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CITY OF CAMBRIDGE

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May 31, 2023

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

Re: Response to Council Order No. O-4 of 4/10/23 Re: Legal opinion on earliest possible date that potential changes to the charter could be voted on by electorate, assuming the Charter Review Committee submits proposed changes to the City Council by the new December 31, 2023 deadline.

Dear Mr. Huang:

I write in response to the above-referenced Council Order, which requests that the City Solicitor provide a legal opinion on the earliest possible date that potential changes to the charter could be voted on by the Cambridge electorate, assuming the Special Charter Review Committee of the City Council submits proposed changes to the City Council by the new December 31, 2023 deadline. After review, my opinion is that the earliest possible date that an election could be held ultimately depends on whether the City Council follows the procedures set forth in the Home Rule Procedures Act, specifically G.L. c. 43B, §10(a), or through special legislation. If the City Council proceeds under the Home Rule Procedures Act, then the ballot question(s), if approved by a 2/3 vote of the City Council and approved by the Massachusetts Attorney General, would be on the ballot for the next regular municipal election. If special legislation is pursued, the date of the election would depend on what the Massachusetts General Court approves and the Governor enables.

I. Possible Election Dates Under G.L. c. 43B, §10(a) Process

Under G.L. c. 43B, §10(a), certain amendments to a previously adopted or revised city charter may be proposed by the city council of a city or the town meeting of a town by a two-thirds vote. The proposed amendments, however, cannot relate "in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager, or the board of selectmen or town manager." *Id.* If approved by two thirds of the City Council, a copy of the proposed amendment is then immediately submitted to the Massachusetts Attorney General and the Massachusetts Department of Housing and Community Development for review. G.L. c. 43B, §10(c). Within four weeks, the Attorney General "shall furnish the city council ...with a written opinion setting forth any conflict between the proposed amendment and the constitution

and laws of the commonwealth.” *Id.* If the Attorney General reports that there is a conflict, the amendment shall not take effect. *Id.* If the Attorney General reports that there is no conflict, then the proposed amendment can be submitted to the voters.

Under G.L. c. 43B, §11, a proposed charter amendment approved by the City Council pursuant to a two-thirds vote and approved by the Attorney General shall be submitted to the voters for their approval or disapproval at the “first regular city election” *See* G.L. c. 43B, §11 (“A proposed charter amendment shall be similarly submitted to the voters at the first such election ... held at least two months after the order proposing such charter amendment becomes effective under section ten.”) When interpreting statutory text, the plain meaning of the text must be followed. *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992); *United States v. Providence Journal Co.*, 485 U.S. 693, 700-01 (1988). Based on a plain reading of the statutory language, special elections cannot be held for proposed charter amendments pursuant to G.L. c. 43B, §10(a). Instead, state law would require that a vote on the proposed amendments be held on the City’s next regular municipal election, which would be November 4, 2025 at the earliest.

II. Possible Election Dates under Special Legislation Process

The other possible pathway regarding potential City charter amendments would be through enabling special legislation. Pursuant to Mass. Const. Amend. Art. 2, §8, a city or town may adopt or change a charter by requesting the state legislature to pass a special law. Under this process, the City Council, upon receipt of the Charter Review Committee’s report on or about December 31, 2023, would review the recommendations of the committee. The City Council may then vote whether to approve a Home Rule Petition to the Massachusetts General Court. *See* Mass. Const. Amend. Art. 2 §8 (“The general court shall have the power to act in relation to cities and towns ... and by special laws enacted ... on petition filed or approved by the voters of a city or town, or the mayor and city council or other legislative body of a city, or the town meeting of a town, with respect to a law relating to that city or town....”) *See also* Opinion of the Justices to the House of Representatives, 375 Mass. 843 (1978) (enactment of home rule amendment is not violated if general court enacted petition from city council of Plan E government city without approval of mayor). Upon local approval by vote of the City Council, the charter or charter change can be filed as a bill by a member of the City’s delegation to the General Court, with the bill proceeding through the legislative process in the same manner as other legislation. *See* Mass. Const. Amend. Art. 2 §8. The special legislation, if passed by the Massachusetts General Court and enacted and signed by the Governor, would then go before the voters on the next municipal ballot.

Under this process, scheduling the election for the ballot question(s) regarding potential charter amendments ultimately depends on what is authorized or provided for in the special legislation as passed by the state legislature and approved by the Governor. Mass. Const. Amend. Art. 2, §8 does not specify the type of election for which potential charter amendments would be voted on. As such, the election on potential amendments to the City’s charter could theoretically be conducted during either the City’s biennial municipal election or the City’s biennial state election, depending on the final language in the home rule petition that the state legislature approves and the Governor signs. Likewise, the language in Mass. Const. Amend. Art. 2, §8 does not preclude the City from requesting a special election on potential charter amendments in its home rule petition to the state legislature. Special elections can only be conducted pursuant to authorizing law or special legislation. *See e.g.*, G.L. c. 54, §140 (state law requiring special

elections be conducted “upon failure to choose a senator or representative in congress or upon creation of a vacancy in that office). Ultimately, the City Council’s Home Rule Petition would have to specify what election it wishes the ballot question(s) to be in, whether municipal election, state election, primaries, or special election. It is then up to the state legislature and governor to approve or deny the request.¹

The Massachusetts Secretary of State’s Election Division has indicated that it would not object if special legislation authorized the City to hold a local special election simultaneously on the same day as the 2024 state/federal election. However, the Election Division has also stated that it would oppose any effort to place City ballot questions, or any other kind of local question, on any state ballot.² Additionally, the state legislature may object to a local election detracting from the state/federal election in the state’s fourth largest municipality. Tanya Ford, the Executive Director of the Election Commission, has noted that conducting two simultaneous separate elections on the same day would also require increasing staffing and resources. Director Ford noted that the state would not pay for any local ballots in the event of a simultaneous election, requiring the City to cover all printing costs. Director Ford expressed further concerns regarding the risk that voters could ignore or refuse local ballots when voting if their interest is only in the state/presidential election, which would require two separate voting lists to keep track of voters who choose to vote in the state election vs. the special municipal election. Director Ford also cautioned about the need to comply with state procedures regarding the valid handling and processing of early voting, vote by mail, and absentee ballots, noting that state and local ballots would have to be separately processed and handled. For example, if a voter intermingled their state and local ballot and sealed them in the same envelope, it may result in the invalidation of both ballots due to state requirements that only the state ballot is to be sealed in the voter affirmation envelope. In another example, for biennial state elections, municipalities are allowed to count ballots that are postmarked on election day and arrive in the office by Friday after the election by 5:00 PM. However, this may not apply for simultaneously held local special elections, as for local elections ballots can only be accepted if received prior to the close of polls. This could result in local ballots being invalidated while state ballots being accepted if postmarked and mailed at the same time. Given that special legislation ultimately requires state approval, the City Council should keep these additional considerations in mind when determining which election day it wishes to petition the state legislature to approve.

¹ Prior special legislation for municipalities regarding proposed charter changes show that the question has been placed on both annual state and local elections. See e.g. St. 1983, c. 425, § 3, an act providing for a charter and an administrative code for the City of Lawrence (proposed charter amendments shall be submitted to voters in next annual city election); St. 1986, c. 136, § 2, providing for a charter for the City of Waltham (proposed charter amendments shall be placed on state ballot used for Waltham in 1986 state election); St. 1992 c. 189; St. 1994, c. 95, § 8, relative to charter of City of Lowell (proposed charter amendments shall be placed on state ballot used for Lowell in 1994 state election.); St. 2004, c. 358, § 2 (proposed charter amendments shall be submitted to voters in next annual town election).

² The Massachusetts Secretary of State’s Election Division has rejected and denied every request to place local municipal ballot questions on state ballots due to federal requirements under the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA), 52 U.S.C. § 203 (1986). Such a request should therefore probably not be placed in any proposed special legislation.

Please let me know if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Nancy E. Glowa', with a stylized flourish extending to the right.

Nancy E. Glowa
City Solicitor