



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 Departments in the Executive Branch

DATE: July 31, 2013

The following is a brief explanation of the substantive components of the charter amendments proposed by the Administration and affecting the powers and duties of various Departments within the Executive Branch, as set forth in Article II of the Charter. This commentary is based on the committee draft of the bill for an ordinance referring the proposed charter amendments to the voters, dated July 31, 2013.

Authority for Mayor to utilize different titles for “Managers” of the Departments (§2.2.10)

Since the Speer Amendment of 1916, the Charter has utilized the title of “Manager” to describe the heads of the major departments under the Mayor. As a consequence of the city’s long history of utilizing this title, the word “Manager” appears throughout the charter, and also in numerous references in the Denver Revised Municipal Code. In practice, sometimes Managers utilize an alternative title to describe their position; for example, the Manager of Finance is often called the “chief financial officer.”

The proposed amendment would expressly authorize the Mayor to assign other titles in lieu of the word “Manager” to the appointed charter officers who head the major department. This short-form amendment is proposed in lieu of a more lengthy and prescriptive approach to amending the Charter, an approach which would have deleted every specific use of the word “Manager” in the charter and substituted a specific alternative title (e.g. “Executive Director”).

Deleting the word “exclusively” in Article II (§§ 2.3.3, 2.4.4)

The Denver Charter rigidly assigns administrative functions in the executive branch of city government, creating what is often referred to as a “silo” effect in terms of the way city departments exercise their functions. Indeed, section 2.2.1 prohibits the Mayor from exercising any executive power that is “delegated to the departments hereinafter created.”

During the G2 process convened by the Mayor, the working group discussed various options for increasing administrative flexibility in the Charter and giving the Mayor greater authority to assign and re-assign functions and duties within the executive branch in order to increase the efficiency of city operations. However, some of the more sweeping alternative ideas for restructuring the executive branch were deferred for further study.

The proposed amendment does, however, take one small step toward increasing the potential for flexibility and cross-departmental cooperation by eliminating the word “exclusively” the two places it appears in Article II of the Charter to define the powers and duties of the Department of Public Works and the Department of Parks and Recreation. The word “exclusively” is not used to define the powers of the other Departments in Article II. It was inserted in the section of the charter defining the functions related to parks and public works in 1954, when these functions were first split into two separate and distinct Departments.

The word “exclusively” does appear elsewhere in the Charter, for example to describe the Clerk and Recorder’s exclusive authority to conduct elections, and the Library Commission’s exclusive authority to manage libraries. However, the proposed charter amendment is limited to addressing the use of the word only insofar as it describes the functions of Departments that are directly accountable to the Mayor.

Authority for investments (§ 2.5.3 (C))

Various state laws limit the types of investments that the state, counties, municipalities and other public entities may utilize. In the City and County of Denver, the limitations on permissible types of investments that can be utilized with city money have always been defined in Charter, and the Charter has always contained a fairly specific and categorical list of permitted investment tools. In the past, when this section of the Charter has been amended to increase the City’s investment options, the amendment has simply added more specific types of investments to the list. The most recent amendment to this section of the Charter also allowed the council, by ordinance, to add “other similar securities” to the list of permitted investment tools.

The proposed amendment would retain the existing list of permissible investments, but would also allow the Manager of Finance to utilize any type of investment authorized for use by the State Treasurer.

Authority for Manager of Aviation to appoint five executive or managerial positions (§§ 2.11.3; 9.1.1 (E)(xv))

The proposed charter amendment would allow the Manager of Aviation to appoint up to five persons to serve at-will, outside the Career Service system, at the pleasure of the Manager. While no other department manager enjoys this authority, the amendment is proposed on the principle that the Department of Aviation is unique because it manages a massive enterprise that competes like a business on a global scale, and thus the Manager should exercise greater authority to recruit, select and manage her executive team similar to the way the CEO of any large business operation would do. Note, however, that the proposed amendment does not contain any special provision for compensation of these executive appointees, and thus they would be paid within the classification and pay plan adopted by ordinance, just as other employees who are not in the Career Service system are compensated.

Note that the Charter does contain other carve-outs for appointees as exception from the Career Service in other areas of the City:

- Mayor: fifty at-will appointments
- District Attorney: all attorneys and up to ten employees at-will
- Auditor: certified public accountants and up to five employees at-will
- Career Service: up to two employees at-will
- Clerk and Recorder: Director of Election and one other employee at-will

Authority for designees to attend Board of Equalization Meetings (§7.4.6)

In counties elsewhere in Colorado, the Board of County Commissioners sits and performs the function of a Board of Equalization for property taxes (i.e. the entity that handles appeals regarding the way the Assessor has valued property for purposes of *ad valorem* taxation). However, since the City and County of Denver does not have a Board of County Commissioners, *per se*, the Charter has long assigned these duties to an *ad hoc* entity comprised of three executive branch managers (Finance, Public Works, and General Services), the Clerk and Recorder, and the President of Council.

The City Attorney's office has traditionally interpreted this charter provision to require the personal attendance of each of the named officers because the powers assigned to members of the BOE are non-delegable. This has sometimes led to practical problems in scheduling and conducting meetings of the BOE, because of the other intense demands on the time and attention of the five named charter officers who are required to attend BOE meetings. The problem is exacerbated by the fact that, under state law, the BOE must operate under strict deadlines in processing appeals.

The proposed charter amendment would mitigate this problem by allowing each of the named officers to designate someone else to attend the BOE meetings on their behalf.