

Memorandum

To: Mayor Jacob Frey
Council President Lisa Bender
Members of the City Council

cc: Casey Joe Carl, City Clerk

From: James R. Rowader, Jr., City Attorney
Caroline Bachun, Assistant City Attorney

Date: June 28, 2021

Subject: Petition for Charter Amendment Regarding Public Safety Department

I. PETITION

A petition for a proposed charter amendment from the Yes4Minneapolis Coalition, which would generally remove the Police Department and create a Department of Public Safety, has been transmitted to the City Council and verified by the City Clerk.

The voter-driven petition proposes to add the following amendments (strikethrough used for removal of language, underline used for new language) to the Minneapolis City Charter §§ 7.2(a), 7.3, 7.4(c), and 8.2:

§ 7.2. - Departments.

(a) **The departments generally.** The City Council must establish, organize, and otherwise provide for these departments:

- (1) a City Coordinator;
- (2) a City Clerk (section 4.2(e));
- (3) a City Assessor;
- (4) a City Finance Officer and budget office, including a director;
- (5) a City Attorney and legal department;
- (6) a civil rights department, including a director, and a civil rights commission (section 7.2(d));
- (7) a department of community planning and economic development;
- (8) a fire department (section 7.4);
- (9) a health department, headed by a health commissioner;
- (10) a planning commission (section 7.2(e));
- (11) ~~a police department~~ department of public safety (section 7.3);
- (12) a public-works department;
- (13) a purchasing department;
- (14) a regulatory-services department; and
- (15) any other department necessary or convenient for the efficient delivery of municipal services.

~~§ 7.3. Police.~~

~~(a) **Police department.** The Mayor has complete power over the establishment, maintenance, and command of the police department. The Mayor may make all rules and regulations and may promulgate and enforce general and special orders necessary to operating the police department. Except where the law vests an appointment in the department itself, the Mayor appoints and may discipline or discharge any employee in the department (subject to the Civil Service Commission's rules, in the case of an employee in the classified service).~~

~~(1) **Police chief.**~~

~~(A) **Appointment.** The Mayor nominates and the City Council appoints a police chief under section 8.4(b).~~

~~(B) **Term.** The chief's term is three years.~~

~~(C) **Civil service.** 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.~~

~~(D) **Public health.** The chief must execute the City Council's orders relating to the preservation of health.~~

~~(2) **Police officers.** Each peace officer appointed in the police department must be licensed as required by law. Each such licensed officer may exercise any lawful power that a peace officer enjoys at common law or by general or special law, and may execute a warrant anywhere in the county.~~

~~(b) **Temporary police.** The Mayor may, in case of riot or other emergency, appoint any necessary temporary police officer for up to one week. Each such officer must be a licensed peace officer.~~

~~(c) **Funding.** The City Council must fund a police force of at least 0.0017 employees per resident, and provide for those employees' compensation, for which purpose it may tax the taxable property in the City up to 0.3 percent of its value annually. This tax is in addition to any other tax, and not subject to the maximum set under section 9.3(a)(4).~~

7.3 Public Safety:

(a) Department of Public Safety.

(1) Function: The Department of Public Safety is responsible for integrating its public safety functions into a comprehensive public health approach to safety, including licensed peace officers if necessary to fulfill the responsibilities of the department.

(2) Commissioner of Public Safety Department. (a) The Mayor nominates and the City Council appoints a commissioner of the department of public safety under section 8.4.

§ 7.4. - Fire.

....

(c) **Fire police.** The City Council may provide for fire police within either the fire department or the ~~police~~ department of public safety. The fire department may command ~~the police~~ these officers at any fire.

§ 8.2. - Officers generally.

Except as this charter otherwise provides:

....

(d) Tenure. Each officer takes office, after having qualified and taking the required oath—

(1) in the case of an elected officer other than a Council member, elected in a regular general election, on the first weekday in January that is not a holiday in the calendar year next following the election;

(2) in the case of Council members, elected in a regular general election, on the first Monday in January in the calendar year next following the election;

(3) in the case of an elected officer elected at a special election, when the results are certified;

(4) in the case of an officer appointed under section 8.4(b), other than the police chief, on the first weekday in January that is not a holiday in an even-numbered year; and

~~(5) in the case of the police chief, on the first weekday in January that is not a holiday in the year the appointment starts; and~~

~~(6 5)~~ in the case of any other office, as any applicable ordinance provides, otherwise upon election or appointment.

II. PROCESS – TECHNICAL REQUIREMENTS

The Charter Commission shall propose amendments to the Minneapolis Charter upon the petition of voters equal in number to five percent of the total votes cast at the last previous state general election in the City. *See* Minn. Stat. sec. 410.12 (2020). There are various technical requirements for a petition to amend the Minneapolis Charter.

These technical requirements generally include the following:

1. Proposed charter amendments must be submitted at least 17 weeks before the general election. The municipal general election is November 2, 2021.

The deadline for submitting a petition for this November 2, 2021 general election is July 5, 2021. The petition papers were submitted to the City Clerk,

the liaison for the Charter Commission, on April 30, 2021. Therefore, the proposed charter amendments were timely submitted.

2. All petition papers for a proposed amendment shall be assembled and filed with the Charter Commission as one instrument, then transmitted to the City Council. The Charter Commission met at its regular meeting of May 5, 2021 and voted to receive the petition and refer it to the City Council. The Charter Commission, through a letter from Chair Barry Clegg, transmitted the proposed petition amendment to the City Council on May 5, 2021. A copy of that transmission letter can be found in LIMS 2021-00578.

3. Within ten days after the petition is transmitted to the City Council, the City Clerk shall determine whether each paper of the petition is properly attested and whether the petition is signed by a sufficient number of registered voters. Upon completing an examination of the petition, the city clerk shall certify the result of the examination to the City Council. The City Clerk's Office conducted this verification process between May 6, 2021 and May 12, 2021. The City Clerk's Office reported its results of the verification of the petition to the City Council on May 14, 2021. At that presentation, the City Clerk's Office informed the City Council that five percent of the 238,104 total votes cast at the 2020 state general election in the City is 11,906, which is the minimum number of required signatures for a petition. While 11,906 votes were needed, the petition yielded 14,101 valid signatures. The City Clerk's Office

advised the City Council that the petition met the technical requirements and was therefore a valid petition.

III. CITY COUNCIL STAFF DIRECTION TO THE CITY ATTORNEY

On May 14, 2021, the City Council directed the City Attorney to:

1. Conduct a legal analysis of the proposal to determine whether it constitutes a proper subject for a home-rule charter;
2. Prepare draft ballot language for the proposal to be submitted to the electorate as part of the general election to be conducted Tuesday, November 2, 2021; and
3. Publish the legal analysis, along with supporting findings, in a written opinion together with the draft ballot language for the proposed charter amendment to be distributed to City policymakers and presented formally through the Policy & Government Oversight Committee.

IV. LEGAL ANALYSIS

Chapter 410 of the Minnesota Statutes governs the charter process for home rule charter cities such as Minneapolis. When a valid, voter-driven petition has been presented with the requisite number of signatures of registered voters, the City Council has a ministerial duty to place the measure on the ballot unless the proposed amendment contravenes the public policy of the state, is preempted by state or federal law, is in conflict with any statutory or constitutional provision, or contains subjects that

are not proper subjects for a charter under Chapter 410. The question of whether the Council favors the proposed amendment is not relevant.

The sole question before the Council is whether the proposal satisfies this legal standard. If the Council determines that it does, the Council must craft a ballot question and transmit the ballot question to the County Auditor prior to the August 20, 2021, deadline for this year's general election ballot. *See* Minn. Stat. § 205.16, subd. 4 (2020). If the Council determines that it does not satisfy this legal standard, the Council should vote to withhold the proposed amendment from the ballot.

A. A Charter Amendment must be a proper subject for the Charter.

Chapter 410 provides, in relevant part:

A city charter may provide for any scheme of municipal government not inconsistent with the constitution, and may provide for the **establishment and administration of all departments of a city government**, and for the regulation of all local municipal functions, as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896.

Minn. Stat. § 410.07 (2020) (emphasis added).

Any amendment to the Charter must fall within the subjects that a Charter may include. The amendment provides for the removal of a City department, the Police Department, and the addition of a Department of Public Safety. The amendment involves the establishment and administration of departments of the City, which is clearly contemplated as a proper subject for a charter. The proposed charter amendment is a proper subject for amendment to the Minneapolis Charter.

B. A Charter Amendment must be constitutional and must comply with federal law, state law, and state public policy.

Minnesota Statutes, Chapter 410 governs home rule charter cities. Section 410.12 prescribes the steps that must be followed to place a voter-driven petition for a charter amendment on the ballot. Minnesota courts have made clear, however, that if the proposed amendment contravenes the public policy of the state or any statutory or constitutional provision, the council may decline to place such a proposal on the ballot. *State ex rel. Andrews v. Beach*, 191 N.W. 1012, 1013 (Minn. 1923); *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312-13 (Minn. 2017). The courts have reasoned that placing an unconstitutional or unlawful amendment on the ballot is a futile gesture not required by Chapter 410. *Housing and Redevelopment Auth. of Minneapolis v. City of Minneapolis*, 198 N.W.2d 531, 536 (Minn. 1972). Similarly, a city council need not place a proposed amendment on the ballot where the amendment would be preempted by state law or in conflict with the public policy of the state. *Columbia Heights Police Relief Ass'n v. City of Columbia Heights*, 233 N.W.2d 760, 761-64 (Minn. 1975); *Haumant v. Griffin*, 699 N.W.2d 774, 779 (Minn. Ct. App. 2005) (quoting *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 347 (Minn. Ct. App. 2002)).

The amendment seeks to remove the Police Department from the Charter. There is no requirement under the United States Constitution, the Minnesota Constitution, or Minnesota statutes, for a municipality to include a Police Department in its government structure.

Article I, Section 1, of the Minnesota Constitution references the security and protection of people but does not require a police department. Article I, Section 1 provides as follows:

Section 1. Object of government.

Government is instituted for the security, benefit and protection of the people, in whom all political power is inherent, together with the right to alter, modify or reform government whenever required by the public good.

Article XII, Section 4 of the Minnesota Constitution allows any local government unit, when authorized by law, to adopt a home rule charter for its government. Article XII, Section 5 of the Minnesota Constitution allows the Minnesota legislature to provide by law for charter commissions. The Minnesota legislature enacted Chapter 410 of the Minnesota Statutes to provide for charters and charter commissions. Neither of these constitutional sections, nor Chapter 410, require a charter city to include a police department.

There are various statutes that specify duties that can only be performed by a licensed peace officer. *See e.g.*, Minn. Stat. § 626.05 (search and seizure under a court order); 629.34, subd. 1(c)(4)-(8) (felony arrest based on charge, certain gross misdemeanor arrests, arrests for violations of protective-type orders); and 626.84, subd. 2 (authorization to carry a firearm when on duty for the City). However, none of these statutes requires a city to have a police department.

If the City needed a police officer to perform duties for the City, the City would have various options. The City could hire licensed peace officers as employees or independent contractors. The City could have joint powers agreements with other

jurisdictions, such as St. Paul or the State of Minnesota, to provide licensed peace officer services as needed. *See* Minn. Stat. § 179A.60 (2020).

There is no law or state policy that would prohibit a peace officer from working as an employee, or as an independent contractor, or through a joint powers agreement, with this new Department of Public Safety. To comply with the law, the only requirement is that duties that are required to be performed by licensed peace officers must be performed by licensed peace officers. This petition language does not demonstrate that such a legal requirement would be ignored, especially since the language contemplates that there may be times when licensed peace officers may be necessary to perform certain public safety functions.

There is no law or state policy that requires a Police Chief to run a public safety department. Therefore, it would not be a violation of the law for a Commissioner to supervise licensed peace officers.

The proposed amendment provides, in relevant part, “The Department of Public Safety is responsible for integrating its public safety functions into a comprehensive public health approach to safety, including licensed peace officers if necessary to fulfill the responsibilities of the department.” It is not clear what public safety functions would be integrated into the new Department of Public Safety. Further, it is not clear whether the public safety functions of a comprehensive public health approach to safety would include the typical work of a police department, such as patrolling the City, 911 call responses, traffic stops, making arrests, and conducting criminal investigations.

However, if the petition is adopted by the voters, the City Council may enact ordinances to clarify these issues through the City's ordinance enactment process.

In sum, the petition language would be constitutional and would comply with federal law, state law, and state public policy.

V. FINDINGS AND PROPOSED BALLOT QUESTION

Based upon a review of the law and the petition, the City Attorney's Office makes the following findings:

1. All technical requirements for the petition have been met.
2. The amendment is a proper subject for the Minneapolis Charter.
3. The amendment is constitutional and complies with federal law, state law, and state public policy.
4. The City Council should place the proposed amendment on the ballot in the form of a ballot question at the general election on Tuesday, November 2, 2021.

Based on the findings above, the City Attorney recommends two alternative ballot questions for this petition be placed on the ballot at the general election on Tuesday, November 2, 2021. One alternative should be used if two ballot questions related to the creation of a Department of Public Safety are on the ballot (i.e., the City Council proposal as contained in Legislative File No. 2021-00105 and the Yes4Minneapolis petition). The other alternative should be used if only one ballot question related to the creation of a Department of Public Safety is on the ballot (i.e., only the Yes4Minneapolis petition).

The only difference between the two alternatives is the title of the question. If two ballot questions related to the creation of a Department of Public Safety are on the ballot, the two ballot questions must be distinguished, so the additional language is needed. If only one ballot question related to the creation of a Department of Public Safety is on the ballot, the title of “Department of Public Safety” would suffice.

If two ballot questions related to the creation of a Department of Public Safety are on the ballot, the following language is recommended:

City Question #

Department of Public Safety – Peace Officers Included if Necessary

Shall the Minneapolis City Charter be amended to remove the Police Department and to create a Department of Public Safety that employs a comprehensive public health approach, and which would include licensed peace officers if necessary, to fulfill its responsibilities for public safety, with the general nature of the amendments being briefly indicated in the explanatory note below, which is made a part of this ballot?

Yes _____

No _____

Explanatory Note:

This amendment would create a new Department of Public Safety, which would:

(1) Combine public safety functions of the City of Minneapolis into a comprehensive public health approach to safety, with the specific public safety functions to be determined.

(2) Include licensed peace officers (police officers) if necessary to fulfill the responsibilities of the Department of Public Safety.

(3) Be led by a Commissioner. The appointment process for the Commissioner would include a Mayor nomination and a City Council appointment.

This amendment would also do the following:

(1) Remove from the Charter a Police Department that is led by a Police Chief.

(2) Remove the City Council requirement to fund a police force of at least 1.7 employees per 1,000 residents.

(3) Remove City Council authorization to impose additional taxation on taxable property in the City of Minneapolis of up to 0.3 percent of its value annually to fund the compensation of employees of the police force.

If only one ballot question related to the creation of a Department of Public Safety

(Yes4Minneapolis petition only) is on the ballot, the following language is recommended:

City Question #

Department of Public Safety

Shall the Minneapolis City Charter be amended to remove the Police Department and to create a Department of Public Safety that employs a comprehensive public health approach, and which would include licensed peace officers if necessary, to fulfill its responsibilities for public safety, with the general nature of the amendments being briefly indicated in the explanatory note below, which is made a part of this ballot?

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