Somerville City Clerk's Office

Manual on Legislative Drafting

January 9, 2025

Prologue

The purpose of this manual is to facilitate the implementation of a uniform and consistent legislative language style in the City of Somerville. It is intended to assist drafters with producing legislation for submission to the city council, or editing legislation in committee, that is functional and easily understood by members of the public. To that end, it includes general rules of style, suggested practices for managing multiple drafts through the committee process, as well as a legislative drafting process and drafting standards. At the end of the document are templates for formatting ordinances, resolutions, orders, and home rule petitions.

The rules and guidelines for drafting laid out below are drawn from a variety of sources, including from legislative drafting manuals in other jurisdictions, general writing style guides, academic papers studying best practices for drafting effective legislation, and common formatting and drafting practices already in use within the Somerville Code of Ordinances. While there are definite standards for quality legislation, there is no universal standard for formatting, and no right and wrong way. Uniformity in style is predictable, and what is predictable is typically more easily understood. Good formatting is a critical component of good drafting, and good drafting, while not the sole determinant of whether a law is "good", is a critical component of good law.

Contents

Part one. – General principles and organization

The guiding principles contained within this part are not intended to serve as rigid rules that are applicable to all circumstances and should not be seen as a comprehensive list of all important principles for drafting. Rather, they are meant to be a roadmap to well-drafted legislation, supplemented by the skill and experience, subject matter knowledge, and understanding of the common-sense principles of simplicity, clarity, and good organization already possessed by the drafter.

The various legislative documents covered by this manual, and to which these guiding principles were intended to apply, are home rule petitions, orders, resolutions, and ordinances. It is helpful to give a brief definition of these terms at the outset. A home rule petition[1] is a special act, requiring local approval, of the state legislature, which applies only to the requesting municipality. Home rule petitions are necessary for a municipality to regulate any matter on which the Massachusetts constitution or Massachusetts General Laws has restricted municipal power. An order is a demand for information or request for specific action from a municipal department, submitted by a city councilor. A resolution is a request for general action or statement of opinion or values by a city councilor or the City Council. An ordinance is a municipal law, enacted by the City Council and approved by the mayor.[2]

The form, length, and complexity of each of these documents differs dramatically. It would be unusual for an order to be longer than a few lines, while resolutions, ordinances, and home rule petitions are often at least several paragraphs, and sometimes multiple pages, long. Resolutions, unlike ordinances and home rule petitions, are non-binding requests or policy statements. Longer resolutions utilize "whereas" statements indicating the reason for the resolution, and the phrase "now, therefore, be it resolved" to indicate the request. While ordinances and home rule petitions are sometimes accompanied by "whereas" statements, those statements are not a part of the actual law.

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[1] The style for home rule petitions, including amendments to the charter, should conform to the standards set by the Massachusetts General Court's Legislative Research and Drafting Manual, which differs significantly from the standards set in this style manual.

[2] There is a distinction between an ordinance and a zoning ordinance. Zoning ordinances are technical documents, and while many of the principles in this drafting guide are applicable, the formatting of the Somerville Zoning Ordinance is managed by a style guide produced by the Somerville Planning, Preservation, and Zoning division of the Office of Strategic Planning and Community Development.

Sec. 1-1. – General principles.

Two generally accepted critical properties of quality legislation are: that the legislation is written in such a way that it effectively accomplishes its intended purpose, and that it is comprehensible. The implementation of a style guide facilitates the latter by encouraging consistency in drafting and providing a basis for interpreting intent. Naturally, substance is of arguably greater importance than style; a neatly drafted, easy to read piece of legislation that is obviously incapable of accomplishing the intended outcome which it was drafted to achieve is not "good law". However, in the same way, a law that is unintelligible to everyone except the drafter or a trained attorney can hardly be called good either, even if it perfectly accomplishes the drafter's intent.

A drafter should certainly never sacrifice substance for style, but clarity, simplicity, precision, and consistency should be prioritized wherever practically possible. To that end, there are certain general rules that should be followed when drafting.

(1) Use plain language: while legislation should avoid colloquialism, there is no need to be overly formal or technical. Municipal law's target audience should be the general public, not attorneys or judges.

    (A) Avoid the use of Latin unless absolutely necessary.

    (B) Avoid using different words to say the same thing or using the same word to say different things. Stick to one word per concept and one concept per word.

(2) Clearly define terms: where jargon or technical language cannot be avoided, if a term can be interpreted multiple ways (e.g., "day" vs "business day" or "year" vs "calendar year" vs "fiscal year"), a term without a commonly understood meaning is used, or a term's meaning in the document is different from the commonly understood meaning, the term should be defined.

    (A) Any term that is key to the legislation, even if its meaning seems obvious, should be defined.

(3) Use short sentences: communicate concepts as simply and using as few words as practically possible. Eliminate idle words wherever possible. If a word has the same meaning as a phrase, use the word.

    (A) Break complex, compound sentences down into multiple sentences where possible.

(4) Use present tense: where possible legislation should be read as effective at the time when read, rather than projecting requirements, restrictions, or duties out into the future (e.g., rather than saying "the Inspectional Services Department shall be the enforcing authority" say "the Inspectional Services Department is the enforcing authority").

(5) Err on the side of specificity: if there is potential to interpret a provision multiple ways but one specific interpretation is intended, make that clear.

(6) Avoid the passive voice: use the active instead of passive voice unless the actor cannot be identified or the statement is intended to be universal. The use of the passive obscures the true subject and muddies who the law applies to and how.

(7) Be direct: law is a demand, not a request, and direct language is clearer and more concise. If a concept can be expressed either positively or negatively it should be expressed positively (e.g., "at least" rather than "not less than").

Sec. 1-2. – Organization.

The Somerville Code of Ordinances is divided into three parts: the charter and related legislation ("the charter"), the code of ordinances ("the ordinances"), and administrative orders. The charter is organized by part, division, title, and section, while the ordinances are organized by chapter, article, division, and section. There are fifteen chapters in the ordinances, covering a broad array of topics which are likely to encompass any new ordinances. New ordinances typically either fit within one of the existing articles or create a new one. Chapters, articles, divisions, and sections are numbered sequentially and are designated by Arabic numerals. Any new chapters, articles, divisions, or sections should receive the next number in the sequence for their placement within the ordinances.

Articles and sections should be numbered according to the chapter and article, respectively, that they are contained within, with chapter and article numbers separated by periods, and the section number preceded by a hyphen (e.g., section twelve of article five of chapter twenty should be numbered "**Sec. 20.5-12. – [Section title].**"). Where an article contains divisions, the division number should be included following the article number in the same manner as the article and chapter numbers (e.g., section four of division two

of article four of chapter two should be numbered "**Sec. 2.4.2-12. – [Section title].**"). This numbering system eliminates the potential for section numbering overlap and obviates the need for reserving sections.

Sections are further divided into subsections, paragraphs, subparagraphs, clauses, and subclauses, formatted as follows:

(a) Subsection

(1) Paragraph

(A) Subparagraph

(I) Clause

(i) Subclause

Citation to sections, and to specific subdivisions of a section (known as a pinpoint citation or "pincite"), should be made using the numbering format established above, appending the appropriate subdivision in parentheses (e.g., Section 20.5-12(a)(2)(D)).

Part two. – Types of legislative action.

Sec. 2-1. – Home rule petition.

A home rule petition is a request by a municipality for a special act of the state legislature, applying specifically to the requesting municipality. Under the home rule amendment to the Massachusetts constitution there are a number of restrictions on a municipality's ability to self-govern, including that a municipality may not make any law that is "inconsistent with the constitution or laws enacted by the general court[.]"[3] Additionally, there are six categories of law which are expressly reserved for the state legislature: (1) regulation of elections; (2) levy, assessment, and collection of taxes; (3) borrowing money or pledging the credit of a municipality; (4) disposition of park land; (5) enactment of private or civil law governing civil relationships;[4] and, (6) defining and providing for the punishment of a felony or imposition of imprisonment as punishment for any violation of law.[5] For a municipality to be exempted from the restrictions or requirements of the Massachusetts general laws or regulations promulgated by state agencies (such as the building code or plumbing code), to change its home rule charter, or to make law on any of those six restricted categories, a home rule petition is necessary.

A home rule petition should be drafted in accordance with the style established in the Massachusetts General Court Legislative Research and Drafting Manual because, fundamentally, it is state legislation and thus should be filed in accordance with the standards set for state legislation. The style established within this drafting manual is not applicable and should be disregarded. In terms of content, a home rule petition can vary substantially based on the issue at hand. It could be as simple as requesting that every instance of a particular word be struck and replaced with another in the city charter, indicating each section where the word appears and what it should be replaced with (e.g., changing "solicitor" to "attorney" or creating a

[3] Article LXXXIX of the Massachusetts Constitution Articles of Amendment establishes the right of local self-government and contains mechanisms for adoption, revision, or amendment of charters, as well as limitations on municipal powers.

[4] This restriction is conditional, as a municipality may govern civil relationships "as incident to an exercise of an independent municipal power". Whether governance of civil relationships qualifies as incident to an exercise of an independent municipal power is determined by the courts. The city attorney's office should be consulted to determine whether an ordinance or home rule petition is the most appropriate course of action.

[5] Massachusetts Constitution Article LXXXIX, Section 7.

gender-neutral charter by removing all gendered pronouns), or as complex as crafting a framework for rent stabilization. The drafter's judgment will be necessary when determining what substance should be included, but generally speaking the components of an ordinance, described in detail below, can serve as a guide in drafting a home rule petition.

When drafting a home rule petition, a drafter should consider the extent of the detail required to accomplish the goal. For largely cosmetic changes, like implementing a gender-neutral charter, the level of detail required is minimal, as noted above. All that should be included is the term that needs to change, its replacement, and every place within the document where that term appears, with no need to specifically identify each individual instance (e.g., "Section 4 of chapter 82 of the acts of 1928 is hereby amended by striking out the word "chairman", each time it appears, and inserting in place thereof, in each instance, the word "chair"). Others are drafted in a more classically recognizable statutory form and require significantly greater detail, such as a revised charter or an act establishing a mechanism for automated traffic enforcement within the city. Still others might be a request for specific authorization to take particular action, such as allowing a municipal officer to remain in their position beyond the term established by law, or to be granted the authority to make an ordinance on a particular topic typically forbidden.

In other words, the content of a home rule petition is determined by its purpose and the request being made. It is best to begin the drafting process for a home rule petition by reviewing past home rule petitions with similar purposes. Each home rule petition filed by the city is available on the state legislature's website for review, as well as within the city's own legislative management system. Some example home rule petitions are contained within the appendix to this manual.

Sec. 2-2. – Order.

An order is a demand for information or request for specific action from a municipal department, submitted by a city councilor. An order should be directed to the department head, from whose department action or information is requested, clearly state the request, and, where applicable, the reason for the request. Generally speaking, an order should be concise and not exceed a single sentence, or two at most.

An order should be directed to the appropriate department head, being sure to name the role rather than the person holding it (e.g. the commissioner of public works rather than "commissioner Lathan"), and should avoid generalities such as "the administration" or "the appropriate staff", as there is no mechanism for council staff to follow up and determine whether action has been taken. Similarly, an order should avoid overly broad requests such as "all information relating to" or for information from a broad span of time. While too narrow of a request could miss important information, too broad of a request creates additional administrative burdens and could result in the substantial delays in fulfilling the request, or even denial of the request if it encompasses privileged or confidential information which should not be made public. Additionally, even if a broad request is fulfilled there is the risk that the quantity of information provided could mask the information necessary to answer the question that led to the request. The inclusion of the reason for a request helps to address some of the potential pitfalls of a too narrow or broad request by providing context which can help determine what specific information would be most valuable in answering the question.

Sec. 2-3. – Resolution.

A resolution is a non-binding request or statement which can be directed either internally, to the administration or a specific department, or externally, including to the general public, the state or federal delegation, a specific state or federal agency or department, other government official, local business, etcetera. The form of a resolution can vary significantly depending on its purpose and the specific issue it is intended to address. An internal request for action by the administration or a department, for instance, might follow the same format as an order, while an external request or policy statement is likely to be significantly longer and include multiple "whereas" clauses.

A resolution's "whereas" clauses should consist of individual justifications for the request or policy statement, and should begin with an appropriate thesis statement (e.g., "That Somerville prioritize its public safety resources according to a fact-based understanding of road safety", "Residents of Somerville have a right to intellectual freedom, including the freedom to access and share information and ideas without interference", "The City of Somerville is committed to fostering equity and building a more inclusive

community", etc.). Subsequent "whereas" clauses should provide support for the initial thesis statement and offer concrete justification for the request or policy statement.

"Now, therefore, be it resolved" should be used to indicate the beginning of the request or policy statement. There are many different ways to structure these clauses. Some prefer to utilize a single "now, therefore, be it resolved" and contain the entire request, even if there are multiple different actions requested, in a single paragraph. Others treat individual requests as their own clauses, utilizing the phrase "and, be it further resolved" for each clause. Still others utilize list format, with semicolons at the end of each clause, and "; and," to mark the final clause. For the sake of uniformity and clarity, the request or policy statement of a resolution should utilize the phrase "and, be it further resolved" for each clause.

Sec. 2-4. – Ordinance.

An ordinance is municipal law, and the code of ordinances is the equivalent of the general laws for a city or town. Each discrete topic within legislation should have its own section or subsection. As with a home rule petition, it is best to begin the process of drafting an ordinance by reviewing past ordinances with similar goals or subject matters.

An ordinance should adhere to a standard of moving from general to specific, wherever possible, but above all the order of sections within an ordinance must make sense. A reader —whether an elected official, city staffer, or member of the public— should be able to easily identify the rules, any exceptions, and who enforces the rules without needing to jump around through the ordinance. Statements of purpose,[6] definitions,[7] and broad principles should precede descriptions of the standards or requirements set by the legislation and who those standards or requirements apply to. Exceptions, exemptions, and conditional rules should follow, then establishment or designation of the officer or agency responsible for administration or

[6] The inclusion of not just a statement of purpose but also a "short title" section seems to be in vogue lately. The inclusion of a short title is not recommended. The use of short titles in state and federal legislation, for which the entire body of statutes and quantity of proposed legislation tends to be substantially more voluminous than at the municipal level, and where bills are typically titled with a description of their purpose, is valuable as it helps to quickly and easily identify what is being referenced. Ordinances in Somerville are already typically named using the conventions of what would be a short title in higher levels of government, so the inclusion of a specific identifying section adds nothing of meaningful value.

[7] While some legislative bodies, especially those on the state and federal levels, place the definitions at the end of a piece of legislation, placing definitions at the beginning primes the reader for the terms that they will encounter and eliminates the need for them to jump to the end to see if an unfamiliar term is defined each time they encounter one.

enforcement, including any restrictions on the exercise of that power. Finally, mechanisms for enforcement and a severability clause should be placed at the end of the legislation.

With ordinances, in particular, it is critical that a reader is able to understand the current requirements or restrictions imposed on them by the text. Not only should the text be drafted in the present tense, but the use of a general effective date should be avoided. Effective dates that are applicable to an entire article, division, or comprehensively drafted section with a significant number of subsections, can cause substantial confusion in the future when amendments are made. If it is of critical important that an ordinance, or certain sections of it, not take effect until a set period has elapsed after passage, effective dates should be contained within those specific components.

For example: an ordinance establishes a commission intended to enforce compliance with new requirements for the operation of dance halls in the city. The drafter intends for enforcement to commence one year after passage. While it has historically been common practice to place an effective date at the end of an ordinance, doing so may cause confusion as it seems to imply that the commission cannot be established until after that effective date. The solution, then, would be to indicate the effective date in the section that outlines who the new ordinance applies to (e.g., "a dance hall that began operation prior to January xx, 20xx shall be exempt from these licensing requirements until January yy, 20yy" or "a dance hall that begins operation after January xx, 20xx shall be required to…etc.").

Effective dates should avoid general timelines which bind the effectiveness to passage of the ordinance (e.g., "the licensing requirements shall take effect two years after passage of this ordinance") and instead should rely on specific dates as in the example above. If a future amendment alters the requirements so significantly that the drafter believes it is important for a new effective date to be imposed, simply adding a future date to the updated requirements is an easily accomplished and clearly understood mechanism for doing so. General effective dates at the end of an ordinance and effective dates bound to the passage of the ordinance have occasionally resulted in confusing attempts to accomplish the same goal.

Part three. – Special rules.

Section 3-1. – Special rules.

(a) Capitalization: Avoid the use of capitalization of terms except for proper names (people, places, and organizations, including departments), publications (including codes, regulations, reports, and studies), and citation to other portions of the Code of Ordinances or other body of law.

(b) Definitions: Definitions should be drafted according to the following format: [*Defined term*] means [definition of term.] (e.g., "*Public grounds* means the parks and all public lands owned by the city, and including the parts of public places which do not form travelled parts of streets or highways.").

(1) If multiple ordinances use the same term, the definition should remain the same across ordinances wherever possible (e.g., "tenant", "employee", etc. should not be defined differently in similar contexts).

(c) List structure: Lists should be formatted vertically for readability rather than in-line. Lists should be introduced with a colon and punctuated as follows:

(1) Where individual items in the list are, themselves, self-contained sentences, the first letter of each item should be capitalized, and the item should end with a period.

(2) Where individual items in the list are single words or short phrases that are not, themselves, self-contained sentences but would otherwise constitute a sentence in combination with the introductory phrase:

(A) the first letter of each item should not be capitalized;

(B) each item should be separated from the others by a semicolon;

(C) the next to last item should be followed by "and,"; and,

(D) the final item should be followed by a period.

(d) Numbers: Both cardinal and ordinal numbers should be expressed as words for all numbers, including fractions and percentages. Avoid the use of parenthetical repetition of the number as Arabic numerals. Avoid the use of the word "and" in compound numbers, except when expressing a dollar amount with

cents (e.g., "3,450" should be written as "three thousand four hundred fifty" while "$34.50" should be written as "thirty-four dollars and fifty cents").

(1) Exceptions: Dates and times should be written using Arabic numerals in the format of "month day, year", with the month expressed as text (e.g. March 1, 2024). Avoid the use of ordinals for dates (e.g., March 1 rather than March 1st). Times should be written as simply as possible, only including the minutes place if they are in use (e.g., 5 p.m., 7:30 a.m., etc.). Additionally, Arabic numerals should be used in addresses and citations to other parts of the municipal code or other law (e.g., 123 McGrath Highway, or Chapter 12, Section 12-345), and for dollar amounts in tables.

(e) Plurals: Plurals should be avoided where their use is not explicitly necessary. Any law that applies to individual members of a group should reasonably be interpreted to apply to each member of that group (e.g., use "The applicant" rather than "applicants"). Avoid the use of the "conditional s" (e.g., employee(s), applicant(s), etc.).

(f) Pronouns: The use of pronouns should be avoided wherever possible, especially in ordinances that apply to multiple actors. Instead, repeat the noun to enhance clarity. Where the use of pronouns is necessary, avoid the use of binary gendered pronouns such as "he or she" and instead utilize the gender neutral "they".

(1) Possessives: Possessives can be used to avoid the use of pronouns, but it is better to avoid the use of a possessive unless it is necessary to avoid an overly complicated sentence.

(g) Punctuation:

(1) Comma: A comma should precede the "and" or "or" at the end of a series of items to avoid any interpretation of the last item being a part of the previous one.

(2) Semicolon: Avoid the use of a semicolon except where it is absolutely necessary and cannot be replaced by an equally, or arguably more, appropriate piece of punctuation.

(A) An exception to this rule is in the structuring of lists, as described above in Section 3-1(b).

(h) Time periods: If an action must be taken by a certain date, give preference to the phrase "on or before" rather than "no later than" (see Section 1-1(7)). Avoid the use of the word "within" for establishing time periods (e.g. "within six months of the passage of this ordinance") and utilize a specific date instead.

(i) Word choice:

(1) And/or: Avoid the use of "and/or". "Or" should be considered inclusive when listing items out with the intent that a selection of some or all is sufficient to satisfy the requirements of the ordinance, while "and" should be used to indicate that all items are necessary to satisfy the requirements of the ordinance (e.g., "an applicant shall provide an email address, mailing address, and phone number" means that an applicant must provide all three, while "an applicant shall provide an email address, mailing address, or phone number" requires at least one but does not prohibit an applicant from providing two or more methods of contact). In a list, "and" or "or" should appear at the end of the next-to-last item only.

(2) Any, each, etc.: Generally, avoid the use of "any", "each", "every", all", "some", or similar words where "a", "an", or "the" can be used (e.g., instead of "any person who violates" use "a person who violates").

(3) Finite verbs: Utilize finite verbs over all other forms except where necessary (e.g., "applies" rather than "is applicable" or "consider" rather than "give consideration".

(4) Means & includes: The word "means" should be used to indicate that a definition is complete, while "includes" should be used to indicate that a definition is not limited to what is specifically enumerated. Avoid the use of the phrase "but is not limited to".

(5) Provided: Avoid the use of the phrases "provided, however" and "provided, further". Instead use "but", "if", "except", or simply begin a new sentence as appropriate.

(6) Shall vs. May: Shall should be used exclusively to impose a duty to act and should not be used to indicate future tense or to impose restrictions on action (e.g., avoid "shall be the appointing authority" or "shall not" or "no person shall"). May should be used exclusively to grant authority or

discretion, a right, or a privilege. "May not" should be used to prohibit action by depriving an actor of authority or discretion, rights, or privileges.

(A) To avoid confusion, do not use the words "will", "should", "ought", and similar which could serve as substitutes for "shall" or "may".

(7) Such & said: Avoid the use of "such" and "said" and instead use "the", "this", or "that" (e.g., "the application" rather than "such application" or "said application").

(8) Which & that: Use "that" when the clause following it is essential to the meaning of the sentence, and "which" when the sentence would retain its meaning even if the clause was removed. In other words "that" clauses are necessary for understanding the requirements of a law, while "which" clauses provide helpful, but unnecessary, information.

Part four. – Drafting standards and process.

Section 4-1. – Overview.

The process of drafting an ordinance is almost as important as the actual text. Committee discussion, previous drafts, and statements by staff and elected officials are all part of the public record that can clarify the intent and purpose of a law. With that in mind, it is critical that the drafting process be as transparent, predictable, and accessible as possible. Established roles, clear workflows, and efficient use of discussion time facilitate a shared understanding of the intent and purpose of the ordinance, encourage collaboration, and promote high quality drafting.

The process of ordinance drafting can be broadly divided into five elements:

(1) idea formulation;

(2) staff engagement;

(3) language production;

(4) committee discussion; and,

(5) ordainment.

While most of these do not occur in the public eye, they are no less critical to a transparent and predictable process. Presenting a well written first draft facilitates committee discussion and allows the presenter to clearly communicate the content and purpose of the ordinance without being bogged down with language issues that could have been ironed out ahead of time.

Section 4-2. – Key components of quality legislation.

Before discussing a legislative process, it is important to highlight that there are definite, objective standards for legislative quality, and that those standards should be applied to evaluate any legislative intervention in its initial stages. The list of core qualities of good legislation is long, but can be condensed into five key, interrelated components:

(1) necessity;

(2) effectiveness;

(3) practicality;

(4) legality; and,

(5) equity.

Critically, if there are no satisfactory answers to questions about the necessity, effectiveness, practicality, legality, or equity of a legislative intervention, then it is not the appropriate course of action and it should be reconsidered.

Necessity is not just a question of whether a problem needs to be solved, but also whether municipal intervention, specifically legislation, is necessary to solve it. If there are other ways for a problem to be solved, is government action the more appropriate method? If government action is necessary, is a policy sufficient, or establishing a program? Can the intervention be tailored to address only the problem, or will it touch on and affect other things that do not need to be addressed? A solution in search of a problem is an inappropriate intervention and should be avoided at all costs. An unnecessary intervention is inefficient, which goes a long way toward answering questions of practicality as well.

Effectiveness asks whether, if implemented perfectly, the intervention will resolve or mitigate the problem in a meaningful way. Beyond that, it also asks if the intervention will create other problems that then will require an additional intervention. While an intervention that purports to improve residents' quality of life may accomplish its narrow purpose in addressing one specific problem, if it bandages one wound in exchange for opening another it has not effectively accomplished the larger goal. It is critically important to remember that any legislation that does not include real and meaningful consequences for lack of adherence is a suggestion, a policy statement, not an effective law. Laws are, inherently, punitive, and a law without enforcement mechanisms creates a confusing and frustrating tension for those subjected to it.

Practicality asks whether the law can be implemented and is a cornerstone of effectiveness. Importantly, this is not a question of practicability, though that question is important as well. The question of practicality assumes that, with appropriate resources, the intervention could be accomplished. The question, then, is whether implementation would be disruptive. Does the city have the capacity to implement or enforce the legislation? Are there other interventions in progress or in development that will impede, or be duplicated or undermined by, legislation on the topic? Is the proposed intervention cost effective?

Fundamentally if the resources are not available for implementation or enforcement, or if adherence to the requirements or restrictions of legislation would be so burdensome as to forestall positive behaviors as well, then legislation is not practical and it should be revised.

Legality, while not the only nuanced component of quality legislation, is one that is significantly more flexible, and definite answers to the question of legality are elusive. While there are many things that are explicitly within or outside of a municipality's, or the City Council's, legal authority, there are vastly more that exist in ambiguity. These questions require court intervention for a definite answer, and where there is a grey area there are many considerations that need to be weighed. Even in the case where an intervention is explicitly illegal, there may be overriding factors that merit the risk of a challenge, though those circumstances are vanishingly rare and require a clear, unequivocal "yes" to the questions of necessity, effectiveness, practicality, and equity.

As noted above, the first question that should be asked is whether the city has the legal authority to regulate or restrict a particular behavior. If it does have that authority, does the City Council have the authority to legislate on it? If the authority of either is questionable, is a challenge likely? Is the intervention likely to survive a challenge? If not, does the potential benefit outweigh the significant cost to the city that a challenge represents? Is there a reasonable, good-faith argument to be made in support of the city or the City Council possessing the authority?

It is also important to recognize that questions of legality are not questions that can be answered by councilors or any staff aside from staff in the Law Department. Ultimately the city attorney will be required to present arguments in defense of the city's action. If the city, or the City Council, obviously does not have legal authority, or if there is not significant enough justification for acting despite questions about legality, then the city's actions are indefensible. While other staff can present potential arguments in support of an intervention, only the Law Department can evaluate whether those arguments have legal merit. In the event that blatantly illegal, or even questionably legal, legislation is advanced, not only will the legislation likely be struck down, it will also rob the city of significant resources that might have bettered the lives of residents.

Finally, equity asks us whether the law's applicability is predictable. Unexpected consequences and negative externalities are certainly a component of this, but consideration of equity also requires a drafter to consider questions of flexibility. If a law is so inflexible that it unreasonably disregards circumstances beyond the control of the subject, that is unfair. Too much flexibility, though, gives outsize power to the whims of any given individual conducting enforcement. Predictable does not necessarily mean that the outcome will be the same every time, but that reading the law and considering the circumstances should give the reader a good idea of what the outcome ought to be. Drafters should consider questions such as: how much discretion is afforded to the enforcing party? Are there mechanisms in place to limit bias? Is there any possibility of disparate impact, or does it disadvantage a particular group? Is the language accessible? Does the law promote transparency, accountability, and fairness?

Section 4-3. – Idea formulation.

Every ordinance begins with an idea. Whether that idea is one presented to the drafter by constituents or advocates, or something that comes from their personal, professional, or academic background, or something that came to them in a dream is immaterial. Idea formulation is an opportunity to take an idea, regardless of its origin, and explore it. As part of this exploration, drafters should identify the problem they wish to address, their goal for an outcome, and the intervention required to accomplish that goal. While establishing these three things, drafters should conduct initial research to identify best practices or, failing that, common practices, as well as evaluate potential issues including legality, logistics, or negative externalities.

While an initial idea can be abstract and vague, it is important to use the idea formulation process to focus and refine it. A vague idea produces a vague ordinance, and unfocused law accomplishes little. While it may be accurate to say "residents are struggling to find housing", "the streets are unsafe", or "discrimination is bad", and it is noble to want to address those issues, such general statements do not lend themselves well to the development of an enforceable ordinance. A clear, specific statement of a problem to address is critical.

The simplest way to identify specific problems is to question the idea. Why are residents struggling to find housing? What barriers do they face? Is there something about specific residents that is getting in the

way? Is there not enough housing available? What is it about streets that makes them unsafe? Who is being discriminated against, and by whom? By asking these questions, we identify specific problems to address, breaking a broad, abstract issue into its discrete parts and simplifying our task.

Next is the goal. It is easy to say the goal is to "make it easier for residents to find housing", "make the streets safer", or "eliminate discrimination", but a focused goal allows us to more effectively tailor our efforts to the problem at hand. Additionally, a focused goal provides an opportunity for continued evaluation of the intervention. If the problem is that residents cannot afford rent, a goal might be to provide rental assistance to residents and the success of the intervention can be measured by the number of residents helped, or the amount of money expended. Streets might be made safer by redesigning them to include traffic calming, increasing enforcement, or by proliferating bike lanes. Measurable interventions are born out of clear, focused goals.

It is important here to highlight again that the appropriate intervention may not be an ordinance, and the idea formulation stage is the first opportunity to identify alternatives. There are many interventions available beyond drafting an ordinance or home rule petition, including identifying and sharing the relevant statutory or ordinance provisions in response to a constituent question, requesting —either through conversation or via resolution— that the administration adopt a particular policy for city staff to follow, submitting an order requesting additional information about the issue that a relevant department may have, or advocating to the state legislature broadly or to the Somerville delegation.

Research on the best or most common practices is a necessary part of the process of establishing the problem, goal, and intervention. If other municipalities have managed to address a similar issue reviewing their work can help to identify whether the specific problem they attacked is one face by Somerville as well, whether their goals for addressing that problem align with those of the City of Somerville, and whether the intervention they used is one that is available to the Somerville City Council.

Finally, the question of potential issues must be considered. It is critical that an intervention intended to solve a specific problem not create a new problem, either for the same group of people it purports to help or for another group. Similarly, it is critical that an intervention not be explicitly illegal, and that the city has

the capacity to act on it. If there is obvious harm that cannot be avoided, if the intervention is explicitly illegal, or if it would be impossible for the city to enforce, then a new approach is necessary. This is not the last time that these issues should be considered, instead this should be the opportunity to spot issues that would be obvious to a lay person. Experts will be able to identify negative externalities as well as legal and logistical problems that might easily be missed without their input.

Section 4-4. – Staff engagement.

Staff expertise is absolutely necessary for any intervention, ordinance or otherwise, to be effective. Staff are experts not just in their respective fields but also on the interaction of those areas of expertise with municipal government. Failing to seek, or ignoring, their input will severely negatively impact the effectiveness of any intervention, and may undermine existing efforts, cause direct harm, or expose the city to lawsuits. The support of the Intergovernmental Affairs Department (IGA) is critical in this part of the process, and the earlier they are engaged the better. IGA will assist with identifying relevant departments, as well as coordinating conversations with the appropriate staff in those departments.

Failing to provide staff with an opportunity to engage and have discussions on an idea prior to submission of an ordinance draft shifts the conversation away from the merits of an idea and potential solutions to a discussion of the merits of specific language. Staff opposition to an ordinance as an intervention does not mean that staff are opposed to solving the problem, and engaging staff in the ordinance drafting process provides an opportunity to identify alternatives or shift the scope to more effectively address the problem. It also ensures that broad discussions about policy between the council and the administration do not occupy a disproportionate share of committee time, distracting from more focused conversations on specific policy objectives and language.

Section 4-5. – Language production.

This stage of the process is the point at which a submission draft is created, incorporating feedback from stakeholders, including community members and staff. There is no need to wait until this stage to produce an outline for discussion, but it is important to distinguish between a "discussion" draft and a "submission" draft. Submission of a discussion draft to the city council will cause confusion for staff and,

even if the intent is to incorporate staff feedback into the final draft, it causes the above-mentioned shift away from a discussion of the policy to a discussion about the submitted draft.

Submission of a discussion draft also causes confusion for members of the public and introduces a perception of delay when a draft sits in committee without any action taken on it. The draft is not ready for committee discussion, and any attempt to provide an update on progress is likely to result in questions and concerns from members of the committee that stem from a lack of context, their only interaction with the legislation coming from an incomplete discussion draft. This has the potential to present an appearance of inaction or lack of urgency when, in reality, there is significant work occurring behind the scenes.

The submission of a discussion draft also causes confusion for committee members, who may have prepared themselves to discuss the submitted draft, but the first time it is placed on a committee agenda they will be faced with a motion to replace the initial draft with new language. This inhibits meaningful discussion, as committee members might not have the opportunity to read and digest the new draft ahead of discussion. Rather than evaluating the new draft on its own, members of the committee may become trapped in fruitless attempts to compare the submission draft to the originally submitted discussion draft, which will only produce frustration.

It's also important to keep in mind that a submission draft does not need to be perfect, and how "done" it should be before submission will vary. The general standard is that any involved staff, community members, or councilors feel that the group working on language production has exhausted its ability to polish language and anticipate potential issues. The key is to ensure that staff time spent in committee is used efficiently, and that staff can answer questions about a document that they have helped to shape, rather than voicing concerns about a policy they have provided little to no input on.

Section 4-6. – Committee discussion.

Committee discussion is an opportunity to refine a draft piece of legislation. This includes revising language, clarifying intent, debating policy, and narrowing or expanding scope. It is important to remember that committee meetings occur outside of normal business hours and often require staff to be present for additional items that are not relevant to them. Reading materials ahead of time and keeping discussions

focused on issues relevant to the draft before the committee facilitates efficient use of everyone's time, staff and councilor alike.

Committee discussion is where every previous element of the drafting process bears fruit. Careful idea formulation makes staff engagement easier, meaningful staff engagement encourages a collaborative language production process, and a thorough language production process promotes an efficient and effective committee discussion. By identifying issues and questions early in the process, staff and sponsors of legislation can be better prepared to answer questions from committee members and members of the public who are watching the proceedings. The more refined a draft is before it is presented to the committee, the more opportunity the committee has to identify other areas that would benefit from further polish, rather than spending considerable time addressing obvious issues.

Section 4-7. – Version control and naming conventions.

Version control is a critical component of accessibility for the public, and absolutely necessary to ensure that the committee and staff are working from the most current language in the committee process, and that the final version ordained by the City Council accurately incorporates all changes approved in committee. While minor, non-substantial changes such as misspellings or errant and clearly erroneous punctuation can be corrected as a scrivener's error, any language that alters the effect of the ordinance requires a further amendment to correct.

While version control is managed by the legislative and policy analyst, it is important that each draft follows the same naming convention so that there is no potential for confusion. Ordinance submissions are titled using the following format: [date in mm.dd.yy] [abbreviation of controlling body] amending [relevant chapter, article, section] (e.g., "01.02.24 CC Amending 3.2-1 Complaints about dogs" or "01.02.24 LEG Amending 5.2.1-1 Fire department organization"). Abbreviations of names of controlling bodies are:

(1) City Council (CC)

(2) Confirmation of Appointments and Personnel Matters (COA)

(3) Equity, Gender, Seniors, Families, and Vulnerable Populations (EQUITY)

(4) Finance (FIN)

(5) Housing and Community Development (HCD)

(6) Land Use (LAN)

(7) Legislative Matters (LEG)

(8) Licenses and Permits (L&P)

(9) Open Space, Environment, and Energy (OSEE)

(10) Public Health and Public Safety (PHPS)

(11) Public Utilities and Public Works (PUPW)

(12) Traffic and Parking (T&P)

The date should be the date of the next agenda that the item will appear on.

Section 4-8. – Ordainment.

Similar to committee discussion, the ordainment process benefits significantly from full engagement with each element of the drafting process. By thoroughly answering questions ahead of and in the committee process, sponsors, staff, and members of the committee can be prepared to address any concerns presented by members of the public or council colleagues in any discussion that occurs at the full council level. In addition, staff engagement presents an increased opportunity for the mayor to raise concerns and offer input ahead of submission, reducing the likelihood of a veto or returning the legislation for revision.

Section 4-9. – Zoning.

The zoning ordinance, as noted previously, is a technical document, in a way that few other ordinances are. As such, there are some small, but meaningful, differences between the standard ordinance process and the process of drafting zoning ordinances. Specifically, staff engagement is primarily focused on the Planning, Preservation, and Zoning (PPZ) division of the Office of Strategic Planning and Community Development initially, as the technical experts on zoning and planning issues. Depending on the issue, other staff are likely to be involved as well, but at the very least it is certain that PPZ staff will be necessary partners in drafting any zoning amendment.

Following initial conversations, if a councilor elects to proceed with an amendment despite concerns from staff, PPZ staff will provide drafting support to ensure there are no issues incorporating the amendment

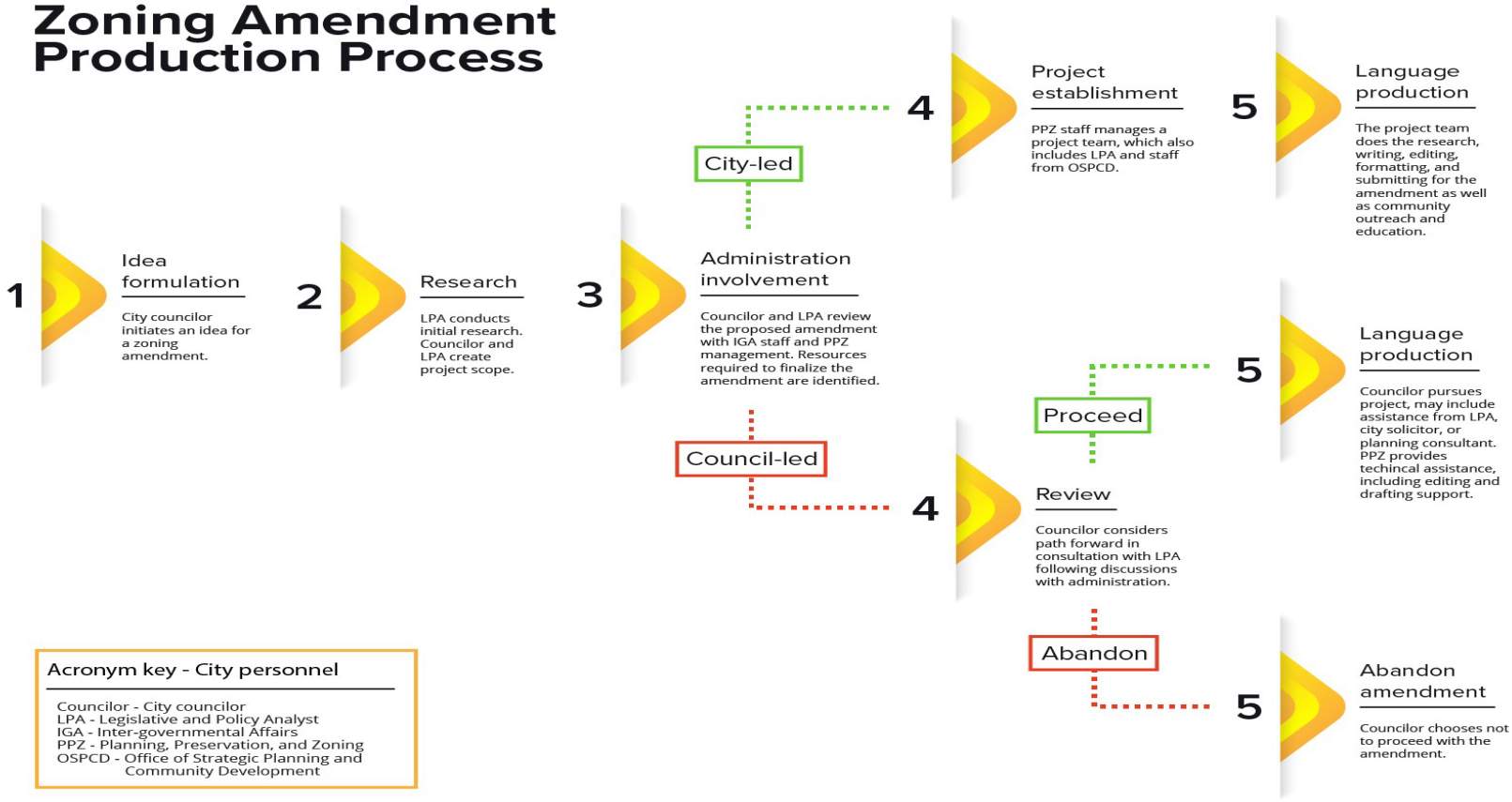
into the zoning ordinance. If the administration supports the policy objectives of the proposed amendment, PPZ will establish a project team to conduct comprehensive research and produce language in collaboration with the councilor. A flowchart for this process can be found in Appendix A below.

APPENDIX A – Process flowcharts.

The Legislative Drafting Process

Idea Formulation	Staff Engagement	Language Production	Committee Discussion	Ordainment
• Define problem, intervention, and goal. • Conduct initial research. • Consider potential issues.	• Identify staff stakeholders. • Evaluate practicality, legality, and synergy with existing efforts.	• Produce language incorporating recommendations based on staff expertise.	• Submit proposed ordinance and discuss in committee.	• Return to full council for final discussion and vote.

Zoning Amendment Production Process



APPENDIX B – Drafting templates.

ORDINANCE TEMPLATE

CITY OF SOMERVILLE
ORDINANCE NO. 2024-
IN CITY COUNCIL: _____, 2024

Be it ordained by the City Council, in session assembled, that [chapter/article/division/section] of the code of ordinances of the City of Somerville is amended as follows by deleting the ~~struckthrough~~ text and adding the underlined text.

Sec. 00-000. – [Section Title].

(b) Subsection
  (1) Paragraph
    (A) Subparagraph
      (I) Clause
        (i) Subclause
(c) Etc.
(d) Etc.
  (1) Etc.
  (2) Etc.
    (A) Etc.
    (B) Etc.
      (I) Etc.
      (II) Etc.
        (i) Etc.
        (ii) Etc.

Be it further ordained by the city council that Section 1-11(b) of the Code of Ordinances of the City of Somerville is hereby amended as follows:

Offense	Fine	Enforcing Personnel
	$00.00	

Approved:

_____
President

Approved:

_____
Mayor

RESOLUTION TEMPLATE

WHEREAS: [Thesis statement];

WHEREAS: [Justification 1];

WHEREAS: [Justification 2];

WHEREAS: [Justification 3]; and,

WHEREAS: [Justification 4]; **NOW, THEREFORE BE IT,**

RESOLVED: that the Somerville city Council [Request/statement 1]; and,

BE IT FURTHER RESOLVED that [Request/statement 2]; and,

BE IT FURTHER RESOLVED that [Request/statement 3].