



To: City Clerk Nicole Tillander

From: Office of the City Attorney

Date: April 8, 2026

RE: Separation of powers analysis related to proposed Chapter 44A

The city attorney is required to advise the city council on the sufficiency of all ordinances prior to their adoption. Administration Code Section 3.02(3). The city attorney is also required to advise the council on all matters related to their official powers, duties and functions. *Id.* at Subp. (1). In responding to that duty, the office of the city attorney has prepared the attached Memorandum of Insufficiency. Please attach this letter and the Memorandum of Insufficiency to Ord 26-19 - Adding Chapter 44A to the Administrative Code to institute training, reporting and programming related to the City's relationship with civil immigration laws and enforcement practices under Administrative Code Chapter 44.



Confidential and Attorney-Client Privileged

To: Members of the Saint Paul City Council
From: Office of the City Attorney
Date: March 25, 2026
RE: Separation of powers analysis related to proposed Chapter 44A

Introduction

The Saint Paul City Council (“Council”) is moving forward with the introduction of Chapter 44A to the city’s administrative code. Chapter 44A would mandate how city employees are trained and identify how city departments report to the Council on immigration matters under Chapter 44, entitled Employee Authority in Immigration Matters.

The current version of Chapter 44A is not compatible with the City Charter. The City Council has authority to implement policy and procedure, but this proposed ordinance wades into the executive power of the Mayor by also administering policy.

There is a separation of powers inherent in the City’s Charter that provides the Council with authority to enact legislation and provides the Mayor with authority to oversee and administer the departments. Our concerns with the proposed ordinance are not a matter of whether or not the Council has authority to require training or reporting, but rather how the specificity in Chapter 44A’s training and reporting requirements impinge on the Mayor’s authority.

ANALYSIS

The Charter is the City’s Constitution

Minnesota's Constitution authorizes local government units to adopt home rule charters for their governance. Minnesota Constitution Art. XII, Section 4. A home rule charter “may provide for any scheme of municipal government not inconsistent with the constitution” and may regulate “all local municipal functions, as fully as the legislature might have done before home rule charters for cities were authorized by constitutional amendment in 1896”. Minn. Stat. § 410.07.

The Saint Paul City Charter was approved by the voters in 1972. It has been effective since July 1, 1976. As a home rule charter city, the Saint Paul charter establishes a Strong-Mayor and Council form of government that separates legislative and executive powers. Charter



cities can exercise power in their discretion, so long as the Charter does not violate the State Constitution and laws. *State v. Mankato*, 136 N.W.2d. 264 (Minn. 1912). In our case, the Charter grants the city every power which can lawfully be conferred upon a municipal corporation, in harmony with the Constitution of the State of Minnesota and the Constitution of the United States. Charter, Section 1.03.

Powers of the City Council

The City Council has legislative power under the Charter. Sections 1.04, 4.01. Other relevant provisions of Chapter 4 are the investigation and audit provisions. The Council has the authority to investigate the affairs of the city and the conduct of the departments. Section 4.07. The Council also has authority to conduct audits of city accounts. Section 4.08. When taken together, the intent of the Charter is to provide the City Council with authority to create laws and to act as a check on the administration of the city and departments – but the administration of the city rests with the Mayor.

Powers of the Mayor

The Charter provides that “the mayor shall exercise all powers and perform all executive duties given to the office of mayor by this Charter, the ordinances of the city and the laws of the state.” Section 1.04. Additionally, executive power is vested in the Mayor. Section 3.01. Subject to the Charter and the ordinances, the Mayor “shall control and direct the administration of the city’s affairs.” *Id.* The Mayor is required to “direct and supervise the administration of all departments, offices and agencies of the city, except as *expressly provided herein* [in the Charter].” Section 3.01.4 (emphasis added). The Charter only limits Mayor’s executive power if there is a Charter section that expressly does so.

QUESTIONS RAISED BY THE COUNCIL

Council identified three provisions in the City Charter that could theoretically suggest some power of Council authority over city departments:

§ 3.01 – Powers & Duties

“The executive power shall be vested in the mayor. **Subject to the provisions of this Charter and the ordinances**, the mayor shall control and direct the administration of the city's affairs. Without limiting the generality of the foregoing, the mayor shall have the following powers and duties.”

We acknowledge that Section 3.01 appears to allow ordinances to limit the Mayor’s executive power. However, this section must be read in harmony with 3.01.4, which only



limits the Mayor's power if expressly provided in the Charter. See *State v. Friese*, 959 N.W.2d. 205 (Minn. 2021) ("It is a fundamental rule of statutory construction that a statute is to be read and construed as a whole so as to harmonize and give effect to all its parts.").

In reading these two sections together, the Mayor's executive power can only be limited by ordinance if *expressly* provided for in the Charter itself. One way that the Charter *expressly* provides such limitation is through administrative ordinances, which leads us to the next Council question on Section 6.03.2.

§ 6.03.2 – Administrative Ordinances

"Every act of the council which establishes, alters, or abolishes any department, office or agency or **the procedure for the performance of any administrative act or which promulgates any rule or regulation for the conduct of the city government...** shall be by administrative ordinance."

This provision establishes that the proper procedure for enacting an administrative act is to create an ordinance in the Administrative Code. This section acknowledges the Council's authority to promulgate rules and regulation of the city, but again it must be read in harmony with other provisions of the Charter.

"It is a cardinal rule of statutory construction that a particular provision of a statute cannot be read out of context but must be taken together with other related provisions to *determine its meaning*." *Kollodge v. F. & L. Appliances, Inc.*, 80 N.W.2d. 64 (Minn. 1956) (emphasis added); see also *State v. Galvan-Conteras*, 980 N.W.2d. 578, 584 (Minn. 2022) (holding that "We do not read a statute in isolation; rather, we read all parts of a statute together as a whole."). Therefore, reading Section 3.01.4 with Section 6.03.2, a balance must be struck between the power of the Mayor and the Council.

There is not a bright line rule that identifies when that line is crossed. But clearly there is a line somewhere, otherwise the Council would have authority to override everything in the Charter by enacting an Ordinance.¹

It is our opinion that the line gets crossed when the Council directs departments in such a way that the Council is directing the details of how a policy is administered. We think the

¹ Minnesota law presumes "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable." Minn. Stat. § 645.17. Courts must construe statutes "to avoid absurd results and unjust consequences." *In re Enlargement and Increasing Number of Managers of Brown's Creek Watershed Dist. In Washington County*, 633 N.W.2d. 76 (Minn. App. 2001). The Minnesota Supreme Court has stated that "statutes cannot be construed to produce an absurd result" and courts reject "statutory construction that would yield absurd results." *In re Welfare of A.A.E.*, 590 N.W.2d. 773 (Minn. 1999).



line that honors the roles of both sides is where the Council requires training on the Separation Ordinance and requires that reporting is done to ensure compliance with that training. However, when the Ordinance takes away all discretion on how to implement the training, and how reports are collected, it is impeding on the Mayor's power.

It is instructive to look at what already exists in the Administrative Code related to training. In a search of the Administrative Code, there were 24 results for "training". The relevant results² include:

- 2.02(G)(10): "Facilitate grant management training opportunities for departments" – Grants Section in OFS
- 2.03: "carry out workplace conduct policy training" and "organizational development and training" – Human Resources
- 8.02.3: "Operate a training program to maintain and improve the efficiency of the members of the department" – SPPD
- 9.01.b.5: "Provide for and administer a program for the training of firefighters" – SPFD
- 9A.02: "[regarding] natural, man-made, technological, and terrorist hazards [] develop and implement plans, secure resources, conduct training and exercises" and "Plan, coordinate, and deliver public safety training and conduct emergency preparedness exercises to test and evaluate city disaster readiness, response, and recovery activities" – Emergency Management
- 10.05: "Provide information and training to city staff, district council staffs on citizen participation, city processes and neighborhood needs; provide training as requested to citizen volunteers to maintain organizational structure and monitoring ability" and "Provide systems analysis, software development, maintenance, and user support and training to PED departmental staff" – PED

In these Administrative Code examples, the ordinances only provide for what topics must be addressed in training.³ These ordinances strike the balance that honors separation of powers between the Mayor and the Council.

This is in stark contrast with the level of specificity related to training in Chapter 44A, which includes seven parts and seven additional subparts for General service employees and three parts and four additional subparts for supervisors. By getting into this level of specificity, the Council is impinging on the Mayor's executive power.

² Results not included were mostly training as a part of qualifications/experience for positions (i.e., 4.01 for city clerk) or cost of training (i.e., 105.03 for paying of training).

³A similar result was found when doing a search for "report" in the Administrative Code.



The City Attorney's Office created an edited version of Chapter 44A that established procedures to train staff in the application of Chapter 44, and created reporting requirements for the departments.⁴ This is not the only version of the ordinance that would be consistent with the Charter, but it does thread the needle of respecting the Council's authority to create policy and procedure, with the Mayor's authority to administer the policies implemented by the Council. The Office of the City Attorney can work with the Council to further amend the version in a way that does not violate the separation of powers.

§ 9.01 – Executive Departments

“There shall be an office of the mayor and ... such additional executive departments as may be established by ordinance. Each executive department so established shall have such **functions as are prescribed by ordinance.**”

The original drafters of the Charter likely knew that they could not contemplate everything within the Charter, so allowed some work to be flexible and therefore accomplished via ordinance. Section 9.01 has allowed for the City's creation of new departments, such as the Office of Neighborhood Safety (Section 3.02.12) and Office of Financial Empowerment (Section 2.02.G.8).

However, the “office of the mayor” is not an “executive department”, like ONS and OFE are. See *Chapters 1, 3*. Therefore, Section 9.01 is not the section that provides the Council the authority to prescribe the Mayor's “functions.”

The next question is can the Council prescribe the functions of other “executive departments,” such as in Chapter 44A? Yes, CAO does not dispute that the Council has such power. The problem is when such prescription has gone beyond the Council's power and into the Mayor's power. The proper balance of is articulated in the previous section.

RECOMMENDATION

The City Charter is the city's local constitution and all of its sections must be read in harmony. The City Council can create ordinances that establish city policy, but when those policies direct city departments on how to carry out those policies, then the executive power of the Mayor is eroded.

⁴ Furthermore, the CAO proposal drafted the training and reporting provision to be consistent with level of specificity that was in “Public safety employee” sections.



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The version of Chapter 44A that was edited by the office of the City Attorney respects the Council's authority to set policy and procedure, and also respects the Mayor's authority to administer the departments. However, there remains opportunity for additional revisions, if the Council would like to discuss the matter further.