

Proposed Amendment Should Not Be Advanced

Legal Grounds and Policy Impact Jeopardize Boston's Financial Stability

A proposed amendment by the Boston City Council to fundamentally change the strong-mayor form of government has made its way to the Massachusetts Attorney General's Office in order to proceed to the ballot box.

This proposal is not consistent with state law, establishes a dangerous legal precedent and reverses decades of thoughtful legislation that was designed to ensure stable financial management in the City. It would create a dysfunctional government system that would not allow the city to carry out its most basic functions. In December, 2020, the Boston City Council approved this proposed amendment, initiated by Councilor Edwards, in a 10-3 vote. The Mayor has not concurred with this amendment, a vital step in the process of changing the strong-mayor form of government.

The amendment is not a minor issue but an initiative to overhaul a central feature of the City's long-standing strong-mayor governance model—mayoral budgetary authority—established through decades of thoughtful legislative change to achieve the financial stability it has today. With the exception of the powers to originate a budget and set a maximum budget amount, the proposal gives equal budget authority to the Mayor and City Council. This would be the most significant shift in budgetary authority and legislative powers between the City's executive and legislative body in over 60 years. Furthermore, this amendment would establish a dangerous legal precedent whereby fundamental changes to municipal governance, including structure, duties and responsibilities, could advance without following the appropriate procedures that the General Court intended for charter reform.

Legal Issues Surrounding Proposed Amendment

City councilors cannot cherry pick which parts of the law they want to follow based on what suits their needs.

- A city or town can change its charter without advancing legislation through the state Legislature in two ways: a charter revision and charter amendment. The proposed "amendment" to the Boston City Charter would *fundamentally transformation* of Boston's form of government. *Therefore it is a revision, not an amendment*, and should be treated as such legally.
- The legal avenue proposed, Chapter 43B Subsection 10(b), cannot be read as a standalone provision to advance the amendment as proposed. It must be read in harmony with other subsections of the law, as well as the Home Rule Amendment, which clearly states *concurrence of the mayor is necessary to advance a charter amendment*.
- The proposed amendment also seeks to alter the City Council's role in the Boston Public School's budget process which is expressly forbidden in Section 75 of the Boston City Charter and state law.

In addition to its non-compliance with state law, the proposal invites chaos and dysfunction, putting the fiscal stability of Boston in jeopardy. The City has an obligation to responsibly develop and manage its multi-billion dollar budgets so that annual expenditures do not exceed available revenues. This order jeopardizes that obligation by granting the City Council, among other things, the ability to take money away from important parts of the budgets and amend the appropriation order in whole or in part without the resources and expertise to take future impact into account. This process is complex and involves hundreds of employees including financial experts and technical specialists. The City Council structure and central staff are not prepared to execute this type of analysis and evaluation or forecasting.

In a July 6th, 2020 letter regarding this proposal, Councilor Edwards wrote “In addition to enhancing discussions of any new proposed or desired spending, this change would give the city council more *nimble tools* in responding to budget cuts in the time of fiscal austerity, and allow for public deliberation on what services could or should be reduced without *lasting harm*”.

It is our firm belief based on decades of experience that there is nothing “*nimble*” about this new process and the Council does not have the resources or knowledge to ensure that their changes to the budget will not create “*lasting harm*”.

Additionally, dividing budgetary responsibility among Council and Mayor is a major concern as it injects uncertainty in Boston’s fiscal management and threatens the City’s financial stability. The rating agencies consistently cite Boston’s strong management as reasons for the City’s AAA bond ratings, allowing Boston to continue funding a budget that addresses the many needs of residents at a sustainable cost. Even in difficult fiscal times, the current structure of budgetary authority provides for a checks and balance procedure that is vital to the stability of the City.

Boston must maintain its current system of strong financial management if it is to ensure its fiscal health, deliver basic services and be sufficiently prepared and flexible to deal with the changing needs of residents as well as downturns in the economy. This proposed charter change is ill-advised. The City Council should exercise its current powers and responsibilities to impact the City’s budget priorities and ensure that the process is participatory. This proposed amendment should not advance any further.