

SECTION 30. *Votes Needed for Nomination.* The two persons receiving at a preliminary election under Plan A the highest number of votes for nomination for the office of the mayor [or] district city councillor ... shall be deemed to have been nominated for said office; and the eight persons receiving at such election under Plan A the highest number of votes for nomination for the office of city councillor-at-large ... shall be deemed to have been nominated for such office. If a preliminary election under Plan A or D results in a tie vote among candidates for nomination receiving the lowest number of votes, which, but for said tie vote, would entitle a person receiving the same to be deemed to have been nominated, all persons participating in said tie vote shall be deemed to have been nominated, although in consequence there be printed on the official ballot to be used at the regular election names to a number exceeding twice the number to be elected. [Acts of 1948, c. 452, s. 61, amended by Acts of 1951, c. 376, s. 2.61, and further amended by Acts of 1983, c.342, s. 10]

SECTION 31. *Printing of Names on Ballots.* The name of every person deemed under section [twenty-six C] or section [thirty] to have been nominated, together with his residence and district and the title and term of the office for which he is a candidate, and the statement, if any, contained in his nomination petition concerning the elective public offices held by him, shall, in addition to the directions provided for by section [twenty-eight], be printed on the official ballots to be used at the regular election; and said persons shall be the sole candidates whose names may be printed on such ballots. As soon as conveniently may be after the sixth Tuesday preceding every regular election, the election commission shall draw by lot the position of said names on said ballots; and said names shall be printed on such ballots in the order so drawn. Each candidate shall have an opportunity to be present at such drawing in person or by one representative. [Acts of 1948, c. 452, s. 62, amended by Acts of 1951, s. 376, s. 2.62, and further amended by Acts of 1983, c. 342, s. 11]

SECTION 32. *Ballots Must Be Free of References to Political Parties.* No ballot used at any preliminary or regular election 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 nominated or indicating his views or opinions. [Acts of 1948, c. 452, s. 63, amended by Acts of 1951, s. 376, s. 2.63]

SECTION 33. *Blank Spaces for Write-in Votes.* On every ballot to be used at a preliminary or regular election, there shall be left, at the end of the list of candidates for each office, blank spaces equal to the number for which a voter may vote for such office, in which blank spaces the voter may insert the name of any person not printed on the ballot for whom he desires to vote for such office. [Acts of 1948, c. 452, s. 64, amended by Acts of 1951, c. 376, s. 2.64]

ORGANIZATION OF CITY DEPARTMENTS

SECTION 34. *Organization of Departments and Agencies.* The city council with the approval of the mayor may from time to time make by-laws or ordinances for any or all of the following purposes: (a) to create a new department or agency; (b) to abolish, in whole or in part, any department or agency; (c) to reorganize, in whole or in part, any department or department head or any agency or agency head; (d) to confer or impose on any department or agency any power or duty of the city not appertaining at the time of the making of the by-law or ordinance to any department or agency; (e) to transfer any or all of the powers, duties and appropriations of any division of any department or agency to another division

of the same department or agency; (f) to transfer any or all of the powers, duties and appropriations of any department or division thereof or of any agency or division thereof either to another department or division thereof or to another agency or division thereof; and (g) to increase, reduce, establish or abolish the salary of any department or agency head. Every department or agency head created by, or resulting from a reorganization effected by, a by-law or ordinance made under this section shall, unless ex officio, be appointed by the mayor without confirmation by the city council for a term expiring on the first Monday of the January following the next biennial municipal election at which a mayor is elected or, in the case of a person serving without compensation or of a person serving on the board of appeal, the board of examiners, the board of examiners of gasfitters or other like board, for such other term as the by-law or ordinance may prescribe. Every person holding an office or position subject to the civil service laws and rules shall, if the office or position is abolished by a by-law or ordinance made under this section and the by-law or ordinance so provides, be reappointed without civil service examination or registration to a similar office or position with similar status in any new department or agency, or division of either, thereby created or in any department or agency, or division of either, not thereby abolished; and every such person shall upon such reappointment, retain all rights to retirement with pension that shall have accrued or would thereafter accrue to him; and his services shall be deemed to have been continuous to the same extent as if such abolition had not taken place. As used in this section, the term "agency" shall be construed to mean any office in charge of a board or officer not subject to the direction of a department head. Nothing in this section shall authorize any action in conflict with the civil service laws or rules except as expressly provided herein; nor shall any by-law or ordinance made under this section affect in any way the school committee or any board or officer of the school committee or school department, or the board of commissioners of school buildings or the superintendent of construction, or the board of trustees of the teachers' retirement fund or the board of trustees of the permanent school pension fund, or the Boston retirement board, or the city clerk, or the board of election commissioners, or the Boston traffic commission, or any board or officer appointed by the governor. [Acts of 1909, c.486, s.5, amended by Acts of 1936, c. 152, s. 1, and further amended by Acts of 1953, c.473, s.1]

SECTION 35. *Appointment of Heads of Departments.* All heads of departments and members of municipal boards, including the board of street commissioners, as their present terms of office expire (but excluding the school committee and those officials by law appointed by the governor), shall be appointed by the mayor without confirmation by the city council. They shall be recognized experts in such work as may devolve upon the incumbents of said offices, or persons specially fitted by education, training or experience to perform the same, and (except the election commissioners, who shall remain subject to the provisions of existing laws) shall be appointed without regard to party affiliation or to residence at the time of appointment except as hereinafter provided. [Acts of 1909, c. 486, s. 9]

SECTION 36. *Certification of Appointments of Heads of Departments.* In making such appointments the mayor shall sign a certificate in the following form: [See Appendix E]. The certificate shall be filed with the city clerk, who shall thereupon forward a certified copy to the civil service commission. The commission shall immediately make a careful inquiry into the qualifications of the nominee under such rules as they may, with the consent of the governor and council, establish, and, if they conclude that he is a competent person with the requisite qualifications, they shall file with the city clerk a certificate signed by at least a majority of the commission that they have made a careful inquiry into the qualifications of the appointee, and that in their opinion he is a recognized expert, or that he is qualified by education, training or experience for said office, as the case may be, and that they approve the

appointment. Upon the filing of this certificate the appointment shall become operative, subject however to all provisions of law or ordinance in regard to acceptance of office, oath of office, and the filing of bonds. If the commission does not within thirty days after the receipt of such notice file said certificate with the city clerk the appointment shall be void. [Acts of 1909, c. 486, s. 10]

SECTION 37. *Expenses of Civil Service Commission.* The civil service commission is authorized to incur in carrying out the foregoing provisions such reasonable expense as may be approved by the governor and council; the same to be paid by the commonwealth, which upon demand shall be reimbursed by the city of Boston. [Acts of 1909, c. 486, s. 11]

SECTION 38. *Vacancy of Heads of Departments.* A vacancy in any office to which the provisions of section [thirty-five] of this act apply, shall be filled by the mayor under the provisions of said section and pending a permanent appointment he shall designate some other head of a department or member of a board to discharge the duties of the office temporarily. [Acts of 1909, c. 486, s. 12]

SECTION 39. *Terms of Office of Heads of Departments.* Members of boards shall be appointed for the terms established by law or by ordinance. Heads of departments shall be appointed for terms of four years beginning with the first of May of the year in which they are appointed and shall continue thereafter to hold office during the pleasure of the mayor. [Acts of 1909, c. 486, s. 13; *see also* Acts of 1953, c. 473]

SECTION 40. *Removal from Office of Heads of Departments.* The mayor may remove any head of a department or member of a board (other than the election commissioners, who shall remain subject to the provisions of existing laws) by filing a written statement with the city clerk setting forth in detail the specific reasons for such removal, a copy of which shall be delivered or mailed to the person thus removed, who may make a reply in writing, which, if he desires, may be filed with the city clerk; but such reply shall not affect the action taken unless the mayor so determines. The provisions of this section shall not apply to the school committee, the public facilities commission, or any official by law appointed by the governor. [Acts of 1909, c. 486, s. 14, amended by Acts of 1966, c. 642, s. 11]

SECTION 41. *Civil Service Laws not to Apply to Certain Appointments.* The civil service laws shall not apply to the appointment of the mayor's secretaries, nor of the stenographers, clerks, telephone operators and messengers connected with his office, and the mayor may remove such appointees without a hearing and without making a statement of the cause for their removal. [Acts of 1909, c. 486, s. 15]

SECTION 42. *Expenditures Not to Exceed Appropriation.* No official of said city, except in case of extreme emergency involving the health or safety of the people or their property, shall expend intentionally in any fiscal year any sum in excess of the appropriations duly made in accordance with law, nor involve the city in any contract for the future payment of money in excess of such appropriation, except as provided in section [17G] of this act. Any official who violates the provisions of this section shall be personally liable to the city for any amounts expended intentionally in excess of an appropriation to the extent the city does not recover such amounts from the person to whom paid. The trial court of the commonwealth or a single justice of the supreme judicial court shall have jurisdiction to adjudicate claims brought by the city hereunder and to order such equitable relief as the court may find appropriate to prevent further violations of this section. Any official who shall violate

the provisions of this section shall be punished by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or both. [Acts of 1909, c. 486, s. 16, amended by Acts of 1982, c. 190, s. 17]

SECTION 42A. *Contracting without an Appropriation.* Anything in section [forty-nine] or section [forty-two] to the contrary notwithstanding, city and county officers who are authorized to make expenditures, and the school committee, may, during any fiscal year, at the time of, or after, contracting for the performance or delivery during the remainder of such year of any work, services or supplies of a constantly recurrent nature, contract, without an appropriation, upon like or more favorable terms and conditions, for the performance or delivery of such work, services or supplies for the whole or any part of the first three months of the next fiscal year; provided, that in no event shall the average monthly liability incurred with respect to the next fiscal year exceed the average monthly liability for such work, services or supplies during the last nine months of the then current fiscal year. [Acts of 1948, c. 452, s. 16A, amended by Acts of 1951, c. 182]

THE FINANCE COMMISSION

SECTION 43. *Appointment of a Finance Commission.* Within sixty days after the passage of this act the governor with the advice and consent of the [governor's] council shall appoint a finance commission to consist of five persons, inhabitants of and qualified voters in the city of Boston, who shall have been such for at least three years prior to the date of their appointment, one for the term of five years, one for four years, one for three years, one for two years, and one for one year, and thereafter as the terms of office expire in each year one member for a term of five years. Vacancies in the commission shall be filled for the unexpired term by the governor with the advice and consent of the council. The members of said commission may be removed by the governor with the advice and consent of the council for such cause as he shall deem sufficient. The chairman shall be designated by the governor. His annual salary ... shall be paid in monthly installments by the city of Boston. The other members shall serve without pay. [Acts of 1909, c. 486, s. 17; *but see* Acts of 1964, c. 740, s. 3⁴]

SECTION 44. *Duty to Investigate.* It shall be the duty of the finance commission from time to time to investigate any and all matters relating to appropriations, loans, expenditures, accounts, and methods of administration affecting the city of Boston or the county of Suffolk, or any department thereof, that may appear to the commission to require investigation, and to report thereon from time to time to the mayor, the city council, the governor, or the general court. The commission shall make an annual report in January of each year to the general court. [Acts of 1909, c. 486, s. 18]

SECTION 45. *Investigation of Pay Rolls, Bills, etc.* Whenever any pay roll, bill, or other claim against the city is presented to the mayor, city auditor, or the city treasurer, he shall, if the same seems to him to be of doubtful validity, excessive in amount, or otherwise contrary to the city's interest, refer it to

⁴ "Subject to section two of this act and except as required by the constitution of the commonwealth, so much of each provision of the General Laws and of any special law as requires the advice and consent of the council to any appointment in the executive department, or to the fixing of any salary, or other compensation for services rendered, in the executive department, or to the removal of any person holding office in the executive department, including without limitation, any person appointed prior to the effective date of this act, is hereby repealed." [Acts of 1964, c. 740, s. 3]