

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

Don Samuels, Sondra Samuels, and
Bruce Dachis,

Case No.:
Judge:

Petitioners,

v.

**PETITION TO CORRECT BALLOT
QUESTION PURSUANT TO
MINN. STAT. § 204B.44 AND TO
ENJOIN DISTRIBUTION OF
ERRONEOUS BALLOTS**

City of Minneapolis; Casey Joe Carl, in his
official capacity as City Clerk of the City of
Minneapolis; Minneapolis City Council;
Mark V. Chapin, in his official capacity as
Hennepin County Auditor; Steve Simon, in
his official capacity as Minnesota Secretary
of State,

Respondents.

STATEMENT OF THE CASE

1. Nine members of the Minneapolis City Council approved an incomplete and misleading ballot question regarding an amendment to the City Charter that would eliminate the Minneapolis Police Department without any plan for replacing that department's critical public safety functions. If approved, the new charter sections will become effective on December 2, 2021, and Minneapolis will no longer have a police department. Voters need to understand that outcome and timeline. The current ballot question hides that information from them. This must be corrected.

2. This petition is brought by registered voters residing in the City of Minneapolis wishing to protect themselves and all other voters from being presented with a ballot question that fails to identify the essential purpose and effects of the Charter amendment. (*See Decl. of*

Don Samuels ¶¶ 1–6; Decl. of Sondra Samuels ¶¶ 1–6; Decl. of Bruce Dachis ¶¶ 1–6, all declarations filed concurrently with this Petition.)

3. The ballot question presents the issue as one of simply “replac[ing]” the current police department with a new “Department of Public Safety”:

<p>Department of Public Safety</p> <p><u>Shall the Minneapolis City Charter be amended to strike and replace the Police Department with a Department of Public Safety which could include licensed peace officers (police officers) if necessary, with administrative authority to be consistent with other city departments to fulfill its responsibilities for public safety?</u></p> <p>Yes _____</p> <p>No _____”</p>
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(Resolution 2021R-262 at 5, Aug. 20, 2021 Ex. 1.)

4. But the actual purpose of the Charter amendment is to do two things: (1) dismantle and eliminate the Police Department, and (2) begin the process of creating a brand new department of public safety that *might* hire peace officers “if necessary.” In other words, the Charter amendment does not “replace” the Police Department, as the ballot question incorrectly states. That is because the Charter amendment does not transfer of *any* of the functions of the Police Department to the new public-safety department.

5. As written, the ballot question fails to inform voters that choosing “Yes” means:
- The Minneapolis Police Department will ***cease to exist*** as of December 2, 2021;
 - Minneapolis ***will not be required to employ a single licensed peace officer***—the only individuals that, under Minnesota law, can make arrests for felonies like murder, domestic assault, and car-jacking, among other crimes—effectively eliminating any form of City-provided peace-officer protection in Minneapolis as of December 2, 2021;

- Minneapolis will no longer be required to employ 1.7 persons for public safety for every 1,000 residents in whatever police department may exist in the future, if any;
- The position of Chief of Police will be eliminated;
- The Mayor’s “complete power” over the police department is eliminated, so in whatever department is created that department and the people in it will be reporting to no fewer than the 13 members of the City Council and the Mayor, effectively eliminating political accountability for law-enforcement conduct; and
- There is no identified funding mechanism for the new “Department of Public Safety.”

6. If Minneapolis voters want to make this monumental change to public safety, they can do so. But a decision of that magnitude should be made by fully informed voters, not voters misled by ballot language that fails to identify the essential purpose of a complex Charter amendment adopted through a chaotic process. The ballot question needs to be corrected.

INTRODUCTION

7. The issue now before this Court arose after a group known as “YES 4 Minneapolis” (“YES”), a coalition funded largely by entities from outside Minnesota, petitioned to amend the Minneapolis City Charter to make draconian changes to law enforcement in Minneapolis (the “City”) through the use of a ballot question to be presented to voters in the November 2, 2021 general election.

8. After the City Council was presented with YES’s petition, it directed the Minneapolis City Attorney to develop proposed language to include on the ballot. Given the enormous consequences of the question being put to Minneapolis voters, the City Attorney drafted a detailed, non-partisan ballot question and “Explanatory Note” that provided essential context and details to voters regarding the decision they were being asked to make. Explanatory notes are expressly permitted under Minnesota law.

9. The City Council approved the City Attorney’s proposed language by a 12-to-1 vote. Almost immediately after that vote, YES petitioned this Court to “correct” the language of the ballot, arguing, among other things, that the “Explanatory Note” was an improper exercise of the City Council’s authority.

10. The Court rejected YES’s contention that explanatory notes are improper under Minnesota law. The Court also held that the Explanatory Note as then written could not appear on the ballot. In response, the City Attorney revised the language of both the ballot question and Explanatory Note and submitted the revisions to the City Council.

11. But the City Council did not follow the City Attorney’s advice. Instead, acting *against* the City Attorney’s recommendations, the City Council approved YES’s suggested ballot language—language that eliminates the Explanatory Note and omits critical information voters need to understand the gravity of the decision they are making.

12. On August 20, 2021, the City Council held three meetings to vote on the proposed ballot language. In the first meeting, nine City Council members voted to adopt YES’s proposed ballot question language—the same language the City Attorney had previously criticized as being “woefully deficient” and as “altogether fail[ing] to inform voters of the nature of the proposed changes to the City Charter.” Minneapolis Mayor Jacob Frey, who spoke out forcefully against the proposed language, vetoed the resolution. Mayor Frey’s veto was sustained, requiring the City Council to meet again to consider revised language that several City Council members developed on the spot.

13. At the second City Council meeting Council Member Palmisano asked if “the City Attorney ha[d] received this [new ballot question language] and found it to be sufficient?” In response, the City Attorney, Jim Rowader, said “this would be the first time we have seen this

language . . . it would be a little hard to give a definitive legal opinion about the sufficiency of it . . . from my knowledge we have not reviewed this and so we've *just seen it now.*" (See Proceedings of Minneapolis City Council, Aug. 20, 2021, available at <https://www.youtube.com/watch?v=hufN8RzAON4> at 15:51 (emphasis added).)

14. Despite those facts, the City Council voted 9–4 to accept the revised ballot-question language. Mayor Frey then issued a second veto, bringing the City Council back for a third August 20 meeting. During that third meeting, nine City Council members overrode the Mayor's veto in favor of the hastily developed language. The ballot question was then transmitted from the City Clerk to the County Auditor, who passed it to the Minnesota Secretary of State. The Minnesota Secretary of State and County Auditor now appear poised to issue ballots containing the misleading question.

15. Unless this Court grants Petitioners their requested relief, that question will appear on the November 2, 2021 general-election ballot. At that point, Minneapolis voters will be asked to decide whether to eliminate the City's entire police force and to "replace" it with a "Department of Public Safety." The outcome is dramatically different than the "name change" intimated by the misleading language of the ballot question. The new department is not a "replacement" because it has no assurance of funding and adopts a structure that insulates elected officials from accountability and discipline—consequences that are never explained to voters.

16. This Court must immediately intervene to prevent Minneapolis voters from being misled about the proposed amendment. If the ballot measure passes, the amendment will go into effect 30 days later, on December 2, 2021. Whatever may replace the Police Department's functions (if anything) will result from decisions that have yet to be made by the City Council. If the City Council does not pass all ordinances necessary to the operation and functioning of the

“Department of Public Safety,” including the hiring of licensed peace officers, by December 2, Minneapolis will no longer have police officers, a police chief, or funding to hire licensed peace officers to perform the functions that only such officers are allowed to do under Minnesota law. As importantly, no single elected official will be accountable to the electorate for law enforcement conduct in Minneapolis. The voters need to be told that by voting in favor of the ballot question that they will be substituting the Mayor and the Police Chief with up to 13 City Council members who may or may not have supervisory oversight of whatever public safety function may exist.

17. This Court should not be swayed by any pronouncement from the nine members of the City Council that they will act in a timely fashion if the Charter amendment is approved. Indeed, delaying the development of the new “Department of Public Safety” appears to be YES’s express strategy:

[YES Co-leader] Bates, of Yes 4 Minneapolis, said . . . that the plan *intentionally lacks specific details* to allow residents to work with elected officials to shape it . . .

If the amendment passes, Bates said the mayor and city council would select a commissioner and pass ordinances to determine how the department functions and is staffed, **a process she said could take months.**

‘Concrete change’ or ‘Trojan Horse’? Minneapolis to vote on replacing police with public safety department, USA Today, Aug. 19, 2021 (emphasis added) available at <https://www.usatoday.com/story/news/nation/2021/08/19/minneapolis-police-public-safety-department-november-election/8149356002/>.

18. The people of Minneapolis will not have “months” to wait. They will have 30 days. If on December 2, 2021, negotiations between the Mayor, City Council, and unidentified “residents” (whomever they may be)—negotiations that are supposed to take months—are not complete, City residents will be left to fend for themselves. That is a

particularly alarming outcome for a City that has seen an 89% year-over-year increase in homicides, with overall violent crime up 14%. *Minneapolis on pace for near-record homicide number, as City sees violent crime spike*, Kare11.com, June 1, 2021 (available at <https://www.kare11.com/article/news/crime/minneapolis-on-pace-for-near-record-homicides/89-eed4ccdb-9d61-42b1-81bc-aeca9b181fbe>); *Violent crime surges across Minnesota with record murders*, MPR, July 27, 2021 (available at <https://www.mprnews.org/story/2021/07/27/violent-crime-surges-across-minnesota-with-record-murders>).

19. While that would be a stunning, unprecedented situation, it is exactly what will happen if voters approve this ballot question. The voters deserve—and need—to be presented with ballot language that accurately describes the effects of the decision they are being asked to make, both in terms of what is being eliminated and what is (or is not) being added.

20. Under Minnesota law, this Court is required to immediately set a time for a hearing on this matter. In conjunction with setting a time for that hearing the Court should enjoin Respondents from creating and transmitting ballots containing an erroneous question, and then order Respondents to remove the improper ballot question and replace it with language that is “sufficient to identify the amendment clearly.” See Minn. Stat. § 204B.44(b) (“Upon receipt of the petition the court shall immediately set a time for a hearing on the matter”); Minn. Stat. § 410.12, subd. 4.

PARTIES

21. Petitioner Don Samuels is a resident of Minneapolis, Minnesota and is a registered voter in the State of Minnesota.

22. Petitioner Sondra Samuels is a resident of Minneapolis, Minnesota, and is a registered voter in the State of Minnesota.

23. Petitioner Bruce Dachis is a resident of Minneapolis, Minnesota, and is a registered voter in the State of Minnesota.

24. Respondent City of Minneapolis is a home rule charter city under the laws 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-262, which adopted the ballot question at issue in this matter, to be placed on the November 2, 2021 general-election ballot.

25. Respondent Minneapolis City Council is the “governing body” of the City of Minneapolis in which the City’s general legislative and policymaking authority resides, and is the entity that approved the ballot question at issue in this matter, to be placed on the November 2, 2021 general election ballot.

26. Respondent Casey Joe Carl is the City Clerk and chief election official for the City of Minneapolis, in which role he is responsible for direction of the election process and preparing ballots for the November 2, 2021 general election.

27. Respondent Mark V. Chapin is the Hennepin County Auditor, and in that role has a number of responsibilities related to elections, including the transmittal of approved ballot questions to the Secretary of State and mailing of ballots to individuals that have requested them via mail, in addition to other duties.

28. Respondent Steve Simon is the Secretary of State for the State of Minnesota, in which role he has various duties related to elections, including transmitting forms to county auditors as necessary for the conduct of elections, among other election-related duties.

JURISDICTION AND VENUE

29. 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). Venue is also appropriate pursuant to Minn. Stat. §§ 542.03, 542.09.

30. This Court also has subject matter jurisdiction over this matter pursuant to Minn. Stat. § 484.01.

BACKGROUND

I. THE MINNEAPOLIS CITY CHARTER CAN BE AMENDED BY PETITION.

31. As a “home rule” charter city, the Minneapolis City Charter can, within certain limits, be amended “upon the petition of voters equal in number to five percent of the total votes cast” at the last previous general election. *See* Minn. Stat. § 410.12, subd. 1.

32. When such a petition is presented to the City Council, the petition is evaluated to determine whether it is technically and legal valid. If it is, the City Clerk transmits the petition first to the relevant policy committee of the City Council, which in the case of a public-safety amendment is the Policy and Government Oversight Committee. The committee develops proposed ballot question language that it then sends to the full City Council for approval.

33. The actual content of the ballot question is ultimately determined by the Minneapolis City Council as the “governing body.” *See* Mpls. City Charter § 4.1(a). Critically, “[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. The ballot item must contain a “concise statement of the nature of the question” Minn. Stat. § 204B.36, subd. 3. The City Council’s role, therefore, is to craft language that provides voters with sufficient information to identify what they are voting for.

34. Under the normal process, once ballot-question language is developed and approved by the City Council it is submitted to qualified voters in the form of a ballot question. *See* Minn. Stat. § 410.12, subd. 4.

35. Any ballot question must be referred to the County Auditor no less than seventy-four days prior to the date of the election at which the electorate will decide the question. That is the same deadline for the County Auditor to provide notice to the Minnesota Secretary of State as well. *See* Minn. Stat. § 205.16.

36. Given those requirements, and that the next general election in Minnesota is set for November 2, 2021, the deadline for ballot questions to be referred to the County Auditor and for the County Auditor to send those to the Secretary of State was Friday, August 20, 2021.

37. Once the Secretary of State receives the ballot question language, he prepares ballots with the approved language on them. Any person that requested a ballot by mail can be sent that ballot 46 days before, and not later than 14 days before, the November 2, 2021 election. Minn. Stat. § 204B.45, subd. 2.

38. If 51 percent of the votes cast are in favor of the proposed amendment, it is considered adopted, and it goes into effect 30 days after the election. Minn. Stat. § 410.11. Those charter provisions then supersede all other relevant charter provisions. *Id.*

II. YES SUBMITTED A PETITION THAT THE CITY ATTORNEY DETERMINED MET THE LEGAL AND TECHNICAL REQUIREMENTS TO BE SUBMITTED TO THE CITY COUNCIL FOR APPROVAL.

39. On or about April 30, 2021, 2021, YES submitted a petition proposing a charter amendment eliminating the Police Department and creating a Department of Public Safety.

40. Specifically, the petition sought to modify the Minneapolis City Charter in various ways pertaining to public safety, such as by eliminating the provisions relating to “Police” and

that the Mayor have sole authority over the police, removing a requirement that the Police Department employ 1.7 individuals per 1,000 residents, eliminating the requirement that the City Council fund a police force, depriving the City Council of its authorization to impose property taxes to fund police officer compensation, and creating a “department of public safety,” though the petition did not define that department’s duties, responsibilities, or structure.

41. After the petition was verified by the City Clerk, it was transmitted to the City Council. On May 14, 2021, the City Council directed the City Attorney to: (1) analyze YES’s proposed charter amendment to determine whether it constitutes a proper subject for a home-rule charter; (2) draft ballot language for the proposal to be submitted to voters at the November 2, 2021 general election; and (3) publish the legal analysis, along with supporting findings, in a written opinion along with the draft ballot language for the proposed charter amendment.

(Staff Directive, May 14, 2021, attached as Ex. 2.)

42. The City Attorney published its analysis, along with its recommended ballot language, in a memorandum on June 22, 2021 (the memorandum was revised four times, the last time on July 13, 2021). (City Atty. Mem. at 12, July 13, 2021, attached as Ex. 3.) According to the memorandum, the City Attorney determined that the amendment was a proper subject for the Charter and complied with relevant law. The City Attorney noted, however, that while there is no Minnesota constitutional provision or statute requiring cities to have a police force *per se*, there are numerous critical public safety duties that can be performed *only* by a licensed peace officer. These include, among other things: performing a court-ordered search and seizure; conducting a felony arrest; conducting certain gross misdemeanor arrests; and conducting arrests for violations of protective-type orders. *See, e.g.*, Minn. Stat. § 626.05; Minn. Stat § 629.34, subd. 1(c)(4)-(8); Minn. Stat. § 626.84, subd. 2.

43. Recognizing that, police force or not, a large city like Minneapolis needs individuals that are legally permitted to perform arrests, searches and seizures, and enforce domestic-violence protection orders, the City Attorney noted that without a police department the City could “hire licensed peace officers as employees or independent contractors.” The City could also “have joint power agreements with other jurisdictions, such as St. Paul . . . to provide licensed peace officer services as needed.” (City Atty. Mem. at 9–10.)

44. Finally, the City Attorney noted the vague and ambiguous nature of the proposed “department of public safety.” According to the City Attorney, based on the language of the proposed charter amendment “[i]t is not clear what public safety functions would be integrated into the new Department of Public Safety” and “it is not clear whether the public safety functions of a comprehensive public health approach to safety [the proposed charter amendment language] would include the typical work of a police department, such as patrolling the City, 911 call responses . . . making arrests, and conducting investigations.” (City Atty. Mem. at 10–11.) The City Attorney noted that such details could be worked out in the future through enactment of ordinances. (*Id.*)

45. In short, if YES’s proposal is adopted, Minneapolis residents have no guarantee that the City will hire a single licensed peace officer that could perform such crucial public-safety duties as arresting suspected murderers or apprehending domestic abusers violating restraining orders. Instead, Minneapolis may need to rely on licensed peace officers from St. Paul, or cities even further away, to respond to emergencies in Minneapolis.

46. YES’s proposed charter amendment thus presents Minneapolis citizens with a stark choice: Should they agree to disband the existing system of public safety—one that includes individuals capable of executing search warrants, arresting felons, and enforcing

domestic protection orders—and create an ill-defined “Department of Public Safety” potentially lacking these powers and charged with the vague mission to “integrat[e] its public safety functions into a comprehensive public health approach to safety”?

47. Given the importance of this issue, recognizing the possibility of voter confusion, and wishing to provide voters with a clear understanding of the purpose of the amendment and effect of their vote, the City Attorney provided draft language for a ballot question that included an “Explanatory Note” identifying the critical components of the amendment and explaining to voters what the charter amendment could mean for the City. In its final form, the City Attorney’s proposed ballot question was:

<p>Department of Public Safety</p> <p>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?</p> <p>Yes _____</p> <p>No _____</p> <p>Explanatory Note:</p> <p>This amendment would create a new Department of Public Safety, which would:</p> <p>(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.</p> <p>(2) Include licensed peace officers (police officers) if necessary to fulfill the responsibilities of the Department of Public Safety.</p> <p>(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.</p> <p>This amendment would also do the following:</p> <p>(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.</p> <p>(2) Remove the City Council requirement to fund a police force of at least 1.7 employees per 1,000 residents.</p> <p>(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.</p>
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(City Atty. Mem. at 12.)

48. Each point in the “Explanatory Note” was drawn directly from either the language of the proposed Charter amendment or referenced language that the amendment would strike from the existing charter.

49. The Minneapolis Policy and Government Oversight Committee considered the proposed language and, on July 21, 2021, voted 11–2 to adopt the language and submit it to the City Council for approval.

50. After considering this language, on July 23, 2021 the City Council voted 12–1 to approve the ballot question with the “Explanatory Note.” Mayor Jacob Frey took no action within the time specified by the City Charter, so it was deemed effective and valid as if approved by the Mayor on July 28, 2021. (Resolution 2021R-209, July 28, 2021, attached as Ex. 4.)

III. YES BRINGS LEGAL ACTION TO FORCE THROUGH A BALLOT QUESTION THAT THE CITY ATTORNEY CALLED “WOEFULLY DEFICIENT.”

51. Though YES achieved its goal of putting the proposed abolishment of the Minneapolis Police Department before Minneapolis voters, it was not satisfied with the City Council’s ballot question and started a lawsuit to “correct” the approved ballot language.

52. Specifically, YES complained that the inclusion of an “Explanatory Note” was impermissible under Minnesota law and a misleading “partial description” of the impact of their proposed City Charter amendment. (YES Pet. at 8–9, July 30, 2021, attached as Ex. 5.)

53. Instead, YES proposed ballot language that would only reference the disbanding of the police force and the purported “replacement” of the Police Department with a Department of Public Safety. (*Id.* at 10.) YES’s proposal omitted any reference as to how this change could limit the City’s ability to conduct crucial tasks such as felony arrests and enforcement of harassment restraining orders. It also did not disclose that all of that would happen 30 days after the amendment was approved by voters. YES’s preferred language was:

“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 _____”

(YES Pet. at 10.)

54. In opposing YES’s petition, the City explained that “[g]iven the number and breadth of the proposed charter changes that must be reduced to a single ballot question, ‘a concise statement of the nature of the question’ is necessarily lengthier than a ballot question might be for a single proposed charter amendment to a discrete provision.” (Resp. to Pet. at 14, Aug. 6, 2021, attached as Ex. 6.)

55. The City further noted that YES’s preferred language “altogether fails to inform voters of the nature of the proposed changes to the City Charter.” (Resp. to Pet. at 15.) The City continued that “Petitioner’s proposed language mentions only two of the charter changes the proposed amendment would create . . . [but] makes no mention of the other significant changes” that the amendment would cause, including the (1) removal of the Mayor’s complete power to establish, maintain, and command of the police department; (2) removal of a “police chief” as a required role within the City government; (3) removal of a minimum funding requirement for a police force; and (4) removal of the City Council’s ability to impose additional taxes to pay the City’s police (or peace officer) force. (Resp. to Pet. at 15–16.) The City concluded that “[YES’s] proposed ballot language is woefully deficient and would not sufficiently identify many key aspects of the Charter amendment.” (Resp. to Pet. at 16.)

56. The Court ruled on YES’s petition on August 13 (the “Aug. 13 Order). As part of that ruling the Court affirmed the City’s ability to include an “Explanatory Note.” (See Aug. 13 Order at 5–8, attached as Ex. 7.)

57. While the Court was clear that including an explanatory note can be a proper exercise of the City Council’s authority, it nonetheless determined that the “inclusion of the explanatory note as it is currently written,” would be an error. (*Id.* at 8–11 (emphasis added).) Critically, the Court’s analysis and ultimate ruling that the existing explanatory note needed to be removed did not bar the inclusion of a revised explanatory note. The Court also expressly declined to adopt YES’s proposed ballot language.

IV. THE CITY ATTORNEY REVISES THE PROPOSED BALLOT QUESTION LANGUAGE TO BE CONSISTENT WITH THE LAW, BUT THE CITY COUNCIL ADOPTS YES’S PREFERRED LANGUAGE.

58. On August 16, 2021, the City Attorney proposed revised ballot language. The City Attorney attempted to accommodate the Court’s generalized concerns by significantly shortening the Explanatory Note, eliminating the bullet point format, and adding additional details to the ballot question that had previously been part of the Explanatory Note. (*See id.*) The City Attorney’s revision also explained that, rather than entirely “replacing” the Police Department—the language YES advocated which suggests all of the functions will transfer to the new department, which is not what the amendment says—the Mayor and City Council would determine the new department’s functions *after* the amendment passed. Petitioners do not agree that the City Attorney’s revised question meets the statutory requirements of presenting the ballot question fully and fairly to the voters. It falls short for many of the same reasons that make the language ultimately approved by the City Council unsuitable

59. The revised language proposed by the City Attorney was:

Public Safety Department

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 to the delivery of its functions, with those specific functions to be determined by the Mayor and City Council; which will not be subject to exclusive mayoral power over its establishment, maintenance, and command; and which could 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 Department of Public Safety combining public safety functions through a comprehensive public health approach determined by the Mayor and Council. The department would be led by a Commissioner nominated by the Mayor and appointed by the Council. The Police Department, and its chief, would be removed from the City Charter. The Public Safety Department could include police officers, but the minimum funding currently required would be eliminated.

(Revised Ballot Question, Aug. 18, 2021, attached as Ex. 8.)

60. On August 18, 2021, the City Clerk and Deputy City Attorney presented the proposed revised ballot question language to the Minneapolis Policy and Government Oversight Committee, recommending the approval of that language.

61. After that meeting, however, the Policy and Government Oversight Committee approved wholesale the imprecise ballot and misleading ballot language that YES demanded in its petition—the same language that this Court refused to adopt and that the City Attorney referred to as “altogether fail[ing] to inform voters of the nature of the proposed changes to the City Charter.” (See Resolution, Aug. 18, 2021, attached as Ex. 9; Resp. to Pet. at 15.)

V. THE CITY COUNCIL HOLDS A SERIES OF LAST-MINUTE MEETINGS TO APPROVE BALLOT LANGUAGE THAT WAS NOT ANALYZED BY THE CITY ATTORNEY.

62. On August 20, 2021, the City Council met three times to consider the new ballot-question language that had been approved by the Policy and Government Oversight

Committee. The City Council initially voted 9–3 to approve the language, but Mayor Frey quickly vetoed the resolution. (Resolution 2021R-254, Aug. 20, 2021, attached as Ex. 10.) On a later vote to override the veto, the City Council failed to garner enough votes for the revised language, and the Mayor’s veto was sustained. Without any meaningful discussion or a comprehensive review by the City Attorney, a couple of members of the City Council then cobbled together new language. The new language was not submitted to or analyzed by the City Attorney prior to the next City Council vote.

63. The City Council then approved the following language to be included on the November 2, 2021 ballot by a 9–4 vote, overriding a second veto by the Mayor:

<p>Department of Public Safety</p> <p><u>Shall the Minneapolis City Charter be amended to strike and replace the Police Department with a Department of Public Safety which could include licensed peace officers (police officers) if necessary, with administrative authority to be consistent with other city departments to fulfill its responsibilities for public safety?</u></p> <p>Yes _____</p> <p>No _____”</p>
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(Resolution 2021R-262, attached as Ex. 1.)

64. The adoption of this bare description of a proposal that will, if adopted, in 30 days fundamentally change the way residents of Minneapolis are protected by law-enforcement officers defies logic, common sense, and the law.

65. The approved language was transmitted to the County Auditor, who transmitted it to the Minnesota Secretary of State.

66. The proposal cannot stand because it deprives voters of critical information about the effects of their vote. This includes the crucial fact that, unless other ordinances are passed by

the City Council, the City will be unable to dispatch licensed peace officers to respond to calls for assistance in instances of life-threatening violence, domestic abuse, and property destruction. The language conceals from voters the reality that, unless and until the City Council passes additional ordinances (if ever), any officers left working for the City of Minneapolis have no assurance their salaries will be funded. And it hides from voters the removal of charter language that previously granted the Mayor authority to control any police or peace officers that may someday be hired, resulting in an opaque and convoluted organizational structure where any officer that is hired is overseen by the Mayor and all thirteen City Council members.

67. Moreover, Minneapolis residents need to understand that, if the Charter amendment is approved, it will go into effect 30 days later. If the City Council does not create an organizational structure, pass ordinances, and agree on funding within those 30 days, there may be no licensed peace officers employed by the City available to respond to emergencies.

68. While some City Council members may believe that work can be accomplished in 30 days, YES has made clear it intends to influence those discussions, which will almost certainly drag the process out.

69. More problematic, the entire City Council and the Mayor is up for election on November 2, and some Council members are not running for re-election. That means that any new ordinances, and an entirely new City department will be being negotiated by lame-duck Council members, with newly elected Council members potentially weighing in as well. In sum, it is improbable that the City Council can or will take all the steps necessary to maintain anything like the capabilities of the Minneapolis Police Department within 30 days of abolishing it. Voters *must* understand this.

70. There is widespread opposition to this ballot question and Charter amendment, which have been criticized by Minnesota Governor Tim Walz and U.S. Senator Amy Klobuchar, among other state officials, as well as by civic groups. *See Walz Opposes Minneapolis ballot question to replace Police Department*, Star Tribune, Aug. 26, 2021 (available at <https://www.startribune.com/walz-opposes-minneapolis-ballot-question-to-replace-police-department/600091315/?refresh=true>). On Sunday, August 29, 2021, the Editorial Board of the Star Tribune also criticized the ballot question, in an article titled “Minneapolis voters are ill-served by vagueness on public safety ballot question.” *Minneapolis voters ill-served by vagueness on public safety ballot question*, Star Tribune, Aug. 29, 2021 (available at <https://www.startribune.com/vagueness-on-ballot-ill-serves-minneapolis-voters-public-safety-police/600091892/>).

71. Voters deserve to know what they are voting for or against. This petition does not seek to deprive the people of their vote or right to decide how to be served by law enforcement personnel.

72. Minnesota law, and a basic sense of democracy and due process, requires that a ballot question “be sufficient to identify the amendment clearly.” The proposed ballot question that will be presented to Minneapolis residents absent this Court’s intervention does not “identify the amendment clearly”: it describes only a portion of what the amendment will do in a confusing and misleading manner. The Court should order that the ballot question, including any explanatory note, be redrafted to fairly apprise citizens of the issue being presented to them. The Court should also enjoin Respondents from creating or distributing ballots containing language developed in error.

PETITION TO CORRECT ERROR PURSUANT TO MINN. STAT. § 204B.44

73. The preceding allegations are incorporated by reference as if fully set forth herein.

74. To successfully petition for correction of an error on a ballot, Petitioner must show that Respondents committed, or will commit, an error, omission, or wrongful act that must be corrected under Minn. Stat. § 204B.44.

75. Respondents City of Minneapolis, the Minneapolis City Council, and the Minneapolis City Clerk, erred by approving ballot question language, and submitting such language to the County Auditor and Minnesota Secretary of State, that fails to “sufficiently identify the amendment clearly.” Specifically, the ballot question to be presented does not inform voters of the essential purpose of the amendment or the crucial effects of their vote, including the elimination of the role of Chief of Police, the removal of a required minimum number of police-department employees, and the removal of the requirement for the City’s authority to levy taxes to fund peace officers.

76. The only means to protect Minneapolis voters from the immediate and irreparable harm that will arise from being presented with a misleading ballot question devoid of necessary context and detail is to enjoin Respondents Secretary of State and Hennepin County Auditor from erring by presenting voters with ballots containing an erroneous question, and to order Respondent City Council to correct its erroneous ballot question language to include additional details about the amendment sufficient to satisfy Minn. Stat. § 410.12, subd. 4.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court enter relief in its favor and against

Respondents:

1. Finding that the City Council erred and acted wrongfully by omitting necessary information from a ballot question regarding an amendment to the Minneapolis City Charter that would allow voters to make a fair and informed decision regarding the proposed Charter amendment;

2. Find that Petitioners will be irreparably harmed if the Court does not enter injunctive relief barring the Secretary of State and Hennepin County Auditor from presenting voters with an erroneous ballot question;

3. Immediately set a time for a hearing on the matter as required by Minn. Stat. § 204B.44(b), which hearing should be set sufficiently in advance of the September 17, 2021 date on which mail-in ballots can begin to be distributed that such ballots can be corrected;

4. Enter a temporary restraining order and temporary injunction barring the Secretary of State from placing a ballot question on the November 2, 2021 ballot that is in error;

5. Enter a temporary restraining order and temporary injunction barring the Secretary of State and/or Hennepin County Auditor from mailing ballots to voters that contain an error, specifically that the ballot question does not provide sufficient information to “identify the amendment clearly”;

6. Such other, further, or different relief as this Court shall deem just and proper.

**ANTHONY OSTLUND
BAER & LOUWAGIE P.A.**

Dated: August 30, 2021

By: s/ Joseph W. Anthony

Joseph W. Anthony (#0002872)
Norman H. Pentelovitch (#399055)
Cory D. Olson (#386941)

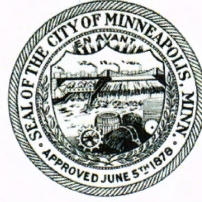
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ATTORNEYS FOR PETITIONERS

ACKNOWLEDGEMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, to the parties against whom the allegations in the Summons and Complaint are asserted.

s/ Joseph W. Anthony
Joseph W. Anthony (#0002872)



Resolution No. 2021R-262

City of Minneapolis

File No. 2021-00578

Author: Bender

Committee: POGO

Public Hearing: None

Passage: Aug 20, 2021

Publication:

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

MAYOR ACTION

APPROVED

VETOED

MAYOR FREY

AUG 20 2021

DATE

Certified an official action of the City Council

ATTEST:

CITY CLERK

AUG 20 2021

Presented to Mayor: _____

Received from Mayor: _____

AUG 20 2021

Amending Resolution 2021R-209 entitled "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," passed July 23, 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:

EXHIBIT 1

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:

"City Question #

Department of Public Safety

Shall the Minneapolis City Charter be amended to strike and replace the Police Department with a Department of Public Safety which could include licensed peace officers (police officers) if necessary, with administrative authority to be consistent with other city departments to fulfill its responsibilities for public safety?

Yes _____

No _____"

STAFF DIRECTIVE

Proposal for Charter Amendment on Public Safety – By Citizen Petition [New Business Item 3]

1. Receiving and filing the report of the City Clerk on the validation of the petition submitted by the Yes4Minneapolis committee related to its proposed charter amendment.
2. Referring to the City Attorney a proposal for charter amendment to be referred to the electorate at the general election on Tuesday, November 2, 2021, related to a new Public Safety Department (submitted by Yes4Minneapolis Petition Committee) and directing the City Attorney to—
 - A. Conduct a legal analysis of the proposal to determine whether it constitutes a proper subject for a home-rule charter;
 - B. 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
 - C. 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.
3. Referring the proposed charter amendment to the Policy & Government Oversight Committee pending the report of the City Attorney's Office, as described above.

May 14, 2021

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:

EXHIBIT 3

- (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:

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.



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.”

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: CIVIL – OTHER

Yes 4 Minneapolis,

Court File No. _____

Petitioner,

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

v.

City of Minneapolis

and

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

Respondents.

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.”¹ 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.”²

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

² *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/charter-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.06³ and found that petitioner met her

³ 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@hjlwfirm.com

Email: tpriebe@hjlwfirm.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



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

[Signature] 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."

STATE OF MINNESOTA**DISTRICT COURT****COUNTY OF HENNEPIN****FOURTH JUDICIAL DISTRICT****Yes 4 Minneapolis,****Case Type: Other Civil****Court File No.: 27-CV-21-9345****Petitioner,****Judge: Jamie L. Anderson****v.****RESPONSE IN OPPOSITION TO
PETITION TO CORRECT
BALLOT****City of Minneapolis,****and****Casey Joe Carl, in his official capacity as
City Clerk of the City of Minneapolis,****Respondents.**

INTRODUCTION

Respondents City of Minneapolis and Casey Joe Carl respectfully request that the Court dismiss the Petition to Correct Ballot under Minn. Stat. § 204B.44. Petitioner asks the Court to strike from the ballot language that is not only legally permitted but is also necessary to identify the significant structural changes to the Minneapolis City Charter that Petitioner seeks. Petitioner's challenge is premised on the idea that a ballot question cannot describe the specific changes sought by proposed amendment. This argument is not cognizable under the governing law and runs counter to the principle that the voters should be informed when considering a change to their city's charter. In addition, Petitioner itself was promoting proposed ballot language that included an explanatory note as recently as last month. Because (1) the City Council, not Petitioner, is the body

EXHIBIT 6

statutorily charged with approving ballot language and (2) the Council approved language that faithfully captures the proposed charter changes, this Petition to Correct Ballot should be dismissed.

FACTS

A. The City of Minneapolis is a Home Rule Charter City, and its Charter is Subject to Amendment by Ballot Question Initiated by Citizen Petition.

The City of Minneapolis is a home rule charter city. *See* Minn. Const. art. XII, § 4 (permitting “[a]ny local government unit . . . [t]o adopt a home rule charter for its government”); Minn. Stat. § 410.04 (authorizing “[a]ny city in the state” to “frame a city charter for its own government in the manner” prescribed by Chapter 410. Subject to the limitations in Chapter 410, a 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.” Minn. Stat. § 410.07. Amendments to a municipal charter may be proposed by the city’s charter commission and shall be proposed “upon the petition of voters equal in number to five percent of the total votes cast” at the last previous general election. Minn. Stat. § 410.12, subd. 1.

B. Proposed Amendments that Meet All Technical and Legal Requirements Shall Be Placed on the Ballot at the Next Election, with the City Council Charged with Crafting the Ballot Language.

An amendment that is found to be technically and legally valid shall be submitted to the qualified voters in the form of a ballot question. Minn. Stat. § 410.12, subd. 4; *see Haumant v. Griffin*, 699 N.W.2d 774, 780-81 (Minn. Ct. App. 2005) (upholding City’s

refusal to place proposed amendment on ballot where proposed amendment would violate federal law, state law, and state public policy and was therefore legally invalid). The proposed amendment must be submitted as a ballot question at the next general election if one is to be held within six months of the date that it was transmitted by the Charter Commission to the City Council. *See* Minn. Stat. § 410.12, subd. 4; Minn. Stat. § 410.10, subd. 1.

The form of the ballot question is determined by the governing body. Minn. Stat. § 410.12, subd. 4. In the City of Minneapolis “[t]he governing body is the City Council, in which the City’s general legislative and policymaking authority resides.” (Declaration of Sarah McLaren (“McLaren Decl.”), Ex. A (Minneapolis City Charter Provision 4.1(a)).

“The 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. The proposed amendment is adopted if fifty-one percent of the votes cast on the amendment in the election are in favor of its adoption. *Id.*

C. Last Spring, Petitioner Submitted a Proposed Charter Amendment Eliminating the City’s Police Department and Creating a New City Department of Public Safety.

On April 30, 2021, the Clerk’s Office, on behalf of the Minneapolis Charter Commission, received a petition to amend the Minneapolis City Charter in the form of a ballot question to be referred to the electorate at the general election set for Tuesday,

November 2, 2021 (hereinafter “Petition”). The Petition was submitted by Petitioner organization “Yes 4 Minneapolis.” (Declaration of Casey Joe Carl (“Carl Decl.”), ¶ 3.)

The Petition proposed that the City Charter be amended (1) to remove language that requires a police department under the exclusive control of the mayor, temporary police, and minimum funding levels for a police force and (2) replace it with a department of public safety 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. (Carl Decl. ¶ 4.) The Petition included a red line of the affected charter provisions, showing the proposed deletions and additions to the current City Charter. (Carl Decl. ¶ 4, Ex. 1.)

The Petition proposed that Article VII, Sections 7.2(a), 7.3, and 7.4(c), and Article VIII, Section 8.2 of the Minneapolis City Charter be amended as follows. The text that would be removed by the proposed amendment appears below with strikethrough effect; the text that the proposed amendment would add appears underlined.

§ 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~~

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

A copy of the current language of the relevant sections of the City Charter is attached as Exhibits B – E to the Declaration of Sarah McLaren.

D. The City Received the Petition and Determined the Petition to Be Sufficient under the Law.

The Petition was filed with the Charter Commission at its meeting on May 5, 2021. That same day, the Chair of the Charter Commission transmitted the Petition to the City Council. (Carl Decl. ¶5, Ex. 2.) Pursuant to state law, Minnesota Statutes § 410.12, subd. 3, the City Clerk's Office then proceeded to determine whether the Petition had the requisite number of signatures of registered voters and had the proper attestations. This determination was completed and the Petition was found sufficient to satisfy the statutory requirements on May 14, 2021. (Carl Decl. ¶6, Ex. 3.)

E. The Proposed Amendment Was Determined to Be a Legally Permissible Ballot Measure.

On May 14, 2021, the Minneapolis City Council received and filed the report of the City Clerk on the validation of the Petition. The Council also directed the City Attorney to: (1) conduct a legal analysis of the proposal in the Petition 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. (Carl Decl. ¶7, Ex. 4.)

On June 30, 2021, the City Attorney's Office, per the direction of the Minneapolis City Council, presented to the Policy & Government Oversight Committee its findings regarding the legality of the Petition's proposed changes to the City Charter. (Carl Decl. ¶8.) Those findings were as follows.

- 1. Cities are not legally required to employ police officers or have a police department or police chief.*

The City Attorney's Office concluded that the Petition met all technical requirements, that the amendment was constitutional and complied with all applicable laws. (Carl Decl. ¶9, Ex.5.) Specifically the City Attorney's Office concluded that the proposed amendment was lawful because there is no legal requirement for a municipality to include a police department in its government structure or to employ police officers. The Minnesota Constitution states that government "is instituted for the security, benefit

and protection of the people” but does not require a police department. Minn. Const. art. I, sec. 1.

There is similarly 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, should licensed peace officers be deemed necessary as part of the proposed Department of Public Safety.

2. Under the proposed amendment, if it is necessary for the City to provide police services, the City could employ or contract with licensed peace officers.

Under state law, specific services can only be performed by licensed peace officers. *See, e.g.*, Minn. Stat. § 626.05 (search and seizure under a court order); Minn. Stat. § 629.34, subd. 1(c)(4)-(8) (felony arrest based on charge, certain gross misdemeanor arrests, arrests for violations of protective-type orders); and Minn. Stat. § 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 or to provide these services.

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 proposed 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.

Under the City Charter Amendment proposed by Petitioner, if the City needed a police officer to perform services 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). In addition, if the proposed amendment is adopted by the voters, the City Council could enact ordinances to clarify these issues through the City's ordinance enactment process. In sum, the proposed charter amendment, if enacted, would be constitutional and would comply with federal law, state law, and state public policy.

F. The City Adopted Ballot Language for the Proposed Amendment that Mirrors the Language of the Petition and Enables Voters to Make an Informed Choice.

Pursuant to its conclusion that the Petition and proposed amendment met all legal requirements, the City Attorney's Office advised that 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. (Carl Decl. ¶ 9, Ex.5.)

The Policy & Government Oversight Committee received and filed the City Attorney's Office recommendations. (Carl Decl. ¶ 10, Ex.6.) At its meeting on July 21, 2021, the Policy & Government Oversight Committee recommended that the full City Council pass a resolution adopting the title and ballot language pertaining to the proposed

amendment to the Minneapolis City Charter requested by the Petition. (Carl Decl. ¶11, Ex.7.)

On July 23, 2021, the Minneapolis City Council passed resolution 2021R-209 which adopted the title and ballot language pertaining to the proposed amendment to the Minneapolis City Charter requested by the Petition. This Resolution became effective upon the expiration of the mayoral veto period and publication on July 31, 2021. (Carl Decl. ¶12, Ex.8.) The title and ballot language adopted by the Council is 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.

(Carl Decl., Ex. 8.)

G. Under State Law, the City Must Provide Ballot Language to the County Auditor by August 20, 2021, to Enable the Question to Appear on the Ballot for the Upcoming General Election.

Under state law, a ballot question may not be submitted to voters at any election unless all election-related deadlines can be met, including notice and publication deadlines. Minn. Stat. § 205.10, subd. 5, and § 205.16. One of those requirements is that any ballot question to be referred to the electorate must be submitted to the County Auditor no less than seventy-four days before the date of the election at which the question is to be considered by voters. Given that the general election in 2021 is set for Tuesday, November 2, that means that this statutory cutoff date for notice to the County Auditor is Friday, August 20, 2021. (Carl Decl. ¶13.) That same day is also the statutory deadline for the County Auditor to provide this same notice to the Minnesota Secretary of State. Minn. Stat. § 205.16. The County Auditor must post sample ballots for each

precinct in its office and provide a copy to the Secretary of State no later than September 17, 2021. Minn. Stat. § 204D.16. (Carl Decl. ¶14.)

LEGAL STANDARD

Petitioner brought this challenge to the ballot question language approved by Minneapolis City Council under Minn. Stat. § 204B.44. As Petitioner acknowledges, it bears the burden of proof by a preponderance of the evidence. (*See* Petition to Correct Ballot at ¶ 16 (citing *Weiler v. Ritchie*, 788 N.W.2d 879, 882-83 (Minn. 2010)); *see also Paquin v. Mack*, 788 N.W.2d 899, 904 (Minn. 2010).

Specifically, Petitioner must show that the City committed an error, omission, or wrongful act that must be corrected under Minn. Stat. § 204B.44. *See Butler v. City of Saint Paul*, 936 N.W.2d 478, 484 (Minn. 2019) (stating that the petitioner “has the burden to prove that the City made an error that requires correction”); *Paquin v. Mack*, 788 N.W.2d 899, 904 (Minn. 2010) (stating that petitioner “has the burden to prove that leaving his name off the ballot is an error that must be corrected under Minn. Stat. § 204B.44”); *see also* Minn. Stat. § 204B.44.

As the Supreme Court observed in *Carlson v. Ritchie*, “the ‘principal purpose’ of [section 204B.44] ‘is to provide a mechanism for correcting errors alleged to have occurred before the election such as . . . errors in preparing or printing the official ballot.’” *Carlson v. Ritchie*, 830 N.W.2d 887, 894 (Minn. 2013) (quoting *Coleman v. Ritchie*, 762 N.W.2d 218, 231 n. 13 (Minn. 2009)).

ARGUMENT

I. The Ballot Language Approved by City Council Accurately Informs Voters About the Proposed Amendment and More Than Satisfies the Requirements of Minn. Stat. § 410.12, subd. 4 and Minn. Stat. § 204B.36, subd. 3.

Petitioner does not propose a single or isolated change to the Minneapolis City Charter. Rather, the proposed charter amendment before Minneapolis voters would strike some charter provisions, replacing some of the stricken provisions with new language, and would entirely remove other provisions, without replacing them. Each of the proposed charter changes, whether a revision to existing language, addition of new language, or removal of existing language, would meaningfully and significantly alter the structure of City government as it currently exists.

Given the number and breadth of the proposed charter changes that must be reduced to a single ballot question, “a concise statement of the nature of the question” is necessarily lengthier than a ballot question might be for a single proposed charter amendment to a discrete provision. *See* Minn. Stat. § 204B.36. Likewise, a statement of the question that is “sufficient to identify the amendment clearly” is necessarily more detailed when many changes are proposed by an amendment, as opposed to a single change addressing a discrete charter provision.

The ballot question language approved by the Minneapolis City Council, the governing body, by a 12 to 1 vote, faithfully conveys the substance of the proposed changes to the City Charter. Both the initial question and each of the items listed in the explanatory note describe specific proposed charter changes and are “sufficient to identify the amendment clearly,” as required by section 410.12, subd. 4, whether those

changes are revisions of existing charter language, removal of language, or replacement of language.¹

By contrast, the language proposed by Petitioner altogether fails to inform voters of the nature of the proposed changes to the City Charter. Petitioner's proposed language would simply ask voters, without further explanation:

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?

(Petition to Correct Ballot at 10).

Under the law, it is the City Council, not the Petitioner, which determines the form of the ballot question. *See* Minn. Stat. § 410.12, subd. 4. In addition, Petitioner's proposed language falls well short of the standard requiring the statement of the ballot question to be "sufficient to identify the amendment clearly." *See id.* To the contrary, the Petitioner's proposed language mentions only two of the charter changes the proposed amendment would create: the removal of the police department and the creation of the department of public safety. Petitioner's proposed language makes no mention of the other significant changes its proposed charter amendment would bring about, including (1) the removal of the Mayor's "complete power over the establishment, maintenance,

¹ Petitioner cites *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636 (Minn. 2012) and argues that the highly deferential standard it sets forth should not apply in this case. (*See* Pet. at 8). The Court need not determine whether that standard applies in this case because the ballot language approved by the City Council conforms with the plain-language statutory requirements of Minn. Stat. §§ 410.12, subd. 4 and 204B.36, subd. 3.

and command of the police department” (McLaren Decl., Ex. C (current Section 7.3(a) of the Minneapolis City Charter); (2) the removal of “police chief” as a required role within the City government (*Id.*); (3) the removal of the minimum funding requirement for a police force (*Id.* at 7.3(c)); and (4) the removal of the City Council’s ability to impose additional taxation for the purpose of compensating employees of the City’s police force. (*Id.*) In short, Petitioner’s proposed ballot language is woefully deficient and would not sufficiently identify many key aspects of the proposed Charter amendment.

II. Petitioner Fails to Identify an Error, Omission, or Wrongful Act and, Accordingly, Cannot Meet Its Burden.

Under section 204B.44, the petitioning party must identify “errors, omissions, or wrongful acts” that must be corrected. Minn. Stat. § 204B.44; *Butler v. City of Saint Paul*, 936 N.W.2d 478, 484 (Minn. 2019). But Petitioner cannot specifically identify or articulate any such error, omission, or wrongful act. Instead, Petitioner makes a series of misleading and conclusory statements concerning the ballot language approved by the City Council. Each of Petitioner’s arguments is addressed in turn.

Petitioner makes the conclusory statement that the explanatory note “inevitably omits important contextual information and would reflect an author’s inherent bias.” (*See* Pet. ¶ 29). However, Petitioner altogether fails to identify what, if any, important contextual information is missing and what bias is purportedly reflected in the explanatory note.² The purpose of the explanatory note approved by the City Council is

² Without explanation, Petitioner quotes *Weiler*, 788 N.W.2d at 88, which states that “[t]he purpose of the ballot is not to provide a forum for candidates to campaign or advertise.” (*See* Pet. at 8–9). Likewise, Petitioner states that “Minnesota law and policy

to ensure that the ballot language is “sufficient to identify the amendment clearly” and “distinguish the question from every other question on the ballot at the same time,” as required by state law. *See* Minn. Stat. § 410.12. The explanatory note’s neutral, factual statements relating to the proposed charter amendment do not constitute an error, omission, or wrongful act. *See* Minn. Stat. § 204B.44.

Petitioner contends that the explanatory note “misleads voters by suggesting that the proposed charter amendment would eliminate certain public safety functions.” (Pet. ¶ 30). The language of the proposed charter amendment, however, belies Petitioner’s argument. The charter amendment would strike the entirety of section 7.3 from the charter, thereby removing the police department as a city department. (*See* Carl Decl., Ex. 8, pages 2-4.). Under the proposed charter language, the department of public safety that would replace the police department would “includ[e] licensed peace officers *if necessary* to fulfill the responsibilities of the department.” (*See id.* at p. 3) (emphasis added). The proposed charter amendment does not identify any public safety functions to be addressed by the new department of public safety, such as 911 services. It is thus an accurate, neutral statement of fact that the new department of public safety would “[c]ombine public safety functions of the City of Minneapolis into a comprehensive

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.’” (*See* Pet. at 2, 2 n.2 (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364–65 (1997))). While Petitioner appears to imply that the approved ballot language would somehow campaign or advertise, it makes no argument and cites no facts that would support such a proposition. In any case, the neutral ballot language approved by the City Council neither campaigns nor advertises. Further, it faithfully satisfies the requirements of Minn. Stat. § 410.12, subd. 4 and Minn. Stat. § 204B.36, subd. 3.

public health approach to safety, with the specific public safety functions to be determined.” (*Id.* at p. 5.) Here, too, Petitioner fails to identify an error, omission, or wrongful act. *See* Minn. Stat. § 204B.44.

Regarding the mayor’s role with respect to the new Department of Public Safety, Petitioner states:

[T]he 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.

(*See* Pet. ¶ 31).

Petitioner’s description of the explanatory note is misleading, and its argument is a red herring. Nowhere does the approved ballot language suggest that the mayor currently has “complete discretion to hire the Police Chief.” Rather, the explanatory note accurately states that under the proposed amendment, “[t]he appointment process for the Commissioner would include a Mayor nomination and a City Council appointment.” (*See* Carl Decl., Ex. 8, page 5.) It further accurately states that “[t]he Mayor would not have complete power over the establishment, maintenance, and command of the Department of Public Safety,” as reflected in the new section 7.3 that the proposed amendment would add to the city charter (*Id.*). Currently, under section 7.3 of the city charter, the Mayor indeed has “complete power over the establishment, maintenance, and command of the police department.” (McLaren Decl., Ex. C (current Section 7.3(a) of the Minneapolis City Charter).) The proposed charter amendment would thus alter the Mayor’s role with

respect to public safety functions in the City, as the explanatory note accurately reflects. (*See* Carl Decl., Ex. 8, page 5.) Petitioner thus fails to identify an error, omission, or wrongful act. *See* Minn. Stat. § 204B.44.

Finally, Petitioner contends that the explanatory note “falsely implies that the proposed charter amendment, if passed, would eliminate the ability of the City Council to provide funding for peace officers.” (Pet. ¶ 32). The explanatory note contains no such implication. Instead, the explanatory note accurately states that the proposed amendment would “[r]emove 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.” (Carl Decl., Ex. 8, page 5 (emphasis added).) This tracks directly with the language that the proposed amendment would remove from the current city charter:

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).

(McLaren Decl., Ex. C (current Section 7.3(c) of the Minneapolis City Charter).). Here, too, the explanatory note accurately describes the proposed charter amendment, and Petitioner altogether fails to identify an error, omission, or wrongful act. *See* Minn. Stat. § 204B.44.

In sum, Petitioner has failed to meet its burden under Minn. Stat. § 204B.44 and accordingly, is not entitled to the relief it seeks.

III. The Use of Explanatory Notes in Ballot Questions Is Permitted under the Plain Language of Minn. Stat. §§ 410.12, subd. 4 and 204B.36, subd. 3, and, Further, Is Advisable When Voters Are Presented with Charter Amendment Ballot Questions.

In arguing that the City Council lacks the authority to include an explanatory note, Petitioner's argument appears to be that the ballot language approved by City Council explains too much about the proposed ballot question. This critique is not cognizable under section 204B.44, and is contrary to the aims of enabling voters to make informed decisions on changes to their city's charter. It also runs counter to the prior statements of Petitioner, which, as recently as July 2, 2021, promoted a ballot question incorporating an explanatory note on its website. (*See* Exhibit F to the Declaration of Sarah McLaren.)

Contrary to Petitioner's argument, Minn. Stat. § 410.12 subdivision 4 sets forth a standard for what is the minimum, not maximum, permissible ballot language: "The 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." (Emphasis added.) Sufficiency under this statutory provision is simply a minimum standard that delineates what is allowable ballot question language from that which is insufficient, and therefore not allowable.

Given the extensive changes to the charter that are proposed, the ballot language approved by the City Council contains no more than what is required by sections 410.12, subdivision 4 and 204B.36, subdivision 3. Moreover, contrary to the principle implicit in Petitioner's argument, these statutes do not create a prohibition on too much information being provided to voters. Stated differently, these provisions create a floor, not a ceiling,

for providing voters with accurate descriptions of the ballot measure on which they are asked to vote. Thus, Petitioner's argument that the City Council included more information than is legally permissible fails on its face. Subdivision 4 simply does not contain the prohibitory language Petitioner asks the Court to read into it.

Beyond conforming with the statutory requirements of Minn. Stat. § 410.12, subd. 4 and Minn. Stat. § 204B.36, subd. 3, the use of an explanatory note has long been specifically sanctioned by the state attorney general for use in ballot questions involving charter amendments. In a 1951 advisory opinion issued by the attorney general, the city attorney for the city of Chislm, a home-rule charter city, sought advice regarding the proper form of a complex ballot question that would amend multiple sections of the city's charter.³ *See* Op. Att'y Gen. (Nov. 16, 1951), attached as Exhibit G to the Declaration of Sarah McLaren.

The opinion addressed whether, when a ballot question proposed multiple amendments to the Chislm city charter, the various provisions can be properly condensed into a single ballot question, rather than separately stated on the ballot. (McLaren Decl., Ex. G at 1.) The attorney general opined "that it would be proper to submit one general question relating to the amendments of sections 265 to 274, and

³ Importantly, the 1951 opinion of the attorney general interpreted the same statutory language at issue in this case. *Compare* 1949 Minn. Laws 204 (amending Minn. Stat. § 410.12 (1945) and stating, in relevant part, "The form of the ballot shall be *fixed by the governing body. The 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*" (emphasis in original)), with Minn. Stat. § 410.12, subd. 4. (2020) (setting forth precisely the same language).

furthermore, that *it would be proper to include on the ballot an explanatory note indicating the general nature of those amendments.*” *Id.* at 2 (emphasis added). The opinion indicated that the explanatory note should appear below the ballot question.

Minn. Stat. § 8.07 provides that the attorney general shall, upon request, provide a written opinion to city attorneys “on questions of public importance.” (2020). While such opinions are not binding on courts, as Minnesota appellate courts have repeatedly observed, opinions of the attorney general are “entitled to careful consideration by appellate courts, particularly where they are of long standing.” *City of Brainerd v. Brainerd Inves. P’ship*, 812 N.W.2d 885, 891 (Minn. App. 2012), *aff’d sub nom. City of Brainerd v. Brainerd Invs. P’ship*, 827 N.W.2d 752 (Minn. 2013); *see also, e.g., Governmental Research Bureau, Inc. v. St. Louis County*, 104 N.W.2d 411, 416 (1960); *Krout v. City of Greenfield*, No. A11-1200, 2012 WL 1253090, at *3 (Minn. App. Apr. 16, 2012).

Opinions are also entitled to careful consideration when administrative reliance has occurred. *Governmental Research Bureau*, 104 N.W.2d at 416 (1960) (stating opinions of attorney general are “entitled to careful consideration where they are of long standing and accompanied by administrative reliance thereon”); *Bartell v. State*, 284 N.W.2d 834, 838 (Minn. 1979) (same). Administrative reliance exists where, as here, the City Council acted in conformity with advice previously provided by the attorney general in its advisory opinions. *See Governmental Research Bureau*, 104 N.W.2d at 416 (reaching conclusion consistent with opinion of attorney general where “[t]he

construction placed upon the statute by the attorney general was followed by the auditor of St. Louis County”).

Here, because the opinion of the attorney general is longstanding and administrative reliance has occurred, the opinion is entitled to careful consideration. Moreover, the ballot language approved by City Council satisfies the plain-language statutory requirements of Minn. Stat. §§ 410.12, subd. 4 and 204B.36, subd. 3.

CONCLUSION

For all the foregoing reasons, Respondents City of Minneapolis and Casey Joe Carl respectfully request that this Court dismiss the Petition to Correct Ballot in its entirety.

ACKNOWLEDGMENT

Respondents, through their attorneys, acknowledge that sanctions may be imposed under Minn. Stat. § 549.211, if the statute is found to apply.

Dated: August 6, 2021

JAMES R. ROWADER, JR.
City Attorney
By

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Attorneys for Respondents

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Yes 4 Minneapolis,

Petitioner,

vs.

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

Respondents.

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

Court File No. 27-CV-21-9345

This matter came before the Court on August 9, 2021, upon Petitioner's Petition to Correct Ballot under Minn. Stat. § 204B.44. Terrance W. Moore, Esq., appeared on behalf of Petitioner. Sarah McLaren, Esq., appeared on behalf of Respondents.


Based upon all the files, records, and proceedings herein, the Court makes the following:

ORDER

1. The Petition to Correct Ballot under Minn. Stat. § 204B.44 is hereby GRANTED IN PART as to Prayer for Relief, Paragraph (b) and DENIED IN PART as to Prayer for Relief, Paragraphs (a) and (c).
2. Respondents shall remove the Explanatory Note from the Ballot Question.
3. The following Memorandum is incorporated herein.

BY THE COURT:

DATED: August 13, 2021



Jamie L. Anderson
Judge of District Court

EXHIBIT 7

MEMORANDUM

Background

Petitioner Yes 4 Minneapolis is a coalition campaign formed to support the establishment of a Department of Public Safety. *See* Pet. to Correct Ballot, ¶ 1.

Respondent City of Minneapolis (the “City”) is a home rule charter city under the law of the State of Minnesota with the capacity to sue and be sued. *See id.*, ¶ 2.

Respondent Casey Joe Carl is the City Clerk and chief election official for the City. Respondent Carl 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. *See id.*, ¶ 3.

On April 30, 2021, Petitioner timely submitted petitions for a proposed charter amendment to the City Clerk, the liaison to the Charter Commission. The Charter Commission maintains the charter for the City. *See id.*, ¶¶ 6-7. The proposed amendment would amend Minneapolis City Charter §§ 7.2(a), 7.3, 7.4(c) and 8.2, thereby eliminating the Police Department and creating a Department of Public Safety. *See id.*, Ex. B.

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. *See id.*, ¶ 8.

On or about May 22, 2021, the City Council directed the City Attorney to perform a legal analysis of the petition and recommend draft ballot language for the November 2, 2021 election. *See* Pet. to Correct Ballot, ¶ 9.

On July 13, 2021, the City Attorney issued a memorandum determining that the charter amendment satisfies the legal standard to be placed on the ballot and recommended language for the ballot question. *See id.*, ¶¶ 10-11; *see also id.*, Ex. B.¹

On July 23, 2021, the City Council approved Resolution No. 2021R-209, which sets the title and language of the ballot question (the “Ballot Question”), including an explanatory note (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, 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 The Petition claims that the City Attorney recommended the ballot question including an explanatory note and directs the Court’s attention to Exhibit B to the Petition. However, the City Attorney’s letter, as it appears in the Petition, cuts off before any of the recommended language appears.

(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.”

See id., Ex. C.

On July 28, 2021, the resolution was approved by default after the Mayor did not take any action within the time specified by the City Charter. *See id.*

On July 30, 2021, Yes 4 Minneapolis brought this Petition to Correct Ballot under Minn. Stat. § 204B.44.

Standard of Review

Under § 204B.44, “any individual may file a petition in the manner provided in this section for the correction of . . . errors, omissions, or wrongful acts which have occurred or are about to occur.” The petitioning party bears the burden of demonstrating the error, omission, or wrongful act they seek to have corrected. *Weiler v. Ritchie*, 788 N.W.2d 879, 882 (Minn. 2010). The petitioning party must prove this error, omission, or wrongful act by a preponderance of the evidence. *Id.*, at 883. An act is “wrongful” when it is unjust, unfair, or unlawful. *Butler v. City of St. Paul*, 923 N.W.2d 43, 51 (Minn. Ct. App. 2019).

Analysis

Petitioner challenges the inclusion of the Explanatory Note with the Ballot Question on two grounds. First, Petitioner argues that the City Council, by including the Explanatory Note, has

committed a wrongful act by exceeding its statutory authority. *See* Pet. to Correct Ballot, ¶¶ 17-27. Second, Petitioner argues that inclusion of the Explanatory Note is in error because it is unreasonable and misleading. *See id.*, ¶¶ 28-32. Additionally, Petitioner asks the Court to certify ballot language excluding the Explanatory Note. The Court will address these issues in turn.

A. The City is not Prohibited from Including an Explanatory Note on the Ballot.

Petitioner first argues that the City Council is precluded from including *any* explanatory note on the ballot as it has not been given express authority to do so. *See id.*, ¶¶ 17-27. Respondents contend that the use of explanatory notes is not only permitted under Minn. Stat. §§ 410.12, subd. 4 and 204B.36, subd. 3, but advisable when voters are presented with charter amendment ballot questions. *See* Resp'ts' Mem. in Opp., pp. 20-23.

Ballots shall be prepared in a manner that enables the voters to understand which questions are to be voted upon. *See* Minn. Stat. § 204B.35, subd. 2. Charter amendments shall be submitted to the qualified voters at a general or special election. *See* Minn. Stat. § 410.12, subd. 4. The ballot's form shall be fixed by the governing body and the statement of the question shall be sufficient to identify the amendment clearly and distinguish it from every other question on the ballot at the same time. *Id.* These controlling statutes, Petitioner argues, lack any express legislative authorization to include explanatory notes and because “[m]unicipalities possess only those powers conferred by statute or implied as necessary to carry out legislatively conferred powers[,]” the City Council is therefore prohibited from including any explanatory note on a ballot. *See* Pet. to Correct Ballot, ¶ 18 (*quoting Breza v. City of Minnetrista*, 725 N.W.2d 106, 110 (Minn. 2006)).

Breza, and the other cases cited by Petitioner, are distinguishable from Petitioner's position in both fact and principle. In *Breza*, the Supreme Court stated "municipalities, like the City of Minnetrista, possess no inherent powers and are purely creatures of the legislature." *Id.* The court, however, was discussing whether a city may exercise domain over the filling and restoration of wetlands when it had not been expressly granted authority over such matters. *See id.* Similarly, Petitioner cites *Village of Brooklyn Center v. Rippen* for its contention that municipalities have no inherent powers. *See* Pet'r's Reply Mem., p. 2; *see also* 96 N.W.2d 585, 587 (Minn. 1959). *Rippen*, too, is distinguishable. In *Rippen*, the court held that the Village did not have authority to license boats using lakes partially or wholly within its boundaries because "[t]he resulting multiplicity of local license requirements would saddle boat owners with burdensome consequences that are both unreasonable and absurd." 96 N.W.2d at 588.

Petitioner also argues that express and implied powers should be construed narrowly and, in this case, the City's power over preparing ballots should be narrowly construed to exclude the ability to include explanatory notes. *See* Pet'r's Reply Mem., pp. 2-3. In support of this argument, Petitioner relies again on dicta from various appellate opinions which state "if a matter presents a statewide problem, the implied necessary powers of a municipality to regulate are narrowly construed unless the legislature has expressly provided otherwise." *See id.* (*quoting Lilly v. City of Minneapolis*, 527 N.W.2d 107 (Minn. Ct. App. 1995) *review denied* Mar. 29, 1995; *quoting Welsh v. City of Orono*, 355 N.W.2d 117, 120 (Minn. 1984)). Again, these cases are distinguishable.

In *Lilly*, the City of Minneapolis expanded the scope of a statute with respect to persons who may receive medical benefits and premiums paid when the legislature clearly defined who may receive such benefits. 527 N.W.2d at 113. The Court of Appeals held that such expansion of the statute was beyond the limits of the City's power and therefore without legal force or effect.

Id. Welsh involved a statute giving the City of Orono power to regulate the construction, length and use of docks extending into Lake Minnetonka and whether that statute also granted Orono authority to regulate lakebed dredging. *See generally* 355 N.W.2d 117. The Supreme Court found that it did not, as the legislature had clearly delegated power to regulate lakebed dredging to the Department of Natural Resources. *Id.*

Here, contrary to Petitioner’s argument, none of these cases rule on or even discuss whether statutory language creates a ceiling on legislatively-granted authority. Rather, they deal with how local regulatory authority comports with state regulatory authority. It is undisputed that the City Council has express authority to fix the ballot’s form. *See* Minn. Stat. § 410.12, subd. 4. Moreover, there is no intermingling of state and municipal authority as there was in all the above cases. The City Council in this case has been tasked with fixing the ballot’s form and has done so pursuant to that duty. The City Council has *not* attempted to exercise authority over an area not within their regulatory purview.

In contrast to Petitioner’s argument, Respondents argue that the statutory authority granted them to fix the form of ballots creates not a ceiling, but rather a floor for providing voters with accurate descriptions of the ballot measure. *See* Resp’ts’ Mem. in Opp., pp. 20-21. In addition to the text of the statute itself, Respondents rely on a 1951 advisory opinion from the attorney general that is on point with the topic now before the Court. *Id.*

While advisory opinions from the attorney general are not binding on courts, they are “entitled to careful consideration, particularly where they are of long standing.” *City of Brainerd v. Brainerd Inves. P’Ship*, 812 N.W.2d 885, 891 (Minn. Ct. App. 2012). Moreover, practical construction of a statute by public officials should not be ignored. *Governmental Research Bureau, Inc. v. St. Louis County*, 104 N.W.2d 411, 416 (Minn. 1960).

Here, the 1951 attorney general opinion that Respondents have presented the Court with may not be binding, but it does deserve consideration. The city attorney for Chisolm, Minnesota—a home rule charter city like Minneapolis—asked the attorney general for advice on constructing a proper ballot question for a charter amendment that would amend several sections of the city’s charter. *See Op. Atty. Gen.*, 58-i, Nov. 16, 1951. In the opinion letter, the attorney general stated his position that, “it would be proper to submit one general question relating to the amendments . . . and, furthermore, that it would be proper to include on the ballot an explanatory note indicating the general nature of those amendments.” *See id.*

Again, while this single opinion is not precedent, it indisputably tips the scale in favor of Respondents’ argument. As is the case here, the opinion regarded forming a ballot question for a charter amendment that would alter multiple sections of the city’s charter. Ultimately, the attorney general’s opinion was that including an explanation of the comprehensive changes would be proper.

In summary, Petitioner has not presented any law or evidence that the City Council acted outside its authority by including the Explanatory Note on the ballot. Further, Petitioner has not proven that this action was “unjust, unfair, or unlawful.” *Butler*, 923 N.W.2d at 51. Accordingly, the Court finds that Petitioner has failed to prove by a preponderance of the evidence that the City Council’s including the Explanatory Note is *in itself* a wrongful act in need of correction pursuant to Minn. Stat. 204B.44. The Petition is denied as to Prayer for Relief, Paragraph (a).

B. Inclusion of the Explanatory Note, as It is Currently Written, would be in Error.

The next question before the Court is whether inclusion of the Explanatory Note, as written, was an error, omission, or wrongful act warranting correction pursuant to § 204B.44. Petitioner

argues that inclusion of the Explanatory Note would be error because it is unreasonable and misleading. *See* Pet. to Correct Ballot, ¶¶ 28-32. Specifically, Petitioner argues that the Note “omits important contextual information and would reflect an author’s inherent bias.” *See id.* (citing *Weiler*, 788 N.W.2d at 888). Respondents’ position is that the language in the Explanatory Note accurately informs voters about the proposed amendment and is necessary so that the question is “sufficient to identify the amendment clearly.” *See generally* Resp’ts’ Mem. in Opp., p. 14.

Section 410.12 states “the 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.” Further, statute requires that “[b]allots shall be prepared in a manner that enables the voters to understand which questions are to be voted upon and the identity and number of candidates to be voted for in each office and to designate their choices easily and accurately.” Minn. Stat. § 204B.35, subd. 2.

While no case law directly on point exists, much case law exists as to what information *is* and *is not* allowed on a ballot regarding political candidates. Time and again, the Supreme Court of Minnesota has held that supplemental information should be added to a ballot sparingly, and should be excluded if it will potentially sway a person’s vote.² The primary theme of all these decisions has been to keep the tone and content of the ballot neutral so as not to affect voters’ decisions at the polls. These decisions are in line with the plain language of the statute, “[t]he name

² *See Dougherty v. Holm*, 44 N.W.2d 83, 84 (1950) (noting that the purpose of allowing additional information about candidates with identical surnames is to prevent voter confusion); *Foley v. Donovan*, 144 N.W.2d 600, 603 (1966) (“Our election laws are bottomed on the theory that no candidate for an office ought to be given an unfair advantage over another and the people ought to be permitted to know whom and what they are voting for”); *Clifford v. Hoppe*, 357 N.W.2d 98, 101 (1984) (holding that use of middle name “Prolife” could give candidate unfair advantage despite candidate’s claim that use of “Prolife” was being used to enlighten electorate on good faith issue); *Weiler v. Ritchie*, 788 N.W.2d 879 (2010) (disallowing use of nickname “Doc” on several grounds, including consistency with statute and conforming to proper function of ballot).

of a candidate shall not appear on a ballot in any way that gives the candidate an advantage over an opponent.” Minn. Stat. § 204B.35, subd. 2.

While the Court agrees that Respondents have authority, and a statutory duty, to word the ballot in a way that is “sufficient to identify the amendment clearly and to distinguish the question from every other question on the ballot,” the language in the Explanatory Note is problematic. The ballot question itself is comprised of a single sentence containing of 67 words, while the Explanatory Note is 192 words spread across six bullet points and multiple subsections that read as much like a warning label as they do informational statements.

The proper function of the ballot is to assist the voter in easily and accurately identifying what they are voting on. *Weiler*, 788 N.W.2d at 888. Even in service of this principle, attempts to enlighten voters on good faith issues may create an unfair advantage one way or the other if extraneous information is allowed. *Clifford*, 357 N.W.2d at 101. Respondents may be correct that the Explanatory Note accurately informs voters about the proposed charter amendment, and it is important to note that they have not taken a position either in-favor-of or against the proposed amendment, but the Ballot Question addresses a highly-relevant public policy issue and a voter could very well construe such a lengthy and detailed explanation as either an endorsement or a warning.³ The Supreme Court has made it clear that additional information on the ballot should only clear up confusion, not create it. *Dougherty*, 44 N.W.2d at 84. Here, the Explanatory Note goes beyond the black-and-white of clarifying what is on the ballot and wades into a grey area of explanation that is not allowed.

For these reasons, the Court finds Petitioner has proven by a preponderance of the evidence that inclusion of the Explanatory Note would be an error under § 204B.44 as the proposed language

³ The Court is uncertain whether the Explanatory Note would tend to “help” or “hurt” one side or the other, but that is irrelevant.

has potential to sway voters' decisions one way or another. Petitioner's Prayer for Relief as to Paragraph (b) is granted.

C. The Court will not Certify Alternative Language.

Finally, Petitioner also requests that the Court certify ballot language without the Explanatory Note *See* Pet. to Correct Ballot, Prayer for Relief, ¶ (c). Respondents do not explicitly argue against this relief. The language Petitioner requests the Court to certify is 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 _____”

See id. The Court cannot and will not do so, just as it will not clarify what might constitute proper explanatory note language. While the Court has authority on matters regarding the legality of ballot language, it is longstanding policy that the judiciary's role is not to advise policy makers how to word bills or ballots. *League of Women Voters Minnesota v. Ritchie*, 819 N.W.2d 636, 651 (Minn. 2012) (*citing State v. Duluth & N.M Ry. Co.*, 112 N.W. 897, 898 (Minn. 1907)).

CONCLUSION

For the foregoing reasons, the Petition to Correct Ballot is granted in part as to Paragraph (b) of Petitioner's Prayer for Relief. Pursuant to Minn. Stat. § 204B.44 (b), the Court hereby orders Respondents to remove the Explanatory Note from the Ballot Question. The Petition is hereby denied as to Paragraphs (a) and (c) of Petitioner's Prayer for Relief.

-jla

**REVISED BALLOT LANGUAGE:
PUBLIC SAFETY DEPARTMENT**

Policy & Government Oversight Committee – August 18, 2021

Public Safety Department

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 to the delivery of its functions, with those specific functions to be determined by the Mayor and City Council; which will not be subject to exclusive mayoral power over its establishment, maintenance, and command; and which could 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 Department of Public Safety combining public safety functions through a comprehensive public health approach determined by the Mayor and Council. The department would be led by a Commissioner nominated by the Mayor and appointed by the Council. The Police Department, and its chief, would be removed from the City Charter. The Public Safety Department could include police officers, but the minimum funding currently required would be eliminated.

RESOLUTION

By Jenkins

Amending Resolution 2021R-209 entitled “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,” passed July 23, 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:

“City Question #

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 _____”



Resolution No. 2021R-254

City of Minneapolis

File No. 2021-00578

Author: Jenkins

Committee: POGO

Public Hearing: None

Passage: Aug 20, 2021

Publication:

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

MAYOR ACTION

APPROVED

VETOED

MAYOR FREY

AUG 20 2021

DATE

Certified an official action of the City Council

ATTEST:

CITY CLERK

AUG 20 2021

Presented to Mayor: _____

AUG 20 2021

Received from Mayor: _____

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