

Comments and Questions on Proposed Changes to the City Charter Regarding Elections
Tom Stohlman, Cambridge Election Commissioner
March 9, 2025

General:

1. ***I have attached my comments and questions in Bold/Italics after the proposed wording. Plan E Charter is also referred to as MGL C.43 in my comments. I sometimes abbreviate the Board of Election Commissioners to BOEC.***
2. ***I am assuming that the City Council is proposing enough major changes to the Plan E Charter to effectively make it a new City Charter. If this is the case, current references in the Plan E Charter to election laws like Chapter 54A, which has been repealed, can no longer be applied by reference to the new City Charter. I understand that if this is the case, it is important to explicitly incorporate in the new City Charter much of the election-related language of Chapter 54A regarding elections and election procedures. If this is the case, it is an excellent opportunity to simplify the language and make the adoption of new election procedures easier than changing the Charter. If I am wrong, please explain why so much specific procedural language is now included in the New Charter language.***
3. ***I assume the term “municipal election” elsewhere in the proposed changes applies to any election in a municipality which may be for local, state, or federal office. Plan E-MGL C.43 appears to make a distinction between local or “regular” municipal elections and state/federal elections. Is my understanding correct?***
4. ***I think in general it is a good idea to put in the Charter things that are fundamental and difficult to change. It is a good idea to reference State Laws when we want the Charter to keep up-to-date with changes in the State Law (See the MGL C.54A confusion). Finally I think the Charter should allow more flexibility to change many election procedures by a vote of the BOEC, or another legislative body (See Section 7-6) as the circumstances require it, rather than freezing election minutia in the Charter language.***

ARTICLE 7: ELECTIONS SECTION 7-1: CITY ELECTION

The regular municipal election shall take place on the Tuesday next following the first Monday of November in every odd-numbered year.

Plan E-MGL C.43 S.109 is similar, but limits which offices can be elected at the election to CC, SC, and certain others. Has the restriction been removed to allow more flexibility in having a broader range of other State/Federal elections held at the same time?

SECTION 7-2: ELIGIBILITY OF VOTERS

Every citizen who (i) is at least 18 years old, (ii) is not temporarily or permanently disqualified by law because of corrupt practices in respect to elections, and (iii) is a resident of Cambridge registered to vote in the City, may vote in a regular municipal election.

This does not seem to appear in Plan E and appears to be constant with current State law. If State law changes to allow different eligibility for elections, will this then conflict with State law?

Does State law allow Cities and Towns to choose eligibility requirements for voters in local municipal elections? If so, why not include more flexible procedures for future changes to voter eligibility.

SECTION 7-3: CITY OFFICES

All elective city offices are nonpartisan. No reference to any political party affiliation will be included in any declaration of candidacy, nominating petition, notice, voters' pamphlet, ballot, or other elections publication concerning a city candidate.

I assume that all of the restrictions mentioned above apply only to City publications and not Candidate's publications. Am I correct? I would object to a City Charter which restricts the content of a Candidate's campaign material.

SECTION 7-4: DIRECTOR OF ELECTIONS

The Director of Elections shall be the Chief Election Official for the City of Cambridge. The Director of Elections shall be the head of the Elections Department, appointed by the City Manager. The Director of Elections shall supervise voter registration, oversee polling places, the hiring and supervision of election officers, and the general conduct of all elections. The Director of Elections shall direct the Elections Department in the preparation of ballots, polling places, voting equipment, voting lists, the administration of campaign finance laws, the certification of nomination papers and petitions, the conducting of the annual city census, and the preparation of the street list of residents. The Director of Elections shall serve as an ex officio member of the Board of Election Commissioners. The Director of Elections shall not have voting power or shall be included in the count when determining quorum, unless in instances where there is a tie vote of the Board of Election Commissioners. The Director of Elections need not be a registered voter of the city, a resident of the city, or a registered member of any political party. The Director of Elections shall advise and assist the Board of Election Commissioners in carrying out its duties.

This section proposes several major changes to the current duties and responsibilities of the Board of Election Commissioners, as I understand them. I could not find any references in State Election Laws to "The Director of Elections" and their duties and responsibilities. I was able to find many references to "Board of Election Commissioners" and their duties and responsibilities. I would appreciate any citations you may have to help me understand how State Law governs this position.

Chapter 239 Acts of 1921 abolished the Board of Registrars and established the Board of Election Commissioners. Among other things it states: "The board may appoint assistant commissioners and other clerical assistants as it may deem necessary..."

MGL C.51 S.16A states: "The board may appoint such assistant commissioners and such assistants as it deems necessary, who shall at all times equally represent the two leading political parties as defined as aforesaid. Said assistant commissioners shall have such powers and perform such duties as are prescribed by this chapter for assistant registrars of voters, and shall perform such other duties as the board may require."

What is the plain meaning of this appointment authority? Is it in conflict with the appointing authority of the Cambridge City Manager or is it complimentary?

From a practical point of view, since the City Manager appoints the BOEC, the City Manager will have enormous influence on the “assistant commissioners and clerical assistants” that the BOEC appoints. The BOEC is also elected by Cambridge residents (members of the two “major” political parties) and must be Cambridge residents, unlike other City employees with department supervisory function. This is like the requirement that City Council members be residents, but the City Manager need not be. I am concerned about removing this appointing authority in election matters from (partial) representatives of the voters. That said I would support a selection process for the BOEC which includes all of the voters, not just voters from the two major parties, but that is a problem for another day.

***The current Cambridge Board of Election Commissioner’s website states:
“The Board of Election Commissioners was established by the Acts of 1921, Chapter 239, to conduct voter registration, supervise all elections, assume responsibility for the annual City census, and certify voter signatures on nomination papers, petitions, and ballot questions. Every ten years, after the conclusion of the Federal Census, the Board also re-precincts based on population changes. The role of the Commission was expanded in 1987 to include administration of Chapter 55 of the Massachusetts General Laws governing campaign and political finance reporting. In 1991 the Commission was assigned the administration and enforcement Chapters 2.117 and 2.118 of the Cambridge Municipal Code, known as the “Ethics Ordinance.” The Board establishes policy for the Commission.”***

The proposed wording gives the “Director of Elections” several responsibilities which I assumed belonged the Board of Election Commissioners. For instance, in the past two elections which I have participated in, I have spent considerable time and effort appointing, scheduling, and supervising election workers. This made sense to me given my understanding of Chapter 239 Acts of 1921 and MGL C.51 and the BOEC website. It is now being proposed that “The Director of Elections shall supervise voter registration, oversee polling places, the hiring and supervision of election officers, and the general conduct of all elections.” I thought my duties and responsibilities included all of these things and that an “Executive Director” was hired to help us meet those duties and responsibilities.

In the case of tie votes when the BOEC is interpreting critical ballot questions during a “Count” (voter intent, the acceptance or rejection of provisional ballots, etc) it appears Chapter 239 Acts of 1921 says that a justice of the Third District Court of Eastern Middlesex shall preside and break ties if needed. I understand the need for this tie-breaker and given things have changed since 1921, who currently breaks ties on critical ballot questions?

That said I am opposed to a non-resident of Cambridge breaking ties on regular (legislative) motions that can be decided by a tie vote. A motion with a tie vote fails, and the status quo remains.

I support and depend on hearing Staff comments at BOEC meetings, but what is the need for adding ex-officio members to the Board?

SECTION 7-5: ELECTION CALENDAR

The Board of Election Commissioners and Director of Elections shall prepare and issue a calendar of dates, times, and deadlines for the conducting of regular municipal elections. Unless specified in this charter, all election related dates, times, and deadlines shall be consistent with state law.

SECTION 7-6: PROPORTIONAL REPRESENTATION

- (a) All members of the city council and the school committee shall be elected at large by single transferable vote form of ranked choice voting, hereafter referred to as proportional representation, during each regular municipal election.
- (b) The Election Commission shall promulgate regulations for the City to adopt a proportional representation method of electing candidates and transferring votes, and they may be amended provided that any such regulation shall not apply to the next municipal election unless it is voted and approved by the commission no later than six (6) months prior to the date of said election. Any regulations adopted after six (6) months prior to the date of a municipal election shall not take effect until the next subsequent municipal election.
- (c) The Election Commission shall have the authority to make any changes to the ranked choice voting ballot and tabulation process necessary to ensure the integrity and smooth functioning of the election, provided that proportional representation ranked choice voting shall still be used, and the smallest number of changes are made to achieve such purpose.

I support the intent of this section to increase the flexibility in voting and counting in our Proportional Representation elections. I am concerned that this section is not flexible enough. There are forms of voting in PR elections which do not involve ranking choices. There are forms of counting in PR elections which do not involve single transferable votes. Careful rewording should allow more flexibility, and can still make clear the method of voting and counting which will be in place if the new Charter passes.

SECTIONS 7-7 NOMINATION PAPERS

- (a) Any registered voter of the city who is eligible for election to any elective municipal body shall be entitled to have their name printed as a candidate on the official ballot to be used at the regular municipal election; provided, that prior to the deadline for submission set pursuant to Section 7-6, there shall be filed with the Board of Election Commissioners nomination paper(s) of their candidacy, on a form prepared and approved by the Board of Election Commissioners, with a statement of candidate signed and notarized by the candidate, and on such nomination paper(s) at least fifty registered voters of the city, whose signatures shall have been certified as required by law. No person shall be entitled to have their name printed as a candidate on such ballot except as set forth under Section 7-8.

Plan E-MGL.43 S.110 (Candidates;Statement and Petition) is similar.

- (b) Nomination papers shall be available from the Board of Election Commissioners at least eighteen (18) weeks prior to the date of the Election, on a date and time set by the Board of Election Commissioners pursuant to Section 7-6. Nomination papers must be filed with the Board of Election Commissioners fourteen (14) weeks prior to the date of the Election, on a date and time set by the Board of Election Commissioners.

Plan E-MGL.43 S.111 (Nomination Papers) Similar, but deadlines are added here.

SECTIONS 7-8 INVALID NOMINATION PAPERS

Use of any other nomination papers other than those forms prepared and approved by the Board of Election Commissioners under Section 7-7 shall be invalid. Each nomination paper's candidate statement section must be signed and notarized by the candidate before registered voters are permitted to sign nomination papers. No voter may sign the nomination papers of more than one candidate for election as a member of any elective body; and if a voter signs nomination papers of more than one such candidate their signature shall be invalid on all such papers except the one first acted upon by the Board of Election Commissioners. Nomination papers that are not timely filed by the deadline set by the Board of Election Commissioners shall be invalid. Nomination papers that were not properly signed and notarized by the candidate prior to the collection of registered voter signatures shall be invalid. Nomination papers that otherwise do not follow or conform with state laws and regulations or Board of Election Commissioners' rules, regulations, or directions shall be invalid.

Plan E-MGL.43 S.110 &111 Lots of changes added to further define proper nomination procedure. Can this be referenced in existing State Law? Why not be more flexible and allow the BOEC to set the standards?

SECTIONS 7-9 SUBMISSION OF BALLOT QUESTION PETITIONS

Notwithstanding state law, the deadline for the submission of ballot questions to be on the ballot for regular municipal elections shall be fourteen (14) weeks prior to the date of the Election, on a date and time set by the Board of Election Commissioners.

SECTIONS 7-10 BALLOTS; FORM AND CONTENTS

There shall be a separate form of ballot for each body to be elected, and each such separate form of ballot shall be of a different and clearly distinguishable color from that of any other form of ballot prepared and furnished at the public expense for use at the same election. The ballot shall contain instructions to voters regarding how to mark their choices.

MGL.43 S.112 Similar, with some (needed) simplification, but still not simple enough. What is the point of the color requirement? I like the requirement for voter instructions to voters requirement. Why not be more flexible and allow the BOEC to set the standards?

SECTIONS 7-11 ARRANGEMENT OF NAMES; NUMBER OF BALLOTS

Ballots used in elections to such a body or office by proportional representation shall be printed in as many lots as there are candidates for election thereto. In the first lot the names of the candidates shall appear in the alphabetical order of their surnames. In the second lot the names shall appear in the same order except that the first name in the first lot shall be placed last. In each succeeding lot the order shall be the same as that of the lot preceding, except that the first name in that preceding lot shall be placed last. Sets of ballots to be used at the several polling places shall be made up by combining ballots from the different lots in regular rotation, so that no two successive voters shall receive ballots from the same lot, and so that each candidate's name shall appear first and in each other position substantially the same number of times on the ballots used.

I agree with this procedure why not be more flexible and allow the BOEC to make changes to it?

SECTIONS 7-12 CENTRAL COUNTING PLACE OF BALLOTS; DIRECTOR OF THE COUNT
Immediately preceding an election by the method of proportional representation or preferential voting, the Board of Election Commissioners shall designate a central counting place where ballots used under such method shall be brought together and tabulated publicly. The Director of Elections of the Board of Election Commissioners or their designee shall act as director of the count, employ a sufficient staff of assistants, and make suitable arrangements for the counting of such ballots. Before performing their official duties, the director of the count and each of his assistants shall be sworn before the City Solicitor, the City Clerk, or any officer qualified to administer oaths, or, in the case of any such assistant, before the director; and a record thereof shall be made. During the absence or disability of the director of the count, an assistant may be designated to perform the duties of the director.

Same concerns as in Section 7-4 above regarding this new position, “Director of Elections”. The BOEC appoints the Director of the Count now and this changes it to being a responsibility of the new “Director of Elections”.

SECTIONS 7-13 USE OF BALLOT BOXES; PROCEDURE

The Board of Election Commissioners shall provide each precinct with separate ballot boxes for ballots counted by machine and auxiliary ballots. Auxiliary ballots include any ballots cast by a voter with write-in votes, overvotes that are not corrected by the voter at the polls, or any other ballots that are ejected from the machine or otherwise unable to be counted by machine at the polling place. As soon as the polls have closed and all closing procedures at the polling place have been followed, the ballots that have been counted by machine may be removed from the ballot box and sealed in a ballot carrier to be transferred to the central counting place. The auxiliary ballot box must be sealed without removing any ballots and transported to the central counting place by a police officer, together with other election materials as required by state law. Proper receipts shall be required in connection with the transmission of ballot boxes, ballots, records and copies of records. The Board of Election Commissioners shall develop procedures to tally auxiliary ballots according to voter intent and add the ballots to the official results, in accordance with the requirements of any voting technology in use.

I’m okay with this procedure why not be more flexible and allow the BOEC to make changes to it?

SECTIONS 7-14 RECOUNT OF BALLOTS

Recounts of the ballots cast for city council or school committee shall take place in the manner provided in MGL c. 54, §§ 134 through 137, except that any petition shall be submitted on or before five o'clock in the afternoon of the third day following the public announcement by the director of the count of the result of the vote for such body or office and shall be on a form approved and furnished by the Board of Election Commissioners and be signed by fifty or more voters of the City. If a partial or complete recount of the ballots cast in such an election shall in fact take place, it shall be conducted according to the rules prescribed for the original count as nearly as is practicable.

SECTIONS 7-15 VACANCY

When a vacancy occurs in the city council or school committee, such vacancy shall be 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. Except for the following special rules, the provisions governing the original count shall be in effect:

All choices marked for candidates who have already been elected or who have become ineligible shall be disregarded.

The ballots shall be sorted each to the earliest choice marked on it for any of the eligible candidates.

If any candidate received more than half of the ballots which show any preference among the eligible candidates, they shall be declared elected to the vacant place.

If no candidate receives more than half of such ballots, the candidates lowest on the poll shall be declared defeated one after another. After each candidate is defeated, their ballots shall be transferred among the continuing candidates.

The process shall continue until one candidate is credited with more ballots than all the other undefeated candidates together, when they shall be declared elected to the vacant place.

If the candidate is eligible and willing to serve, the city clerk shall administer the oath of office to the person within fifteen (15) days after certification and the person shall serve.

If the candidate who is eligible declines the office, is not eligible and willing to serve, is no longer eligible for office, or fails to take the oath of office within the time period set forth in this section, then the vacancy recount process under this section shall continue until the next candidate who is eligible and willing to serve is declared elected to the vacant place.

In the event where no regularly nominated candidate remains who is eligible and/or willing to serve, the vacancy shall be filled for the unexpired term by a majority vote of the remaining members of the body with a vacancy. If the remaining members fail to fill such a vacancy within thirty days after, the vacancy shall be filled by the appointment by the City Council of any qualified voter of the city, after an advertising period for interested candidates by the City Council.

This wording is too specific if one wants flexibility in voting and counting of PR ballots. I agree with this procedure why not be more flexible and allow the BOEC to make changes to it?

SECTIONS 7-16 PRESERVATION OF BALLOTS

The ballots cast for the city's municipal elections shall be preserved by the Board of Election Commissioners until the term of office of the members of the body or of the officer elected thereby has expired, and shall be available for examination during regular city business hours, under supervision by the Director of Elections, on written application signed by not less than one hundred registered voters of the city. Such application shall name not more than three (3) representatives of the applicants to make such examination.

See comments in Section 7-4 above regarding the new position of "Director of Elections". I am not sure why a supervisory position was even included here since the ballots' preservation is the BOEC's responsibility and part of that responsibility is supervising access and examination.

SECTIONS 7-17 PUBLICATION OF STATEMENTS REGARDING BALLOTS CAST

Within thirty days after a municipal election, the Board of Election Commissioners shall have available upon request election data, electronic records, or other public records related to the municipal election, including but not limited to the number of first-choice ballots cast for each candidate at each precinct, and such other information in regard to the ballots as the Election Commission may deem of interest. regarding the results of the election. Ballot data showing the ranking on each ballot in each precinct shall be available provided that sharing the data does not violate voter privacy.

SECTIONS 7-18 APPLICABILITY OF GENERAL LAWS RELATING TO ELECTIONS

All municipal elections held by the City shall be subject to all general laws relating to elections and corrupt practices so far as applicable and not inconsistent with this charter.

In conflicts between State law and the City Charter regarding elections, does the Charter always rule?

SECTIONS 7-19 APPLICABILITY OF SPECIAL ACTS

All special acts, home rule petitions, ordinances, rules, regulations and votes of the Board of Election Commissioners, which are in force at the time this charter is adopted and are not inconsistent with the provisions of this charter, shall continue in full force until amended or repealed.