

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Cathy Spann; Aimee Lundberg; Jonathan Lundberg; Don Samuels; Sondra Samuels; Julie Oden; Audua Pugh; Georgianna Yantos,

Petitioners,

v.

Minneapolis City Council; Mayor Jacob Frey,

Respondents/Defendants.

Case Type: Civil/Other

Court File No. _____

**PETITION FOR A WRIT OF
MANDAMUS**

1. Minneapolis is in a crisis. The city faces a violent crime rate that has skyrocketed this year. It is the responsibility of the City Council and the Mayor to make Minneapolis safe. Instead, the City Council and Mayor Jacob Frey have violated their duties to fund, employ and manage a police force as required by the City Charter. Rather than work to improve public safety, the City Council and Mayor Jacob Frey are making the city unsafe for its citizens, thus requiring this Court’s intervention.

2. Violent crime, including homicides and shootings, have skyrocketed in Minneapolis. Residents observe that “[i]t’s 24-hour crime,” with “[g]un battles, drug dealing and prostitution” running rampant through the streets of the city, especially its embattled North Side.¹ As recently as August 15, violent demonstrators threw rocks and vandalized the Fifth Precinct in

¹ <https://minnesota.cbslocal.com/2020/07/16/its-24-hour-crime-neighbors-at-lowry-logan-in-north-minneapolis-fed-up-after-ongoing-violence/>

south Minneapolis, spray-painting the front of the precinct with phrases like “pig sty.” At the same time, there were multiple shootings that injured at least five people on the south side of the city.² During 2020, Minneapolis has experienced at least 44 homicides and a total of 3,077 violent crimes. The homicide rate in 2020 is more than double what it was in 2019, and the violent crime rate is running far ahead of last year’s total.

3. It doesn’t have to be this way. In fact, it *would not* be this way if the City Council and the Mayor did their jobs. The City Council and the Mayor are *required* by the City Charter to provide for public safety by funding and employing a working police force. The City Charter, in Article VII, section 7.3(c), requires the City Council to fund 0.0017 police per citizen in Minneapolis. Section 7.3(a) gives the Mayor “complete power over the establishment, maintenance, and command of the police department.” As a result of these two provisions, the City Council must fund, and the Mayor must employ, 743 officers based on the number of Minneapolis residents in 2020.³

4. At the beginning of the year, Minneapolis employed and deployed a police force of about 825 officers, in excess of the required minimum.⁴ However, in just the first seven months of the year, at least 80 officers have retired or quit, up dramatically from the annual average of 45.⁵

5. This exodus continues unabated. In his 2021 Budget Address on August 14, Mayor Frey stated that he expects 100 police officers to retire from the force by year-end.⁶ In addition,

² <https://www.startribune.com/minneapolis-fifth-police-precinct-hit-with-rocks-graffiti/572131892/>.

³ 2019 resident totals would require 730 officers.

⁴ <https://www.startribune.com/what-you-need-to-know-about-proposal-to-end-the-mpls-police-department/571761992/>.

⁵ <https://www.southwestjournal.com/news/2020/08/summer-crime-spree/>.

⁶ <https://youtu.be/mzRWpSeuBSA?t=759> (12:39 onward); <https://www.startribune.com/minneapolis-mayor-proposes-keeping-vacant-100-police-jobs/572111892/>.

Mayor Frey said those eliminated positions would be “included in our hiring freeze,” meaning they will not be replaced.⁷ Furthermore, all remaining Minneapolis’ police training academies for 2020 have been canceled, meaning the number of police on the force will continue to fall as current officers leave the force throughout the remainder of 2020 with no replacement hiring absent this Court’s intervention.⁸

6. As bad as that is, it’s only part of the massive current attrition of active duty Minneapolis police officers. The City Council and the Mayor have told the police unequivocally that their jobs will soon be eliminated and that their service will no longer be required or desired. As just one example of many, in June, a self-described “veto-proof majority” of the City Council announced that it would “dismantle” the police department and “end policing as we know it” by replacing police officers with community-based public safety programs.⁹ In addition, both the City Council and Mayor Frey have made multiple public statements disparaging the police, with not a single public indication of support.

7. Due to the hostile working conditions created by Mayor Frey and the City Council, by the end of July, more than 200 officers had applied for disability—about 20% of the entire force.¹⁰ According to a city spokesperson, on July 17 a total of 111 officers were on some type of medical leave, including 40 PTSD claims filed just since May 26.¹¹ According to the *Star Tribune*, the city could lose as many as one-third of its officers by year-end due to disability and medical

⁷ *Id.*

⁸ <https://minnesota.cbslocal.com/2020/07/31/crime-is-out-of-control-minneapolis-officials-address-uptick-in-violence/>.

⁹ <https://www.forbes.com/sites/tommybeer/2020/06/12/minneapolis-city-council-unanimously-votes-to-replace-police-with-community-led-model/#3dad0ea671a5>

¹⁰ *See supra* n. 5; <https://thecrimereport.org/2020/07/22/20-of-minneapolis-police-officers-may-depart/>.

¹¹ <https://www.startribune.com/staggering-number-of-mpls-cops-are-filing-disability-claims/571809512/>.

leave.¹²

8. After its members, including Lisa Bender and Jeremiah Ellison, made public and radical “dismantle the police” pronouncements on June 7,¹³ the City Council apparently realized for the first time that the City Charter requires a vote of the citizens before reducing the police force below the required minimum of 743. So, in addition to proposing wresting authority over the police from the Mayor, the City Council decided to defund the police incrementally. Thus, the City Council turned its eye to slashing the police budget, and the Mayor has complied. On July 24, the City Council diverted \$1.5 million from the Minneapolis Police to an Office of Violence Prevention.¹⁴ In addition, the \$193 million police budget for 2020 will reportedly be cut by \$10 million.¹⁵ With a hiring freeze, no training programs, and an encouragement of officers to leave the Minneapolis police force, the City Council is accomplishing its stated goal of a quick (but illegal) dismantling of the Minneapolis police force.

9. While the City Council claims that a sufficient number of armed police are not required for public safety, when it comes to their own safety, the City Council has protected themselves with armed guards at the citizens’ expense. Media reports indicate that the city has paid \$152,400 for armed protective agents for three City Council members—a private armed security force so the Council members do not need to rely on the disintegrating Minneapolis police force.¹⁶ So while citizens are being terrorized by a crime spree and the City Council is proclaiming

¹² <https://www.startribune.com/minneapolis-police-face-staffing-challenges-as-violence-rises/571982152/>.

¹³ <https://www.cnn.com/2020/06/07/us/george-floyd-protests-sunday/index.html>.

¹⁴ <https://www.startribune.com/minneapolis-council-approves-first-substantial-cuts-to-police/571891532/>.

¹⁵ <https://thecrimereport.org/2020/07/27/1034044/>.

¹⁶ <https://www.startribune.com/minneapolis-spent-152-400-for-private-security-for-3-city-council-members/571765432/>.

that police are not the answer, they hire their own special private police force at taxpayer expense. The people of Minneapolis deserve to be treated at least as well as the City Council members treat themselves.

10. The City Council and the Mayor have the unqualified duty to fund and employ the Minneapolis Police. They are failing in that duty. The Court should issue a writ of mandamus to require the City Council and the Mayor to do their jobs.

PARTIES

11. Petitioner Cathy Spann is a resident and taxpayer of Minneapolis, Minnesota and Hennepin County.

12. Petitioner Aimee Lundberg is a resident and taxpayer of Minneapolis, Minnesota and Hennepin County.

13. Petitioner Jonathan Lundberg is a resident and taxpayer of Minneapolis, Minnesota and Hennepin County.

14. Petitioner Don Samuels is a resident and taxpayer of Minneapolis, Minnesota and Hennepin County.

15. Petitioner Sondra Samuels is a resident and taxpayer of Minneapolis, Minnesota and Hennepin County.

16. Petitioner Julie Oden is a resident and taxpayer of Minneapolis, Minnesota and Hennepin County.

17. Petitioner Audua Pugh is a resident and taxpayer of Minneapolis, Minnesota and Hennepin County.

18. Petitioner Georgianna Yantos is a resident and taxpayer of Minneapolis, Minnesota and Hennepin County.

19. Respondent Minneapolis City Council is the duly constituted city council for the City of Minneapolis, Minnesota. The Minneapolis City Council's office is located at Minneapolis City Hall, City Hall, Room 307, 350 South Fifth Street, Minneapolis, MN 55415.

20. Respondent Mayor Jacob Frey is the Mayor of Minneapolis. His office is located at Minneapolis City Hall, 350 Fifth St. S., Room 331, Minneapolis, MN 55415.

JURISDICTION AND VENUE

21. The Court has jurisdiction over this petition pursuant to Minn. Stat. § 586.11.

22. Venue is proper in this Court because the Defendants are located in Hennepin County, Minnesota.

FACTS

The City Council Must Fund, and the Mayor Must Employ, At Least 743 Peace Officers in Minneapolis

23. The Minneapolis City Council exists and derives its authority from the Minneapolis City Charter, and pursuant to Article IV. § 4.1, which states, in relevant part:

- a. "The governing body is the City Council, in which the City's general legislative and policymaking authority resides." Section 4.1(a).
- b. "The Council may act on the City's behalf in any matter, except where—(1) this charter reserves the action for a different board, commission, or committee; or (2) the action is inconsistent with this charter or otherwise unlawful." Section 4.1(b).

24. The authority for the Minneapolis City Charter is derived from Minn. Stat. § 410.04.

25. The powers of the City Council are limited by the provisions of Minn. Stat. §§ 410.12 and 410.19.

26. Minn. Stat. § 410.12 limits the power of the Council to amend the Charter.

- a. Subdivision 5 of that statute requires that if the Council seeks amendment

through the city’s voters, it must propose an amendment, which is submitted to the charter commission, and thereafter can be submitted for a vote to the people of the city.

- b. Subdivision 7 of that statute requires that for the charter to be amended by ordinance, the charter commission must recommend a charter amendment, which must then be publicly heard by the Council, and then may be enacted upon a unanimous vote of the Council and approval by the Mayor.

27. Minn. Stat. § 410.19 provides that the City Charter’s provisions “defin[e] the powers and duties of the mayor and each member of the council.”

28. The Charter imposes duties and obligations on the City Council and Mayor.

29. Among those duties and obligations, the City Charter, section 7.3, requires as follows:

- a. “The Mayor has complete power over the establishment, maintenance, and command of the police department. The Mayor may make all rules and regulations and may promulgate and enforce general and special orders necessary to operating the police department. Except where the law vests an appointment in the department itself, the Mayor appoints and may discipline or discharge any employee in the department (subject to the Civil Service Commission's rules, in the case of an employee in the classified service).” Section 7.3(a).
- b. “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.” Section 7.3(c).

30. Thus, the Charter unambiguously requires that Minneapolis fund and employ a “police force” of 743 employees, based on the 2020 number of residents in Minneapolis.

31. The “police force” consists of “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.” <https://www.merriam-webster.com/dictionary/police%20force>.

32. Thus, the “police force” in City Charter section 7.3 refers to licensed peace officers, and not other employees of the Minneapolis Police Department.

33. Based on public sources, at the beginning of 2020, Minneapolis employed approximately 825 licensed peace officers in its police force.

34. Based on public sources, as of the date of this Petition, 80 or more employees of the police force have retired during 2020.

35. Based on public sources, as of the date of this Petition, more than 200 employees of the police force had applied for disability leave during 2020.

36. Because Minn. Stat. § 176.011, Subd. 15(e) was added in 2019 to create the presumption that post-traumatic stress disorder and other mental impairments suffered by police officers are “presumptively an occupational disease,” there is a strong probability that virtually all of these leaves will be granted.

37. Based on public sources, as of the date of this Petition, at least 111 employees of the police force are on medical leave.

38. The Mayor publicly stated, on August 14, 2020, that about 100 employees of the police force are expected to retire by the end of 2020.

39. Minneapolis has instituted a hiring freeze, and the Mayor publicly stated, on August 14, 2020, that the hiring freeze would prevent Minneapolis from replacing the vacancies created by the retirement and termination of employees of the police force during 2020.

40. Minneapolis has canceled its police academies for August 2020, which are usually a source of new employees to be added to the police force.

41. Based on public sources, therefore, there are, at most, 634 (825, minus 80 retirees, minus 111 on medical/disability leave) employees of the police force employed by Minneapolis and working on the police force. However, given that the more than 200 applications for disability

leave already have been or likely will be granted, the number of employees of the Minneapolis police force is likely closer to 440.

42. Only having between 440 and 634 employees of the police force at any given time violates the Minneapolis City Charter, sections 7.3(a) and 7.3(c).

43. Because the Mayor and City Council have has instituted a hiring freeze and canceled Minneapolis' police academies, the Mayor and City Council will not be able to increase the number of employees of the police force to comply with the City Charter absent an order from this Court.

44. In addition, the City of Minneapolis and the Police Officers' Federation of Minneapolis have entered into a Collective Bargaining Agreement ("CBA") that is in effect and governs wages and benefits for employees of the Minneapolis police force.¹⁷

45. The City Council cannot reduce funding such that it would violate the CBA, and the City Council has a duty to fund the employment of at least 743 licensed peace officers at any given time.

46. Thus, if the Court orders the Mayor to hire licensed peace officers to increase the employment of the police force above the minimum, the City Council must ensure that the funding for those peace officers is consistent with the CBA.

47. Petitioners, through counsel, brought these matters to the attention of the City Council and Mayor via a letter on August 4, 2020. That letter is attached as Exhibit 1.

48. In response to that letter, Interim City Attorney Erik Nilsson did not dispute that the City Council is failing to fund 0.0017 employees of the police force, or that the Mayor is employing or maintaining fewer than 0.0017 employees of the police force. Instead, he claimed

¹⁷ http://www2.minneapolismn.gov/hr/laboragreements/labor-agreements_police_index.

that the Minneapolis City Charter “does not require that all of those positions be filled at any given time.” That response is attached as Exhibit 2.

Petitioners Need Expedited Relief Due to the Increase in Crime in Minneapolis

49. Petitioners need expedited relief pursuant to this Petition because of the ongoing increased crime and violence in Minneapolis caused by Respondents’ failures to fund and employ the police.

LEGAL ARGUMENT

50. Under Minn. Stat. § 586.01, a writ of mandamus may be issued to “any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station.”

51. The Petitioners, as taxpayers and residents of Minneapolis, are beneficially interested in the issuance of a writ of mandamus forcing the City Council to fund, and the Mayor to employ an adequate police force. *Scinocca v. St. Louis Cty. Bd. of Comm'rs*, 281 N.W.2d 659, 660 (Minn. 1979).

52. 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).

53. Petitioners 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.

54. To obtain a writ of mandamus, a petitioner must establish that the official, person, corporation, or board had a clear and present official duty to perform a certain act. *McIntosh v. Davis*, 441 N.W.2d 115, 118 (Minn. 1989).

55. The Mayor is a person with a legal duty to maintain the police force such that it employs at least 0.0017 employees of the police force per resident of Minneapolis, or 743 licensed peace officers. City Charter § 7.3(a).

56. The City Council is the governing body of the municipal corporation that is Minneapolis, and it has a legal duty to fund the police force such that it employs at least 0.0017 employees of the police force per resident of Minneapolis, or 743 licensed peace officers. City Charter § 7.3(c).

57. The Mayor's duty to employ, and the City Council's duty to fund, at least 0.0017 employees of the police force per resident of Minneapolis, or 743 licensed peace officers, are present official duties to perform certain acts.

58. The Mayor has no discretion to employ fewer than 0.0017 employees of the police force per resident of Minneapolis, or 743 licensed peace officers, as of August 14, 2020.

59. Because the City is bound to a CBA with the Federation, the City Council has no discretion as to *how* to fund the employment of the minimum 0.0017 employees of the police force per resident of Minneapolis, or 743 licensed peace officers, as of August 14, 2020.

60. The Mayor has failed to employ at least 0.0017 employees of the police force per resident of Minneapolis, or 743 licensed peace officers, pursuant to City Charter § 7.3. The current number employed on the police force is 634 or fewer.

61. The City Council has failed to fund at least 0.0017 employees of the police force per resident of Minneapolis, or 743 licensed peace officers, force pursuant to City Charter § 7.3. The current number of employees of the police force funded by the City Council is 634 or fewer.

62. There is no valid excuse for Respondents' nonperformance.

63. The Court should issue a peremptory writ of mandamus ordering Respondents to comply with Section 7.3 of the Minneapolis City Charter and employ and fund at least 0.0017 employees of the police force per resident of Minneapolis, or 743 licensed peace officers.

PRAYER AND DEMAND FOR RELIEF

64. Petitioners pray that the Court find, adjudge, and decree that Respondents have failed and refused to perform their legal duty to fund and employ the Minneapolis police, as described herein.

65. 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 of Minneapolis, consistent with the number of residents currently in Minneapolis and the city's CBA with the Federation. Minn. Stat. § 586.03.

66. Petitioners demand that the Respondents, immediately after the receipt of a copy of the writ of mandamus, comply with Section 7.3 of the Minneapolis City Charter and fund and employ at least 0.0017 licensed peace officers to police the City of Minneapolis consistent with the number of residents currently in Minneapolis and the city's CBA with the Federation.

67. Alternatively, the Petitioners pray for an alternative writ of mandamus and demand that the Respondents show cause, at a time and place as soon as possible, on an expedited basis, to be determined by the Court, why Respondents have not complied with their obligations described herein. Minn. Stat. § 586.03.

68. If the Court issues an alternative writ, Petitioners pray that the Court direct the time and manner of service for any Order to Show Cause or Writ.

69. Petitioners pray that, upon prevailing, the Court award them their costs and disbursements incurred in this action.

70. Petitioners pray that the Court award them such other and further relief as may be just, lawful, and appropriate.

UPPER MIDWEST LAW CENTER

Dated: August 17, 2020

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ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: August 17, 2020

/s/ James V. F. Dickey
James V. F. Dickey (#393613)