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CITY OF CAMBRIDGE

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July 19, 2021

(via electronic mail to: margaret.hurley@mass.gov)

Margaret J. Hurley
Chief, Central Massachusetts Division
Director, Municipal Law Unit
Office of the Attorney General
10 Mechanic Street, Suite 301
Worcester, MA 01608

***Re: City of Cambridge comments on charter amendments proposed pursuant to
G.L.c.43B, §10***

Dear Attorney Hurley:

As you requested in our telephone conversation of last week, I am submitting these comments in my capacity as City Solicitor for the City of Cambridge on the three proposed Cambridge charter amendments that the City Council voted to submit to the Attorney General for review pursuant to G.L.c.43B, §10. At the June 28 City Council meeting, I raised two questions regarding the G.L.c.43B, §10 charter amendment process. After discussion, the City Council voted to approve the three amendments and to forward them to your office for review on June 30, 2021. I am writing to ask that the issues discussed at the June 28 Council meeting be reviewed by the Attorney General's Office in carrying out its responsibility pursuant to G.L. c. 43B, §10 (c) to provide a written opinion to the City Council as to whether the proposed charter amendments conflict with the Constitution or laws of the Commonwealth. It would be helpful if as part of the review of the proposed charter amendments the Attorney General's Office addressed the following two issues.

First, the charter amendment process set forth in G.L.c.43B, §10 requires a city council and directly elected mayor to submit certain charter amendments. In Cambridge, there is not a directly elected mayor; rather, the un-elected Cambridge City Manager is the chief executive officer under the City's Plan E Charter. The requirement in Section 10 for both the city council and the elected mayor to jointly submit charter amendments appears to exist in order to ensure

that both branches of local government agree and approve the charter amendments submitted pursuant to that section. The issue raised by the Cambridge City Council submission is whether without the agreement of a directly elected Mayor (which does not exist in Cambridge), the §10 process is available to a city council acting independently. The specific language in G.L.c.43B, §10 provides that a city council by two-thirds vote may submit charter amendments “only with the concurrence of the mayor in every city that has a mayor...,” and “mayor” is defined in the section as the elected chief executive officer of a city or an officer lawfully acting as such. The statute is silent on whether a city council alone may act.ⁱ I therefore request that you advise as to whether a proposed amendment of the City’s Plan E Charter that is submitted by a two thirds majority of the City Council alone and not with the concurrence of an appointed City Manager is permissible pursuant to G.L. c. 43B, §10.

The second issue that would be helpful to have your office address is whether the proposed charter amendment that would provide the Cambridge City Council with the power to confirm the City Manager’s appointments to local boards and commissions relates “in any way” to the “terms of office” of the City Manager, and if it does, would therefore not be an appropriate amendment to be accomplished pursuant to the G.L.c.43B, §10 process. The phrase “terms of office”, which may be understood to be used in the temporal sense, as in the duration of time, could also reasonably be construed to mean more than just how long the City Manager will serve (and in Cambridge the City Manager has no such set length-of-service restriction). “Terms of office” could be construed to mean the powers and parameters of the City Manager’s office, which a restriction on the City Manager’s appointment power would certainly relate to. G.L.c.43B, §10 provides that “...only a charter commission elected under this chapter may propose any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager...” Therefore, I request that you address the question of whether the City’s Plan E Charter may be amended pursuant to the G.L. c. 43B, §10 process where the proposed amendment seeks to limit the appointment power of the City Manager by subjecting it to City Council review and approval.

I appreciate the opportunity to submit these questions for your consideration and look forward to hearing from you. Thank you in advance for your guidance on these issues.

Very truly yours,



Nancy E. Glowa
City Solicitor

cc: Anthony Wilson, City Clerk (via electronic mail)

ⁱ Opinion of the Justices, 375 Mass. 843 (1978) relates to the power of a Plan E City Council to submit a petition for a special act to the Legislature; it does not relate to the power of a Plan E City Council to act independently under the provisions of G.L.c.43B, §10.