



City of Cambridge

Executive Department

YI-AN HUANG
City Manager

CMA 2026-288
IN CITY COUNCIL
October 19, 2026

To the Honorable, the City Council:

Please see attached a memo from Megan Bayer, City Solicitor, Elliott Veloso, Deputy City Solicitor, and Kate Kleimola, First Assistant City Solicitor, relative to Awaiting Report 26-50 regarding requirement of Eversource to submit weekly certified payroll documentation.

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



CITY OF CAMBRIDGE

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

Assistant City Solicitors

Paul S. Kawai
Sean M. McKendry
Diane O. Pires
Sydney M. Wright
Evan C. Bjorklund
Franziskus Lepionka
Andrea Carrillo-Rhoads
Joseph R. Posner

Public Records Access Officer

Seah Levy

September 30, 2026

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

Re: Awaiting Report 26-50, of August 3, 2026 that the City Manager determine whether the City may require Eversource, and any contractors or subcontractors working on Eversource's behalf in Cambridge, to submit weekly certified payroll documentation for work performed in Cambridge's public ways

Dear Mr. Huang:

We have prepared this memorandum in response to the above-referenced Policy Order of August 3, 2026 ("Policy Order"). The Policy Order requests the City Manager:

- (1) *"determine whether the City may require Eversource, and any contractors or subcontractors working on Eversource's behalf in Cambridge, to submit weekly certified payroll documentation for work performed in Cambridge's public ways;"*
- (2) *"include a determination of whether utility work performed by or on behalf of Eversource in Cambridge's public ways is presently subject to Massachusetts prevailing wage and certified payroll requirements and, where such requirements do not presently apply, whether Cambridge may establish payroll-reporting or wage-compliance requirements through permits, regulations, agreements, ordinances, home-rule legislation, or other legally available mechanisms;"* and
- (3) *"include whether payroll reporting may be required as a condition of street-opening permits, trench permits, obstruction permits, utility permits, traffic management approvals, or any other City approval connected to work in the public way."*

This memorandum discusses the legal background and seeks to answer the Council's questions.

Background

Municipalities in Massachusetts have broad authority to regulate local affairs. This authority extends to the "exercise [of] any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the [state]."¹ Generally, a local ordinance must further the public health, morals, safety, or some other facet of the general welfare.²

When determining whether a local ordinance or regulation is inconsistent with a state law, courts look into whether there was either an express legislative intent to forbid local activity on the same subject, whether the local ordinance or regulation would somehow frustrate the purpose of the state law, or whether the legislative intent may be inferred because state legislation on the subject is so comprehensive.³

In state laws and court rulings on utilities, courts have consistently ruled that state laws are so comprehensive that legislative intent to forbid local activity can be inferred.⁴ For example, Newton was allowed to charge an administrative fee, but no other fees, to utility companies seeking permits because the state law explicitly states that utility companies must seek written consent from municipalities, and municipalities may recoup costs associated with granting that permission.⁵ On the other hand, Somerville was not allowed to require utility companies to use certain contractors and certain materials for street paving and street repair after excavation.⁶

Weekly Payroll Records and Payroll Reporting as a Condition to Certain Permits

The Council's first question is "*whether the City may require Eversource, and any contractors or subcontractors working on Eversource's behalf in Cambridge, to submit weekly certified payroll documentation for work performed in Cambridge's public ways...*"

The Council's third question is whether "*payroll reporting may be required as a condition of street-opening permits, trench permits, obstruction permits, utility permits, traffic management approvals, or any other City approval connected to work in the public way.*"

While Eversource must obtain the City's written consent before performing utility work, the City may not burden Eversource with any additional conditions in obtaining

¹ Ma. Const. Am. Art. 89; see *Bd. of Appeals of Hanover v. Hous. Appeals Comm. in Dep't of Cmty. Affs.*, 363 Mass. 339, 358 (1973).

² *Sperry and Hutchinson Co. v. Director of the Division on the Necessaries of Life*, 307 Mass. 408, 418 (1940); *Marshal House, Inc. v. Rent Review & Grievance Bd. of Brookline*, 357 Mass. 709, 717 (1970).

³ *Boston Gas Co., v. City of Somerville*, 420 Mass. 702 (1995).

⁴ *Boston Gas Co., v. Town of Bedford*, 444 Mass. 775 (2005).

⁵ *Boston Gas Co., v. City of Newton*, 425 Mass. 697 (1997).

⁶ *Boston Gas Co., v. City of Somerville*, *supra*.

those permits, except that the City may recoup its costs for granting any permits. For example, the City may require only that Eversource meet the requirements as set out in M.G.L. c. 82A, ss. 2 & 3, and may recoup its costs before issuing an excavation permit.

If the City were to require Eversource, or its contractors or subcontractors, to provide weekly certified payroll documentation for work performed in Cambridge's public ways, a court would very likely rule that such an ordinance is preempted by state law, because the state laws are so comprehensive that the state legislature's intent to forbid local activity can be inferred.

Prevailing Wage Act⁷

The Council's second question is *"whether utility work performed by or on behalf of Eversource in Cambridge's public ways is presently subject to Massachusetts prevailing wage and certified payroll requirements and, where such requirements do not presently apply, whether Cambridge may establish payroll-reporting or wage-compliance requirements through permits, regulations, agreements, ordinances, home-rule legislation, or other legally available mechanisms."*

The Prevailing Wage Act applies to private companies, including utility companies, if the work being performed is a "public work," unless another state law states otherwise.⁸ Because the law gives the Commissioner of the Department of Labor and Standards ("Commissioner") authority to implement the Prevailing Wage Act, much of its interpretation appears in the Commissioner's determinations. The Commissioner has determined that any road or other work conducted only for the benefit of, at the direction of, and using funding provided by a private utility company is not covered under the Prevailing Wage Act.⁹ If, however, utility or related work is being conducted in "the construction of a public work," the private utility company or its contractors would be subject to the Prevailing Wage Act. For example, the installation of an underground conduit system, which was part of a construction project for a local school, was covered by the Prevailing Wage Act.¹⁰

In response to the Council's question about whether the City can "establish payroll-reporting or wage-compliance requirements" through its permitting process, regulations, agreements, ordinances, or home-rule legislation, we believe the City cannot. If, however, the City contracts with Eversource on a public works construction project, Eversource would likely be subject to the Prevailing Wage Act and would likely be required to provide weekly certified payroll records to the City for that project.¹¹

⁷ M.G.L. c. 149, ss. 26 and 27.

⁸ For example, M.G.L. c. 6C, s. 44(c) states that utility relocation work performed on a Massachusetts Department of Transportation construction project by a utility company's employees is not subject to the Prevailing Wage Act.

⁹ Letter to Early and Marino, Felix A. Marino, Co., August 29, 1994.

¹⁰ Letter to Burger, Foundation for Fair Contracting, July 6, 2001.

¹¹ Of note, the Attorney General's Office is empowered to enforce the Prevailing Wage Act, not local municipalities.

Conclusion

In summary, the City cannot impose restrictions on a utility company beyond the legal requirements for the permit sought and recouping its own costs for issuing the permit. Even if the permit relates to work in a public way, a court would likely find that state law preempts the additional payroll-reporting requirement. However, if the City contracts with Eversource for work on "construction of public works," Eversource, its contractors, and subcontractors will likely be subject to the Prevailing Wage Act and need to provide weekly certified payroll records to the City for that project.

Very truly yours,


Megan B. Bayer
City Solicitor