



Drafting Municipal Legislation

Step-by-step from idea to ordinance



The Legislative and Policy Analyst Role

- Full-time staff for the city council.
- Provides research and drafting support to councilors on legislative projects.
- Facilitates coordination, communication, and collaboration with staff points of contact for legislative projects and information requests.



Key Components of Effective Legislative Interventions

- Necessity
- Effectiveness
- Practicality
- Legality
- Equity

Important note:

If there are no satisfactory answers to the questions of necessity, effectiveness, practicality, legality, or equity, then legislative intervention is not the appropriate course of action.



Necessity

- What is the problem the intervention is meant to address?
- Is this specific intervention the action that needs to be taken to address the problem?

Effectiveness

- If implemented perfectly, will this intervention resolve or mitigate the problem in a meaningful way?
- Are there negative externalities or unexpected consequences?
- Are there real and meaningful consequences for lack of adherence?



Practicality

- Does the city have the capacity to implement or enforce the legislative intervention?
- Is the intervention cost effective?
- Are there other interventions in progress or in development that will impede, or be duplicated or undermined by, a legislative intervention?

Legality

- Does the city have the legal authority to demand, regulate, or restrict behavior that causes the problem?
 - Does the city council?
- Is a challenge likely?
 - Is the intervention likely to survive a challenge?



Equity

- Does the intervention have any form of disparate impact? Does it disadvantage a particular group?
- Is the applicability of the intervention predictable?
- Is it accessible?
- Does it have mechanisms in place to avoid disparate impact or bias in enforcement?
- Does it promote transparency, accountability, and fairness?



Hallmarks of Bad Legislation

- Unnecessary.
- Impractical or burdensome to implement.
- Inconsistent with existing laws.
- Unintelligible, ambiguous, or imprecise.
- Inaccessible or unpublished.
- Not fair, transparent, or promoting accountability.
- Costly or inefficient.
- Legally unsound.



Good Legislation in a Municipal Context

Some things worth remembering

- Municipal legislation is subject to preemption by federal and state laws and regulations.
- Different municipalities, especially in different states, have different government structures and budgets. Because it can be done in one place does not guarantee it can be done here.
- Many of the tools at our disposal on the municipal level are substantially limited by the state legislature.
- The Massachusetts constitution forbids cities from taking action on certain issues without the approval of the legislature:
 - Regulation of elections
 - Levy, assessment, or collection of taxes
 - Borrowing money or pledging the city's credit
 - Disposition of park land
 - Law governing civil relationships
 - Defining or providing for punishment of a felony, or imposing imprisonment as punishment for any offense



The Legislative Drafting Process

Idea Formulation

- Define problem, intervention, and goal.
- Conduct initial research.
- Consider potential issues.

Staff Engagement

- Identify staff stakeholders.
- Evaluate practicality, legality, and synergy with existing efforts.

Language Production

- Produce language incorporating recommendations based on staff expertise.

Committee Discussion

- Submit proposed ordinance and discuss in committee.

Ordainment

- Return to full council for final discussion and vote.

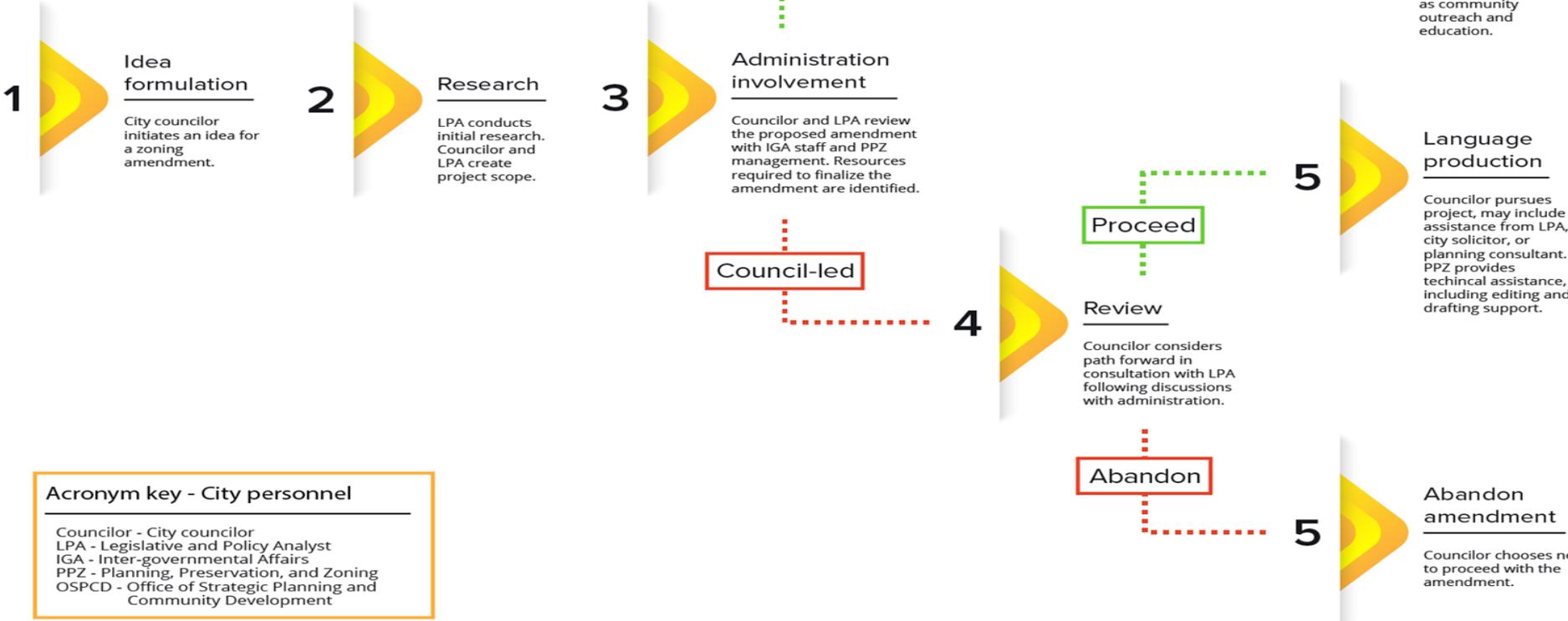


Variations on the Process

While the above process makes specific mention of ordinances, the process for a councilor led zoning amendment or home rule petition (HRP) is similar.

- An HRP is a request that the state legislature permit a municipality to take action on an issue subject to preemption by state law or regulation, or specifically forbidden by the constitution (rent control, for instance). Rather than a vote on enrollment and ordainment, once approved and signed by the mayor the HRP is sent to the state house for action.
- Zoning generally follows the same path, with some slight specific variations. The following slide contains a flowchart for the process.

Zoning Amendment Production Process



Acronym key - City personnel

Councilor - City councilor
 LPA - Legislative and Policy Analyst
 IGA - Inter-governmental Affairs
 PPZ - Planning, Preservation, and Zoning
 OSPCD - Office of Strategic Planning and Community Development



Questions?