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Memorandum

**TO: Mayor Sumbul Siddiqui, Cambridge City Council, City of Cambridge
Members of the Cambridge City Council, City of Cambridge**

CC: Louis A. DePasquale, City Manager, City of Cambridge

FROM: Charter Project Team, Collins Center for Public Management

DATE: April 28, 2021

RE: Second Memo on Cambridge Charter and Charter Review

Project Background

On September 23, 2020, at the request of the city council, the Collins Center charter project team presented at a special council meeting on charters and charter processes. Cambridge is one of only a dozen Massachusetts municipalities to still retain a “Plan” form of government, and one of only two remaining cities with a Plan E. The City has had this Plan E charter since it was adopted in 1940, and, to the Center project team’s knowledge, it has never been the subject of a formal review. Best practices suggest that a charter should be reviewed at least once every ten years.

Following the Center’s presentation, the council requested further information about what different charters and forms of government could look like in Cambridge and what charter review pathways might make the most sense. The Center responded with a proposal that included two memos:

1. A memo presenting major options of form of government available to Cambridge and the key differences between them; and
2. A memo summarizing the Cambridge City Council’s feedback regarding the current charter and form of government, and providing options for pathways the Council could take.

The proposal also included a presentation of the memos to the city council, if the council requests one.

After receipt of the proposal, the city council unanimously passed Policy Order O-5 of November 23, 2020, which stated “That the City Manager be and is hereby requested to appropriate the funds necessary to procure the work of the Collins Center as outlined in their submitted proposal.”

Upon signing of an intergovernmental services agreement, the Center commenced work on the first memo, which was delivered on March 11, 2021. After delivery of the first memo, the project team met virtually with each member of the council to answer any questions from councilors about the memo, and to obtain the perspectives of councilors on the potential need for and possible scope of a review of Cambridge’s charter. To maintain compliance with the provisions of the Open Meeting Law, the content of each councilor’s interview was not shared with any other councilor. Upon completion of the interviews, the information was compiled into this second memo for the project.

In this Memo

This memo includes:

1. Overview of Findings
2. Recommendations and Alternatives
3. Potential Next Steps

Overview of Findings

There is nearly universal support on the council for a review of the charter at some point in time, but there is also widespread concern among councilors about the timeline, given several significant events occurring in the near term that would both impact and be impacted by a charter review. First among these, it is understood that the current city manager will be retiring in July 2022. In between now and that time, there is a council election, as well as still many unknowns about how fast the pandemic will recede, what its impacts will look like, and what new work it will entail.

Many councilors astutely noted the potential damage to a city manager recruitment that could come from a simultaneous discussion about a potential change in form of government that could involve eliminating the position. Several councilors also pointed to the election in less than six months and noted that a new council could have a different perspective on the need for, or scope of, a charter review.

On the consequential question of whether the City should seriously consider changing form of government to replace the city manager as chief executive with a directly elected mayor, there was a wide variety of opinions. On balance, it does not appear that there is a majority on the council to consider a wholesale change in form of government to a mayor at this point in time, let alone the kind of super-majority that would make a change more likely to succeed. The combination of those who profess no interest in making the change to a strong mayor form of government, and those who might be open to it at some point in the future but not at this point in time, leaves only minority support for consideration of a strong mayor form of government right now. (It is also worth noting that there was concern that any charter discussions would turn into a binary mayor vs manager debate that would derail all possible changes.)

Put simply, it does not seem like a full debate on converting to a strong mayor form of government is something the council may want to undertake at this time. However, while consideration of a major change in form of government is probably not on the table for the council at this moment, it should certainly not be permanently dismissed. In its history, Cambridge has already had three very different forms of government, and with the rapid and accelerating changes in demographics, service expectations, technology, and laws, there is no reason to assume the current form will always remain the best one for the community. Moreover, it is important to note that nothing in this memo or the proposed alternative pathways the Center provides here prevents residents from initiating a Home Rule Charter process to create an elected charter commission that could propose any form of government legal in the Commonwealth. This is described briefly as Option C at the end of this memo and operates outside of council decision-making.

Moving beyond the mayor vs manager debate, there are a few common substantive threads where strong majorities of the council would likely find common ground. These include the following:

- **Do no harm to the City's financial strength:** It was widely recognized that the City is in a position of financial strength unique in the Commonwealth, and probably New England. It was noted that this was not always the case, and that four to five decades ago, the City was in weak financial shape. There was a strong sentiment for ensuring that any charter review and charter changes protect this current strength, even while there was some thinking that the City could be utilizing more of its resources to face current challenges without damaging its long-term fiscal health.
- **Provide the council stronger voice in appointments:** There is significant frustration on the council about its complete lack of involvement in appointments to boards and commissions, both as a matter of process and sometimes in the outcomes. This is not surprising, as the Plan E text is the most extreme position of charters on the spectrum of where appointing authority lies, providing the council no voice in these processes. Other Massachusetts city charters provide for councils to play a role in appointments processes, whether in the form of required approval of appointments or potential veto over appointments. There seemed to be similar interest in this with regard to appointment of at least some key department heads. The project team would note that there are differences between board and commission appointments and department heads appointments. While similar, these topics should not be conflated.
- **Ensure the council has adequate resources to perform its duties:** There were several lines of concern that, taken together, imply a general feeling that the council lacks sufficient resources to perform its duties. Among the specific items mentioned were lack of formal control over staffing, insufficient access to staff (particularly subject matter expertise), and lack of space within city hall.
- **Increase accountability in City government:** Concern about a lack of accountability throughout the City government was another common theme, but the minimal tools by which the council holds the manager accountable were of specific concern. In particular, the lack of a consistent, formal process for evaluation of the city manager was noted frequently, although there was clearly a sense that the blame for the infrequent evaluations should be divided between the charter and the council itself, which could take a stronger stance on the need for performance evaluation. There was little or no feeling that the manager bore responsibility for this problem.
- **Strengthen mechanisms for council to convey goals and priorities to the manager:** Another common thread was frustration with the council's ability to convey its goals and priorities to the manager. One version of this was simply being dissatisfied with the perceived long timeframes that council priorities take to be implemented (although this was tempered by some recognition that City staff are overextended). A more severe version of this critique is that council priorities, even when voted, sometimes are not executed. While certainly some of this may derive from Cambridge's particular circumstances, the project team has heard these same themes in other council-manager cities.
- **Provide council with more access to legal advice:** There was a common thread of frustration about negative responses the council receives to its proposed policy directives from the solicitor's office. However, similar to the last item (i.e., conveying council goals and priorities to the manager), but unlike many of the other items noted here, which are more particular to the Plan E charter or to Cambridge-specific circumstances, the project team notes that this is a common complaint expressed in cities across the Commonwealth, regardless of form of government. The project team has heard other councils express feeling stymied by city solicitor offices operating under executive branch jurisdiction, and it is very difficult to distinguish between decisions that are sound legal advice, decisions that are made due to the risk-averse nature of municipal legal counsel generally, and decisions that may appear to some as being made to reflect the executive's preference.

- **Review the current council composition:** Another common thread was an interest in looking at whether the current council structure (i.e., number of councilors, lack of district councilors, length of term, and method of selection of the mayor) remains the best structure. As noted, this structure has been unchanged for 80 years. While there did not appear to be any initial obvious common interest in specific changes, a desire for some type of review and discussion of the current structure was a common theme.
- **Make future charter reviews automatic:** Of all the potential common themes related to making change, the recognition that future charter reviews should be automatic may have been the closest to universal. This is understandable, given that Cambridge’s charter has remained virtually untouched for 80 years and does not reflect, either in substance or form, the charter of a modern municipal government, let alone one of the largest and most sophisticated in New England.

Recommendations and Alternatives

The Center project team has put together two alternative proposals for the council to consider. Following those two options, the Center is also including here (as option C) a brief description of the charter commission process, which is entirely independent from council decision-making and which is always available to residents. With both the Center proposed alternatives, the project team has tried to craft processes that will allow the council to address as many of the issues noted as possible. At the same time, these proposals have been developed to adhere to several critical principles. These principles are:

- Do no harm to the City’s existing strengths, particularly its financial management;
- Do no harm to city manager search process;
- Construct processes in a way that enables the opportunity for public input, while being mindful of the pandemic, the upcoming council election, and the current financial challenges facing many residents and businesses; and
- Ensure that, regardless of whatever else happens, a periodic charter review is mandated.

With regard to the potential impact of a charter review on the city manager search process specifically, the project team has discussed this at length. The team believes that within this challenge, there is a significant opportunity, especially in light of current councilor interest in looking outside City government for the next manager and the vacancy in the deputy city manager’s office. Taken together, the project team believes there is an increased likelihood that, for the first time in 44 years, the next city manager may not come from the city’s current workforce. With a potential change in form of government to strong mayor off the table for at least the next few years, there is the possibility to take a charter review process that might be viewed as a threat and convert it into an attractive feature of the position that could actually strengthen recruitment efforts. In the Collins Center’s municipal executive recruitment practice, a key task is to identify unique and interesting attributes of a position that will make it attractive to candidates, including particularly those manager candidates who would be choosing to give up existing positions, and therefore comparing their current roles to the potential for something new.

In framing the job description for the next city manager, a well-thought through charter review process could be described as an attractive and legacy-making component of the position. Some sample text in the recruitment materials might read as follows: “The City of Cambridge is entering a new era. For the first time in 80 years, the City will be [or “has started”, depending on the option] undertaking a comprehensive review of its charter. The City will be seeking to construct a new council-manager charter that builds upon and extends its 40 years of stability and financial strength, while also ensuring an accountable, responsive, and democratic local government adapted to the modern era. The next city

manager will have the opportunity to play a unique role assisting the council and the charter advisory committee collect input for and (if it passes) implement a new constitution for the City.” This reframing may help attract candidates thinking about the legacies that they might leave through their work.

The Center proposes that the council consider the two alternative paths provided here.

Option A: New Charter on the November 2023 Ballot

The central feature of this proposal would be the placing of a new charter on the ballot in November 2023. While much of this new proposed charter would obviously be decided by the committee proposed here, the project team would recommend that two items are important to make the plan successful and they both be included in the charter advisory committee’s mandate. The first is that a change in form of government to strong mayor is *not* under consideration during this immediate charter work, but that consideration will be publicly encouraged during the first review mandated within the new charter itself. The second is that the new charter have a mandated review included and that this review should probably occur sometime in the 2027 to 2029 range.

The new charter envisioned in this proposal would be drafted using the special act process. A brief description of this process, along with an example of a possible timeline, could look something like the following:

- Current council creates proposed structure of a committee that is advisory to the council and that will prepare recommendations that would serve as the starting point for council deliberations on any charter changes, and council drafts a mandate for the committee’s work (now-December 2021)
- Newly-elected council reviews proposed structure and mandate, and makes adjustments if desired (January-March 2022)
- Council appoints members to charter advisory committee (April-June 2022)
- Charter advisory committee begins its work, focusing initially on collecting public input, in conjunction with new city manager (July 2022)
- Charter advisory committee completes work on draft charter and submits it to council (February 2023)
- Council reviews proposed charter, makes any adjustments as desired, and submits home rule petition to the legislature (May 2023)
- New charter appears on municipal election ballot (November 2023)
- New charter takes effect (if approved by the voters) (January 2024)
- Charter review mandated by new charter (roughly 2028)

The project team views the pros and cons of this approach as follows.

Pros:

- Aligns the charter work and the city manager recruitment timelines in a way that potentially strengthens both
- Provides opportunity for the current council to begin the work without constraining future councils

- Allows the charter work to be done thoughtfully and with significant opportunities for engagement of the public in the process, while being mindful of the pandemic and other challenges, without pushing the potential date of a new charter too far out into the future
- Still keeps alive the opportunity to consider changing to a strong mayor form of government, but that occurs *after* there has been time to assess whether a new city manager operating under a fresh charter has addressed council and public concerns

Cons:

- Places the success or failure of the whole project entirely on the single vote in November 2023, meaning that if the charter does not pass, everything remains as it is currently
- A significant public education effort will likely be necessary to inform the public of the proposal and its benefits for the city

Option B: Some Charter Changes Now, with a Full Review Slated for (Approximately) 2026

Although the project team believes that the current Plan E charter is obsolete and will need to be replaced in the near future, Option B leaves the current charter in place a little longer than Option A in a trade-off to try to accomplish some more immediate changes in preparation for a new city manager.

The central feature of this proposal would entail making some changes to the charter this year and leaving some concerns for a more significant charter review a few years from now. The changes to be made would be ones that have universal or near universal council support and potentially do not require a vote at the ballot box. For example, these changes could include:

- Mandating charter review every 10 years starting in 2026
- Providing for the council to review, and approve or reject, proposed appointments to boards and commissions, and potentially some department heads
- Providing for an annual review of the city manager by the council

The list could include others as well, provided that they are items that have universal or at least near universal support on the council.

The charter changes envisioned in this proposal would be drafted using the special act process. This should be undertaken in a timeframe to guarantee that the legislation is enacted by September 2021 to address the potential that (a) one or more of the changes will need voter approval or (b) there are changes where the council may want voter approval. If the legislation is enacted and signed by the Governor by mid-September, that should provide sufficient time for any questions relating to the legislation to appear on the November 2021 ballot. A brief description of this process, along with an example of a possible timeline, could look something like the following:

- Current council decides on small set of priority changes, hosts a public forum or public forums on those potential changes, and submits home rule petition to the legislature (now-June 2021)
- Any items that the council or the legislature decide need voter approval go on municipal election ballot (November 2021)
- Charter changes take effect (January 2022)
- City begins more comprehensive charter review (e.g., January 2026)

The project team views the pros and cons of this approach as follows.

Pros:

- Provides for several consensus (or near consensus) items to be implemented quickly and already in place before the new city manager begins
- Definitively locks in place future charter reviews
- Allows the larger charter work to be done thoughtfully and with significant opportunities for public input, while being mindful of the pandemic and other challenges
- Still keeps alive the opportunity to consider changing to a strong mayor form of government, but that occurs *after* there has been time to assess whether a new city manager operating with an amended charter has addressed council and public concerns

Cons:

- Pushes significant change out further than Option A
- Potentially rushes the changes that would be made in 2021
- May have a “dampening” effect on taking on a more comprehensive charter change effort, as some councilors likely to be satisfied with the changes and see another effort as too soon, unnecessary, or as raising more challenging issues where consensus would be elusive

Option C: The Home Rule Charter Route

This option is different from Options A and B in several ways. First, it is outside of the decision-making processes of the council. Any residents who can collect the required signatures (15% of registered voters) can initiate the Home Rule Charter process at any point in time.

Second, this process (and the associated timeline) is spelled out in detailed in Section 3 of Article 89 of the Massachusetts Constitution and Chapter 43B of the General Laws. Unlike the Options A and B, where the council would create a committee to draft a new charter, the Home Rule charter process would create an elected charter commission of nine members. The project team provided more detail on this process in the first memo, but below is a restatement of the highlights of this process:

1. Citizen petition process requiring 15% of voters to sign a petition calling for the municipality to adopt a charter;
2. Election of a 9-member charter commission to prepare a proposed charter;
3. Completion and distribution of a draft charter within 16 months of election of the commission;
4. Review of the draft charter by the Attorney General to determine consistency with the constitution and laws of the commonwealth;
5. Preparation of a proposed charter (also referenced as the final report) within 18 months of the election of the commission;
6. Distribution of the proposed charter to every household with a registered voter 2 weeks prior to the municipal election;
7. Voters adopt or reject the charter in its entirety; and
8. Charter takes effect as the charter provides.

Again, for the purposes of this project, it is worth reemphasizing that this process operates separate from the council (and the manager) and is entirely voter-driven. It is presented here as a reminder of its availability to residents as an alternative, in case there is interest in choosing a path different from the ones the council follows.

Potential Next Steps

As part of this project, the Center project team can schedule an appearance at a council meeting to discuss this memo and any potential next steps.

Once the council decides if one of the pathways provided here (or some other pathway) is of interest, the Center project team can be available to discuss additional agreements for assistance in next steps.

If the council were to follow Option A or something close to it, the next step would be creating a charter advisory committee structure and drafting a mandate to the committee. While the project team believes that council deliberations should decide the size and composition of the charter advisory committee, the team's experience in this arena suggests a committee membership not to exceed 13, with 9 or 11 being the preferred size. Consideration should also be given to ensure the committee has individuals who have a good understanding of the community and its government, who represent different age groups, races, neighborhoods, etc., and who have prior civic service (which could be either in the governmental or non-profit realms). The committee should be working with a specific deadline from the council.

If the council were to follow Option B or something close to it, the next step would be to draft special legislation for the small number of consensus charter changes that the council wants to attempt to achieve this year. This would need to be done relatively quickly in order for it to occur in time for any changes that need to appear on the November ballot to have time to go through the legislature.

As noted, Option C exists outside and independent from the council's control, so there are no official steps for the council to take as a body. This would not prevent any individual councilor or councilors from pursuing this pathway on their own as residents.