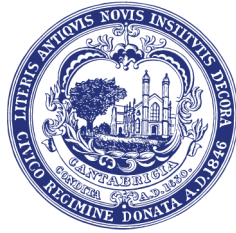


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CITY OF CAMBRIDGE

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

November 13, 2023

Diane LeBlanc
City Clerk
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Request for Legal Opinion – “Carry Over” Procedures for City Council Business

Dear Diane LeBlanc,

I write in response to your request for a legal opinion. You inquired whether the City of Cambridge City Council (“City Council”) has the authority to carry over any or all items on the current City Council agenda, including items pending in the various Committees, and including items appearing on the Awaiting Report List, to the next City Council whose term will begin on January 1, 2024. You also inquired whether pending Municipal and Zoning Ordinances, not yet ordained, carry over to the next City Council.

Legal Analysis

The Massachusetts Constitution codifies the authority of the General Court’s House of Representatives and the Senate to determine their own rules of proceedings, *see* Mass. Const. p. 2, c. 1, § 2, art. 7 (“The senate shall choose its own president, appoint its own officers, and determine its own rules of proceedings.”), Mass. Const. p. 2, c. 1, § 3, art. 10 (“The house of representatives ... shall choose their own speaker; appoint their own officers, and settle the rules and orders of proceeding in their own house ...”). Similarly, state law grants broad power to municipal city councils to set their own rules and ordinances governing their proceedings. *See* M.G.L. c. 43, §18(2) (“The city council shall, from time to time, establish rules for its proceedings.”) As such, the practices and procedures relative to the managing of legislative agendas across terms vary between municipalities. For example, under Worcester City Council’s Rule 53, items under six months are automatically continued into their respective new standing committee and anything older than six months is designated “stale” and placed on file unless the City Councilor that Chair’s that Committee deems the item as held in Committee, which they have until December 14 to do.

State law also recognizes specific instances where matters carry over between legislative sessions regardless of municipal action. For example, M.G.L. c. 40A, § 5 governs the adoption or change of zoning ordinances or by-laws, and sets forth specific timelines for action, posting, and notice requirements. As such, the process for adopting or amending zoning ordinances or by-laws is governed by state law, which supersedes any local rules of a municipality governing the carrying over of legislative matters.

Cambridge Procedures

The Cambridge Municipal Code (the “Code”) currently maintains no ordinance or provision that governs the carrying over of agenda items following the end of the prior legislative term to the beginning of the new one. The City Council Rules are also currently silent as to the process or procedure for carrying over matters into a new term. However, there are grounds under both state law and the Code that support the contention that the carrying over of policy orders and legislative items would require votes by the departing City Council to forward and/or the new City Council to accept.

First, both the Code and state law long recognize that action by any legislative body can only be done via majority or two-thirds vote by the body. *See* M.G.L. c. 43, §99 (“The affirmative vote of a majority of all the members elected to the city council shall be necessary for the passage of any order, ordinance, resolution or vote, except that the affirmative vote of a majority of the members present shall be sufficient to adjourn any meeting of the city council.”); M.G.L. c. 43, §97 (“The city council shall have and exercise all the legislative powers of the city, except as such powers are reserved by this chapter to the school committee and to the qualified voters of the city.”); Section 2.02.202 of the Code (City Council shall exercise all legislative power as provided by G.L. c. 43, §97).

Secondly, Robert’s Rules of Order, which pursuant to City Council Rule 37 governs all procedural practices of the City Council not otherwise governed by its rules, also recognizes that any actions by a legislative body require a vote of the body to carry it forward. *See e.g. Roberts Rules of Order*, 11th Edition, Chapter 1, §1, Pg. 2 Ln. 4 (“In any decision made, the opinion of each member present has equal weight **as expressed by vote through which the voting member joins in assuming direct personal responsibility for the decision**, should his or her vote be on the prevailing side.” (emphasis added)); *Id.* at Chapter 1, §1, Pg. 4 Ln. 3 “The basic principle of decision in a deliberative assembly is that, to become the act or choice of the body, a proposition must be adopted by a majority vote that is, direct approval- implying assumption of responsibility for the act- must be registered by more than half of the members present and voting on the particular matter, in a regular or properly called meeting of the body.”); *Id.* at Chapter 1, §1, Pg. 4 Ln. 18 (instances where two-thirds vote is required by legislative bodies). Thus, the need for a vote in order for a legislative body to take any action is also recognized as an underlying principle of parliamentary procedure.

Finally, both Roberts Rules of Order and many legislative bodies recognize the need for affirmative action to carry over matters from the end of a legislative session to the beginning of a new one. For example, the rule *sine die* (Latin for “without a day”) recognizes that the end of

legislative terms is a distinct event that terminates the existence of the body until its reformation as a new body. *See Roberts Rules of Order*, 11th Edition, Chapter 4, §8, Pg. 83 Ln. 7. The United States Congress customarily adjourns a session *sine die* on the morning of January 3, immediately before the next session holds its constitutionally mandated first meeting. This practice is also recognized under the City's Charter. *See* Cambridge City Charter, Section 97 (assembly of councilors elect and taking of the oath of office at 10:00 AM in the forenoon of first Monday in January after a municipal election). There is therefore recognition that the body that forms at the start of a new legislative session is different from the legislature that existed in the prior session, with potentially new membership and priorities. As such, an affirmative vote of the body regarding the business it wishes to carry over from the last legislative session reflects the will of the body to address matters raised by the prior council.

In summary, our research of the Code, Robert's Rules of Order, and state and federal legislative procedure, supports the following conclusions and recommendations:

1. The City Council, as a legislative body, can only take official action via vote of the majority of its members (or two-thirds of its members in certain circumstances).
2. Many legislative bodies view legislative terms as separate and distinct given that their membership and composition can change after each election cycle, and that as a result affirmative action by the body is required to carry over business from one term to another.
3. Therefore, it is recommended that, to avoid confusion and to ensure that the business that is being conducted reflects the will of the body, if the current City Council wishes to have its business carry over to the new City Council, the current City Council should vote to forward Awaiting Reports it wishes to carry forward for the newly elected City Council's consideration in the next legislative term.
4. It is also recommended that at the first regular business session after inauguration, the new City Council should vote approve those Awaiting Reports it wishes to carry over for the new legislative term.

Please do not hesitate to contact the Law Department should you have further questions.

Very Truly Yours,

/s/Megan B. Bayer

Megan B. Bayer
Acting City Solicitor

cc: Yi-An Huang, City Manager