

BEMIDJI CHARTER COMMISSION SPECIAL MEETING AGENDA

Monday, August 10, 2026

**Council Chambers
City Hall – 317 4th Street NW
4:30 PM**



- I. Call to Order**
- II. Roll Call**
- III. Approve Agenda**
- IV. Business**
 - a) Review Legal Memorandum and Consider Charter Amendment Ballot Question
 - 1. Keep Ballot Question Moving Forward for Council Action; OR
 - 2. Rescind Motion to have Charter Amendment on November 2026 Ballot
- V. Adjourn**

CHARTER COMMISSION AGENDA ITEM



Meeting Date: August 10, 2026

Action Requested: Consider Legal Memorandum Regarding Charter Amendment
Ballot Question

Prepared By:

Background:

The City Council has received a memorandum from Flaherty and Hood regarding the Charter Amendment ballot question regarding Section 12.17. In summary, legal believes the amendment is illegal and unenforceable. We would like to give the commission an opportunity to either keep the ballot question moving forward or to rescind its motion to put the ballot question on the November 2026 ballot. This meeting is needed due to the August 11 deadline to submit the ballot question to the county auditor.

Recommendation:

Either keep the ballot question moving forward for council action or to rescind the motion to add the charter amendment to the November 2026 ballot.

MEMORANDUM

To: City Council and Mayor of the City of Bemidji

Cc: Rich Spiczka, City Manager
Michelle R. Miller, City Clerk

From: Robert J. Kringler and Robert T. Scott

Date: July 30, 2026

Re: Legal Review of Proposed Charter Amendment from Bemidji Charter Commission

1) INTRODUCTION

On April 6, 2026, the Bemidji City Council (the “Council”) approved a Resolution receiving a proposed charter amendment approved by the Bemidji Charter Commission (the “Commission”) for submission to the voters at the next general election, and referring the proposed charter amendment for legal review.

In accordance with the Council’s directive, this memorandum will review the legal framework of city charters, the legal procedures for amending the charter, the legality of the proposed charter amendment, and provide an overview of the City of Bemidji’s (the “City”) options regarding the amendment, including the decision as to whether or not it shall be placed on the ballot for the November 2026 General Election.

2) BACKGROUND AND PROPOSED LANGUAGE

On June 2, 2025, a duly noticed public hearing was held in front of the Bemidji City Council to consider a proposed amendment to the Bemidji City Charter that was proposed for adoption by Ordinance by the Commission.

The proposed charter amendment Ordinance sought to establish a new section of the Bemidji City Charter (the “City Charter”), Section 12.17, which would penalize violations of the City Charter by councilmembers and by employees of the City as misconduct of a public official under Minnesota Statutes, Section 609.43, as follows:

CHAPTER 12 GENERAL PROVISIONS

Section 12.17 CHARTER VIOLATIONS. A violation of this Charter by a councilmember or employee of the City of Bemidji may be charged with Misconduct of a Public Official, under Minn. Stat. §609.43.

(the “Proposed Amendment”).

On June 16, 2025, the charter amendment Ordinance failed to receive the statutorily required unanimous vote of the City Council and was not adopted. Notice of the failed Ordinance was then provided to the Commission.

On March 18, 2026, the Commission approved the submission of the Proposed Amendment, with the same language that was originally proposed to the Council in Ordinance format provided above, to the City’s voters for consideration at the City’s next general election, pursuant to Minnesota Statutes section 410.12 subds. 1 & 4.

On April 6, 2026, the City Council enacted a Resolution Receiving Proposed Charter Amendment and referring for legal review, finding that the Proposed Amendment satisfied the basic statutory threshold of being submitted to the City Council at least 17 weeks prior to the next general election.

3) UNDERSTANDING ROLES AND RESPONSIBILITIES FOR CITY CHARTERS, THE CHARTER COMMISSION, AND PROPOSED AMENDMENTS

Before discussing specific comments related to the Commission’s Proposed Amendment, the City Council may benefit from some background information regarding the legal framework and essential functions of the Commission, the limitations placed on its authority and the Charter generally, and the City Council’s role in reviewing proposed amendments.

a) Charter Commission Authority

First, it is important to understand that cities in Minnesota are classified in the law as political subdivisions of the State, and derive all their powers from the State; they have no “inherent powers” independent from those conferred upon them by the State.¹

Bemidji is a home-rule charter city, authorized directly by the Minnesota Constitution.² State statutes provide further clarity on how a charter shall be established and amended, and also provide the framework for the operation of charter commissions within a charter city.³ State statutes assign a narrow role and limited authority to charter commissions to serve as a quasi-“standing constitutional convention” to study the charter and suggest and/or consider potential changes to the text of the charter itself.⁴

¹*Mangold Midwest Co. v. Vill. of Richfield*, 274 Minn. 347, 357, 143 N.W.2d 813, 820 (1966).

² Minn. Const. art. XII, § 4.

³ See generally Minn. Stat. ch. 410.

⁴ See League of Minnesota Cities Publications, Handbook for Minnesota Cities, Chapter 4, The Home Rule Charter City, at 9—10 (available at <https://www.lmc.org/wp-content/uploads/documents/The-Home-Rule-Charter-City.pdf>).

The Legislature has given any city in the state the authority to adopt a home rule charter “for its own government,”⁵ and has provided for the formation of charter commissions to develop such charters. State statutes directly establish the limited functions and activities of a charter commission, after the initial adoption of the Charter, summarized as follows:

1. Remove members for failure to attend four consecutive meetings, without excuse.⁶
2. Meet at least once during each calendar year.⁷
3. Suggest appointments to the charter commission.⁸
4. Propose amendments to such charter consistent with the scope and subject matter limitations applicable to the initial adoption of a charter.⁹
5. File an annual report of its activities with the chief judge of the district court.¹⁰
6. Recommend that the city council enact a charter amendment by ordinance.¹¹
7. Meet to consider the proposals set forth in a petition signed by at least ten percent of the number of voters of the municipality, or upon resolution approved by a majority of the governing body of the city requesting the commission to convene.¹²
8. Employ an attorney and other personnel to assist in framing such charter, and any amendment or revision thereof. The amount of reasonable and necessary charter commission expenses that shall be paid by the city is the greater of .07 percent of the city’s current certified general property tax levy or \$1,500, not to exceed \$20,000 in any one year.¹³

The above represents the sole authority governing the activities of the Commission. The Charter acts as the City’s constitution and as such, like the federal or state constitutions, there should generally be a compelling reason for making changes to the same. An example of a compelling reason would be to address and correct inconsistencies or conflicts between the City Charter and State law. Some proposed amendments may be determined to exceed the scope of the Commission’s authority, particularly when the Commission appears to be attempting to enact legislation or policy that is not within its jurisdiction, as discussed further below.

Noticeably absent from the grants of authority given to the Commission in Minnesota Statutes is any ability to enact legislation or policy initiatives.

b) Legislative Functions Reserved to Elected City Council

⁵ Minn. Stat. § 410.04.

⁶ Minn. Stat. § 410.05, subd. 2 (“(w)hen any member has failed to perform the duties of office and has failed to attend four consecutive meetings without being excused by the commission, the secretary of the charter commission shall file a certificate with the court setting forth those facts and the district court shall thereupon make its order of removal and the chief judge shall fill the vacancy created thereby.”)

⁷ *Id.*, subd. 4.

⁸ *Id.*, subd. 3 (“(a) city council, a charter commission, or the petitioners requesting the appointment of a charter commission may submit to the court the names of eligible nominees which the district court may consider in making appointments to the charter commission.”)

⁹ Minn. Stat. § 410.12, subd. 1; Minn. Stat. § 410.07 (generally authorizing a charter to address municipal powers, governing structure and the organization and operation of local government in the city).

¹⁰ Minn. Stat. § 410.05, subd. 2.

¹¹ Minn. Stat. § 410.12, subd. 7.

¹² Minn. Stat. § 410.05, subd. 4.

¹³ Minn. Stat. § 410.06 (the council may authorize such additional charter commission expenses as it deems necessary).

Pursuant to Minnesota Statutes, the legislative power of a city to regulate and provide for the general welfare of its citizens is reserved exclusively to the city council of such city,¹⁴ whose members are elected by the voters and are thus directly accountable to the voters in a way that members of a charter commission are not, since charter commission members are instead appointed and not elected.¹⁵

None of the powers or duties of a charter commission, which are specifically defined in State statute and discussed above, encompass the authority to exert legislative functions or otherwise review, propose, or consider specific legislative actions undertaken for the general welfare of the City. Because charter commissions, like cities, lack inherent powers, a charter commission may only act in its official capacity in furtherance of one of the specific statutory powers or responsibilities enumerated above.

In *Vasseur v. City of Minneapolis*, the Minnesota Supreme Court held that “the form of municipal government adopted in a charter defines the powers held by that government and its residents.”¹⁶ In applying this holding to the City of Minneapolis and a proposed charter amendment there, the Court concluded that Minneapolis’ charter “vest[ed] legislative and policymaking authority solely in the City Council,” and in doing such held that a proposed charter amendment addressing a minimum wage in the City was improper.¹⁷

Like Minneapolis, the Bemidji City Charter gives the sole authority over legislation to the City Council, and requires that all legislation be enacted via Ordinance, which can only be approved directly by the City Council,¹⁸ or by the voters via a petitioned initiative approved by voters.¹⁹ The Commission is granted no express powers over legislation or policy in the Bemidji City Charter, nor in State statutes.

Given the clear directive in Minnesota law that charter commissions shall not legislate or otherwise take legislative action reserved to the City Council through its Charter and/or State statutes, any proposed Charter amendment must be reviewed through this framework. Charter amendments seeking to enact legislative policy are not proper under the law, and could be found to be illegal or even unconstitutional if challenged in court.

c) *City Council’s Role in Reviewing Proposed Amendments.*

When a charter commission acts to send a proposed amendment directly to the voters, and follows the proper procedure to do so, City Council’s role is limited. Under Minnesota law, after receiving a proposed amendment, the City Council is required to “fix” the form of the ballot,²⁰ meaning that the Council directly approves the language that will go onto the ballot that proposes

¹⁴ Minn. Stat. § 412.221 subd. 32.

¹⁵ See Minn. Stat. § 410.05, subd. 1.

¹⁶ *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 471 (Minn. 2016).

¹⁷ *Id.*

¹⁸ Bemidji City Charter § 3.05 (“Except as otherwise provided in this Charter, all legislation shall be by ordinance... an affirmative vote of a majority of all the members of the council shall be required for the adoption of all ordinances and resolutions.”)

¹⁹ Bemidji City Charter § 5.05.

²⁰ Minn. Stat. § 410.12 subd. 4.

the charter amendment. The Council must act to fix the ballot language in a timely fashion, in order for the City Clerk to meet the necessary deadline for submission of the ballot to the County Auditor, at least 84 days before the election is to be held.²¹

Under Minnesota law, the City Council cannot refuse to submit, nor change the amendment, as long as it is constitutional.²² Courts have determined that the Council lacks any “supervisory or veto powers” over proposed charter amendments, and thus may not reject a proposal based on policy disagreements or because it is arguably illegal.²³ Rather, the legal defect must be clear on its face, or the proposal must plainly conflict with the Minnesota Constitution or State law.²⁴

The Minnesota Supreme Court has stated that “when a proposed charter amendment is manifestly unconstitutional, the city council may refuse to place the proposal on the ballot.”²⁵ Beyond unconstitutionality, case law further suggests that charter provisions that conflict with State public policy are invalid,²⁶ and that charter provisions found to be “contrary to the public policy of the State, as disclosed by general laws or its penal code” are forbidden.²⁷

As directly stated by the Minnesota Supreme Court, “Because ‘state law may limit the power of a city to act in a particular area,’ we have declined to require the futile gesture of placing an unconstitutional or unlawful proposed charter amendment on the ballot.”²⁸

It is important to note that courts do not require the City Council to reject a proposed amendment that it considers to be unconstitutional or otherwise in conflict with State law or public policy. Rather, the City Council simply has the authority to do so in its discretion. In other words, even if a proposed amendment is determined to have legitimate legal issues, the Council can still elect to respect the recommendation of the charter commission and place the proposal on the ballot for consideration by the voters. However, the risk of doing so is that if the proposed amendment is adopted, it could be subject to future legal challenges and invalidated, which can cause confusion for the voters, and additional City expenses.

Under these legal precedents, the City Council’s review of the Proposed Amendment language must be limited to its constitutionality, conflicts with State law, and whether or not it contradicts public policy of the State of Minnesota. As such, our legal review in this memorandum will be targeted towards these factors.

4) LEGAL REVIEW OF THE PROPOSED CHARTER AMENDMENT

The Commission’s Proposed Amendment now under consideration is as follows:

²¹ Minn. Stat. § 205.16 subd. 4.

²² *Haumant v. Griffin*, 699 N.W.2d 774 (Minn. Ct. App. 2005).

²³ *Kranz v. City of Bloomington*, 990 N.W.2d 695, 699 (2023).

²⁴ *Id.* at 700.

²⁵ *Minneapolis Term Limits Coalition v. Keefe*, 535 N.W.2d 308 (Minn. 1995) (citing *Davies v. City of Minneapolis*, 316 N.W.2d 498 (Minn.1982)).

²⁶ *Nordmarken v. City of Richfield*, 641 N.W.2d 347 (Minn. Ct. App. 2002).

²⁷ *Town of Lowell v. City of Crookston*, 91 N.W.2d 83 (1958).

²⁸ *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 472 (Minn. 2016).

Section 12.17 CHARTER VIOLATIONS. A violation of this Charter by a councilmember or employee of the City of Bemidji may be charged with Misconduct of a Public Official, under Minn. Stat. § 609.43.

The Proposed Amendment seeks to enact a new policy into the City's Charter that would provide that any violation of the City Charter by a councilmember or employee of the City may be criminally charged as Misconduct of a Public Official under Minnesota Statutes, Section 609.43. If enacted, the Proposed Amendment would provide guidance to law enforcement and prosecutors, that violations of the City Charter may be prosecuted as misconduct of a public official under State law.

The plain text of the Proposed Amendment raises many legal issues that must be analyzed, including: 1) is the Proposed Amendment within the Commission's authority? 2) does the City Charter have the authority to tell law enforcement and judges how to interpret the State criminal code?

- a) *The proposed Amendment appears to be legislative in function, violating basic governance principles that prohibit the Commission from enacting legislation or policy.*

By its plain language, the Amendment seeks to place a reference to Minnesota Statutes, Section 609.43 into the City Charter, so as to bring violations of the City Charter within Section 609.43's application and interpretation. By doing so, the Proposed Amendment seeks to make violations of the City Charter a basis to bring criminal charges under State law.

Under basic legal principles, policies related to criminal law and its interpretation are considered legislative in nature, as those policies and laws are created by the Legislature directly, or delegated to cities to legislate through their city councils.

In providing the framework for the establishment of city charters and charter commissions, the Minnesota Legislature made clear that legislative powers of a city are reserved to the city council, not a city's charter commission. This framework is in line with Bemidji's City Charter as discussed above.

The Proposed Amendment before the Council is seeking to legislate through the City Charter. Not only is it improper for the Commission to propose amendments that are legislative in nature, as legislative functions are reserved to the City Council, it is improper to place legislation or policy matters into the Charter to begin with, as the Charter is intended to deal with basic form and functions of municipal government. The Minnesota Supreme Court has reasoned that "[a] charter amendment . . . differs in its fundamental character from a simple legislative enactment. Its content cannot transcend its limited office and be made to serve or function as a vehicle through which to adopt local legislation."²⁹ And the Proposed Amendment before the Council appears to be doing just that—attempting to enact local legislation to criminalize certain conduct. The City Code is the proper place for legislation to be enacted, including matters of criminal law within the City's authority.

²⁹ *Vasseur*, 887 N.W.2d at 471 (quoting *Cheeks v. Cedlair Corp.*, 287 Md. 595, 415 A.2d 255, 261 (Md. 1980)).

Further, as the Proposed Amendment seeks to legislate through the City Charter, in violation of the authorities granted to the Commission in Minnesota Statutes, it therefore violates the Minnesota Constitution itself, which provides that that charter amendments "may be proposed and adopted in any other manner provided by law."³⁰ Minnesota Statutes, Section 410.07 generally limits the subjects that may be addressed in a city charter to those concerning municipal powers, governing structure and the organization and operation of local government in the city. As the Proposed Amendment has not been proposed in accordance with Minnesota Statutes, exceeds the statutory authority of the Commission, and concerns matters that are beyond the scope of what may be addressed in a city charter, it is "manifestly unconstitutional" on its face.³¹

b) If enacted, the Proposed Amendment would likely be unenforceable, as case law mandates that charges brought under Minn. Stat. § 609.43 must rely on its plain language and the interpretation of that language by Minnesota courts to establish the underlying violations, not local City laws or policies.

In order to understand the legality and implementation of the proposed amendment, we must better understand Minnesota Statutes, Section 609.43, governing misconduct of public officers, and how courts have interpreted this statute in the past.

Section 609.43 provides as follows:

609.43 MISCONDUCT OF PUBLIC OFFICER OR EMPLOYEE.

A public officer or employee who does any of the following, for which no other sentence is specifically provided by law, may be sentenced to imprisonment for not more than 364 days or to payment of a fine of not more than \$3,000, or both:

(1) intentionally fails or refuses to perform a known mandatory, nondiscretionary, ministerial duty of the office or employment within the time or in the manner required by law; or

(2) in the capacity of such officer or employee, does an act knowing it is in excess of lawful authority or knowing it is forbidden by law to be done in that capacity; or

(3) under pretense or color of official authority intentionally and unlawfully injures another in the other's person, property, or rights; or

(4) in the capacity of such officer or employee, makes a return, certificate, official report, or other like document having knowledge it is false in any material respect.

Noticeably absent from the text above is any reference to violations of city charters or city ordinances. If the Legislature intended that violations of a city charter should be within the scope of prosecutable misconduct under the statute, it would have included language to that effect, but it did not do so. Rather, the statute refers to "intentionally" failing or refusing to perform a known mandatory duty, as a person acting in excess of their "lawful authority." Since the plain language of the statute does not define lawful authority, we must look to the courts to see how this language has been interpreted in the past.

³⁰ Minn. Const. art. XII § 5.

³¹ See *Kranz*, 990 N.W.2d at 699. (finding that a proposed charter amendment is "manifestly unconstitutional" for seeking to change required voting thresholds for future charter amendments on ranked choice voting in violation of Minn. Stat. § 410.12, and thus in violation of Minn. Const. art. XII § 5).

The courts have implemented a three-pronged analysis when reviewing charges under Section 609.43, which requires an analysis of “(1) whether the act charged was done by a public officer or employee; (2) whether the act was committed while the defendant was acting in his[/her] official capacity as a public officer or employee; and (3) whether the act was either forbidden by law or in excess of his[/her] lawful authority.”³²

Most important for Council’s analysis of the Proposed Amendment is how courts determine if an act is forbidden by law or in excess of a public officer’s lawful authority, and if local City laws are utilized in this analysis. To this question, courts have set a clear policy that the underlying authority or law alleged to be violated that constitutes the basis of a misconduct charge under Section 609.43 must be found in Minnesota Statutes, not local laws, ordinances, or city policies.

“We hold that ‘lawful authority’ as used in Minn. Stat. § 609.43(2) is determined by statutes which define or describe a public official's authority. We believe this approach will best assure that the official misconduct statute satisfies the general principles of the Criminal Code which seek to "protect the individual against the misuse of the criminal law by fairly defining the acts and omissions prohibited... ***Therefore, a charged violation of section 609.43(2) must be based on an act that exceeded an officer's statutory authority, not merely his or her authority under an ordinance or city code.***”³³ (emphasis added)

In *State v. Lash*, the Minnesota Court of Appeals likewise determined that the basis of a charge under Section 609.43 must be violation of a state statute, rather than a local ordinance or policy.³⁴ In that case, a public employee of the City of Minneapolis was charged under Section 609.43, stemming from violations of the Minneapolis City Code of Ordinances related to the administration of payroll expenses and mandatory reporting.³⁵ The Court held that the underlying violations tied to the misconduct charge must be in Minnesota Statutes, and that violations of Minneapolis’s City Code of Ordinances were not sufficient to bring misconduct charges under Section 609.43.³⁶

Relevant to our current analysis, the Court offered the following opinion: “We conclude that the act of improperly preparing payroll forms is not an action intended to be a criminal offense under the official misconduct statute. Rather, it is an administrative personnel procedure with no criminal ramifications if violated.”³⁷

While our case law research did not reveal any specific instances of courts reviewing violations of city charters as the basis for charges under Section 609.43, courts have made clear determinations on city ordinances and policies, finding that those authorities will not be considered when evaluating criminal charges under Minn. Stat. § 609.43. Minnesota law generally classifies both city charter provisions and city ordinances as “local laws” which are enacted through the same limited grant of authority from the Legislature. Therefore, we would

³² *State v. Ford*, 397 N.W.2d 875, 879 (1986).

³³ *State v. Serstock*, 402 N.W.2d 514, 517 (1987) (quoting Minn. Stat. 609.01, subd. 1(2)).

³⁴ *State v. Lash*, 2009 Minn. App. Unpub. LEXIS 1112.

³⁵ *Id.* at 3.

³⁶ *Id.* at 6. See *Serstock*, 402 N.W.2d at 517 (holding that not all actions barred by the city ethics code are intended to be criminal offenses under the official misconduct statute).

³⁷ *Id.* at 7.

expect a court to react similarly to provisions of the City Charter being used as the basis for misconduct charges under Section 609.43.

- c) *The proposed Amendment seeks to change state criminal law through the City Charter, violating preemption principles and the division of powers between the state and city governments.*

The legal doctrine of preemption is crucial to our analysis of the Proposed Amendment, and whether or not it may violate the established division of powers between the state and city governments in Minnesota. Minnesota courts have regularly addressed this issue, invalidating local charter provisions and ordinances found to have crossed the line into areas exclusively controlled by the state, or that are otherwise found to be in conflict with state law. The Minnesota Supreme Court has stated:

"Notwithstanding a city's broad power to legislate in regard to municipal affairs, state law may limit the power of a city to act in a particular area... [A] state law may fully occupy a particular field of legislation so that there is no room for local regulation, in which case a local ordinance attempting to impose any additional regulation in that field will be regarded as conflicting with the state law, and for that reason void, even though the particular regulation set forth in the ordinance does not directly duplicate or otherwise directly conflict with any express provision of the state law."³⁸

Further, the Minnesota Court of Appeals has held that, if an enacted local law, such as a charter provision or city ordinance, is found to be preempted by state law, the "local law purporting to govern an aspect of the preempted field is void even if the law is not directly in conflict with the state law."³⁹

One such area of the law where the state has "fully occup[ied] a particular field of legislation" is criminal law. While cities retain the limited the ability to regulate for the health, safety, and general welfare of the community, they can only do so under their limited scope of authority granted by the state. The Legislature, through the enactment of Minnesota Statutes, Chapter 609 (known as the "Criminal Code") has fully occupied the field regarding serious criminal offenses, leaving only the ability for the City to charge and prosecute misdemeanor level offenses through its City Code.⁴⁰ A city charter cannot be used to escape these preemption principles.

Simply put, a city charter provision cannot be used to establish whether or not a violation of Minnesota Statutes occurred. Nor can the Charter be used to dictate the interpretation and implementation of state criminal statutes, which is exactly what the Proposed Amendment seeks to do. As discussed above, courts have clearly established how Minnesota Statutes, Section 609.43 is to be interpreted, and what elements must be satisfied to establish a conviction. These precedents make clear that the underlying offense must be based in state statute, not in local policies, ordinances, or charter provisions.

³⁸ *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 820 (1966).

³⁹ *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 348 (Minn. App. 2002).

⁴⁰ See Minn. Stat. 412.231 ("The council shall have the power to declare that the violation of any ordinance shall be a penal offense and to prescribe penalties therefor. No such penalty shall exceed a fine of \$1,000 or imprisonment in a city or county jail for a period of 90 days, or both, but in either case the costs of prosecution may be added."). See also Minn. Stat. 609.02 subd. 3 ("Misdemeanor" means a crime for which a sentence of not more than 90 days or a fine of not more than \$1,000, or both, may be imposed.)

By way of example, should the Proposed Amendment be adopted, and a City employee or councilmember is found to have violated the City Charter, and law enforcement determines it is appropriate to bring charges against that employee or councilmember, those charges would not cite the City Charter as its grant of authority to bring the charges. Rather, the charges must be solely based on the plain language of Section 609.43 and how courts have previously interpreted this language. In practice, this means that in evaluating the charges, a court would determine whether or not a violation of statute occurred based solely on the statute, and the prosecution would not have the authority to rely on the City Charter to prove the charges.

The Proposed Amendment seeks to enact criminal legislation in the City Charter, clearly overstepping the authority of the Charter Commission and the City itself in matters of criminal law already legislated by the state. Matters of criminal law which the City has jurisdiction over, such as misdemeanor traffic enforcement, are found in City Code—not the City Charter.

The Minnesota State Legislature has determined what constitutes “Misconduct of a Public Official,” through enacting and amending Section 609.43, and it is not the place of a city to tell courts how to interpret the Legislature’s intent when it enacted that statute, whether in a charter or ordinance. If the Proposed Amendment is adopted and challenged in court, there is a strong likelihood that it would be invalidated because it violates basic principles of preemption and represents an impermissible expansion of the limited powers delegated to the City by the Legislature.

5) CONCLUSIONS AND RECOMMENDATION

The City Council has received the Proposed Amendment from the Commission that complies with all procedural requirements. The Council must now decide whether to approve ballot language and send the Proposed Amendment to the voters, or reject the Proposed Amendment if it finds that the Proposed Amendment constitutes improper legislation or is contrary to state law and public policy for the reasons addressed in this memorandum.

In sum, the City Council has a mandatory obligation to submit properly proposed charter amendments to the voters, so long as the proposed amendment is not an unauthorized attempt to enact legislation in the City Charter, manifestly unconstitutional, or otherwise determined to violate state law or public policy.

After reviewing the controlling law governing city charters, the scope of the Commission’s authority, the plain text of the Proposed Amendment, and the existing law on “Misconduct of a Public Official” under Minnesota Statutes, Section 609.43, it is our opinion that the Commission through its Proposed Amendment is attempting to enact legislation outside the scope of its authority, and if enacted, the Proposed Amendment would likely violate the City’s limited criminal legislative authority by seeking to change criminal law duly enacted by the Minnesota legislature, and is arguably an unconstitutional exercise of the Commission’s authority.

Should the Council decide to respect the recommendation of the Commission and place the Proposed Amendment on the ballot for the voters of the City to weigh in on, which the Council is free to do, the Council should understand that if enacted, there is a strong likelihood that the

Proposed Amendment would be found to be illegal and/or unenforceable given the legal issues identified in this memorandum and case law interpreting Minnesota Statutes, Section 609.43.

Alternatively, the Council would be within its rights to reject the Proposed Amendment and decline placing it on the ballot for the reasons articulated in this memorandum.

Please note, there is no mandatory obligation for the City Council to reject the Proposed Amendment or to withhold it from the ballot for the November general election, even after receiving this opinion of legal counsel. Ultimately, the decision to place the Amendment on the ballot rests solely with the City Council.

6) CONCLUSION

We hope that the foregoing is helpful in your consideration of this matter. Should you have any questions or require additional information, please do not hesitate to contact me at your convenience at (651) 259-1901 or via email at rjkringler@flaherty-hood.com. Thank you.

RJK-RTS/mb