



CITY OF SOMERVILLE, MASSACHUSETTS LAW DEPARTMENT

August 4, 2017

Honorable Board of Aldermen
City Hall
93 Highland Avenue
Somerville, MA 02143

Re: Board Item No. 203868

Dear Honorable Board Members:

You have asked whether the Board of Aldermen may lawfully enact an ordinance stating, in effect, that the "holdover" period is limited to 90 days after expiration of a term of office for officers and boards specified in Section 2-24 (c) of the Somerville Code of Ordinances (SCO).

In my opinion, for the reasons stated below, such a provision is vulnerable to a successful legal challenge. In light of that risk, the Law Department recommends that should the Board of Aldermen seek to limit such a holdover period, the Charter be revised to eliminate legal risk.¹

The positions specified in SCO Section 2-24 (c) are as follows: clerk of committees, assistants to the clerk of committees, recreation and youth commission, licensing commission, planning board, board of appeals, housing authority, redevelopment authority, and weighers, measurers, and surveyors. The planning board (G.L. c. 41, s. 81A), board of appeals (G. L. c. 40A, s. 12; Charter, Division 2, Article IV, s. 2), housing authority (G.L. c. 121B, s. 5), redevelopment authority (G. L. c. 121B, s. 5), licensing commission (Charter, Division 2, Article IV, s. 2), and weighers, measures and surveyors (G. L. c. 41, s. 86), while referenced in the ordinance, are all statutory and/or charter positions. The clerk of committees, assistants to the clerk of committees, and recreation and youth commission are not statutory and/or charter positions.

The above-referenced positions are all subject to appointment pursuant to Section 21 of the Charter. With respect to term of appointment, pursuant to Charter Section 21, individuals appointed to the positions referenced hold office "...*unless otherwise provided*, for 1 year and until the appointment and qualification of a successor." (emphasis added).

Charter Section 21 mirrors the well settled law that, unless otherwise provided, an officer continues to hold office until the appointment or election and qualification of his successor. *Quinn v. Rent Control Bd. Of Peabody*, 45 Mass. App. Ct. 357 (1998).

¹ The City of Somerville Charter is a special act that applies to Somerville. Therefore, in my opinion, Section 21 supercedes any contrary general law.

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The general legislation for planning board, board of appeals, licensing commission, and weighers, measures and surveyors are all silent – so do not otherwise provide – as to whether members hold over until their successors are appointed. Therefore, given that the legislation does not provide otherwise, the legislation establishes that these officers hold over until their successors are appointed.²

The general state law for housing authority and redevelopment authority members explicitly states that “[e]very member, unless sooner removed, shall serve until the qualification of his successor.” (G. L. c. 121B, s. 5). Therefore, pursuant to the general law, these members also continue to serve as a hold over until their successors are appointed.

In my opinion, while one may argue that the phrase “unless otherwise provided” is broad and does not restrict the City from enacting an ordinance which provides limits for the holdover period, the better argument is that the phrase “unless otherwise provided” refers only to the Charter and state law for statutory positions. As a result, in my opinion, a Charter or statutory position holder is entitled to remain in office as a “holdover,” until a replacement is appointed, unless otherwise specified in the Charter or statute. See, *Town of Eastham v. Barnstable*, 52 Mass. App. Ct. 734 (2001) (town accountant was entitled to remain in her statutory position during the holdover period pending the qualification of her successor).

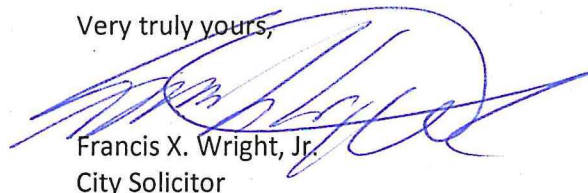
Given that all of the positions referenced in SCO Section 2-24 (c), except for clerk of committees, assistants to the clerk of committees, and the recreation and youth commission, are statutory and/or charter positions, in my opinion, these members hold over until their successors are appointed.

Furthermore, I recommend that the Board consider the other legal and practical ramifications of the policy decision, including, but not limited to, the public convenience and necessity. For example, potential constructive grants would be issued to developers should there be no duly authorized zoning board. (See G. L. c. 40A, s. 10 which provides that the board of appeals must “act” within 100 days of the filing of a petition or the variance will be deemed granted).

Therefore, for the reasons stated above, should the Board wish to address the expiration of terms in a holdover period, the Law Department concludes that a Charter revision is needed to accomplish the objective.

Please contact me if you have any questions. Thank you.

Very truly yours,



Francis X. Wright, Jr.
City Solicitor

² Caselaw does not offer guidance on the scope of the phrase “unless otherwise provided” in the Charter.