

## NEW ORLEANS CHARTER AMENDMENT, NOVEMBER 8, 2022

### IN BRIEF

New Orleans voters will decide November 8 whether to amend the City's charter to require City Council confirmation of the mayor's appointments of all department heads and allow the council to confirm certain other administrators. Currently, the charter authorizes the mayor to make these appointments without the council's approval or input. If approved, the amendment would take effect January 1, 2023. It would apply only to appointments made on or after that date. Because the amendment would not apply to current administrators, the primary impact would be on future mayoral administrations.

Proponents say the charter change is necessary to provide an additional layer of scrutiny to help ensure top administrators are well qualified and ready for the job. Opponents say the change would usurp a key mayoral power and could lead to gridlock and political dealmaking between the mayor and council.

The mayor vetoed an ordinance to place the charter amendment on the ballot, but the council voted 5-2 to override the veto, giving voters the final say.

The proposed charter amendment would:

- Require City Council confirmation of the mayor's appointments of all 11 department heads established in the charter, including the police and fire superintendents.
- Permit the council to adopt an ordinance requiring its confirmation of mayoral appointments to head any other department, office or unit to which executive powers have been assigned.
- Allow the mayor to temporarily bypass council confirmation by making an interim appointment for up to 120 days.

### REPORT HIGHLIGHTS

- A BGR analysis found that city council confirmation of department heads is a widely used practice among 25 peer cities. In 20 of the cities, or 80%, the council confirms some or all department heads. The councils in the other five cities (20%) do not confirm department heads, as is the current situation in New Orleans.
- The current appointment process in New Orleans gives the mayor full discretion to make appointments with no external checks to help ensure the appointees are well qualified. Mayors typically interview candidates in private and make appointments without input from the council or public. The lack of a public vetting process can limit citizens' confidence that top administrators are capable and free from conflicts of interest.

**IN BRIEF CONTINUED ON NEXT PAGE**

#### About BGR's *On the Ballot* Series

This report is part of BGR's *On the Ballot* series, which provides voters with objective, nonpartisan analysis of significant ballot propositions in the New Orleans metropolitan area. In producing these reports, BGR recommends positions consistent with its mission of promoting informed public policy making and the effective use of public resources to improve local government. *On the Ballot* reports highlight the strengths and weaknesses of ballot propositions and assess the potential for government expenditures or actions to efficiently achieve beneficial outcomes for citizens.

## INBRIEF

- Council confirmation would add another layer of transparency and accountability for mayoral appointments. Council members said they plan to hold public hearings to vet appointees and learn how they would lead their departments, if confirmed. Such a public review could also make it more likely that candidates with potential conflicts of interest or poor performance in previous positions would be identified prior to appointment and removed from consideration. Moreover, a public vetting process would provide the mayor with an incentive to thoroughly scrutinize candidates and not put forward any who are unqualified.
- While some have expressed concern about the amendment diminishing the mayor's executive powers, the mayor would still oversee all departments and could remove unclassified administrative appointees at any time. Also, the council would be limited to approving or rejecting the mayor's appointees and could not install its own picks.
- The council could adopt an ordinance to extend its confirmation powers to certain administrative positions, including the heads of 13 special mayoral offices. Citing a proliferation of these offices – mayors have added nine since 2010 – BGR has recommended that the City review the offices for duplication of executive functions and other inefficiencies. Public hearings on the appointees to head some of these offices could help both the council and the public assess the scope and necessity of the offices.
- Opponents of the charter amendment have raised concerns about the potential for gridlock through repeated rejections of mayoral appointees. To address this, the council added the provision authorizing the mayor to make interim appointments for up to 120 days without council confirmation. However, the interim appointment process includes some ambiguities that could result in litigation.
- There is a risk that the confirmation process could be undermined by political dealmaking between the mayor and council in which the appointee's merits are not the sole consideration. The council could reduce this risk by establishing a clear process and criteria for evaluating appointees, but it has yet to do so.
- While the council already has sufficient investigative and disciplinary authority to remove unqualified or unethical administrators, this is a reactive approach. Additional scrutiny through the confirmation process could help identify poor administrative candidates prior to their appointments.

## BGR POSITION

**FOR.** The charter amendment would provide significant transparency benefits to help make all mayoral administrations more open and responsive to the public. Requiring the City Council's confirmation of mayoral appointments of department heads would set a clear expectation for public accountability before administrators take office. The confirmation process also would give appointees an opportunity to explain to the council and citizens how they would apply their experience and expertise to improve the department and address any problems it faces. Such a process would provide an additional check to help ensure the City's top administrators are well qualified and capable. These benefits have made council confirmation of department heads a widespread practice among large cities with mayor-council forms of government, like New Orleans. Extending the option of council confirmation to other top administrative positions would provide another check on the broad mayoral authority to create special offices and bestow executive powers on them. However, the council should use its confirmation authority judiciously to avoid overburdening the executive branch.

BGR's support of the charter amendment is not a criticism of the current administration, which would face a more limited impact from council confirmation than subsequent administrations. Rather, BGR finds that the charter amendment would improve the selection process by increasing transparency and accountability for all administrations. Fully realizing these benefits will hinge on how the council addresses gaps and ambiguities in the proposal. The lack of details on the confirmation process increases the potential for political dealmaking. This could undermine the integrity of the vetting process by shifting the focus away from appointees' qualifications. To reduce this risk, the City Council should establish a clear process and criteria for evaluating prospective appointees. In addition, the council should clarify the provision allowing the mayor to make interim appointments to avoid potential litigation and gridlock. In establishing the confirmation process, the council should engage with the mayor. Such collaboration would help ensure that the charter amendment serves as a check and balance, rather than a political tool.

## INTRODUCTION

New Orleans voters will decide November 8 whether to amend the City's charter to require City Council confirmation of the mayor's appointments of all department heads and allow the council to confirm certain other administrators. Currently, the charter authorizes the mayor to make these appointments without the council's approval or input. If approved, the amendment would take effect January 1, 2023. It would apply only to appointments made on or after that date. Because the amendment would not apply to current administrators, the primary impact would be on future mayoral administrations.

Proponents say the charter change is necessary to provide an additional layer of scrutiny to help ensure top administrators are well qualified and ready for the job. Opponents say the change would usurp a key mayoral power and could lead to gridlock and political dealmaking between the mayor and council.

The seven-member council voted 4-1, with two absences, on April 21 to approve an ordinance placing the proposed charter amendment on the ballot. The mayor vetoed the ordinance, but the council voted 5-2 to override the veto May 5, giving voters the final say.

BGR prepared this report to provide voters with an independent, nonpartisan analysis to help them make an informed decision on the proposed charter amendment. The report begins with an overview of the proposition, followed by background on New Orleans' form of government and the division of powers and responsibilities between the mayor and City Council. It then analyzes the necessity of the proposed charter change and its potential effectiveness. Finally, the report gives BGR's position on the proposal.

## OVERVIEW OF THE PROPOSITION

Currently, the City charter authorizes the mayor to appoint the Chief Administrative Officer (CAO) and the City Attorney as head of the Law Department. It further authorizes the CAO to appoint all other department

heads with the mayor's approval.<sup>1</sup> None of these appointments require council input or approval.

The charter amendment would modify these appointment powers in three ways. It would (1) require the council to confirm the mayor's appointments of all department heads established in the charter, (2) permit the council to confirm certain other executive branch administrators, and (3) allow the mayor to make interim appointments without council approval. The changes would not apply to the CAO, the mayor's second in command, who is not considered a department head.<sup>2</sup>

First, the amendment would require the council's confirmation of all 11 existing department heads as listed in Table 1, which includes the police and fire superintendents. Confirmation would require a majority vote of the council. The council would establish details of the confirmation process by adopting a council rule, which it has not yet done. A council rule requires a majority vote of the council and is not subject to a mayoral veto.<sup>3</sup>

Second, the charter amendment would allow the council to adopt an ordinance requiring its confirmation of mayoral appointments to head any other department, office or unit to which executive powers have been assigned or transferred.<sup>4</sup> This includes at least 13 administrative positions for a variety of purposes. Examples include the special mayoral offices of Economic Development, Neighborhood Engagement and Youth and Families. The council has not adopted an ordinance specifying which departments, offices or units would be subject to its confirmation. Unlike a council rule, an ordinance must be submitted to the mayor for approval or veto.<sup>5</sup>

Finally, the charter amendment would allow the mayor to temporarily bypass council confirmation by making an interim appointment for up to 120 days. If the council failed to confirm, reject or extend an interim appointment before the end of the 120-day period, the appointee would be deemed confirmed. The charter amendment would bar the mayor from making successive interim appointments intended to circumvent the council's confirmation.

**TABLE I. DEPARTMENT HEADS SUBJECT TO CITY COUNCIL CONFIRMATION UNDER THE PROPOSED CHARTER AMENDMENT**

(\$ in millions)

Department	2022 General Fund Budget Allocation	Staff (budgeted positions)
Police	\$176.2	1,511
Fire*	\$120.0	593
Finance	\$50.0	137
Sanitation	\$41.6	71
Public Works	\$30.8	216
Health	\$24.6	192
Parks and Parkways	\$12.2	163
Property Management	\$10.8	87
Human Services/Juvenile Justice	\$9.3	104
Safety and Permits	\$8.1	106
Law	\$6.9	53
<b>Totals for Departments</b>	<b>\$490.5</b>	<b>3,233</b>
General Fund Total	\$652.1	4,217

\* Includes \$32.3 million in General Fund revenues and \$87.7 million in federal grants from the American Rescue Plan Act (ARPA).

Note: The charter authorizes three additional departments that are currently not in existence: Recreation, which is currently the New Orleans Recreation Development Commission; City Civil Service, which is dormant in the charter as long as the State-created civil service system for New Orleans exists; and Utilities, which a previous mayor abolished.

Source: City of New Orleans 2022 Adopted Budget.

## BACKGROUND

New Orleans has a mayor-council form of government that features an elected executive officer, the mayor, and an elected legislative body, the City Council. The two branches serve as checks on one another, but they also must collaborate to ensure the effective and efficient operation of City government. The mayor-council format is one of the two most common forms of municipal government. The other is the council-manager format in which an elected council appoints a professional city manager to carry out executive duties.<sup>6</sup>

Among mayor-council governments, New Orleans has a “strong mayor” format in which the mayor has sub-

stantial powers and responsibilities. This usually includes veto power over council ordinances. In a “weak mayor” format, the council handles many executive responsibilities in addition to all the legislative ones.<sup>7</sup>

In New Orleans, the charter gives the mayor authority to, among other things:<sup>8</sup>

- Oversee the day-to-day operations of City government
- Enforce City ordinances
- Propose operating and capital budgets to the City Council
- Appoint administrators
- Sign contracts

- Sign or veto ordinances adopted by the City Council

Within the executive branch, the charter empowers department heads to set policies with approval of their immediate supervisor and manage key functions of City government. It also authorizes them to appoint, promote, supervise, discipline, and remove all employees in their respective departments and determine their compensation, subject to civil service rules, pay plans and budgets.<sup>9</sup> Given these significant powers and responsibilities, the ability of department heads to make effective decisions is essential to City government performance.

The charter assigns all legislative powers to the City Council. These include the authority to enact local laws, levy taxes, oversee zoning issues, and to modify and adopt the mayor's proposed operating and capital budgets. The council also has broad powers to conduct investigations, with the authority to administer oaths, subpoena witnesses and compel the release of relevant documents. The scope of permissible investigations includes any office, department or board administering the City's affairs.<sup>10</sup> The council has an active investigation into the former head of the mayor's Office of Utilities concerning potential conflicts of interest with the scuttled "smart cities" broadband contract.<sup>11</sup>

The charter also empowers the council to bring charges against administrative appointees who are unclassified (i.e., not in the civil service system), including department heads.<sup>12</sup> Possible charges include a lack of qualifications, incompetence and gross misconduct. If the appointing authority, usually the mayor or CAO, does not dismiss the appointee, the council can hold a public hearing on the charges. If the charges are substantiated, the council can suspend or dismiss the appointee by a majority vote of its members.<sup>13</sup> Notwithstanding the current investigation, the council has rarely used its powers to conduct investigations or bring charges against an administrator.

Finally, while the charter currently gives the mayor free rein in appointing department heads, it requires council confirmation of many mayoral appointments to various

City boards, such as the Historic District Landmarks Commission and the Mosquito, Termite and Rodent Control Board.<sup>14</sup>

## ANALYSIS

The following analysis shows that city council confirmation of department heads is a widespread requirement among large U.S. cities to provide another layer of accountability for mayoral appointees. In addition, public confirmation hearings under the charter amendment would significantly improve transparency in selecting the City's top administrators. While the amendment's opponents fear potential gridlock from repeated rejections of appointees, this is not typically the case in other cities. Moreover, the proposed amendment adds a safeguard in which the mayor could temporarily bypass council confirmation with an interim appointment.

On the other hand, there is a risk that extending the council's confirmation powers beyond department heads could overburden mayoral administrations. The council could address this concern in an ordinance establishing the scope of positions subject to its confirmation, but it has not yet adopted such an ordinance. Similarly, the council has not adopted a rule establishing the process and criteria it would use in evaluating appointees. Finally, a couple of provisions in the proposed charter amendment related to the temporary appointment of department heads are ambiguous and may result in litigation.

### A Widely Used Practice

To assess the prevalence of city council confirmation of department heads nationally, BGR reviewed the charters of 25 peer cities that, like New Orleans, have strong mayor-council governance structures. In selecting the cities, BGR prioritized geographic diversity with a limit of one large city per state. BGR also chose cities close in size to New Orleans when possible.<sup>15</sup> As summarized in Table 2, BGR found that city council confirmation is a widespread practice among the peer cities. In 15 cities, the council approves all department heads. In five other cities, the council approves some department

**TABLE 2. COUNCIL CONFIRMATION OF DEPARTMENT HEADS IN PEER CITIES**

City	Population (2020)	Does the council confirm mayoral appointments of department heads?
Los Angeles, California	3,899,000	YES
Chicago, Illinois	2,746,000	YES
Houston, Texas	2,305,000	YES
Indianapolis, Indiana	888,000	YES
Seattle, Washington	737,000	YES
Denver, Colorado	716,000	SOME
Nashville, Tennessee	689,000	SOME
Boston, Massachusetts	676,000	NO
Detroit, Michigan	639,000	SOME
Baltimore, Maryland	586,000	YES
Milwaukee, Wisconsin	577,000	YES
Albuquerque, New Mexico	565,000	SOME
Atlanta, Georgia	499,000	YES
Omaha, Nebraska	486,000	NO
Minneapolis, Minnesota	430,000	YES
Tulsa, Oklahoma	413,000	NO
Tampa, Florida	385,000	YES
Cleveland, Ohio	373,000	NO
Honolulu, Hawaii	351,000	YES
Lexington, Kentucky	323,000	YES
Pittsburgh, Pennsylvania	303,000	YES
St. Louis, Missouri	302,000	NO
Jersey City, New Jersey	292,000	YES
Buffalo, New York	278,000	SOME
Boise, Idaho	236,000	YES
<b>New Orleans, Louisiana</b>	<b>384,000</b>	<b>NO</b>

BGR analysis of charters in the peer cities and U.S. Census Bureau 2020 census population statistics, rounded to the nearest thousand.

heads. Thus, the councils in 20 cities, or 80% of the total, have some confirmation powers. The councils in the other five peer cities (20%) do not confirm department heads, as is the current situation in New Orleans.

Narrowing the focus to the New Orleans metropolitan area, the two largest general-purpose governments aside from New Orleans – the parish governments in Jefferson and St. Tammany – require confirmation of most or all department head appointees. Each parish has an elected parish president and a parish council. This governance structure is similar to New Orleans’ mayor-council format, though the parish presidents have less power than the mayor. In Jefferson, the parish council’s confirmation is required for all but two of the parish president’s appointed department heads.<sup>16</sup> In St. Tammany, parish council confirmation is required for all the parish president’s appointed department heads.<sup>17</sup>

The prevalence of council confirmation of department heads does not in and of itself demonstrate that it is a beneficial practice. However, it does show that council confirmation is a well-established and tested requirement at the local level. An expert in municipal governance told BGR that council confirmation is widely used because it helps ensure that qualified individuals are appointed to the most important administrative positions.

### **Greater Transparency and Accountability**

In New Orleans, the current appointment process for City administrators gives the mayor full discretion to make appointments with no external checks to help ensure the appointees are well qualified. Mayors and CAOs typically interview candidates in private and make appointments without input from the council or public. The lack of a public vetting process can limit citizens’ confidence that top administrators are capable and free from conflicts of interest.

Council confirmation would address this by adding another layer of scrutiny for mayoral appointments. Councilmembers said the confirmation process would include public hearings, but they have not adopted a rule specifying the level of review and criteria for vetting appointees.

Ideally, citizens would have this information prior to voting, so they could understand the council’s expectations of appointees. While this is a gap in the proposed amendment, the addition of public hearings alone could significantly increase transparency and accountability by publicly disclosing a candidate’s qualifications and potential conflicts. Hearings could also ensure appointees have the experience and expertise necessary to successfully manage the department and address existing or potential challenges. Currently, there is no mechanism to ensure that prospective department heads publicly discuss how they would approach their jobs. A public review also could make it more likely that candidates with potential conflicts of interest or poor performance in previous positions would be identified prior to appointment and removed from consideration. Moreover, a public vetting process would provide the mayor with an incentive to thoroughly scrutinize candidates and not put forward any who are unqualified.

Some opponents of the charter amendment contend there is no need for council confirmation because the council already has sufficient investigative and disciplinary authority to hold mayoral appointees accountable if the mayor does not remove them from office. However, this is a reactive approach, whereas the additional scrutiny through the confirmation process could help identify unqualified or incompetent administrative candidates prior to their appointments.

### **The Balance of Power**

In vetoing the ordinance to place the charter amendment on the ballot, the mayor stated that council confirmation would usurp a key executive power to select top administrators, hamstringing the administration’s ability to address the City’s needs.<sup>18</sup> Some citizens raised similar concerns before the council this spring, saying the amendment would diminish the powers that voters have given to their elected chief executive. However, the reduction in powers would not be substantial because the mayor would still oversee all departments and could remove unclassified administrative appointees at any time. Also, the council would be limited to approving or rejecting the mayor’s appointees and could not install its own picks.

Currently, the council lacks authority under the charter to involve itself in mayoral appointments. For example, it cannot require the mayor to release the names of candidates under consideration for executive leadership roles. Thus, there is no way short of a charter amendment to ensure public scrutiny of the mayor's appointments before they take effect. As previously noted, the charter already requires council confirmation of appointments to many of the more than 100 boards and commissions in New Orleans, which typically have far fewer responsibilities than department heads.<sup>19</sup> From this perspective, the proposed charter change represents a logical extension of an existing practice.

### **Assessing Concerns about Political Dealmaking and Gridlock**

There is a risk that the new confirmation powers could be misused or have negative consequences. For instance, the proposed amendment does not require the council to state a reason for rejecting a mayoral appointee. This could open the door for the council to oppose qualified appointees for political reasons. The council also could approve unqualified appointees as part of undisclosed agreements with the mayor. To guard against such political dealmaking that undermines the vetting process, the council should clearly establish its criteria for evaluating appointees in the rule setting forth the confirmation process. The public could then assess the council's application of these criteria and hold the council accountable if it deviated from them. However, voters have no guarantee that the council will establish clear confirmation criteria.

Opponents of the charter amendment have raised concerns about the potential for gridlock through repeated rejections of mayoral appointees. They said the possibility that key positions could go unfilled is a particular concern during emergencies. To address this, the council added the provision authorizing the mayor or CAO to make interim appointments for up to 120 days without council confirmation. However, the interim appointment process includes some ambiguities that could result in litigation. For example, it is not clear whether the council could reject an interim appointment

immediately or whether it would have to wait the full 120 days, or another term chosen by the mayor. Similarly, courts may have to resolve any disputes about whether successive interim appointments are intended to circumvent council confirmation and, therefore, are prohibited under the amendment. This is especially the case if the mayor cited a different motive, such as the continued operation of City government. Avoiding such ambiguities is particularly important in charter amendments because they are difficult to correct, often requiring voters to approve another amendment. The council should seek to resolve these gray areas in the rule establishing the confirmation process.

BGR found no provisions among the peer cities it reviewed allowing the mayor to temporarily bypass council confirmation by making an interim appointment. Instead, if the council rejects a mayoral appointee, it is up to the mayor to make another appointment. In some cities, if the mayor takes too long to make an appointment, the council can fill the vacancy on its own. Conversely, if the council does not confirm or reject a mayoral appointee within a certain timeframe, the appointee is deemed to be automatically confirmed and can take office in some cities.

The lack of workarounds for a mayor to bypass council confirmation in the peer cities suggests that gridlock may not be a substantial problem. An expert on municipal governance confirmed that in practice, mayors and city councils are typically able to reach agreement on appointees. However, there is no guarantee that New Orleans would follow this trend and avoid problems with gridlock.

Proponents of the charter amendment contend that if appointees are well vetted by the mayor's office beforehand, the confirmation process should run smoothly. Instead of gridlock, the proposed charter change would bring broader input to filling key positions, such as the police and fire superintendents and the director of public works. These appointees oversee critical public safety and infrastructure issues facing the City. Involving the council in filling these positions could build consensus between the two branches of government on a strategy for improving the departments' performance.

**TABLE 3: SPECIAL MAYORAL OFFICES POTENTIALLY SUBJECT TO THE PROPOSED CHARTER AMENDMENT**

Office	2022 General Fund allocation	Staff (budgeted positions)
Homeland Security and Emergency Preparedness	\$12,440,000	50
Youth and Families	\$3,510,000	4
Criminal Justice Coordination	\$2,260,000	10
Economic Development	\$1,090,000	5
Service and Innovation	\$900,000	7
Neighborhood Engagement	\$820,000	9
Cultural Economy	\$800,000	7.2
Supplier Diversity	\$690,000	6
Performance and Accountability	\$510,000	4
Transportation	\$320,000	2
Resilience and Sustainability	\$260,000	2
Utilities	\$140,000	1
Gun Violence Prevention	*	*
<b>Totals for Special Mayoral Offices</b>	<b>\$23,740,000</b>	<b>107.2</b>

\*Data unavailable.

BGR analysis of the City of New Orleans 2022 Adopted Operating Budget

### **Extending Confirmation Beyond Department Heads**

The charter change could bring more attention to some lesser-known administrative positions. It would authorize the council to pass an ordinance extending its confirmation authority to appointments to head any department, office or unit to which executive powers have been assigned. The scope of this authority may require some legal interpretation, but the proposed amendment would appear to permit council confirmation of the administrators of 13 special mayoral offices. As Table 3 shows, the offices cover a wide range of purposes, including public safety, economic development and social services.

In a 2019 report on the City’s budget, BGR noted the proliferation of these special offices.<sup>20</sup> Mayors have created nine of them since 2010. BGR has recommended that the City review the mayoral offices for duplication of executive functions and other inefficiencies.<sup>21</sup> The City Council has some control over these offices

through the appropriation process, but public hearings on appointees could help both the council and the public further assess the scope and necessity of these offices. This would provide another check on the broad mayoral authority to create special offices and bestow executive powers on them.

However, the potential expansion of council confirmation from 11 department heads to include 13 or more additional administrators could be overly burdensome to a new mayor’s administration. This concern is mitigated by the fact that the charter amendment only grants the authority to create an ordinance to provide for council confirmation of these office heads; it does not require the council to do so. Also, any ordinance to require the council’s confirmation would be subject to mayoral negotiation and possible veto. Still, it would have been helpful to voters if the council had adopted such an ordinance prior to the election, subject to voter approval of the amendment.

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### **Is a Comprehensive Charter Review Needed?**

The mayor characterized the charter amendment as a short-sighted, piecemeal proposal that had not received sufficient vetting or public input.<sup>22</sup> Instead, the mayor called for forming a 15-member commission to conduct a comprehensive review of the charter. The commission would seek input from experts and the public in developing recommendations to improve City government. The charter took effect in 1954 and has not undergone a comprehensive review since 1995. That review eventually led to the creation of the Office of Inspector General, among other changes that voters approved.

While a comprehensive charter review could identify additional opportunities to improve City government, the absence of such a review does not negate the potential benefits of the proposed charter amendment already before voters. The proposed amendment is a discrete change that would not have a broad impact on other areas of the charter. In addition, the council gave the public and the Mayor’s Office multiple opportunities to provide feedback before approving the ordinance that put the amendment on the ballot.

### **BGR POSITION**

**FOR.** The charter amendment would provide significant transparency benefits to help make all mayoral administrations more open and responsive to the public. Requiring the City Council’s confirmation of mayoral appointments of department heads would set a clear expectation for public accountability before administrators take office. The confirmation process also would give appointees an opportunity to explain to the council and citizens how they would apply their experience and expertise to improve the department and address any problems it faces. Such a process would provide an additional check to help ensure the City’s top administrators are well qualified and capable. These benefits have made council confirmation of department heads a widespread practice among large cities with mayor-council forms of government, like New Orleans. Extending the option of council confirmation to other top administrative positions would provide another check on the broad mayoral authority to create special offices and bestow executive powers on them. However, the council should use its confirmation authority judiciously to avoid overburdening the executive branch.

BGR’s support of the charter amendment is not a criticism of the current administration, which would face a more limited impact from council confirmation than subsequent administrations. Rather, BGR finds that the charter amendment would improve the selection process by increasing transparency and accountability for all administrations. Fully realizing these benefits will hinge on how the council addresses gaps and ambiguities in the proposal. The lack of details on the confirmation process increases the potential for political dealmaking. This could undermine the integrity of the vetting process by shifting the focus away from appointees’ qualifications. To reduce this risk, the City Council should establish a clear process and criteria for evaluating prospective appointees. In addition, the council should clarify the provision allowing the mayor to make interim appointments to avoid potential litigation and gridlock. In establishing the confirmation process, the council should engage with the mayor. Such collaboration would help ensure that the charter amendment serves as a check and balance, rather than a political tool.

## ENDNOTES

- 1 Home Rule Charter of the City of New Orleans (City Charter), Sec. 4-106 (1) et seq.
- 2 City Charter Sec. 4-208 places the position of Chief Administrative Officer within the Mayor’s Office. In addition, it specifies a process for council appointment of the CAO if the mayor fails to do so within 60 days of any vacancy in the position.
- 3 Rules governing the council’s operation and processes for transacting business are not subject to mayoral veto. See City Charter Sec. 3-107.
- 4 The transfer or assignment of executive powers would have to be in accordance with Section 4-105 or 9-201(2) of the charter.
- 5 City Charter Sec. 3-113.
- 6 National League of Cities, [Cities 101: Forms of Municipal Government](#).
- 7 Specific mayoral powers and duties vary from city to city, but for a general overview see National League of Cities, [Cities 101: Mayoral Powers](#).
- 8 City Charter Sec. 4-206 and 4-401.
- 9 City Charter Sec. 4-107.
- 10 City Charter Sec. 3-124. The charter also permits investigations of any subject upon which the council may legislate; any entity that was created or exists under the authority of the City; and any entity that receives City funds, though such investigations are generally limited to the use of those funds.
- 11 DiColo, Jerry, [“What is New Orleans’ ‘smart cities’ plan? Here’s a primer as the City Council probe deepens.”](#) *The Times-Picayune | The New Orleans Advocate*, June 2, 2022.
- 12 La. Const. Art. 10, Sec. 4 establishes the City’s civil service system and Art. 10, Sec. 2 defines the positions that are unclassified and exempted from the system.
- 13 City Charter Sec. 3-125. The charter does not specify who or what entity would determine whether the charges were substantiated. An attorney for the council told BGR it appears councilmembers could either make this determination themselves or assign it to a hearing officer or some other neutral magistrate.
- 14 City Charter Sec. 4-206(e).
- 15 BGR began with a list of the 100 largest cities in the country, 42 of which have a strong mayor-council governance structure. These 42 cities represent 25 different states, not including Louisiana. From this group, BGR selected one peer city from each of the 25 states, prioritizing cities that are close in size to New Orleans when possible.
- 16 BGR analysis of the Jefferson Parish Charter and Code of Ordinances. The exceptions are the directors of the finance and planning departments, which the parish president appoints without council confirmation.
- 17 The St. Tammany parish president appoints the heads of all departments except for the Legal Department, which is headed by the District Attorney’s Office of the 22<sup>nd</sup> Judicial District. St. Tammany Parish Home Rule Charter, Secs. 4-01 and 4-03.
- 18 Letter from Mayor LaToya Cantrell to Ms. Lora W. Johnson, Clerk of New Orleans City Council, April 26, 2022.
- 19 See <https://www.nola.gov/government/> for a list of New Orleans boards and commissions. City Charter Sec. 4-206(1)(e) provides for the mayor to “appoint, with approval of a majority of all members of the Council, members of boards except as otherwise provided in this Charter or by applicable state or municipal law.”
- 20 BGR, [A Look Back to Plan Ahead: Analyzing Past New Orleans Budgets to Guide Funding Priorities](#), October 2019, pp. 30-32.
- 21 BGR, [PolicyWatch](#), May 21, 2020, p. 6.
- 22 Letter from Mayor LaToya Cantrell to Ms. Lora W. Johnson, Clerk of New Orleans City Council, April 26, 2022.

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### BUREAU OF GOVERNMENTAL RESEARCH

1055 St. Charles Ave., Suite 200  
New Orleans, LA 70130  
Phone 504-525-4152  
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