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July 26, 2021

Cambridge City Council
795 Massachusetts Avenue
Cambridge, MA 02139

**RE: Cambridge City Council Meeting of June 28, 2021 - Case #
10252
Calendar Item # 3 (Charter Amendments)**

Dear City Council Members:

On June 30, 2021 you submitted for our approval pursuant to G.L. c. 43B, § 10 (c) certain charter amendments approved by the City Council (the "Council") on June 28, 2021. As detailed below, we find no conflict with the laws or Constitution of the Commonwealth posed by these proposed charter amendments, which require (among other things) Council approval of City Manager appointments to boards and commissions. The proposed changes may therefore be placed on the ballot for a vote by the City's voters in the manner described in G.L. c. 43B, § 11.

In this decision, we summarize the proposed charter amendments; the Attorney General's standard of review of charter amendments; and

then explain why, based on that standard of review, we conclude that these charter amendments do not conflict with state law.¹

I. SUMMARY OF PROPOSED CHARTER AMENDMENTS

On June 28, 2021, the Council voted pursuant to the provisions of G.L. c. 43B, § 10 (a) to propose three amendments to the City Charter: 1) requiring Council approval of City Manager appointments to boards or commissions; 2) requiring the Council to perform annual performance reviews of the City Manager; and 3) requiring a Council review of the City Charter every ten years.

A. Council Approval of City Manager's Board and Commission Appointments

The first proposed charter amendment adds text to Section 105, "Appointments," to require the Council to approve a board or commission appointment within 60 days after the filing of the notice of appointment with the City Clerk, as follows:

The City Manager shall refer to the City Council and simultaneously file with the Clerk the name of each person the City Manager desires to appoint or reappoint as a member of a board or commission. Appointment of a member of a board or commission made by the City Manager will be effective upon a majority vote of the city council, which vote shall occur within 60 days after the date on which notice of the proposed appointment was filed with the City Clerk. The appointment may be approved or rejected by a majority of the full City Council before 60 days. An appointment or reappointment shall take effect if the City council fails to act within those 60 days.

¹ We greatly appreciate the submissions we received from (1) Mr. David Sullivan, a Cambridge registered voter, on behalf of himself, Cambridge Sumbul Siddiqui, and City Councilor Patricia Nolan; and (2) Cambridge City Solicitor Nancy Glowa.

B. Council Review of City Manager's Performance

The second proposed amendment would add a new Subsection 116 (a) that requires the Council to annually prepare and deliver to the City Manager a written review of the City Manager's performance "in a manner provided by ordinance."

C. Periodic Review of City's Charter

The third proposed amendment would add a new Subsection 116 (b) that requires the Council to provide for a periodic review of the Charter by a special committee "not later than July 1, in each year ending in a 2."

II. ATTORNEY GENERAL'S STANDARD OF REVIEW OF CHARTER AMENDMENTS

Pursuant to G.L. c. 43B, § 10 (c), the Attorney General must provide a written opinion to the Council reporting whether the proposed charter amendments conflicts with the Constitution or laws of the Commonwealth. If the Attorney General determines that no such conflict exists, the proposed charter amendments may then be placed on the ballot for vote by the voters of the City.² If the Attorney General determines that there is a conflict between the charter amendments and the Constitution or laws of the Commonwealth, then the charter amendments cannot move forward to a vote as originally drafted, but the Council may cure any deficiencies by revising the text and starting the charter amendment process again by following the steps outlined in G.L. c. 43B, § 10 (a).³

² G.L. c. 43B, § 11 ("A proposed charter amendment shall be similarly submitted to the voters at the first such election or meeting held at least two months after the order proposing such charter amendment becomes effective under section ten.")

³ G.L. c. 43B, § 10 (c) ("If the attorney general reports that the proposed amendment conflicts with the constitution or laws of the commonwealth, the order proposing such amendment shall not

In our review of these proposed charter amendments, we are guided by the same principles that govern our review of proposed by-law amendments. The Attorney General’s limited standard of review requires her to review proposed charter amendments solely for their consistency with state law, regardless of any policy views she may have on the subject matter or the overall wisdom of the charter amendments. See Amherst v. Attorney General, 398 Mass. 793, 795-96, 798-99 (1986) (analyzing Attorney General’s by-law review role). The state constitution’s Home Rule Amendment, as ratified by the voters themselves in 1966, and the Home Rule Procedures Act (G.L. c. 43B) both confer broad powers on cities and towns to adopt and amend charters to establish municipal government as they see fit. “By the Legislature’s delegation to municipalities through G.L. c. 43B of greater power in managing their affairs, municipalities [can], within certain broad limitations, choose for themselves the forms of local government they f[ind] best suited to their own needs...” Town Council of Agawam v. Town Manager of Agawam, 20 Mass. App. Ct. 100, 103 (1985) (citing Opinion of the Justices, 368 Mass. 849, 855 (1975)). So long as the proposed charter amendments are not in conflict with state law, it is not for the Attorney General to substitute her judgment for that of the City’s. See Amherst, 398 Mass. at 798-99. (“Neither we nor the Attorney General may comment on the wisdom of the town’s by-law.”)

III. THE PROPOSED CHARTER AMENDMENTS DO NOT CONFLICT WITH STATE LAW

Based on the Attorney General’s standard of review, we approve the proposed charter amendments because we find no conflict with the Constitution or laws of the Commonwealth.

During our review we considered the question whether the City is authorized to use the charter amendment process outlined in G.L. c. 43B,

take effect except as may be specified by further proceedings of the mayor and city council or town meeting under subsection (a).”)

§ 10 to amend its Plan E Charter. Specifically, we considered whether Cambridge is authorized to use the Section 10 amendment procedure even though the City does not have a mayor “elected by the voters” as the term “mayor” is defined in G.L. c. 43B, § 10 (a).

As further explained below, we determine that G.L. c. 43B does not preclude the Council from using the provisions of G.L. c. 43B to amend the City’s Plan E Charter. On the contrary, the language of G.L. c. 43B specifically authorizes a City with a Plan E Charter (like Cambridge) to use the charter amendment procedures of G.L. c. 43B. See G.L. c. 43B, § 18.⁴ Therefore, we conclude that the Council’s utilization of G.L. c. 43B, § 10 to amend its Plan E Charter does not create a conflict with state law.

A. Cambridge Is Not Precluded from Using the Provisions of G.L. c. 43B, § 10 to Amend its Plan E Charter

A city may amend its charter using various methods. Here, the Council chose to amend the Charter pursuant to the Home Rule Procedures Act (G.L. c. 43B), specifically the procedure outlined in G.L. c. 43B, § 10 (a). When a city council itself proposes a charter amendment under Section 10 (a), then “the amendments of a city charter may be proposed only with the concurrence of the mayor *in every city that has a mayor*,” G.L. c. 43B, § 10 (a) (with emphasis added). Section 10 (a) defines “mayor” as “an officer elected by the voters as the chief executive officer of a city or an officer lawfully acting as such.” Under the Plan E form of government, Cambridge’s mayor is not elected by the voters, but rather is a member of the city council elected by the members of the city

⁴ G.L. c. 43B, 18 (“Any city or town having a charter under chapter forty-three or forty-three A or a method of electing officers under chapter fifty-four A may change the same in accordance with the procedures for the adoption or amendment of a charter prescribed by this chapter.”)

council. As such, Cambridge does not have the type of mayor whose concurrence is required by Section 10 (a). ⁵

In reaching this conclusion, we are guided by the court’s decision in Opinion of the Justices, 375 Mass. 843, 844 (1978), where the court considered whether Art. 89, § 8 would be violated if the Legislature enacted special legislation pursuant to a petition signed by a majority of the Cambridge City Council, but without the mayor's signature. The court answered that there would be no constitutional violation in the case of Cambridge, a “Plan E” city, where the mayor is not elected to that office by the voters and has no power of approval or veto over measures approved by the city council. Id. at 845-846. As the court explained, Plan E mayors do not exercise distinct legislative powers (i.e., powers other than those of a city councilor), and requiring the mayor's approval of a petition would provide him with a veto power that he does not have in any other context. Id. at 845-46.

Moreover, G.L. c. 43B, § 18 specifically authorizes a city with a charter adopted pursuant to G.L. 43, including Plan E Charters like Cambridge’s, to amend its charter using the amendment procedures in c. 43B. ⁶ In light of this specific statutory authorization in Section 18, it would make no sense to conclude that Cambridge, like all Plan E forms of city government, cannot use the Section 10 procedures because Cambridge does not have a mayor “elected by the voters” as referenced in Section 10(a). For these reasons, we determine that Cambridge is not precluded from using the provisions of G.L. c. 43B, § 10 to amend its Plan E Charter.

⁵ In any event, although Cambridge does not have a “mayor” as that term is defined in G.L. c. 43B, § 10(a), we note that Mayor Sumbul Siddiqui voted in favor of the proposed charter amendments.

⁶ G.L. c. 43B, 18 (“Any city or town having a charter under chapter forty-three or forty-three A or a method of electing officers under chapter fifty-four A may change the same in accordance with the procedures for the adoption or amendment of a charter prescribed by this chapter.”)

B. Because the Proposed Amendments Do Not Change Any “Term of Office” the City Is Not Precluded from Using G.L. c. 43B, § 10 (a) to Adopt the Amendments

We have also reviewed the question whether the proposed amendments are the type of amendments that are statutorily excluded from the G.L. c. 43B, § 10 process. General Laws Chapter 43B, Section 10 (a) requires certain charter changes to undergo the charter commission method: “[O]nly a charter commission elected under this chapter may propose any change in a charter relating in any way to the composition, mode of election or appointment, or *terms of office of the* legislative body, the mayor or *city manager*, or the board of selectmen or town manager” (with emphasis added). See also “Local Charter Procedures,” Secretary of the Commonwealth, Elections Division, p. 8, (1995 ed.). As explained below, we determine that the phrase “term of office” as used in Section 10 (a) does not include a change in the City Manager’s appointment authority such that the proposed amendment must be accomplished by a charter commission.

The Merriam-Webster Dictionary defines the phrase “term of office” as “the time when a person holds a job or position of authority especially in the government.” See *Term of Office*, Merriam-Webster Dictionary Online, <http://www.m-w.com> (last visited, July 22, 2021). Although the phrase “term of office” is not defined in G.L. c. 4, § 7 (“Definitions of statutory terms; statutory construction”), Section 7’s definition of the term “coterminous” uses the phrase “term of office” in a way that is consistent with the Webster’s definition of “term of office”:

Sixth A, "Coterminous", shall mean, when applied to the term of office of a person appointed by the governor, the period from the date of appointment and qualification to the end of the term of said governor; provided that such person shall serve until his successor is appointed and qualified; and provided, further, that the governor may remove such person

at any time, subject however to the condition that if such person receives notice of the termination of his appointment he shall have the right, at his request, to a hearing within thirty days from receipt of such notice at which hearing the governor shall show cause for such removal, and that during the period following receipt of such notice and until final determination said person shall receive his usual compensation but shall be deemed suspended from his office.

G.L. c. 4, § 7.

In addition, numerous state statutes use the phrase “term of office” to refer to the number of years an officer serves. For example, in the context of the Home Rule Procedures Act, G.L. c. 43B, § 20 provides in pertinent part as follows:

The provisions of any charter or charter amendment adopted pursuant to the provisions of this chapter shall be deemed consistent with the provisions of any law relating to the structure of city and town government, the creation of local offices, the term of office or mode of selection of local offices, and the distribution of powers, duties and responsibilities among local offices. Such provisions may provide: (d) for the term of office to be served by any local elected officer; provided, however, that no term of office of a local elected officer shall be for more than five years, and the members of multiple member bodies shall serve for terms which, as nearly as possible, expire in different years;

See also G.L. c. 41, § 1 (“Every town at its annual meeting shall in every year when the term of office of any incumbent expires, and except when other provision is made by law or by charter, choose by ballot from its registered voters the following town officers for the following terms of office...”)

Moreover, numerous court decisions use the phrase “term of office” to refer to the duration of the time served by the officeholder. See, e.g. Del Duca v. Town Administrator of Methuen, 368 Mass. 1, 13 (1975) (five-year term of office of the existing planning board members could not be cut short to three years); and Perkins v. Selectmen of Framingham, 313 Mass. 322, 323 (1943) (discussing whether the Town’s by-law fixed the term of office of the town attorney for a definite period of one year.)

The common definition of the phrase “term of office,” and the statutory and judicial uses of the phrase consistent with that common definition, all lead to the conclusion that the phrase “term of office” does not include a change in appointment authority. Therefore, we determine that the City is not barred from using the charter amendment procedures in G.L. c. 43B, § 10 in order to adopt the proposed charter changes.

IV. CONCLUSION

We find no conflict between the proposed charter amendments and the Constitution or laws of the Commonwealth under our standard of review in G.L. c. 43B, § 10 (c). Therefore, we approve the proposed charter amendments adopted by the City Council at its June 28, 2021 Council meeting. Please feel free to contact us if there are any questions about this decision.

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