

Megan B. Bayer
City Solicitor

Elliott J. Veloso
Deputy City Solicitor

Kate M. Kleimola
First Assistant City Solicitor



Assistant City Solicitors
Paul S. Kawai
Sean M. McKendry
Diane O. Pires
Sydney M. Wright
Evan C. Bjorklund
Franziskus Lepionka
Andrea Carrillo-Rhoads

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Public Records Access Officer
Seah Levy

January 27, 2025

Yi-An Huang
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Response to City Council Proposals Regarding Charter Changes.

Dear Mr. Huang,

The following is being presented in response to the five proposed changes to the City of Cambridge's charter as presented by members of the City Council. Councillor Toner, Co-Chair of the Special Committee of the City Council, requested City staff provide comments assessing the potential impacts and implications of these proposals. This response summarizes responses from the Law Department, Election Commission, Finance Department, and City department heads who have reviewed the proposals to evaluate their potential impacts.

The City's departments and staff share the Council's goal to strengthen our democracy, create a more inclusive local government, and chart a path toward more transparency and accountability. In this continuous endeavor, City staff appreciate the opportunity to provide their perspective and concerns regarding these proposed charter changes.

1. Proposal for City Council Budget Authority: "Would give the City Council the power to increase parts of the annual budget by up to 10% compared to what is initially proposed by the City Manager—in addition to the Council's current power to decrease parts of the budget—and as long as the overall budget total proposed by the City Manager remained the same."

Impacts: This proposal would fundamentally change how the City's budget process works, with significant impacts to the City's financial stability, ability to support Council priorities, and accountability. The proposal states that this would provide the Council with the same budget authority as the Boston City Council's but does not account for the Mayor's separate political authority and formal veto power in Boston's system. The existing structure where the Council hires, reviews, and can terminate the City Manager provides significant authority to shape the budget through an appropriate governance relationship.

A. The current budget process places Cambridge in a strong fiscal position that enables the City to support the Council's priorities.

- Developing an annual budget is a lengthy, year-round process for the City administration and requires the involvement of many employees with operational, programmatic, and financial expertise. The City Council may not have the time and budget analysis capacity to ensure that budget amendments are fiscally responsible and operationally feasible, or to weigh the trade-offs that come from reducing one department's budget to increase funding in another area.
- The current budget process has placed Cambridge in a strong fiscal position and has given the Council appropriate authority to set budget direction in a responsible, planned, and thought-out manner, resulting in substantial investments in universal preschool, affordable housing, climate, cycling safety ordinance, after-school programs, and much more. The Finance Committee plays a key role in guiding the budget process. Material amendments to the budget have been made during budget hearings based on Council feedback including added funding to the Public Health Department and Affordable Housing Trust in FY24.

B. The City's long-term financial sustainability and credit worthiness is based on consistent and stable financial planning. Significant increases and decreases late in the annual budget process create significant risk.

- The goal of the existing process is to work out funding priorities and City Council interests early in the budgeting process so the City Manager and City staff can assess financial impacts and plan the budget to meet those goals. Significant last-minute changes to the budget undermines the cooperation between the two branches through the budget process and compromises shared governance, transparency, and accountability.
- Significant increases and decreases in the budget by City Councillors would ultimately require a great deal of staff time to reconcile and reallocate, which increases the likelihood that the City will enter the next fiscal year without an approved final budget. This could negatively impact the quality and frequency of services the City provides, due to sudden elimination of programs, personnel, and potentially departments in order to balance the budget. This would also have an adverse impact on hirings and employee retention.
- Decreases and increases totaling 10% of the budget represent a significant and material change. Based on the FY25 Budget, 10% would constitute almost \$100 million dollars that potentially could be reallocated, removed, or canceled if reallocation is not possible. Even at a departmental level, this amounts to millions of dollars. Further, large budget-line items cannot be reduced (e.g., debt service, pension funding, health insurance, collectively bargained salary increases) which means that 10% of a total budget represents a much larger percentage change than it appears.

Additional challenges could occur with the elimination of union positions or contractual obligations without appropriate process, which could lead to union grievances and litigation.

C. A key difference between Cambridge and Boston is that Boston has a Strong Mayor system of government, and the Mayor can veto budget amendments that negatively impact programs and Boston's finances.

- The Boston City Council can override a veto should it be committed to budget changes. In Council/Manager forms of government, City Managers are appointed by and serve at the pleasure of the City Council, who can terminate them if they are not responsive. The City Manager has no veto power in the event the Council's proposed changes were not feasible, fiscally irresponsible, illegal, or would otherwise negatively impact programs or core operational functions.

2. Proposal for City Solicitor Appointment by the City Council: "The City Solicitor would be appointed by the City Council in a process similar to how the Council currently hires the City Clerk and the City Auditor. The appointment and any reappointment or termination would be the responsibility of the City Council."

Impacts: This proposal overemphasizes the legislative function of the City Solicitor, who also has significant responsibilities over legal administration, employment and labor matters, litigation, and contracts. The current structure provides an avenue for Council authority through the City Manager and does not risk politicizing the role or undermining the Solicitor's ability to represent the City.

A. The City Solicitor must be able to provide impartial legal advice to both the City Administration and the City Council.

- The larger portion of the City Solicitor's responsibilities are to ensure the City Administration is well represented and making sound legal decisions. While advising the Council on legislation is a critical part of the role, it's important that the Solicitor is hired and managed as part of the City Administration rather than as an extension of the legislative branch.
- The existing system provides significant authority for the Council through feedback and management of the City Manager, especially with the implementation of a rigorous and transparent annual performance review process.

B. Making the City Solicitor position a political hire limits the ability to recruit and retain qualified candidates.

- Requiring the City Solicitor to be appointed and reappointed by the City Council could undermine the ability to attract the best applicants, who may have concerns about the politics of public appointment, re-appointment, and review.

C. The public hiring and approval process could undermine the City Solicitor’s ability to represent the City.

- Approval, reapproval, and hiring process would be public and could not be done in executive session. Opponents in legal cases against the City could potentially glean legal strategies and positions of the City from the City Solicitor’s required disclosures to the City Council.

3. Proposal for City Council Approval of City Manager’s Department Head Appointments:

“The City Manager would be required to submit all Department Head appointments and reappointments for approval by the City Council in a process similar to how the Council approves appointments to Boards and Commissioners.”

Impacts: This proposal would undermine the executive authority and accountability of the City Manager, make the hiring of department heads more political, and make it harder for the City to recruit and hire the best candidates.

A. The current structure provides the Council clear accountability and feedback to the City Manager over department performance.

- Under this proposal, the City Manager would not have authority to hire, manage, and terminate department heads, which would significantly undermine the executive function of the City. This would be less transparent and accountable, and does not represent best practices in governance, particularly for a large and complex organization dedicated to high performance.
- The existing system provides significant authority for the Council through feedback and management of the City Manager, especially with the implementation of a rigorous and transparent annual performance review process.

B. The political nature of requiring approval and renewals of department head appointments by the City Council create barriers to City leadership and staff effectively doing their jobs.

- Fear of losing City Council approval or reapproval could result in reduced candor from department heads on issues facing the City. Department heads could be afraid of performing their duties, even if legally required, if such actions could impact on a Councillor’s interests or constituency.

C. Making department heads political hires limits the ability to recruit and retain qualified candidates.

- Requiring department heads to be appointed and reappointed by the City Council could undermine the ability to attract the best applicants, who may have concerns about the politics of public appointment, re-appointment, and review.

- Requiring appointments would create terms for all department heads, which would potentially create short-term uncertainty and further make leadership positions in the City of Cambridge unattractive.

4. Proposal for an elected Mayor alongside a City Manager (similar to Worcester): “City Council candidates would declare on the ballot whether they are also interested in serving as mayor. In addition to appearing on the City Council section of the ballot, these candidates would also appear on the Mayor section of the ballot. Voters would elect the Mayor via Ranked Choice Voting. The Mayor would retain the same powers they wield currently, alongside the City Manager, who would retain the same powers the position wields currently.”

Impacts: This proposal is similar to how Worcester selects a mayor. However, there are differences, which have operational implications and could lead to discrepancies. The key difference is that Worcester does not have proportional/ranked choice voting. Instead, Worcester has a hybrid form of representative government consisting of at-large and district representation. In Worcester, only at-large candidates can run for mayor.

A. Having the mayoral and city councillor races on separate ballots could cause discrepancies in our proportional representation/ranked choice system.

- Because of the format of the City’s ranked choice voting ballots, the mayoral race and council race would need to be printed on two separate ballots, unlike in Worcester where they are printed on the same page. Voters are not required to vote in any race they do not wish to vote in. For example, in the current systems, some voters only vote for City Council and not for School Committee, and vice versa. Adding a third ballot raises the possibility that voters could opt to only vote for mayor and not City Council and School Committee, or ignore the mayoral ballot entirely. There is therefore a possibility that at the end of an election the voting tallies for City Council and for mayor are materially different.
- If its required that the winner of the mayoral election must also win a City Council seat, situations could arise where a candidate wins the mayoral race but does not win a seat on the City Council, or where a City Council candidate receives the highest number of votes for councillor but does not win the mayoral race.

B. Additional areas for consideration.

- Adding an extra ballot will require additional processing time at the polls, which could discourage voter participation. Voters may opt to leave early or only request ballots for certain races to save time. The extra ballot may also lead to voter confusion.
- Election procedures would need to be updated to account for additional nomination papers for mayor, including separate requirements for nomination papers.

- The City Council may also want to consider additional areas such as term limits and role on the School Committee.

5. Proposal for four-year terms for City Councillors with elections every two years: “City Council terms would be extended to four years. Elections would still occur every two years, with five Council seats and the mayor up for election in one cycle, and four seats up for election two years later. Other aspects of City Council elections like rank choice voting and at-large proportional representation would remain constant.”

Impacts: Staggering the at-large City Council seats into a five seat/four seat cycle results in multiple issues that could potentially jeopardize the City’s proportional/ranked choice voting system. Staggering City Council seats creates different vote quotas for each cycle, leading to a less representative Council, a high likelihood for civil rights lawsuits against the City, and implications for the School Committee.

A. Cycle One structurally becomes more desirable for candidates, as the vote quota is lower and the Mayor can only be elected in Cycle One.

- Quota in the City’s proportional/ranked choice voting system is determined by dividing the total number of valid ballots cast by the number of positions to be elected plus one and then adding one to the resulting dividend, disregarding fractions.
- Currently, there are nine City Council seats open every municipal election. Assuming 25,000 ballots were cast, the present quota needed to win a seat on the City Council would be **2,501**. (25,000 divided by 10 (9 seats plus 1), plus 1).
- Cycle One would have five seats open. Again, assuming 25,000 ballots were cast, the quota needed to win a seat on the City Council would now be **4,167**. (25,000 divided by 6 (5 seats plus 1), plus 1).
- Cycle Two would have four seats open. Again, assuming 25,000 ballots were cast, the quota needed to win a seat on the City Council would now be **5,501**. (25,000 divided by 5 (4 seats plus 1), plus 1).
 - As a result, it is **harder for a candidate to run for office running in Cycle One and Two compared to the City’s current municipal election quotas.**
 - It is **also much harder for a candidate to win an election in Cycle Two compared to Cycle One.** In fact, a candidate would need to **double** the number of votes needed compared to the City’s current municipal election quotas.

- This structural unfairness is amplified with the Mayor only being elected in Cycle One. No candidate running in Cycle Two would ever have the opportunity to become mayor.

B. In the staggered system, the difference in the voting cycles hinders the system's ability to fairly represent the City.

- Danger of interest groups, political parties, or bad actors attempting to influence the election by making large campaign donations and having favored candidates elected in a "bloc" in Cycle One. If all five seats are won by candidates supported by these interests, they would have a foolproof majority for four years, regardless of who wins in Cycle Two.
- The higher vote quota in Cycle Two favors candidates with more resources and better funding, due to the need to reach out and convince more voters to meet the quota. Minority candidates, new candidates, or candidates with less resources are more likely to lose as a result.
- Staggering the terms would result in a less representative and diverse council. The reason multi-winner ranked choice is called Proportional Representation is because it allows minority groups of voters to be represented in proportion to their share of the electorate. The more elected, the more the body reflects the diversity of the electorate.
 - For example, under the current 9-member system, minority groups can win at least one seat on the City Council with 10-15% of the voters, where they only need at least 10% to reach quota.
 - With staggered terms, this minority group would have no representation, as they would need at least 16.7% of voters in Cycle One and at least 20% of voters in Cycle Two to get even one seat. Majority groups would dominate both cycles in comparison to the current system, and the City Council would be less reflective of the diversity of the voters.

C. There are potential implications on the School Committee, which currently consists of six seats elected at-large with the Mayor as the seventh member and Chair.

- If the School Committee members also have staggered four-year terms, the unfairness issues noted in Cycle One and Cycle Two are further amplified.
 - Currently, there are six School Committee seats open every municipal election. Assuming 25,000 ballots were cast, the present quota needed to win a seat on the School Committee would be **3,572**. (25,000 divided by 7 (6 seats plus 1), plus 1).
 - If divided into cycles, there would only be three School Committee seats open every municipal election. Again, assuming 25,000 ballots were cast, the quota

needed to win a seat on the School Committee would be **6,251** (25,000 divided by 4, plus 1).

- This further increases the importance of the Cycle One election, as the mayor serves as chair of the School Committee. Again, interest groups, political parties, or bad actors could, through campaign donations or influence, have favored candidates win the mayoral race and all school committee seats, giving them a foolproof majority for four years regardless of who wins in Cycle Two.
- D. These issues raise a high likelihood of civil rights lawsuits against the City on the basis that the voting system now perpetuates unfairness towards minorities and candidates with less resources. The City could be forced to abandon Proportional Representation as a result.
- E.g.: Huot v. City of Lowell, 17-CV-10895 (D. Mass. 2017). Minority Hispanic/Latino and Khmer voters sued the City of Lowell, alleging that the City's at-large, one-person one-vote system of municipal elections diluted their votes and prevented their ability to elect candidates of their choice. As part of a Federal Consent Decree, Lowell agreed to abandon the at-large, one-person one-vote system and change its municipal election system to either an at-large, ranked choice voting system or a hybrid at-large/district system. The at-large ranked choice voting system would have allowed Hispanic/Latino and Khmer voters to elect candidates of their choice with at least 10-15% of total votes and nine council seats. With the hybrid at-large/district system, districts are drawn so that some are majority Hispanic/Latino and Khmer.

We will be available to discuss further and answer questions at the Special Committee meeting. Additionally, the Law Department is in the process of incorporating the Special Committee's December 9, 2024 votes into the draft charter prepared by the Charter Review Committee, as well as noting other areas in the draft charter for the Council's consideration, and we will provide the draft charter to the Council after incorporating any additional changes that are voted on at this meeting.

Very Truly Yours,



Megan B. Bayer
City Solicitor