

STATE OF MINNESOTA
IN SUPREME COURT

A21-0931

Court of Appeals

Gildea, C.J.

Cathy Spann, et al.,

Appellants,

vs.

Filed: August 24, 2022
Office of Appellate Courts

Minneapolis City Council, et al.,

Respondents.

Douglas P. Seaton, James V.F. Dickey, Upper Midwest Law Center, Golden Valley, Minnesota, for appellants.

Peter Ginder, Acting Minneapolis City Attorney, Gregory P. Sautter, Brian S. Carter, Caroline M. Bachun, Assistant City Attorneys, Minneapolis, Minnesota, for respondents.

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S Y L L A B U S

1. The Minneapolis City Charter imposes a clear legal duty on the Minneapolis Mayor to employ at least 0.0017 sworn police officers per Minneapolis resident.

2. The Minneapolis City Council is meeting its uncontested clear legal duty to fund at least 0.0017 sworn police officers per Minneapolis resident.

3. Because the Mayor has a clear legal duty to employ 0.0017 sworn police officers per Minneapolis resident, the district court did not err in issuing an alternative writ of mandamus ordering the Mayor to comply with his clear legal duty, but because the City Council is meeting its uncontested clear legal duty to fund at least 0.0017 sworn police officers per Minneapolis resident, the district court erred in issuing an alternative writ of mandamus requiring the City Council to fund at least this many officers.

Affirmed in part, reversed in part, and remanded.

O P I N I O N

GILDEA, Chief Justice.

This appeal requires us to determine whether the Minneapolis City Charter imposes a clear legal duty on the Minneapolis Mayor and the Minneapolis City Council to employ and fund at least 0.0017 sworn police officers per resident. In the fall of 2020, a group of north Minneapolis residents sought a writ of mandamus to compel the Mayor and City Council to employ and fund this minimum number of officers. The district court issued an alternative writ of mandamus, concluding that the Minneapolis City Charter creates a clear legal duty to employ and fund 0.0017 officers per resident and that the Mayor and City Council had failed to do so. The court of appeals reversed. The court of appeals held that the Mayor does not have a clear legal duty to employ a minimum number of officers and that the City Council is satisfying its clear legal duty to fund 0.0017 officers per resident. On June 20, 2022, we filed an order that affirmed in part, reversed in part, and remanded, concluding that the Mayor has a clear legal duty to employ 0.0017 officers per resident and

that the City Council is meeting its clear legal duty to fund at least this many officers. Our opinion explains the reasons for our decision.

FACTS

In August 2020, eight residents—Cathy Spann, Aimee Lundberg, Jonathan Lundberg, Don Samuels, Sondra Samuels, Julie Oden, Audua Pugh, and Georgianna Yantos—filed a petition for a writ of mandamus seeking to compel the Mayor and City Council to employ and fund at least 0.0017 sworn police officers per Minneapolis resident. The residents argued that sections 7.3(a) and 7.3(c) of the City Charter impose an “unqualified duty” on the Mayor and City Council to employ and fund these officers. The first provision, section 7.3(a), describes the Mayor’s power over the police department:

Police department. 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).

Minneapolis, Minn., Charter § 7.3(a) (2022). The second provision, section 7.3(c), describes the City Council’s obligation to fund a police force:

Funding. 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. This tax is in addition to any other tax, and not subject to the maximum set under section 9.3(a)(4).

Minneapolis, Minn., Charter § 7.3(c) (2022).

The residents further supported their position that the Charter places a minimum force requirement on the Mayor by pointing to language in prior versions of the Charter. The residents noted that the Charter was amended in 2013 and that those amendments became effective in 2015. When discussing the powers of the Mayor, the 2013 Charter stated:

The 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 population of the city according to the latest United States official census.

Minneapolis, Minn., Charter ch. 6, § 1 (Dec. 15, 2014 version). The residents pointed out that this language was first proposed to be included in the Charter in 1961 and that this language was intended to actually increase the size of the police force, not just to increase funding.

Based on their reading of the Charter language, the residents argued that the Charter required the City to employ and fund 743 sworn police officers in 2020 and that the Mayor and City Council were not complying with this duty.¹ The residents alleged that at the beginning of 2020, the City employed approximately 825 officers but that due to retirements, medical leave, and disability leave there were fewer than 743 officers at the time of the petition. Because of a hiring freeze and the City's decision to cancel its

¹ The district court ultimately determined that the ratio would result in 730.33 sworn police officers based on the 2019 population estimate from the U.S. Census Bureau Quick Facts, and the court of appeals noted that the ratio results in 730.92 officers based on the 2020 U.S. Census, *Spann v. Minneapolis City Council*, 973 N.W.2d 321, 324 n.2 (Minn. App. 2022).

August 2020 police academy, the residents claimed that the City would be unable to fill these vacancies. The residents argued that this lack of police was contributing to a surge in violent crime. The residents asked for a peremptory writ requiring the Mayor and City Council to immediately comply with the City Charter or an alternative writ requiring the Mayor and City Council to show cause why they were not complying with their obligations.

In April 2021, the parties reached a stipulation of facts and exhibits governing their dispute. The parties agreed that there were 743 sworn police officers in the Minneapolis Police Department as of April 10, 2021, down from 879 in early January 2020.² By June 1, 2021, the number was projected to be down to 690 officers and remain under 700 officers for at least a full year. This decrease was due to “an unprecedented departure of sworn police officers” following George Floyd’s death on May 25, 2020, and the aftermath. Specifically, 169 officers had left the department, almost four times the normal rate of attrition.³ An additional 70 “then-known or suspected PERA Duty Disability applicants” had not yet left the department. Despite the loss of officers, the 2021 city budget “provide[d] actual funding for an average of 770 sworn officers on payroll.”

The stipulation also addressed what was being done to fill vacancies in the department and future employment projections. The parties agreed that “[h]iring new sworn police officers is a resource intensive process” and that “[t]he pipeline of potential

² The parties do not dispute that fewer than 743 officers are presently employed by the Minneapolis Police Department.

³ The Minneapolis Police Department expects to lose roughly 44 officers in any given year.

sworn officers has shrunk considerably within the last several years.” Specifically, all new officers attend a 3-month long police academy “to onboard and train.” Three such academies were scheduled for 2021 and were expected to add 110 new sworn police officers to the department. While it was still early in the 2022 budget process, the parties agreed that the Mayor’s proposed 2022 budget would likely include training for at least 160 additional officers, the most the department believed that it could train in a year. Based on this information, and assuming a “return to normal attrition after the current group of disability claimants leave the [department],” the department projected that the number of officers would hit a low of 637 in April 2022 and then begin to climb up to 757 officers by the end of January 2023.

After a hearing, the district court issued an alternative writ of mandamus in early July 2021.⁴ In its order, the district court defined “police force” as “all sworn police officers currently employed by the” Minneapolis Police Department, whether “on leave or on the ground.” The district court concluded that the City Council and the Mayor “cannot indefinitely rely on the 2010 Census number to determine how many sworn officers must

⁴ The district court issued an alternative writ of mandamus. 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 [to] 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 noncompliance with the alternative writ, the alternative writ should be quashed, and no peremptory writ shall issue. *See* Minn. Stat. §§ 586.06–.09 (2020).

be employed,” despite acknowledging that the City Charter “is clear and unambiguous” that “any reference to population or other enumeration refers to the latest decennial federal census.” Instead, the district court imposed an obligation “to keep up with projected census numbers as each 10-year period approaches” and concluded that “[t]he City must be proactive.” Ultimately, the district court determined that the City must fund 730.33 officers based on the 2019 population estimate from the U.S. Census Bureau Quick Facts. In a footnote, the district court stated without citation to the record that “[t]he parties do not dispute that ‘to fund’ also requires the City ‘to employ.’ ”

After addressing these preliminary matters, the district court concluded that the residents had “established the essential elements required for the issuance of an alternative writ of mandamus”: “(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.” The district court reasoned that the Mayor and City Council failed to perform their official duties clearly imposed by law because the parties’ stipulated future employment projections fell below the required 730.33 sworn police officers. In concluding “that the failure to [adequately] fund a police force . . . constitutes a ‘public wrong’ that is specifically injurious to” the residents, the district court determined that there was a causal link between the increased crime that the residents were experiencing and the failure to adequately fund the police. Finally, the district court concluded that the residents “cannot seek legislative and/or position changes through the political process . . . because [the residents] are not seeking ‘change’ or a ‘fix.’ ”

The alternative writ of mandamus issued by the district court commanded the Mayor and City Council “to immediately . . . take all necessary action . . . to fund a police force of at least . . . 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.”⁵ The alternative writ further commanded the Mayor and City Council “to make a return of th[e] writ specifying by affidavit what [they] have done to comply with the writ, and to file and serve the return, or show cause before this Court why [they] have not done so, on or about June 30, 2022.”

The court of appeals reversed the issuance of the writ. *Spann v. Minneapolis City Council*, 973 N.W.2d 321, 323 (Minn. App. 2022). The court of appeals identified the “central legal issue” as “whether section 7.3 of the city charter clearly imposes a duty on the city council and the mayor to *not just fund but also to continuously employ* a minimum number of police officers.” *Id.* at 326. The court of appeals noted that the district court did not reach that question because it erroneously concluded that “[t]he parties do not dispute that ‘to fund’ also requires the City ‘to employ.’” *Id.* The court of appeals explained that the Mayor and City Council “consistently maintained” throughout their filings that the Charter only imposes a funding requirement and that the Mayor and City

⁵ The court of appeals took notice that the 2020 U.S. Census states that the population of Minneapolis is 429,954. *Spann*, 973 N.W.2d at 324 n.2. Applying the minimum “0.0017 employees per resident” requirement found in section 7.3(c) of the Charter results in 730.92 sworn police officers. 973 N.W.2d at 324 n.2. The parties do not dispute this calculation. For ease of reference, we will refer to the duty at issue as the duty to fund and employ 731 officers.

Council did not concede at the district court hearing that “to fund” requires the City “to employ.” *Id.*

The court of appeals concluded that although the current language of section 7.3(c) unambiguously “imposes a duty on the city council to continuously fund a minimum number of sworn police officers,” section 7.3(a) “does not direct the mayor to employ any certain number of officers.” 973 N.W.2d at 327. The court of appeals recognized that “it is logical to conclude that if the city council provides funds . . . then the mayor must use those funds for their designated purpose,” but held that this logical inference did not create “a nondiscretionary ‘*duty clearly imposed by law*’ that may be controlled through a writ of mandamus.” *Id.* (quoting *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006) (emphasis added)). The court concluded its analysis by noting “that the mayor’s duty to maintain the police department is a discretionary duty” and that, because the Mayor was “actively exercising his discretion to address the shortage of sworn officers,” there was “no need for mandamus to set that discretion in motion.” *Id.* at 329.

Judge Connolly wrote separately “because [he thought] it is illogical that there is a clear . . . duty to fund a certain number of sworn officers, but no clear duty to employ them.” *Id.* at 330 (Connolly, J., concurring specially). Nevertheless, he agreed that “the city charter provides *no clear duty* to employ a certain number of sworn officers.” *Id.* He noted that his decision was “also influenced by the city’s representations at oral argument that the mayor is making a good-faith effort to hire the specified number of officers that has already been funded.” *Id.*

We granted the residents’ petition for further review and motion to expedite.

ANALYSIS

This appeal asks us to reinstate an alternative writ of mandamus, issued by the district court, requiring the Mayor and City Council to show cause why they have not employed and funded at least 731 sworn police officers, the equivalent of 0.0017 officers per resident based on the 2020 Census. The residents ask three specific questions: (1) whether section 7.3 of the City Charter imposes a clear legal duty on the Mayor to employ at least 731 officers, (2) whether the City Council is factually meeting its uncontested clear legal duty to fund at least 731 officers, and (3) based on our conclusions to the first two questions, whether the district court appropriately issued a writ of mandamus ordering the Mayor and City Council to employ and fund at least 731 officers.

I.

We first address whether the Mayor has a clear legal duty to employ a police force of at least 731 sworn police officers under the City Charter. This question requires us to interpret the City Charter, a legal question that we review de novo. *Vasseur v. City of Minneapolis*, 887 N.W.2d 467, 469–70 (Minn. 2016) (per curiam).

Section 1.3(d) of the City Charter governs the Charter’s construction. Minneapolis, Minn., Charter § 1.3(d) (2022). Under section 1.3(d)(2), “the canons of construction and other principles of interpretation in the Minnesota Statutes apply to this charter.” Accordingly, we rely on general principles of statutory interpretation to guide our analysis.

Our first step when interpreting a statute is to determine whether the statutory language is susceptible “to more than one reasonable interpretation,” that is, whether the statute is ambiguous. *Roberts v. State*, 945 N.W.2d 850, 853 (Minn. 2020). When

determining whether a statute is ambiguous, “[w]e read [the] statute as a whole and interpret each section in light of the surrounding sections.” *Id.* (citation omitted) (internal quotation marks omitted). If the statute is unambiguous, our analysis ends, and “we interpret the statute according to its plain meaning without resorting to the canons of statutory construction.” *State v. Serbus*, 957 N.W.2d 84, 87 (Minn. 2021) (citation omitted) (internal quotation marks omitted). If there is more than one reasonable interpretation, however, “we may consider the canons of statutory construction” to determine which reasonable interpretation we should adopt. *Id.* at 88; *see* Minn. Stat. § 645.16 (2020).

The interpretation advanced by the Mayor and City Council is reasonable. Focusing exclusively on section 7.3 of the City Charter, they argue that the City Council has a clear legal duty to fund 731 sworn police 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.

Section 7.3(a) grants the Mayor “*complete power* over the establishment, maintenance, and command of the police department,” without explicit limitation. Minneapolis, Minn., Charter § 7.3(a) (emphasis added). “Complete” means “[a]bsolute.” *The American Heritage Dictionary of the English Language* 377 (5th ed. 2011); *see* Minn. Stat. § 645.08(1) (2020) (“[W]ords and phrases are construed according to . . . their common and approved usage . . .”). “Power” is defined to mean, among other things, “[t]he ability or official capacity to exercise control; authority,” *The American Heritage Dictionary of the English Language*, *supra*, at 1382, and “[t]he legal right or authorization

to act or not act,” *Power, Black’s Law Dictionary* (11th ed. 2019). Accordingly, section 7.3(a) is a grant of absolute control or authority “over the establishment, maintenance, and command of the police department” to the Mayor, which includes the right to act or not act. Included in section 7.3(a) is the power to hire police department employees. This hiring power resides only in the Mayor and, in some limited cases, in the department itself—which the Mayor has “complete power” over. Minneapolis, Minn., Charter § 7.3(a) (“Except where the law vests an appointment in the department itself, the Mayor appoints . . . any employee in the department . . .”). As the Mayor and City Council argue, section 7.3(a) does not expressly require the Mayor to hire a fixed number of police officers.

Section 7.3(c), by contrast, does impose an explicit duty on the City Council; “[t]he City Council must fund a police force of at least [731 sworn police officers], and provide for those employees’ compensation.” Minneapolis, Minn., Charter § 7.3(c). When interpreting statutes, “[m]ust’ is mandatory.” Minn. Stat. § 645.44, subd. 15a (2020); *see* Minneapolis, Minn., Charter § 1.3(d)(1) (“[E]ach term used in this charter has the same meaning as in the Minnesota . . . statutes . . .”). Further, the 731 officer minimum appears in a provision entitled “Funding,” suggesting that it is in fact a funding provision, not an implicit employment requirement. *See* Minneapolis, Minn., Charter § 1.3(d)(3) (“[E]ach heading is a part of the charter, and may be used in interpreting its provisions . . .”). Finally, the duty to provide minimum funding is imposed upon the City Council, which has no direct control over police department hiring. *See* Minneapolis, Minn., Charter § 7.3(a). Accordingly, it is reasonable to conclude (as the Mayor and City Council

argue) that the City Council’s obligation under section 7.3(c)—to “fund a police force of at least [731 officers] and provide for those employees’ compensation”—is a funding obligation limited to the City Council and does not provide any limitation on the Mayor’s “complete power” under section 7.3(a) to establish and maintain the police department.

The conflicting interpretation offered by the residents is not reasonable. The residents argue that the use of the words “establishment” and “maintenance” in section 7.3(a) when granting the Mayor “complete power over the establishment, maintenance, and command of the police department” reasonably transforms section 7.3(c) from what appears to be a minimum funding provision applicable to a different branch of government with no police officer hiring authority (the City Council) into a minimum employment provision imposed on the Mayor. We disagree.

The terms “establishment” and “maintenance” cannot be reasonably read to do the work that the residents’ interpretation requires. “Establish” means “[t]o cause . . . to come into existence or begin operating,” *The American Heritage Dictionary of the English Language, supra*, at 608, and “maintain” means “[t]o keep up or carry on; continue,” *id.* at 1058. There is no dispute that the Minneapolis Police Department has been brought into existence and continues to exist; sworn police officers are employed, and hiring efforts are ongoing. Accordingly, the residents’ interpretation fails to cross the threshold of reasonableness.

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) (2022). 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 matters 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 that was the express intention of the amendment, the amended language alone controls. But section 1.3(b) correspondingly requires that if the language 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 The American Heritage Dictionary of the English Language, supra*, at 625 (defining “explicit” as “[f]ully and clearly expressed; leaving nothing implied”); *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, *see* Minneapolis, Minn., Charter

§ 1.2 (2022)), 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.”⁶ Because the 2013 amendment did not explicitly provide for a substantive change in the Mayor’s powers, section 1.3(b) can reasonably be read to require that section 7.3 carry over the Mayor’s powers and duties from the prior Charter.⁷ *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 constitution’s] clarity . . .

⁶ 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.

⁷ 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 in relation to other departments. The 2021 ballot question asked voters: “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?” Minneapolis, Minn., Ordinance 2021-056 (Nov. 19, 2021). In contrast, the 2013 Charter amendment (effective in 2015) did not flag for the voters an intended substantive change in the Mayor’s powers concerning the police. Nothing we say here, however, should be read as discouraging charter cities, such as Minneapolis, from making efforts to improve the organization, length, and clarity of their charters; those efforts are commendable, but cities must signal to voters when substantive changes are intended.

without making any consequential changes in its legal effect’ ” (alterations in original) (citation omitted)).

Language from the prior Charter reflects that the Mayor’s powers were 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–Chief” 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.*” Minneapolis, Minn., Charter ch. 6, § 1 (Dec. 15, 2014 version) (emphasis added). The 2013 Charter specifically 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.” *Id.* (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 prevent 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, but also prior versions of the law, “the occasion and necessity for the law,” “the circumstances under which it was enacted,” “the mischief to be remedied,” “the object to be obtained,” and “the contemporaneous legislative history.” Minn. Stat. § 645.16; *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 section 7.3(c)’s funding provision was clearly meant to address a crime wave in the early 1960s and actually bring on board 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 were 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 amendments were to be primarily non-substantive

updates 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 officers compels us to conclude that the Mayor has a clear legal duty to employ 731 officers based on the 2020 U.S. Census.

II.

We next address whether the City Council is meeting its uncontested clear legal duty to fund at least 731 sworn police officers under section 7.3(c) of the Minneapolis City Charter. *See* Minneapolis, Minn., Charter § 7.3(c). The parties stipulated that “[t]he 2021 budget provides actual funding for an average of 770 sworn officers on payroll.” The 2021 budget was the only budget in existence at the time the district court issued its mandamus order. The stipulation of facts is binding on the residents for this dispute.⁸ *See Ketterer v. Indep. Sch. Dist. No. 1 of Chippewa Cnty.*, 79 N.W.2d 428, 435 (Minn. 1956); *Anderson v. Anderson*, 225 N.W.2d 837, 840 (Minn. 1975) (explaining that stipulated facts “take the place of evidence” and “that a stipulation cannot ordinarily be repudiated or withdrawn by one party without the consent of the other party except by leave of the court for cause shown”).

“Actual” is defined as “[e]xisting in fact; real.” *Actual*, *Black’s Law Dictionary* (11th ed. 2019). Therefore, for this dispute, the City Council provided “real” funding or

⁸ During briefing before our court, the residents filed a motion to supplement the record, asking us to consider the 2022 Minneapolis City Council Adopted Budget, a related Mayor’s Budget Presentation, and a December 2021 Star Tribune article related to the police department’s funding. Because our review is based on the record at the time that the writ issued, and because the residents are bound by their stipulation of facts, we deny the motion to supplement the record and do not consider those later-created materials.

funding “existing in fact” for 770 sworn police officers in 2021. Because the City Council provided funding “existing in fact” for 770 officers—more than the 731 minimum required under the Charter—the City Council did not violate its clear legal duty to provide funding for the police force.

In arguing otherwise, the residents conflate “to fund” with the number of sworn police officers actually employed by the Minneapolis Police Department. They argue that because there are fewer than 731 officers currently employed, there cannot possibly be sufficient funding for 731 officers. But, besides stipulating that there is in fact “actual funding” for more than the required minimum number of officers, having sufficient funds for a certain number of positions does not mean that all funded positions will necessarily be filled. Factors beyond funding go into filling vacant positions—such as the number of qualified applicants and training capacity. Accordingly, the residents’ argument is not persuasive. Based on the parties’ stipulation, we hold that the City Council is meeting its clear legal duty to fund at least 731 officers.

III.

We turn now to the question of whether the district court properly issued an alternative writ of mandamus. A writ of mandamus is primarily employed to either “compel the performance of an official duty clearly imposed by law” or “to compel the exercise of discretion when that exercise is required by law.” *Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162, 171 (Minn. 2006). But “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.” *Id.*

To obtain a writ of mandamus, the residents had to show that the Mayor and City Council “(1) failed to perform an official duty clearly imposed by law; (2) that, as a result, the [residents] suffered a public wrong specifically injurious to the [residents]; and (3) that there is no other adequate legal remedy.” *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004) (citations omitted); *see also* Minn. Stat. § 586.01 (2020) (“The writ of mandamus may be issued . . . to compel the performance of an act which the law specially enjoins as a duty”); Minn. Stat. § 586.02 (2020) (“The writ shall issue on the information of the party beneficially interested, but it shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law.”). Only the first prong of the mandamus analysis is before us: whether the Mayor and City Council “failed to perform an official duty clearly imposed by law.” *N. States Power Co.*, 684 N.W.2d at 491; *see Spann*, 973 N.W.2d at 326 (“[The Mayor and City Council] challenge only the first of these elements in this appeal.”). When, like here, the district court issued its writ of mandamus based on a legal determination, we review the appropriateness of that writ de novo, based on the record at the time that the writ issued. *Madison Equities, Inc. v. Crockarell*, 889 N.W.2d 568, 571 (Minn. 2017).

A.

We first address whether the alternative writ of mandamus was appropriately issued to compel the Mayor to employ at least 731 sworn police officers or show cause why he has not done so. Although we have already concluded that the Mayor has a clear legal duty under section 7.3 of the City Charter to employ 731 officers—and the Mayor stipulated that there was projected to be fewer than 731 officers in the police department from

June 2021 to at least the start of January 2023—this conclusion does not resolve whether an alternative writ was appropriate here.

The Mayor argues that the alternative writ issued by the district court improperly dictates how he must exercise his hiring discretion. To determine whether the alternative writ issued by the district court improperly dictates how the Mayor’s hiring discretion is to be exercised, we must consider what the writ actually commands the Mayor to do. Here, the writ commands the Mayor “to immediately . . . take all necessary action required by the Court’s Order . . . to fund a police force of at least [731 sworn police officers].” The district court’s order is clear that it equates funding with employment. Accordingly, the writ requires the Mayor to employ at least 731 officers but does not instruct the Mayor how to do so; it simply commands him to do so through “all necessary action.”⁹

The line between when mandamus appropriately “compel[s] the performance of an official duty clearly imposed by law” and when mandamus inappropriately “dictate[s] how discretion is to be exercised” can be unclear. *Mendota Golf, LLP*, 708 N.W.2d at 171. But here we hold that the alternative writ issued by the district court is an appropriate use of mandamus. Key to this conclusion is that the writ commands only that the Mayor fulfill what is a clear legal duty—employing a minimum of 731 sworn police officers—and does not instruct the Mayor how to reach that number of officers. *See, e.g., id.* at 173–74

⁹ Although we conclude that the Mayor has a clear legal duty to employ 731 sworn police officers based on sections 7.3 and 1.3(b)(2)–(3) of the Charter—rather than the district court’s erroneous assertion that “[t]he parties do not dispute that ‘to fund’ also requires the City ‘to employ’ ”—the basis of this duty does not alter the end result required by the district court’s alternative writ of mandamus.

(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 reconcile its comprehensive plan and zoning ordinance as required by statute). For instance, the district court did not command the Mayor to raise wages, offer incentive bonuses, advertise positions, lower hiring standards, or hold more training academies—all of which would have inappropriately controlled the Mayor’s discretion. Instead, the Mayor retains his discretion about how best to reach the 731 officer minimum, but he must meet it or show cause why he has not done so.

The Mayor also 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, as a result, the alternative writ of mandamus is inappropriate. Although we have no reason to question these representations, there are two flaws with this argument. First, as discussed above, the writ was issued to compel performance of a clear legal duty imposed by law—to employ 731 sworn police officers. This is not a situation where mandamus seeks to compel the exercise of discretion, for there is no discretion in the required end result. Second, the Mayor’s efforts after the alternative writ was issued have no bearing on the inquiry here as to whether the district court erred in issuing the alternative writ of mandamus based on the record before the court at the time. Instead, these efforts should be appropriately considered by the district court upon return of the alternative writ to determine whether cause exists for the Mayor’s inability to reach the 731 officer

minimum.¹⁰ *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 on the question whether a peremptory writ should issue”). If after reviewing this evidence the district court determines that cause has been shown for why the Mayor has not complied with the alternative writ, the alternative writ should be quashed and no peremptory writ shall issue. *See* Minn. Stat. §§ 586.06–.09 (2020).¹¹

B.

We end our analysis with the alternative writ of mandamus as it relates to the City Council. Because, as we previously concluded, the City Council is meeting its uncontested

¹⁰ The Mayor concedes that “[w]ith the present headcount in the [Minneapolis Police Department] it is fair to admit that the required number will not be reached by June 30, 2022,” the return date for the writ set by the district court.

¹¹ The Mayor and City Council also argue that the district court should not have issued the writ of mandamus because, at the time the order was issued, only the 2010 census was available and there were more than 650.38 sworn police officers employed by the Minneapolis Police Department—the number required based on the 2010 population—despite stipulating that the number of officers was projected to be below this number by January 1, 2022. The Mayor and City Council did not advance this argument at the court of appeals, and it is therefore forfeited. *See In re Welfare of M.D.O.*, 462 N.W.2d 370, 379 (Minn. 1990) (“The failure to raise and preserve an issue before the court of appeals constitutes a [forfeiture] in a subsequent appeal to this court.”). Moreover, the court of appeals noted that “the parties agree that the requisite number [of officers that the City Council was required to fund, and the Mayor was required to employ] should be determined with reference to the since-released 2020 census data.” *Spann*, 973 N.W.2d at 324 n.2. The Mayor and City Council did not request cross-review on that point, and so we do not consider any argument that we should look to the 2010 census data in evaluating the district court’s writ of mandamus order. *See Abrahamson v. St. Louis County School Dist.*, 819 N.W.2d 129, 137 n.4 (Minn. 2012).

clear legal duty to fund at least 731 sworn police officers, the district court erred in issuing the alternative writ requiring the City Council to fund at least 731 officers.

CONCLUSION

For the foregoing reasons, we affirm in part, reverse in part, and remand to the district court for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.