

A PUBLIC MEETING OF THE CAMBRIDGE CHARTER REVIEW COMMITTEE

June 20, 2023, @ 5:30 p.m.
REMOTE ONLY – VIA ZOOM

Pursuant to Chapter 2 of the Acts of 2023 adopted by Massachusetts General Court and approved by the Governor, the City is authorized to use remote participation at meetings of the Cambridge Charter Review Committee.

The zoom link is: <https://cambridgema.zoom.us/j/83253118929>

Meeting ID: 832 5311 8929

One tap mobile +13092053325,,83253118929# US

Agenda Items – Tuesday, June 20, 2023

- I. Roll Call 5:30 PM
- II. Introduction by Chair, Kathy Born
- III. Adoption of Meeting Minutes from the meeting of May 23, 2023.
- IV. Meeting Materials Submitted to the Committee to be placed on file
 - Communications from Committee Members
 - Communications from Council Members
 - Communications from the Public
 - Other Meeting Materials
 - i. An opinion from Cambridge Solicitors Office, responding to a councilor order No. O-4 of 4/10/23, regarding timing of ballot vote for charter changes
- V. Public Comment
 - Members of the public are invited to share their ideas or comments with the committee.
- VI. Continued Legislative Branch Discussion
 - **Facilitator:** Anna, Libby, Mike. **Goal:** Begin discussions with straw polls on city council composition topics including 1) district vs at-large councilors, 2) term lengths and term limits, and 3) the election and role of the chair of city council (mayor).
- VII. Resident Participation Mechanisms Discussion
 - **Facilitator:** Anna w/ Lisa, Kathy, and Max. **Goal:** Begin discussion on including Public Engagement and Communication Article (Resident Assembly and Public

Engagement Commission) and Resident Participation Mechanisms: Free Petition, Initiative and Referendum.

**MINUTES OF THE CAMBRIDGE
CHARTER REVIEW COMMITTEE
TUESDAY, MAY 23, 2023**

COMMITTEE MEMBERS

Kathleen Born, Chair
Kaleb Abebe
Jessica DeJesus Acevedo
Mosammat Faria Afreen
Nikolas Bowie
Kevin Chen
Max Clermont
Jennifer Gilbert
Kai Long
Patrick Magee
Mina Makarios
Lisa Peterson
Ellen Shachter
Susan Shell
Jim Stockard

The Cambridge Charter Review Committee held a meeting on Tuesday, May 23, 2023. The meeting was called to order at approximately 5:30p.m. by the Chair of the Committee, Kathleen Born. Pursuant to Chapter 2 of the Acts of 2023 adopted by Massachusetts General Court and approved by the Governor, this meeting was remote via Zoom.

At the request of the Chair, Clerk of Committees Erwin called the roll.

Kaleb Abebe – Absent*
Jessica DeJesus Acevedo – Present
Mosammat Faria Afreen – Absent
Nikolas Bowie – Absent*
Kevin Chen – Present
Max Clermont – Present
Jennifer Gilbert – Absent
Kai Long – Present
Patrick Magee – Present
Mina Makarios – Absent
Lisa Peterson – Present
Ellen Shachter – Present
Susan Shell – Present
Jim Stockard – Present
Kathleen Born – Present
Present – 10, Absent – 5. Quorum established.

*Member Nikolas Bowie was marked present at 5:41p.m.

*Member Kaleb Abebe was marked present at 6:00p.m.

The Chair, Kathleen Born recognized Member Ellen Shachter who made a motion to adopt and place on file written communications received from the public. The motion was seconded by Member Jim Stockard.

Clerk of Committees Erwin called the roll.

Kaleb Abebe – Absent

Jessica DeJesus Acevedo – Yes

Mosammat Faria Afreen – Absent

Nikolas Bowie – Absent

Kevin Chen – Yes

Max Clermont – Yes

Jennifer Gilbert – Absent

Kai Long – Yes

Patrick Magee – Yes

Mina Makarious – Absent

Lisa Peterson – Yes

Ellen Shachter – Yes

Susan Shell – Yes

Jim Stockard – Yes

Kathleen Born – Yes

Yes – 10, No – 0, Absent – 5. Motion passed.

The Chair, Kathleen Born noted that the meeting was for Committee Members to continue the discussion on forms of government and shared that Michael Ward and Elizabeth Corbo from the Collins Centers were present at the meeting.

The Chair, Kathleen Born opened Public Comment.

James Williamson shared that he was supportive of Committee Members moving towards a more democratic government and offered comments and suggestions on different forms of government.

Member Kai Long offered comments on using the word “democracy” when discussing form of government and shared they would like to have a better understanding of how other Committee Members feel they are using the word “democracy” when they are offering comments during conversations. Member Nikolas Bowie responded by sharing their thoughts on democracy and offered comments on Mayor-CAFO-Council form of government, as well as the budget. Members Jim Stockard, Ellen Shachter, Susan Shell, Lisa Peterson, Kai Long, Max Clermont, and Patrick Magee responded to remarks made by Nikolas Bowie and offered comments on form of government, democracy in the community, and the budget. Member Nikolas Bowie stressed the importance of building up a democratic body. The Chair, Kathleen Born shared that based on discussions in the Committee, it feels that there is a universal support for budget process reform regardless of what form of government Committee Members are leaning towards. Michael Ward offered comments on voter turnout and Mayor and Manager forms of government.

Anna Corning recognized Elizabeth Corbo who shared a chart titled “Decision Chart for Article 3: Executive Branch” (Attachment A), with the focus being on Mayor-CAFO-Council form of

government. The chart reviewed the potential decision areas which included qualifications, term of Office, compensation, prohibitions, evaluation, goal setting, powers/duties, appointments by Office, temporary appointments, temporary vacancy in Office, removal (City Manager), and Veto (Mayor). While reviewing the chart, comments and concerns that were brought forward by Committee members were added to the document (Attachment B). Members from the Collins Center and Anna Corning were available to respond to questions and concerns from Committee members.

Member Ellen Shachter shared concerns about the procedure for the Committee moving forward with decision making. Anna Corning noted that the plan was to try and finish up the form of government discussion at the current meeting with the goal of a vote being taken at the next meeting. Anna Corning shared that the majority vote on form of government would then be the focus moving forward and members who vote in the minority would have the opportunity to produce a minority section on that form of government to be submitted with the final report. Member Ellen Shachter suggested that if Members were not available to vote at the next meeting, they could possibly submit a vote by proxy. The Chair, Kathleen Born noted that the Law Department should be consulted on this issue.

Members Kai Long and Susan Shell offered comments on democracy and voter turnout. Member Nikolas Bowie shared that they agree with Kai Long and Susan Shell on voter turnout and noted that the low turnout in the City is not a good way to run the City. Nikolas Bowie noted that the Committee can make changes within their control to change voter turnout. Anna Corning and Michael Ward offered comments and suggestions about voter turnout and shared that the Committee can look at other ways to increase voter participation. The Chair, Kathleen Born asked for clarification on ways to increase participation in elections. Anna Corning and Member Nikolas Bowie, noted that under the State's Home Rule Amendment, municipalities are not allowed to change voting laws without State Legislative approval.

The Charter Review Committee adjourned at approximately 7:30p.m.

Attachment A – Decision Chart for Article 3: Executive Branch

Attachment B – Decision Chart for Article 3: Executive Branch with comments and questions

Clerk's Note: The City of Cambridge/22 City View records every City Council meeting and every City Council Committee meeting. This is a permanent record.

The video for this meeting can be viewed at:

https://cambridgema.granicus.com/player/clip/515?view_id=1&redirect=true&h=a9eb99a2717b74e1865b80f83ba5a5d9



City of Cambridge

Executive Department

YI-AN HUANG
City Manager

June 12, 2023

To the Honorable, the City Council:

Please find attached communication relative to Awaiting Report Item Number 23-27, regarding a legal opinion on the Charter Review timeline, from City Solicitor Nancy Glowa.

Very truly yours,

Yi-An Huang
City Manager

Attachment(s)



Nancy E. Glowa
City Solicitor

Megan B. Bayer
Deputy City Solicitor

Elliott J. Veloso
First Assistant City Solicitor



CITY OF CAMBRIDGE

Office of the City Solicitor
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Cambridge, Massachusetts 02139

Assistant City Solicitors

Paul S. Kawai
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Kate M. Kleimola
Sydney M. Wright
Evan C. Bjorklund
Franziskus Lepionka
Andrea Carrillo-Rhoads

Public Records Access Officer

Seah Levy

May 31, 2023

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

Re: Response to Council Order No. O-4 of 4/10/23 Re: Legal opinion on earliest possible date that potential changes to the charter could be voted on by electorate, assuming the Charter Review Committee submits proposed changes to the City Council by the new December 31, 2023 deadline.

Dear Mr. Huang:

I write in response to the above-referenced Council Order, which requests that the City Solicitor provide a legal opinion on the earliest possible date that potential changes to the charter could be voted on by the Cambridge electorate, assuming the Special Charter Review Committee of the City Council submits proposed changes to the City Council by the new December 31, 2023 deadline. After review, my opinion is that the earliest possible date that an election could be held ultimately depends on whether the City Council follows the procedures set forth in the Home Rule Procedures Act, specifically G.L. c. 43B, §10(a), or through special legislation. If the City Council proceeds under the Home Rule Procedures Act, then the ballot question(s), if approved by a 2/3 vote of the City Council and approved by the Massachusetts Attorney General, would be on the ballot for the next regular municipal election. If special legislation is pursued, the date of the election would depend on what the Massachusetts General Court approves and the Governor enables.

I. Possible Election Dates Under G.L. c. 43B, §10(a) Process

Under G.L. c. 43B, §10(a), certain amendments to a previously adopted or revised city charter may be proposed by the city council of a city or the town meeting of a town by a two-thirds vote. The proposed amendments, however, cannot relate “in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager, or the board of selectmen or town manager.” *Id.* If approved by two thirds of the City Council, a copy of the proposed amendment is then immediately submitted to the Massachusetts Attorney General and the Massachusetts Department of Housing and Community Development for review. G.L. c. 43B, §10(c). Within four weeks, the Attorney General “shall furnish the city council ...with a written opinion setting forth any conflict between the proposed amendment and the constitution

and laws of the commonwealth.” *Id.* If the Attorney General reports that there is a conflict, the amendment shall not take effect. *Id.* If the Attorney General reports that there is no conflict, then the proposed amendment can be submitted to the voters.

Under G.L. c. 43B, §11, a proposed charter amendment approved by the City Council pursuant to a two-thirds vote and approved by the Attorney General shall be submitted to the voters for their approval or disapproval at the “first regular city election” *See* G.L. c. 43B, §11 (“A proposed charter amendment shall be similarly submitted to the voters at the first such election ... held at least two months after the order proposing such charter amendment becomes effective under section ten.”) When interpreting statutory text, the plain meaning of the text must be followed. *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992); *United States v. Providence Journal Co.*, 485 U.S. 693, 700-01 (1988). Based on a plain reading of the statutory language, special elections cannot be held for proposed charter amendments pursuant to G.L. c. 43B, §10(a). Instead, state law would require that a vote on the proposed amendments be held on the City’s next regular municipal election, which would be November 4, 2025 at the earliest.

II. Possible Election Dates under Special Legislation Process

The other possible pathway regarding potential City charter amendments would be through enabling special legislation. Pursuant to Mass. Const. Amend. Art. 2, §8, a city or town may adopt or change a charter by requesting the state legislature to pass a special law. Under this process, the City Council, upon receipt of the Charter Review Committee’s report on or about December 31, 2023, would review the recommendations of the committee. The City Council may then vote whether to approve a Home Rule Petition to the Massachusetts General Court. *See* Mass. Const. Amend. Art. 2 §8 (“The general court shall have the power to act in relation to cities and towns ... and by special laws enacted ... on petition filed or approved by the voters of a city or town, or the mayor and city council or other legislative body of a city, or the town meeting of a town, with respect to a law relating to that city or town....”) *See also* Opinion of the Justices to the House of Representatives, 375 Mass. 843 (1978) (enactment of home rule amendment is not violated if general court enacted petition from city council of Plan E government city without approval of mayor). Upon local approval by vote of the City Council, the charter or charter change can be filed as a bill by a member of the City’s delegation to the General Court, with the bill proceeding through the legislative process in the same manner as other legislation. *See* Mass. Const. Amend. Art. 2 §8. The special legislation, if passed by the Massachusetts General Court and enacted and signed by the Governor, would then go before the voters on the next municipal ballot.

Under this process, scheduling the election for the ballot question(s) regarding potential charter amendments ultimately depends on what is authorized or provided for in the special legislation as passed by the state legislature and approved by the Governor. Mass. Const. Amend. Art. 2, §8 does not specify the type of election for which potential charter amendments would be voted on. As such, the election on potential amendments to the City’s charter could theoretically be conducted during either the City’s biennial municipal election or the City’s biennial state election, depending on the final language in the home rule petition that the state legislature approves and the Governor signs. Likewise, the language in Mass. Const. Amend. Art. 2, §8 does not preclude the City from requesting a special election on potential charter amendments in its home rule petition to the state legislature. Special elections can only be conducted pursuant to authorizing law or special legislation. *See e.g.*, G.L. c. 54, §140 (state law requiring special

elections be conducted “upon failure to choose a senator or representative in congress or upon creation of a vacancy in that office). Ultimately, the City Council’s Home Rule Petition would have to specify what election it wishes the ballot question(s) to be in, whether municipal election, state election, primaries, or special election. It is then up to the state legislature and governor to approve or deny the request.¹

The Massachusetts Secretary of State’s Election Division has indicated that it would not object if special legislation authorized the City to hold a local special election simultaneously on the same day as the 2024 state/federal election. However, the Election Division has also stated that it would oppose any effort to place City ballot questions, or any other kind of local question, on any state ballot.² Additionally, the state legislature may object to a local election detracting from the state/federal election in the state’s fourth largest municipality. Tanya Ford, the Executive Director of the Election Commission, has noted that conducting two simultaneous separate elections on the same day would also require increasing staffing and resources. Director Ford noted that the state would not pay for any local ballots in the event of a simultaneous election, requiring the City to cover all printing costs. Director Ford expressed further concerns regarding the risk that voters could ignore or refuse local ballots when voting if their interest is only in the state/presidential election, which would require two separate voting lists to keep track of voters who choose to vote in the state election vs. the special municipal election. Director Ford also cautioned about the need to comply with state procedures regarding the valid handling and processing of early voting, vote by mail, and absentee ballots, noting that state and local ballots would have to be separately processed and handled. For example, if a voter intermingled their state and local ballot and sealed them in the same envelope, it may result in the invalidation of both ballots due to state requirements that only the state ballot is to be sealed in the voter affirmation envelope. In another example, for biennial state elections, municipalities are allowed to count ballots that are postmarked on election day and arrive in the office by Friday after the election by 5:00 PM. However, this may not apply for simultaneously held local special elections, as for local elections ballots can only be accepted if received prior to the close of polls. This could result in local ballots being invalidated while state ballots being accepted if postmarked and mailed at the same time. Given that special legislation ultimately requires state approval, the City Council should keep these additional considerations in mind when determining which election day it wishes to petition the state legislature to approve.

¹ Prior special legislation for municipalities regarding proposed charter changes show that the question has been placed on both annual state and local elections. See e.g. St. 1983, c. 425, § 3, an act providing for a charter and an administrative code for the City of Lawrence (proposed charter amendments shall be submitted to voters in next annual city election); St. 1986, c. 136, § 2, providing for a charter for the City of Waltham (proposed charter amendments shall be placed on state ballot used for Waltham in 1986 state election); St. 1992 c. 189; St. 1994, c. 95, § 8, relative to charter of City of Lowell (proposed charter amendments shall be placed on state ballot used for Lowell in 1994 state election.); St. 2004, c. 358, § 2 (proposed charter amendments shall be submitted to voters in next annual town election).

² The Massachusetts Secretary of State’s Election Division has rejected and denied every request to place local municipal ballot questions on state ballots due to federal requirements under the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA), 52 U.S.C. § 203 (1986). Such a request should therefore probably not be placed in any proposed special legislation.

Please let me know if you have any questions.

Very truly yours,



Nancy E. Glowa
City Solicitor