



CITY OF SOMERVILLE, MASSACHUSETTS

CITY CLERK'S OFFICE

KATJANA BALLANTYNE

MAYOR

KIMBERLY M. WELLS
CITY CLERK

MEMORANDUM

To: Honorable City Council
From: Brendan Salisbury, Legislative and Policy Analyst
Date: October 23, 2024
Re: Charter Recommendations

On September 8, 2022, the Somerville Charter Review Committee conveyed to the City Council its recommendations and proposed charter text. On May 25, 2023, after significant discussion and revision, the City Council transmitted to Mayor Ballantyne an amended draft of the charter proposal. On September 10, 2024, Mayor Ballantyne returned a further revised draft of the charter proposal along with a memorandum describing the changes and the reasons for them. Upon review of the proposed changes, discussion with administration staff, and further research, I present the following recommendations as the City Council's Legislative and Policy Analyst. Also attached is a red-line version of the proposed charter which reflects my recommendations.

- (a) **City Clerk Term:** As Mayor Ballantyne's memorandum notes, the term of the City Clerk is 3 years per Chapter 355 of the Acts of 1989. No changes to the text of the proposed charter accompany this note and I have no specific recommendation. The City Council may choose to retain the three-year term by retaining the special act, or may remove the requirement for confirmation every three years by repealing the special act within the new charter, but must take additional action to accomplish the goal to eliminate the three-year term.
- (b) **City Council Staff:** Mayor Ballantyne's proposed changes include in section 2-7(d) the addition of the phrase "and city personnel policies and procedures", relating to the removal and suspension of City Council staff. I recommend rejecting this inclusion. This provision relates to the suspension or removal of appointed employees, who serve at the pleasure of the City Council, similar to department heads under the Mayor. The City Council should be no more limited in its ability to suspend or remove those staff than the Mayor.



- (c) **Confirmation of Appointments:** Mayor Ballantyne’s proposed changes include in section 2-8(a) changes to the confirmation timeline. After conversation with administration staff, I recommend rejection of these changes. The proposed changes appear intended to avoid a situation where an appointee might be forced to wait two months for confirmation. That scenario is, in my opinion, too unlikely to merit significant revision to the City Council’s proposed timeline.
- (1) Section 2-8(b) includes the removal of “their appointing authority subject to limitations and requirements imposed by federal and state laws, rules or regulations” and replaces with the phrase “the mayor”. I agree with the administration’s position that employment law considerations are not applicable to volunteer positions and recommend accepting this change with one exception: “the mayor” should be reverted to “their appointing authority”.
- (d) **Constables:** The administration recommends striking section 2-8(c) in its entirety and instead adopting the relevant state law. This is consistent with the recommendation that I previously made to the City Council, and I will renew it here. The inclusion of City Council confirmation of constable appointments in city charters throughout the Commonwealth predates the existence of Massachusetts General Laws c. 41, § 91. The legislature’s decision to establish a mechanism for appointment of constables in the general laws is indicative of an interest in a uniform standard throughout the Commonwealth. Administration staff has stated that they are willing to commit, on the record, to collaborating with the City Council to set qualifications for constables that will not conflict with state law.
- (e) **Access to Information:** Mayor Ballantyne’s proposed changes include in section 2-10 the addition of “related to the official duties and responsibilities of the city council” and “or provide information that is privileged or the release of which is prohibited by law” as standards for the City Council’s ability to access information by order. I recommend accepting these changes, as they are consistent with the principle of separation of powers and legal restrictions on publicly sharing privileged or confidential information.

This language is present in other charters with these access to information provisions, and failure to include the language could be taken as an intent not to impose these standards. The City Council has broad powers of financial oversight through the budget process, and significant authority to guide city policy through legislation. I anticipate that there are few circumstances where an administration could successfully argue that a request is not related to the official duties and responsibilities of the City Council, and the inclusion of this language sets a clear standard for the City Council to rely on if such a question were to arise.

- (f) **Filling of City Council Vacancies:** Mayor Ballantyne’s proposed changes include in section 2-12 a change to the method for filling a vacancy in the position of Ward Councilor by allowing a defeated candidate in the most recent election to fill the seat for the remainder of the term, consistent with the



process for filling vacancies in the position of Councilor At-Large. I recommend accepting this change, with one additional change. Both Chelsea and Framingham have similar provisions in their charters, but establish a vote threshold that defeated candidates must reach in order to qualify to fill a vacancy. I recommend the addition of the following language in section 2-12(b), at the end of the first sentence:

“; provided, however, that the defeated candidate for the seat of ward councilor shall have received not less than 30 percent of the total ballots cast for the seat being vacated.”

- (g) **Four-Year Mayoral Term:** In response to Mayor Ballantyne’s inclusion of a recommendation to adopt a 4-year mayoral term, I renew my previous recommendation for the same. As noted by the Mayor in her memorandum, and as I presented during previous meetings of the City Council’s Special Committee on Charter Review, a 4-year mayoral term is considered best practice nationwide, and is rapidly becoming the most common practice for other council-mayor form of government municipalities in the Commonwealth. By failing to include a 4-year mayoral term in this new charter, Somerville runs the risk of falling even further behind our peer communities that have already adopted this progressive change.

- (h) **Four-Year City Council Term:** I recommend amending the term of office for city councilors in section 2-1(b) from 2 years to 4 years. I make this recommendation for two reasons: first, it is common practice nationwide and considered best practice (the National Civic League’s model charter recommends a 4-year term for city councils). Second, a 4-year term for city councilors, in conjunction with the best practice 4-year mayoral term, will maintain the balance of power between the City Council and the Mayor while also allowing the city to join its peers, both within the Commonwealth and nationwide, in adopting a 4-year mayoral term.

Though uncommon in Massachusetts, 4-year city council terms are common practice nationwide, including in cities similar to Somerville. In Massachusetts, both Barnstable and Greenfield elect all councilors to 4-year terms, and Framingham elects at-large members to 4-year terms. Several other municipalities elect their town or city councilors to 3-year terms. While a 4-year term is rare for city councilors in Massachusetts, there is substantial precedent for terms longer than 2 years.

The arguments for a 4-year mayoral term are equally applicable to a 4-year city council term. As the Mayor’s memorandum notes, Somerville is a mid-sized city with ambitions and initiatives that rival those of big cities. This tendency extends to the work of the City Council as well, with numerous legislative proposals, both by the City Council and the Mayor, requiring shepherding through multiple terms before reaching completion. This charter being just one example. A 4-year City Council term will allow councilors to pursue ambitious legislative priorities and will relieve pressure on council and administration staff, facilitating coordination, collaboration, and the production of well drafted and effective legislation. Similarly, the ability to govern without concern about campaigning every other year, and the opportunity to devote additional time in the first year to



learning the responsibilities of the role, are two clear benefits that would improve the City Council as well.

Should the City Council adopt this recommendation, I further recommend that the City Council amend section 2-12 regarding City Council vacancies to reflect a 4-year term, section 3-13 regarding a permanent vacancy in the office of the Mayor to reflect that municipal elections will be held every 4 years instead of every 2, and section 4-1(b) regarding the term of office for School Committee members from 2 years to 4 years. Further, I recommend that all changes to the terms of office take effect in 2028, in alignment with the Mayor's recommendation regarding the term of office for Mayor.

- (i) **Executive Powers:** Mayor Ballantyne's proposed changes include in section 3-4 the addition of a provision present in the current charter explicitly stating that the power to deliver deeds and leases for land owned by the city, and to make contracts and other binding agreements on behalf of the city, rests solely with the Mayor. I recommend accepting these changes. Similar to the language changes proposed for access to information, failure to include this language when it was previously present in the charter could be construed as an intent to cede that exclusive authority.
- (j) **City Attorney and Chief Administrative Officer:** In previous discussions regarding confirmation of the City Attorney and Chief Administrative Officer, I recommended strongly against requiring reconfirmation of these positions for the same reasons presented by Mayor Ballantyne. However, the Mayor's proposed changes simply strike reconfirmation for these critically important positions and do nothing to meaningfully address the City Council's concerns which led to the inclusion of reconfirmation language.

As such, I recommend that language be added to sections 3-5(b) and 3-6 requiring that the Mayor make at least 2 candidates for the positions of City Attorney and Chief Administrative Officer available to the City Council for a public interview before the body, that the City Council make recommendations to the Mayor, in the form of a vote, for a selection from those candidates, and that the Mayor's appointment to those positions be subject to confirmation by the City Council under section 2-8(a) of the proposed charter.

The majority of municipalities nationwide, and several municipalities in the Commonwealth, provide the City Council with the authority to appoint the City Attorney. I do not recommend this approach, but instead note that the National Civic League's model charter suggests that a Chief Administrative Officer should be appointed jointly by the Mayor and City Council as a means of promoting shared authority while maintaining separation of powers. The arguments for City Council involvement in the appointment of a chief administrative officer are equally applicable to the appointment of the City Attorney. The inclusion of this language increases the City Council's oversight of those roles and



aligns with best and common practices nationwide, and joint appointment of both of these positions will facilitate collaboration and further balance the powers of the Mayor and the City Council.

- (k) **Temporary Appointments:** Mayor Ballantyne's proposed changes include in section 3-7 a lengthening of the period for which a person may perform the duties of an office on a temporary basis from 150 to 180 days, and the lengthening of an extension from 60 days to 90 days. I do not believe that this change has a material impact and I have no specific recommendation. A 180-day temporary appointment period may reduce the likelihood of a request for an extension, and a 90-day extension period may further reduce the likelihood of a request for a second extension. Regardless, the City Council retains its authority to deny an extension.

Additionally, Mayor Ballantyne's proposed changes include in section 3-8 the removal of language limiting the authority of temporary appointments to multiple member bodies. I do not have a specific recommendation regarding this language, however I recommend the addition of the following language requiring a communication to the City Council when the Mayor designates a temporary appointee:

In section 3-8, after the first sentence, add: "The mayor shall submit a communication to the city council with the name of the designee."

- (l) **Special Meetings:** Mayor Ballantyne's proposed changes included the addition of requiring that notice of a special meeting of the City Council called by the Mayor be delivered "by hand or by electronic mail" in section 3-10(b). I do not recommend accepting this change as it is unnecessarily prescriptive. However, review of this proposed change did reveal an oversight in sections 2-5(e) and 3-10(b). After discussion with the City Clerk, I recommend the following:

Strike section 2-5(e) in its entirety and replace with: "Special meetings of the city council shall be held at the call of the president or at the call of any 6 or more members, for any purpose. Except in an emergency as declared by the city council president, notice of the meeting shall be delivered to the city clerk at least 3 business days in advance of the time set and shall specify the date, time, location and purpose for which the meeting is to be held. The city clerk shall post an agenda for such meeting at least 2 business days in advance of the time set."

Strike section 3-10(b) in its entirety and replace with: "The mayor may call a special meeting of the city council for any purpose. Unless the mayor designates an emergency, notice of the meeting shall be delivered to the city clerk at least 3 business days in advance of the time set and shall specify the date, time, location and the purpose for which the meeting is to be held. The city clerk shall post an agenda for such meeting at least 2 business days in advance of the time set."

- (m) **School Committee:** I recommend amending the term of office for School Committee members in section 4-1(b) from 2 years to 4 years. I make this recommendation to align the terms of office of all



elected officials in Somerville, if the City Council adopts my recommendations regarding the terms of office for City Council and Mayor, so that elections for School Committee will not suffer from depressed voter turnout on years where the offices of City Councilor and Mayor are not up for election.

- (n) **Filling of School Committee Vacancies:** Mayor Ballantyne's proposed changes include the striking of section 4-6 in its entirety and replacing it with language that requires a joint meeting of the City Council and School Committee to fill a vacancy on the School Committee. I have no specific recommendation for this change. Similar language is present in the charters for the cities of Chelsea and Framingham, though with some differences. Chelsea requires a 20 percent vote threshold for defeated candidates to be qualified to fill a School Committee vacancy. Framingham does not permit defeated candidates to fill a vacancy, and instead requires a joint meeting to review applications by city residents to fill the vacancy. Should the City Council choose to accept the Mayor's recommendation, I would recommend considering adoption of a vote threshold and including language to establish a process by which candidates are selected and considered should no viable defeated candidate exist to fill a School Committee vacancy.
- (o) **Compensation of City Employees:** Mayor Ballantyne's proposed changes include the striking of section 5-3 in its entirety, which aligns with my previous recommendation to the City Council. I renew that recommendation here.
- (p) **Appointment of the Independent Auditor:** Mayor Ballantyne's proposed changes include in section 6-7 returning the authority to appoint an independent auditor to the Mayor. I have previously recommended to the City Council that authority to appoint the independent auditor should remain with the Mayor and that, instead, language should be included that directs the administration to present the results of the audit to the City Council to facilitate the exercise of their financial oversight authority during the budget process. The language proposed by the Mayor fulfills that and so I recommend accepting the proposed changes.
- (q) **Periodic Review of Multiple Member Bodies:** Mayor Ballantyne's proposed changes include in section 8-6 language that limits the review of multiple member bodies during the periodic review to be conducted every 10 years. While the limitation on bodies which are required in cities by Massachusetts General Law is consistent with the recommendations of the Charter Review Committee, I do not recommend forbidding review of bodies established by an enabling law accepted "at least 10 years prior to the adoption of the charter". It seems to me that this will result in the retention of bodies that have been defunct for longer than 10 years prior to adoption of the charter, and are exactly the bodies that should be subject to review.



I recommend striking from the first sentence: “established by a special act of the legislature at the city’s request or established by the city’s acceptance of one or more state enabling laws at least 10 years prior to the adoption of the charter”.

- (r) **Advisory Legal Counsel:** I renew here my recommendation that section 2-7(b) be struck in its entirety. As I have previously stated, the perceived advantages and benefits of contracted advisory legal counsel are illusory. Instead, as I recommend below, the City Council should have a more significant role in the appointment of the City Attorney.

First, there are only two municipalities in the Commonwealth that I have identified with separate “advisory” counsel outside of their respective Law Department: Leominster and New Bedford. Both communities created the role of Legislative Counsel by ordinance, though Leominster includes the authority to do so in its charter¹. I was able to speak with the City of Leominster’s City Attorney who expressed to me, quite clearly, that the Leominster City Council’s Legislative Counsel role almost exclusively serves to duplicate the work of the City Attorney’s office. Furthermore, the City Attorney stressed that Legislative Counsel is not authorized to represent the City Council in legal proceedings, and that the City Attorney’s opinion remains the official legal opinion of the city.

Second, I believe that it will be impossible to obtain advisory legal counsel on a contract basis. As evidence of this, I remind the City Council that at the regular City Council meeting of March 24, 2022, the following order was approved: Docket #213432 “Pursuant to Section 2-121 of the Code of Ordinances, this Council authorizes and requires the employment of other counsel for an opinion on the ability of this Council to exercise the provisions of Ordinance 2-121, relative to utilizing outside counsel.” The City Clerk’s Office attempted to obtain said opinion from an attorney versed in Massachusetts municipal law and was unsuccessful despite significant efforts.

Finally, the Massachusetts Appeals Court in 2003 upheld a decision by the Suffolk Superior Court² in *City Council of Boston v. Mayor of Boston*,³ where Mayor Menino successfully challenged the Boston City Council’s ability to hire its own legal counsel without the Mayor’s approval. In its decision, the Superior Court clearly states that “the establishment of such a position creates a serious potential for confusion and contradiction in the direction of the City’s litigation, as well as the potential for disruption of the City’s business in the event that the advice rendered differs between each attorney.”

For the above reasons, I strongly recommend that the City Council strike section 2-7(b) in its entirety and instead accept the recommendations regarding the City Attorney found above.

¹ It is not immediately clear to me when this provision was added to the Leominster charter. The city’s charter was revised in 1970, and the revised charter did not include this provision. I am currently unable to identify any subsequent successful revisions to Leominster’s charter that include the language regarding legal counsel.

² *Boston City Council v. Menino*, No. CIV. A. 0-1267, 2000 WL 744356, *6 (Suffolk Sup. Ct., May 9, 2000).

³ 58 Mass. App. Ct. 542 (2003)



- (s) **Budget Timeline:** Mayor Ballantyne's proposed changes include adjustments to the budget timeline in sections 6-3, 6-4, and 6-6. These recommendations are consistent with the administration's position made on record in previous meetings of the City Council's Special Committee on Charter Review where the budget timeline was discussed. I recommend accepting these changes. It is my opinion that significant deference should be given to the judgment of city staff regarding their ability to meet certain benchmarks, and the time required to produce a budget.
- (t) **Capital Improvement Program:** Mayor Ballantyne's proposed changes include in section 6-7(c) clarification of the City Council's powers regarding the Capital Improvement program, which I have confirmed in conversations with administration staff. The City Council may choose to adopt the program, but the program does not require City Council authorization. The City Council may not amend the program. This aligns with the principle of separation of powers. I recommend rejecting the language changes as they relate to the City Council's method for expressing disapproval. Specifically, changing "shall" to "may" and striking "reject". This language emphasizes the City Council's oversight responsibilities, and renders them a more active participant in the process, providing an opportunity to highlight any issues they identify. The City Council should retain the ability to vote to accept or reject the Capital Improvement Program and state on record the reason for their decision.
- (u) **Eligibility to Vote in Municipal Elections:** I have previously recommended the removal of section 7-1 in its entirety and I renew that recommendation here. There are myriad subjects where state government has a vested interest in a uniform system of administration. In some cases, such as the appointment of constables or establishing a maximum fine that can be assessed, this is to avoid conflicts between municipalities where wildly varying standards might disadvantage one community. In others it is because oversight or administration falls, in some part, to a state agency. This is the case for 16- and 17-year old and non-citizen resident voting. It is my understanding that the state legislature does not intend to approve an expansion of voting rights unless it does so for every community in the Commonwealth, as the burden of attempting to oversee and administer expansion of voting rights for individual communities on a case-by-case basis would be overwhelming. As such, it is my opinion that these provisions stand no chance of being approved by the state legislature.

Even if this were not the case, Somerville already has home rule petitions requesting these expansions of voting rights pending at the state legislature. It is my opinion that it is inappropriate to include these provisions in the proposed charter while the state legislature is already considering them, and I believe that the state legislature will take a dim view of a charter proposal that attempts to duplicate an existing request in an apparent attempt to either circumvent the existing process or to take a second bite at the apple.



From a policy perspective, I recognize the importance of these provisions and strongly encourage the City Council to exert as much pressure as possible on the state legislature to consider and approve the existing home rule petitions. However, I must, in the strongest terms, recommend against the inclusion of anything that is so severely unlikely to succeed and which may jeopardize the entire charter.