

MEMORANDUM

To: Mayor Rhonda Pownell and Members of the Northfield City Council
Ben Martig, City Administrator
Deb Little, City Clerk

VIA EMAIL ONLY

From: Christopher M. Hood and Robert T. Scott

Date: August 30, 2017

Re: Charter Commission's Proposed Amendment to Charter Section 3.8

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The following memorandum presents Flaherty & Hood, P.A.'s analysis of the Northfield Charter Commission's (Commission) proposed amendment to the City of Northfield's (City) Home Rule Charter (Charter) that would require the mayor to report to the City Council on any neglect, dereliction of duty, or waste on the part of any officer or department of the City once during each mayoral term.

Background

As required by statute, the City Council noticed and conducted a public hearing on the Commission's proposed Charter amendment ordinance at its August 8, 2017 City Council meeting.¹ The City Council must hold a vote on the Charter amendment ordinance no later than one month after the public hearing (i.e. on or before September 8, 2017), and the amendment will pass and take effect only if it receives a unanimous affirmative vote of all members of the City Council.² If the Charter amendment ordinance passes with such unanimous support, a referendum on the ordinance may still be forced if a petition signed by registered voters equal in number to at least 5 percent of the registered voters in the City or 2,000, whichever is less, is filed with the City Clerk within 60 days after passage and publication of the ordinance.³

Analysis

The proposed Charter amendment would add a single sentence to Section 3.8, subdivision 2, which defines the executive functions of the Mayor. In order to understand the effect that the proposed Charter amendment would have, were it to be enacted, an understanding of the existing language of Section 3.8 is necessary. Section 3.8, subd. 2 currently provides, in its entirety, as follows:

¹ Minn. Stat. § 410.12, subd. 7.

² *Id.*

³ *Id.*

Subd. 2. *Executive Functions.* The mayor shall exercise all powers and perform all duties conferred on the mayor by state law, this Charter, city ordinances, and council resolutions. *The mayor shall study the administration and operations of the city and shall report to the council any neglect, dereliction of duty, or waste on the part of any officer or department of the city.* The mayor may appoint and remove, with the approval of the council, such professional services as the mayor shall deem necessary. If the office of administrator becomes vacant, the mayor, with the approval of the council, shall appoint an acting administrator. The mayor shall be recognized as the official head of the city for purposes relating to national security or peacetime emergency. Subject to state law concerning emergency management and any local emergency management program consistent therewith, the mayor shall oversee and direct the city's response to any declared emergency.

(Emphasis added).

In its current form, subdivision 2 appears to assign to the Mayor an ongoing oversight responsibility over the administration and operations of the City government, in addition to other responsibilities. It then requires the Mayor to report to the Council whenever, in the course of exercising such oversight, the Mayor becomes aware of “any neglect, dereliction of duty, or waste on the part of any officer or department of the city.” The reporting requirement is triggered by the *discovery* of “any neglect, dereliction of duty, or waste.” If no such neglect, dereliction of duty, or waste is discovered, no report to the Council would be required by the current charter language. Additionally, the Mayor could satisfy the existing reporting requirement by providing a verbal or written report; it is not currently required to be in writing.

The proposed amendment would add a single sentence after the existing oversight and reporting requirement in subdivision 2 as follows:

. . . . The mayor shall study the administration and operations of the city and shall report to the council any neglect, dereliction of duty, or waste on the part of any officer or department of the city. The report required by this subdivision shall be communicated by the mayor to the council in writing once during each mayoral term, not later than the last day of the third year of the mayoral term. . . .

The new sentence proposed by the Commission would transform the Charter’s reporting requirement from one that becomes operative only upon the Mayor’s actual *discovery* of neglect, dereliction of duty, or waste (in the course of the Mayor’s ongoing responsibility to study the City’s administration and operations), to an affirmative requirement that must be satisfied once during each mayoral term, regardless of whether the Mayor finds any such neglect, dereliction of duty, or waste. It would also require the report be made to the Council in writing.

The proposed Charter amendment is, in a broad sense, legal, meaning that if it were to take effect it would be a valid Charter provision and become a legal requirement that must be complied with as fully as possible given supplemental or competing provisions of the Charter, and the federal or

state constitutions, statutes and regulations. Whether to approve the proposed amendment and impose an affirmative reporting requirement on the Mayor is, on the other hand, at this stage in the statutory process to consider proposed Charter amendments, a policy question for the City Council to approve or not approve in the Council's discretion.

With the above framework in mind, we would offer the following observations and comments to inform the City Council's consideration of the proposed Charter amendment:

1. The proposed Charter amendment's affirmative reporting requirement would, to a large extent, duplicate procedures already in place to hold City government operations accountable. For example, the City already is required to regularly undertake a comprehensive independent review of its finances in the form of the statutorily-required annual audited financial statement that must be filed with the state auditor, which audit must be reviewed at a Council meeting.⁴ The League of Minnesota Cities summarizes the purposes served by such required audits as follows:

Conducted regularly, audits ensure city accounts are being properly kept and that all financial transactions have occurred according to law. In this sense, audits are a safeguard to taxpayers and individual public officials, as well as to the council.⁵

Additionally, the City Administrator, who reports directly to the City Council, is currently charged by the Charter with the responsibilities to "supervise all departments of the city", "establish rules, regulations, and procedures governing city departments", and "keep the council fully advised as to the financial condition and needs of the city."⁶

2. In specific circumstances, the proposed Charter amendment's reporting requirement could conflict with, or be in tension with, Charter assignments of supervisory authority over City personnel to the City Administrator and/or statutory requirements for handling sensitive personnel data. As noted above, the organizational structure adopted by the City in its Charter assigns the responsibility to supervise City employees to the City Administrator, and with the exception of department heads, entrusts the administrator with the sole responsibility to hire, fire and discipline City employees. The City Administrator in turn reports directly to the City Council. The proposed Charter amendment's reporting requirement (as well as the oversight requirement in the existing Section 3.8) must be read together with the Administrator's supervisory responsibilities elsewhere in the Charter. Practically, this means that for any neglect or dereliction of duty committed by an employee other than the City Administrator, the Mayor would need to work cooperatively with the City Administrator to coordinate the drafting and

⁴ See Minn. Stat. § 471.697, subd. 1(c).

⁵ See League of Minnesota Cities Handbook for Minnesota Cities, Chapter 25, Financial Reports, Accounting and Auditing, available at <http://www.lmc.org/media/document/1/financialreportsaccountingandauditing.pdf?inline=true>.

⁶ Northfield Charter, § 7.3.

submission of the written report to the City Council required by the proposed amendment.⁷

Furthermore, it is probable that any incident of “neglect, dereliction of duty, or waste” will implicate a personnel issue involving one or more City employees. Regardless of what level in the organization the implicated employee(s) occupy, any data in the City’s possession, including a mayoral report on the incident required by Section 3.8, would very likely be considered private personnel data that the City would be prohibited from publicly disclosing or disclosure would have certain limitations attached.⁸ This means that the mayoral report to the Council would either need to be drafted so as to not to disclose the identity of the employee(s) involved, or kept private and confidential by the City Council, or both to ensure compliance with the Minnesota Government Data Practices Act.

3. The timing of the report required by the proposed Charter amendment does not appear to be consistent with the ongoing nature of the oversight responsibility to study the administration and operations of the City assigned to the Mayor in Section 3.8. As noted above, the existing language in Section 3.8 appears to assign to the Mayor an ongoing oversight responsibility over the administration and operations of the City government. The proposed Charter amendment does not propose to alter the language imposing this ongoing responsibility. However, by requiring the Mayor to make a report of any neglect, dereliction of duty, or waste once per mayoral term (i.e. approximately once every four years), the reporting requirement in the proposed amendment appears to contemplate a different type of process altogether, in which the Mayor only periodically studies the administration and operations of the City and always reports on the Mayor’s findings. In other words, the proposed reporting requirement seems to sever the link between the discovery of neglect, dereliction of duty, or waste (presumably during the course of the Mayor’s ongoing oversight) and the prompt reporting of such discovery to the Council, whenever it is discovered.

Conclusion

Whether or not the Commission’s proposed Charter amendments are appropriate or necessary such that they should be enacted by ordinance pursuant to the statutory process initiated by the Commission is, at this stage, a policy question for the City Council to determine. The City Council must vote on the proposed amendment by September 8, 2017 at the latest. As previously noted, only the unanimous vote by all members of the City Council in favor of the

⁷ One way to lessen the tension between the reporting requirement in Section 3.8 and the Charter’s assignment of supervisory responsibilities over City employees to the City Administrator in Section 7.3 would be to amend Section 3.8 to narrow its application to only “neglect, dereliction of duty, or waste” on the part of the City Administrator, but at this point making this change would require the Commission to pass a new amendment ordinance.

⁸ See Minn. Stat. § 13.43, subd. 4 (establishing presumption that personnel data is private data on individuals that may only be released pursuant to a court order).

proposed Charter amendment ordinance would be sufficient to allow these Charter amendments to take effect under this statutory process. *See* Minn. Stat. § 410.12, subd. 7.

If you have any questions about this memorandum or need further assistance, please contact us at your convenience.

CMH/RTS