

# **Charter Review: Balance of Power**

Somerville MA City Council  
January 25, 2023

# Tonight's Agenda

Anticipated Schedule

Reminder of Procedure

Balance of Power Section: 10 Recommendations for Review

# Anticipated Schedule

- **Virtual, February 8**
  - Topic Area: Budget/Finance
- **Virtual, February 22**
  - Review of Language from Prior Policy Requests

# Resources and Process

- **Subject Matter Experts: Collins Center consultants**
  - Contract still not in place
  - Legislative Policy Analyst **Brendan Salisbury** to serve as City Council liaison
- **Subject Matter Experts: Charter Review Committee members**
  - Bev Schwartz (member) and Anna Corning (Mayor's Office), liaisons
  - Questions submitted through the Chair in advance will give time to research answers and arrange for attendees to help with discussion
- Topic Areas will be published in advance, on Agendas
- **Online Document repository: [tinyurl.com/hashtagCharterReform](https://tinyurl.com/hashtagCharterReform)**

# Parliamentary Procedure

- **Deliberation**
  - Largely focused on the current topic area; Rules of the Council prevail
- **Resolutions are “in order”**
  - Resolutions to recommend adoption of the Committee’s suggested text
  - Resolutions to request amended text to address the Council’s intent
    - Motions to amend are not, there is no text before us
    - Amended text will be reviewed at a future meeting
- Once all topics have been resolved, a final HRP Text will be submitted
- **Task Forces** may be formed to work on thorny issues and return with compromise

# Balance of Power

Retain Mayor-Council Form of Government

Retain City Council Structure

Retain 2-year Council Term

Increase Mayoral Term to 4 Years

Establish a Chief Administrative Officer Subject to Confirmation

# Balance of Power, continued

Advisory Legal Counsel for City Council

Allow City Council to Hire Staff

Add Access to Information Provision to Charter

Change Department Head Hiring/Appointment Process

Change Multiple Member Body (MMB) Appointment Process

# Retain Mayor-Council Form of Government

Recco #2: Maintain the Mayor-Council system of governance

- Policy Considerations: A Mayor-Council form of government is based on balance-of-powers between a mayor and a city council. Separation of powers provides healthy independence, debate, consensus building, and creative tension.
- Community Feedback: The Somerville community has shown almost no indication of preference to switch to a council-manager form of government or to a weak mayor, and there was strong opposition to changing the form of government.



# Retain Mayor-Council Form of Government

Recco #2: Maintain the Mayor-Council system of governance

- Proposed Text: SECTION 1-3: SEPARATION OF POWERS
  - The administration of the fiscal, prudential and municipal affairs of the City of Somerville shall be vested in an executive branch led by a mayor and a legislative branch consisting of a city council. The legislative branch shall never exercise any executive power and the executive branch shall never exercise any legislative power.
- Current Text: Sec. 2. - Form of government.
  - The administration of the fiscal, prudential and municipal affairs of said city shall be vested in an executive department, to consist of the mayor, and a legislative department, to consist of a single body, to be called the city council. The executive department shall never exercise any legislative power, and the legislative department shall never exercise any executive power.

# Retain City Council Structure

Recco #5: Maintain the current composition of city council.

- Policy Considerations: The city council's current structure of ward and at-large membership has served the Somerville community well. Both Ward and At-Large seats have unique benefits to residents and democracy.
- Community Feedback: There was not significant community support to change the composition of city council.

# Retain City Council Structure

Recco #5: Maintain the current composition of city council.

- Proposed Text: SECTION 2-1: COMPOSITION; TERM OF OFFICE; ELIGIBILITY
  - (a) Composition - There shall be a city council consisting of eleven members which shall exercise the legislative powers of the city. Four of these members, to be known as councilors-at-large, shall be nominated and elected by the municipal voters at large. Seven of these members, to be known as ward councilors, shall be nominated from and elected by the municipal voters in each ward; one such ward councilor to be elected from each of the seven wards into which the city is divided under section 7-7.
- SECTION 7-7: WARDS
  - The territory of the city shall be divided into seven wards by the city clerk to consist of nearly an equal number of inhabitants as it is possible to achieve, based on compact and contiguous territory, bounded as far as possible by the center line of known streets or ways or by other well-defined limits. Each ward shall be composed of voting precincts established under the General Laws. The city council shall review these wards to ensure uniformity in the number of inhabitants at least once every 10 years.

# Retain City Council Structure

Recco #5: Maintain the current composition of city council.

- Existing Text: Sec. 3. - Seven wards established
  - It shall be the duty of the city council in joint convention, as soon as may be after the acceptance of this Act, to divide said city into seven wards, containing as nearly as possible and as may be consistent with well-defined limits to each ward an **equal number of male voters**. In order that the new wards may conform to the present representative districts, the present ward one shall constitute one ward, and the present wards two, three and four shall each be divided into two wards. Immediately after such new division of the city into wards, the **city council shall divide such new wards into voting precincts, none of which shall contain more than one thousand registered male voters**, and the mayor shall thereupon appoint, with the approval of the city council, election officers to serve therein. Action under this section shall not apply to the state election to be held the present year.

# Retain 2-Year City Council Term

Recco #6: Keep City Councilor terms at 2 years.

- Policy Considerations: Every Massachusetts municipality with a population greater than 50,000 has 2-year terms for city councilors. It is important to ensure the legislative body is representative of the wards or at-large residents they represent and are held accountable to the voters frequently.
  - Staggered terms and recall provisions were considered but rejected.
- Community Feedback: 65% of survey respondents supported 2-year terms for city councilors.

# Retain 2-Year City Council Term

Recco #6: Keep City Councilor terms at 2 years.

- Proposed Text: SECTION 2-1: COMPOSITION; TERM OF OFFICE; ELIGIBILITY
  - (b) Term of Office - The term of office for councilors shall be two years each, beginning on the first business day in January following the municipal election.

# Increase Mayoral Term to 4 Years

Recco #13: Increase the mayoral term to 4 years.

- Policy Considerations: Mayoral terms are 2 or 4 years across the state, trending towards 4-year terms including eight out of eleven cities closest in population to us.
  - The committee considered that 4-year terms would allow more time to implement and pass policy priorities, more stability for administration jobs and the ability to attract stronger talent, and allow more credible challengers with more time to build their case to voters.
- Community Feedback: 62% of respondents to the community survey supported a 4-year term for the mayor. Participants emphasized the benefits of committing less time to campaigning, which would give more time for governing.

# Increase Mayoral Term to 4 Years

Recco #13: Increase the mayoral term to 4 years.

- Proposed Text: SECTION 3-1: MAYOR: ROLE; TERM OF OFFICE; ELIGIBILITY
  - (b) Term of Office – The term of office for mayor shall be four years, beginning on the first business day in January following the municipal election.
- Current Text:
  - Sec. 20. - Mayor; vested with executive powers; term of office. [...] The mayor shall hold office for the two municipal years beginning with the first Monday in January following his election, unless sooner removed, and until his successor is elected and qualified; provided, that if elected to fill an existing vacancy, he shall hold office only for the remainder of the unexpired term.



# Add Chief Administrative Officer (CAO)

Recco #14: adding a Chief Administrative Officer to the city administration who would be confirmed by city council as laid out in the department head process.

- Policy Considerations: The committee sought to ensure that anyone in this role had the skills and qualifications needed to successfully serve. In the past, the day-to-day running of the City has largely fallen on a combination of the mayor's Chief of Staff and various department heads with no oversight from city council. Adding the CAO position to the charter: 1) gives city council some oversight and confirmation of the role, 2) frees the Chief of Staff to focus on policy, and 3) allows department heads to focus on their departments. Job requirements and hiring process will be defined in the city's administrative code.
- Community Feedback: There was no community feedback on the CAO position. City staff expressed support for such a position.

# Add Chief Administrative Officer (CAO)

Recco #14: adding a Chief Administrative Officer to the city administration who would be confirmed by city council as laid out in the department head process.

- SECTION 3-6: APPOINTMENT OF CHIEF ADMINISTRATIVE OFFICER
  - The mayor shall appoint a chief administrative officer to coordinate and direct the operations and functions of municipal government. The chief administrative officer shall be appointed by the mayor, subject to review by the city council under section 2-8(a). The appointee shall be chosen on the basis of strong administrative and executive qualifications and shall have a combination of experience, training, and/or education to perform the duties of the office.

# Advisory Legal Counsel for City Council

Recco #7: Allow city council to hire their own advisory legal counsel.

- Policy Considerations: school committee is allowed advisory legal counsel as dictated in MGL. The committee felt that allowing city council the ability to get a second opinion on legal questions can increase trust in government, especially when there is disagreement between the Mayor's Office and city council. The legal counsel would be advisory only and prohibited from representing city council or the City in any legal proceedings, as the City Solicitor serves as the legal representation and authority for all branches of government.

# Advisory Legal Counsel for City Council

Recco #7: Allow city council to hire their own advisory legal counsel.

- Community Feedback: The community supported more support for city council.
  - 52% of survey respondents said they felt city council needed more support. 56% of survey respondents who answered the question "which of the following would be helpful in better supporting city council" selected advisory legal counsel as one option.
  - Some participants at one of our community engagement meetings expressed support for advisory legal counsel.

# Advisory Legal Counsel for City Council

Recco #7: Allow city council to hire their own advisory legal counsel.

- Text from Proposed Charter: SECTION 2-7: APPOINTMENTS OF THE CITY COUNCIL
  - (a) Advisory Legal Counsel - The city council may secure legal services, either by employment or on a contractual basis. Such legal services shall be solely in the service of the council and may include research, analysis, and drafting assistance. **The mayor shall annually provide to the city council a sum of money sufficient to satisfy the estimated cost of legal services** as presented to the mayor, in writing, by the city council. The legal services provided to the council shall not include representation of the council or any councilor in any court matter or related litigation, or the issuance of formal legal opinions on behalf of the city. The city solicitor shall remain the only authorized officer of the city in all legal matters involving the city's government.

# Allow City Council to Hire Staff

Recco #8: Continue to allow City Council to hire staff, subject to Mayoral appropriation.

- Policy Considerations: Some MA charters explicitly state that their city councils can hire staff. Somerville city council can currently hire staff **subject to appropriations**, this recommendation would enshrine the power in the charter.
- Community Feedback: 70% of respondents who answered the question "which of the following would be helpful in better supporting city council" selected staff as one option. Participants at one of our community engagement meetings also expressed support for city council hiring staff.

# Allow City Council to Hire Staff

Recco #8: Continue to allow City Council to hire staff, subject to Mayoral appropriation.

- Text from Proposed Charter: SECTION 2-7: APPOINTMENTS OF THE CITY COUNCIL
  - (b) Other Staff - **Subject to appropriation**, the city council may employ staff as it deems necessary.
  - (c) Removals and Suspensions of City Council Staff – City council appointments may be removed at the sole discretion of the city council subject to limitations and requirements imposed by federal and state laws, rules and/or regulations.

# Access to Information Provision

Recco #10: Add an access to information provision to the charter.

- Policy Considerations: Instead of non-binding orders, city council would be able to submit formal Access to Information Requests to make investigations into the affairs of the city and into the conduct and performance of any city agency. Including this provision in a charter is a best practice and it is a part of many Massachusetts charters.
- Community Feedback: The community supported increasing access to information by residents, which we heard frequently in public comments at meetings



# Access to Information Provision

Recco #10: Add an access to information provision to the charter.

- Proposed Text: SECTION 2-10: ACCESS TO INFORMATION
  - (a) In General - The city council may make investigations into the affairs of the city and into the conduct and performance of any city agency. Absent compelling circumstances or an emergency which shall be declared on record and noted in the city council minutes, the city council shall give a minimum of 14 days' notice to a person it may require to appear before it under this section. In circumstances involving compelling circumstances or emergency, 7 days' notice shall be allowed. The notice shall include specific questions on which the city council seeks information and any person called to appear before the city council under this section shall not be required to respond to any question not relevant or related to those questions presented in advance and in writing. The mayor shall receive a copy of any notice issued under this section at the same time as the person who is requested to appear before the council. Any notice under this section shall not be issued without first being authorized by a majority vote of the city council.

# Access to Information Provision

Recco #10: Add an access to information provision to the charter.

- Proposed Text: SECTION 2-10: ACCESS TO INFORMATION
  - (b) Department Head - The city council may require, by majority vote, specific information from a department head or their designee on any matter related to the municipal services, functions and powers or duties which are within the scope of responsibility of that person. The department head or their designee shall not be required to answer questions relating to any other matter outside the scope of the matter noticed.
  - (c) Mayor - The city council may request, by majority vote, specific information from the mayor on any municipal matter. The mayor or their designee shall appear before the city council and respond to the questions. The mayor or their designee shall not be required to answer questions relating to any other matter. The mayor may bring to this meeting any assistant, department head or other city officer or employee that the mayor may consider necessary to assist in responding to the questions posed by the city council.

# Change Department Head Hiring Process

Recco #15: Change the department head structure..

The committee recommends six changes for department heads:

1. Candidates have a conditional offer prior to city council confirmation;
2. City council must take up the appointment of a department head within 30 days of filing;
3. City council must provide an explanation for rejection of a department head appointment;
4. Temporary department head appointments have an initial 150-day limit with possible 60-day extensions if approved by city council;
5. Department heads serve at the discretion of the mayor and may be removed by the mayor, may no longer request reinstatement from city council
6. Removal of terms for department heads.

# Change Department Head Hiring Process

Recco #15: Change the department head structure..

- Policy Considerations:
  - The committee balanced the needs of the mayor's office for filling department head positions in a timely manner with the desire for oversight from city council, while staying mindful of employment law. Timelines were put in place to increase the City's ability to hire the best candidates. Candidates may be granted a conditional approval/offer by the mayor while waiting for city council confirmation - this ensures that the City does not lose good candidates by being unable to extend an offer. City council will then have 30 days to approve or reject a department head appointment so candidates can get a final answer promptly. If city council rejects a candidate they must provide a written explanation.

# Change Department Head Hiring Process

Recco #15: Change the department head structure..

- Policy Considerations:
  - Currently, there is no time component for temporary appointments, giving the mayor the ability to keep candidates who would not otherwise get approval from city council. This timeline provides the mayor adequate time to fill a position, the ability to extend the temporary appointment if the mayor has trouble filling the post, and the ability for city council to bring a temporary appointment to an end if they feel the extensions are being used improperly.
  - Current term lengths do not have enforcement mechanisms of any kind.

# Change Department Head Hiring Process

Recco #15: Change the department head structure..

- Policy Considerations:
  - If the mayor removes a department head, city council can no longer force the mayor to keep a department head they no longer want. In the new charter, if an employee believes they are wrongfully terminated by a mayor, this wrongful termination would be covered by employment law processes.
- Community Feedback: There was no community feedback on the department head process

# Change Department Head Hiring Process

Recco #15: Change the department head structure.

- Text from Proposed Charter: SECTION 2-8: CITY COUNCIL CONFIRMATION OF CERTAIN APPOINTMENTS
  - a. Department Heads - The mayor shall refer to the city council and simultaneously file with the city clerk the name of each person the mayor desires to appoint as a department head. The city council shall have 30 days after the date on which notice of the proposed appointment was filed with the city clerk to vote to approve the appointment with approval not to be unreasonably withheld. An approved appointment shall be effective immediately. The city council shall accompany a rejection of the appointment with a written statement describing the reason, which shall be delivered to and placed on file with the city clerk within 30 days of filing. If the city council does not take up the appointment within 30 days, the appointment shall be deemed approved. The question on rejection of any appointment made by the mayor shall not be subject to the procedure of charter objection provided in section 2-9(b) of this charter.

# Change Department Head Hiring Process

Recco #15: Change the department head structure.

- Text from Proposed Charter: SECTION 3-5: APPOINTMENTS BY THE MAYOR
  - a. Department Heads - The mayor shall appoint, subject to review by the city council under section 2-8(a), all department heads for whom no other method of appointment or selection is provided by this charter. Department heads serve at the discretion of the mayor subject to the limitations and requirements imposed by federal and state laws, rules, and/or regulations.



# Change Department Head Hiring Process

Recco #15: Change the department head structure.

- Text from Proposed Charter: SECTION 3-7: TEMPORARY APPOINTMENTS TO CITY OFFICES

Whenever a temporary or permanent vacancy occurs in a city office that is appointed under section 3-5(a), the mayor may designate a person to perform the duties of the office on a temporary basis for up to 150 days until the position can be filled as provided by law or by this charter. Persons serving as temporary officers under this section shall have only those powers indispensable and essential to the performance of the duties of the office during the period of temporary appointment and no others.

- a. Filing of a Temporary Appointment - When the mayor designates a person under this section, the mayor shall file a certificate with the city clerk in substantially the following form:
  - “I designate (name of person) to perform the duties of the office of (office in which vacancy exists) on a temporary basis until the office can be filled by (the regular procedure for filling the vacancy or when the incumbent shall return). I certify that this person is qualified to perform the duties which will be required and that I make this designation solely in the interests of the City of Somerville.”
- (b) Extension of Temporary Appointments - If an extension of a temporary appointment is necessary, the mayor may seek additional extensions in 60-day increments, which shall be authorized by a majority vote of the city council. If an extension is not approved, the position shall be deemed vacant.

# Change MMB Appointment Process

Recco #16: Change the multiple member body (MMB) structure.

The committee recommends three changes for multiple member bodies:

1. Holdovers and temporary appointments last 150 days, with an option for 60-day extensions with city council approval;
2. City council has 45 days from filing to confirm or reject mayoral appointments, and can have a single 15-day extension upon request; and
3. MMBs, their structures, and term lengths will be specified in Administrative Code. For MMBs governed by MGL, MGL takes precedence.

# Change MMB Appointment Process

Recco #16: Change the multiple member body (MMB) structure.

The committee recommends keeping:

1. Current procedures for removal of MMB appointments (the appointing authority is the removing authority)
2. Current practice that the mayor serves ex officio on all MMBs
3. Use of uniform procedures for MMBs including following Open Meeting Law
4. MMB members are appointed for terms.

# Change MMB Appointment Process

Recco #16: Change the multiple member body (MMB) structure.

- Policy Considerations

- There are over 400 seats on the 40+ MMBs. The committee sought to balance the needs of the Mayor to track and fill these positions in a timely manner with city council's desire for oversight and approval. Currently, there is no time limit for holdovers and temporary appointments to MMBs, giving the mayor the ability to keep members who would not otherwise get approval from city council.
- The committee recco'd a timeline that provides the mayor with adequate time to fill seats, the ability to extend the temp appointment or holdover if the mayor has trouble filling the seat, and the ability for city council to bring an end to a holdover if they feel the extensions are being used improperly.
- For MMBs governed by MGL which require a quorum to function, MGL takes precedence.

# Change MMB Appointment Process

Recco #16: Change the multiple member body (MMB) structure.

- Policy Considerations
  - The authority, code, and legislation for MMBs all currently exist across multiple sources: MGL, the charter, and ordinances. The committee felt it was important to have all of these laid out clearly and transparently in the Administrative Code. A Periodic Review of MMBs has been established, the first to happen upon the passing of the charter..
- Community Feedback: There were a few responses to the community survey expressing frustration with the lack of accountability for holdovers on MMBs.

# Change MMB Appointment Process

Recco #16: Change the multiple member body (MMB) structure.

- Text from Proposed Charter: SECTION 2-8: CITY COUNCIL CONFIRMATION OF CERTAIN APPOINTMENTS
  - (b) Multiple Member Bodies - The mayor shall refer to the city council and simultaneously file with the city clerk the name of each person the mayor desires to appoint as a member of a multiple member body. The city council shall have 45 days after the date on which notice of the proposed appointment was filed with the city clerk to vote to approve or reject the appointment, with approval not to be unreasonably withheld. If the city council does not approve or reject the appointment within 45 days, it may file a 15-day extension with the city clerk. If the time period elapses and no extension has been filed, the appointment shall be deemed approved. Multiple member body members may be removed at the discretion of their appointing authority subject to limitations and requirements imposed by federal and state laws, rules, and/or regulations.

# Change MMB Appointment Process

Recco #16: Change the multiple member body (MMB) structure.

- Text from Proposed Charter: SECTION 3-5: APPOINTMENTS BY THE MAYOR
  - (b) Multiple Member Bodies - The mayor shall appoint, subject to confirmation by the city council under section 2-8(b), all members of multiple member bodies for whom no other method of appointment or selection is provided by administrative order or General Laws. All members shall serve terms as defined by administrative order or General Laws.

# Change MMB Appointment Process

Recco #16: Change the multiple member body (MMB) structure.

- Text from Proposed Charter: SECTION 3-8: TEMPORARY APPOINTMENTS TO MMBs
  - Whenever a temporary or permanent vacancy occurs on a multiple member body that is appointed under section 3-5(b), the mayor may designate a person to perform the duties of the office on a temporary basis for up to 150 days until the position can be filled as provided by law or by this charter. If an extension of a temporary appointment is necessary, the mayor may seek additional extensions in 60-day increments, which shall be authorized by a majority vote of the city council. If an extension is not approved, the position shall be deemed vacant, except on multiple member bodies where such vacancy would prevent a quorum. In such instance, a temporary appointment shall be permitted to remain until a successor is qualified, however, the authority of the temporary appointment shall be limited to matters where failure to act by the multiple member body may have adverse consequences to the City.