



CITY OF STAMFORD, CONNECTICUT
INTER-OFFICE CORRESPONDENCE

To: Jeff Curtis, President of the Board of Representatives
From: Dana B. Lee Esq. /s/DLEE
Copy: Thomas Cassone, Esq.
Date: November 27, 2024
RE: Opinion Re: Proposed Ordinance on Vacancies and Holdover Appointees

CONFIDENTIAL ATTORNEY COMMUNICATION

I. ISSUES:

Does the proposed ordinance, “Establishing the Order in which Expirations and Vacancies are Filled on Boards and Commissions,” conflict with the provisions of the Stamford Charter? If so, what is the consequence of those conflicts?

II. BRIEF ANSWER:

As discussed below, the proposed ordinance conflicts with the City Charter in significant ways and would be null and void to the extent of those inconsistencies.

III. DISCUSSION:

A. Factual Background

The proposed ordinance is set to be considered by the Board of Representatives at the regular meeting scheduled for Monday, December 2, 2024, and concerns the provisions of the Stamford City Charter Sections C6-00-3 and C6-00-4. The proposal was approved for publication by the Appointments Committee on November 19, 2024. A copy of that proposed ordinance can be found here:

https://boardofreps.org/Data/Sites/43/userfiles/committees/appointments/items/2024/a31160/a31160_draft_ordinance_revised_241119.pdf

B. Legal Background

In Connecticut, municipal charters serve as the constitutional foundation for local governance. As our courts have explained:

“[A] charter bears the same general relation to the ordinances of the city that the constitution of the state bears to the statutes.” *Cook-Littman v. Board of Selectmen of Town of Fairfield*, 328 Conn. 758, 779 (2018), quoting *Turn of River Fire Dept., Inc. v. Stamford*, 159 Conn.App. 708, 722 (2015). “An ordinance is a legislative enactment of a municipality ... It designates a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality.” (*Internal quotation marks omitted.*) *Turn of River Fire Dept., Inc. v. Stamford*, 159 Conn.App. at 722.

“[N]either the municipal legislative body nor the mayor may disregard charter mandates or procedures at any time, nor do past variations and looseness, be they occasional or frequent, lend an aura of respectability or legality to any other mode of practice. The proposition is self-evident, therefore, that an ordinance must conform to, be subordinate to, not conflict with, and not exceed the charter ... Ordinances must ... conform with the express terms of the charter ... Consequently, an ordinance violative of or not in compliance with the city charter is void.” *Palermo v. Ulatowski*, 97 Conn.App. 521, 525 (2006), *cert. denied*, 280 Conn. 936, 909 A.2d 961 (2006).

This law establishes that a municipal ordinance that conflicts with or exceeds the provisions of the City Charter is null and void. In other words, an ordinance cannot amend the Charter, unless there is a specific provision allowing for that in the Charter itself, such as in C6-00-1, which allows certain Boards and Commissions to be eliminated by superseding ordinance. Also see e.g., C6-100-3 regarding the Health Commission, C6-120-4 regarding the Parks and Recreation Commission; C6-130-3 for the Golf Commission, and C6-140-12 for Personnel Commission, which allow for changes in organization and duties by superseding ordinance.

C. Legal Analysis

1. Section (a) of the Proposed Ordinance

This section of the proposed ordinance provides:

“(a) A position on an Appointive Board or Commission is vacant when no person occupies the position or, as provided in Charter Section C6-00-3(a) when the term of a member of an Appointive Board and Commission has expired.”

This provision improperly defines vacancies to include term expirations, contrary to Section C6-00-4(a)¹, which expressly allows for the continuation of the term after expiration. By

¹ Sec. C6-00-4. - Expiration of Terms of Office.

(a) The term of each appointive Board or Commission member or relevant position shall expire on December first of the final year of the term, subject to continuance in office for

misclassifying term expirations as vacancies, the ordinance does not conform with the Charter, rendering this provision a nullity.

Furthermore, this provision contravenes the holdover doctrine established by the Connecticut Supreme Court. The holdover doctrine is the legal principle that allows public officials to remain in office beyond the expiration of their term until a duly appointed and qualified successor assumes the role. This doctrine is designed to ensure continuity in public administration and to prevent disruptions in government functions caused by vacancies. See e.g., *State ex rel Eberle v. Clark*, 87 Conn. 537, 540 (1913) (affirming that a holdover official has both the right and duty to continue performing the responsibilities of the office after the expiration of their term until a successor is appointed); *State ex rel. McCarthy v. Watson*, 132 Conn. 518 (1949) (holding that that a public officer is legally entitled to continue holding their position beyond the expiration of their term under the holdover doctrine until a successor has been duly appointed and qualified.)

The Court, in *State ex rel Eberle v. Clark*, explained the purpose of the doctrine:

“The public interest requires that such officers shall hold over when no successor is ready and qualified to fill the office, otherwise important public offices might remain vacant to the public detriment in the absence of statutes providing for the filling of the vacancies or through the neglect of the appointing authorities to fill them. The rule has grown out of the necessities of the case, so that there may be no time when such offices shall be without an incumbent.”

Id., see also, *Picard v. Department of Public Health*, 2000 WL 33981438 at *2 (Conn.Super. 2000)(Cohen, J.) (Holding that holdover doctrine overrides the term limit provisions of Connecticut General Statute § 20-196(a) where a successor has not yet been appointed.)

2. Section (b) – Resumption of Appointment Authority by the Mayor

This section of the proposed ordinance provides:

“(b) Resumption of the Appointment Authority of the Mayor Upon Expiration of the Time-Frames in Sec. C6-00-3(a). Following the expiration of the time-frames set forth in Sec. C6-00-3(a) the Charter, the Mayor is required to resume appoint authority for the appointment of Board and Commission members in accordance with the provisions of Sec. C6-00-3(b). Such nominees shall be made to the Board of Representatives within one hundred and twenty

a period of six (6) months or until a successor has been approved by the Board of Representatives, whichever occurs first.

(b) The terms of members of Boards and Commissions designated in Sec. C6-00-2(a) shall overlap so that one term ends in the first of three (3) successive years and two (2) terms end in each of the second and third years. The terms of alternate members designated in Sec. C6-00-2(c) shall overlap so that one term ends in each of three (3) successive years.

(120) days of the resumption of such appointing authority, in accordance with the clear intent of the Charter.”

This provision imposes a rigid 120-day deadline for the Mayor to act on vacancies when the Board of Representatives fails to act on a nominee submitted by the President of the Board of Representatives. Charter Section C6-00-3(a) does not prescribe a timeframe. Imposing the deadline would exceed the provisions of the Charter and would be a nullity.

3. Section (c)

This section of the proposed ordinance and its subsections mandate a priority order for filling vacancies with “rejected nominees” filled first, followed by “holdover appointments;” followed by “any other vacancy;” then lastly “(v)acancies created within six months of the expiration of a member’s term.”

The proposed mandate is an additional procedural requirement that exceeds the express terms of the Charter which does not establish a priority order. The Charter emphasizes a uniform process without explicitly prioritizing types of vacancies and does not require the mayor to submit nominations in any particular order. Imposing the priority order would exceed the provisions of the Charter and would be a nullity.

4. Section (c)(2) – Holdover Appointments shall be filled second.

Subsection (c)(2) requires the mayor to submit nominations for all holdovers within 120 days of the effective date of the ordinance, which is an additional procedural requirement not contemplated by the Charter. This section improperly amends the procedures outlined in Charter Sections C6-00-3(b) and C6-00-3(c) and constitutes an impermissible restriction on the mayor's appointment authority as established by the Charter. As such, the provision upon enactment would be a nullity.

5. Section (d) – Restrictions on Holdover Members’ Participation

This provision of the proposed ordinance places restrictions on the authority and participation of holdover members which is not contemplated by the Charter. The restriction on holdover members’ full participation also expressly contradicts Section C6-00-4(a) and the holdover doctrine discussed above, which permits holdovers to serve without express restriction. As such, this limitation constitutes an improper amendment to the Charter and upon enactment would be a nullity.

6. Section (e) – Public Disclosure of Term Dates

Requiring transparency through public disclosure of term dates does not conflict with the Charter and serves as an administrative enhancement.

IV. Conclusion

The proposed ordinance is invalid to the extent of its inconsistencies with the Charter, of which there are many. It is strongly advised that the ordinance be revised or reconsidered to align with the Charter and avoid legal challenges. Consultation with relevant stakeholders and further legal analysis may help clarify its objectives within lawful parameters.

Such discussions should consider the established jurisprudence of the Connecticut Supreme Court and the holdover doctrine, which underscores the legal and practical necessity of holdover provisions for public officers. See e.g., *State ex rel Eberle v. Clark*, 87 Conn. 537, 540 (1913); *State ex rel. McCarthy v. Watson*, 132 Conn. 518 (1949). This well-established principle highlights the critical importance of continuity in public service, which should be carefully considered during the revision process.