



# City of Somerville, Massachusetts

## City Council Charter Review Special Committee

### Meeting Minutes

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Wednesday, February 8, 2023

6:00 PM

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This meeting was held via GoToWebinar and was called to order by Chair Scott at 6:01 pm and adjourned at 9:09 pm on a Roll Call Vote: 11 in favor (Councilors McLaughlin, Davis, Ewen-Campen, Pineda Neufeld, Clingan, Wilson, Burnley, Gomez Mouakad, Kelly, Strezo, Scott), 0 opposed, 0 absent.

Others present: Kimberly Wells – City Clerk; Cindy Amara – City Solicitor; Anne Gill – Director of Human Resources; Aneesh Sahni – Intergovernmental Affairs Director; Brendan Salisbury – Legislative and Policy Analyst; Anna Corning – Charter Review Project Manager; Beverly Schwartz – Charter Review Committee Member; Stephen McGoldrick - Edward J. Collins Center for Public Management

#### Roll Call

**Present:** Chairperson Jefferson Thomas (J.T.) Scott, Vice Chair Kristen Strezo, Willie Burnley Jr., Matthew McLaughlin, Lance L. Davis, Ben Ewen-Campen, Judy Pineda Neufeld, Jesse Clingan, Jake Wilson, Beatriz Gomez Mouakad and Charlotte Kelly

1. Committee Minutes (ID # [23-0161](#)) Approval of the Charter Review Special Committee Minutes January 25, 2023.

**RESULT:** ACCEPTED

**AYE:** Chairperson Scott, Vice Chair Strezo, City Councilor At Large Burnley Jr., McLaughlin, Davis, Ewen-Campen, Pineda Neufeld, Clingan, Wilson, Gomez Mouakad and Kelly

2. Officer's Communication (ID # [22-1520](#)) Charter Review Committee conveying its recommendations and proposed Charter text.

Chair Scott referred the Committee to the slides from the 01.25.2023 meeting, related to the Balance of Power topics, noting that the schedule will be extended to allow for additional discussion of items before moving to Budget/Finance topics in the next meeting.

The discussion began with the recommendation of the Charter Review Committee to allow the City Council to hire their own advisory legal counsel. Solicitor Amara shared some concerns, particularly that the Solicitor's role is to represent the City Council and separate legal counsel may infringe on that role and legal opinions of the Solicitor's Office. There are also concerns about duplication of resources and inefficient use of funds, as well as increasing conflict rather than cooperation. Councilor Wilson inquired about whether there had been any consideration of the option to give the appointing authority for the City Solicitor to the City Council. Charter Review Committee member Beverly Schwartz commented that it had not been a consideration, and added that the intent was to allow for a second opinion, not to challenge the City Solicitor's opinion but to encourage discussion, and the City Solicitor would still be the decision-making authority. Councilor Ewen-Campen shared some examples of instances where the City Council needed separate legal counsel, referring to two situations in the Confirmation of Appointments and Personnel Matters Committee where the City Council's inability to get advise on how to accomplish their goals created issues, and in those circumstances, the Mayor's goals did not align with the City Council's. Councilor Ewen-Campen also noted an instance in the Legislative Matters Committee when the information provided was not sufficient to satisfy the requests of the Councilors. The ability to have this power is a critical one, though he is willing to consider various options on how to get there.

Councilor Davis added another example related to the Welcoming Community Ordinance where the City Council reached out to attorneys outside of the city to make their decisions because the City Solicitor did not provide adequate information. Councilor Davis emphasized that the relationship between the City Council and City Solicitor's Office will continue to be collaborative and in good faith, but this is a need stemming from direct Council frustrations with the City Solicitor's Office. Councilor Davis added that seeking legal remedy through alternative means is not what this language allows nor what the City Council is aiming to achieve. He emphasized the community process that led to this decision of the Charter Review Committee, and added that without this provision, the City Council has no recourse if the Mayor decides not to do things that are required by Charter or otherwise.

Legislative & Policy Analyst Brendan Salisbury cited MGL CH 231A,

noting that there is declaratory relief through the courts, and the Charter is state law, which would give the Attorney General jurisdiction to enforce the provisions. Councilor Burnley added that the gap between the City Council having a power in theory vs practice remains an issue and he supports this provision. Councilor McLaughlin also supported the provision, noting that it was a key issue behind the impetus for Charter reform. Councilor McLaughlin shared that it does not make sense for the same person to represent two separate branches of government, which may be in conflict at various times. Councilor Kelly suggested consideration of changing the language to reflect employment, rather than a contract, and amending the Code of Ordinances to add the position to the position listing and salary schedule. An alternative suggestion Councilor Kelly provided was to tie the sum provided to the average salary of the city's Law staff. Councilor McLaughlin shared that the Charter Review Committee discussed this, and concluded that it would not likely represent sufficient work for a full-time position, and would be more likely to reflect a conflict with the Solicitor's Office if it was an employee.

Councilor Strezo also expressed support for this provision and agreement with Councilor McLaughlin that a contract is the most efficient way to use the city's funds for this purpose. Councilor Davis added that a contract would also enable a variety of experts in different areas of municipal law to provide advise as needed. Chair Scott commented that using the average salary or a percentage of the City Solicitor's salary for the appropriation is a sound possible solution. Councilor Kelly clarified that her intent was not necessarily that the position would be full-time.

Director Sahni shared that the Administration is open to the City Council seeking second opinions when needed. There are significant concerns related to this provision, around duplication of efforts, and the lack of bounds on the language related to the amount of funding. Director Sahni noted that the City Council would be the first in the Commonwealth to implement this, and it would be a significant change. Additionally, he noted that many new provisions would require more resources for the Administration to execute. Councilor Ewen-Campen noted that it seems there is broad support for this and those who would like to see changes should suggest changes to reflect their concerns.

The next topic of discussion was the recommendation of the Charter Review Committee to continue to allow the City Council to hire staff, subject to Mayoral appropriation. Councilor Burnley expressed support for this provision, noting that the appropriation relying on the Mayor may pose an issue. Councilor Wilson noted that it may be an issue for staff to have 11 bosses and the implementation would need to be considered. To questions regarding the appropriation, Mr. McGoldrick commented that everything is subject to appropriation because the funds need to come from somewhere. Chair Scott asked if language tying the appropriation to something else would be feasible and Mr. McGoldrick will research.

Councilor Ewen-Campen noted that the Charter is not the place to be specific about the nature of staff. He noted that much like the City Clerk's role, which is required by state law, he would like to see the language be more explicit that the City Council will have staff. Councilor Pineda Neufeld asked about the distinction between the Council as a whole hiring staff versus individual Councilors possibly being able to hire staff. Beverly Schwartz noted that the intent was to make this as flexible as possible. Councilor Pineda Neufeld also inquired about various staffing models and Mr. McGoldrick will research further, adding that Boston is the only municipality in MA where Councilors have individual staff. Councilor McLaughlin clarified that Cambridge City Councilors have individual staff, but they are not full-time, and added that staff for Committees is a better model. Councilor Kelly stressed exploring the topic of tying funding of City Council staff to other staff roles.

The next recommendation of the Charter Review Committee that was discussed was the addition of an access to information provision. Councilor Burnley expressed appreciation for the intent of this language but concerns about enforceability. Beverly Schwartz clarified that this would be supplemental to the power to submit orders that Councilors currently utilize. Councilor Davis noted that current practice is that typically seven days' notice is required, and this could give the Administration additional power to withhold information for a period of time. Councilor Wilson also shared concerns about enforceability. Analyst Salisbury added that the answer is likely the same as previously shared regarding the courts and the Attorney General. Solicitor Amara emphasized that the Charter is an important legal document and agreed that legal recourse would be an option. Councilor Wilson noted that this is an improvement, even if not foolproof. Councilor Ewen-Campen also highlighted that updating this document will make any transgressions more apparent. Director Sahni added that the Administration supports this provision but has concerns about ensuring that there would be protections for personnel or other confidential information. Chair Scott referred to previous issues with the legislative body being refused access to certain information. Councilor Gomez Mouakad emphasized that this language cannot account for every circumstance and is a necessary improvement.

Chair Scott clarified that this would not replace the Rule of the City Council enabling the Council to request an appearance before the Council within seven days for the normal course of business, but would rather represent a separate process providing an opportunity for escalation.

Councilor Burnley moved to support the recommended language by the Charter Review Committee on adding an access to information provision.

The motion was approved on a roll call vote of 11 in favor (Councilors McLaughlin, Davis, Ewen-Campen, Pineda Neufeld, Clingan, Wilson, Burnley, Gomez Mouakad, Kelly, Strezio, Scott), 0 opposed, 0 absent.

The recommendation before the Committee next was on changing the

department head hiring structure. Chair Scott noted that the conditional offer provision is akin to the civil service process in place for Police and Fire employees. He highlighted that the exemption from the provision granting members the right to table an item is important to ensure that one member cannot unduly influence the appointment process. Director Gill noted that the conditional offer process would be a burden to hiring the best candidates, and the city is already struggling to fill roles. She added that candidates at the department head level prefer to keep their candidacy secret, and a 30-day waiting period for confirmation would thus have an impact on the caliber of applications. Additionally, benefits would not begin accruing until after those 30 days. She expressed further concern about the potential risk of a public rejection by the City Council. Director Gill added that non-union employees serve at the will of the Mayor, but the city follows protocols and processes for discipline and termination.

Councilor Ewen-Campen shared that it is very important that the City Council have some power in the event that a highly unqualified candidate is put forward. The Mayor's Office also need the ability to recruit the most talented people. Other communities have a variety of ways to address this issue. The model used in Newton may address some of the current concerns - it would entail the offer taking effect *unless* there is a 2/3 vote to reject, taken within 30 days. Councilor Pineda Neufeld asked about how the timeline would be impacted by the times when the Council is in recess, adding that Councilor Ewen-Campen's proposal addresses this. She asked as well about what recourse a candidate would have if rejected, noting that there is an appeal process for civil services candidates who are not confirmed. Councilor Davis asked what department heads are *not* subject to confirmation. The City Clerk will provide the list of those who are subject to confirmation.

Councilor Kelly referenced existing public hiring processes, including public interviews currently being held for a new Superintendent of Schools as well as several other posts in the School District, indicating that these processes are not uncommon even within Somerville and do not unduly hinder the hiring of qualified candidates. Councilor Strezo shared worries about losing candidates. Director Gill noted that the current process is to follow a conditional offer with an offer within about a week. The issue would be with candidates leaving positions for a conditional offer that doesn't come to fruition following the conditional approval period. Councilor Clingan expressed support for the proposal from Councilor Ewen-Campen. He added that if the administration is not going to submit unqualified candidates, the confirmation period should not be an issue. Beverly Schwartz noted that Newton's proposed Charter contains the same text that they are currently using, which indicates that they are happy with that process. She added that the conditional offer would enable candidates to start sooner while awaiting the confirmation, rather than waiting the 30 days, which was intended to provide more flexibility. Councilor Davis

emphasized that the conditional offer is a red herring - this concept is not new. The Council's involvement may have been ignored in the past, but has always been part of the process. Councilor McLaughlin agreed that this simply gives the City Council more ability to use the power granted to it. He also shared support for Councilor Ewen-Campen's suggestion that a 2/3 vote could be instituted.

Councilor Gomez Mouakad raised the point that this is consistent with many hiring processes, where the interviews take place with many different staff members and the City Council should maintain the opportunity to participate in the process. Councilor Wilson supported Councilor Ewen-Campen's proposal. Councilor Burnley noted that this power is important to the Council and needs to be used consistently and effectively. He also supported Councilor Ewen-Campen's language for department heads. Chair Scott noted that there are times when things are missed in the hiring process and having the confirmation process is an important one. He raised some timing issues, including when the timeline begins and what happens during a recess. He suggested that this topic could also be worked on by a small group to resolve the Administration's issues.

**RESULT: KEPT IN COMMITTEE**

Referenced Documents:

- 02.08.23 CHARTER Proposed Amendments to Department Head and CAO Appointments
- 02.08.23 CHARTER Proposed Amendment Detail\_Redacted
- City Employee Term Chart 2023