



City of Cambridge

Executive Department

YI-AN HUANG
City Manager

CMA 2025 #53
IN CITY COUNCIL
March 17, 2025

To the Honorable, the City Council:

In response to Awaiting Report #24-58 which requested that the City Manager confer with the Finance Department, Law Department, and other relevant departments to explore the feasibility of a successor program to Rise Up Cambridge, please find attached response from Megan Bayer, City Solicitor.

Very truly yours,

Yi-An Huang
City Manager



Megan B. Bayer
City Solicitor

Elliott J. Veloso
Deputy City Solicitor

Kate M. Kleimola
First Assistant City Solicitor



Assistant City Solicitors
Paul S. Kawai
Sean M. McKendry
Diane O. Pires
Sydney M. Wright
Evan C. Bjorklund
Franziskus Lepionka
Andrea Carrillo-Rhoads

CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Public Records Access Officer
Seah Levy

March 17, 2025

Yi-An Huang
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: *Awaiting Report No. 24-58 of September 23, 2024, requesting that the City Manager confer with the Finance Department, Law Department, and other relevant departments to explore the feasibility of a successor program to Rise Up Cambridge.*

Dear Mr. Huang:

I write in response to the above-referenced City Council order (“Council Order”), requesting an opinion from the Law Department, the Finance Department, and other relevant departments regarding the feasibility of a successor program to Rise Up Cambridge. As discussed further below, a cash assistance program centered on addressing a recognized public purpose is likely permissible because it furthers a public purpose, but a guaranteed income program without parameters around how the money is spent may be vulnerable to a challenge.

I. BACKGROUND

1) PRIOR CASH ASSISTANCE PROGRAMS IN CAMBRIDGE

There have been two cash assistance programs in Cambridge. The first, Cambridge RISE (Recurring Income for Success and Empowerment), was a \$1.6 million, philanthropically funded guaranteed income pilot program that provided \$500 per month for 130 single caregiver households with children in Cambridge.

The second was Rise Up Cambridge: Cash Payments for Families with Kids (“Rise Up Cambridge”). Rise Up Cambridge was funded utilizing \$22 million received by the City from the federal American Rescue Plan Act (ARPA), which allowed for cash assistance payments to those who were negatively economically impacted by the COVID-19 pandemic. Rise Up Cambridge provided direct cash to low-income Cambridge households with children at or under 21 years of

age, earning at or below 250 percent of the Federal Poverty Level, and enabled eligible households to receive \$500 per month for 18 months.

The Council Order is now exploring the feasibility of a cash assistance program in Cambridge that would use City funds as the source of funds for distribution. Evaluating the legality of such a program requires assessing whether or not the payments are for a permissible public purpose and whether the payments are permissible under the Anti-Aid Amendment.

2) CASH ASSISTANCE PROGRAMS IN OTHER LOCAL MUNICIPALITIES

At least two neighboring municipalities, Somerville and Chelsea, have administered cash assistance programs for their residents, but similar to Cambridge, those programs were also funded through private donations and/or funding received in response to the COVID-19 pandemic.

Chelsea's program was initially funded through private donations, and then through ARPA funding. Chelsea is winding down this program but currently funds are transferred directly to food banks to address food insecurity.

Somerville has had three cash assistance programs, including the Somerville Cares Fund, Somerville Cares 2.0, and the Somerville Guaranteed Basic Income Program. The initial Somerville Cares Fund was administered in partnership with the United Way, and provided a one-time distribution. Somerville Cares Fund 2.0 and the Somerville Guaranteed Basic Income Program utilized ARPA funding. Somerville Cares Fund 2.0 is no longer active, and the Guaranteed Basic Income Program ends June 2025.

3) CHALLENGES TO GUARANTEED BASIC INCOME PROGRAMS

The Guaranteed Basic Income (GBI) program in St. Louis, Missouri has faced challenges including a lawsuit. The lawsuit was filed by city residents claiming that the program violated the Missouri Constitution and the city charter and argues that the city cannot give public money to private individuals. The St. Louis program was an 18-month pilot program that provided low-income families with \$500 per month. In July 2024, the court ordered the city to pause payments to families while the lawsuit was being heard. This St. Louis program is funded with ARPA funds and supplemented with private philanthropic donations. The St. Louis litigation is ongoing, but the GBI program has continued to operate but by utilizing private donations.

4) ANTI-AID AMENDMENT AND PUBLIC PURPOSE DOCTRINE

The Anti-Aid Amendment of the Massachusetts Constitution prohibits the use of public funds to aid private groups or institutions, including charitable, religious, and secular organizations, unless a public purpose is served and the aid to the private entity is ancillary. M.A. Const. art. 46, cls. 1-2. The Massachusetts Division of Local Services (DLS) of the Department of Revenue extends this prohibition under the Anti-Aid Amendment to public funds that aid individuals. Mitchell, Esq., Mary, *Municipal Expenditures: Proper Public Purposes*, Division of Local Services, Municipal Finance Law Bureau, Feb. 2006. In Commonwealth v. School Comm. of Springfield, 382 Mass. 665 (1981), the Supreme Judicial Court established a three-part test to assess whether expenditure of public funds violates the Anti-Aid Amendment: 1) what is the purpose of the spending; 2) to what extent the spending aids a private entity; and 3) whether the

spending avoids “the political and economic abuses which prompted the passage of art. 46.” The Springfield test is “not precise” and serves instead as “guidelines to a proper analysis.” Caplan v. Town of Acton, 479 Mass. 69, 74 (2018). The application of the Springfield test is fact-specific and focuses on the particular expenditures at issue.

Evaluating the legality of the proposed cash assistance payments also requires assessing whether such direct payments would constitute an impermissible use of taxpayer funds for a non-public purpose, pursuant to the public purpose doctrine. Municipalities can spend only for public purposes, and public funds cannot be used for private purposes. The City therefore cannot expend funds directly for the private benefit of certain individuals. As the Supreme Judicial Court (SJC) opined in Opinion of the Justices to the House of Representatives, 368 Mass. 880, 885 (1975):

“‘It is a fundamental principle of constitutional law frequently declared that money raised by taxation can be used only for public purposes and not for the advantage of private individuals.’ The crucial inquiry in cases such as this, where there may be benefits to private parties, is whether the private benefits are primary or are merely incidental to achievement of the public purpose. ‘The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit,’ and whether the ‘aspects of private advantage . . . are reasonably incidental to carrying out a public purpose in a way which is within the discretion of the Legislature to choose.’” (Internal citations omitted).

II. ANALYSIS OF ANTI-AID AMENDMENT

1) PURPOSE OF THE POTENTIAL CASH ASSISTANCE PROGRAM?

The first part of the Springfield test assesses whether the spending at issue is intended to serve a public purpose or evidences a hidden motive to support private groups, charitable entities, or certain individuals. When assessing this prong, courts will conduct a fact specific inquiry to see if the “primary purpose” of the funds benefits the public. Springfield, 382 Mass. at 677. If it is found that the primary purpose of the funds aids private entities rather than public needs, the spending will likely be found unconstitutional. See e.g. Bloom v. Sch. Comm. of Springfield, 376 Mass. 35, 42 (1978) (law requiring public school committees to lend textbooks to children attending private schools found unconstitutional, as its primary purpose was to aid private schools). If an expenditure serves a public purpose but also incidentally benefits a private organization, the expenditure will generally not violate the Anti-Aid Amendment. Benevolent & Protective Order of Elks, Lodge No. 65 v. Planning Bd. of Lawrence, 403 Mass. 531, 551-552 (1988).

In this case, in the event of legal challenge the City has strong arguments in favor of the “primary purpose” of the cash distributions being intended to serve a public purpose, if the City were to structure/require the funds be used to address a recognized public purpose(s) (e.g., addressing food insecurity, housing insecurity, education, job training, etc.). Compelling public interests are served by reducing the number of City residents suffering from food insecurity and facing housing instability, etc. While recipients of the cash assistance would gain some private

benefit by having additional income, the overall benefit would be found to primarily serve the public interest.

If the City were to structure the potential successor program as a “guaranteed basic income program”, the likelihood of a challenge based on the Anti-Aid Amendment is significantly greater. As further discussed below, an unrestricted cash assistance approach will likely be treated as “substantially” benefiting the individual, notwithstanding any public purpose that might also be achieved.

2) DOES THE GRANT/CASH DISTRIBUTION AID PRIVATE ENTITIES OR INDIVIDUALS?

The second part of the Springfield test assesses whether the spending, notwithstanding any public purpose, “substantially” aids an entity or individual. Springfield, 382 Mass. at 675. In evaluating this factor, courts examine both the amount of aid provided and the degree to which the aid assists the entity or individual in carrying out its “essential functions.” Caplan, 479 Mass. at 89, quoting Opinion of the Justices, 401 Mass. 1201, 1208 (1987). The aid is likely impermissible if it amounts to substantial assistance, but does not need to compromise a major portion of the total expense of a private institution to be impermissible. Id. at 357, quoting Attorney General v. School Comm. of Essex, 387 Mass. 326, 332 (1982); Springfield, 382 Mass. at 679. In the Caplan case the Court found that the aid from the town substantially aided the church because the church was seeking to use the money for a master plan study and the total cost of the master plan was \$55,000 and the grant from the town was for \$49,500. Additionally, the church had indicated that budgetary constraints have left it to make difficult choices between capital improvements and funding its projects, and having the money for the master plan would allow it to use other funds for its church programs.

Although it is not exactly apples to apples to apply this analysis to aid to individuals, if assistance was provided to individuals for housing costs, for example, it would be important to look at what the total housing costs were for the individual over some period of time, and what proportion of those costs the City was funding and/or for how long. Here, we need more information including a more detailed Program scope and budget that includes but is not limited to who would be eligible for the Program and how much each eligible individual would receive before we could evaluate whether the potential successor program would likely to be found to meet this part of the Springfield test.

3) DOES THE GRANT/CASH DISTRIBUTION AVOID THE RISKS OF THE POLITICAL AND ECONOMIC ABUSES THAT LED TO THE PASSAGE OF THE ANTI-AID AMENDMENT?

The third part of the Springfield test focuses on whether the grants “avoid the risks of the political and economic abuses that ‘prompted the passage’ of the anti-aid amendment.” Caplan, 479 Mass. at 90-91. In Helmes, the SJC “redefined the third factor in light of the circumstances of that case to consider ‘whether there is any use of public money that aids a charitable undertaking in a way that is abusive or unfair, economically or politically.’” Id. In assessing such risks, courts will examine factors such as whether the grants infringe on a taxpayer’s liberty of conscience, risk government entanglement with religion, or threaten “civic harmony” Id. at 91-94. For example, in

Helmes v. Commonwealth, the SJC found that a proposed grant for the alteration, remodeling, or repair of the battleship U.S.S. Massachusetts did not violate the Anti-Aid Amendment because “there was no evidence that any private person would benefit from it, that the funds would be distributed to a noncharitable use, or that its charitable objective —preserving a World War II battleship and educating the public — was not generally accepted [by the public].” Caplan, 479 Mass. at 91, citing Helmes, 406 Mass. at 877-878. In contrast, in the Caplan case, a town’s proposal to use Community Preservation Act funds to restore the stained-glass windows of an active Congregational Church was found to likely violate the Anti-Aid Amendment. Caplan, 479 Mass. at 96. In cases where grants were found to not violate the Anti-Aid Amendment, a common finding was that the benefits were available to the general public and not selectively beneficial to certain religious institutions, individuals, or organizations. See e.g. Helmes v. Commonwealth, 406 Mass. 873 (1990) (use of funds for battleship restoration for public memorial exhibit did not violate anti-aid amendment as the benefits were for the general public and no private person would benefit). In instances where a grant was found in violation of the Anti-Aid Amendment, a common finding was that the aid ultimately benefited specific religious groups, private institutions, or individuals. See e.g. Bloom v. School Committee of Springfield, 376 Mass. 35 (1978) (statute requiring school committees to loan textbooks to students attending sectarian or nonsectarian private schools violated Anti-Aid Amendment by its use of public property to provide aid to specific private institutions in their essential teaching functions).

Here, the proposed cash distributions would benefit the general public by serving a public purpose which in turn benefits the community. Additionally, as long as the program is available based on established criteria and/or an impartial lottery system, it is not selectively benefitting individuals. This would avoid some of the risks the Anti-Aid Amendment has in place to protect from by not selecting certain individuals for funds rather than others based on some unfair criteria or intent to just benefit a select group. It is possible that local taxpayers could argue that because of the amount of funding available the cash distributions will not be offered to the general public, but rather to just a segment of the population. However, the City will likely be able to make a good faith counterargument that the proposed cash distributions are not “abusive or unfair, economically or politically.” The cash distributions are not, by design, discriminatory on the basis of a religious denomination and are purely sectarian in nature, open to all residents who qualify. For example, if the Program had certain eligibility requirements (e.g., certain income level requirements, etc.), such conditions are secular in nature. As such, the benefits proposed do not fall under those categories of concern that traditionally gave rise to the Anti-Aid Amendment, namely state favoritism towards particular religious or private institutions.

III. ANALYSIS OF TAXPAYER FUNDS FOR PUBLIC PURPOSE

Factors courts may consider in determining whether a government expenditure properly serves a public purpose instead of improperly conveying a private benefit include, but are not limited to: (1) whether the enterprise bears directly and immediately, or only remotely and circumstantially, upon the public welfare; (2) whether, in so far as benefits accrue to individuals, the whole of society has an interest in having those individuals benefitted; (3) whether the need to be met in its nature requires united effort under unified control, or can be served as well by separate individual competition; (4) whether private enterprise has in the past failed or succeeded in supplying the want or in eradicating the evil; (5) whether the benefit is available on equal terms to

the entire public in the locality affected; and (6) whether the service or commodity supplied is one needed by all or by a large number of the public. Allydonn Realty Corp. v. Holyoke Hous. Auth., 304 Mass. 288, 293 (1939). Although the Allydonn case is an older case, these factors remain how a court would look at whether an expenditure serves a public purpose. The Massachusetts Department of Revenue stated in 2021 that the “the basic test is whether the expenditure is required for the general good of the inhabitants of the city or town.”

This list of factors is not exhaustive and there is no “universal test” to determine whether a governmental expenditure properly serves a public purpose or improperly conveys a private benefit. Id. at 292. Rather, “[e]ach case must be decided with reference to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare.” Id. The Allydonn Court also recognized that the above referenced factors “are in no sense to be regarded as exclusive of others, and that great weight or little or no weight may be attached to some of them according to the presence or absence of others, or of still other conditions not hereinbefore enumerated.” Id. at 293. Additionally, the Court has recognized that “[t]he circumstances may be such that only a relatively small portion of the inhabitants may participate in the benefits, but the use or service must be of such nature that in essence it affects them as a community and not merely as individuals.” Opinion of the Justices, 297 Mass. 567, 571 (1937).

In Allydonn, the Court held that a statute allowing for the use of public funds to develop low-income housing served a public purpose. Allydonn, 304 Mass. at 294-96. Many cases since Allydonn have also held that low-income housing is a public purpose. The courts have also held that education is a public purpose. Additionally, there are multiple state and federal benefit programs that distribute funding to individuals with the understanding that the funds will be used for certain public purposes including addressing food insecurity. For example, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) intends to help low-income families improve the health of their children and pregnant and post-partum woman, by amongst other ways, providing participants with nutritious foods. Similarly, Supplemental Nutrition Assistance Program (SNAP), is a federal government program designed to provide food assistance to low-income individuals and families, allowing them to purchase groceries and access nutritious foods they might not otherwise be able to afford.

In another older case, Attorney Gen. v. Bd. of Pub. Welfare of Northampton, 313 Mass. 675, 679 (1943), the Court held that “The support of poor persons is a public purpose for which money may be raised by taxation.” That case dealt with an early iteration of a transitional cash assistance program established by state law and administered by the state, which is now administered by the Massachusetts Department of Transitional Assistance (“DTA”). The issue in that case was what town did an individual reside in and was another town responsible for providing transitional cash assistance for dependent children even if an individual was not a resident of the subject town. The towns/cities made the payments, but they were part of a state program, set by state law. This case, along with the cash assistance programs administered by the state DTA, support that providing assistance to those living in poverty is a public purpose. However, the City cannot provide unrestricted cash assistance because there are ways in which money can be spent that do not further a public purpose.¹

¹ For example, pursuant to 106 CMR 701.225 benefits through the DTA Transitional Aide to Families with Dependent Children (TAFDC) program and Emergency Aid to the Elderly, Disabled and Children (EAEDC)

Therefore, if cash assistance is provided with parameters for its use to ensure it is used for established public purposes, to applicants who qualify financially, the assistance is a permissible use of public funds. As previously mentioned, all the tests presented are fact specific, but the City maintains strong arguments to support that the incentives provide a direct benefit to the general public.

IV. IMPACT ON PUBLIC BENEFITS

If the City were to implement a successor program to Rise Up Cambridge, there is a likelihood that cash distributions could impact recipients' eligibility for other state or federal public benefits, including but not limited to food stamps, social security, etc. For the Rise Up Cambridge Program, the City, with the assistance of its partners, obtained exemptions from various programs (e.g., SNAP, cash assistance and subsidized child care) confirming that cash distributions will not be included toward recipients' income in determining their eligibility for other programs. We do not know yet whether the City will be able to obtain exemptions from the Commonwealth for state run programs (and even if it were possible, we anticipate it will take a substantial amount of time to obtain the exemption). We believe it is highly unlikely the current administration in Washington will approve such exemptions for federal programs. For Cambridge Rise and Rise Up Cambridge the City obtained exemptions for federally subsidized housing. Ultimately if the City were to implement a successor Program to Rise Up Cambridge, the City should disclose to recipients that receipt of the cash distributions might impact their eligibility for other federal, state or local benefits, and then leave it to the recipient to determine whether they wish to proceed in participation in the program.

V. CONCLUSION

For these reasons, we think a cash assistance program requiring selected recipients to attest they are using the cash distributions toward a recognized public purpose that is pre-determined by the City, such as to combat food insecurity, housing, or education, will be unlikely to violate the anti-aid amendment. It also may be possible to provide cash assistance that can be used more generally if it is provided to support those living in poverty with their basic needs, and those basic needs are defined, or alternatively, prohibited uses are clearly defined. However, it is our opinion that a cash assistance program structured as guaranteed basic income that is unrestricted in usage, is not as defensible if challenged.

program cannot be used as follows: "A client must not use cash assistance funds held on an electronic benefit card for the purchase of alcoholic beverages as defined in M.G.L. c. 138 § 1; lottery tickets or tobacco products as defined in M.G.L. c. 64C § 1; visual material or performances intended to create or simulate sexual conduct or sexual excitement as defined in M.G.L. c. 272 § 31; firearms and ammunition as defined in M.G.L. c. 140 § 121; tattoos or body piercings; jewelry; televisions, stereos, video games or consoles at rent-to-own stores; vacation services; gambling as defined in M.G.L. c. 23K § 2; and/or for the payment to the commonwealth or any political subdivision thereof for fees, fines, bail or bail bonds ordered by a court. Any cash assistance client found to have knowingly used cash assistance benefits in violation of this section shall be required to reimburse the Department for the full amount of such use and may be subject to disqualification from the cash assistance programs."

Very Truly Yours,

A handwritten signature in blue ink that reads "Megan B. Bayer". The signature is written in a cursive style with a large initial "M" and a long horizontal stroke at the end.

Megan B. Bayer
City Solicitor