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TO: Charter Revision Workgroup Members

FROM: Lisa M. Needham, Assistant City Attorney

DATE: July 2, 2009

RE: Charter Review – Regulatory Services and
City Powers Follow-Up Memorandum

MEMORANDUM

OVERVIEW

At the first Charter Revision Workgroup meeting, we discussed whether there were any differences in the scope of City powers between the Proposed Charter Revision’s general grant of power and the existing Charter’s specific provisions. Generally, the specific powers granted to the City in Charter chapter 4 affect Regulatory Services. Burt Osborne and I have reviewed the 42 specific powers in the current Charter and how their removal would affect Regulatory Services. Our review is below.

ANALYSIS

I. RECAP OF GENERAL WELFARE CLAUSE

As was discussed in the initial memorandum regarding City powers, the Proposed Charter Revision changes the language the City relies upon for its grant of powers.

The Proposed Charter Revision states:

§ 1.4. Powers

(a) Powers plenary. *The City, acting through the boards, departments, and officers for which this charter or an ordinance provides, may exercise any power that a municipal corporation can lawfully exercise.*

(1) Eminent domain. *The City Council may, and any other authorized board may, establish the procedure by which the City exercises through that board its power of*



eminent domain, including the procedure for any appeal from an award in condemnation.

*(2) **Infrastructure.** The City may establish, plan, build, maintain, regulate, and otherwise provide for public ways and works and any other infrastructure necessary or convenient for its residential and economic development; for the comfort, convenience, health, safety, or welfare of its citizens; or for the efficient delivery of municipal services.*

*(b) **Optional powers claimed.** If a municipal corporation may enjoy or exercise a certain power by charter, without forgoing any other power, then the City hereby claims and may exercise that power.*

*(c) **Laws excepting home-rule cities.** Whenever a law grants a power or an option to cities generally or to cities of a certain class, but excepts cities having adopted a home-rule charter, the City may nevertheless exercise the power or option if that exercise is not inconsistent with this charter, notwithstanding its having adopted this charter...*

*(f) **Unmentioned powers.** This charter's mention of certain powers does not limit the City's powers to those mentioned.*

Proposed Revised Charter § 1.4.

The current City Charter handles the general welfare clause differently. The Charter contains no clause labeled as a general welfare or powers clause, but instead contains a section with a general introduction as to the City's powers and a list of specific powers following. The City's current general welfare clause is generally said to be the first sentence of Charter ch. 4 § 5:

***City Council--Power to Make Ordinances.** The City Council shall have full power and authority to make, ordain, publish, enforce, alter, amend or repeal all such ordinances for the government and good order of the City, for the suppression of vice and intemperance, and for the prevention of crime, as it shall deem expedient, and in and by the same to declare and impose penalties and punishments, and enforce the same against any person or persons who may violate the provisions of any ordinance, passed and ordained by it, and all such ordinances are hereby declared to be and to have the force of law.*

The City's current Charter then goes on to provide a list of 42 specific powers.

II. OVERVIEW OF EFFECT ON REGULATORY SERVICES

Generally, Regulatory Services will not be affected by the Proposed Charter Revisions, and those changes can therefore be considered non-substantive. Many of the specific powers in the current Charter are either fully provided for in ordinance or have long been superseded by state statutes and regulations. Even in the event that the Proposed Charter Revision was not adopted in full, many of the specific powers in the Charter

could be eliminated. In the event the Proposed Charter Revision was adopted, the general grant of power in the Revised Charter would suffice to ensure the continued functioning of Regulatory Services.

III. SUPERSEDED PROVISIONS

The following specific powers have been superseded by state law and could be removed from the Charter:

Seventh.—To regulate the movement and speed of railroad locomotives and cars, to require maintenance of flaggers or the construction and maintenance of gates at the crossings of railway tracks over such streets or avenues as said City Council shall deem to require such precautions; to regulate or prohibit the whistling of locomotive engines; to regulate and prohibit the unnecessary discharging of steam therefrom, and the causing or permitting [of] steam to escape therefrom unnecessarily, and to require the use thereon of such safety valves or other practical appliances as it may designate, for the purpose of preventing or lessening the noise from the discharge or escape of steam; and may direct what kind of coal any yard or switch engine shall use while being run or operated for any yard or upon any railroad, within the limits of said City; and to prevent and punish immoderate driving or riding in the streets; and to regulate places of bathing and swimming in the waters within the City limits.

Twentieth.—To control and regulate the construction of piers and wharves, or grading said wharves into the Mississippi River, within the corporate limits of said City, and to prescribe and control the prices to be charged for pierage or wharfage thereon, and to prevent and remove all obstructions in the water of said river, and to prescribe and regulate rates of wharfage and pierage to be charged to any boat or vessel landing or mooring at any landing, wharf or pier, within the limits of said City and paid to said City, and to regulate the landings, levees, wharves and piers within the limits of said City, and boats and vessels landing and mooring at the same.

Twenty-fourth.—To appoint City Sealers, Inspectors, Weighers, and Gaugers, to regulate their duties and prescribe their compensation.

Thirtieth.—To regulate the construction of all buildings within said City, and by such regulations to prescribe the depths of cellars, the material and method of construction of foundations and foundation walls, the manner of construction and location of drains and sewer pipes, the thickness, material and construction of party walls, partitions and outside walls, the size and material of floor beams, girders, piers, columns, roofs, chimneys, flues and heating apparatus, to apportion and adjust such regulations to the height and size of the buildings to be erected; to regulate the construction and location of restroom facilities and vaults in such buildings, to prohibit the construction of buildings not conforming to such prescribed standard, either in the whole City or within such building limits as it may prescribe; to establish, alter or enlarge such building limits from time to time; to appoint an Inspector or Inspectors of buildings, or to devolve the duties of such inspector on any City officers; to give such Inspector or other officer authority to enter upon, examine and inspect all buildings in process of construction in said City or within such building limits, and to direct the suspension of any such building operation as does not conform to such regulations. Provided, however, That neither said City Council nor any Inspector or officer of said City shall have control or regulation of any building erected by the United States or the State of Minnesota.

Thirty-third.—To require the owner or lessee of any building or structure, now or hereafter built or constructed in said City, to place thereon such fire escapes, and such appliances for protection against, and for the extinguishment of fire, as it may direct. And also to require such owner or lessee to construct, provide and furnish each and every other thing, and to do each and every other act which it may think necessary or advisable to lessen the danger to human life in case of fire or accident.

Thirty-fourth.—To regulate or prohibit the location and use of such steam boilers, in size and construction, as it may designate as being dangerous to life or property or to prohibit the location of any such steam boiler except where permission therefor is first given by the City Council, specifying the location and prescribing the regulation for its use.

Thirty-fifth.—To regulate and control the quality and measurement of gas; to prescribe and enforce rules and regulations for the manufacture and sale of gas; to provide for the inspection of gas and gas meters, and to appoint an inspector and other officers if needed for that purpose, and prescribe their duties.

Thirty-seventh.—To regulate and designate the width of tires of all wheels used on any and all vehicles used in said City, and the highest weight of any load to be drawn over any street in said City, and may direct upon what streets heavily-loaded vehicles may be drawn and from what streets, avenues and boulevards the same shall be excluded.

Forty-first.—To license, prohibit, regulate and control the carrying of concealed weapons and provide for the confiscation of the same. And to regulate and determine the manner in which bodies which have been buried or placed in a vault, or tomb or other place for the purpose of burial, may be removed.



Forty-second.—To regulate the construction of buildings, chimneys and stacks within the limits of said City, also the emission of dense smoke; it shall also have authority to prohibit and prevent the erection or maintenance of any insecure or unsafe buildings, stacks, walls or chimneys and the emission of dense smoke in said City, and to declare them to be nuisances, and to provide for their summary abatement.

IV. LIQUOR ISSUES

At least one provision of a City charter cannot be amended or replaced via a vote of the Council:

If the charter which is to be amended or replaced contains provisions which prohibit the sale of intoxicating liquor or wine in certain areas, such provisions shall not be amended or removed unless 55 percent of the votes cast on the proposition shall be in favor thereof.

Minn. Stat. § 410.121. The current Charter prohibits the sale of liquor in several parts of Chapter 4 § 5:

First.-- To license and regulate exhibitions and shows of all kinds, including exhibitions of caravans, menageries, circuses, concerts, roller skating rinks, places of amusements and museums for which money is charged for entrance into the same, newspaper carriers and bootblacks, and theatrical performances, also to license and regulate all auctioneers, pawnbrokers, dealers in secondhand goods, junk dealers, keepers of employment offices and agencies, as well as all persons doing the business of seeking employment for others or procuring or furnishing employees for others, pool and billiard tables, bowling alleys, shooting galleries, taverns, restaurants, cafes and cafeterias, and all persons vending, dealing in or disposing of spirituous, vinous, fermented or malt liquors. Provided that no license shall be issued for any longer time than one year, and the City Council shall by ordinance determine the date of expiration of all licenses.

And provided further, that the power to regulate above given, shall be construed to include among other powers, the power to define who shall be considered as auctioneers, pawnbrokers, dealers in secondhand goods and junk dealers, and to compel each and every such person whether licensed or not to keep in such manner as it may direct open at all times for inspection, a record of all such property as it may designate, with the time when received, and the name, residence and description of the person from whom the same was received, and to make daily reports thereof to the police department of said city, as it shall direct. And also, among other powers, the power to require all persons doing the business of seeking employment for others, or procuring or furnishing employees for others, to keep open at all times for inspection, such records of their business as it [the council] may designate, and to furnish to every person with whom they may deal such written evidences of the transaction as it may designate, and to prescribe and punish all kinds of unfair dealings by such persons in the course of their said business, and to establish such rules of legal evidence as it may see fit for the proof of such unfair dealings.

Provided further that (except as to regularly licensed druggists, to sell for medicinal, chemical or mechanical purposes, not to be used or drunk upon the premises), **no license shall be granted to any person or persons to vend, deal in, or dispose of any intoxicating spirituous, vinous, fermented or malt liquors except at a location within an area or**

district zoned by ordinance to permit the sale of liquor therein, and further subject to the following:

(a) If such liquor is not to be used or consumed on the premises, then only if said area or district, together with such other areas or districts contiguous thereto wherein such sale would be permitted by ordinance and by law, contains five (5) or more acres.

(b) If such liquor is to be consumed on the premises, then only if said area or district, together with such other areas or districts contiguous thereto wherein such consumption would be permitted by ordinance and by law, contains seven (7) or more acres, and then only if a substantial portion of the income to be derived from business conducted at such location is derived from the sale of food to be consumed on the premises and adequate facilities are provided therefor. The City Council shall, by ordinance, establish suitable and appropriate standards to determine whether a substantial amount of income is derived from the sale of food and to define adequate facilities for the consumption thereof on the premises.

(c) A license as described in (a) or in (b) above may be issued notwithstanding the requirement of area or sale of food for a location within the territory where issuance of such a license was permitted by law or by the provisions of this Charter on November 1, 1974, or for a location which at the time of issuance is being used for, or the latest use of which was for the sale of liquor under a similar type license.

Nothing herein shall authorize the City Council to issue liquor licenses in residence or office residence districts.

The bolded portions represent portions of the existing Charter that prohibit the sale of intoxicating liquor or wine in certain areas. Those portions therefore cannot be changed via wholesale adoption of the Proposed Charter. The Charter proposes to move the specific liquor powers to ordinance, but that isn't possible. Only a referendum vote of at least 55% approval will suffice. If the Council were to adopt the Proposed Revised Charter as written, the bolded language above would need to be reinstated before adoption. If the Council feels that they would like to see the relevant language eliminated, it would need to be put to the voters for a referendum vote.

CONCLUSION

This memo exists only to provide a guide as to the suggested changes contained in the Proposed Revised Charter and to assist the Workgroup in its discussion of those changes.

Please feel free to contact me if you have further questions or concerns.