

To: Charter Commission members  
From: Jane Frantz & Brooke Lipsitt  
Re: Article 10 overview  
Date: October 13, 2016

With the assistance of our colleagues at the Collins Center, we have reviewed Article 10, and considered the various opportunities the public has to influence the actions of the City outside of the election process. We are recommending the following:

Individual petitions - There seems no reason to change the opportunity for any citizen to approach a councilor or school committee member and ask for assistance in bringing an item to the attention of the full council or committee.

Group petitions - The current language requires a public hearing for any item on which 50 voters request the council or school committee to act. We are recommending increasing this threshold to 100. Most cities require 100 or 150 signatures to trigger such a hearing. We also recommend that the first 10 signers be notified when the council sets the date for a hearing, and that notice of the hearing be published. The current language provides that the first 50 signers be notified.

Section 11-7 of the current Charter says that a "general meeting" shall be called by the council at the request of 50 voters. We recommend deleting this section, as such a meeting can take place without any governmental action.

Initiative petitions - The current Charter allows 50 voters to file a petition which requires the council or school committee to take an action and, upon approval as to form, an additional 6 months to collect enough signatures to total 10 per cent of the voters. If there is no action or a rejection of the initiative within 30 days after certification of sufficient signatures, petitioners have 45 days to collect supplemental signatures from an additional 5 per cent of the voters, at which time the item must be submitted to the voters.

We are recommending that the initial signature requirement be increased to 200 from 50; most other charters now require 200-250. In addition, we recommend reducing the time to collect signatures from 6 months to 90 days. The time to collect supplemental signatures would remain unchanged, i.e., 45 days.

We are also recommending that the petitioners name a petitioners committee of 10 who will be responsible for circulating and filing petitions. This conforms with current practice in other charters.

Referendum - We recommend that the requirements for filing a referendum on an action taken by the council or school committee remain as they are, i.e., 5 per cent of voters may file a petition within 20 days of final action. The council or school committee has 30 days to rescind its action or the item goes to the voters.

Participation thresholds - We recommend adding a requirement that 20% of eligible voters participate in Initiative Petition or Referendum votes in order for them to take effect.

Veto by the mayor - The current charter contains a provision (Sec. 10-19) permitting the mayor to veto an action taken by the city council (not the school committee, interestingly) in response to submission of signatures for an initiative petition or referendum. In the case of such veto, unless overridden, the initiative petition or referendum would go to the voters.

An example of the effect of such a veto is as follows: The council passes an ordinance. A group of citizens objects and collects sufficient signatures for a referendum. The item is heard by the council which decides to agree with the signature-gatherers and rescinds the ordinance. The mayor vetoes the council's action. Unless the veto is overridden, the item must go to the voters.

In this referendum scenario, a substantial number of voters and the council are, ultimately, in agreement. The mayor's veto forces the electorate at large to consider a different outcome.

Or, in the case of an initiative petition: A group of citizens collects sufficient signatures to require that the council consider a new ordinance. The council holds a hearing and adopts the requested ordinance. The mayor vetoes it. Unless the veto is overridden, the ordinance must be referred to the voters at large.

The initiative petition scenario essentially permits the electorate at large to override the mayor's veto. While this is consistent with the goals of the original initiative petition filers and a majority of the council, it amounts to legislation by ballot box. The Commission must consider whether this is a desirable process.

We recommend removing the veto section from Article 10, whether or not we continue to permit mayoral vetoes of initiative petitions or referenda. If the mayor retains the ability to veto the council's decision, it need not be addressed; if the mayor cannot veto such decisions, this should be included in Article 3 with other matters not subject to veto.

Recall elections - About half of Massachusetts cities have recall provisions, similarly divided for those with two and four year mayoral terms. The current charter contains no such provision. After consideration, we recommend against including such a provision in our charter, recognizing that most recall attempts would likely be in response to an action which voters disliked, and the other provisions of this article provide citizens ample opportunity to address the actions themselves. We feel that elections provide the best way to 'recall' elected officials.

We do, however, recommend a different way to handle an elected official who has committed a criminal act, and that would be automatic removal from office upon final adjudication of a felony. We recommend adding language similar to that in the Pittsfield charter:

"An elected official who has been convicted of a state or federal felony while holding office shall be deemed to have vacated the office."

We are unsure about whether or not there should be an opportunity for election of someone previously removed under this procedure. It would remain in the mayor's or superintendent's purview to remove any staff member convicted of a felony, except of course the school committee would have the ability to remove the superintendent. Such a provision would most likely be included in the *General Provisions* article of the charter (Article 11).