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# CITY OF CAMBRIDGE

Community Development Department

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**IRAM FAROOQ**  
Assistant City Manager for  
Community Development

To: Yi-An Huang, City Manager  
From: Iram Farooq, Assistant City Manager for Community Development  
Brooke McKenna, Transportation Commissioner

**SANDRA CLARKE**  
Deputy Director  
Chief of Administration

Re: [Awaiting Report 24-19](#) dated March 25, 2024 re. incentives for residents  
who don't own cars

Date: July 23, 2024

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We write in response to the above-referenced policy order regarding whether the City could provide incentives for residents who do not have cars, such as Massachusetts Bay Transportation Authority (MBTA) passes, Bluebikes memberships, or others. Please find below our response. The Law Department's analysis is provided under separate cover.

As you might expect, research shows that owning a car increases the likelihood that people drive<sup>1</sup>. While City policy aims to help reduce traffic deaths and injuries, lower emissions, pollution and congestion, and lessen the damage to and wear on city roads by reducing driving, we have not offered the type of incentive contemplated in this Council Order. In addition to the legal implications discussed in the Law Department's memo, this type of incentive also has budget and equity considerations, as described below. Instead, the City has focused on programs and policies that make it safer, more affordable, and more convenient to walk, bike, and take public transportation, which makes it easier for residents to live without owning a private car in Cambridge.

### **Infrastructure That Separates Bikes from Motor Vehicle Traffic and Provides Bus Priority**

We have made significant investments in infrastructure to support sustainable transportation. From 2004 to 2022, the total miles of bicycle facilities have more than doubled. Bicycle facilities that are physically separated from motor vehicles have increased by 80%. In the same time frame, the number of people riding bikes counted in the intersection count program nearly tripled.

We are currently progressing designs for three separate off-road paths dedicated for walking and biking. Over the next few years, we anticipate adding or rebuilding 2.86 miles of dedicated active transportation paths to the City's growing network.

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344 Broadway  
Cambridge, MA 02139  
Voice: 617 349-4600  
Fax: 617 349-4669  
TTY: 617 349-4621  
[www.cambridgema.gov](http://www.cambridgema.gov)

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<sup>1</sup> [https://www.edf.org/sites/default/files/CARB\\_Report\\_Handy\\_UCDavis\\_VMT.pdf](https://www.edf.org/sites/default/files/CARB_Report_Handy_UCDavis_VMT.pdf)

Additionally, with the construction and installation work planned for FY25, there will be:

- 0.7 more miles of dedicated bus lanes (total 3.2 miles)
- 10 more locations with signal priority for buses (total 14)
- 2 more locations with dedicated signals for head-start/queue-jump bus movements (total 6)

### **Cambridge and Massachusetts Programs That Support Using the MBTA and Bluebikes**

Through the Parking and Transportation Demand Management Ordinance and Planning Board Special Permit conditions, the City requires some property owners to provide MBTA pass subsidies and Bluebikes memberships to employees at their sites. There are currently 57,000 employees in the TDM program, which accounts for 38% of Cambridge workers, some of whom are also Cambridge residents. The vast majority of the properties have a transit subsidy requirement and a growing number have a Bluebikes membership requirement, which we began to require in 2013. Some Cambridge residents at multi-family buildings also receive limited-time MBTA and Bluebikes benefits through Special Permit requirements.

In addition, there are subsidized transportation benefits that are available to people with low incomes. The publicly-owned Bluebikes regional bikeshare system has an income-eligible membership program. Cambridge residents can apply to join the program. Residents qualify if they are older than age 16; have a credit, debit, or prepaid card to pay for fees; and show proof of enrollment in income-based assistance programs like SNAP, LIHEAP, Housing Choice Voucher (Section 8), MassHealth, Pell Grants, Public Housing, SSI/SSDI, and WIC or demonstrate income within guidelines.

Cambridge provides assistance for completing applications with in-person appointments, telephone support, or e-mail support. In-person appointments can be held at City buildings at 344 Broadway or 119 Windsor Street. If approved, the resident sets up a Bluebikes membership on a reduced cost monthly or annual plan. The monthly plan costs \$5 per month and the annual plan costs \$50 per year. On either plan, an income-eligible Bluebikes member has unlimited free 60-minute classic bike rides, 7-cents-per-minute e-bike rides, and no unlock fees.

This summer, the MBTA is launching an income-eligible reduced fare program. This is in addition to the existing reduced fare programs for youth aged 18-25, students in middle and high school, and seniors aged 65 or older. Riders will apply to join the income-eligible reduced fare program, and qualify if they are a Massachusetts resident, with a government-issued ID, between the ages of 26 and 64, and enrolled in a number of income-based assistance programs like SNAP, TAFDC, EAEDC, or a number of MassHealth programs. If approved, the MBTA will mail a personalized reduced fare CharlieCard to the rider, which will be valid for 1 year. With this CharlieCard, a rider can purchase a monthly bus/subway pass for \$30, a 7-day bus/subway pass for \$10, or pay per ride at a 50% discount. Users of THE RIDE, paratransit, will also pay a discounted fare. We do not have a sense of how many residents may be eligible at this time.

## How Much Impact Would a Car-Free Incentive Program Have?

It is instructive to learn about other cities' programs to address car ownership. Santa Monica and South Los Angeles, CA, Hoboken, NJ, and Seattle, WA, have implemented various forms of car-free or car-light incentive programs, but research indicates that their success is mixed.

The budget needed to support a car-free incentive program available to all Cambridge residents would be significant. There are more than 20,000 car-free residents who could be eligible for an incentive.<sup>2</sup> If the City provided a one-month bus/subway pass, the program cost would be more than \$1.8 million per month, or over \$20 million annually. The cost of providing annual Bluebikes membership would be more than \$2 million per year.

In addition, national research shows that people with higher incomes have more vehicles in their households than people with lower incomes, and that higher-income households drive more than lower-income households<sup>3</sup>. An incentive aimed at compensating people for getting rid of their cars would effectively be providing support to higher-income households, who already experience more financial security and would likely require a substantial incentive to motivate them to get rid of a car.

### Current planning

Our own Cambridge [Net Zero Transportation Plan](#) (NZTP) Advisory Group is currently discussing potential actions to encourage people to reduce car ownership and reduce car trips. The group agrees that if fewer people own cars in Cambridge, there could be less competition for parking and less car traffic. But the group also acknowledges that it would be good to support carshare services or occasional access to ridehail and taxi rides, since not every car trip can be replaced by buses, trains, and bikes. In recent discussions, Advisory Group members noted that the City shouldn't perpetuate inequities by giving an incentive to people who can afford to own cars. Additionally, they noted that the City should recognize and value large, multi-generational families who can reduce the number of cars they own, even if they don't get to zero cars in the household.

The NZTP Advisory Group also noted that a possible alternative to launching a car-free incentive program could be if the state authorized the establishment of a Universal Basic Income program that would allow people to choose how they spend their money. This would also reduce the burden on people with low incomes to demonstrate eligibility for various programs. With continued improvements and supports for walking, biking, and taking public transportation, it could become a natural choice to drive less in and around Cambridge.

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<sup>2</sup> 17,101 roommates aged 16+ living without a vehicle + 3,063 zero-vehicle family households. Source: 2018-2022 5-year American Community Survey

<sup>3</sup> <https://www.fhwa.dot.gov/policy/23cpr/chap3.cfm#access-to-vehicles>

Megan B. Bayer  
Acting City Solicitor

Elliott J. Veloso  
First Assistant City Solicitor



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

Public Records Access Officer  
Seah Levy

## CITY OF CAMBRIDGE

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

August 5, 2024

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

**Re: *Awaiting Report No. 24-19 of March 25, 2024, requesting that the City Manager work with the Law Department, the Community Development Department, and the Traffic, Parking and Transportation Department to determine whether the City could provide incentives for residents who do not have cars.***

Dear Mr. Huang:

I write in response to the above-referenced City Council order (“Council Order”), requesting an opinion from the Law Department, the Community Development Department (CDD), and the Traffic, Parking, and Transportation Department (TPT), regarding whether the City could provide incentives for residents who do not own motor vehicles, such as Massachusetts Bay Transportation Authority (MBTA) passes, BlueBike memberships, or other such inducements. As discussed further below, the proposed incentives are likely permissible because they further a public purpose and are available to the general public, but it is possible a challenge can assert that the incentives risk being unfair because they provide benefits to only a segment of the population who can live and work without needing to own a motor vehicle. CDD and TPT’s response is provided under separate cover.

### I. BACKGROUND

In essence, the proposals in the Council Order would constitute direct financial incentives with taxpayer funds to residents based on a particular status: whether the resident owns a motor vehicle. Evaluating the legality of such financial incentives requires assessing whether or not the payments are for a permissible public purpose and whether the payments are permissible under the Anti-Aid Amendment.

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). Application of the Springfield test is fact-specific and focuses on the particular expenditures at issue.

Evaluating the legality of the proposed financial incentives 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 Council Order Grants/Incentives?

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 incentives being intended to serve a public purpose. The City maintains compelling public interests which are served in reducing the number of vehicles on its public ways. Motor vehicle reduction reduces the City’s severe traffic congestion and enhances public safety by reducing the potential of collisions with pedestrians and cyclists. Encouraging City residents to use public transportation instead of owning motor vehicles reduces the City’s greenhouse gas emissions, furthering the City’s climate change reduction and mitigation goals. These incentives also improve public quality of life for residents. While recipients of the incentives do gain some private benefit in having greater personal access to public transportation options, the overall benefit would be found to primarily serve the public interest.

2) Does the Grant/Incentive Aid Private Institutions or Groups?

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 must amount to substantial assistance but does not need to compromise a major portion of the total expense of a private institution. Id. at 357, quoting Attorney General v. School Comm. of Essex, 387 Mass. 326, 332 (1982); Springfield, 382 Mass. at 679.

In this case, the proposed financial incentives would likely to be found to meet this part of the Springfield test. The cost of the incentives proposed in the Council Order, such as MBTA passes, would likely not be found to constitute such assistance as to be “essential” to the individuals receiving them.

3) Does the grant/incentive 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 incentives would benefit the general public by reducing car ownership and would be available to any member of the public who does not own a car. It is possible legal challenges could arise from members of the public who could benefit from the incentives offered but cannot due circumstances requiring them to own a vehicle. For example, residents who require a motor vehicle for work, education, disability access, or other professional or personal needs who would otherwise benefit from the public transportation options offered could challenge the incentives. Residents who need vehicles as an essential part of their employment could also challenge the incentives legality, such as rideshare drivers, delivery drivers, technicians, or other trades that require to bring equipment onsite (e.g. plumbers, electricians). It is also possible that a challenge could allege that the incentives are “unfair, economically or politically” because only residents who would benefit are either those who already have the financial means to afford not owning a motor vehicle or those who already exclusively use public transportation for their work and personal needs.

That said, the City can raise good faith counterarguments that the incentives as currently conditioned are permissible. The proposed benefits are offered to the general public and not just a segment of the population, even if not everyone will avail themselves of the incentives. Additionally, the proposed incentives are not “abusive or unfair, economically or politically.” The incentives are not, by design, discriminatory on the basis of a religious denomination and are purely sectarian in nature, open to all residents who qualify. The condition imposed in order to qualify, whether or not a person owns a vehicle or not, is also 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.

For these reasons, we think the proposed incentives do not violate the anti-aid amendment, but there could be a possible challenge and we cannot say for certain how a court would ultimately decide after conducting a fact-intensive analysis.

### III. ANALYSIS ON TAXPAYER FUNDS FOR NON-PUBLIC PURPOSE

Under the SJC's standard, the incentives must confer a "direct public benefit of a reasonably general character" to a "significant part of the public, as distinguished from a remote and theoretical benefit" and any private benefits must be merely "incidental" to carrying out the public purpose. Opinion of the Justices to the House of Representatives, 368 Mass. at 885. In this case, the proposed incentives could be challenged on the grounds that they do not benefit a "significant part of the public" because only people who do not own motor vehicles would benefit. The incentives' criteria therefore exclude significant portions of the general public, including residents who could otherwise benefit from the incentives but for their need to own a vehicle based for employment, education, or similar reasons. It can therefore be argued that the benefit from the incentives lacks the "general character" required to survive legal challenge.

Again, however, the City has arguments against these claims. The proposed benefits are offered to the general public and not just a segment of the population, even if not everyone will avail themselves of the incentives. Arguments can also be made that the reduction in car usage ultimately benefits a significant portion of the public through public safety improvements, meeting the City's climate goals, and traffic reduction. 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.

Very Truly Yours,

  
Megan B. Bayer  
Acting City Solicitor