

STATE OF MINNESOTA

DISTRICT COURT
Hon. Jamie L. Anderson

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Cathy Spann, Aimee Lundberg, Jonathan
Lundberg, Don Samuels, Sondra Samuels, et.
al.,

Petitioners,

**SUMMARY OF RELEVANT FACTS
AND FINDINGS, CONCLUSIONS OF
LAW, ORDER FOR AN ALTERNATIVE
WRIT OF MANDAMUS AND
ALTERNATIVE WRIT OF MANDAMUS**

Court File No.: 27-CV-20-10558

vs.

Minneapolis City Council and Mayor Jacob
Frey,

Respondents.

The above-entitled matter is presently before the Court on Petitioners' Petition for a Writ of Mandamus, filed with this Court on August 17, 2020. The parties briefed the issues presently before the Court, and on May 21, 2021, the Court held a hearing via Zoom video conferencing and took the matter under advisement at that time.

Petitioners are represented by James V.F. Dickey, Esq., and Douglas P. Seaton, Esq. Respondents are represented by Gregory P. Sautter, Esq., Brian S. Carter, Esq., and Caroline Bachun, Esq.

Based upon the written submissions and oral arguments of counsel, all of the files, records, and proceedings herein, the Court being duly advised now makes the following:

Background

“Petitioners pray for a peremptory writ of mandamus compelling Respondents to immediately comply with City Charter section 7.3 and fund and employ the police force such that there are 0.0017 licensed peace officers per resident in Minneapolis, consistent with the number of residents currently in Minneapolis...” (Pets.’ Pet. for Writ of Mandamus ¶ 65.) “Alternatively, the Petitioners pray for an alternative writ of mandamus and demand that the Respondents show cause...why Respondents have not complied with their obligations described herein.” (*Id.* ¶ 67.) “Petitioners pray that, upon prevailing, the Court award them their costs and disbursements incurred in this action.” (*Id.* ¶ 69.)

SUMMARY OF RELEVANT FACTS AND FINDINGS

The parties entered into a Stipulation of Facts and a Stipulated Exhibit List on April 21 and April 23, 2021, respectively. Specifically, the parties “stipulate and agree...that the Court may rule on this matter based on this Stipulation of Facts and the exhibits identified in the Parties’ Stipulated Exhibit List, and the Petition, Answer, and arguments and briefs of the parties.” (Stip. of Facts, p. 1.) Because the parties agree on the facts, the Court has both reviewed the relevant and agreed-upon facts, and made a specific finding at it relates to the Petitioners’ injuries based upon the stipulated exhibits submitted by the parties in this case.

1. The Minneapolis City Charter, effective January 1, 2015, and specifically Section 7.3, is probative and provides legal guidance to this Court. (*See* Stip. of Facts ¶ 1.)
2. “Respondents admit that the crime rate in Minneapolis has increased since the killing of George Floyd.” (*Id.* ¶ 41(a); *See also* Stip. Ex. 9.) “Respondents do not challenge whether one or more Petitioners have suffered injuries from that increase in crime.” (*Id.* ¶ 41(b).)

3. Exhibit 1 represents the most recent version of the Minneapolis Police Department (“MPD”) Staffing and Leave Report by Pay Period. (*See Id.* ¶ 5.) “The parties agree that this is a true and accurate accounting of the number of sworn officers and unsworn officers on payroll and the number of sworn officers and unsworn employees on continuous leave at the Minneapolis Police Department.” (*Id.*)
4. “Sworn officers” refers to sworn licensed peace officers as defined by Minn. Stat. § 626.84.¹ “Unsworn” or “Non-sworn” refers to employees of the MPD who are not “sworn.” (*See Id.* ¶ 4.)
5. The total number of sworn officers in the MPD on January 4, 2020 is 879 plus 25 on continuous leave. The total number of sworn officers in the MPD on April 10, 2021 is 743 plus 92 on continuous leave. (*See Id.* ¶ 6.)² The total number of sworn and unsworn MPD employees on January 4, 2020 is 1,049 plus 40 on continuous leave. The total number of sworn and unsworn MPD employees on April 10, 2021 is 871 plus 98 on continuous leave. (*See Id.* ¶ 7.)
6. “[T]hose on ‘continuous leave’ means those officers on leave for 78 or more hours during the applicable pay period.” (*Id.* ¶ 8.)³

¹ “Sworn officer” is defined as “an employee or an elected or appointed official of a political subdivision or law enforcement agency who is licensed by the board, charged with the prevention and detection of crime and the enforcement of the general criminal laws of the state and who has the full power of arrest, and shall also include the Minnesota State Patrol, agents of the Division of Alcohol and Gambling Enforcement, state conservation officers, Metropolitan Transit police officers, Department of Corrections Fugitive Apprehension Unit officers, and Department of Commerce Fraud Bureau Unit officers, and the statewide coordinator of the Violent Crime Coordinating Council.” Minn. Stat. § 626.84, subd. 1(c)(1).

² The Court recognizes the parties have stipulated to these numbers, but still questions their veracity. Other evidence states that on February 4, 2021, MPD “had 640 sworn, available officers – or about 200 fewer than the same point in 2019.” (Stip. Ex. 40.)

³ The parties agree that Exhibit 1’s calculation does not include the sworn MPD officers on leave on any given day because they were not on “continuous leave,” or leave for a full 78 hours during the applicable pay period. (*See Stip. of Facts* ¶ 8.)

7. On April 21, 2021, the MPD projected that as of June 1, 2021, it will have 690 sworn officers on payroll and 46 on long term leave. (*See Id.* ¶ 9.) As of January 1, 2022, the MPD projects that it will have 649 sworn officers on payroll and no officers on long term leave. (*See Id.* ¶ 10.) As of April 1, 2022, the MPD projects that it will have 637 sworn officers on payroll and no officers on long term leave. (*See Id.* ¶11.) As of June 1, 2022, the MPD projects that it will have 669 sworn officers on payroll and no officers on long term leave. (*See Id.* ¶ 12.) Finally, as of January 1, 2023, the MPD projects that it will have 721 sworn officers on payroll and no officers on long term leave. (*See Id.* ¶ 13.)
8. A training academy will graduate in January 2023, and the MPD projects that by the end of January 2023, the total officers on payroll will rise to 757 with no officers on long term leave. (*See Id.* ¶ 14.)
9. The 2020 adopted budget provided the MPD with a total expense budget of \$193,257,000, and the MPD’s “targeted strength” number was 888 sworn officers. (*See Id.* ¶ 16; *See also* Stip. Ex. 2, p. 456.)
10. The COVID-19 pandemic has significantly impacted the City’s available revenue, forcing the City Council and Mayor Frey to make mid-2020 budget cuts. (*See Id.* ¶ 16(a); *See also* Stip. Exs. 3, 4.) Specifically, Resolution No. 2020R-177 cut the MPD expense budget by \$8,625,191. (*See Id.* ¶ 16(b); *See also* Stip. Ex. 3.) Resolution No. 2020R-194 further cut the MPD expense budget by \$1,524,000, in addition to the MPD laying off its CSO⁴ employees. (*See Id.* ¶ 16(c); *See also* Stip. Ex. 4.) Furthermore, the MPD cancelled its August 2020 police academy and revoked job offers to 36 police officer candidates. (*See Id.* ¶ 19.)

⁴ “Community Service Officer/s.”

11. “In response to the 2020 budget cuts, the [MPD] laid off all of its Community Service Officers. CSOs are full or part time MPD employees who provide assistance to the [MPD] while they work towards completion of the Minnesota Peace Officer Standards and Training [“POST”] license training requirements.” (*Id.* ¶ 18.) A CSO “is an unsworn civilian position with the goal of most CSOs attending a future Minneapolis Police Academy and being hired as sworn Police Officers.” (*Id.*)
12. The 2021 City of Minneapolis budget was passed on December 9, 2020. (*See Id.* ¶ 20.) “The 2021 budget provides actual funding for an average of 770 sworn officers on payroll because out of the ‘target level’ of 888 sworn officers, 118 sworn officer positions in MPD will be held vacant in 2021.” (*See Id.*, *See also* Stip. Ex. 6, p. 437.)
13. “The 2021 budget provides the MPD with a total expense budget of \$164,292,000 for which it does not require additional City Council consent.” (*Id.*, *See also* Stip. Ex. 6, p. 442.)
14. In addition to the above-discussed MPD expense budget, the 2021 budget included two budget reserves for the MPD: \$500,000 was held in reserve for additional overtime to be released by City Council approval if requested by MPD – this money remains in reserve; and \$6,427,000 was held in reserve for the cost of the CSO program and the 2021 MPD police academies – Resolution 2020R-036 released these funds for use by the MPD. (*See Id.* ¶ 21(a)-(b).)
15. There are three Minneapolis Police Academies for sworn police officers scheduled for 2021: (1) February 2021, (2) August 2021, and (3) December 2021. “The total budgeted capacity for which there is enough staff to train officers for those three academics is 119 new sworn officers.” (*Id.* ¶ 24.) Over the three 2021 training academics, the MPD expects the addition of 110 new sworn police officers. (*See Id.* ¶ 25.)

16. “Hiring new sworn police officers is a resource intensive process. The pipeline of potential sworn officers has shrunk considerably within the last several years.” (*Id.* ¶ 28.) “The City has no current plan to add sworn officers to [the] MPD in 2021 other than through the first two academics to take place in 2021 and potentially through the CSO program. The cadets⁵ trained in the December 2021 Academy are expected to be added to the MPD as sworn officers in 2022.” (*Id.* ¶ 33.)
17. The MPD estimates that it can train 160 or more new sworn officers in 2022. (*See Id.* ¶ 34.) “The total amount of new sworn officers planned for and funded for addition in 2022...will not be determined until the 2022 budget is adopted by vote [on December 8, 2022] of the City Council and signature of the Mayor.” (*Id.* ¶ 36.)
18. “Starting shortly after the civil unrest in the wake of George Floyd’s killing, numerous sworn police officers have made psychological and physical workers compensation claims.” (*Id.* ¶ 38.) Specifically, between May 25, 2020 and April 15, 2021, Respondents are aware of 167 sworn police officers who have applied for Public Employees Retirement Association (“PERA”) Duty Disability. (*See Id.* ¶ 38(a).) “As of April 15, 2021, 97 of the 167 then-known or suspected PERA Duty Disability applicants had separated from employment with the City of Minneapolis.” (*Id.* ¶ 38(b).) “Respondents assume that all Duty Disability applicants who are awarded Duty Disability by PERA will separate from City employment after award of Duty

⁵ “The cadet program is a feeder program where police officer candidates are hired and sent to schooling to complete their law enforcement degree and POST license training. After they complete their schooling and pass the POST license examination, cadets are then sent to train in a Minneapolis Police Academy. Recruits are candidates who have already passed their POST license examinations and required schooling. They are hired and sent to the Minneapolis Police Academy to train with the MPD. At graduation from the Minneapolis Police Academy, all candidates, whether recruit or cadet, are sworn and at that time obtain their POST licenses.” (Stip. of Facts ¶ 29.)

Disability. Separation within 45 days of Duty Disability award is a statutory requirement to obtain benefits.” (*Id.* ¶ 38(d).)

19. “Upon learning of (sic) that an officer has submitted paperwork that the officer has injuries or a mental condition that does not permit him or her returning to work, the Health and Safety unit of MPD transfers the officer to the Personnel Leaves unit.” (*Id.* ¶ 39.) “As of April 15, 2021, a total of 88 sworn police officers were assigned to the Personnel Leaves unit.” (*Id.* ¶ 39(a).) “Of those 88 sworn police officers assigned to the Personnel Leaves, 79 have filed or are expected to file for PERA Duty Disability.” (*Id.* ¶ 39(b).)
20. “The Court has found that Petitioners have standing to bring this mandamus action.” (*Id.* ¶ 40.)
21. “Petitioners are all residents and taxpayers of the City of Minneapolis and one or more Petitioners have alleged and testified to individualized injuries based on their claim that Respondents are violating Section 7.3 of the City Charter.” (*Id.* ¶ 41.)
22. Finally, the parties disagree as to whether the injuries Petitioners have claimed are a result of the City’s failure to properly fund/staff the MPD. As discussed in detail below, based on several statements from Mayor Jacob Frey, in addition to testimony from Petitioners in this case, this Court finds that there is a causal connection between the injuries Petitioners claim and the funding/staffing of the MPD.

CONCLUSIONS OF LAW

Whether Petitioners’ petition for a writ of mandamus should be granted hinges on whether Respondents have funded “a police force of at least 0.0017 employees per resident” as required under the City Charter § 7.3(c). In order to determine the outcome of Petitioners’ petition for a writ of mandamus, the Court must address four main issues: (1) How is “police force” defined

pursuant to City Charter § 7.3(c); (2) How many sworn officers on the police force does the City Charter require;⁶ (3) Whether Petitioners have established the essential elements required for the issuance of a writ of mandamus; and (4) Whether the City’s budget and its compliance, or lack thereof, with City Charter § 7.3(c) is causally linked to the increased crime.

I. The term “police force” in City Charter § 7.3(c) is defined as sworn police officers.

1. City Charter § 7.3(c) states that, “[t]he City Council must fund a police force of at least 0.0017 employees per resident, and provide for those employees’ compensation, for which purpose it may tax the taxable property in the City up to 0.3 percent of its value annually.”
2. The parties are in agreement that “police force” is defined by Merriam-Webster as of April 19, 2021, as “a body of trained officers entrusted by a government with maintenance of public peace and order, enforcement of laws, and prevention and detection of crime.” (Stip. Ex. 39.) Despite this agreement, the parties disagree as it relates to who is an “employee” of the “police force.”
3. Petitioners take the position that “the Charter’s ‘police force’ is a component of active, sworn MPD officers enforcing the law on a given day.” (Pets.’ Arg. In Supp. of Issuance of a Writ of Mandamus, p. 31.) Petitioners argue that the plain meaning and “[d]ictionary definitions support the understanding of ‘police force’ []—those actually enforcing the law; those on ‘active duty.’” (*Id.* at 34.) Petitioners further argue that “those who are on leave from a police department are not part of the ‘force,’ since they cannot maintain ‘public peace and order,’ or ‘enforce [the] laws,’ or ‘prevent[] and detect[]...crime.’” (*Id.*) Finally, Petitioners contend that “[t]he Charter’s use of the term ‘police force’ instead of ‘police department’ contemplates

⁶ The parties do not dispute that “to fund” also requires the City “to employ.” For example, if the Court finds that the City was required to fund 10 sworn officers on the police force, 10 sworn officers must be employed.

those officers on ‘active duty.’” (*Id.*) “Active duty” is defined as “[t]he playing of a direct role in the operational work of the police or armed forces as opposed to doing administrative work.” (Stip. Ex. 21.)

4. Respondents take the position that “[t]here is no language in Section 7.3(c) or Section 7.3 in general that makes any distinction between employees of the MPD who are ‘active duty’ and those who are on leaves of some type.” (Resps.’ Closing Arg., pp. 15-16.) Respondents argue that “[s]ection 7.3 makes ‘employees’ a larger set of persons than ‘police officers.’” (*Id.* at 30.) Further, Respondents argue that “[h]ad the drafters intended Section 7.3(c) to only apply to sworn police officers, they could have done so clearly by using the words they have used before.” (*Id.*)⁷
5. At the May 21 hearing, this Court indicated to counsel for Respondents that it is having a hard time with the argument that the police force can mean all employees within the police department, both sworn and civilian employees. (*See Id.* at 27-30.) The Court then gave a couple of extreme examples, i.e., could 75% of these so-called “employees” be civilian positions and 25% be sworn officers, or could 80% of these employees be sworn officers but 60% of whom are on long-term leave – the Court inquired of counsel for Respondents where their argument that “police force” includes all MPD employees ceases to be true.
6. Counsel for Respondents addressed both issues in his response: sworn officers versus civilians, and sworn active-duty officers versus sworn officers on long-term leave. Counsel for Respondents stated that “there is a point, I can’t tell you exactly what point that is...where that line is is (sic) not what we have in front of us here today, because when one looks at the numbers of sworn officers in the police department versus civilians, at the beginning of 2020,

⁷ See Section 7.3(a)(2) and (b).

we had over 880 sworn officers and 160 or 170 civilians, so those numbers and those percentages were not ever approaching the extreme that one talks about... I can't say where they would fall out of the police force.”

7. Furthermore, in addressing the issue of officers on leave who are paid members of the department, counsel for Respondents stated that “there is no distinction between them. What we have today is the extreme situation that has never existed before in the Minneapolis Police Department, where over 150 officers...have left the department since the killing of George Floyd and we have never seen attrition like that, and this already is a position of extremes that we have.”
8. There is no case law, on point or otherwise, that directs the Court to a conclusive answer of how to define “police force,” pursuant to Section 7.3(c). Therefore, the Court must turn to the legislative intent and history of the City Charter. *See State v. Riggs*, 865 N.W.2d 679, 687 (Minn. 2015).
9. The Court in *Welscher v. Myhre* stated:

The rules for the interpretation of revised Statutes or Codes resolve themselves into one inquiry, applicable alike to the construction of all legislative enactments, viz., the legislative intent. If the language of the Revised Statutes be plain and free from doubt, the will of the lawmakers must be ascertained therefrom, unaided by prior statutes on the subject. If of doubtful meaning or import, or susceptible of two constructions, the prior statutes, of which the new is the revision, may be resorted to for the purpose of rendering the new clear.

Welscher, 42 N.W.2d 311, 313 (Minn. 1950) (quoting *State v. Stroschein*, 109 N.W. 235 (Minn. 1906)).

10. Although the instant matter at issue – definition of “police force” – is neither statutory nor code-related, the Court considers the analysis analogous to the history and intent behind the City Charter § 7.3. Specifically, Respondents argue that “[e]ven if ‘police force’ is something

smaller than the entire MPD the Charter offers no guidance supporting that position. Rather, the structure of the Charter clearly implies otherwise. Section 7.3 makes ‘employees’ a larger set of persons than ‘police officers.’ Had the drafters intended Section 7.3(c) to only apply to sworn police officers, they could have done so...” (Resps.’ Closing Arg., p. 30.)

11. The same argument can be made, however, that had the drafters intended Section 7.3(c) to include employees encompassing more than just sworn police officers, they could have used “police department” as opposed to “police force.”
12. Clearly, the legislative intent of the use of the term “police force” as opposed to “police department” was to narrow the meaning to sworn police officers, exclusive of administrative staff and employees.
13. The Court’s interpretation of the phrase “police force” to include only sworn officers is further bolstered by the Charter’s history and purpose.
14. Petitioners’ brief, in addition to Stipulated Ex. 30, provides a thorough, in-depth overview of the Charter Amendment history and purpose, so the Court will not simply repeat what is in the briefs and/or what the parties have already agreed to. However, in short, the Charter Amendment in 1961 came about as a direct result of an understaffed police force: “The basic reason for the record increase in crime is our inadequately manned police department. A year from now, when the 190 men will be on the street, the figures will show a considerable reduction.” (Stip. Ex. 30, PET 429.)
15. Further, as Petitioners correctly conclude, “...the historical common usage of the term ‘police force’ throughout Minnesota law has referred to the body of active officers actually enforcing the laws of a governing body, as distinct from the entire police department.” (Pets.’ Arg. In Supp. of Issuance of a Writ of Mandamus, p. 36.) *See Minneapolis Police Officers Federation*

v. *City of Minneapolis*, 481 N.W.2d 372, 373 (Minn. Ct. App. 1992) (quoting former Charter § 6.1); *See also State ex rel. Getchell v. O'Connor*, 83 N.W. 498, 500 (Minn. 1900) (quoting the distinction between force and department); *See also Oswald v. O'Brien*, 51 N.W. 220 (Minn. 1892) (members of the police force have the “common-law and statutory power of constables”); *See also In re Wilson*, 19 N.W. 723, 724 (Minn. 1884) (Minneapolis ordinance requiring active patrols by the “police force”).

16. The Court cannot find that those officers on continued leave are not part of the MPD’s police force. MPD sworn officers, whether on continuous leave, expected PERA Duty Disability, and/or part of the Personnel Leaves unit, are all funded by the City Council, and Section 7.3(c) does not differentiate as it relates to whether a police officer is on leave or on the ground, and thus, neither shall this Court.
17. Therefore, based on the above analysis, the term “police force” as used in Section 7.3(c) refers to all sworn police officers currently employed by the MPD.

II. Respondents cannot indefinitely rely on the 2010 Census number to determine how many sworn officers must be employed on the police force.

18. The parties agree on the following data: on January 1, 2022, the MPD will have 649 sworn officers on payroll; on April 1, 2022, the MPD will have 637 sworn officers on payroll; on June 1, 2022, the MPD will have 669 sworn officers on payroll; and on January 1, 2023, the MPD will have 721 sworn officers on payroll. (*See Stip. of Facts*, ¶¶ 10-13.)
19. Respondents argue that “[t]he City uses the 2010 Census number because the Charter demands it does... ‘any reference to population or other enumeration refers to the latest decennial federal census.’” (Resps.’ Closing Arg., p. 18) (quoting City Charter, Section 1.3(d)(5)). “Thus, when one measures the Section 7.3(c) requirement for employee funding the number of positions

required funded is 650.38 positions ($382,578 \times 0.0017 = 650.38$).” (Resps.’ Closing Arg., p. 18.)

20. Petitioners take the position that “the annual nature of the Section 7.3(c) special tax and annual budgeting process support an annual rebalancing.” (Pets.’ Arg. In Supp. of Issuance of a Writ of Mandamus, p. 39.) Further, Petitioners argue that “[e]ven if the Court were inclined to accept Respondents’ view of the population issue, when the 2020 Census is released later this year, *see* Ex. 19, Respondents will be forced to immediately devote enormous resources to police hiring.” (*Id.* at 41.)
21. The Court disagrees with portions of both parties’ arguments on this issue. Clearly, it was never the intention of the drafters of the City Charter to continue to use a decennial census that is more than ten years old, nor did they likely foresee that a decennial census would be untimely or delayed as the 2020 Census is, for example. The same can be said, however, for Petitioners’ argument, i.e., it was never the intention of the drafters of the City Charter to track population numbers based upon an annual review.
22. The language in Section 1.3(d)(5) is clear and unambiguous: “[A]ny reference to population or other enumeration refers to the latest decennial federal census.” Because the 2020 Federal Census is still in the process of being compiled, and Minneapolis population numbers will likely not be released for several more months (*see* Stip. Ex. 19), this Court is tasked with determining population numbers as it relates to “a police force of at least 0.0017 employees per resident.” The Court notes that there is an added level of uncertainty where, as is the case here, there is no additional guidance – rule, code, charter, statute, case law – that states what exactly should happen when the release of the Federal Census is unknown.

23. At the May 21, 2021 hearing, the Court gave counsel for Respondents another extreme example, i.e., what if the 2020 Federal Census never gets released? Counsel for Respondents argued that the 2020 Federal Census will be released as it is a constitutional obligation by the Federal Government to conduct and release said census every ten years. Counsel for Respondents then stated that he does not know exactly when the census will come out, but he does not envision the circumstance where the census does not come out before 2022 budget is approved. Counsel concluded by stating to “pray the census comes out in time so we can move forward.” The parties concede that the federal government’s delay in publishing the 2020 Census report is highly unusual and brings quite a bit of uncertainty. Because it is unknown whether this late publication is the “new normal” or whether it is late only this year, the Court must determine how the City Charter Section is interpreted when the Census is not published as expected.
24. Based upon the plain language of Section 1.3(d)(5), the uncertainty surrounding the 2020 Federal Census, the remarks from counsel for Respondents, and this Court’s interpretation of Section 7.3(c), the proper census to use in order to determine how many employees must be on the police force is the 2019 population estimate from the U.S. Census Bureau Quick Facts. (*See* Stip. Ex. 20.) It should be noted that because the City Charter refers to “the latest decennial census” and not “metropolitan council population and household estimates,” the Court believes that Stipulated Exhibit 20 – as opposed to Stipulated Exhibit 42 – contains the most accurate and up-to-date data.
25. Initially, the Court was inclined to use an estimated 2020 population number, however, because the parties have stipulated to what the 2019 population estimates are, the Court will use those agreed-upon numbers. It should also be noted that the parties concede that the 2020

Minneapolis population numbers will be higher than the 2019 Minneapolis population numbers, thus, this Court's decision to use 2019 population estimates does not put Respondents in any position of disadvantage.

26. The U.S. Census estimated population numbers for calendar year 2019 is 429,606.
27. The Court believes the City has a responsibility to keep up with projected census numbers as each 10-year period approaches. As is the case from 2010 to 2020, population in Minneapolis has increased dramatically. If the City is not proactive in anticipating what will be required of it in coming years, it will constantly be behind – constantly underperforming and, as a result, understaffing the police force. By not taking aggressive and proactive steps, the City would still be trying to fulfill 2020 number requirements in 2030. That is not the intent behind the funding requirements in the City Charter. The City must be proactive.
28. Thus, Section 7.3(c) requires that Respondents fund a police force that consists of 730.33 employee positions ($429,606 \times 0.0017 = 730.33$).

III. Petitioners have established the essential elements required for the issuance of an alternative writ of mandamus.

29. A writ of mandamus is an extraordinary legal remedy. *See Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006). It is not awarded as “a matter of right, but in the exercise of sound judicial discretion and upon equitable principles.” *Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. Ct. App. 1995) (citation omitted). Mandamus is used “to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” Minn. Stat. § 586.01. In order to obtain a writ of mandamus, a petitioner must demonstrate: “(1) the failure of an official duty clearly imposed by law; (2) a

public wrong specifically injurious to petitioner; and (3) no other adequate specific legal remedy.” *Coyle*, 526 N.W.2d at 207; *See also* Minn. Stat. §§ 586.02, .04.

30. In a mandamus action, Petitioners “must demonstrate a clear legal right to have the act in question performed and must demonstrate every material fact necessary to show the existence of the plain duty with respect to the relief sought.” *Mendota Golf*, 708 N.W.2d at 174, 178-79 (quotation omitted). A writ of mandamus does not control the particular manner in which a duty is to be performed and does not dictate how discretion is to be exercised. *See, e.g., State v. Davis*, 592 N.W.2d 457, 459 (Minn. 1999); *State ex rel. S. St. Paul v. Hetherington*, 61 N.W.2d 737, 740 (Minn. 1953); *State ex rel. Laurisch v. Pohl*, 8 N.W.2d 227, 231 (Minn. 1943). “If the entity has any discretion to perform the duty, a petitioning party must show that the failure to perform was so arbitrary and capricious that it constituted a clear abuse of discretion.” *Houck v. Eastern Carver County Sch.*, 787 N.W.2d 227, 232 (Minn. 2010) (citation omitted).
31. Issuance of the writ should “be denied where it is obvious that it will prove to be futile, unavailing, and ineffective.” *Winnetka Partners Ltd. P’ship v. County of Hennepin*, 538 N.W.2d 912, 915 (Minn. 1995) (citations omitted). A court should also not grant mandamus to compel “a technical compliance with the letter of law” that would violate the spirit of the law. *State v. Hodapp*, 48 N.W.2d 519, 522 (Minn. 1951).
32. “When the right to require the performance of the act is clear, and it is apparent that no valid excuse for nonperformance can be given, a peremptory writ may be allowed in the first instance. In all other cases the alternative writ shall first issue.” Minn. Stat. § 586.04. Issuance of an alternative writ also requires that Respondents have a duty to act and did not do so.

However, the alternative writ commands the Respondents to act or show cause why they have not done so. *See* Minn. Stat. § 586.03.

33. “Writs of mandamus shall be issued upon the order of the court or judge, which shall designate the return day, and direct the manner of service thereof, and service of the same shall be by copies of the writ, order allowing the same, and petition upon which the writ is granted.” Minn. Stat. § 586.05.

The failure to perform an official duty clearly imposed by law

34. The first requirement for mandamus—the failure to perform an official duty clearly imposed by law—is satisfied “only when the petitioner has shown the existence of a legal right to the act demanded which is so clear and complete as not to admit any reasonable controversy.” *In re Welfare of Child of S.L.J.*, 772 N.W.2d 833, 838 (Minn. Ct. App. 2009) (quotation omitted).
35. Here, Petitioners contend that they “have a clear right for Respondents to comply with Section 7.3 of the Minneapolis City Charter as residents of Minneapolis who need police to protect them, especially given the substantial increase in crime in Minneapolis due to the Mayor and City Council’s failures to support and fund the police.” (Pets.’ Pet. ¶ 53.)
36. Again, Section 7.3(c) requires the following: “The City Council must fund a police force of at least 0.0017 employees per resident, and provide for those employees’ compensation, for which purpose it may tax the taxable property in the City up to 0.3 percent of its value annually.”
37. The requirement to fund a police force of at least 0.0017 employees per resident is an official duty of Respondents clearly imposed by law, i.e., § 7.3(c). In fact, Respondents concede that the City Charter creates the obligation for Respondents to properly fund the police force of Minneapolis, however, argue that “it is clear [that] Respondents have fulfilled their obligations.” (Resps.’ Closing Arg., p. 4.) Respondents maintain that “[w]ith every budget

resolution adopted in 2020 and 2021, adequate numbers of sworn officers and civilian employees are funded.” (*Id.*)

38. As discussed at length above, Respondents are not correct as it relates to their interpretation of what the City Charter demands, in addition to their calculations pursuant to Section 7.3(c). Because Respondents incorrectly continue to use 2010 data and numbers, the perception that Respondents are complying with and fulfilling their obligations pursuant to Section 7.3(c) is skewed by the 650.38 calculation. (*See Id.* at 27.)
39. Based on the above discussion and calculations, the City Charter § 7.3(c) requires Respondents fund a police force of 730.33 employees. The parties stipulated that the MPD will have 649 sworn officers as of January 1, 2022, 637 sworn officers as of April 1, 2022, 669 sworn officers as of June 1, 2022, and 721 sworn officers as of January 1, 2023 – all of these projections fall significantly below the required 730.33 employees. (*See Stip. of Facts*, ¶¶ 10-13.)
40. Therefore, Petitioners have demonstrated that Respondents have failed to perform an official duty clearly imposed by law.

A public wrong specifically injurious to Petitioners

41. To be entitled to mandamus relief, Petitioners must also show that the failure to fund a police force of at least 0.0017 employees per resident constituted a “public wrong” that specifically injured them. *See Chanhassen Chiropractic Ctr., P.A. v. City of Chanhassen*, 663 N.W.2d 559, 562 (Minn. Ct. App. 2003). In addition, the party petitioning for a writ of mandamus must be “beneficially interested” in the issuance of the writ. *See Minn. Stat. § 586.02*. This means that the petitioners must show not only that the alleged public wrong is specifically injurious to them, but also that they would benefit from the issuance of the writ. *See FATE v. Nichols*, 350

N.W.2d 489, 491-92 (Minn. Ct. App. 1984) (“If petitioner cannot show with certainty that it is a beneficially interested party, then it does not have standing for mandamus.”)

42. It should be noted that the Court previously found that “as Minneapolis taxpayers, Petitioners have a beneficial interest in the petition both to enforce a public duty and to remedy any alleged misallocation of funds . . . Petitioners are beneficially interested in a writ of mandamus as Minneapolis taxpayers.” (Order for Standing, pp. 6-7, Index # 24.)

43. The City Charter, and specifically Section 7.3(c), unambiguously creates a public right of the residents of the City of Minneapolis to a properly funded police force of at least 0.0017 employees per resident. Petitioners are members of the public, i.e., residents and taxpayers of the City of Minneapolis. (*See* Stip. of Facts, ¶ 41.) By failing and/or refusing to fund a police force of 730.33 employees to serve and protect the residents of City of Minneapolis, Respondents have violated City Charter § 7.3(c).

44. It is undisputed that: (1) the crime rate in Minneapolis has increased since the killing of George Floyd; (2) one or more Petitioners have suffered injuries from that increase in crime; (3) Ms. Lundberg has been diagnosed with Post Traumatic Stress Disorder; and (4) the Court previously found that Petitioners have standing to bring this mandamus action. (*See* Stip. of Facts, ¶¶ 40, 41.)

45. Despite the above-mentioned concessions, Respondents argue that Petitioners “have established no causal connection between the injuries they claim and the funding and/or staffing of the MPD.” (Resps.’ Closing Arg., p. 43.) Stated differently, Petitioners have not “met their burden to show a causal link between the crime they suffer, and Respondents’ budgetary decisions. [Therefore,] [a] peremptory writ of mandamus simply cannot issue.” (*Id.* at 46.)

46. The Court disagrees. The evidence submitted by the parties in the record shows otherwise. For example, Petitioner Aimee Lundberg testified to the following at her deposition:

Q: Then it says, "In addition to the injury caused by respondents' failure to comply with their legal duties under City Charter Section 7.3, those actions also caused the Lundbergs' house to be shot twice, with a bullet lodging in the side of her house next to her daughter's window." Do you see that?

A: Mm-hmm.

Q: So my question for you is, how did the city's failure to comply with its legal duties under City Charter Section 7.3 cause your house to be shot twice?

A: The -- the experience that we had this summer when -- after George Floyd's death, there was an obvious reduction in police, and the escalation of crime and gunfire went to an unprecedented level. We were hearing machine guns. We were hearing exchange of fire, not just pop, pop, pop, which is what we've come accustomed to, unfortunately . . . And so I do believe, because of the escalation of gunfire and the escalation of violent behavior in this community, it got to the point where, yeah, our house got hit. I'm surprised it wasn't hit with more bullets. It's shocking to me that it's only two.

(Dep. of Aimee Lundberg, at 28:16-30:20.)

47. Petitioner Cathy Spann testified to the following at her deposition:

A: Okay. The decision to -- to defund/dismantle on June 7th, between June 7th, violence erupted shortly after that. The stress of the phone calls, the gun -- the hearing the gunshots. I work on 24th and Girard. There were shootings on Emerson, Fremont, Girard, Irving, Humboldt, Oliver, Queen. People were getting shot. I was going to people's homes, trying to provide comfort to some families who had lost some of their children. Children had gotten shot. It became a lot and unbearable. I'm a walker. I could no longer walk. The fear of everything that was going on after that decision literally paralyzed me, and it was hard to -- it was hard to deal. People's homes were getting shot up. People's cars were being shot up. 15th and Hillside, an area in which I have a strong book club, community, you couldn't -- you couldn't walk the street in that neighborhood. The impact of the stress had just taken a toll. And on June 23rd, I held that meeting to share with people that we have to do something, and afterwards, I just gave in. I could not -- my body just -- it was depleted.

(Dep. of Cathy Spann, at 40:20-41:25.)

48. The above testimony and personal experiences of Mrs. Lundberg and Ms. Spann are just a couple of examples that this Court specifically drew out from the evidence submitted by the parties. The Court finds that the Petitioners are not only beneficially interested in the issuance of this writ, but also that the alleged public wrong, i.e., failure to fund a police force of at least 0.0017 employees per resident, is specifically injurious to Petitioners. As a result, Petitioners would personally benefit from the issuance of a writ in this case.
49. Thus, Petitioners have met their burden to show that the failure to fund a police force of at least 0.0017 employees per resident constitutes a “public wrong” that is specifically injurious to Petitioners.

No other adequate specific legal remedy

50. Petitioners submit that “Petitioners have no plain, speedy, or adequate remedy in the ordinary course of law to enforce Respondents’ compliance with the City Charter. *E.g., Kaibel v. Municipal Bldg. Com’n*, 829 F. Supp. 2d 779, 784 (D. Minn. 2011).” (Pets.’ Pet. ¶ 52.)
51. Respondents argue that “[Petitioners’] remedy through the political process is more than adequate. This November, every position in the City Council and the Mayor are up for election. Petitioners are engaged members of the community with the ability to have their voices heard. They have adequate remedies available to them.” (Resps.’ Closing Arg., p. 43.)
52. The problem with this argument, however, is that it completely overlooks the fact that Petitioners cannot seek legislative and/or position changes through the political process in order to fix or correct the issues in this case because Petitioners are not seeking “change” or a “fix.” Petitioners are not asking Respondents to go above and beyond and do more than required. They are not seeking a change to the law. Rather, Petitioners have requested this Court simply demand that Respondents follow their own city charter.

53. There is nothing that the political process can do, including “hav[ing] their voices heard” that will bring about the same result Petitioners currently seek, i.e., Respondents following their own city charter to fund a police force of at least 0.0017 employees per resident.
54. It should be noted that Petitioners did in fact attempt to “have their voices heard” by way of a letter on August 4, 2020. (*See* Pets.’ Pet., Ex. 1.) In response, Interim Minneapolis City Attorney Erik Nilsson stated that Section 7.3(c) “requires the City Council to ‘fund’ a police force of at least 0.0017 employees per resident, but does not require that all of those positions be filled at any given time.” (*Id.*, Ex. 2.) Stated differently, the City’s response was that not all 730.33 positions are filled by employees – sworn police officers – at this time. Again, no political process, letter, speaking out, or other specific legal remedy can correct the instant situation.
55. Therefore, Petitioners have established that there are no other adequate specific legal remedies to mandamus. As a result, they are entitled to demand mandamus relief.

IV. Petitioners have established a causal connection between the injuries they claim and the funding and/or staffing of the MPD.

56. Respondents concede the following: The crime rate in Minneapolis has increased since the killing of George Floyd, and Respondents do not challenge whether one or more Petitioners have suffered injuries from that increase in crime. (*See* Stip. of Facts ¶ 41(a)-(b).) Even so, Respondents argue that Petitioners “have not met their burden to show a causal link between the crime they suffer, and Respondents’ budgetary decisions.” (Resps.’ Closing Arg., p. 46.)
57. Since this Court has determined that Petitioners demonstrated “a public wrong specifically injurious to petitioner,” this discussion will be very brief.
58. On October 26, 2020, Mayor Jacob Frey sent an email to the Petitioners stating the following:

We have reprioritized several units within the MPD to account for the recent attrition – focusing officers on both 911 response and investigations. Although it was a difficult decision for the Chief and I given the importance of units like the Community Engagement Teams, it was a necessary move given the uptick in violence we are seeing.

(Stip. Ex. 36.)

59. Mayor Frey also states that the number of “sworn, available officers” is 200 less than two years ago and “[a]t the same time we’ve seen crime numbers rise.” (Stip. Ex. 40.) Mayor Frey confirmed this information in his deposition. (*See* Stip. Ex. 17, p. 14.) Later in his deposition, Mayor Frey does not deny that precincts 3 and 4, in which the Petitioners live, are experiencing a large impact from the lack of police protection in the City. Specifically, Mayor Frey stated, “I am aware that those precincts have experienced very significant upticks in violent crime.” (*Id.*, p. 79.)

60. To summarize, Mayor Frey acknowledges that “the uptick in violence we are seeing” is because police officers are needed. The Court finds that the reverse would be true, too. When the police force is adequately funded and staffed, violence decreases.

61. Mayor Frey’s email exchange and his Facebook post from February 2021, coupled with the testimony of Aimee Lundberg and Cathy Spann, is clear evidence that there is a causal connection between Petitioners’ claimed injuries and Respondents’ failure to comply with Section 7.3(c) – funding and/or staffing of the MPD.

Conclusion

62. Respondents have failed to comply with Section 7.3(c) of the Minneapolis City Charter to fund and employ at least 0.0017 sworn police officers per resident of Minneapolis. As a result, an alternative writ of mandamus shall issue.
63. Specifically, pursuant to Minn. Stat. §§ 586.03 and 586.05, an alternative writ of mandamus shall issue in conjunction with this Court's Order.

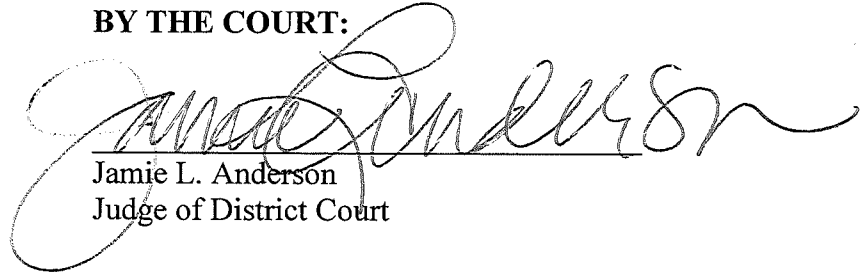
ORDER

1. Petitioners' Petition for an Alternative Writ of Mandamus is hereby GRANTED.
2. An Alternative Writ of Mandamus shall issue simultaneously with this Court's Order. Petitioners shall serve the Alternative Writ of Mandamus on Respondents by email only if express authority has been given by the City Attorney to be served that way, otherwise service of the writ must be effected via traditional service rules, and no later than seven days from the date of this Order.
3. Respondents shall immediately take any and all necessary action to ensure that they fund a police force of at least 0.0017 employees per resident, which will total either 730.33 sworn police officers or a number of sworn police officers equaling 0.0017 of the 2020 census population when published later this year, whichever is higher.
4. Respondents shall comply with the required acts in the Alternative Writ, or show cause before this Court why the Respondents have not done so, on or about June 30, 2022, or a date mutually agreed-upon by the parties, at the Hennepin County Government Center, Minneapolis, Minnesota.

5. Petitioners are awarded their costs and disbursements incurred in this action and may proceed with an application for the same pursuant to applicable statutes and rules. Said application is due within 14 days from the date of this Order.

BY THE COURT:

Dated: July 1, 2021



Jamie L. Anderson
Judge of District Court

ALTERNATIVE WRIT OF MANDAMUS

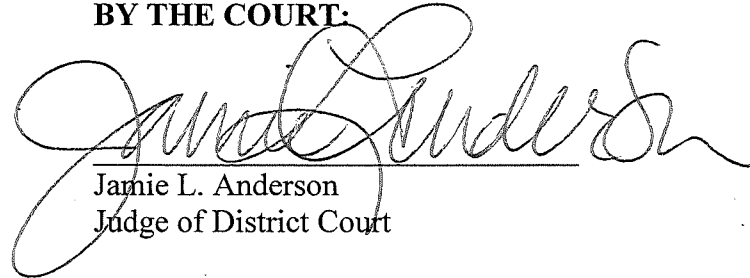
TO: Respondents Minneapolis City Council and Mayor Jacob Frey

YOU ARE COMMANDED to immediately, after receipt of a copy of the writ, take all necessary action required by the Court's Order dated July 1, 2021, to fund a police force of at least 0.0017 employees per resident, which will total either 730.33 sworn police officers or a number of sworn police officers equaling 0.0017 of the 2020 census population when published later this year, whichever is higher.

YOU ARE FURTHER COMMANDED to make a return of this writ specifying by affidavit what you have done to comply with the writ, and to file and serve the return, or show cause before this Court why the Respondents have not done so, on or about June 30, 2022, or a date mutually agreed-upon by the parties, at the Hennepin County Government Center, Minneapolis, Minnesota.

Dated: July 1, 2021

BY THE COURT:



Jamie L. Anderson
Judge of District Court