an appropriate office and staff” (§8.2(a)(2)). In addition, pursuant to proposed Charter revision §8.2(b), the Mayor nominates and the City Council appoints each department’s head under §9.4(b) of the proposed Charter Revision. Section 9.4(b) provides that the appointment process is vested collectively in the Mayor, who nominates the department head, the Executive Committee, who reviews the Mayor’s nomination and forwards it with a recommendation, and the City Council, who appoints the candidate.

This constitutes a significant change in the manner in which the City Clerk is appointed. Under the



proposed Charter revision, the City Clerk’s appointment must proceed according to the “Executive Committee process”, whereas under the current Charter, the City Clerk is “elected” by the City Council, without nomination by the Mayor or appointment by the Executive Committee.

## **II. City Clerk’s Duties Related to Elections**

The current Charter specifies certain City Clerk duties related to elections, including filing deadlines, and public notice requirements. Charter Chap. 2. The proposed Charter revision (Chapter 3) retains language related to elections, and prescribes the City Clerk’s role in the conduct of elections. The primary difference between the current Charter and the proposed Charter revision related to elections is that the proposed Charter refers to state election law and provides that “[u]nless it is inconsistent with this charter, the Minnesota election law applies to each municipal election”. (§3.1(a)). The current Charter provides somewhat more detail about the City Clerk’s role in the administration of elections, including filing for nominations and election returns, while the proposed Charter revision provides that “[t]he city clerk administers each election under the City Council’s direction”.

## **III. Oaths**

There are several places in the current Charter where oaths, affirmations and affidavits are referenced, and the City Clerk’s role in administering such oaths. According to the current City Clerk, oaths of office vary widely from one position to another, without apparent reason. The proposed Charter revision places “oaths of office” language in one section (§9.2), and applies the same oath to each “officer”. An “officer” includes each elected officer, each board’s members and officers for which the charter or a general law, special law, or ordinance provides, and each employee that the charter, a general law, special law, ordinance, or board designates as an officer.

The oath required of such officers is the same for all officers and takes the following form: “I swear [or ‘affirm’] that I will faithfully discharge the office of [title], and will support the constitutions of the United States and of Minnesota.” (§9.2(a)).

## **IV. City Clerk’s Role Related to Service, Filing and Maintaining Records**

A. The current Charter contains numerous provisions that enumerate the City Clerk’s responsibilities related to maintenance of official records, filing of documents, or service of documents. Under the proposed Charter revision, these provisions will be removed to ordinance (see discussion below). The references are contained in the following current Charter chapters: Chapter 2 (Officers/Elections), Chapter 3 (Powers/Duties of Officers), Chapter 5 (Taxation and Finance), Chapter 6 (Police Department), Chapter 10 (Assessments), Chapter 11 (Miscellaneous Provisions), Chapter 15 (Board of Estimate & Taxation), Chapter 16 (Park Board), and Chapter 19 (Civil Service Commission). We have not included all of the relevant current Charter language in the table below, as it is not critical to this discussion of the City Clerk’s office.



B. Under the current Charter, when the Mayor vetoes an action of the City Council, he or she is required to return the action to the City Council with his or her objections, by depositing it with the City Clerk. Charter Chap. 3, §1. Proposed Charter revision §4.4(c) specifies that acts presented to the Mayor take effect “(3) if the Mayor vetoes it by retuning it with an objection within five days (excluding Sundays) after its presentation, only if the Council at its next meeting by two-thirds of its membership again passes the act over the Mayor’s veto.” The proposed Charter revision is silent regarding to whom the Mayor is to return an act after he or she has vetoed it. If the City Council adopts the Charter revisions, this procedure should be clarified to avoid any confusion about the Mayor’s veto.

**V. Removal of Charter Powers to Ordinance**

Under the proposed Charter revision, portions of the Charter related to the City Clerk’s Office and duties will be removed to ordinance. 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 City Clerk provisions to ordinance will mean that those powers and duties can be much more easily changed, or even eliminated by the Council.

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

Current Charter Provision	Proposed Charter Revision
<b>Chapter 2 Officers—Elections</b>	
<p><b>§ 10. City Clerk to Give Notice of Time and Places of Holding Elections</b> The City Clerk shall give notice of the time and places of holding general city election, which notice shall be given at least 15 days before the general city election, and unless otherwise specifically provided for in this Charter, the City Clerk shall give 15 days’ notice of the time and places of holding special elections.</p>	<p>[§ 3.1(b)] <b>Administration.</b> The city clerk administers each election under the City Council’s direction. The clerk must give public notice of the time and place of holding each election at least 15 days before the election.</p>
<p><b>§ 13. Filing for Nominations</b> All candidates for election at any city election shall file their affidavit for such election and pay their fee therefor, in the same manner as provided in the general election laws of the State of Minnesota, except only that such filing shall be made with, and</p>	<p>[§ 3.1] (a) <b>General law applies.</b> Unless it is inconsistent with this charter, the Minnesota election law applies to each municipal election. . . . .</p>

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



<p>such fee paid to the City Clerk instead of the County Auditor, and such filing must be made, and the fee therefor paid, not later than the 40th day preceding the general election.</p>	<p>(c) <b>Administration.</b> The city clerk administers each election under the City Council’s direction.</p> <p>[§ 3.2(c)]  <b>Schedule.</b> For each regular election, the City Council must provide by ordinance for a filing period of at least 15 days ending at least 40 days before the election.</p>
<p><b>§ 14. Election Returns</b>  The returns of all elections for City officers, charter amendments and other propositions or elections for any other City purpose, shall be made to the City Clerk, and within two (2) weeks after such election, the City Council shall meet and canvass the returns thereof, and declare the results as it appears from such returns, and the City Clerk shall forthwith give notice to the officers elected of their respective elections.</p>	<p>[§ 3.1(b)]  <b>Administration.</b> The city clerk administers each election under the City Council’s direction. The clerk must give public notice of the time and place of holding each election at least 15 days before the election.</p>
<p><b>§ 16A. Special Election Process May Commence Upon Submission of Notice of Resignation by Mayor or Council Member</b>  When a Council Member or Mayor files with the City Clerk a notice of vacation of office to be effective on a given date in the future, such action shall result in the vacation of that office on that given date. When such a notice of vacation has been filed with the City Clerk, the provisions of this Charter for filling the Council Member or mayoral vacancy may be commenced but the special election shall not be held until the vacancy has occurred.</p>	<p>[§ 3.3(a)]  <b>Elected office.</b> A special election occurs whenever a vacancy occurs in an elected office before the term expires, and this charter does not provide another method of filling the vacancy.</p>
<p><b>§ 18. Oath of Office—Bonds of City Officers—Approval of Bonds</b>  Every person elected or appointed to any office under this Charter shall, before entering upon the duties of office, take and subscribe an oath of office, and file the same with the Clerk of the City.</p>	<p>[§ 9.2(a)]  <b>Oath.</b> Before taking office, each officer must sign and file with the city clerk an oath in substantially the following form: “I swear [or ‘affirm’] that I will faithfully discharge the office of [title], and will support the constitutions of the United States and of Minnesota.”</p>
<p>The Finance Officer, Clerk and such other officers as the City Council shall require, shall severally, before they enter upon the duties of their respective offices, execute to the City of Minneapolis, bonds in such form, amounts and upon such conditions as the City Council shall prescribe.</p>	<p>[§ 9.2(b)]  <b>Bond.</b> The city clerk, the finance officer, and any other officer that the City Council requires, must before taking office deliver an executed bond in whatever amount and form and on whatever conditions the Council requires.</p>
<p><b>Chapter 3</b>  <b>Powers and Duties of Officers</b></p>	
<p><b>§ 1. Powers and Duties of Mayor</b></p>	
<p>All ordinances, resolutions and other actions of the City Council, except those related to its organization, rules or procedures, shall, before they take effect, be presented to the Mayor, and if (the Mayor) approves thereof, the Mayor shall sign the same, and such as shall not be signed, the Mayor shall return to the City Council, with his or her objections thereto, by depositing the same with the City Clerk, to be presented to the City Council at their next meeting thereafter. Upon the return of any ordinance, resolution or other action of the City Council by the Mayor, the vote by which the same was passed shall be deemed to have been reconsidered, and the question shall be again put upon the passage of the same, notwithstanding the objections of the Mayor, and if upon such vote the City Council</p>	<p>[§ 4.4(c)]  <b>Mayor’s signature or veto.</b> The Council must present each act to the Mayor in the manner that this charter prescribes for giving notice. The act takes effect—  (1) when the Mayor signs it;  (2) five days after its presentation to the Mayor, if he or she neither signs nor vetoes it; or  (3) if the Mayor vetoes it by returning it with an objection within five days (excluding Sundays) after its presentation, only if the Council at its next meeting by two-thirds of its membership again passes the act over the Mayor’s veto.</p>



shall pass the same by a vote of two-thirds of the members of the Council, it shall have the same effect as if approved by the Mayor. If any ordinance, resolution or other action of the City Council shall not be returned by the Mayor within five days, Sundays excepted, after it shall be presented to the Mayor, the same shall have the same force and effect as if approved by the Mayor.	
<i>The Mayor or one (1) person designated in writing by the Mayor, said designation to be on file with the City Clerk and the City Attorney, under the Mayor's direction shall sign all contracts made for the City of Minneapolis, by authority of the City Council.</i>	

<b>§ 5. City Clerk—Election—Duties</b>	
There shall be a Clerk of said City, styled the "City Clerk," who shall be elected by the City Council.	<b>§ 8.2. Departments</b>  (a) <b>The departments generally.</b> The City Council must establish, organize, and otherwise provide for—  [§ 8.2(a)(2)] a city clerk, and an appropriate office and staff;  (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. The Mayor nominates and the City Council appoints each department's head under section 9.4(b), except as this charter or any applicable law or ordinance otherwise provides.
<i>The Clerk shall keep the corporate seal and all the papers and records of the City, and keep a record of the proceedings of the City Council, at whose meetings it shall be the Clerk's duty to attend.</i>	
Copies of all papers filed in the Clerk's office and transcripts from the records of the City Council certified by the Clerk under the corporate seal shall be evidence in all courts the same as if the originals were produced.	[§ 5.3(f)(2)] <b>Effect.</b> Any board that can adopt an act must provide for each such act's certification, publication, and codification. An act so certified, published, and codified— (A) is admissible as evidence, (B) establishes a presumption that the act is valid, and (C) is entitled to judicial notice.
<i>The Clerk shall draw and sign all orders on the Finance Officer in pursuance of any order or resolution of the City Council, and keep a full and accurate account thereof in books provided for that purpose.</i>	
<i>The Clerk shall have power to administer oaths and affirmations and shall perform all other services by law required of clerks of cities or townships, within said City.</i>	
<i>The Clerk shall pay into the city treasury, upon the last day of each month, all fees and moneys, allowed by public law and collected by the Clerk during that month, and shall hold office for the term of two (2) years, beginning with the day such person is qualified as clerk.</i>	



<p>The Clerk may, by and with the consent of the City Council, employ such clerical and other staff as may be necessary.</p>	<p>[§ 8.2(a)(2)] a city clerk, and an appropriate office and staff;</p>
<p><b>§ 6. Assistant City Clerk—Powers and Duties</b> <i>The City Clerk may appoint an Assistant City Clerk, to be confirmed by the City Council; the salary of which Assistant City Clerk shall be fixed by the City Council, and said Assistant City Clerk shall have all the powers, duties and responsibilities of the City Clerk. It shall be the duty of such Assistant Clerk to assist the Clerk in the care of the papers and files, and in making the records of said city. Such Assistant Clerk shall also attend such meetings of any of the committees of the City Council as such committee may designate, and act as clerk of such committees. The Assistant Clerk shall have authority in the disability or absence of the City Clerk to certify and affix the corporate seal to copies of files and transcripts of records, and all such certificates shall have the same validity as if made by said City Clerk.</i></p>	
<p style="text-align: center;"><b>Chapter 4 City Council—Powers—Duties, Etc.</b></p>	
<p><b>§ 9. Ordinances and Resolutions—How Passed</b></p>	
<p>When approved, they shall be recorded by the City Clerk in books provided for that purpose, and before they shall be in force they shall be published in the official paper of the city. The Council may direct that only the title of the ordinance or resolution and a summary conforming to Minnesota Statutes Section 331A.01, Subdivision 10 be published in the official paper of the city. Zoning ordinance map(s) affecting district boundaries shall not be published in the official paper of the City, but shall be summarized as required by this section and shall be available for public inspection in the office of the Zoning Administrator and the City Clerk. All ordinances and resolutions shall be available for purchase at a reasonable price.</p>	<p>[§ 5.3(e)] <b>Proceedings.</b> The board’s secretary must carefully and faithfully record its proceedings, including each act adopted and each member’s vote on each such act, which the secretary must promptly file with the city clerk or in the board’s office. The clerk or board must keep the board’s proceedings on file and available for inspection and copying by any voter during normal business hours at the clerk’s or board’s office.</p>
<p><b>§ 10. Copy of Record of Ordinance—Prima Facie Evidence—Compilation of Ordinances—Judicial Notice</b></p>	
<p>A copy of the record of any ordinance or resolution heretofore passed and recorded or that may hereafter be passed, certified by the Clerk and verified by the seal of the city, any copy thereof published in the official paper of the city, or printed in the books containing the official proceedings of the City Council, or published in any compilation of ordinances made under direction of the City Council, shall be prima facie evidence of the contents of such ordinances and of the regularity and legality of all proceedings relating to the adoption and approval thereof, and shall be admitted as evidence in any Court in this State without further proof.</p> <p>In all actions, prosecutions and proceedings of every kind before the Municipal Court of Hennepin County, such Court shall take judicial notice of all ordinances of the said city, and it shall not be necessary to plead or prove such ordinances in said Municipal Court.</p>	<p>[§ 5.3(f)(2)] <b>Effect.</b> Any board that can adopt an act must provide for each such act’s certification, publication, and codification. An act so certified, published, and codified— (A) is admissible as evidence, (B) establishes a presumption that the act is valid, and (C) is entitled to judicial notice.</p>



<b>Chapter 5 Taxation and Finance</b>	
<b>§ 5. Duty of City Clerk</b>	
<p>When the assessment rolls shall have been revised by the Board of Equalization, they shall be returned to the City Council, who may confirm the same or return the same to said Board for further revision, to be again reported to the City Council.</p>	<p>[§ 4.1(c)(2)]  <b>Board of equalization.</b> The Council may provide under this section 4.1(c) for a board of equalization, in which case it may also provide that any such board . . . (B) must return to the City Council the assessment rolls that the board has revised, in which case the Council may confirm the board’s revisions or return the rolls to the board for further revision.</p>
<p><i>When the City Council shall have confirmed the assessment the City Clerk shall enclose therein a memorandum of such confirmation, and such rolls shall then be returned to the County Auditor as other assessment rolls. In case said City Council shall neglect to take final action on such rolls on or before the second (2nd) Thursday after the first (1st) Tuesday of August of every year it shall be the duty of the City Clerk to return them to the County Auditor, with a certificate of the fact, and in such case the assessment rolls, as revised or equalized by such Board, shall have the same validity as if confirmed by said City Council.</i></p>	
<p><b>§ 29. Statement of Deposits</b>  <i>The City Finance Officer shall make statements at least monthly of the amount of money deposited as hereinbefore provided, giving the amount deposited in open account, and in interest bearing certificates, in each depository separately, and file such statement with the City Clerk, who shall present the same to the City Council at its next regular meeting thereafter; and the City Clerk shall furnish a copy thereof to any local newspaper applying therefor for publication, free of charge.</i></p>	
<b>Chapter 6 Police Department</b>	
<p>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 removal upon the recommendation of the executive committee by a vote of a majority of all of the members of the city council. Such position shall be in the unclassified service. The term of office of each chief of police shall be three (3) years from and after the second day of January of the year of appointment. In case of a vacancy occurring otherwise, the appointment shall be for the unexpired term. <i>Ten (10) days prior to the appointment of a chief of police, the executive committee shall file with the city clerk the name of all persons the executive committee is then considering for the appointment. The chief of police may be reappointed by a majority of all members of the city council. In the event that the council does not reappoint within thirty (30) days of the termination of the term, the executive committee shall within sixty (60) days thereafter make a new appointment.</i> Persons holding the position of chief of police shall be entitled to the same employee benefits as persons in the classified service</p>	<p>[§ 8.3(a)(1)]  <b>Police chief.</b>  (A) <b>Appointment.</b> The Mayor nominates and the City Council appoints a police chief under section 9.4(b).  (B) <b>Term.</b> The chief’s term is three years.  (C) <b>Civil service.</b> The chief serves 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 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>except as to appointment and removal. If the person appointed chief of police is a member of the classified service, such person shall be deemed to be on leave of absence during the tenure as chief of police, and upon the termination of service as chief of police shall be returned to his or her permanent civil service classification. If no vacancy is available in that permanent civil service classified position, seniority shall prevail and the person most recently certified to such position shall be returned to the permanent civil service classification held prior to such certification.</p>	
<p><b>§ 4. Oath and Bond of Police Officers</b>          Before entering upon or exercising any official duty, each and every appointee under this chapter shall take, subscribe, and file in the office of the City Clerk an oath to support the constitution of the United States and of the State of Minnesota, and faithfully perform the duties of the office, <i>under direction of the Mayor and Chief of Police, and, if the City Council shall so require, shall also file a bond, in manner, form and amount, as prescribed by the City Council, with said City Clerk.</i></p>	<p>[§ 9.2(a)]  <b>Oath.</b> Before taking office, each officer must sign and file with the city clerk an oath in substantially the following form: “I swear [<i>or ‘affirm’</i>] that I will faithfully discharge the office of [title], and will support the constitutions of the United States and of Minnesota.”</p>

**Conclusion**

This memorandum exists only to provide 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.

