

# City of Fall River Massachusetts

Office of the City Clerk

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2017 SEP 18 P 4: 02

ALISON M. BOUCHARD  
CITY CLERK

CITY CLERK \_\_\_\_\_  
FALL RIVER, MA

INÊS LEITE  
ASSISTANT CITY CLERK

SEPTEMBER 18, 2017

## AGENDA

THURSDAY, SEPTEMBER 21, 2017

CITY COUNCIL CHAMBER, ONE GOVERNMENT CENTER

5:30 P.M. CITY COUNCIL COMMITTEE ON FINANCE

Mayor and Corporation Counsel regarding Charter Commission ballot question and summary to be placed on the Municipal Election Ballot, November 7, 2017 (tabled 9-14-17)

5:35 P.M. SPECIAL MEETING OF THE CITY COUNCIL OR IMMEDIATELY FOLLOWING THE COMMITTEE ON FINANCE IF THAT MEETING RUNS PAST 5:35 P.M.

To act on the following if recommendation is received from the City Council Committee on Finance and Charter Commission:

Amended Charter Commission ballot question and summary to be placed on the Municipal Election Ballot, November 7, 2017

Alison M. Bouchard  
City Clerk

ADA Coordinator: Gary P. Howayeck, Esq. 508-324-2650



**City of Fall River  
Massachusetts  
Office of the Mayor**

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2017 AUG 10 A 11:43

**JASIEL F. CORREIA II**

*Mayor*

August 10, 2017

CITY CLERK \_\_\_\_\_  
FALL RIVER, MA

The Honorable City Council  
One Government Center  
Fall River, MA 02722

Dear Councilors:

At the request of the Charter Commission I am forwarding the following order to you.

Per the Charter Commission the following Ballot Question and Summary will appear on the ballot for the election to be held on November 7, 2017. It will be reproduced to give voters an opportunity to become familiar with it prior to Election Day. Please note that the summary is necessarily brief and describes the most significant of the proposed changes. The Final Report of the Charter Commission contains the entire proposed charter.

Very Truly Yours,

Jasiel F. Correia II, Mayor

I concur,

Joseph I. Macy, Corporation Counsel

CITY OF FALL RIVER  
IN CITY COUNCIL

AUG 15 2017

*Referred to the  
Committee on Finance  
5 Year, 4 days*

*9-14-17  
Tabled in Finance  
5 year, 4 days*

One Government Center • Fall River, MA 02722

TEL (508) 324-2600 • FAX (508) 324-2626 • EMAIL [mayor@fallriverma.org](mailto:mayor@fallriverma.org)

# City of Fall River, In City Council

## An ORDER, Allowing the City of Fall River to Place a Ballot Question On the November 7, 2017 Fall River Election Ballot

The Board of Elections shall place on the official ballot for the Fall River election to be held on November 7, 2017 in the City of Fall River the following question:

### BALLOT QUESTION AND SUMMARY

Shall this city approve the new charter recommended by the charter commission summarized below?

\_\_\_\_\_ Yes \_\_\_\_\_ No

### SUMMARY

Effective at the 2019 municipal election, voters will continue to elect a mayor, a 9 member city council, and 6 members of the school committee, all at-large. The mayor shall continue to serve as chair of the school committee. All elected officials will be elected by the voters citywide for 2-year terms.

The charter contains procedures for adoption of an annual operating budget, a long-term financial forecast, a debt management plan and a capital improvement plan. The council will review and approve all proposed mayoral appointments. There is a public comment provision applying to all elected and appointed bodies. The mayor is responsible for assuring that the planning and management needs of the city are examined on a regular basis. Free petition, initiative petition, referendum, and recall provisions are included allowing for direct voter participation. Elected officials convicted of a felony will be barred from holding any elective or appointed office in the city. Candidates may seek only one office at each election. Members of the city council and school committee will be prohibited from holding any other city position while in office. The charter will be initially reviewed after 5 years. After that review, the charter and ordinances will be reviewed every 10 years.

CITY OF FALL RIVER  
IN CITY COUNCIL  
AUG 15 2017

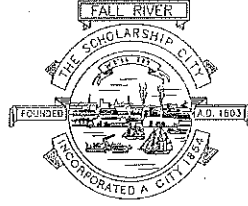
*Referred to the  
Committee on Finance  
5 years, 4 days*

*9-14-17*

*Tabled in Finance  
5 years, 4 days*

**City of Fall River**  
*Office of the Corporation Counsel*

**JASIEL F. CORREIA II**  
Mayor



**JOSEPH I. MACY**  
Corporation Counsel

**GARY P. HOWAYECK**  
Assistant Corporation Counsel

**JESSICA A. ADLER**  
Assistant Corporation Counsel

August 31, 2017

Fall River City Council  
One Government Center  
Fall River, MA 02722

RE: Charter Commission Ballot

Dear Councilors:

At a recent city council meeting I was asked to look into the legality of placing a "Pro-Con" section on the ballot below the question. In arriving at the within answer I have used standard rules of statutory construction, Massachusetts case law, and have consulted with the local government division of the Attorney General's Office, the Secretary of State's Office, and the Election Commission.

The uniform guidance has been that the language of the statute governs. The statute in question, MGL 43B s11, provides the language to be placed on the ballot; i.e. "Shall this city approve the new charter recommended by the charter commission summarized below?" Yes or No." This is the exact language sent to the council.

The summary, also submitted to the council, provides for a summary of the proposed charter. "Only the most significant proposed change must be set forth. ... The brief summary called for in s11 is obviously designed to identify for the voter the general subject on which he is asked to express an opinion."

The question as to the legality of adding an additional section to the ballot question allowing for arguments "Pro-Con" may also be answered directly. State ballots may contain such information because that is permitted by state law. However, only municipalities which have accepted MGL 53 s18B may make such an addition to their ballot. Fall River has not adopted this statute.

Therefore, there being no language permitting the suggested addition in the operative statute (MGL 43B s11) and this City not having adopted MGL 53 s18B, there may be no additional language added to the ballot question. This opinion is in accord with information received from the Attorney General and the Secretary of State, on which we may rely, and information from the Collins Center which is advisory.

Nothing in this opinion precludes any individual or group from independently contacting voters with mailings or handouts. This opinion deals only with the question asked and is confined thereto.

  
Joseph I. Macy, Corporation Counsel

One Government Center • Fall River, MA 02722 • TEL (508) 324-2650  
Workers' Compensation (508) 324-2540 • FAX (508) 324-2655 • EMAIL [lawoffice@fallriverma.org](mailto:lawoffice@fallriverma.org)

*Equal Justice Under Law*

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2017 AUG 31 P 4: 08  
CITY CLERK  
FALL RIVER, MA

8/31/17 emailed to all Councilors cat

**City of Fall River**  
*Office of the Corporation Counsel*



**JASIEL F. CORREIA II**  
Mayor

September 6, 2017

Fall River City Council  
One Government Center  
Fall River, MA 02722

Re: Charter Commission Ballot

Dear Councilors:

I provided information to you on 8/31/2017 regarding the legality of placing a "Pro-Con" section on the ballot below the question.

Below please find a summary of timeframes specified within MGL 53 sec18B which would need to be abided by. Though the adoption of Chapter 53 sec18B can take place during the next City Council meeting, the timeframes specified within the chapter may not be able to be met. It is important to note as well, approving the ballot question and summary is separate from adopting Chapter 53 sec18B.

Two separate approvals are necessary from the City Council. While the two approvals may be given in any order, they must both be enacted in order for Chapter 53 sec18B to apply.

The ballot question and summary must be approved by the City Council as indicated in Chapter 43B sec11: "The city council or board of selectmen shall cause the final report of a charter commission, or a charter amendment proposed in an order which has become effective under section ten, to be printed and a copy to be distributed to each residence of one or more registered voters. Such distribution shall occur not later than two weeks before the election at which the question of adopting, revising or amending the charter is to be submitted to the voters."

Chapter 53 sec18B has to be adopted by the City Council. If adopted by the City Council, the order is sent to the Mayor who has ten (10) days to approve or veto said order. If the Mayor approves the order, it will be sent back to the City Clerk and the mandated actions and timeframes within Chapter 53 sec18B can begin.

**JOSEPH I. MACY**  
Corporation Counsel

**GARY P. HOWAYECK**  
Assistant Corporation Counsel

**JESSICA A. ADLER**  
Assistant Corporation Counsel

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SEP - 6 A 11:35  
CITY CLERK  
FALL RIVER, MA

*9/6/17 emailed to all Councilors and UAF*

Theses timeframes are as follows:

Chapter 53 sec18B states, “(c) Not later than the day following the date of the determination that a question shall appear on the ballot in an election, the governing body shall provide written notification to the city solicitor or town or district counsel and to the city or town clerk.”

“(d) Not later than seven (7) days after the determination that a question shall appear on the ballot, the city solicitor or town or district counsel, as applicable, shall seek written arguments from the principal proponents and opponents of the question. For the purposes of this section, the principal proponents and opponents of a question shall be those persons determined by the solicitor or counsel to be best able to present the arguments for and against the question. The solicitor or counsel shall provide not less than seven (7) days’ written notice to the opponents and proponents of the date on which the written arguments shall be received. Proponents and opponents shall submit their arguments, which shall be not more than 150 words, to the solicitor or counsel, together with a copy thereof to the city or town clerk or, in a district, to the clerk of each city and town within the district. The arguments and summary shall be submitted by the solicitor or counsel to the governing body at least 20 days before the election for distribution to voters in accordance with subsection (b)<sup>1</sup>. A copy of the arguments and summary shall also be submitted by the solicitor or counsel to the city, town or district clerk.”

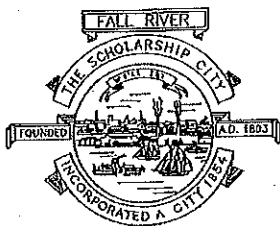
“(e) ... the solicitor or counsel shall determine, based on a review of arguments received, the person or group best able to present arguments for and against a question.”

“(b)... Not later than seven (7) days before an election at which the question shall be submitted to the voters in a city, town or district, the information in this subsection shall be sent to each household wherein a person whose name appears on the current voting list for the city, town, or district resides.”

It has come to my attention that the ballots and all accompanying information MUST be sent to the printer by October 1, 2017. With the deadline of October 1, 2017 to the printer and the City Council meeting occurring on September 14, 2017, abiding by all of the time deadlines specified in MGL 53 sec18B, even if the process is as expeditious as possible, would be problematic.

  
\_\_\_\_\_  
Joseph I. Macy, Corporation Counsel

<sup>1</sup> (b) The governing body of a city, town or district which accepts this section in the manner provided in section 4 of chapter 4 shall print information relating to each question that shall appear on the city, town or district ballot. The information shall include: (1) the full text of each question; (2) a fair and concise summary of each question, including a 1 sentence statement describing the effect of a yes or no vote, which shall be prepared by the city solicitor, town counsel or counsel for the city, town or district; and (3) arguments for and against each question as provided in subsections (d) and (e). Not later than 7 days before an election at which the question shall be submitted to the voters in a city, town or district, the information in this subsection shall be sent to each household wherein a person whose name appears on the current voting list for the city, town or district resides.



City of

# Fall River

Charter Commission

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2017 SEP 12 P 3:40

CITY CLERK \_\_\_\_\_  
FALL RIVER, MA

September 11, 2017

Dear Clerk Bouchard:

Per Attorney Macy's letter dated September 8, 2017, he states if the ballot summary is inaccurate it should be amended. Provided is an amended ballot question and summary, which removes two sentences and replaces them with sentences that better reflects the language in the proposed home rule charter (see below). Please forward the amended ballot question and summary to the city councilors, since this matter is scheduled to come before them at their meeting on Thursday, September 14, 2017.

**REMOVED:** Elected officials convicted of a felony will be barred from holding any elective or appointed office in the city.

**REPLACED WITH:** An elected official convicted of a state or federal felony while holding office must vacate the office.

**REMOVED:** After that review, the charter and ordinances will be reviewed every 10 years.

**REPLACED WITH:** After that review, the charter will be reviewed in 10-year intervals in each year ending in a 7. Ordinances will be reviewed at 5-year intervals in years ending in a 3 and 8.

Regards,

Michael L. Miozza  
Chair, Fall River Charter Commission

**Michael L. Miozza**  
Chairman

**Kris Bartley**  
Vice Chairman

**Brenda Venice**  
Clerk

**Atty. David Assad**

**James Cusick**

**Patrick Norton**

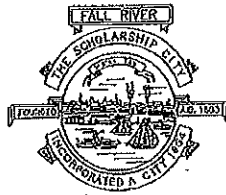
**Dan Robillard**

**John Silvia**

**Michael Quinn**

**City of Fall River**  
*Office of the Corporation Counsel*

**JASIEL F. CORREIA II**  
Mayor



**JOSEPH I. MACY**  
Corporation Counsel

**GARY P. HOWAYECK**  
Assistant Corporation Counsel

**JESSICA A. ADLER**  
Assistant Corporation Counsel

September 8, 2017

Mike Miozza  
Chair, Fall River Charter Commission

Mr. Miozza,

As you know the Charter Commission, independently of the city and with the paid assistance of the Collins Center, created the proposed new charter. The language the commission adopted is the language which must go before the voters.

If the summary is inaccurate it should be amended; the charter proposal may not be.

While this office has attempted to be helpful to the commission given that you have no staff the ultimate responsibility for the submission to the voters is yours not this office. We were asked to review the summary not the charter nor were we asked to compare the charter to the summary or to your bullet points.

I hope this is helpful.

Very truly yours,

  
Joseph I. Macy, Corporation Counsel



## **BALLOT QUESTION AND SUMMARY**

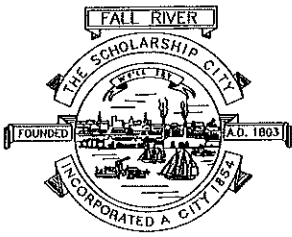
**Shall this city approve the new charter recommended by the charter commission, summarized below?**

\_\_\_\_\_ **Yes** \_\_\_\_\_ **No**

### **SUMMARY**

Effective at the 2019 municipal election, voters will continue to elect a mayor, a 9 member city council, and 6 members of the school committee, all at-large. The mayor shall continue to serve as chair of the school committee. All elected officials will be elected by the voters citywide for 2-year terms.

The charter contains procedures for adoption of an annual operating budget, a long-term financial forecast, a debt management plan and a capital improvement plan. The council will review and approve all proposed mayoral appointments. There is a public comment provision applying to all elected and appointed bodies. The mayor is responsible for assuring that the planning and management needs of the city are examined on a regular basis. Free petition, initiative petition, referendum, and recall provisions are included allowing for direct voter participation. An elected official convicted of a state or federal felony while holding office must vacate the office. Candidates may seek only one office at each election. Members of the city council and school committee will be prohibited from holding any other city position while in office. The charter will be initially reviewed after 5 years. After that review, the charter will be reviewed in 10-year intervals in each year ending in a 7. Ordinances will be reviewed at 5-year intervals in years ending in a 3 and 8.



City of  
**Fall River**  
Charter Commission

September 19, 2017

Alison M. Bouchard  
City Clerk  
One Government Center  
Fall River, MA 02722

Dear Clerk Bouchard,

I would like to inform you the Charter Commission met on Tuesday, September 19, 2017 in the City Council Chamber at Government Center and voted 6-1 in favor of passing the charter ballot question and amended language to the summary. Please forward the attached ballot question and summary to the members of the City Council as this is on the agenda for discussion at their next meeting on Thursday, September 21, 2017.

Regards,

Kris E. Bartley  
Vice Chairman  
Fall River Charter Commission

**Michael L. Miozza**  
Chairman

**Kris Bartley**  
Vice Chairman

**Brenda Venice**  
Clerk

**Atty. David Assad**

**James Cusick**

**Patrick Norton**

**Dan Robillard**

**John Silvia**

**Michael Quinn**

CITY CLERK  
FALL RIVER, MA

2017 SEP 20 A 9:01

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## BALLOT QUESTION AND SUMMARY

Shall this city approve the new charter recommended by the charter commission, summarized below?

\_\_\_\_\_ Yes \_\_\_\_\_ No

### SUMMARY

Effective at the 2019 municipal election, voters will continue to elect a mayor, a 9 member city council, and 6 members of the school committee, all at-large. The mayor shall continue to serve as chair of the school committee. All elected officials will be elected by the voters citywide for 2-year terms.

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CITY CLERK  
FALL RIVER, MA

2017 SEP 20 A 9:01

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