

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

CASE TYPE: CIVIL – OTHER

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Yes 4 Minneapolis,

Court File No. \_\_\_\_\_

Petitioner,

v.

**PETITION TO CORRECT BALLOT  
UNDER MINN. STAT. § 204B.44**

City of Minneapolis

and

Casey Joe Carl, in his official capacity as  
City Clerk of the City of Minneapolis,Respondents.

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The Petitioner Yes 4 Minneapolis, through its counsel, brings this Petition under Minn. Stat. § 204B.44 (Errors or Omissions) to correct the errors, omissions, and wrongful acts of Respondents City of Minneapolis (the “City”) and Casey Joe Carl, in his official capacity as City Clerk and chief election official of the City of Minneapolis (“Mr. Carl” or “City Clerk”).

**INTRODUCTION**

On July 23, 2021, the Minneapolis City Council unlawfully added an “Explanatory Note” to a ballot question regarding a proposed amendment to the Minneapolis City Charter, for the City’s November 2, 2021 general election. If passed, the amendment would establish a Department of Public Safety. The “Explanatory Note” should be stricken from the ballot because it is not authorized by law and is also a misleading partial description of the impact of the proposed amendment.

To be clear, this Petition does not address the merits of the ballot question itself, but challenges the addition of the “Explanatory Note.” The ballot question fully and fairly explains the proposed amendment’s “essential purpose.”<sup>1</sup> The City Council exceeded its power by adding its own subjective version of what will happen if the amendment passes.

For proposed charter amendments, Minnesota law authorizes that a ballot question include only a description “sufficient to identify the amendment clearly and to distinguish the question from every other question on the ballot at the same time.” Minn. Stat. § 410.12, subd. 4. Therefore, the legislature only permits a statement of the *ballot question*. No Minnesota law give cities authority to include on the ballot its “explanation” of what the amendment would mean. Of course, such “explanations” are necessarily incomplete, easily misconstrued, and inevitably biased.

The City Council’s “Explanatory Note” is not permitted by the Minnesota Constitution, constitutes a governmental overstep in authority, and opens the floodgates to the inclusion of more politically motivated “explanations” on future ballots.

Further, the Explanatory Note here is unreasonable, unnecessary, and carries an implied bias. If such explanatory notes were allowed on ballots, every candidate, initiative, and referendum included would be subject to partisan “explanations” written by politicians with an ax to grind on the issue. Minnesota law and policy protects the integrity, fairness, and efficiency of its ballots by keeping them neutral and not permitting them to be used as “billboard[s] for political advertising.”<sup>2</sup>

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<sup>1</sup> *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636, 651 (Minn. 2012).

<sup>2</sup> *See Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364-65 (1997).

For the reasons set forth below, the Petitioner respectfully requests that the Court sever the Explanatory Note and direct the Office of the City Clerk to certify the approved ballot question without the Explanatory Note.

### **PARTIES**

1. Petitioner Yes 4 Minneapolis is a coalition campaign formed to support the establishment of a Department of Public Safety. Petitioner designed a proposed City Charter amendment and campaigned to have the amendment placed on the ballot through a citizen petition.

2. Respondent City of Minneapolis is a home rule charter city under the law of the State of Minnesota with the capacity to sue and be sued. The City, through its City Council, is the legal entity responsible for the passage of Resolution 2021R-209, which adopted the ballot question and “Explanatory Note” at issue in this matter, to be placed on the November 2, 2021 general election ballot.

3. Respondent Casey Joe Carl is the City Clerk and chief election official for the City of Minneapolis and is responsible for directing the election process in the City and preparing its ballot for the general election to be held on November 2, 2021.

### **JURISDICTION AND VENUE**

4. This Court has original, personal, and subject matter jurisdiction and venue is appropriate under Minn. Stat. § 204B.44(a) and (b), which states, in pertinent part:

Any individual may file a petition . . . for the correction of . . . any wrongful act, omission, or error of any . . . municipal clerk . . . charged with any duty concerning an election....  
“The petition shall be filed with . . . any judge of the district court in that county in the case of an election for county, municipal, or school district office.”

Minn. Stat. § 204B.44(a)-(b).

## FACTS

5. Petitioner Yes 4 Minneapolis advocates for implementing a Department of Public Safety that moves away from a “police-only model”—which has “failed to address the race-based harm and violence that continue to plague the Police Department”—to a model in which “police work alongside qualified professionals, like mental health responders and social workers, to make all our communities safer.” *See* YES 4 MINNEAPOLIS, *FAQ*, <https://yes4minneapolis.org/> (last visited July 29, 2021).

6. Yes 4 Minneapolis timely submitted signed petitions for a proposed charter amendment to the City Clerk, the liaison for the Charter Commission, on April 30, 2021.

7. The Charter Commission maintains the home rule charter for the City of Minneapolis. CITY OF MINNEAPOLIS, *Charter Commission*, <https://www.minneapolismn.gov/government/boards-and-commissions/charters-commission/> (last visited July 29, 2021).

8. On May 14, 2021, the City Clerk advised the City Council that the petition meets the technical requirements of Minn. Stat. § 410.12 (2020) and is therefore a valid proposed charter amendment. A true and correct copy of the City Clerk’s Certification is attached as **Exhibit A**.

9. On or around May 22, 2021, the City Council directed the City Attorney to conduct a legal analysis of the petition and recommend draft ballot language for the proposal.

10. The City Attorney determined that the charter amendment satisfies the legal standard to be placed on the ballot. A true and correct copy of the City Attorney’s July 13, 2021 memorandum analyzing the proposed amendment is attached as **Exhibit B**.

11. The City Attorney recommended language for the ballot question, including an Explanatory Note. *See* Ex. B.

12. On July 23, 2021, the City Council adopted the Resolution setting the title and language of the ballot question and including the Explanatory Note. A true and correct copy of the Resolution adopted by the City Council is attached as **Exhibit C**.

13. The ballot title and question approved by the City Council reads as follows:

**Department of Public Safety**

Shall the Minneapolis City Charter be amended to strike and replace the Police Department with a Department of Public Safety that employs a comprehensive public health approach, and which would include licensed peace officers (police 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 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 of Public Safety. The appointment process for the Commissioner would include a Mayor nomination and a City Council appointment. The Mayor would not have complete power over the establishment, maintenance, and command of the Department of Public Safety.

This amendment would also do the following:

(1) Remove from the Charter a Police Department, which includes the removal of its Police Chief, and the removal of the Mayor's complete power over the establishment, maintenance, and command of the Police Department.

**[Continued on next page]**

(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.

14. On July 28, 2021, the resolution was approved by default because the Mayor did not take any action on the resolution. *See* Ex. C.

### ANALYSIS

15. This Court has the duty to correct errors, omissions, and/or wrongful acts that have occurred, or are about to occur, with respect to questions presented on a ballot. Minn. Stat. § 204B.44.

16. The Petitioner bears the burden of proof by a preponderance of the evidence. *Weiler v. Ritchie*, 788 N.W.2d 879, 882-83 (Minn. 2010).

**A. The inclusion of the Explanatory Note is wrongful because the City Council does not have authority to include “explanations” of ballot questions on the actual ballot.**

17. For purposes of Minn. Stat. § 204B.44, an act is “wrongful” when it is unjust, unfair, or unlawful. *Butler v. City of Saint Paul*, 923 N.W.2d 43, 51 (Minn. Ct. App. 2019).

18. The Minnesota Constitution is clear that “municipalities, like the City of [Minneapolis], possess no inherent powers and are purely creatures of the legislature.” *Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006) *citing* Minn. Const. art. XII, § 3. “Municipalities possess only those powers that are conferred by statute or implied as necessary to carry out legislatively conferred powers.” *Id.* (citations omitted). No law gives a city the power to include on the ballot its own interpretation of a ballot question, so cities do not have the power to do so.

19. Under Minn. Stat. § 410.12, subd. 4, the City Council in this matter is responsible for the ministerial task of determining only the “form of the ballot” that will be presented to the voters.

20. The language used for “[t]he statement of the question on the ballot shall be sufficient to identify the amendment clearly and to distinguish the question from every other question on the ballot at the same time.” Minn. Stat. § 410.12, subd. 4.

21. Ballots are to be “prepared in a manner that enables the voters to understand which questions are being voted upon....and to designate their choices clearly and accurately.” Minn. Stat. § 204B.35, subd. 2.

22. The legislature requires that, “when a question is to be submitted to a vote, a concise statement of the nature of the question shall be printed on the ballot....” Minn. Stat. § 204B.36, subd. 3. The legislature does not authorize cities to explain questions in a ballot. *Id.*

23. The City Council, whose role is purely ministerial, exceeded the powers granted to it by the legislature by including the Explanatory Note.

24. The City Council’s only authority here is to include a question that clearly identifies the amendment and helps voters distinguish it from other questions on the ballot. *See* Minn. Stat. § 410.12, subd. 4. The ballot question, without the Explanatory Note, identifies the amendment and clearly describes to voters the purpose of the proposed amendment. The Explanatory Note is not needed to identify the amendment, and so it is neither expressly nor impliedly permitted by the legislature. *See Weiler*, 788 N.W.2d at 889; Minn. Stat. §§ 204B.36 and 410.12, subd. 4. In *Weiler*, the Minnesota Supreme Court analyzed Minn. Stat. § 204B.06<sup>3</sup> and found that petitioner met her

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<sup>3</sup> Requiring a candidate to use only true or commonly/generally known nickname in an affidavit of candidacy.

burden to show the use of the nickname “Doc” was not “necessary to enable voters to identify” the candidate and, therefore, granted the petition requiring the nickname to be omitted from the ballot. The Explanatory Note in this matter does not “identify the amendment clearly” or “distinguish the question from every other question on the ballot at the same time.” *See* Minn. Stat. § 410.12.

25. There are no other questions on the ballot that address the issues in the proposed charter amendment.

26. By including the separate Explanatory Note, the City Council exceeded its statutory authority.

27. By including the Explanatory Note on the ballot in November of 2021, the City Clerk will exceed its statutory authority.

**B. It would be an error to permit the inclusion of the Explanatory Note on the ballot because it is unreasonable and misleading.**

28. Since a) the Explanatory Note is separate from the ballot’s statement of the question; and b) the City Council is not the Legislature, the “high standard” set forth in *League of Woman Voters Minnesota v. Ritchie*, 819 N.W.2d 636, (Minn. 2012) does not apply. That high standard was applied in *League of Woman Voters* because the issue was “whether the *ballot question* is so misleading that it violates the Minnesota Constitution.....” *Id.*, 644 (emphasis added). And Minnesota precedent has a “high standard....for finding a proposed constitutional amendment to be misleading” because there is a “high degree of deference [given] to the *Legislature*.” *Id.*, 648. Here, the ballot question is not misleading, the Explanatory Note is.

29. The “Explanatory Note,” and future ones like it, inevitably omits important contextual information and would reflect an author’s inherent bias. *See Weiler*, 788 N.W.2d at 888



(holding “[t]he purpose of the ballot is not to provide a forum for candidates to campaign or advertise”).

30. The Explanatory Note states that the proposed charter amendment will “[c]ombine 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.” This Explanatory Note misleads voters by suggesting that the proposed charter amendment would eliminate certain public safety functions. The proposed charter amendment does not propose to eliminate any public safety functions, but instead, seeks to combine those functions which are part of the responsibility of the City of Minneapolis and identified by the City Council into a comprehensive approach.

31. Further, the Explanatory Note states that the proposed charter amendment would prohibit the mayor from having complete power over the Department of Public Safety and would not have the sole discretion to hire its Commissioner. But the mayor currently does not have complete discretion to hire the Police Chief. In fact, the mayor would retain the same power to “nominate” the Commissioner of the Department of Public Safety, subject to council approval under the proposed amendment.

32. The Explanatory Note also falsely implies that the proposed charter amendment, if passed, would eliminate the ability of the City Council to provide funding for peace officers. The proposed charter amendment does not eliminate the authority for the City Council to fund peace officers. In fact, the proposed charter amendment envisions that peace officers would be a part of the Department of Public Safety, if necessary.

### **Prayer for Relief**

Petitioner respectfully requests this Court for an entry of judgment in its favor against the Respondents:

- a. Finding that the City Council acted wrongfully and exceeded its authority by including the Explanatory Note with the ballot question;
- b. Finding that the Explanatory Note is an error that must be removed from the ballot;
- c. Ordering the Respondents to omit the Explanatory Note from the November 2, 2021 ballot and certifying ballot language without the Explanatory Note as follows:

**Department of Public Safety**

Shall the Minneapolis City Charter be amended to strike and replace the Police Department with a Department of Public Safety that employs a comprehensive public health approach, and which would include licensed peace officers (police officers) if necessary, to fulfill its responsibilities for public safety?

Yes \_\_\_\_\_

No \_\_\_\_\_

and

- d. Any other relief this Court deems just and proper.

**HELLMUTH & JOHNSON**

Date: July 30, 2021

By: /s/Terrance W. Moore

Terrance W. Moore, #0194748

Thomas H. Priebe, # 0395187

8050 W. 78th St.

Edina, MN 55439

Phone: 952-941-4005

Fax: 952-941-2337

Email: tmoore@hjlawfirm.com

Email: tpriebe@hjalwfirm.com

**ATTORNEYS FOR PETITIONER  
YES 4 MINNEAPOLIS**

**ACKNOWLEDGMENT**

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minnesota Statutes § 549.211, to the party against whom the allegations in this pleading are asserted.

/s/Terrance W. Moore

Terrance W. Moore, #0194748

CITY OF MINNEAPOLIS  
CERTIFICATION

State of Minnesota }  
County of Hennepin } ss.  
City of Minneapolis }

I, Casey Joe Carl, City Clerk of the City of Minneapolis, in the County of Hennepin, State of Minnesota, certify that, pursuant to Minnesota Statutes, Section 410.12, subd. 3, I have examined a petition for a proposed amendment to the Minneapolis City Charter submitted by Vote Yes 4 Minneapolis and that, having carefully reviewed said petition against the rolls of registered voters maintained by the Office of the Secretary of State for the State of Minnesota, I hereby deem the petition to be sufficient and in compliance with pertinent statutory provisions related to signature requirements.

The original Certificate of the City Clerk, together with the original petition and full staff report related to the evaluation of the same are on file in the Office of City Clerk.



IN WITNESS WHEREOF, I have hereunto signed my name  
and affixed the seal of the City on this the Fourteenth Day  
of May 2021

  
CASEY JOE CARL, City Clerk

May 14, 2021





Office of the City Attorney  
James R. Rowader, Jr.  
City Attorney  
350 S. Fifth St., Room 210  
Minneapolis, MN 55415  
TEL 612.673.3000 TTY 612.673.2157  
[www.minneapolismn.gov](http://www.minneapolismn.gov)

## 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: July 13, 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 the following ballot question for this petition be placed on the ballot at the general election on Tuesday, November 2, 2021:



Resolution No. 2021R-209

City of Minneapolis

File No. 2021-00578

Author: Jenkins

Committee: POGO

Public Hearing: None

Passage: Jul 23, 2021

Publication: JUL 31 2021

RECORD OF COUNCIL VOTE				
COUNCIL MEMBER	AYE	NAY	ABSTAIN	ABSENT
Bender	X			
Jenkins	X			
Johnson	X			
Gordon	X			
Cano	X			
Cunningham	X			
Ellison	X			
Fletcher	X			
Goodman		X		
Osman	X			
Palmisano	X			
Reich	X			
Schroeder	X			

## MAYOR ACTION

Mayor did not sign this action within  
the time specified by City Charter.  
This action is valid and effective as if  
approved by the Mayor.

DATE

Certified an official action of the City Council

ATTEST:

  
CITY CLERK

Presented to Mayor:

JUL 23 2021

Received from Mayor:

JUL 28 2021

Adopting title and ballot language pertaining to a proposed amendment to the Minneapolis City Charter relating to the removal of the Police Department and the creation of a new Department of Public Safety, to be submitted to the qualified voters of the City of Minneapolis at the Municipal General Election on November 2, 2021.

Whereas, a petition was submitted by the Yes4Minneapolis Coalition to the Charter Commission, which was then transmitted to the City Council; and

Whereas, the petition has been verified and deemed a valid petition by the City Clerk; and

Whereas, the Minneapolis City Attorney's Office made the following findings in its legal opinion dated July 13, 2021 as follows:





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; and

Whereas, the proposed amendment submitted by the Yes4Minneapolis Coalition would, if approved, amend Article VII, Sections 7.2(a), 7.3, and 7.4(c), and Article VIII, Section 8.2 of the Minneapolis City Charter relating to Administration: Departments, Administration: Police, Administration: Fire, and Officers and Other Employees: Officers Generally, as follows:

**§ 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.

Whereas, the City Council has neither authority to reject this proposed amendment nor authority to change the language of this proposed amendment; and

Whereas, the City Council's only duty, which is dictated by statute, is to fix the ballot question for this proposed amendment; and

Whereas, a vote for or against specific ballot question language is not an indicator of a Council Member's approval or disapproval of this proposed amendment;

Now, Therefore, Be It Resolved by The City Council of the City of Minneapolis:

That the proposed amendment relating to the removal of the Police Department and the creation of a new Department of Public Safety be submitted to the qualified voters of the City for adoption or rejection at the Municipal General Election to be held November 2, 2021, and that such notice of such submission be given by the City Clerk by publication of such notice and amendment, in full, once a week for two successive weeks prior to November 2, 2021, in the *Star Tribune*, a newspaper of general circulation in the City of Minneapolis, and in *Finance and Commerce*, the official newspaper of the City of Minneapolis.

Be It Further Resolved that in submitting the proposed amendment for adoption or rejection by the qualified voters, the title and language of the question shall be presented as follows:

**"Department of Public Safety**

Shall the Minneapolis City Charter be amended to strike and replace the Police Department with a Department of Public Safety that employs a comprehensive public health approach, and which would include licensed peace officers (police 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 of Public Safety. The appointment process for the Commissioner would include a Mayor nomination and a City Council appointment. The Mayor would not have complete power over the establishment, maintenance, and command of the Department of Public Safety.

This amendment would also do the following:

- (1) Remove from the Charter a Police Department, which includes the removal of its Police Chief, and the removal of the Mayor's complete power over the establishment, maintenance, and command of the Police Department.
- (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."