

CHARTER COMMISSION AGENDA
City Council Chambers
April 8, 2009
5 p.m.

- I. ROLL CALL:
- II. ACCEPTANCE OF REQUESTED EXCUSED ABSENCES
- III. APPROVAL OF MINUTES: January 14, 2009 (To Be Sent Out, Prior To Meeting)
- IV. COMMUNICATIONS:
- A. Commissioner Anderson submitting draft ordinance amending Section 21 of the City Charter relating to political activities of city employees (#09-03)
 - B. Commissioner Strongitharm submitting draft ordinance amending section 36 of the City Charter increasing the number of Deputy Fire Chiefs from one to two. (#09-04)
 - C. Commissioner Hanson submitting communication regarding discussion of proposal to require which if any utility rate increases or fees need to be reviewed by the MN Public Utilities Commission, to include but not necessarily be confined to water, gas, sewage, street lighting, annual and one time fees, fixed and variable usage rates. (#09-05)
 - D. City Attorney Johnson submitting communication regarding the definition of "public office". (#09-06)
- V. UNFINISHED BUSINESS: None
- VI. NEW BUSINESS:
- A. Draft ordinance amending Section 21 of the City Charter relating to political activities of city employees.
 - B. Draft ordinance amending section 36 of the City Charter increasing the number of Deputy Fire
 - C. Discussion of proposal to require which if any utility rate increases or fees need to be reviewed by the MN Public Utilities Commission, to include but not necessarily be confined to water, gas, sewage, street lighting, annual and one time fees, fixed and variable usage rates.
- VII. ADJOURNMENT:

REMINDER As per the Charter Commission Rules of Procedure, "...only absences due to personal emergency or illness, or absence from the city will be excused and only if prior notice is given to the president or secretary of the commission."

Please notify the city clerk's office on/or before 10 a.m. on April 8, 2009, if necessary, 730-5500, or jcox@duluthmn.gov or moswald@duluthmn.gov

RECREATION, LIBRARIES AND AUTHORITIES COMMITTEE

09-00____-0

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER IV, SECTION 21, OF THE CITY CHARTER RELATING TO CITY EMPLOYEES RUNNING FOR CITY OFFICES.

BY COUNCILOR ANDERSON:

The city of Duluth does ordain:

Section 1. That Chapter IV, Section 21 of the 1912 Home Rule Charter of the city of Duluth, as amended, is hereby amended, to read as follows:

Section 21. At the head of each department there shall be an officer of the city, who shall have control and direction of the department subject to the general supervision of the chief administrative officer. The head of each department shall, with the approval of the chief administrative officer, have the power to appoint and remove all officers and employees of the department subject to the civil service provisions of this Charter; provided, that the equal opportunity representative shall be appointed by the mayor with the approval of the city council and may only be removed by the mayor with the approval of the city council. Two or more departments may be headed by the same individual and the chief administrative officer may head one or more departments, and heads of the departments may also serve as chiefs of divisions thereof as may be established by ordinance, upon recommendation by the mayor. The authority herein conferred upon the chief administrative officer is granted subject to the limitations contained in Section 19 of this Charter.

Each department head shall possess the necessary qualifications to insure efficient administration of such department. The council by ordinance shall establish appropriate minimum qualifications for department heads, the deputy fire chief, the deputy chief of police and the equal opportunity representative.

A ~~municipal~~ permanent, full-time city employee who wishes to run for ~~political~~ the office of mayor of the city of Duluth or the Duluth city council shall, before commencing the campaign for such office, apply for and obtain a leave of absence from such employee's municipal position. Except in the case of municipal emergency, leave of absence shall be granted by the appropriate authority to every municipal employee desiring such leave for the purpose of running for any political office. ~~For the purposes of this Section, the term "political office" shall not be deemed to include a position on the board of education of the city of Duluth.~~

All city employees shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates.

Section 2. That this ordinance shall take effect 90 days after its passage and publication.

Approved as to form:

Attorney

CCREQ/ATTY JA/MAL:blj:cjk 1/15/2009

STATEMENT OF PURPOSE: Section 1 of this ordinance eliminates the requirement that a city employee running for political office other than Mayor of Duluth or Duluth City Council must take a leave of absence from city employment.

#09-04



City of Duluth Fire Department
602 W. 2nd St. - Duluth, MN 55802 - 218-730-4390

TO: Charter Commission
FROM: John Strongitharm, Fire Chief
SUBJECT: Charter Change concerning Deputy Fire Chief
DATE: March 11th 2009

Issue: The Charter currently limits the amount of Deputy Fire Chiefs to one. Over the last ten years additional managerial responsibilities have been added to the fire department including the oversight of the Building Safety Division and Emergency Management.

Currently the Deputy Chief and I are the only supervisors for the 156 member department. This has impacted our ability to be proactive in planning, department accountability, and resulted in an unacceptable span of control. To address this, the command staff is working on a reorganization plan. Having a second deputy fire chief as an option is being considered. I am not requesting an additional deputy at this time. The change simply gives the department an option to add a deputy if the reorganization plan supports such change and it is budgeted.

The Police Department made the same Charter change a few years ago increasing the amount of Deputy Police Chiefs from one to two. This language mirrors the Police Departments.

Action Sought: To increase the amount of Deputy Fire Chiefs allowed by the Charter from one to two, thereby giving options in the future to meet the changing needs of the department.

COMMITTEE OF THE WHOLE

09-Sec36draft-o

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 36 OF THE CITY CHARTER
INCREASING THE NUMBER OF DEPUTY FIRE CHIEFS FROM ONE TO
TWO.

CITY PROPOSAL:

The city of Duluth does ordain:

Section 1. That Section 36 of the 1912 Home Rule Charter of the City of Duluth, as amended, be amended to read as follows:

Section 36. (A). The board, with the approval of the council, shall make rules and regulations for the proper conduct of its business, and shall provide: for the classification of all employees, except (1) the officers mentioned in Chapter IV (sections 18 through 34, inclusive) of this Charter; (2) two deputy chiefs of police, who at the time of appointment as such must be a sworn law enforcement officer in the classified service of the city; (3) a two deputy fire chiefs, who at the time of appointment as such must be employed in the fire department of the city; (4) an equal opportunity representative; and (5) day laborers, officers of election boards, special police officers, special detectives and other temporary employees; for open competitive and free examination as to fitness, provided that when the board certifies a position as an entry level position which requires only basic manual skills, open and free random selection may be used in lieu of or in connection with a competitive examination; for an eligibility list from which vacancies shall be filled; for a period of probation before employment is made permanent; and for promotion on the basis of merit, experience and record. Employees within the scope of this Chapter, who are in office at the time of the adoption of this Charter, shall retain their positions, unless removed for cause. The council may, by ordinance, confer upon the board such further rights and duties as may be deemed necessary to enforce and carry

out the principles of this Chapter;

Section . That this ordinance shall take effect 90 days after its passage and publication.

Approved:

Approved for presentation to council:

Department Director

Chief Administrative Officer

Approved as to form:

Approved:

Attorney

Auditor

FIRE/ATTY JS/GBJ:cjk 3/11/2009

STATEMENT OF PURPOSE: The purpose of this ordinance is to amend Section 36 of the City Charter to increase the number of deputy fire chiefs from one to two. This would allow an additional deputy fire chief to be appointed if such a position is budgeted for in the future.

#09-05

From: Hanson, George
To: Cox, Jeff
Subject: Charter Commission Agenda

Hi Jeff,

As we discussed, please add the following to the agenda for the next Charter Commission meeting.

Discussion of proposal to require which if any utility rate increases or fees need to be reviewed by the MN Public Utilities Commission.

I suggest that the discussion include but not necessarily be confined to water, gas, sewage, street lighting, annual and one time fees, fixed and variable usage rates. If the commission wishes to proceed then I would expect a committee and/or the City Attorney would be appointed to draft appropriate language.

Please give me a call if you need more info.

Thank you.

George Hanson

Inter-Department Correspondence City of Duluth, Minnesota

Date: March 10, 2009
To: Charter Commission
From: Gunnar B. Johnson *GBJ*
City Attorney
Subject: Definition of "Public Office" as used in the City Charter.

Charter Commission member Miletich has asked for a definition of "public office," as used in Chapter II, Section 3 of the Duluth City Charter. More specifically, does serving as a Duluth Charter Commission member fall within that definition. The language in question reads: "The mayor, chief administrative officer and councilors shall not hold any other **public office**, notary public excepted, during their tenure as mayor, chief administrative officer or councilors." (*Emphasis added*)

In the interpretation of legislative intent, words and phrases are construed according to common and approved usage and rules of grammar. Words should be viewed in their settings, not isolated from the context. It is presumed that the drafters of the Charter did not intend an absurd result.

The language in question appears to derive from 1956 Charter amendments. Since that time, Section 3 has been amended twice. First in 1982, when it was made gender neutral, and again in 2005 when the term "administrative assistant" was changed to "chief administrative officer."

Former Duluth City Attorney Harry E. Weinberg prepared a detailed memorandum to the Duluth Charter Commission in September 1955 to address the legality of the amendments to the Charter that inserted the language in question. With regard to Section 3, attorney Weinberg wrote that it "subjects the mayor and councilmen at all times to the control of the people by initiative, referendum and recall, and forbids any of these officers to hold any other public office except that of notary public." These changes came as Duluth abandoned the commission form of government, where council members had administrative authority, and adopted the strong mayor-council form of government.

The Charter Commission is governed by MS § 410.05, of which subdivision 1 provides, in part:

Except as otherwise provided in the charter, no person shall be disqualified from serving on a charter commission by reason of holding any other elective or appointive office other than judicial. The charter may provide that members of the governing body of the city cannot serve on the charter commission.

Duluth's governing body is the city council. Thus, the mayor and chief administrative officer could not be disqualified from service on the Charter Commission. The question remains, however,

whether city councilors are disqualified from service on the Charter Commission by the language in Chapter II, Section 3 of the Duluth City Charter.

Past practice is instructive. Various city councilors have served on the Charter Commission for sometime. Currently, two city councilors are also members of the Charter Commission.

“Public office” is not defined in the Charter, but is generally defined as:

A position in a governmental system created, or at least recognized, by applicable law, as to which certain permanent duties are assigned, either by the law itself or by regulations adopted under the law by an agency created under such law and acting in pursuance of it. An office is a public charge, or employment, in which the duties are continuing and prescribed by law, and not by contract, and the office holder is invested with some of the functions pertinent to sovereignty, or having some of the powers and duties which inhere with the legislative, judicial, or executive departments of the government. A public office has also been defined to be the right, authority, and duty created and conferred by law, the tenure of which is not transient, occasional, or incidental, by which for a given period an individual is invested with power to perform a public function for the benefit of the public. [63C *Am. Jur.* 2d Public Officers and Employees § 1.]

The Duluth Charter Commission has no final authority to take actions, but instead has the power to recommend. Thus, one of the characteristics of a public office, namely the power to exercise some portion of the sovereign function of government, is, arguably, missing with membership on the Charter Commission.

In light of the fact that there is a long-standing practice of city councilors serving on the Charter Commission, that this Charter section has been amended twice without addressing this particular issue, and that the Charter Commission does not have the authority to take legislative, judicial or executive actions other than to make recommendations, it is my opinion that membership on the Duluth Charter Commission is not a “public office” as provided under Chapter II, Section 3 of the Duluth City Charter.

In his closing comments on the legality of the Duluth Charter, former city attorney Weinberg wrote “Time and experience, not to mention trial and error, alone make up the chemistry of testing any documents or comment thereon produced by the hand of mortal man.” These words still hold true today. Since 1956, the Charter has been amended numerous times. If the Charter Commission feels this issue needs further clarification, it should begin the process of amending the Charter to more clearly define whether membership on the Charter Commission is a “public office,” as provided in Chapter II, Section 3.

GBJ:cjk