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November 9, 2022

Patricia Morsillo, President
City Council
City Hall
Salem, Massachusetts

Dear Councillor Morsillo:

As you know, over the last few weeks, in anticipation of the need for a special election in 2023, I have been working with the City Clerk and KP Law on proposed amendments to our City Charter, Section 59A, and Chapter 445 of the Acts of 1960, a special act requiring preliminary elections in Salem.

Based on our review, we prepared the three attached documents for the Council's review and consideration, a proposed home rule petition amending both the Charter and Chapter 445, a strike-through version of section 59A of the Charter showing the proposed changes and a strike-through version of Chapter 445 showing proposed changes.

The proposed amendments to Chapter 445, shown in redline, allows more time between a preliminary and special election to process absentee ballots, print bilingual ballots and other election requirements. The City has historically had more than three weeks between the preliminary and regular elections as provided in Chapter 445 because we have scheduled the preliminary elections in accordance with MGL c. 54 § 103P, adopted after Chapter 445 of the Acts of 1960. Section 103P does not, however, include special elections thus necessitating this amendment. Further proposed amendments correct wording errors in sections 3 and 4, adds gender neutral language and deletes reference to the year nineteen hundred.

Proposed amendments to section 59A of the Charter clarify the status of a councillor serving as acting mayor post a special election, removes the requirement of a special election for ward councillor vacancies and establishes the quantum of vote of council actions during the time when a councillor is serving as acting mayor.

Both the City Clerk and I are available to meet with the Council to discuss these proposals in greater detail. Thank you for your consideration.

Sincerely,

Elizabeth Rennard

Elizabeth Rennard, Esq.



CITY OF SALEM

In City Council, November 17, 2022

Ordered:

That a petition to the General Court, accompanied by a bill relative to preliminary election dates and the filling of vacancies in the office of mayor and councillor in the city of Salem, as set forth below, be filed with an attested copy of this Order be, and hereby is approved to the end that the following legislation be adopted, except for amendments by the Senate or House of Representatives which conform to the intent of this home rule petition:

AN ACT RELATIVE TO PRELIMINARY ELECTION DATES AND FILLING VACANCIES IN THE OFFICES OF MAYOR AND COUNCILLOR IN THE CITY OF SALEM

SECTION 1. Notwithstanding the provisions of chapter 43 of the general laws or of any general or special law to the contrary, section 1 of chapter 445 of the acts of 1960 is hereby amended by deleting the phrase "On the third Tuesday" and inserting in place thereof the following phrase:- On a Tuesday no less than six weeks but no more than eight weeks.

SECTION 2. Section 2 of chapter 445 of the acts of 1960 is hereby amended by deleting, in subsection 2 the word "unless he shall" and inserting in place thereof the words:- unless they shall.

SECTION 3. Section 3 of said chapter 445 is hereby amended by deleting the first paragraph thereof and inserting in its place the following:- Any person who is qualified to vote at any regular or special municipal election in said city for a candidate for any elective municipal office in said city, and who is a candidate for nomination thereto, shall be entitled to have their name as such candidate printed on the official ballot to be used at a preliminary election for nomination therefor; provided, that if they are a candidate to be voted for in a single ward they shall be a registered voter in the ward wherein they are a candidate, and provided, further, that on or before five o'clock in the afternoon of the sixth Tuesday preceding such preliminary municipal election there shall be submitted to the board of registrars of voters a nomination paper prepared and issued by the city clerk, wherein the candidate sets forth in writing their candidacy, and wherein the petition is signed in person by at least twenty-five, or, in case of a candidate for the office of mayor and other offices, by at least one hundred, voters of the city qualified to vote for a candidate for the said office, whose signatures are certified as hereinafter provided.

SECTION 4. Said Section 3 of said chapter 445 is hereby further amended by deleting the words "nineteen hundred" in each of the three instances in which they appear.

SECTION 5. Said section 3 of said chapter 445 is hereby further amended by deleting in the second paragraph of the text entitled "Petition of Accompanying Statement of Candidate" the words "we believe him to" and inserting in place thereof the following:- we believe they are.

SECTION 6. Section 4 of said chapter 445 of the acts of 1960 shall be amended by deleting in the third sentence the words "regular or special municipal election" and inserting in place thereof the words:- preliminary election.

SECTION 7. Section 5 of said chapter 445 shall be amended by deleting the words "he shall post in a conspicuous place in his office" and inserting in place thereof the following words:- the city clerk shall post in a conspicuous place in their office.

SECTION 8. Section 5 of said chapter 445 shall be further amended by deleting in the first sentence the words beginning with "which shall be drawn by lot" and ending with "in their order as drawn by him" by inserting in place thereof the following:- which shall be drawn by lot by the city clerk within seventy-two hours succeeding five o'clock in the afternoon of the last day fixed for filing the nomination papers with the city clerk, and the city clerk shall cause the ballots, which shall contain said names in their order as drawn by the clerk,

SECTION 9. Said section 5 of chapter 445 is hereby further amended by deleting, in the third sentence, the words "he desires" and inserting in place thereof the following:- they desire.

SECTION 10. Said section 5 of chapter 445 is hereby further amended by deleting, in the second paragraph, the words "in the year nineteen hundred and" and inserting in place thereof the following:- they year.

SECTION 11. Section 6 of said chapter 445 is hereby amended by deleting the last clause and inserting in place thereof the following clause:- or anything showing how they were nominated or indicating their views or opinions.

SECTION 12. Section 7 of chapter 445 shall be amended by deleting the words "in his office" in the last sentence and inserting in place thereof the following words:- in their office.

SECTION 13. Section 8 of chapter 445 shall be amended by deleting the first two clauses and inserting in place thereof the following:- If any person receives at a preliminary election a majority of all the votes cast for the office for nomination to which they were a candidate, they shall be deemed and declared elected thereto.

SECTION 14. Section 8 of said chapter 445 shall be further amended by deleting, in the last sentence, the words "his name printed" and inserting in place thereof the following words:- their name printed.

SECTION 15. Section 9 of chapter 445 shall be amended by deleting in the first sentence the words "filed with him" and inserting in place thereof the following words:- filed with the city clerk.

SECTION 16. Notwithstanding the provisions of section 59A of chapter 43 of the general laws, or any other general or special law to the contrary, the charter of the city of Salem, on file in the office of the archivist of the commonwealth, as provided by section 12 of chapter 43B of the General Laws, is hereby amended by inserting the following heading before the first paragraph of section 59A :- A. Mayor – Vacancies in the office of Mayor.

SECTION 17. Section 59A of the charter of the city of Salem is further amended by deleting, in the third sentence of the first paragraph , the words “Until the time of the election” and capitalizing the word “the” immediately following.

SECTION 18. Section 59A of the charter of the city of Salem is hereby further amended by inserting the following new sentence at the end of the first paragraph:- Unless a councillor serving as acting mayor under this section formally resigns, the councillor shall, upon the election and qualification of a successor mayor, resume their service as a councillor in the capacity to which they were elected and shall serve for the remainder of the unexpired term.

SECTION 19. Section 59A of the charter of the city of Salem is hereby amended by inserting the following sentence at the end of the second paragraph:- Provided, however, that a councillor serving as mayor under this section shall be considered an incumbent councillor for election-related purposes.

SECTION 20. Section 59A of the charter of the city of Salem is hereby amended by inserting the following heading before the third paragraph:- B. Councillor – Vacancy arising in the office of City Councillor.

SECTION 21. Section 59A of the charter of the city of Salem is further amended by deleting in its entirety the fourth paragraph and inserting in place thereof the following:-. If a vacancy occurs at any time in the office of a councillor elected by and from the voters of a ward, a majority of the remaining members of the council shall forthwith select a qualified voter of the ward to fill such vacancy for the remainder of the unexpired term.

SECTION 22. Section 59A of the charter of the city of Salem is hereby further amended by inserting the following two new paragraphs at the end of section 59A:-

A councillor selected to fill an unexpired term under the provisions of this section shall not be considered an elected incumbent for election-related purposes.

When a councillor is serving as acting mayor under subsections A of this section, so as to facilitate the continued orderly administration and operations of the city, the required quantum of vote for council action shall be calculated based upon a ten-member body.

SECTION 23. This act shall take effect upon its passage.

PROPOSED AMENDMENTS TO CHARTER VIA HOME RULE PETITION

CITY OF SALEM CHARTER § 59A. - Vacancies in office of mayor and council; procedure for filling.

A. Mayor – Vacancy arising in the office of Mayor.

If a vacancy occurs in the office of mayor by death, removal or resignation during the first to 36 months, inclusive, of the term ending on December 31 for which the mayor was elected, the city clerk shall forthwith order an election to fill such vacancy for the remainder of the unexpired term. Such election may be held at the time of the regular municipal election so long as the vacancy does not occur more than six months prior to the regular municipal election. ~~Until the time of the election,~~ the city council shall hold a meeting to elect, by majority vote, one of its members as acting mayor until a candidate for mayor is elected and the election results are certified. If the city council fails to elect a member at said meeting or within 30 days thereafter, the president of the city council shall become acting mayor, shall exercise all the rights and powers of mayor and shall be sworn to the faithful discharge of the mayor's duties. The candidate for mayor elected at such election shall take office immediately upon the certification of the results of the election. Unless a councillor serving as acting mayor under this section formally resigns, the councillor shall, upon the election and qualification of a successor mayor, resume their service as a councilor in the capacity to which they were elected and shall serve for the remainder of the unexpired term.

If a vacancy occurs during the thirty-seventh month beginning January 1 through the end of the term for which the mayor was elected, a meeting shall be held by the city council to elect, by majority vote, one of its members as acting mayor for the remainder of the unexpired term. If the city council fails to elect a member at said meeting or within 30 days thereafter, the president of the city council shall become acting mayor, shall exercise all the rights and powers of mayor and shall be sworn to the faithful discharge of the mayor's duties. Provided, however, that a councillor serving as mayor under this section shall be considered an incumbent councillor for election-related purposes.

B. Councillor – Vacancy arising in the office of City Council

If a vacancy occurs at any time in the office of a councillor elected by and from the qualified voters of the city, such vacancy shall be filled forthwith by a majority vote of all the remaining members of the city council for the remainder of the unexpired term.

If a vacancy occurs ~~at any time, before the last six months of the term,~~ in the office of a councillor elected by and from the voters of a ward, a majority of the remaining members of the the city council shall forthwith select a qualified voter of the ward ~~order an election~~ to fill such vacancy for the remainder of the unexpired term.

A councillor selected to fill an unexpired term under the provisions of this section shall not be considered an elected incumbent for election-related purposes.

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When a councillor is serving as acting mayor under section A, so as to facilitate the continued orderly administration and operations of the city, the required quantum of vote of council action shall be calculated based upon a ten-member body.

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PROPOSED AMENDMENTS VIA A HOME RULE PETITION

Chap. 445 of the Acts of 1960. An Act establishing preliminary municipal elections in the City of Salem

Be it enacted, etc., as follows:

Section 1. ~~On the third Tuesday~~ On a Tuesday no less than six weeks but no more than eight weeks preceding every regular or special municipal election in the city of Salem at which any elective municipal office is to be filled, there shall be held, except as otherwise provided in section nine, a preliminary election for the purpose of nominating candidates therefor, At every such election the polls shall be opened during such hours, in accordance with general law, as the members of the municipal council may prescribe and the general laws relative to municipal elections shall apply thereto, except as is otherwise specifically provided for in this act.

Section 2. Except as is otherwise provided in said section nine, there shall not be printed on the official ballot to be used at any regular or special municipal election in said city the name of any person as a candidate for any office unless such person has been nominated as such at a preliminary election for nomination, held as provided in this act. There shall not be printed on the official ballot for use at such preliminary election the name of any candidate for nomination at such election unless hethey shall have submitted, within the time limited and as provided by section three, the nomination paper therein described.

Section 3. Any person who is qualified to vote at any regular or special municipal election in said city for a candidate for any elective municipal office in said city, and who is a candidate for nomination thereto, shall be entitled to have histheir name as such candidate printed on the official ballot to be used at a preliminary election for nomination therefor; provided, that if he-is-they are a candidate to be voted for in a single ward hethey shall be a registered voter in the ward wherein he-is-they are a candidate-, ~~—~~ and provided, further, that on or before five o'clock in the afternoon of the sixth Tuesday preceding such regular or special preliminary municipal election there shall be submitted to the board of registrars of voters a nomination paper prepared and issued by the city clerk, wherein the candidate sets forth in writing histheir candidacy, and wherein the petition is signed in person by at least twenty-

five, or, in case of a candidate for the office of mayor and other offices, by at least one hundred, voters of the city qualified to vote for a candidate for the said office, whose signatures are certified as hereinafter provided.

Said nomination papers shall be in substantially the following form:-

Commonwealth of Massachusetts.

City of Salem.

Nomination Paper.

Statement of Candidate.

I (_____), on oath declare that I am a citizen of the United States of America, that I reside at (number, if any) on (name of street) and ward _____ in the city of Salem; that I am a voter therein, qualified to vote for a candidate for the office hereinafter mentioned; that I am a candidate for the office of (name of office), for (state the term) to be voted for at the preliminary election to be held on Tuesday, the _____ day of _____, ~~nineteen hundred~~ and _____, and I request that my name be printed as such candidate on the official ballot for use at said preliminary election.

(Signed)

Commonwealth of Massachusetts. Essex, ss.

Subscribed and sworn to on this _____ day of

~~nineteen~~

~~hundred~~ and

before me,

(Signed)

Justice of the Peace (or Notary Public).

Petition of Accompanying Statement of Candidate.

Whereas (name of candidate) is a candidate for nomination for the office of (state the office) for (state the term), we, the undersigned, voters of the city of Salem, duly qualified to vote for a candidate for said office, do hereby request that the name of said (name of candidate) as a candidate for nomination for said office be printed on the official ballot to be used at the preliminary election to be held on Tuesday, the _____ day of

, ~~nineteen hundred~~ and

"We further state that we believe ~~him to~~ they are ~~be~~ of good moral character and qualified to perform the duties of the office, and that we have not subscribed to more nominations of candidates for this office than there are persons to be elected thereto.

Signatures of Nominators.

Ward.

Present Residence

(To be made in person.)

No acceptance by the candidate for the nomination named in the said nomination paper shall be necessary to its validity or its filing. The petition, which may be on one or more papers, need not be sworn to.

Section 4. After any such nomination paper has been submitted to said board of registrars of voters, hereinafter called the board, it shall certify thereon the number of signatures which are the names of registered voters in said city qualified to sign the same. All such papers found not to contain a number of names so certified, equivalent to the number required to make a nomination shall be invalid, and such papers shall be preserved by the board for one year. The board shall complete its certification on or before five o'clock in the afternoon of the fifth Tuesday preceding such ~~regular or special municipal~~ preliminary election, and the board, or some member thereof, shall file with the city clerk on or before five o'clock in the afternoon of the next day all papers not found to be invalid as aforesaid.

Section 5. On the first day, other than a legal holiday, following the expiration of the time for filing the above described nomination papers with the city clerk, ~~he~~ the city clerk shall post in a conspicuous place in ~~his~~ their office the names and residences of the candidates for nomination who have duly qualified as such, as they are to appear on the official ballots to be used at the preliminary election, except as to the order of the names, which shall be drawn by lot by the city clerk within seventy-two hours succeeding five o'clock in the afternoon of the last day fixed for filing the nomination papers with ~~him~~ them the city clerk, and the city clerk ~~he~~ shall cause the ballots, which shall contain said names in their order as drawn by ~~him~~ them clerk, and no others, with a designation of residence, and of the office and term of office, to be printed, and the ballots so printed shall be official and no others shall be used at the preliminary election. At any drawing for position on the ballot, each candidate shall have an opportunity to be present in person or by one representative. There shall be left at the end of the list of candidates for nomination for each office blank spaces equal in number to the number of persons to be nominated therefor, in which spaces the voter may insert the name of any person not printed on the ballot for whom ~~he~~ they desires to vote for nomination for such office, but the name of such person shall not be printed on the official ballot to be voted for at any regular or special municipal election in said

city unless such person is qualified to be nominated under section three. There shall be printed on such ballots such directions as will aid the voter, as, for example: "vote for one", "vote for two", and the like, and the ballots shall be headed substantially as follows:-

Official Preliminary Ballot.

Candidates for nomination for the offices of (name of offices) in the city of Salem at a preliminary election to be held on the day of

, in the year ~~nineteen hundred~~ and

On the back and outside of each ballot when folded shall be printed the words "Official Ballot for preliminary Election" followed by the designation of the ward for which the ballot is prepared, the date of the preliminary election and a facsimile of the signature of the city clerk.

Section 6. No ballot used at any preliminary election in said city shall have printed thereon any party or political designation or mark, and there shall not be appended to; the name of any candidate any such party or political designation or mark, or anything showing how ~~he was~~ they were nominated or indicating his~~their~~ views or opinion.

Section 7. The election officers of said city shall, immediately upon the closing of the polls at preliminary elections, count the ballots and ascertain the number of votes cast in the several voting places for each candidate, and forthwith make return thereof upon blanks to be furnished, as in regular elections, to the city clerk, who shall canvass said returns and shall forthwith determine the result thereof, insert the same in a newspaper published in said city and post the same in a conspicuous place in his~~their~~ office.

Section 8. If any person receives at a preliminary election a majority of all the votes cast for the office for nomination to which ~~he was~~ they were a candidate, he~~they~~ shall be deemed and declared elected thereto; provided, that at said election at least eighty per cent of the total registered vote of the city, or, in the case of a ward councilor, of the ward, shall be cast; otherwise the two persons receiving at a preliminary election the highest number of votes for nomination for any office, except one to which two or more persons are to be elected at the regular or special municipal election following, and, as to each of such offices, the several persons in number equal to twice the number so to be elected receiving at such preliminary election the highest number of votes for nomination for that office, shall, except, as provided in this section and in section nine, be the sole candidates for that office whose names may be printed on the official ballot to be used at the regular

or special municipal election at which such office is to be filled.

If the preliminary election results in a tie vote among candidates for nomination to any office receiving the lowest number of votes, which, but for said tie vote, would entitle a person receiving the same to have his name printed upon the official ballot for the regular or special municipal election, all candidates participating in said tie vote shall have their names printed upon the official ballot, although in consequence there be printed thereon the names of candidates to a number exceeding twice the number to be elected.

Section 9. If at the expiration of the time for filing with the city clerk nomination papers for candidates to be voted for at any preliminary election there have not been filed with him more than twice as many such nomination papers for an office as there are persons to be elected to such office, the candidates whose nomination papers have thus been filed shall be deemed to have been nominated to said office, and their names shall be printed on the official ballot to be used at the regular or special municipal election following, and the city clerk shall not print said names upon the ballot to be used at said preliminary election, and no other nomination to said office shall be made. If in consequence it shall appear that no names are to be printed upon the official ballot to be used at any preliminary election in any ward or wards of said city, no preliminary election shall be held in any such ward or wards.

Section 10. So much of chapter five hundred and fifty-nine of the acts of nineteen hundred and twelve and any other special law, and acts in amendment thereof, and in addition thereto, as is inconsistent with this act, is hereby repealed.

Section 11. This act shall be submitted for acceptance to the registered voters of the city of Salem at the state election to be held in the year nineteen hundred and sixty, in the form of the following question, which shall be printed on the official ballot to be used in said city at said election:—"Shall an act passed by the general court in the year nineteen hundred and sixty, entitled 'An Act establishing Preliminary Municipal Elections in the City of Salem', be accepted?" If the majority of the votes in answer to said question is in the affirmative, then this act shall thereupon take full effect in the biennial municipal election to be held in said city in the year nineteen hundred and sixty-one, and for all municipal elections in said city thereafter, but not otherwise.

Approved June 2, 1960.