

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2019-00885

FALL RIVER CITY COUNCIL

vs.

JASIEL F. CORREIA, II<sup>1</sup>

**MEMORANDUM OF DECISION AND ORDER ON THE  
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

The Fall River City Council (the “Council” or the “plaintiff”) moves for a preliminary injunction on the sole count of its verified complaint seeking declaratory relief, pursuant to G. L. c. 231A, §§ 1-2, against the current Mayor of Fall River, Jasiel F. Correia, II (“Correia” or the “defendant”), for his failure to temporarily leave office pursuant to a September 10, 2019 vote by the Council. On October 3, 2019, the Court held a hearing on the Council’s motion and took the matter under advisement. After hearing and review of the parties’ submissions<sup>2</sup>, the plaintiff’s motion for a preliminary injunction is **DENIED**.

**BACKGROUND**

Correia was elected Mayor of the City of Fall River (the “City”) in November, 2015, was re-elected in November, 2017, and received the most votes after a recall election in March, 2019. Regardless of the results of the upcoming November 5, 2019 election, to which Correia qualified, he is set to remain the City’s mayor until at least January 3, 2020, the end of his current term.

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<sup>1</sup> On October 3, 2019, the Court allowed the City of Fall River’s Motion to Intervene as an interested party to this litigation.

<sup>2</sup> The Court’s review included the Fall River City Council’s Supplemental Memorandum of Law in Support of Its Motion for Preliminary Injunction, dated October 7, 2019.

On October 4, 2018, the United States Attorney for the District of Massachusetts (“U.S. Attorney”) filed a thirteen-count indictment against Correia. These indictments related to conduct prior to Correia becoming mayor. On September 5, 2019, the U.S Attorney filed a First Superseding Indictment, charging Correia with an additional eleven federal crimes. Unlike the indictments brought against Correia on October 4, 2018, these new indictments related to alleged conduct during Correia’s time as mayor (the “Sept. 5, 2019 Indictments”).<sup>3</sup>

On September 10, 2019, the Council met to consider whether it should vote to temporarily relieve Correia of his mayoral duties. In light of the Sept. 5, 2019 Indictments, the Council, pursuant to Section 3-8(a) of the City of Fall River Home Rule Charter (the “Charter”), voted eight to one in favor of temporarily removing Correia from office. In pertinent part, Section 3-8 of the Charter, entitled “TEMPORARY ABSENCE OF THE MAYOR,” states:

(a) Acting Mayor – Whenever, by reason of sickness or other cause, the mayor is unable to perform the duties of the office, the president of the city council shall be the acting mayor . . . . The city council, by the affirmative vote of 7 members, shall determine whether the mayor is unable to perform the duties of the office. The vote shall be taken in public session by roll call vote.

The Council also issued an Emergency Order at the meeting. The Emergency Order indicated the Council’s vote, and ordered Correia to relinquish control of his office by Friday, September 13, 2019 at 5:00 p.m. On September 18, 2019, upon Correia’s continued refusal to leave office, the Council voted to seek judicial enforcement of its September 10, 2019 vote.

## **DISCUSSION**

### **I. Standard of Review**

In considering the plaintiff’s motion for a preliminary injunction, the Court “must first determine whether the plaintiff has shown a likelihood of success on the merits of the asserted

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<sup>3</sup> On September 19, 2019, a Second Superseding Indictment was filed, which added indictments against Correia’s former chief of staff, Genoveva Andrade (“Andrade”).

claim and then determine whether the requested order promotes the public interest, or alternatively, that the equitable relief will not adversely affect the public.” *Fordyce v. Town of Hanover*, 457 Mass. 248, 255 n.10 (2010) (internal quotations and citations omitted). A private party, upon moving for a preliminary injunction, is usually required to demonstrate that irreparable harm would result without immediate relief. See *Packaging Indus. Group, Inc. v. Cheney*, 380 Mass. 609, 617 (1980). “When, however, a suit is brought either by the government or a citizen acting as a private attorney general to enforce a statute or a declared policy of the Legislature irreparable harm is not required.” *LeClair v. Town of Norwell*, 430 Mass. 328, 331 (1999). See *Town of Framingham v. Framingham Police Officers Union*, 93 Mass. App. Ct. 537, 541-542 (2018) (“[T]he equitable considerations justifying the need for injunctive relief are supplied by showing that an injunction is in the public interest.”).<sup>4</sup>

## **II. Statutory Construction**

In considering the plaintiff’s requested relief, the Court must interpret the Charter’s language. See *DiGiacomo v. Metropolitan Prop. & Cas. Ins. Co.*, 66 Mass. App. Ct. 343, 346 (2006) (“Statutory interpretation is a quintessential judicial responsibility, to be undertaken using well-established guiding principles.”). The Court’s primary goal in interpreting the Charter’s language is to effectuate its drafter’s intent. See *Sheehan v. Weaver*, 467 Mass. 734, 737 (2014). The drafter’s intent is “principally ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.” See *The Harvard Crimson, Inc. v. President &*

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<sup>4</sup> Because the defendant does not challenge the argument that the Council is “the government,” as opposed to a group of private citizens bringing a civil action against him, the Court will not, for the purpose of this argument, consider whether it needs to conduct an irreparable harm analysis.

*Fellows of Harvard Coll.*, 445 Mass. 745, 749 (2006) (citation omitted). Where the Charter’s language is clear and unambiguous, it is conclusive as to the drafter’s intent. See *City of Worcester v. College Hill Props., LLC*, 465 Mass. 134, 138 (2013). However, where the Charter’s language is unclear and ambiguous, the Court “turn[s] to extrinsic sources, including [the Charter’s] history . . . for assistance in [the Court’s] interpretation.” See *Ciani v. MacGrath*, 481 Mass. 174, 178 (2019) (citation omitted).

### **III. Analysis**

The defendant argues that the plaintiff has no substantial likelihood of showing that the Charter authorized the Council to temporarily remove Correia from office based upon the filing of the Sept. 5, 2019 Indictments. The Court agrees.<sup>5</sup>

First, the Council voted to remove Correia pursuant to Section 3-8(a) of the Charter. Section 3-8 is entitled “TEMPORARY ABSENCE OF THE MAYOR.” See *Lynn Teachers Union, Local 1037 v. Massachusetts Comm’n Against Discrim.* 406 Mass. 515, 525 (1990) (“[W]hile the title to an act cannot control the provisions of the statute, the title may be used for the purpose of ascertaining its proper limitations.”) (internal modifiers and citation omitted). Furthermore, Section 3-8(a) states that the Council may appoint an acting mayor “[w]henever, by reason of sickness or *other cause*, the mayor is *unable to perform the duties of the office . . .*” (emphasis added).

The plaintiff argues that the phrase “other cause” provides the Council with broad discretion to remove a mayor whenever a mayor is unable to perform their mayoral duties.<sup>6</sup>

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<sup>5</sup> The defendant raises various constitutional violations committed by the Council during the voting process to temporarily remove him from office. Given the Court’s ruling, the Court need not address these arguments.

<sup>6</sup> The plaintiff argues that Correia is unable to perform his mayoral duties because Correia (1) cannot authorize marijuana business applications based on state legislation placing a moratorium on new licenses until a new mayor takes office; (2) cannot contact certain City employees and residents pursuant to a non-contact list; and (3) is preoccupied with his defense in his upcoming criminal trial.

However, the Court must read the phrase “other cause,” not in isolation, but in the context of Section 3-8 and subsection (a). See *W.A. Wilde Co. v. Board of Assessors of Holliston*, 84 Mass. App. Ct. 102, 104 (2013) (courts “do not construe a statute’s words in isolation or apart from the legal context within which they appear.”). Read in context, the phrase “other cause” does not give the Council unfettered discretion to remove a mayor. Instead, it is limited to instances where a mayor is temporarily absent and, therefore, unable to perform his mayoral duties. The plaintiff has no substantial likelihood of showing that the Sept. 5, 2019 Indictments led to Correia’s absence from office and his inability to perform his mayoral duties.

If the Court were to interpret Section 3-8 as broadly as the Council suggests, it would give the Council the authority to remove a mayor whenever he or she is unable to perform his or her mayoral duties *to their liking*. This authority is provided for in the Charter in Section 8-5; however, this power is reserved for the citizens of Fall River, not the Council, in the form of a recall election.

Even if the Court had determined the phrase “other cause” was unclear, the Court would reach the same result based on the Charter’s history. On November 3, 2015, the City’s voters elected a Charter Commission (the “Commission”) to amend the Charter. On December 19, 2016, the Commission held a meeting about the Charter.<sup>7</sup> During the course of the meeting Michael Miozza (“Mr. Miozza”), the Commission’s Chair, raised a question specifically relating to the language in Section 3-8(a).<sup>8</sup> Stephen McGoldrick (“Mr. McGoldrick”), then of the Collins

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<sup>7</sup> The plaintiff, without support, argues that the Court cannot review the drafting of the Charter to determine the meaning of “other cause” because certain individuals who provided information to the Commission during this hearing were hired consultants. Such a proposition would leave the Court without a means to review the drafters’ intent. In determining the Charter’s history, the Court looked to the Majority Report of the Charter Commission, the ballot presented to the voters, as well as any comments made during the hearing from individuals in the audience, including the hired consultants.

<sup>8</sup> The preliminary injunction record included a transcript of the pertinent discussion relating to Section 3-8(a), as well as a link to the meeting, which can be found at <https://youtu.be/fw9iXE2tkR4?t=6130>. During the hearing on the plaintiff’s motion, the defendant submitted a flash drive with a recording of the meeting, marked as Exhibit 1.

Center and a consultant for the Commission during the Charter's drafting, answered Mr.

Miozza's question as follows:

This is . . . to address . . . a couple things that may never happen, but if somebody is like, permanently disabled, either physically or mentally or no one can find him or her, you know, because they're gone, they've fled the city. Situations like that where, you know, where there has to be some process by which the City determines that the Mayor is unable to perform the duties. And this can't be . . . why, why, the number seven, is because you don't want frivolous, you know, votes by saying well we think he's incompetent, so, you know, that doesn't make him unable to perform the duties . . . that's why it has to be a serious vote of seven by roll call, because it has to be a public process.

Mr. Miozza later raised an additional question about a comment he heard concerning whether Section 3-8 would give the Council the ability to temporarily remove a mayor due to its lack of confidence in the mayor. The following exchange occurred:

Mr. McGoldrick: No.

Mr. Miozza: No.

Ms. Contreas<sup>9</sup>: This is like [Mr. McGoldrick] said . . . if he's sick, you know, an extended illness, unable to perform the duties, um, he's left town, with or without the contents of the treasury, um, nobody can find him, you know, these are extraordinary circumstances.

Mr. Miozza: Ok. Ok.

Ms. Contreas: This isn't that he hasn't done something that somebody wants or, or he's failed to make decisions. If he's coming to the office every day, he's still mayor.

The Commission then voted, by a six to one margin, to adopt Section 3-8(a) as currently constituted in the Charter.<sup>10</sup>

In May, 2017, the City's registered voters received the "Fall River Charter Commission Majority Report" from the Commission (the "Report"). The Report provided an overview of the

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<sup>9</sup> Marilyn Contreas ("Ms. Contreas") was a consultant with the Collins Center.

<sup>10</sup> As part of this vote, the Commission decided that seven councilmembers needed to support temporary removal of a mayor.

Charter, which included a summary regarding a mayor's temporary absence. The Report stated that "[i]n case of temporary absence or disability of the Mayor, the Council President would become Acting Mayor." In November, 2017, the City's voters adopted the Charter.

Therefore, the plaintiff has failed to show it will succeed on its claim that the phrase "other cause" under Section 3-8(a) permitted the Council to temporarily remove Correia based upon the Sept. 5, 2019 Indictments.


Moreover, the Charter does not otherwise grant the Council authority to temporarily remove a mayor charged with a felony from office. Instead, the Charter requires the removal of an elected official convicted of a felony. Pursuant to Section 9-13 entitled "FELONY CONVICTION," "[a]n elected official who has been *convicted* of a state or federal felony while holding office shall be deemed to have vacated the office" (emphasis added). The language of Section 9-13 is clear that it only applies upon an elected official's conviction. If the Commission intended to extend this provision to an elected official charged with a felony, such language would have been included in the Charter. The Court "will not add words to [the Charter] that the [Commission] did not put there, either by inadvertent omission or by design." See *Retirement Bd. of Somerville v. Buonomo*, 467 Mass. 662, 672 (2014). Therefore, the plaintiff has also failed to show a likelihood of success that some other provision in the Charter granted the Council authority to temporarily remove Correia based on the Sept. 5, 2019 Indictments.<sup>11</sup>

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<sup>11</sup> As the plaintiff has failed to satisfy the likelihood of success prong, the court need not address the public interest concerns. See *Fordyce*, 457 Mass. at 255 n.10.

**ORDER**

For the aforementioned reasons, it is **ORDERED** that the Plaintiff's Motion for a Preliminary Injunction is **DENIED**.

  
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Raffi N. Yessayan  
Justice of the Superior Court

DATED: October 10, 2019