

STATE OF MINNESOTA
IN SUPREME COURT
A21-0931



Cathy Spann, et al.,

Appellants,

vs.

Minneapolis City Council, et al.,

Respondents.

O R D E R

Appellants Cathy Spann, Aimee Lundberg, Jonathan Lundberg, Don Samuels, Sondra Samuels, Julie Oden, Audua Pugh, and Georgianna Yantos filed an action for a writ of mandamus against respondents Minneapolis City Council and Minneapolis Mayor Jacob Frey. The district court concluded that section 7.3 of the Minneapolis City Charter imposes a clear legal duty on the City Council and Mayor to fund and employ 0.0017 sworn police officers per Minneapolis resident. Because the parties stipulated that future employment numbers were projected to fall below this minimum threshold, the district court issued an alternative writ of mandamus ordering the City Council and Mayor to fund and employ 730.33 sworn police officers “or a number of sworn police officers equaling 0.0017 of the 2020 census population when published . . . , whichever is higher.” The City Council and Mayor were ordered to make return of the alternative writ on June 30, 2022, showing either

compliance or cause for failing to fund and employ this minimum number of sworn officers.

The court of appeals reversed, holding that the City Council was meeting its clear legal duty to fund approximately 731 sworn officers based on the 2020 census and that the plain language of section 7.3 does not impose a corresponding duty to employ this minimum number of officers upon the Mayor.

We granted the appellants' petition for review and their motion for expedited consideration. The return on the district court's writ is scheduled for June 30, 2022. So as to not interfere with that schedule, we issue this order with opinion to follow. As explained below, we affirm in part, reverse in part, and remand this matter to the district court for the show cause hearing as scheduled.

Two sections of the Minneapolis City Charter bear upon the question of whether the City has an obligation to employ at least 731 sworn officers. Section 7.3 grants the Mayor "complete power over the establishment, maintenance, and command of the police department" and provides that "[e]xcept where the law vests an appointment in the department itself, the Mayor appoints . . . any employee in the department." Minneapolis, Minn., Charter § 7.3(a). Section 7.3 then requires that the City Council "fund a police force of at least 0.0017 employees per resident, and provide for those employees' compensation." Minneapolis, Minn., Charter § 7.3(c). Focusing exclusively on section 7.3, one reasonable interpretation of the City Charter is that the City Council has a clear legal duty to fund 731 sworn officers in section 7.3(c) but the Mayor's "complete power" over the police

department in section 7.3(a) is not subject to an implicit duty to employ this same number of officers.

But an alternative reasonable interpretation is presented based upon section 1.3(b), which states that although the “charter fully restates and supersedes every prior version . . . except as this charter or an amendment explicitly provides otherwise, the charter does not affect . . . [the] composition . . . of any . . . department . . . or the . . . powers[] or duties of any officer.” Minneapolis, Minn., Charter § 1.3(b). In other words, when it comes to the powers or duties of an officer like the Mayor, or the composition of a department like the police department, a charter amendment only affects a substantive change on those issues if the amendment “explicitly provides” that it is intended to do so. Section 1.3(b), therefore, is not a typical supersession clause stating that the current language supersedes all prior versions. Instead, by its plain terms, section 1.3(b) expressly commands that when the Mayor’s powers or duties or the police department’s composition are at issue, the court must ascertain whether any amendment to the relevant language was intended to be substantive. If the express intention of the amendment was substantive, the amended language alone controls.¹ But section 1.3(b) correspondingly requires that if the language

¹ Although not specifically at issue in this appeal, the ballot question for the Charter amendments in 2021 informed the voters that the amendments were intended to reflect a substantive change in the Mayor’s powers. Accordingly, under section 1.3(b), the new Charter provision controls over a prior inconsistent Charter provision. *See* Minneapolis, Minn., Ordinance No. 2021-056 at 1 (asking “Shall the Minneapolis City Charter be amended to adopt a change in its form of government to an Executive Mayor-Legislative Council structure to shift certain powers to the Mayor, consolidating administrative authority over all operating departments under the Mayor, and eliminating the Executive Committee?”).

at issue was the product of a non-substantive amendment, then the amended language cannot affect the Mayor’s powers or duties, or the police department’s composition.

Here, nothing in the language of section 7.3 or the ballot question presented to the voters in 2013 that resulted in the current language “explicitly provides” that it is altering the duties of the Mayor in relation to the police department. *See Explicit, Black’s Law Dictionary* (11th ed. 2019) (defining “explicit” as “[c]lear, open, direct, or exact” or “[e]xpressed without ambiguity or vagueness; leaving no doubt”). Instead, the current language of section 7.3 is the product of a 2013 amendment (effective in 2015) completely revising the charter, which was put to the voters as “moderniz[ing] the Charter” and “redraft[ing] its provisions for brevity and in plain language.”² Minneapolis, Minn., Charter Editor’s Note. Section 1.3(b) can therefore reasonably be read to require that section 7.3 carry-over the Mayor’s powers and duties from the prior charter, because the 2013 amendment did not explicitly provide for a substantive change in that respect. *Cf. City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 159 (Minn. 2017) (rejecting an interpretation of the Minnesota Constitution that “would contradict the official representation made to the voters that the 1974 changes were meant to ‘improve [the

² The 2013 ballot question stated in full:

Shall the Minneapolis City Charter be amended in the form of a complete revision which (1) modernizes the Charter; (2) redrafts its provisions for brevity and in plain language; (3) reorganizes the charter into nine articles, and groups related provisions together; (4) removes from the Charter certain provisions for possible enactment into ordinance; and (5) retains the current role and relationships of City boards and commissions?

Minneapolis, Minn., Charter Editor’s Note.

constitution's] clarity . . . without making any consequential changes in its legal effect' ” (alteration in original)).

Moreover, language from the prior charter reflects that the Mayor's power was subject to a duty to employ a police force with a minimum number of officers. The section of the prior charter entitled “Powers of Mayor over Police,” provided that “[t]he mayor shall be vested with all the powers . . . connected with and incident to the establishment, maintenance, appointment, removal, discipline, control and supervision of [the] police force, *subject to the limitations herein contained*” and required that “[t]he personnel of the police department *shall be established and maintained at a ratio, or as closely thereto as is possible within the limits of section 2 hereof, of not less than one and seven-tenths (1.7) employees per one thousand (1,000) of*” the City's population based on “the latest United States official census.” Minneapolis, Minn., Charter ch. 6, § 1 (Dec. 15, 2014 version) (emphasis added). Section 2, in turn, concerned the City Council, and imposed a funding requirement that, “[f]or the sole purpose of maintaining the personnel of the Police Department as provided in Section 1 hereof, the City Council . . . shall levy a tax annually . . . in such amount as is necessary to maintain the Police Department personnel ratio,” subject to a “three (3) mills on each dollar” ceiling on such a levy. *Id.* § 2. In other words, the version of the charter before the non-substantive amendment in 2013 makes clear that the Mayor must establish and maintain a police force at the 0.0017 ratio, or as close to that number as possible if taxation limits bar the City Council from fully meeting its funding obligation.

These two reasonable alternative interpretations—one based on section 7.3 alone, and the other also relying on section 1.3(b)—give rise to an ambiguity that permits us to consider not just the current language of the charter and its pre-amendment form, but also “the occasion and necessity for the law,” “the circumstances under which it was enacted,” “the mischief to be remedied,” “the object to be attained,” and the “contemporaneous legislative history.” Minn. Stat. § 645.16 (2020); *see* Minneapolis, Minn., Charter § 1.3(d)(2) (stating that “the canons of construction and other principles of interpretation in the Minnesota Statutes apply to this charter,” unless the charter provides otherwise).

The history on this issue is clear. The provision that would ultimately become the funding provision in section 7.3(c) was clearly meant to address a crime wave in the early 1960s and actually bring onboard 180 additional police officers to combat that crime wave. This intent is reflected in the ballot question posed to the voters in 1961, which asked whether the charter should be amended “to increase the Police Force by establishing a ratio of 1.7 employees per 1,000 residents.” And this historical understanding of the provision as an employment requirement—not just a funding requirement—was clearly expressed in the charter before the 2013 revision that went into effect in 2015. *See* Minneapolis, Minn., Charter ch. 6, § 1 (Dec. 15, 2014 version). Tellingly, the City effectively conceded as much in its brief, by making no argument that its interpretation of the current charter could stand if ambiguity was found. In light of the current Charter’s instruction that the current “charter does not affect . . . [the] composition . . . of any . . . department . . . or the . . . powers[] or duties of any officer,” Minneapolis, Minn., Charter § 1.3(b)(2)–(3), and the representation to the voters that the 2013 amendment was to be a non-substantive update

for brevity and plain language, *see* Minneapolis, Minn., Charter Editor’s Note, the fact that the prior charter required the Mayor to actually employ 731 sworn officers requires us to conclude that the Mayor continues to have a clear legal duty to employ 731 sworn officers.

Because of the Mayor’s clear legal duty to actually employ at least 731 sworn officers, the district court did not err in issuing an alternative writ of mandamus ordering the Mayor to comply with this duty and requiring the Mayor to return to the district court with proof that the City actually employed 731 sworn officers or explain why the Mayor could not satisfy that duty such that the district court should not issue a peremptory writ. Contrary to the Mayor’s arguments, the alternative writ did not improperly intrude on the Mayor’s hiring discretion because it simply commanded him to meet his clear legal duty; it did not dictate the manner in which he must achieve the minimum force requirement.³ *See Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 173–74 (Minn. 2006) (quashing a writ of mandamus issued by the district court that instructed the defendant how it was to bring its comprehensive land use plan into conformity with its zoning ordinance, but remanding to the district court to issue a new writ that commanded the defendant to

³ A district court may issue an alternative writ of mandamus or a peremptory writ of mandamus. Minn. Stat. § 586.03 (2020). An alternative writ commands “the defendant do the required act, or show cause before the court . . . why the defendant has not done so,” either immediately or at a later date. *Id.* A peremptory writ requires the defendant to do the required act without a show-cause option. *Id.* When mandamus is appropriate, the district court may issue an alternative writ unless “it is apparent that no valid excuse for nonperformance can be given,” in which case the district court may issue a peremptory writ “in the first instance.” Minn. Stat. § 586.04 (2020). If the defendant shows compliance with the alternative writ, or cause for why they have been unable to comply with the alternative writ, the alternative writ should be quashed and no peremptory writ shall issue. *See* Minn. Stat. §§ 586.06–.09 (2020).

reconcile its comprehensive plan and zoning ordinance provision as required by statute). Although the Mayor argues that his efforts to increase retention and hiring in the Minneapolis Police Department (much of which are representations about what the Mayor has done since the alternative writ issued) demonstrate that he is actively exercising his discretion—and so mandamus is inappropriate—these efforts go to the question of whether cause exists for failing to meet his clear legal duty; they do not compel a conclusion that the district court abused its discretion when issuing the alternative writ of mandamus based on the record before it at that time.

Turning to the City Council’s uncontested clear legal duty to fund 731 sworn officers, the parties stipulated that “[t]he 2021 budget provides actual funding for an average of 770 sworn officers.” Actual funding for 770 sworn officers is more than the 731 sworn officer minimum required by section 7.3(c). Accordingly, the district court erred in issuing an alternative writ of mandamus ordering the City Council to fund at least 731 sworn officers.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The decision of the court of appeals is affirmed in part, reversed in part, and the case is remanded to the district court for further proceedings consistent with this order. Because the Mayor has a clear legal duty under the Minneapolis City Charter to employ at least 731 sworn police officers, the district court did not err when it issued the alternative writ of mandamus requiring the Mayor to meet that clear legal duty or show cause why that duty is not being met. On remand, the district court may consider additional evidence

offered by the parties of events that have transpired since the writ was issued.⁴ But the district court may not control the manner in which the Mayor exercises his discretion to hire the requisite number of officers.

2. Because the City Council is meeting its clear legal duty to fund at least 731 sworn officers, we reverse the district court’s alternative writ of mandamus as it applies to the City Council.

Dated: June 20, 2022

BY THE COURT:

Lorie S. Gildea
Chief Justice

⁴ We have no reason to question the averments made in the court of appeals’ concurring opinion regarding “the city’s representations at oral argument [before that court] that the mayor is making a good-faith effort to hire the specified number of officers that has already been funded.” *Spann v. Minneapolis City Council*, 973 N.W.2d 321, 330 (Minn. App. 2022) (Connolly, J., concurring). But such representations—along with the information submitted to this court for our consideration in a motion to supplement—have no bearing on the inquiry here as to whether the district court abused its discretion in issuing the alternative writ of mandamus based on the record before it at that time. We thus deny the motion to supplement, but without prejudice, and instead acknowledge the appropriateness of offering this evidence in proceedings on remand. *See State ex rel. Rose Bros. Lumber & Supply Co. v. Clousing*, 268 N.W. 844, 846 (Minn. 1936) (explaining that “[t]he [district] court is bound to consider the situation as it exists as of the time of the hearing”).