



CITY OF CAMBRIDGE

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December 9, 1992

Robert W. Healy
City Manager
City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Mechanism for Charter Change - Council Order #23
(11/2/92)

Dear Mr. Healy:

I write in response to the above Council Order, which requests that the City Manager prepare a report

... on the mechanism for Charter change, describing in detail the difference between the existing Charter and any alternative Charters that are available, so that the citizens of Cambridge can understand what the effects of a Charter change are and what the process is.

I. Standard Plans of City Government

The charter is the "constitution" of a city. It contains the basic provisions which establish the form, structure and organization of a government and the powers and duties of various officials. Thus, since 1940, Cambridge has had a "Plan E Charter", so called, which sets forth the powers and duties of the City Council, the Mayor and the City Manager. See G.L. c. 43, §§93-116; Moore v. Election Commissioners of Cambridge, 309 Mass. 303, 306

(1941).

In 1915, the General Court enacted a statute "to simplify the revision of city charters", which granted to cities, other than Boston, the right to amend their existing charters by adopting one or another of four standard forms of city government - known as Plans A, B, C and D. In 1938, a fifth standard form, Plan E, was offered, and, in 1959, a sixth, Plan F. 18 M.P.S., Randall and Franklin, Municipal Law, §111 (1982).

I am attaching summaries of these Plans, which appear in 18 M.P.S., Randall and Franklin, Municipal Law, §§119-124 (1982). The Plans themselves appear in G.L. c. 43, §§46-127.

II. Other Kinds of City Charters

In addition to the standard plans of city government, there are two other kinds of city charters, which differ in the way they are or have been obtained. Cities may adopt home rule charters through the method contained in the Home Rule Amendment, Mass. Const., Amend., Art. 2, §§ 2 and 3. Charters have also been obtained by Special Acts passed by the state legislature. Id., §9. See, e.g. St. 1986, c. 135 (Charter for City of Waltham).

III. Methods of Amending Charter

A City Charter can be amended by using one of the following methods:

a) Charter Commission

A city may adopt a new charter or revise a charter previously adopted by means of a charter commission, pursuant to the Home Rule Amendment, Mass. Const. Amend., Art. 2, §§ 2, 3 and 4, and the Home

Rule Procedures Act, G.L. c. 43B, §§2-9.

The procedure is as follows:

1. A petition signed by not less than 15% of the voters must be filed with the Board of Election Commissioners for certification.

2. The City Council shall submit the question to the voters.

3. The question of whether to revise the charter and elect a charter commission will appear on the ballot at the next regular city election.

4. If a charter commission is elected, it holds a public hearing within 45 days.

5. The charter commission must prepare a preliminary report within 16 months of its election, including the text of the charter or charter revision which it intends to submit to the voters. After publication of the report in a newspaper, the Commission holds one or more public hearings.

6. The Attorney General renders an opinion on the legality of the proposed charter.

7. Within 18 months after its election, the charter commission must submit its final report to the City Council, including the full text of the proposed new charter or charter revision and an indication of the major differences between the current and proposed charters.

8. Upon submission of the final report of the charter commission, the City Council shall order the proposed charter or charter revision to be submitted to the voters at the first regular

city election held at least two months after the submission. If the new or revised charter is approved by the voters, it will become effective on the date fixed in the charter.

b) Minor amendments by City Council and voters

Amendments to charters may be proposed by a two-thirds vote of the City Council, provided that only a Charter Commission 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, ... or the city manager" G.L. c. 43B, §10(a).

In addition to any amendment proposed by the City Council, the Council shall also consider and vote on any suggested charter amendment it would have had the power to propose, which is suggested to it in writing by the City Manager, a city councillor or by a petition signed by 100 voters. G.L. c. 43B, §10(b).

Within three months after the filing of such suggested amendment with the City Clerk, the City Council shall order a public hearing to be held not later than four months after the filing date. Final action on the proposal shall be taken not later than six months after such filing date. G.L. c. 43B, §10(b).

When an order proposing an amendment is approved by the City Council, a copy of the order shall be sent to the Attorney General for an opinion on its legality. The Attorney General must furnish an opinion within four weeks. If he finds no illegality, the order will take effect four weeks after its submission to him. G.L. c. 43B, §10(c).

Finally, the proposed charter amendment must be submitted to the voters at the first regular city election "held at least two months after the order proposing such charter amendment becomes effective under section ten". G.L. c. 43B, §11.

c) Amendment by Special Act

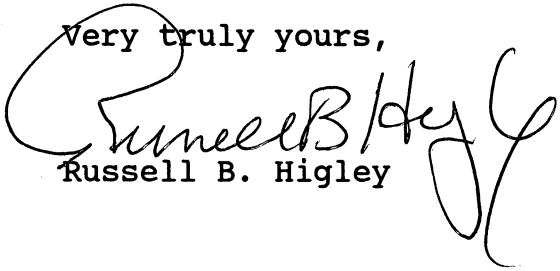
The Home Rule Amendment (Mass. Const. Amend., Art. 2, §8) provides an alternative means for enacting charter amendments. Section 8 provides:

Powers of the General Court - The general court shall have the power to act in relation to cities and towns ... by special laws enacted (1) on petition filed ... by the voters ... or ... legislative body, of a city ...

See Opinion of the Justices, 375 Mass. 843 (1978).

It has been held that charter amendment can be achieved through the passage of a special act. See Marino v. Town Council of Southbridge, 7 Mass. App. Ct. 461 (1979). We have been advised by Anthony Penski, Chief of the Municipal Division in the Attorney General's office, that the Legislature would be likely to require submission to the voters for approval of charter changes accomplished by this method. See, e.g. St. 1986, c. 135, §2 (Charter for City of Waltham).

Very truly yours,


Russell B. Higley

RBH/jab
Enclosures

§ 118 STANDARD PLANS OF CITY GOVERNMENT Ch. 6

The law provides that "if the preliminary election results in a tie among candidates for nomination receiving the lowest number of votes which, but for said tie vote, would entitle a person receiving the same to have his name printed upon the official ballot for the election, all candidates participating in said tie vote shall have their names printed upon the official ballot, although in consequence there be printed thereon candidates to a number exceeding twice the number to be elected."⁷³

A person nominated at a preliminary election may withdraw his name from nomination by filing a request with the city or town clerk within six days after the day of the preliminary election. The nominee shall be replaced by the candidate with the next highest number of votes in the preliminary unless otherwise provided by charter or bylaw.⁷⁴

The law relating to preliminary elections and nominations applies to any city after its adoption of a standard charter plan, unless the particular plan provides otherwise.⁷⁵ Where a city is operating under one of the standard plans and such plan was adopted by the city on or prior to September 1, 1922, a petition⁷⁶ may be filed with the city clerk not later than one month before a regular city election, requesting that the city accept the pertinent provisions of law relating to preliminary elections and nominations. The petition must bear the signatures of at least ten percent of the registered voters of the city computed as of the date of the last prior biennial state election. If the required number of signatures are certified by the registrars of voters, the acceptance of the statutory sections⁷⁷ will be placed before the voters of the city by a question on the ballot. A majority vote in favor will make the sections effective in that city.⁷⁸

§ 119. Plan A

Under plan A, there is a mayor, elected by the qualified voters of the city. He is the chief executive officer and holds office for a term of two years from the first Monday of January following his election and until his successor is qualified.⁷⁹ The mayor appoints, as their terms of office expire and without confirmation by the city council,

73. M.G.L.A. c. 43, § 44F.

for adoption of a standard plan set forth in M.G.L.A. c. 43, §§ 8 and 9.

74. M.G.L.A. c. 43, § 44F.

77. See M.G.L.A. c. 43, §§ 44A-44G inclusive.

75. M.G.L.A. c. 43, § 45.

76. The petition must conform so far as possible to the requirements for a petition

78. M.G.L.A. c. 43, § 44H.

79. M.G.L.A. c. 43, § 48.

all heads of departments and municipal board members, except the school committee, officials appointed by the governor, and assessors, if they are elected by popular vote.⁸⁰ In making an appointment, the mayor is required to file with the city clerk a certificate that in his opinion the appointee is "a recognized expert in the work which will devolve upon him" or that he is "a person specially fitted by education, training or experience to perform the duties of said office", and that the mayor makes the appointment solely in the interest of the city.⁸¹ The mayor may remove such department heads or board members as he is authorized to appoint by filing with the city clerk a written statement setting forth in detail the specific reasons for the removal. A copy of the statement must be mailed or delivered to the person so removed, who may make a written reply and, if he wishes, file the same with the city clerk. Such reply, however, does not affect the action of removal unless the mayor sees fit to reverse his position.⁸²

The legislative body in a plan A city is a city council of nine members elected at large. The council annually will elect one of its members as its president. At the first election after the adoption of plan A, if the plan adopted provides for annual elections, the five candidates for the city council receiving the largest number of votes will be elected for two years, and the four receiving the next largest number of votes will be elected for one year. Thereafter, as these terms expire, enough members will be elected at each annual election to fill the vacancies, each member so elected to serve for two years. If, however, the plan adopted provides for biennial elections rather than annual elections, there will be nine members elected, each to

80. M.G.L.A. c. 43, § 52. An auditor of accounts is a "head of department" and the power to appoint him is vested in the mayor. *King v. Mayor of Quincy*, 270 Mass. 185, 169 N.E. 894 (1930).

A mayor was held empowered to remove a member of the board of park commissioners and appoint a replacement, in each case without the approval of the city council. M.G.L.A. c. 45, § 2 (relating to the appointment and removal of park commissioners) did not apply. *Kaczmarek v. Mayor of Springfield*, 346 Mass. 432, 193 N.E.2d 574.

81. M.G.L.A. c. 43, § 53. The form of certificate, in the alternative, is set forth in the statute.

82. M.G.L.A. c. 43, § 54. This section does not apply to the school committee, to officials appointed by the governor, or to assessors if elected by the voters.

Validity of removal does not depend on the truth of the reasons given. *Fabrizio v. City of Quincy*, 9 Mass.App. 733, 404 N.E.2d 675 (1980), reasons given by mayor for removing assessor were sufficient. Due process did not require a hearing since individual had no property interest in the position of assessor, absent statutory tenure or rules or mutually explicit understandings that support a claim of entitlement to the position.

serve for two years, at the first regular city election held after adoption of the plan and at each biennial election thereafter.⁸³

A vacancy in the city council is filled by the remaining members for the balance of the unexpired term.⁸⁴

Every order, ordinance, resolution and vote passed by the city council, and relating to the affairs of the city, must be presented to the mayor for his approval. If he approves it, he will sign it. If he disapproves, he will return it to the council with his written objections. The council will enter his objections on its records and again consider the measure. If the city council, not less than seven days after its return from the mayor's office, passes the measure by a two-thirds vote of all its members, the measure will take effect despite the mayor's veto. If the mayor fails to return a measure to the city council within ten days after it has been presented to him, it will be deemed to be in force and effect.⁸⁵

§ 120. Plan B

The mayor, under plan B is elected by the voters at large. He is the chief executive officer of the city and holds office for a term of two years from the first Monday in January following his election and until his successor is qualified.⁸⁶

The legislative powers of the city are vested in the city council, which annually elects one of its members as its president. A city containing more than seven wards has a council of fifteen members; a city with seven wards or less has a council of eleven members. In either case, one councillor is elected from each ward "by and from the qualified voters of that ward" and the remaining members of the council are elected "by and from the qualified voters of the city." At the first regular city election under plan B, if the plan adopted provides for annual elections, the councillors elected from the wards will be elected to serve for one year and those elected by the voters of the city at large will be elected to serve for two years from the first

83. M.G.L.A. c. 43, § 50.

Section was not obstacle to power of local board to order funding by city council of fluoridation of water supply under M.G.L.A. c. 111, § 8C. Board of Health v. Mayor of North Adams, 368 Mass. 554, 334 N.E.2d 34 (1975).

84. M.G.L.A. c. 43, § 50A.

85. M.G.L.A. c. 43, § 55. But note that this section does not apply to budgets sub-

mitted by the mayor to the city council under M.G.L.A. c. 44, § 32, or to appropriations by the city council under M.G.L.A. c. 44, § 33.

86. M.G.L.A. c. 43, § 58.

Plan B mayor's signature on record of city council vote constituted approval. Newell v. Rent Board of Peabody, 378 Mass. 443, 392 N.E.2d 837 (1979).

Monday in January following their election and until their successors are qualified. Thereafter, at each regular annual city election, councillors elected to fill vacancies caused by the expiration of terms will be elected to serve for two years. If the plan adopted provides for biennial rather than annual elections, all councillors, whether elected from the wards or at large, will be elected at the first regular city election following adoption of the plan, and at every biennial election thereafter, to serve for two years from the first Monday in January following their election and until their successors are qualified.⁸⁷

If a vacancy in the office of mayor occurs during the first year of the term ending December thirty-first, the city clerk will call an election to fill the vacancy for the unexpired balance of the two year term. If, however, the vacancy occurs during the second year of the term beginning January first, the city clerk will call a meeting of the city council and the council will elect one of its members, by majority vote, to serve as mayor for the unexpired balance of the term. Should the council fail to elect one of its members as mayor at such meeting, or within thirty days thereafter, the president of the city council will become acting mayor. He will exercise all the rights and powers of the mayor and will be sworn to the faithful discharge of his duties.⁸⁸

A vacancy in the office of a city councillor elected by the voters of the city at large will be filled by majority vote of all the remaining members of the council for the remainder of the unexpired term. If a vacancy occurs, before the last six months of the term, in the office of a councillor elected from a ward, the council will order an election to fill the vacancy for the remainder of the unexpired term.⁸⁹

The mayor, under plan B, appoints all heads of departments and members of municipal boards, except the school committee, officers appointed by the governor, and assessors if elected by the voters, as their terms of office expire. Except in the case of the city solicitor, such appointments are subject to confirmation by the city council. The mayor may appoint, and remove, the city solicitor without confirmation by the council.⁹⁰ A liquor licensing board is not a "municipal board" and the mayor's appointments of members to such board

87. M.G.L.A. c. 43, § 59. It will be noted that the powers of the city council are limited to legislative powers. An order of the council which is clearly executive and not legislative is therefore not subject to a referendum under M.G.L.A. c. 43, § 42.

Dooling v. City Council of City of Fitchburg, 242 Mass. 599, 136 N.E. 616 (1922).

88. M.G.L.A. c. 43, § 59A.
18 Mass.Prac.3rd Ed. (R. & F.)—5

89. M.G.L.A. c. 43, § 59A. The statute does not provide for the situation where a vacancy occurs, within the last six months of the term, in the office of a councillor elected from a ward. Presumably the vacancy is not filled.

90. M.G.L.A. c. 43, § 60.

are not subject to confirmation by the city council.⁹¹ Where plan B makes no specific provision as to the appointment and measure of duties of a public officer, such public officer will continue in the same status he enjoyed when the plan was adopted, until the city council changes his status by ordinance.⁹² Where the chief of police had previously been placed under civil service by acceptance of a statute,⁹³ the adoption of plan B did not by implication repeal the acceptance so as to make him removable by the mayor without regard to the requirements of the civil service law.⁹⁴ Plan B does not give to the mayor specific power to remove subordinate officers who are under the charge of department heads.⁹⁵ The treasurer and tax collector of a city is a head of a department who is appointed by the mayor, subject to confirmation by the city council,⁹⁶ and the entire board of assessors also comes within the meaning of the words "head of a department."⁹⁷

The mayor may remove the head of a department or member of a board⁹⁸ before the expiration of his term of office, but such removal must be approved by a majority of the members of the city council. The person to be removed shall receive a copy of the reasons for his removal and he may, if he desires, contest the removal before the council and be represented by counsel.⁹⁹

§ 121. Plan C

Plan C is the commission form of government. The government and general management and control of all of the city's affairs, except the public schools, are vested in an elected city council¹ of five mem-

91. Crocker v. Deschenes, 287 Mass. 202, 191 N.E. 678 (1934).

Section does not apply to appointment of licensing board members under M.G.L.A. c. 138, § 4 or to confirmation of such appointments. Del Greco v. Mayor of Revere, 1 Mass.App. 135, 294 N.E.2d 594 (1973).

92. Bradley v. City of Marlboro, 296 Mass. 253, 5 N.E.2d 439 (1936). In this instance the "public officer" was the superintendent of streets.

93. Chapter 468 of 1911.

94. Ellis v. Shepard, 229 Mass. 147, 118 N.E. 231 (1918).

95. Duggan v. Justice of Third District Court of Eastern Middlesex, 298 Mass. 274, 10 N.E.2d 61 (1937).

96. Clark v. City Council of Waltham, 328 Mass. 40, 101 N.E.2d 369 (1951).

97. Bryson v. Mayor of Waltham, 329 Mass. 524, 109 N.E.2d 452 (1952).

98. Except members of the school committee, officials appointed by the governor, and assessors if elected by the people.

99. M.G.L.A. c. 43, § 61. See Cunningham v. Rockwood, Mayor, 222 Mass. 574, 111 N.E. 409 (1916), where it was held the commissioner of public safety was removable under this section.

1. M.G.L.A. c. 43, § 66.

bers, comprised as follows: a mayor, who is the Commissioner of Administration; a Commissioner of Finance; a Commissioner of Health; a Commissioner of Public Works and a Commissioner of Public Property. Each commissioner is the active head of the department of city affairs indicated by his title. In case of controversy as to the departments to be under the charge of any one or more of the commissioners, the matter will be determined by vote of the majority of all commissioners.²

The terms of office of the five members of the council commence at ten o'clock in the morning on the first Monday of January following their election. They will serve for two years each and until their successors are qualified, except that if the plan adopted calls for annual elections, the terms of office of the commissioners of administration, finance and health elected at the first election held under plan C will be for two years and the terms of office of the commissioners of public works and public property so elected shall be for one year.³

The city council meets annually on the first Monday of January for the swearing in of new members, and organizes by choosing one of its members, other than the mayor, as president, to serve during the pleasure of the council. The organization of the council will take place if at least three members are present and have been sworn in, notwithstanding the absence, death, refusal to serve, or non-election of the mayor or one or more of the other members. If a member-elect does not attend the organization meeting, he may be sworn in at any subsequent time.⁴ If a councillor is temporarily unable for any reason to perform his duties, the council may appoint one of its members to exercise his powers and perform his duties during his disability.⁵

The city council fixes suitable times for its regular meetings, but a special meeting may be called at any time by the mayor, the president of the council or any two members, by causing written notice of the time of the meeting, signed by the person or persons calling it, to be delivered in hand to each member, or left at his usual dwelling place, at least six hours before the time of the meeting. Meetings may be held at any time when all members are present and consent.⁶ The meetings must be public. A majority of the council constitutes a quorum. If the mayor is present, he presides and may vote; if he is not present, the president of the council presides. If neither the

2. M.G.L.A. c. 43, § 67.

5. M.G.L.A. c. 43, § 26.

3. M.G.L.A. c. 43, § 68.

6. M.G.L.A. c. 43, § 70.

4. M.G.L.A. c. 43, § 69.

mayor nor the president is present, the members present choose a temporary chairman. The city clerk is ex officio the clerk of the council and keeps the records of its proceedings. If he is absent, the council elects a temporary clerk, who is sworn to the faithful discharge of his duties.⁷ Every final vote of the council involving an expenditure of fifty dollars or more,⁸ every ordinance and resolution, and any other vote on request of one member, must be by yeas and nays and be recorded on the journal of the council's proceedings. Every ordinance, resolution, order or vote requires for its passage at least three affirmative votes.⁹

The city council under plan C has all the legislative powers of the city and possesses, in itself or through the officers it elects or appoints, all the powers, rights and duties possessed, prior to the adoption of the plan, by the mayor, board of aldermen, common council, and all other boards, commissions and committees of the city.¹⁰

In addition to being the Commissioner of Administration, the mayor is the chief executive officer of the city and, ex officio, chairman of the school committee. He may have such other duties and powers as are provided by ordinance and are not inconsistent with the statute. He presides, when present, at meetings of the city council, but he has no power of veto. In the absence of the mayor, or during his inability to act, the councillor elected as Commissioner of Finance will assume the duties and exercise the rights and powers of the mayor. If the Commissioner of Finance is absent or unable so to act, the council will select another commissioner to act as mayor.¹¹

The city council has the power, and in fact the duty, to assign the executive and administrative powers, authorities and duties not specifically allocated by the plan C statute to proper departments by means of ordinances. Changes in assignments may be made by ordinances enacted, in each instance, by an affirmative vote of three members or by the voters at large upon an initiative petition. The council is the policy-making body, but each individual commissioner has power to carry out the council's policies within his own department.¹² Subject to the confirmation of the city council, and civil service laws, each commissioner may appoint the heads of the departments under his jurisdiction and may remove any one of them for cause stated in the order of removal. Subject again to the civil

7. M.G.L.A. c. 43, § 71.

reserved to the school committee, or to the voters at large.

8. M.G.L.A. c. 43, § 71.

11. M.G.L.A. c. 43, § 74.

9. M.G.L.A. c. 43, §§ 71 and 73.

12. M.G.L.A. c. 43, § 75.

10. M.G.L.A. c. 43, § 72. Note, however, that the council does not acquire powers

service laws, the head of each department may appoint and remove the employees of that department.¹³ Each commissioner must keep a record book, which will be open to public inspection, containing a concise record of the affairs of the department or departments under his jurisdiction, must quarterly render a full report to the city council and must annually make a synopsis of his report for publication.¹⁴

§ 122. Plan D

The government of the city is vested in a city council of seven or nine members and a city manager. The mayor "shall be recognized as the official head of the city for all ceremonial purposes and shall be recognized by the courts for the purpose of serving civil process and by the governor for military purposes". The school committee has general management and control of the school system. The city clerk, the city auditor, any official appointed by the governor, and any elected trustees of trust funds have the powers and duties conferred and imposed upon them by general law.¹⁵

The members of the city council are elected at large for terms of two years each at each regular city election. If the city had seven wards or less when plan D was adopted, the council will consist of seven members. If the city had more than seven wards, the city council will have a membership of nine. No member of the council may hold any other salaried position in the city government.¹⁶ The city council meets and organizes on the first Monday of January following the regular city election. A majority of all members elected to the council must be present and qualified. The city clerk acts as temporary chairman until the mayor or the vice-chairman has qualified. The city council elects a mayor and a vice-chairman from its own membership. If the city council fails to elect a mayor and a vice-chairman within fourteen days after the first Monday in January following the regular city election, the member of the council who received the highest number of votes at the preceding city election will automatically become the mayor and the member receiving the next highest number of votes will become the vice-chairman; both will serve until the end of the terms to which they were elected as members of the city council. If a vacancy occurs in the office of the mayor, the city council will elect one of its members to fill the office for the unexpired term. Pending such election, the senior member of the council in length of service, or, if two or more have equal length of

13. M.G.L.A. c. 43, § 76.

15. M.G.L.A. c. 43, §§ 81, 82, 86.

14. M.G.L.A. c. 43, § 77.

16. M.G.L.A. c. 43, § 82.

service, the senior member both in age and length of service, will act as mayor.¹⁷

The city council will fix the times for its regular meetings. A special meeting may be called at any time by the mayor, or by four members of a nine-member council, or by three members of a seven-member council, written notice being served on each member at least twelve hours before the time set for the meeting. All meetings of the council and of its committees, except executive sessions, are open to the public, and rules of the council must provide that citizens and city employees be given a reasonable opportunity to be heard at any such meeting on any matter considered at the meeting.¹⁸

A majority of all members elected to the city council constitutes a quorum. The mayor presides at meetings and may vote. If the mayor is absent, the vice-chairman presides. The city clerk acts as clerk of the council and keeps the records of the meetings. All final votes on matters involving the expenditure of fifty dollars or more, and any other vote, or request of any member, must be by yeas and nays and must be entered on the records. The affirmative vote of a majority of all the members elected to the city council is necessary for the passage of any order, ordinance, resolution or vote, except that the affirmative vote of a majority of those present is sufficient to adjourn any meeting.¹⁹

The mayor of a plan D city, in cases of public danger or emergency and with the consent of the city council, may take command of the police and take necessary action to maintain order and enforce the laws. He is the chairman of the city council and of the school committee, with the right to vote in each case but without the power of veto.²⁰ If a vacancy occurs in the city council or in the school committee, and the remaining members fail by majority vote to fill such vacancy for a period of thirty days after being notified by the city clerk that the vacancy exists, the mayor will fill the vacancy by appointing any qualified voter of the city.²¹

The chief administrative officer of a plan D city is the city manager, who is appointed by the city council "on the basis of his administrative and executive qualifications only". He need not be a resident of the city or of Massachusetts when appointed. No member of the city council may be chosen city manager during his term of office and no

17. M.G.L.A. c. 43, § 83.

18. M.G.L.A. c. 43, § 84.

19. M.G.L.A. c. 43, § 85.

20. M.G.L.A. c. 43, § 86.

21. M.G.L.A. c. 43, § 88. If there is no mayor, such appointment will be made by the vice-chairman of the city council or by the vice-chairman of the school committee, as the case may be.

person is eligible to appointment who has within two years been elected to or served in an elective office within the commonwealth. The city manager will receive such compensation as the city council may fix by ordinance, but such compensation may not exceed ten thousand dollars a year in a city with a population of less than one hundred thousand, or twenty thousand dollars a year in a city with a population of one hundred thousand or more.²²

The city manager serves at the pleasure of the city council, which may remove him for cause by a two-thirds roll-call vote. Prior to his removal, however, he shall at his request be furnished with a written statement of the alleged reasons for his removal and shall have the right to be heard at a public meeting of the council prior to a final vote on his removal. Pending such public hearing, he may be suspended from office. The action of the city council in suspending or removing a city manager is final, it being the intention of the statute "to vest all authority and fix all responsibility for such suspension or removal in the city council."²³

In the event of the absence, disability or suspension of the city manager the city council will designate the head of some city department to act as city manager during the interim period. If the office of city manager becomes vacant, the council will designate a department head as acting city manager until a new city manager is appointed.²⁴

Generally speaking, the powers and duties of the city manager are the same as those possessed and exercised, immediately prior to the adoption of plan D, by the mayor, board of aldermen, common council and all other boards, commissions and committees of the city, except the school committee. He does not, of course, have legislative powers or duties, but he supervises the administration of the city's affairs and is charged with the duty of seeing to it that the city council's ordinances, resolutions and regulations are faithfully executed. He makes recommendations to the council and keeps the council fully informed as to the city's financial condition. It is his duty to prepare the annual city budget and to submit it to the city council.²⁵ To assist him in preparing the budget, he may require all departments, commissions, boards and offices of the city to furnish

22. M.G.L.A. c. 43, § 89.

shaw, 363 Mass. 800, 298 N.E.2d 847 (1973).

23. M.G.L.A. c. 43, § 89.

24. M.G.L.A. c. 43, § 89.

Statement of reasons for removal did not satisfy statutory requirements where it was never adopted by members of city council at any meeting. *Gildea v. Eller-*

25. As to the contents of the budget, see M.G.L.A. c. 44, § 32.

him with estimates of their financial requirements.²⁶ He is charged with the duty of appointment and removal in the departments for whose administration he is responsible, but he may delegate this duty, insofar as it pertains to subordinates in a department, to the head of that department.²⁷ The city manager must, however, report every appointment and removal at the next following meeting of the city council. City officers and employees appointed by or under authority of the city manager must perform the duties required of them by the city manager, subject to general regulations of the city council, and a violation of this requirement is sufficient grounds for removal of an officer or employee.²⁸

The city manager has a free hand in administering the departments for which he is responsible. No member of the city council may direct or request the city manager to appoint any person to office or to remove any person from office. Except in the course of an inquiry, no member of the city council may deal with any portion of the service of the city for which the city manager is responsible, except through him, and no council member may give orders, publicly or privately, to any subordinate of the city manager. A violation of this non-interference provision of the law carries a substantial penalty.²⁹

No employee of a city under plan D may give, solicit or receive, directly or indirectly, any assessment, subscription or contribution for any political party or for any candidate for city office.³⁰

26. M.G.L.A. c. 43, § 90.

27. Subject in any case, of course, to applicable provisions of the civil service law (M.G.L.A. c. 31).

See *Williams v. City Manager of Haverhill*, 330 Mass. 14, 110 N.E.2d 851 (1953), which holds that an assessor may be removed by the city manager of a plan D city, and that the assessor is not entitled to written charges or to a hearing.

In a Plan D city, the appointment of a person as a member of the alcoholic liquor licensing board was a nullity, because it was not confirmed by the city council as required by M.G.L.A. c. 138, § 4.

28. M.G.L.A. c. 43, § 91.

29. M.G.L.A. c. 43, § 92. This section provides a penalty of not more than five

hundred dollars or imprisonment for not more than six months, or both. In addition, the office of a city council member convicted of a violation of this section is automatically vacated and the member so convicted is barred from ever again being eligible for any office or position in the city service, elective or otherwise.

30. M.G.L.A. c. 43, § 92A. It is not clear whether "political party" as used in this section refers to a political party in its activities within the city or to a political party in a much wider sense. The penalty for violation of the section is a fine of not more than five hundred dollars or imprisonment for not more than six months, or both. In addition, a person convicted of such violation is barred from ever again holding any office or position in the city service.

§ 123. Plan E

As is the case in other statutory city charter plans, the conduct of school affairs in a plan E city remains vested in the school committee. The city clerk, city auditor, officials appointed by the governor and elected trustees of trust funds continue to have and exercise the powers and duties conferred and imposed upon them by general law.³¹ With these exceptions, the government of a plan E city and the general management of its affairs are vested in a city council and a city manager.³²

The city council, as in plan D cities, consists of seven members if the city contained seven wards or less, and nine members if the city contained more than seven wards at the time of adoption of the plan. Members are elected for two year terms by proportional representation. No member of the council may, during the term, be appointed or elected by the council to any office the salary of which is payable by the city.³³

The city council meets and organizes on the first Monday of January following the regular city election. The city clerk acts as temporary chairman until the mayor or vice-chairman has been qualified. The council, by majority vote of all members, elects from its own membership a mayor and a vice-chairman. The presence and the prior qualification of a majority of all the members elected to the city council are essential to the organization. In the event of a vacancy in the office of mayor or vice-chairman, the city council will elect one of its members to fill the vacancy for the unexpired term, but it can only do so if there is then no vacancy in the council itself.³⁴

The council fixes the times for its regular meetings, and a special meeting may be called at any time by the mayor, by the vice-chairman, by four members of a nine-member council or by three members of a seven-member council, written notice being served on each member at least twelve hours before the time set for the meeting. All meetings of the council and of its committees, except executive sessions, are open to the public, and the rules of the council must provide that citizens and city employees be given a reasonable opportunity to be heard at any such meeting on any matter considered at the meeting.³⁵

A majority of all elected members of the city council constitutes a quorum. The mayor presides at meetings and may vote; the vice-

31. M.G.L.A. c. 43, § 95.

tion does not apply to election of a councilor as mayor.

32. M.G.L.A. c. 43, § 95.

34. M.G.L.A. c. 43, § 97.

33. M.G.L.A. c. 43, § 96; M.G.L.A. c. 39,

§ 8. Presumably, however this prohibi-

35. M.G.L.A. c. 43, § 98.

§ 123 STANDARD PLANS OF CITY GOVERNMENT Ch. 6

chairman presides in the absence of the mayor. The city clerk is ex officio the clerk of the council and keeps the records. All final votes involving an expenditure of fifty dollars or more, and any other vote, on request of any member, must be by yeas and nays and must be entered on the records. The affirmative vote of a majority of all the elected members is necessary for the passage of any order, ordinance, resolution or vote, but the majority of those present may vote to adjourn a meeting.³⁶

The mayor under plan E performs much the same functions as his counterpart under plan D. He is the official head of the city for all ceremonial purposes and will be recognized by the courts for the purpose of serving civil process and by the governor for military purposes. He is the chairman of the city council and of the school committee, in each of which positions he has the right to vote, but not the power of veto. He has no powers of appointment, except as to the employees connected with his own office.³⁷ In case of his absence or inability to act, his duties are performed by the vice-chairman of the council.

A vacancy in any elective body in a plan E city is filled for the remainder of the unexpired term by a public recount of the ballots credited at the end of the original count to the candidate elected thereby whose place has become vacant. Subject to certain special rules, the provisions governing the original count of votes will be followed. If no regularly nominated candidate for the city council or school committee remains, the vacancy will be filled for the unexpired term by a majority vote of the remaining members, except that if the remaining members fail to fill the vacancy within thirty days after being notified of the vacancy by the city clerk, the vacancy will be filled by the appointment of any qualified voter of the city by the mayor or, if there is no mayor, by the vice-chairman of the council or, if there is no mayor and no vice-chairman, by the senior member in point of service of the city council or school committee, as the case may be, or, if more than one have so served, then by the member of the city council or school committee who is senior both in length of service and in age.³⁸

36. M.G.L.A. c. 43, § 99.

37. M.G.L.A. c. 43, § 100.

Home rule amendment would not be violated if the general court enacted petition from city council of a plan E city government although petition was filed without approval of mayor. Opinion of the Justices to the House of Representatives, 375 Mass. 843, 378 N.E.2d 43 (1978). In

Plan E cities, measures adopted by city council are not presented to mayor for approval, and mayor has no veto power.

38. M.G.L.A. c. 43, § 102. In any plan E city where plurality voting has been substituted for proportional representation, by acceptance or the application of chapter 661 of the Acts of 1949, a vacancy in an elective body will be filled forthwith for

Ch. 6 STANDARD PLANS OF CITY GOVERNMENT § 123

The city manager is appointed by the city council, to hold office during its pleasure. He is the chief administrative officer of the city and is responsible for the administration of all departments, commissions, boards and offices of the city, except that of city clerk, city auditor, any official appointed by the governor and anybody elected by the voters. He will be appointed on the basis of his executive and administrative qualifications only; he need not be a resident of the city or of Massachusetts when appointed. His compensation will be such as shall be fixed by ordinance. No member of the city council may be chosen as city manager, and no person shall be eligible for appointment who has, within two years, held elective or appointive office in the city or in the county in which the city is located. The city manager will be sworn to the faithful performance of his duties.³⁹

The city manager may be removed by the city council.⁴⁰ Before he may be removed, however, he is entitled, on demand, to a written statement of the reasons alleged for his removal and the right to be heard publicly on these reasons at a meeting of the council held prior to the final vote on his removal. He may be suspended from office pending and during such public hearing. If the city council votes to remove him from office, such action is final, the statute fixing all responsibility for his suspension or removal upon the council. In the absence, disability or suspension of the city manager, the city council will designate a department head to perform his duties temporarily. If the office of city manager becomes vacant, the city council will designate a department head as acting city manager until a new city manager is appointed.⁴¹

The city manager is the "chief conservator of the peace within the city" and supervises the administration of the city's affairs. He sees to it that the laws of the commonwealth and the ordinances and regulations of the city council are faithfully executed. He reports to the council upon the affairs of the city and keeps it advised as to the city's financial condition and future needs. He prepares the city's budgets for submission to the council and, in this connection, he may require expense estimates from all city departments. He makes all

the unexpired term by the remaining members of the body concerned, "who shall choose whichever of the defeated candidates who are eligible and willing to serve, and who received the highest number of votes for membership in the body in which the vacancy occurs at the last regular municipal election at which members of said body were elected". Chapter 230 of the Acts of 1954.

39. M.G.L.A. c. 43, § 103.

40. M.G.L.A. c. 43, § 103. Presumably removal can be accomplished by a majority vote, but note that under plan D a two-thirds vote is required. See M.G.L.A. c. 43, § 89.

41. M.G.L.A. c. 43, § 103.

appointments and removals of personnel⁴² in the departments for whose administration he is responsible and performs such other duties as the council may, by ordinance, prescribe.⁴³

The city council may prescribe entirely, limit, or grant wide discretion to the city manager in carrying out its orders. The city manager has a duty to act on contracts in a manner nonprejudicial to the city's interest. This duty allows for some judgment on the city manager's part in concluding the terms of a contract.⁴⁴

The city manager may delegate the authority to appoint and remove subordinates to a department head. In any event, the manager must report each appointment and each removal to the city council at its next following meeting. All appointments, if subject to the civil service law, shall be made in accordance therewith, and all other appointments shall be made on the basis of executive and administrative training and experience in the work to be performed.⁴⁵

Officers and employees of a plan E city who come under the authority of the city manager are subject to the supervision of the manager, under general regulations of the city council. A violation of this statutory provision is a sufficient ground for removal.⁴⁶

No member of the city council may direct or request the city manager to appoint any person to or remove any person from office. Except in the course of an inquiry, no member of the council may deal with employees of the city under the jurisdiction of the manager except through him, and no council member may give orders, publicly or privately, to a subordinate of the manager.⁴⁷

42. Subject to his right to delegate this responsibility insofar as subordinate employees of departments are concerned. See M.G.L.A. c. 43, § 105.

City manager, as chief administrative officer of city, could properly decide not to fill vacancy in rank of lieutenant in city police department. *Conway v. City Manager of Medford*, 5 Mass.App. 778, 359 N.E.2d 1310 (1977).

43. M.G.L.A. c. 43, § 104.

44. *Sancta Maria Hospital v. City of Cambridge*, 369 Mass. 586, 341 N.E.2d 674 (1976).

45. M.G.L.A. c. 43, § 105.

46. M.G.L.A. c. 43, § 106.

A city manager has broad authority to set general policy to be carried out by the police chief and to supervise and control his actions, but may not go as far as to empower the city manager to exclude the chief entirely from the chain of command from the city manager to the police department. *Chief of Police of Medford v. City Manager of Medford*, Mass.App.Ct.Adv.Sh. (1981) 398, 416 N.E.2d 985 (1981).

47. M.G.L.A. c. 43, § 107. A violation of this statutory provision is punishable by a fine of up to five hundred dollars or imprisonment for up to six months, or both, and upon conviction the office of the guilty person is declared vacant and he is forever barred from holding office, either elective or appointive, in the service of the city.

Ch. 6 STANDARD PLANS OF CITY GOVERNMENT § 123

No city employee may, directly or indirectly, give, solicit or receive, or be concerned in giving, soliciting or receiving, any assessment, subscription or contribution for any political party or candidate.⁴⁸

Under plan E, the regular city election takes place on the Tuesday next following the first Monday of November in every odd numbered year. Members of the city council and school committee, and such other city officers as are chosen by the voters, will be elected at that time.⁴⁹ Any registered voter who is eligible for election to public office in the city is entitled to have his name printed on the official ballot at the regular city election provided that, at least twenty-eight days prior to the election, there has been filed with the city clerk a statement, signed by him, and a petition signed by not less than fifty and not more than one hundred registered voters of the city. The signatures on the petition must have been certified by the registrars of voters as required by law. The foregoing requirements are mandatory; no person shall be entitled to have his name printed as a candidate on the ballot unless they have been complied with strictly.⁵⁰ If the nomination papers of a candidate contain more than the maximum number of signatures, they will be invalid. No voter may sign the nomination papers of more than one candidate for election as a member of any elective municipal body. If a voter signs nomination papers for more than one such candidate his signature will be invalid on all such papers except the one first acted upon by the registrars of voters.⁵¹

A separate form of ballot is required for each body to be elected at the city election, and each separate form must be different in color from all other forms used at the same election. On every ballot there must be printed the following directions to voters, the first sentence under the heading to be in "prominent bold faced type":

"Do not use X marks."

"Mark your choices with NUMBERS only."

48. M.G.L.A. c. 43, § 108. A violation of this section is punishable by a fine of not more than five hundred dollars or imprisonment for not more than six months, or both. Upon his conviction, such employee's office is automatically vacated, and he is barred from holding any elective or appointive position in the city service thereafter.

50. M.G.L.A. c. 43, § 110. The forms of the statement and petition are set forth in this section in detail.

51. M.G.L.A. c. 43, § 111. This appears to say that even though seven members are to be elected to the city council, a voter may sign nomination papers for only one candidate.

49. M.G.L.A. c. 43, § 109.

§ 123 STANDARD PLANS OF CITY GOVERNMENT Ch. 6

“Put the figure 1 opposite your first choice; the figure 2 opposite your second choice; the figure 3 opposite your third choice; and so on.

“Mark as many choices as you please.

“Do not put the same figure opposite more than one name.

“If you spoil this ballot, tear it across once, return it to the election officer in charge of the ballots and get another from him.”

No ballot may indicate the party or political designation of any candidate nor anything to show how he was nominated or what his views or opinions are.⁵²

At the close of the polls at each polling place, where the election is solely one under proportional representation, the ballot box is sealed and delivered to the central counting place, together with voting lists, a record of the ballot box register, a record of the ballots given out, the ballots spoiled and returned, and the ballots not given out, all of these being enclosed in an envelope and duly certified by the election officials. At the central counting place, the ballots are removed from the boxes, and numbers compared with the records from the polling places and any discrepancies noted. The ballots are first counted for the city council and next for the school committee.⁵³

A plan E city may have proportional or plurality voting. In 1949, the Massachusetts general court enacted a statute which, by its terms, repealed so much of the plan E law as provided for proportional representation in any city the voters of which accepted the statute, and substituted in such city ordinary plurality voting.⁵⁴ In 1954, however, the general court made it possible for the voters of a city accepting the 1949 act, thereby abolishing proportional representation in that city, to restore proportional representation by accept-

52. M.G.L.A. c. 43, § 112. The leading case on proportional representation is *Moore v. Election Commissioners of Cambridge*, 309 Mass. 303, 35 N.E.2d 222 (1941) which upholds the constitutionality of this method of voting.

53. M.G.L.A. c. 43, § 114. Ballots cast for purposes other than the election of members to elective bodies (i. e., city council and school committee) are counted at the central counting place “in accordance with the laws otherwise applicable to the counting thereof”. No information as to the state of the balloting may be disclosed before the close of the polls.

54. Chapter 661 of Acts of 1949. The supreme judicial court has ruled that in any city adopting plan E after the effective date of this statute, plurality voting will prevail rather than proportional representation. *Mayor of Gloucester v. City Clerk of Gloucester*, 327 Mass. 460, 99 N.E.2d 452 (1951).

See also Chapter 281 of the Acts of 1952, and Chapter 118 of the Acts of 1953, both of which amend Chapter 661 of the Acts of 1949.

ance of the new act.⁵⁵ For a determination as to whether proportional representation is legally in effect in any particular plan E city, therefore, it is necessary to know when the plan was adopted and what action was taken by the voters on these legislative enactments.

§ 124. Plan F

The government of a city under Plan F is vested in a mayor and a city council, the councillors being elected partly at large and partly from the wards of the city, with the mayor and city councillors being nominated in party primaries, and elected biennially in every odd numbered year. At the city primary, each political party will place in nomination a candidate for mayor, six candidates for the school committee, as many candidates for councillor-at-large as there are councillors-at-large to be elected, and a candidate for councillor from each ward in the city. Independent candidates may be nominated by nomination papers.⁵⁶

The mayor under Plan F is the chief executive officer of the city.⁵⁷ The legislative powers are vested in a city council which will annually elect one of its members as president.⁵⁸

All department heads and members of municipal boards, except the school committee, officials appointed by the governor, and assessors if elected by the voters, are appointed by the mayor, as their terms of office expire, without confirmation by the city council.⁵⁹ The mayor may remove any person whom he is authorized to ap-

55. Chapter 152 of the Acts of 1954. Note that this act does not apply to the City of Quincy.

In 1972, M.G.L.A. c. 43, § 115 and c. 54A dealing with proportional voting was repealed by St. 1972, c. 596, § 2. See also *Belin v. Secretary of the Commonwealth*, 362 Mass. 530, 288 N.E.2d 287 (1972), special law invalid where only one city or town where officers were elected by proportional representation.

56. M.G.L.A. c. 43, §§ 117-127, incl.

57. M.G.L.A. c. 43, § 119. The mayor holds office for two years from the first Monday in January following his election and until his successor is qualified.

58. M.G.L.A. c. 43, § 120. The city council is composed of one member from each

ward, plus members elected at large as follows:

Number of wards in city	Number of members at large
5	2
6	3
7	4
8	3
9	4
10	5
11	4
12	3

59. M.G.L.A. c. 43, § 122. The mayor must file with the city clerk a certificate that his appointee in his opinion is specially fitted by education, training or experience for the position. For the form of the certificate see M.G.L.A. c. 43, § 123.

§ 124 STANDARD PLANS OF CITY GOVERNMENT Ch. 6

point.⁶⁰ Every order, ordinance, resolution and vote adopted or passed by the city council relative to the affairs of the city is subject to the approval or disapproval of the mayor. A measure disapproved by the mayor may take effect if it is again passed by a two-thirds vote of all the members of the council.⁶¹

The mayor serves as chairman of the school committee.⁶²

§ 125. Optional Plan of City Council and School Committee Organization in Certain Large Cities

All cities having a population of 150,000 or more inhabitants, except those operating under a plan E method of government, may adopt an optional plan for city council and school committee organization based upon district representation.⁶³

An optional plan of city council and school committee organization provides for a legislative body to be known as the city council, composed of at least nine members, or a school committee, composed of at least nine members, or both, elected from equally populous districts with one member of the city council or school committee elected at large for every 120,000 residents of the city in excess of 150,000 residents, notwithstanding its plan of government or charter.⁶⁴

Upon petition of five percent of the registered voters, an authorized city⁶⁵ shall place on the ballot one or both of the following questions:

A BINDING REFERENDUM CHANGING THE STRUCTURE OF THE CITY COUNCIL TO PROVIDE FOR DISTRICT REPRESENTATION.

“Shall the city council be composed of nine members elected from equally populous districts and, in addition, one member elected at large for every one hundred and twenty thousand residents of the

60. M.G.L.A. c. 43, § 124. The mayor must file a written statement with the city clerk setting forth the reasons for a removal, and a copy of this statement must be mailed or delivered to the person removed, who may answer the charges. However, the answer will not affect the action taken unless the mayor so determines.

61. M.G.L.A. c. 43, § 125. A new vote on a measure may not be taken for seven days after the return of the measure by the mayor to the council. A measure will

take effect if not returned by the mayor within ten days after it is presented to him.

This section does not apply to budgets under M.G.L.A. c. 44, § 32, or to city council appropriations under M.G.L.A. c. 44, § 33.

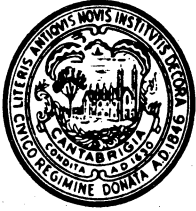
62. M.G.L.A. c. 43, § 31.

63. M.G.L.A. c. 43, § 2.

64. M.G.L.A. c. 43, § 1.

65. M.G.L.A. c. 43, § 128.

18.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

December 14, 1992

To The Honorable, The City Council:

With reference to Awaiting Report Item No. 21, regarding a detailed report on the mechanism for a charter change, please find attached a response received from Russell B. Higley, City Solicitor.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert W. Healy".

Robert W. Healy
City Manager

RWH/mev
attachment

CONSENT AGENDA ITEM #18

S-1048

Awaiting Report Item No. 21 regarding a detailed report on the mechanism for a charter change.

In City Council,
December 14, 1992

Placed on file