



# CITY AND COUNTY OF DENVER

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TO: Denver City Council  
FROM: David W. Broadwell, Assistant City Attorney  
RE: Proposed Charter Amendments Concerning the Department of Safety  
DATE: July 30, 2013

The following is a brief explanation of the substantive components of the charter amendments proposed by the Administration and affecting the Department of Safety. This commentary is based on the revised committee draft of the bill for an ordinance referring the proposed charter amendments to the voters, dated July 30, 2013.

### **Creation of distinct office of “Sheriff” (§§ 2.6.1, 2.6.3)**

The Colorado Constitution requires the Denver Charter to identify who, within our governance structure, performs the powers and duties of “county officers.” (The Constitution defines “county officers” to mean the following: clerk and recorder, assessor, treasurer, sheriff, coroner, and surveyor). Accordingly, the functions of each and every “county officer” have always been assigned to a particular department or individual somewhere in Denver’s Charter.

Traditionally, the functions assigned by state law to the “county sheriff” have been vested by the charter in the Department of Safety, and the Manager of Safety has been deemed the *ex officio* sheriff for Denver County. However, the charter has also always allowed the Manager to delegate sheriff duties to an “Undersheriff” and other personnel in the Denver Sheriff Department.

The proposed charter amendment would change the office formerly known as “Undersheriff” to “Sheriff” and would empower the person in this position to exercise all of the powers and duties assigned by state law to county sheriffs, with two major exceptions:

- Although county sheriffs are normally vested with authority to fully engage in law enforcement activities within their respective counties, the Denver Sheriff would

only exercise such authority to the extent authorized by the Manager of Safety. The reason for this exception is that, unlike other counties, Denver also has a police department which is expressly vested with law enforcement authority under the Charter. The proposed charter amendment would preserve the Manager's authority to ensure there is no redundancy or ambiguity about who exercises law enforcement functions in Denver.

- Although county sheriffs normally exercise full authority over the appointment of deputies and other personnel within their departments, the proposed charter amendment would reserve to the Manager ultimate authority over personnel decisions, just as the Manager does now in relation to the Sheriff Department, and just as the Manager is empowered to do in relation to the Police Department and the Fire Department.

### **Redefinition of “special police” (§ 2.6.3)**

Since the 19<sup>th</sup> Century, Denver charters have contained provisions for the appointment of “special police” to be appointed for specific purposes and for limited periods of time, but who are not considered full-time commissioned police officers of the City. Currently, this moniker is used to describe a host of different employees and volunteers who perform a wide variety of limited law enforcement duties on behalf of the City, for example vehicle control agents in Public Works who issue parking tickets and animal control officers in the Department of Environmental health who issue citations for violation of city ordinances related to animal care and control.

The purpose of the proposed charter amendment is to clarify the limited authority of non-police personnel who are commissioned to enforce specific ordinances of the city, and indeed to eliminate any implication that they are “police” officers at all by eliminating the title “special police.” The Manager of Safety will continue to exercise full authority to grant commissions to persons to other city employees and volunteers to engage in limited ordinance enforcement duties.

### **Allowing for appointment of Chief of the Fire Department from outside the department (§§ 2.6.6, 9.5.1)**

For many years the Charter has uniquely restricted the authority of the Mayor to appoint the Chief of the Fire Department. Indeed, the appointment must come from the rank of Assistant Chief in DFD, in which rank there can never be more six persons at any one time.

The proposed Charter amendment would increase the Mayor's authority to select the Chief of the Fire Department in two distinct ways. First, it would allow the Mayor to appoint a Chief from outside the Department in the same way the Charter has traditionally allowed the Mayor to appoint a Police Chief from outside the Police Department. Second, to the extent the Mayor would choose to appoint the Chief from

inside the Department, the proposed amendment would no longer restrict the Mayor to making the appointment from the rank of Assistant Chief.

**Increased opportunities for “lateral hiring” within the Fire Department (§§ 9.3.11, 9.5.5)**

Under current law, virtually all original appointments of Firefighters in the DFD must occur at the level of Firefighter 4<sup>th</sup> Grade (i.e. the lowest grade of Firefighter) regardless of how much prior experience the individual may have working for other fire departments. In 2005, in conjunction with the absorption of the Glendale fire department into the DFD, the charter was amended to allow firefighters who are employed pursuant to an intergovernmental agreement to enter the DFD at a rank as high as Firefighter 1<sup>st</sup> Grade, but no higher (i.e. no command ranks).

The proposed amendment would authorize lateral hiring in the Fire Department in a manner similar to the way the Charter currently allows lateral hiring of experienced police officers in the DPD. Based upon the number of years of prior experience, a firefighter may be able to enter the ranks in Denver up to Firefighter 1<sup>st</sup> Grade. The proposed amendment would also revisit the issue of fire personnel who may be absorbed into the Denver Fire Department under future IGAs, and would authorize such personnel to be hired at any rank including command ranks.

The proposed amendment is purely enabling. It would still reserve full authority to the Manager of Safety, the Chief of the Fire Department, and the Civil Service Commission to further define the qualifications and procedures for lateral hiring to the extent authorized by the Charter.

**Elimination of 25% cap on hiring from the Public Safety Cadet Program (§9.3.18)**

Section 9.3.18 is a vestige of earlier charter provisions that imposed various highly-prescriptive limitations on the “eligible registers” the Manager of Safety and the Civil Service Commission are required to use when hiring. Many of these restrictions were removed from the Charter via a 2003 amendment, but the Charter continues to contain a limitation stating that no more than 25% of any “academy class” may be hired in the DPD, DFD or DSD. The purpose of the proposed charter amendment is to eliminate this artificial cap, and allow any member of any academy class to compete equally with other applicants for jobs in the Department of Safety.

**Increased flexibility for Police Chief and Fire Chief to define the composition of their respective command staffs (§§ 9.5.2, 9.6.3)**

The Charter has traditionally contained very detailed and prescriptive language dictating how large the command staff can be in the DPD and the DFD, and imposing

strict numerical limitations on each command rank within the two departments. The proposed amendment, while maintaining the overall limitation on the size of each command staff, would allow the chiefs to use whatever combination of command ranks they believe would be most appropriate for the efficient management of their respective departments.

**Removal of requirement that Police Chief be appointed “by contract” (§ 9.6.1)**

To the extent the Charter has traditionally allowed the Mayor to appoint a Police Chief from outside the classified service of the Police Department, the law has also required that such an appointment must be manifested by a “contract.” This charter requirement is unique to the Chief of Police; nowhere else does the Charter require a mayoral appointment to be memorialized in a contract because all appointments are deemed to serve at the pleasure of the mayor and are thus terminable at will. The proposed amendment would eliminate the anomaly of requiring the appointment of an external police chief to occur via contract.