



MAYOR & COUNCIL COMMUNICATION

DATE: 8/18/15

REGULAR

ITEM #22

AGENDA ITEM: Plan B versus Plan A cities

SUBMITTED BY: Clark Schroeder

THROUGH: Clark Schroeder, Interim City Administrator

REVIEWED BY: Clark Schroeder

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Administrator
- Report/Presentation.....City Administrator
- Questions from Council to Staff Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECOMMENDER: City Council

FISCAL IMPACT: Unknown

SUMMARY AND ACTION REQUESTED:

LEGISLATIVE HISTORY: A question was raised concerning what is the difference between a Plan A and a Plan B city and what would it take to make Lake Elmo a Plan B city versus the current status of a Plan A city.

Minnesota has two basic types of city governance: statutory cities, which operate under the statutory city code and home rule charter cities, which operate under a local charter. Most statutory cities have a weak mayor-council governing system. This means the mayor has all the powers and duties of a council member in addition to those duties of a mayor. The council as a whole retains ultimate administrative and legislative responsibility and authority, except where an independent board, such as a utilities commission, has one for more specific functions.

Lake Elmo is currently governed under Minnesota Statute § 412.572 as a Fourth Class Statutory Plan A city. Cities using the Plan A form of organization are the most common type of city in our state. Plan A cities operate with a weak mayor-council. The Plan A city council

consists of an elected mayor and four or six elected councilmembers. One example of the differences in a Plan A versus a Plan B city is in the role of the council in hiring/firing employees of the city.

Statutory Plan A city councils have complete freedom to create whatever positions they find necessary in addition to those required by statutes. Absent specific statutory or charter authority, a city council may not delegate legislative or quasi-judicial power. *A.G. Op. 624-a-3* (Nov. 2, 1998). In addition, a city council may not delegate any administrative power of a discretionary nature unless authorized to do so by state law or city charter. *Jewell Belting Co. v. Village of Bertha*, 91 Minn. 9, 97 N. W. 424 (1903). Councils may delegate merely ministerial functions. *Id.* Except to the extent provided by statute, governance of the affairs of the city is vest in the council. *A.G. Op. 624-a-3*. Under the City of Lake Elmo's current plan, the city council is deemed to have the sole authority to handle the hiring and firing of city employees, including department heads. Minn. Stat. § 412 also provides that the city council may appoint employees for the city as deemed necessary for its proper management and operation. As such, Plan A city councils may establish, by ordinance or resolution, a City Administrator role. State statute does not specifically define the powers of the position, however, the duties delegated to the City Administrator must be ministerial in nature. *Jewell Belting Co.*, 97 N. W. at 425. The duties that the council may delegate include the supervision of workers, accounting, the preparation of reports, factual determinations, and execution of policies set by the council. The administrator may not hire and fire employees or make purchases or let contracts unless the council sets specific standards governing those actions. *A.G. Op. 471-1F* (Oct. 24, 1961). The *A.G. Op. 471-1F* discusses a city administrator's ability to hire and fire employees in the context of an ordinance passed by the City Council of Brooklyn Park which delineated standards for that city's administrator to hire and fire employees. However, the Attorney General ultimately concluded that the council may not delegate the ultimate authority to hire or remove officers, employees and agents, stating that:

"The council may adopt rules and standards for the guidance of the administrator in carrying out all ministerial and administrative functions, including the holding of examinations to determine merit and fitness for appointment and obtaining and submission of particular evidence in connection with the selection and dismissal of employees. But, the ultimate questions as to appointment and dismissal are matters for the determination of the village council on the basis of M.S. § 412.111."

The involvement of the council in daily operations varies by city. Some councils have very little daily interaction, leaving most of the decisions to the administrator and the staff; others involve themselves in the daily operations of running a city. It is up to each council to decide how much authority it grants an administrator in a Plan A city.

Plan B Cities:

In Plan B Cities, also referred to as the "council-manager" form, the city manager exercises the administrative power of the city and is responsible to the council for the proper

administration of all city affairs. Statutory cities must have a population of over 1,000 to be eligible to operate as a Plan B City.

The city manager has complete discretion to appoint or remove staff members within the limits of other applicable laws. Minn. Stat. § 412.651 subd. 3. Neither the council nor any individual councilmember may dictate the appointment of any person to office or employment by the manager. *Nelson v. City of Eden Prairie*, No. A11-350 (Minn. Ct. App. Dec. 27, 2011) (unpublished decision). The council may not give orders to any subordinate of the manager. Minn. Stat. § 412.661. The council's control is indirect, through its selection and appointment of the manager. Minn. Stat. § 412.661. Among the various powers and duties of the City manager laid out in Minn. Stat. § 412.651, the manager is also the purchasing agent for the city. Minn. Stat. § 412.691.

In a Plan B city, the council has only one employee, the city manager and the remainders of the employees are the responsibility of the manager. The city manager also appoints the city clerk, the treasurer, the city attorney and other city officials. The city manager submits a budget to the council for approval, and has broad authorization to make purchases within the legally adopted budget.

In order for the City of Lake Elmo to become a Plan B city, the city must follow procedure laid out in Minn. Stat. § 412.551:

“Subdivision 1. One plan per election.

The council may, and upon petition therefor signed by voters equal in number to at least 15 percent of the electors voting at the last previous city election, shall, submit to the voters at a regular or special election the question of adoption by the city of Optional Plan A or B. The city may also upon its own motion submit an optional plan for voter consideration. Only one plan shall be so submitted at any one election, except that any such plan shall be submitted at the election on incorporation of a city if the incorporation petition so requests and the population of the proposed city, when the submission of Optional Plan B is proposed, is more than 1,000. No plan, except a home rule charter submitted under chapter 410, shall be submitted in any city in which another optional plan is already in effect until the latter plan has been in effect for at least three years.”

Minn. Stat. § 412.551 also lays out various steps the city must follow should the plan be passed by the voters, including specific language that must be used on the ballot, the procedure for adoption and abandonment, and filing an election certificate.

Summary

In Minnesota, 632 cities operate under a Plan A form of government while only 17 operate under the Plan B form of government. Switching to a Plan B city would be a process that without a special election, would take till January 2017. If the desire to have a Plan B city is driven by a goal of having less daily operational engagement with city business there could be avenues explored to develop policies and procedures to lessen the operational work load for council members.

Note: some text was used with permission from David Snyder and the League of Minnesota Cities.

BACKGROUND INFORMATION (SWOT):

Strengths
Weaknesses
Opportunities
Threats

RECOMMENDATION: None