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Memorandum

To: Mayor Jacob Frey
Council President Elliot Payne
Council Vice President Jamal Osman
City Council Members
Casey Carl, City Clerk

From: Kristyn Anderson, City Attorney
Dan Abelson, Deputy City Attorney
Sarah Riskin, Managing Attorney
Katy Fodness, Assistant City Attorney

Date: April 14, 2026

Subject: Legal implications and next steps with respect to City Council's April 9, 2026, vote on the appointment of the Commissioner of Community Safety.

Introduction

This memorandum is in response to questions the City Attorney's Office ("CAO") has received about the legal and practical impact of the City Council's April 9, 2026, vote denying consent to the Mayor's nomination of the current incumbent for appointment to a second term as Commissioner of Community Safety. The questions, discussed more fully below, relate principally to whether the Mayor has the authority to veto the Council's action and what processes and results flow from the answer to that question.

Under the City Charter, the CAO is authorized to render opinions on legal questions.[1] As counsel to the City, the CAO's ultimate obligation is to the City, over and above any particular client representative or branch of City government.[2] In approaching these questions and developing this legal opinion, we reviewed and considered the plain language of the Charter, prior opinions from the CAO interpreting relevant provisions of the Charter, documentation from the Minneapolis Charter Commission (including analysis of the 2021 government structure amendments to the City Charter approved by voters), past treatment of similar actions by City Council, and relevant case law. We did not pre-determine an outcome. To the contrary, we reviewed all relevant guidance we could find, from as many angles as possible, without regard to the interests of the Council, the Mayor, or the incumbent, with the sole objective of determining the correct legal answer for the City as our client.

This memorandum does not constitute legal advice about what *should* happen, or what any of the decisionmakers *should* do. These are political questions beyond the scope of this memorandum. Instead,

[1] City Charter § 7.2(c)(1)(B).
[2] *See* Minn. R. Prof. Cond. 1.13 (Organization as Client).

this memorandum analyzes the City Charter and relevant authorities to produce a legal opinion about the meaning of the same as they apply to the factual situation at hand.

Ultimately, this legal opinion's purpose is to say what the state of the law is, not what it should be. This memorandum does not opine on a resolution. While this opinion addresses the "if, then" of the situation, and makes clear the rules of the road, it is up to the City's political leaders to decide whether and how to resolve the situation.

Executive Summary

Since 1974, the City Charter broadly defines an "act" to include any Council "action," other than narrow explicit exceptions that are inapplicable here. The Charter subjects all "acts" to the mayoral veto authority. Save for one CAO opinion from 1976, which was superseded by a later CAO opinion, CAO opinions have consistently concluded that Council votes on appointments are acts subject to a mayoral veto, and even appointments initiated by mayoral nomination. Moreover, the City has a long history of treating Council denials as acts subject to veto, even outside of the appointments context.

We also examined whether there was any basis to conclude that the recent 2021 government structure Charter amendments changed the language to shrink the mayoral veto authority and supersede past precedent. The answer was no. Indeed, not only did the 2021 Charter amendments retain the language applicable to the mayoral veto authority without change, the Government Structure Work Group, in explaining their Charter amendments that would go to the voters, re-emphasized the breadth of the mayoral veto.

Due to the unambiguous Charter language, the great weight of authority, and the long practice of the City, it is CAO's legal opinion that a mayoral veto is available when the Council takes action to deny consent to the appointment of a mayoral nominee. It is critical to stress, however, that the availability of a veto <u>does not mean</u> that a veto results in an affirmative permanent appointment[3] to a new term. This memorandum analyzes potential results whether or not there is a veto, but the only action that would result in a permanent appointment to a new term would be an affirmative vote of the Council consenting to the nomination coupled with approval by the Mayor.

Charter Provisions on Veto and Overview of Charter Appointments Process

Section 4.4 of the Charter defines an act by the Council and sets out the Mayor's veto authority over acts. Section 4.4(a)(2) defines an "act" as:

> For this article IV's purposes, the noun "act"—
>
> (A) means any ordinance, resolution, appropriation, any other lawful action, and any action amending, repealing, or otherwise affecting any such act; but

[3] In this memorandum we refer to a "permanent appointment" to distinguish it from an interim appointment. Despite use of the word "permanent" in this memorandum, the occupant serves at-will at the pleasure of the Mayor. Use of the word "permanent" is not intended to and must not be construed to suggest any alteration of the at-will nature of the appointment.

(B) does not include a rule or other vote that relates to the Council's internal organization or procedure.

Charter Section 4.4(c) describes the process for the Mayor's signature or veto. It provides:

> The Council must present each act to the Mayor in the manner that this charter prescribes for giving notice. The act takes effect (subject to publication (section 4.4(d)), in the case of an ordinance or resolution)—
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> (1) when the Mayor signs it;
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> (2) five days after its presentation to the Mayor, if he or she neither signs nor vetoes it; or
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> (3) if the Mayor vetoes it by returning it to the City Clerk with an objection within five days (excluding Sundays) after its presentation, only if the Council at its next meeting by two-thirds of its membership again passes the act over the Mayor's veto.

Charter Section 8.4 contains the process for filling permanent appointments of certain officers. The "Mayor nominates and, with the City Council's consent, appoints" these officers to permanent appointments.[4] The process begins with a Mayoral nomination, followed by a City Council vote. Assuming City Council consents, the "officer's term coincides with the Mayor's term,"[5] except that officers appointed through Section 8.4(b) are also at-will, subject at any time to termination by the Mayor, "with or without cause."[6,7]

At the end of the Mayor's term, permanent appointees do not automatically lose their appointment. Rather, the Charter provides that incumbents may continue in a holdover status until a successor is appointed for up to a total of 210 days, or longer with the consent of Council.[8] Section 8.4(b)(5) (Holding over) states:

> Any officer subject to appointment under this section 8.4(b) whose term has expired but whose successor has not been appointed may continue in office for up to 30 days unless the Mayor directs otherwise. The Mayor may continue in office any officer subject to appointment under this section 8.4(b) whose term has expired but whose successor has not been appointed for up to 180 days, or for a longer period with the Council's consent.

Assuming Council has not consented to a longer period, at the end of the 210 days, the office is deemed vacant. Under Section 8.4(b)(2), once there is a vacancy, the Mayor must act to fill it with a permanent appointment by making a nomination. Failure to do so within the prescribed time period, or three successive failed appointments, would provide the Council the opportunity to instead provide a slate of candidates from which the Mayor must make a nomination. Section 8.4(b)(2) states:

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[4] Charter § 8.4(b).
[5] Charter § 8.2(c).
[6] Charter § 8.4(b)(4).
[7] Under certain circumstances, officers appointed pursuant to section 8.4(b) are entitled to severance pay if removed prior to the expiration of their term for reasons "other than malfeasance, misfeasance, or nonfeasance." M.C.O. § 20.456.
[8] Charter § 8.4(b)(5).

> If an office has been vacant for at least 90 days (or 30 days in the case of the police chief) and the Mayor has failed to nominate a successor, or if the Mayor has nominated three candidates that the Council has rejected, then the Council may by a majority of its membership name three or more candidates, from whom the Mayor must nominate one. If the Mayor has not, after 20 days, nominated a candidate so named, then the Council may appoint the officer without the Mayor's nomination.

Issues Presented and Short Answers

Except for limited, explicit exceptions, Section 4.4 of the City Charter broadly provides that any "lawful action" constitutes an "act" of the Council, and that all acts must be presented to the Mayor, after which the Mayor may sign, veto, or not sign the act. The City Council denied consent to the Mayor's nomination of the incumbent for a second term as the permanent Community Safety Commissioner. Is such denial an act that must be presented to the Mayor and may he veto it?

Considering the plain language of the Charter, past CAO opinions, past City practice, and relevant case law, the Council's denial of consent in this situation constitutes an act because it was a lawful action and does not fall within any of the exceptions to the broad definition of an act in the Charter. Because it is an act, it must be presented to the Mayor and the Mayor may sign, veto, or not sign the act.

Was modifying the Council action from voting no on granting consent to the nomination to voting yes on denying consent to the nomination legally significant?

No. The form of the denial of consent is not material to whether this is an act that must be presented to the Mayor.

What happens if the Mayor does not veto the denial of consent?

The denial becomes effective and dispositive, and the appointment to a new term fails. Due to the Charter's holdover provision for previously-confirmed incumbents, the incumbent may continue in their permanent appointment until replaced by a successor or until no later than the end of the Charter-prescribed holdover period (August 3, or longer with consent of Council).[9,10]

No later than the end of the holdover period, or if the incumbent leaves during the holdover period, a vacancy occurs. Once a vacancy occurs, if the Mayor does not nominate someone, other than the incumbent, for a permanent appointment within 90 days, the Charter permits the Council to name a slate of three or

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[9] The holdover period consists of first a 30-day period during which time an incumbent automatically continues in office "unless the Mayor directs otherwise," followed by a 180-day period during which the Mayor "may continue in office" an incumbent, for a total of 210 days. City Charter § 8.4(b)(5). City Charter section 1.3(d)(2) provides that "the canons of construction and other principles of interpretation in the Minnesota Statutes apply to this charter." The computation of time provided by Minnesota Statutes dictates that the first day of the period (January 2, 2026) is to be excluded in counting a period of time. Minn. Stat. § 645.15. The statute continues that "[w]hen the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation." *Id.* Following the statute, and taking into account the 30 day period and subsequent 180 period, the total holdover period in 2026 ends on August 3, 2026, absent Council consent to a longer period. *See* City Charter § 8.4(b)(5).

[10] Ordinance provides that the Commissioner of Community Safety position is subject to the Charter provisions. M.C.O. § 12.30(a).

more candidates from whom the Mayor must make a nomination.[11] *During the vacancy period and until a successor is successfully appointed to the permanent appointment, the Mayor may select anyone to serve in an interim capacity pending a permanent appointment, including the current incumbent.*

What happens if the Mayor vetoes the denial of consent to the Commissioner's appointment?

At the outset, it is important to stress that a veto <u>*does not have the effect of an approval.*</u> *In other words, only a Council vote affirmatively consenting to a nominee, and the approval of the appointment by the Mayor (as well as publication), results in the nominee being successfully appointed to the permanent appointment for a new term.*

If the Mayor vetoes, the act is returned to the Council to consider at its next meeting.

What happens if Council overrides the veto?

An override invalidates the veto. The appointment to a new term fails. The incumbent may continue in the position during the holdover period until August 3, and may serve as the interim, and the Mayor must either nominate someone other than the incumbent during the 90 day vacancy period or the Council may name a slate.

What happens if Council fails to override the veto?

There is not a failed appointment to a new term, but there also is not a successful appointment to a new term. The incumbent may continue in the position until August 3, and may serve as the interim. Because the veto was not overridden, the veto invalidates the original act, which has the same legal effect as if no Council action had been taken in the first place, and the incumbent's nomination remains open until a dispositive action is taken or the nomination is withdrawn.

Analysis

I. The City Charter requires that appointments be presented to the Mayor and, like any other Council action, the Mayor may veto appointments.

A. The scope of an executive's veto authority is governed by the express terms of the relevant law

The executive's authority to veto the actions of a legislative body "is a separate and distinct function of government."[12] "The power of veto is not inherent in the office of mayor of a municipal corporation, or other chief executive officer. It exists only when expressly conferred by law, and does not arise by implication."[13] Because the veto authority is defined by the governing law, it cannot be expanded beyond what is given in the law and it also cannot be narrowed by implication; it may only be narrowed by an

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[11] The answers to these questions would be the same for all Charter department heads assuming a previously-confirmed Charter Department head was in place at the beginning of the Mayor's term, except that for the Chief of Police, the Mayor has 30 days from a vacancy to make a nomination without activating the Council's ability to name a slate, rather than 90 days.
[12] McQuillin, *The Law of Municipal Corporations*, § 16.39 (3d. ed.).
[13] *State ex rel Wenzel v. May*, 251 N.W. 529, 531 (Minn. 1933).

express law.[14] The Minnesota Supreme Court has held that in a charter city a mayor retains express veto authority in the absence of an express repeal of that authority, and that courts should be reluctant to find that an amendment of one section of a charter impliedly repeals the express veto authority.[15]

Because the veto authority is defined by the governing law, it may vary widely based on the relevant law. For example, Saint Paul's Charter gives the mayor line-item veto authority over appropriations, but the Minneapolis Charter gives the Mayor no such authority.[16] The Minnesota governor has line item veto authority over an item of appropriation.[17] In contrast, the Wisconsin governor's line item veto authority is extraordinarily broad allowing approval of appropriations bills "in whole or in part" which includes striking words, letters, or numbers, and even writing in smaller numbers "as long as the remaining text of the bill constitutes a complete, entire, and workable law."[18] The President of the United States has a more limited veto authority. The president has no line-item veto and may only veto bills.[19]

B. Veto authority under the Minneapolis City Charter

The Mayor's veto authority as defined by City Charter has evolved over time from a more limited authority in the 1965 City Charter, to a broad authority that was created in the 1974 Charter and continued through Charter amendments in 2013 and 2021 without major changes relevant to this analysis other than revision for plain language.

1. 1965: Mayoral veto authority

In 1965, Chapter 3, Section 1 of the Minneapolis City Charter established the requirement to present ordinances and resolutions to the Mayor and the contours of the veto authority as follows:

> All ordinances and resolutions shall, before they take effect, be presented to the Mayor, and if [the Mayor] approve thereof [the Mayor] shall sign the same, and such as [the Mayor] shall not sign [the Mayor] shall return to the City Council, with his objections thereto, by depositing the same with the City Clerk, to be presented to the City Council at their next meeting thereafter. Upon the return of any ordinance or resolution by the Mayor, the vote by which the same was passed shall be deemed to have been reconsidered, and the question shall be again put upon the passage of the same, notwithstanding the objections of the Mayor, and if upon such vote the City Council shall pass the same by a vote of two-thirds of the members of the Council, it shall have the same effect as if approved by the Mayor. If any ordinance or resolution shall not be returned by the Mayor within five days, Sundays excepted, the same shall have the same force and effect as if approved by the Mayor.

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[14] McQuillin § 16.39.
[15] *Tamte v. Eddy*, 285 N.W. 720, 722 (Minn. 1939).
[16] *Compare* Saint Paul City Charter § 6.09 *with* Minneapolis City Charter § 4.4(c).
[17] Minn. Const. Art IV, Sec. 23; *see also Ninetieth Minnesota State Senate v. Dayton*, 903 N.W.2d 609, 617 (Minn. 2017).
[18] *LeMieux v. Evers*, 19 N.W.3d 76, 81-84 (Wis. 2025); *see also* Wis. Const. Art. V § 10.
[19] U.S. Const. Art. 1. Sec. 7, Cl. 2; *Clinton v. City of New York*, 524 U.S. 417, 447-48 (1988) (holding that the Line Item Veto Act was unconstitutional and that giving the president line-item veto authority requires a constitutional amendment). Under the U.S. Constitution, the president only has veto authority over bills (which require passage by the House and Senate). The president does not have veto authority over the denial of confirmation to a nomination by the Senate, because the denial of consent is not passed by the House and Senate and therefore is not a bill.

2. 1974: Addition of "other actions" to presentment requirement

In 1974, an amendment to Chapter 3, Section 1 expanded the mayoral veto authority beyond "ordinances and resolutions" to encompass all "other actions of the City Council." The Government Structure Work Group report entitled "*Government Structure: Form and Function, A proposal for a legislative council and executive mayor model for the City of Minneapolis*." ("Report") that was issued before the 2021 Charter Amendments noted that this 1974 amendment "expanded the Mayor's veto power to include administrative actions of the City Council as well as legislative acts."[20]

With this amendment, Chapter 3, Section 1 provided (emphasis added):

> All ordinances, resolutions and ***<u>other actions of the City Council, except those related to its organization, rules or procedures</u>***, shall before they take effect, be presented to the Mayor, and if [the Mayor] approves thereof, [the Mayor] shall sign the same, and such as [the Mayor] shall not sign [the Mayor] shall return to the City Council, with [the Mayor's] objections thereto, by depositing the same with the City Clerk, to be presented to the City Council at their next meeting thereafter. Upon the return of any ordinance, resolution, or other action of the City Council by the Mayor, the vote by which the same was passed shall be deemed to have been reconsidered, and the question shall be again put upon the passage of the same, notwithstanding the objections of the Mayor, and if upon such vote the City Council shall pass the same by a vote of two-thirds of the members of the Council, it shall have the same effect as if approved by the Mayor. If any ordinance, resolution, or by other action of the City Council shall not be returned by the Mayor within five days, Sundays excepted, after it shall be presented to [the Mayor], the same shall have the same force and effect as if approved by the Mayor.

3. 2013: Plain language revision

In 2013, voters approved an amendment to modernize the Minneapolis City Charter. In a report to the City Council, the Charter Commission explained that the revision's "purpose is only modernizing, simplifying, and uncluttering the Charter, and redrafting its provisions for clarity, brevity, and consistency, in plain modern language."[21] The revision's purpose was not to "effect[] any substantive change."[22] The plain language revision became effective January 1, 2015.

Under the plain language revision, the requirements for voting, presentment, and veto found in Chapter 3, Section 1 of previous Charters moved to Article IV, Section 4.4. Section 4.4(c) states that "[t]he Council must present ***<u>each act</u>*** to the Mayor in the manner that this charter prescribes for giving notice." (Emphasis added.) Section 4.4(a)(2) defines the term "act," stating:

> For this article IV's purposes, the noun "act"—

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[20] Report at 2. The *Report* is available at https://lims.minneapolismn.gov/Download/FileV2/23569/Government-Structure-Work-Group-Final-Report-_050321.pdf.

[21] Minneapolis Charter Commission, Plain-Language Charter Revision Report at 3 (May 22, 2013), publicly available at: https://library.municode.com/mn/minneapolis/munidocs/munidocs?nodeId=4b388d1ef9473.

[22] *Id.*

> (A) means any ordinance, resolution, appropriation, ***any other lawful action***, and any action amending, repealing, or otherwise affecting such act; but
>
> (B) does not include a rule or other vote that relates to the Council's internal organization or procedure.

(Emphasis added.) Under Section 4.4(c), an act only takes effect, subject to any publication requirements for ordinance or resolution, when: 1) the Mayor signs the act; 2) five days (not including Sundays) after the act is presented to the Mayor, if the act was neither signed nor vetoed; or 3) the City Council again passes the act over a Mayor's timely veto.

These revisions do not substantively change the definition of what City Council decisions constitute an act or the process of presentment of each act to the Mayor.

C. Previous opinions of the Minneapolis City Attorney's Office

Since 1975, the CAO has provided multiple opinions broadly defining "other actions of the City Council."

1. November 1975: "other actions of the City Council" is broadly construed

In November 1975, the CAO provided formal guidance on the meaning of the phrase "other actions of the City Council" and the types of City Council decisions that are excluded from the phrase.[23] The CAO opined that the phrase "other actions of the City Council" includes "any decision arrived at by the City Council by vote except actions which relate to its organization, its rules, or its procedures." The opinion also stated that motions, such as a motion to adjourn, to lay over to another meeting, or to reconsider were *not* "other actions" subject to the Mayor's veto authority and that exclusions from the veto authority "will have to be determined on a case by case basis."[24]

2. January 1976: Council's Library Board appointment subject to veto

In January 1976, the CAO provided guidance about the Mayor's authority to veto City Council action related to the appointment of trustees to the City's Library Board.[25] A special law provided that one of two citizens appointed as trustees would be appointed by "a majority vote of all members of the City Council." Citing the Charter language establishing mayoral veto authority over all "ordinances, resolutions, and other actions of the City Council," the CAO concluded that the City Council's appointment was subject to the Mayor's veto authority.

3. December 1976: Council action on Mayor's Campaign Regulation Commission appointment not subject to veto authority *(later modified)*

The CAO again provided guidance on the mayoral veto authority in December 1976; however, the decision was later modified in November 1982. At the time of the December 1976 opinion, Minneapolis ordinance

[23] Op. of the Minneapolis City Attorney (Nov. 20, 1975).
[24] The opinion also recognized that state law could in certain instances prescribe that only the City Council act and would supersede the Charter.
[25] Op. of the Minneapolis City Attorney (Jan. 5, 1976).

provided that the Mayor appointed three of six members of the Campaign Regulation Commission subject to the advice and consent of the City Council. The opinion concluded that the City Clerk was not required to present the City Council's approval of the Mayor's appointments or denial of consent to the Mayor for approval or veto. The opinion reasoned that to conclude to the contrary would be unreasonable, absurd, and "accomplish nothing."

For multiple reasons, this opinion should not be, and in fact was not thereafter, given precedential effect. First, the opinion was subsequently modified and, in effect, vacated by another CAO opinion in November 1982, as further discussed below. Second, the opinion did not analyze whether the plain language of the Charter requiring all "other actions of the City Council" be presented to the Mayor for approval or veto required presentment of appointment actions to the Mayor for approval or veto. Instead, the opinion referenced a canon of statutory construction that legislation is not intended to result in an absurd or unreasonable result and summarily concluded that presentment would be unreasonable or absurd.[26] However, the conclusion was inconsistent with the overarching requirement of statutory construction that unambiguous language be given its plain meaning.[27] The courts apply "general principles of statutory interpretation when interpreting the Minneapolis City Charter."[28] As the Minnesota Supreme Court has explained, the function of statutory interpretation "is not to challenge the wisdom of the legislature's act from a distance, but rather to give effect to its will as expressed in the unambiguous language."[29] While a court may look beyond plain language where a statute's literal meaning leads to an absurd result, "[t]his rule … is not available to override the plain language of a clear and unambiguous statute, except in an exceedingly rare case in which the plain meaning of the statute utterly confounds the clear legislative purpose of the statute."[30]

4. <u>November 1982</u>: Council's disapproval of mayoral appointment to Commission on Civil Rights is an act subject to veto

In 1982, the CAO opined that Chapter 3, Section 1 of the Charter (the precursor to the current Section 4.4) required the City Clerk to present the City Council's disapproval of a mayoral appointment to the Mayor for approval or veto. In that matter, the Mayor sought appointment of a member of the Minneapolis Commission on Civil Rights.[31,32] The City Council "voted to disapprove the appointment." In holding that the Mayor had authority to approve or veto the disapproval, the CAO explained that the Charter language requiring presentment of "other actions of the City Council" necessarily included City Council actions disapproving of a mayoral appointment.[33] Citing the November 1975 opinion and McQuillin, the CAO reasoned that "the charter provision re 'other actions' would include *all acts of the Council in addition to ordinances and resolutions* except those specifically relating to 'its organization, rules or procedures, or state

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[26] *Id.* (citing Minn. Stat. § 645.17(1)).
[27] *See Hayden v. City of Minneapolis*, 937 N.W.2d 790, 795 (Minn. App. 2020): *see also* Minn. Stat. § 645.16 (2025) ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.").
[28] *Hayden*, 937 N.W.2d at 795.
[29] *Olson v. Ford Motor Co.*, 558 N.W.2d 491, 496 (Minn. 1997).
[30] *Hayden*, 937 N.W.2d at 795-96 (cleaned up); *see also State v. Basal*, 763 N.W.2d 328, 334 (Minn. App. 2009) ("The existence of an absurdity in a statute is not a basis for a court to substitute its judgment concerning the wisdom of the statute.").
[31] Op. of the Minneapolis City Attorney (Nov. 17, 1982).
[32] At the time, M.C.O. § 141.20(b) required "all mayoral appointments" to the Commission to be referred to the City Council for confirmation." https://library.municode.com/mn/minneapolis/ordinances/code_of_ordinances?nodeId=1317185.
[33] At the time, McQuillin Municipal Corporations was in its third edition and included the same language as the June 2025 edition quoted above. *See* 3 McQuillin Mun. Corp. § 16.42 (cited in Op. of the Minneapolis City Attorney (Nov. 17, 1982)).

law." The opinion noted that the "fact that the appointment was submitted by the Mayor does not appear to remove the obligation to submit the Council action for approval or objection."

The CAO stated that this conclusion "is not free from doubt," but that "if the issue was submitted to litigation the court would likely hold that the Council action had to be submitted to the Mayor for approval or to return with his objections thereto." In this opinion letter, the CAO explicitly recognized that this 1982 opinion would prevail over any contrary information in the December 1976 opinion, effectively repealing the prior opinion.

5. August 1996: A negative action must be presented to the Mayor

In 1996, the CAO addressed whether the City Council's denial of an appeal constituted an action that was required to be presented to the Mayor for approval.[34] There, the City Council adopted the recommendation of the Zoning & Planning Committee, denying the appeal of Check Express, a business operator. Based on the City Clerk's practice at the time, "a negative action of the City Council … did not have to be presented to the Mayor." The CAO opined that "this past practice is in error and that the final Council action must be presented to the Mayor in accordance with [the] Charter." Referencing the 1975 and 1982 opinions discussed above, the CAO reasoned:

> There is no question that the decision of the City Council with respect to Check Express was an "action" of the City Council. All other "actions" on the same Zoning & Planning Committee agenda were apparently presented to the Mayor, except for the matter relating to Check Express. I find no exceptions in the Charter which would find that a "negative action" of the City Council is exempt from the requirements of Charter Chapter 3, §1. Even though presenting a "negative action" to the Mayor could result in a veto and could potentially result in no specific formal action of the City with respect to a matter (such as the Check Express appeal) if there is no override of a veto, the plain language of Charter Chapter 3, §1 does not contemplate an administrative exception to presenting this action of the City Council to the Mayor.

Based on this analysis, the CAO recommended that the negative action be presented to the Mayor to comply with the requirements of the Charter.

D. Appointments and acts under the current City Charter

The 2021 Charter amendments made changes to the appointment process but did not alter the Mayor's exclusive nomination authority or the need for Council approval. In the pre-2021 Charter, the Mayor nominated a candidate, the executive committee reviewed the nomination and forwarded a recommendation to the City Council, and assuming a recommendation by the executive committee, the City Council appointed the candidate.[35] Under the current Charter, the "Mayor nominates and, with the City Council's consent, appoints" the officer.[36]

[34] Op. of the Minneapolis City Attorney (Aug. 28, 1996).
[35] 2013 City Charter § 8.4(b).
[36] City Charter § 8.4(b).

When the Charter was amended in 2021 to reflect the new government structure, Section 4.4(a)(2) defining "act" and Section 4.4(c) "Mayor's signature or veto" were unchanged from the 2013 plain language revisions. While these sections were unchanged, they were considered in the Report issued by the Charter Commission's Government Structure Work Group. The Report explained the basis for the government structure changes. The Report traced the history of the Mayor's veto authority noting that the 1974 Charter amendment "expanded the Mayor's veto power to include administrative actions of the City Council as well as legislative acts."[37] The Report also noted that through a 1984 Charter amendment the Mayor gained the exclusive authority to nominate Charter department heads.[38] Significantly the Report analyzed the breadth of the Mayor's veto authority stating:

> Moreover, the charter makes clear that the Council has very limited authority which is not subject to the approval of the Mayor. In total, there are only two actions Council may take that are not subject to the Mayor's review; those are (1) any act related to its own internal organization or procedure and (2) the appointment of the City Clerk.[39]

In short, in proposing the 2021 government structure changes to the Charter, including the current language about Council consent to the Mayor's appointment of Charter department heads, the Charter Commission considered and not only *did not alter*, but the Work Group re-emphasized the Mayor's broad authority to review and approve or veto all actions of the Council except those related to internal organization or procedure and the appointment of the City Clerk.

The 2021 changes to the City Charter were accompanied by several changes to City ordinances to reflect the new government structure and to create the new Office of Community Safety, which is not an office contained in the Charter. Section 12.30 of City ordinances creates the Office of Community Safety and provides that the Community Safety Commissioner "shall be nominated and appointed by the mayor with the consent of the city council pursuant to the city charter."[40] In other words, the Community Safety Commissioner is subject to the appointment process in section 8.4(b) of the Charter.

E. A Council vote to deny consent to an appointment is an act that must be presented to the Mayor

The principles of statutory construction, plain language of the Charter, historical CAO opinions, relevant case law, and the Work Group Report, all support the interpretation that a denial of consent to an appointment is an act that must be presented to the Mayor and which the Mayor may veto.

The City Charter provides that "the canons of construction and other principles of interpretation in the Minnesota statutes apply to this charter."[41] Two canons of statutory construction are particularly relevant in interpreting what acts must be presented to the Mayor for the Mayor's consideration. First, "[w]hen the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of

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[37] *Report* at 2. The Report references a 1973 amendment to the Charter. The reference to 1973 instead of 1974 appears to be an error as the Mayor's veto authority was expanded by Amendment No. 60 which was adopted by referendum on November 5, 1974. *See* Minneapolis City Charter History *available at* https://lims.minneapolismn.gov/Download/FileV2/22791/Minneapolis-City-Charter-History.pdf.
[38] *Id*.
[39] *Id*. at 3.
[40] M.C.O. § 12.30(a).
[41] City Charter § 1.3(d)(2).

the law shall not be disregarded under the pretext of pursuing the spirit."[42] Second, "[e]xceptions expressed in a law shall be construed to exclude all others."[43]

Under the Charter's plain language, the denial of consent to an appointment is an act that must be presented to the Mayor. The Charter defines an act as "any ordinance, resolution, appropriation, any other lawful action, and any action amending repealing, other otherwise affecting any such act."[44] The only two exceptions to this definition are appointment of the City Clerk and rules or votes relating to the Council's internal organization or procedure.[45] The Charter contains no exception stating that consent or denial of consent to a nomination is not an act.

All acts must be presented to the Mayor and the Mayor may sign the act, veto the act, or if the Mayor does neither after five days the act becomes effective.[46] A Mayor's nomination is subject to City Council's consent.[47] The City Council's vote to consent or not to consent to an appointment is an act under Charter Section 4.4(a)(2) because it is a "lawful action" that does not relate to the Council's internal organization or procedure. Because under the Charter's plain language the vote to consent or not to consent is a lawful action and accordingly an act, it must be presented to the Mayor under Section 4.4(c) and the Mayor may veto the act under Section 4.4(c)(3).[48]

Furthermore, to find that such a vote is not an "act" requires reading additional exceptions into the definition and ignoring the plain language of the Charter. The principles of statutory construction, however, prohibit adding exceptions because the Charter already has express exceptions to the definition of act.[49]

Additionally, the law favors giving strong deference to precedent and longstanding past practice. Minnesota courts recognize the importance of *stare decisis* which directs courts to adhere to "former decisions in order to promote the stability of the law and the integrity of the judicial process."[50] With respect to past interpretations of statutes, this means that "when a judicial interpretation of a statute has remained undisturbed, it becomes part of the terms of the statute itself."[51] *Stare decisis* "has special force in the area of statutory interpretation because the Legislature is free to alter what [courts] have done."[52] The City Charter also explicitly recognizes the importance of past precedent providing "the settled interpretation of any term or provision from a version of the charter before its latest revision on January 1, 2015, is valid in interpreting the revised charter to the extent that the charter carries forward the interpreted provision or term."[53] Here, consistent with the Charter and the principle of *stare-decisis*, we give strong deference to

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[42] Minn. Stat. § 645.16.
[43] Minn. Stat. § 645.19.
[44] City Charter § 4.4(a)(2).
[45] *Id*. §§ 4.2(f)(1) & 4.4(a)(2).
[46] *Id*. § 4.4(c).
[47] *Id*. § 8.4(b).
[48] We reviewed the legislative history for each Section 8.4(b) appointee since the 2021 Charter amendment. Although the current matter is the first instance of Council denying consent to a Charter department head or cabinet appointment, every other nomination presented to Council for consent has been subsequently presented to the Mayor. *See, e.g.*, Council Action Nos. 2022A-0381 (Director of Regulatory Services); 2022A-0382 (Director of CPED); 2022A-0395 (City Assessor); 2022A-0461 (Fire Chief); 2022A-0620 (City Attorney); 2024A-0406 (Civil Rights Director).
[49] Minn. Stat. § 645.19.
[50] *State v. Lampkin*, 994 N.W.2d 280, 288 (Minn. 2023) (internal quotations omitted).
[51] *Id*. (internal quotations omitted).
[52] *Id*. (internal quotations omitted).
[53] City Charter § 1.3(d)(4).

longstanding City past practice and longstanding CAO opinions to interpret what is an "act" and the scope of the veto power, as detailed above. We do so especially because consistency in governmental processes is important.

Like a statute, the Charter can be altered, which suggests that past interpretations should be given special force. As discussed above, the Charter Commission considered the broad definition of act and the scope of the Mayor's veto authority when it proposed the 2021 government structure amendments, the package of which includes the current language about the appointments process.[54] To ensure stability in interpretation of the Charter and given that the Charter may be changed, the Work Group Report and the CAO's past interpretations that broadly define what is an act that goes to the Mayor and may be vetoed should be given deference and support the conclusion that the Mayor may veto the Council's denial of consent to an appointment.

Our interpretation of the Charter is also consistent with available persuasive (though not binding) case law. Whether the veto authority applies to a city council electing or appointing officers is a question that has arisen frequently in municipal law.[55] Most courts have found that electing or appointing officers is not a legislative act but an administrative act not subject to veto.[56] With respect to the City's Charter, this is clearly the case with the Council's election of its own officers (Council President, Vice-President, and Majority and Minority leaders) as these are matters related to the Council's internal organization.[57] However, courts do not apply this general rule when a city charter specifically grants "the mayor veto power of a particular action."[58]

The *City of Ludowici* case decided by the Georgia Supreme Court presents similar facts. In that case, the city council chose the recorder of police court by a 3-2 vote, the mayor vetoed the appointment, and a lawsuit was brought claiming that the mayor lacked the authority to veto the appointment.[59] The city charter established the recorder of police court position and required that the recorder "shall be appointed by the mayor and [city council] of said city."[60] The city charter gave the mayor the veto authority and provided that the mayor could "veto any resolution or ordinance passed by the council" or "any measure passed by the council" and that a veto could be overridden by a two-thirds vote of the entire council.[61]

The court noted that while courts "generally do not favor the view that administrative acts can be vetoed" that authority is not on point "where the veto power is specifically granted."[62] After reviewing its past precedent, the court concluded based on the relevant charter language that the appointment of the police recorder should be characterized as a resolution subject to the mayor's veto authority.[63]

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[54] *Report* at pp. 2-3. The Charter Commission's Government Structure Work Group also considered a CAO opinion in the Report. *See Report* at p. 3, fn. 9. Based on this and the fact that one of the authors of the Report is a former Deputy City Attorney, it is fair to conclude that the Work Group had access to past CAO opinions.
[55] *McQuillin* § 16.39.
[56] *Id*.
[57] *See* City Charter § 4.4(a)(2)(B).
[58] *McQuillin* § 16.39; *see also City of Ludowici v. Brown*, 259 S.E.2d 90, 92 (Ga. 1982) (while administrative acts generally cannot be vetoed, such acts can be vetoed "where the veto power is specifically granted.").
[59] *Ludowici*, 259 S.E.2d at 90-91.
[60] *Id*. at 91.
[61] *Id*.
[62] *Id*.
[63] *Id*.

The Minnesota Supreme Court has taken a similar approach to interpreting the municipal veto authority. In *Wenzel*, there was a state law creating a Minneapolis/Saint Paul sanitary district which required the Saint Paul city council to elect two trustees to the district by a specific time.[64] The city council elected two trustees to the district, the mayor purported to veto the selection, the council then overrode the veto after the required time to elect the trustees, and the attorney general sued on behalf of the trustees elected by the city council.[65] The Minnesota Supreme Court held that the mayor did not have the authority to veto the appointments to the sanitary district because the statute creating the district fully set out the appointment process for the district and the district was independent from and not part of the governmental functions of the municipalities in the district.[66] The court stated:

> This election or selection is wholly outside of any executive, administrative, or legislative function conferred by the charter of the city of St. Paul, or imposed by statute upon the municipality as such. The authority to elect or appoint trustees must be found in [sanitary district legislation] alone. It is therefore unnecessary to construe charter provisions of the city or delimit the veto power of the mayor with respect to the acts of the city council concerning municipal business or legislation.[67]

The court further noted that the "power of veto is not inherent in the office of mayor of a municipal corporation, or other chief executive officer. It exists only when expressly conferred by law, and does not arise by implication."[68]

Wenzel demonstrates that in determining whether a mayor may veto an action of a city council, Minnesota courts will look to the nature of the act, the veto authority as expressed in the city charter, and relevant ordinances. As discussed above, notwithstanding the general rule that appointments are administrative acts not subject to a veto, the plain language of the City's Charter is clear that consent to a nomination is an act that must be presented to the Mayor and may be vetoed by the Mayor. This plain language interpretation is bolstered by the fact that the Mayor's veto authority has not functionally changed over the past half-century despite multiple Charter revisions as well as multiple CAO opinions, and was recognized by the Report issued by the Charter Commission Work Group. Indeed, the Work Group specifically recognized that the Charter's mayoral veto authority includes Council's administrative and legislative actions, other than those expressly excluded.[69]

Negative acts must be presented to the Mayor.

As discussed above, both the 1982 CAO Opinion on Council disapproval of the appointment to the Civil Rights Commission and the 1996 CAO Opinion provide that negative acts of the Council (Council voting no on an item) are acts that must be presented to the Mayor even though if the Mayor vetoes and there is no override it could result in no formal action by the City.[70] Consistent with these longstanding opinions there are numerous instances of negative acts being presented to the Mayor. In some of these instances the Mayor signed the act, in others the Mayor did not sign and the acts were deemed approved, and in one instance the

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[64] *Wenzel*, 251 N.W. at 529.
[65] *Id*. at 529-30.
[66] *Id*. at 530.
[67] *Id*. at 530-31.
[68] *Id*. at 531 (internal quotations omitted).
[69] *Report* at p. 2.
[70] Op. of the Minneapolis City Attorney (Nov. 17, 1982) & Op. of the Minneapolis City Attorney (Aug. 28, 1996).

Mayor vetoed the act and the veto was sustained.[71] Thus, there are both longstanding CAO opinions and City past practice of presenting negative acts to the Mayor. The 1982 CAO Opinion stating that the Mayor had the authority to veto the City Council's denial of confirmation to the Mayor's selection for the Civil Rights Commission is particularly on point for the current circumstance where the City Council denied consent to the Mayor's nominee for Commissioner of Community Safety.

The form of the denial of consent is not material to whether this is an act that must be presented to the Mayor. Initially, the question before the Council was whether to grant consent to the Mayor's nomination to the appointed position of Commissioner of Community Safety for a term ending January 2030. The City Council voted in the negative on that motion by a vote of 6-7. After that vote, the City Clerk requested that, for clarity, the Council re-vote on a substitute motion reframed as denying consent to the Mayor's nomination to the appointed position of Commissioner of Community Safety for a term ending January 2030. The Council voted in the affirmative on that motion by a vote of 7-6. In both cases the Council was not granting consent to the Mayor's nomination. The change in framing of the motion may contribute to a clearer record as the City Clerk stated, but it does not change the substance of the action and is not material to whether it is an act that must be presented to the Mayor any which the Mayor may veto.

II. The Council's denial of consent becomes a final rejection and a "first strike" if the Mayor either does not veto the Council's denial of consent or vetoes the denial of consent and the Council overrides the veto by a 2/3 majority.

Once the denial of consent is presented to the Mayor, like any other act, it can become final and take effect in one of three ways: (1) the Mayor can sign the action, granting explicit approval; (2) the Mayor can take no action, neither signing nor vetoing the action within the Charter-prescribed time period, which has the effect of final approval; or (3) the Mayor vetoes the action but the Council overrides the veto by a two-thirds majority vote.[72]

Under Section 8.4(b) of the Charter, there is no failure of appointment until the Mayor has nominated and the Council "has rejected" the nominee. The Charter permits the Mayor three failed appointments (of three different nominees) before permitting the Council to offer a slate of candidates from which the Mayor must choose. Although the Council's mere denial of consent would not constitute "rejection" because of the potential for the Mayor to veto the action and send it back to the Council, once the action becomes final—either because the Mayor does not veto it or because the Council overrides the veto—the Mayor would be considered to have exhausted one of the three nominees permitted by Section 8.4(b).

Still, in this situation, the position is not yet considered vacant until the earlier of either the incumbent being replaced by a successor or the end of the holdover period established by Charter. The incumbent's status as a holdover is addressed more fully in Part IV below.

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[71] *See,* Council Action Nos. 2017A-0318 (signed by Mayor), 2017A-01154 (signed by Mayor), 2018A-0914 (signed by Mayor), 2019A-0162 (signed by Mayor), 2021A-0469 (signed by Mayor), 2024A-0953 (vetoed and veto sustained), 2025A-0371 (deemed approved) & 2025A-0630 (deemed approved).
[72] City Charter § 4.4(c).

III. If the Mayor vetoes the denial of consent and the Council does not override the veto, the nomination is still open.

In contrast to the finality achieved by a failure to veto or Council's override of a veto, if the Mayor vetoes the Council's denial of consent and the Council does not override the veto, the Council action becomes a legal nullity and the nomination of the incumbent remains technically open unless and until the Mayor or Council acts further.[73] For example, the Mayor could withdraw the nomination, either because the Mayor has reconsidered the nomination or because the nominee withdraws acceptance of the nomination. In this case, the Mayor would be deemed still to have used one of three "strikes" provided by Section 8.4(b).

On the other hand, the Council could decide to change its prior denial by voting affirmatively on a motion to grant consent for the incumbent to be appointed for a second term, which would be presented to the Mayor and likely result in the Mayor's approval and a resulting appointment.[74] Or the Council could take up the nomination again, vote to deny it, and override a subsequent veto.

In the absence of action either by the Mayor to withdraw the nomination or the Council to reconsider and consent to the appointment, or vote to deny and override a veto, the nomination would remain open indefinitely. The Mayor would have satisfied the Charter requirement of having made a nomination. Again, as discussed below, the incumbent would be able to remain in holdover status for the holdover period, at which point the position would become vacant and the Mayor would need to make an interim appointment (which could include appointing the incumbent in an interim capacity).

IV. Holdover status and vacancy process for the current situation.

Regardless of what happens with the nomination for the new term, the holdover provisions in the Charter apply to determine the fate of the incumbent as the permanent appointee for the prior term. The incumbent was previously appointed pursuant to Section 8.4(b), following nomination by the Mayor and consent by the Council. The prior Council action consenting to the appointment for the prior term was presented to the Mayor for signature and became effective upon publication.[75]

Under Section 8.4(b)(5), an officer who was properly appointed (as is the case for the incumbent) and "whose term has expired but whose successor has not been appointed may continue in office" for up to 210 days at the Mayor's discretion, or longer with consent of the Council.[76] In the current situation, a successor indisputably has not been appointed. Therefore, regardless of the incumbent's status as a nominee for a second term—whether there is a nomination still open or whether that nomination has been fully and finally rejected—the incumbent may remain in holdover status until a successor is appointed or, if no successor is

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[73] *See* Op. of the Minneapolis City Attorney (Aug. 28, 1996).
[74] The Mayor could veto the Council's granting of consent, however unlikely.
[75] Council Action No. 2023A-0707 (signed by Mayor).
[76] The appointee automatically continues in holdover capacity for the first 30 days unless the Mayor directs otherwise. Charter § 8.4(b)(5). After the first 30 days, the Mayor can choose to continue the incumbent in a holdover capacity an additional 180 days without any action by the Council, or for longer with Council consent. *Id.* Together, this means the Mayor can allow an incumbent to remain in the position, in a holdover capacity for 210 days after the expiration of the term. Once the 210 days are exhausted, in the absence of Council consent to continue the incumbent in office, the office would be deemed vacant and the Mayor would need to appoint an individual to serve on an interim basis while the nomination and appointment process in 8.4(b)(1) and (2) proceeds.

appointed, for up to 210 days. The incumbent can also continue even longer in holdover status with consent of the Council.

If the Council does not consent to additional time in holdover status, the position will legally be considered vacant, and the Mayor will need to appoint an interim Commissioner to serve until a permanent successor is appointed. The Charter is silent on eligibility for such interim appointments, but City ordinance permits the Mayor "to choose an individual to serve in an interim capacity pending an appointment as provided by city charter."[77] Therefore, the Mayor could choose to appoint the current incumbent on an interim basis during the vacancy period, or the Mayor could appoint a different individual as interim.

If the Mayor vetoes the current action and the Council fails to override, as stated above, the incumbent's nomination would still be technically open. In this case, the Mayor would not need to make a new nomination at the end of the holdover period because the Mayor would have already satisfied the requirement in Section 8.4(b)(1) to nominate a successor, and it would be within the Council's purview to consider the nomination again and override the Mayor's veto to deliver a final rejection.

In any other situation—whether the Mayor permits the current denial of consent to become final, whether the Council overrides the Mayor's veto, or whether the Mayor withdraws the nomination of the incumbent—the Mayor would need to make a new nomination of a different candidate within 90 days of a vacancy, or the Council's opportunity to name a slate of three candidates from whom the Mayor must select one would mature.[78]

V. Although the Charter process seems to enable a never-ending loop, the solution must be a political one.

If the Mayor vetoes the Council's action and the Council does not override the veto, a seemingly never-ending loop is created where the Council denies consent to an appointment, the Mayor vetoes, the Council does not override the veto, and could take up the nomination again, again deny consent (subject again to veto, etc.). The only finality achieved under the plain language of the Charter is when (a) the Council overrides a veto; (b) the nomination is withdrawn; or (c) the Council changes course and grants consent. There is not currently a legal solution to this potential loop.

As the Minnesota Supreme Court noted when it upheld the Governor's line item veto power over appropriations: "Whether it was wise for the people of Minnesota in 1876 to provide for a veto power over items of appropriations, in language that does not expressly exclude the appropriations for a coordinate branch of government, is not for us to judge."[79] Similarly, in finding a change to the President's veto authority required a constitutional amendment and that the Line-Item Veto Act was unconstitutional, the U.S. Supreme Court observed "we express no opinion about the wisdom of the procedures authorized by the" act.[80]

The City Attorney's Office is in no better position than the Minnesota or United States Supreme Courts to judge the wisdom of the Charter giving the Mayor veto authority over the Council's denial of consent to a

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[77] M.C.O. § 11.20(10).
[78] *See* Charter § 8.4(b)(2).
[79] *Dayton*, 903 N.W.2d at 618.
[80] *Clinton*, 524 U.S. at 447.

nomination and the resulting consequences, nor to resolve the current dilemma. Any change to the Charter must be made through the Charter amendment process. Absent such an amendment, the resolution to the current situation lies with the political decisionmakers.