



ORDINANCE COMMITTEE

COMMITTEE MEETING

~ MINUTES ~

Monday, July 26, 2021

5:30 PM

Remote Meeting

The Ordinance committee will meet to continue discussion on two proposals to regulate campaign donations.

Attendee Name	Present	Absent	Late	Arrived
Dennis J. Carlone	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Marc C. McGovern	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Alanna Mallon	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Patricia Nolan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Sumbul Siddiqui	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
E. Denise Simmons	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	6:00 PM
Jivan Sobrinho-Wheeler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Timothy J. Toomey	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	5:45 PM
Quinton Zondervan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

That the City Council adopt a municipal ordinance to reduce or limit campaign donations from donors seeking to enter into a contract, seeking approval for a special permit or up-zoning, seeking to acquire real estate from the city, or seeking financial assistance from the city; Ordinance #2020-27. PLACED ON THE TABLE IN COUNCIL NOVEMBER 8, 2021 PASSED TO A SECOND READING IN COUNCIL DECEMBER 6, 2021 TO ORDAINED ON OR AFTER DECEMBER 20, 2021

The Cambridge City Council direct the City Manager to work with the City Solicitor's Office to draft a Home Rule Petition that would cap campaign contributions to any City Council candidate to \$200 per person, per year, per candidate and limit candidate loans to \$3,000 per election cycle. REFERRED TO THE ORDINANCE COMMITTEE IN COUNCIL NOVEMBER 2, 2020



CAMBRIDGE CITY COUNCIL ORDINANCE COMMITTEE
COUNCILLOR MARC C. MCGOVERN, CHAIR

COMMITTEE MEETING
TRANSCRIPT OF PROCEEDINGS

JULY 26, 2021
5:30 P.M, SULLIVAN CHAMBER

CITY CLERK ANTHONY WILSON: The time of the meeting has arrived, and you have a quorum.

COUNCILLOR MARC C. MCGOVERN: Thank you, Mr. Clerk. A quorum of the Ordinance Committee being present, I call this meeting of July 26th, 2021 to order. The call of the meeting is to continue discussion on two proposals to regulate campaign donations.

The first summary is that the city council adopt a municipal ordinance to reduce or limit campaign donations from donors seeking to enter into a contract, seeking approval for a special permit or upzoning, seeking to acquire real estate from the city, or seeking financial assistance from the city.

Calendar item number one, uh, policy order 2020, number 240 of November 2nd, 2020. Uh, note--please note that originally on 10/26/20 agenda charter right was exercised by Councillor Simmons.

The second, uh, uh, issue that was referred to the Ordinance Committee, that the Cambridge City Council direct the city manager to work with the city solicitor's office to draft a Home Rule petition that would cap campaign contributions to any city council candidate to \$200 per person per year per candidate, and to limit candidate loans to \$3,000 per election cycle.

And that was from policy order 2020 number 253 of November 2nd, 2020. Pursuant to Chapter 20 of the Acts of 2021, adopted by the Massachusetts General Assembly and approved by the governor, the city is authorized to use remote participation in meetings of the Cambridge City Council and its committees.

In addition to having members of the council participate remotely, we have also set up Zoom teleconference public comment. Please be aware that Zoom is primarily being used for public comment. In order to watch the meeting, please tune to channel 22 or visit the Open Meeting portal on the city's website.

If you would like to provide public comment, please visit the city council section of the city's webpage. Instructions for how to sign up to speak are posted there.

Once you have completed the signup procedure, you will receive a link to the Zoom meeting. We will not allow any additional public comment sign up after 6:00 PM. Uh, all meeting, um, I'm sorry. All votes will be by roll call. Uh, Mr. Clerk, please take the roll.

City Clerk Anthony Wilson called the roll:

Councillor Dennis J. Carlone - Present

Vice Mayor Alanna M. Mallon - Absent

Councillor Patricia M. Nolan - Present
Mayor Sumbul Siddiqui - Present
Councillor E. Denis Simmons- Absent.
Councillor Sobrinho-Wheeler Jivan - Present
Councillor Toomey Jr, Timothy J - Absent
Councillor Quinton Y. Zondervan - Present
Councillor Marc C. McGovern - Present

Present-6, Absent-3. Quorum established

COUNCILLOR MARC C. MCGOVERN: Thank you, Mr. Clerk.

Um, so what we'll do is we will hear, um, we'll hear from, um, I guess I'll turn it over to my Co-Chair Councillor Carlone, if you wanna talk a little bit about your order. Um, and then maybe go to hear from the, uh, the city solicitor and just have a general discussion and then go to public comment. Are you--do you wanna talk about, do you wanna just introduce it and--and talk quickly about, give the background again?

COUNCILLOR DENNIS J. CARLONE: Thank you, uh, Co-Chair, um, McGovern. Um, yes, tonight we will be receiving, uh, information from the solicitor. Um, I did briefly speak with her today and was made aware generally of what, um, she has prepared, her office has prepared.

Um, uh, I didn't read it till just now like everybody else, but, um, I'm sure we'll have questions about that and--and talk about next steps. But basically this, um, petition was submitted, um, policy order with wording, uh, sample wording was submitted at the end of 2020. Um, we've had some meetings along the way. And the gist of this is a belief that anybody who, uh, is hoping to gain benefit from the council, um, should be limited in the amount of money they can give if they are active in seeking a purchase of land, a new contract, new Upzoning. Um, and it's something that, uh, Somerville has had in place now, I think four years. Uh, it has not been challenged. Obviously any law can be challenged.

Um, and we've discussed this on and off, and I look forward to the discussion tonight. Um, many people have asked for this, and, uh, this is a response to the public. And, um, this doesn't condemn any Councillor.

It--it just basically says some people, especially when they give large amounts of money, expect a reaction in return. And, uh, public minded, there are communities in New Jersey that have passed somewhat similar, though each one is unique, but somewhat similar, uh, laws on this. So, uh, that's all I'm gonna say. I look forward to the solicitor's comments and the public discussion. Thank you, Mr. Co-Chair.

COUNCILLOR MARC C. MCGOVERN: Thank you, Councillor. Um, and then I'll just say quickly on the second one that, um, uh, I was part of filing, um, you know, the thought came up that if the goal or the concern that people have is that money buys influence, then that can cross all kinds of different lines. You could make the argument that someone who gets a curb cut that the council votes on raises their property values.

And therefore, are we gonna say that a resident who would benefit from a curb cut can't contribute to a campaign? Um, a downzoning petition could, some would argue, would raise people's property values.

And so the second order was really to say, "Look, if we're gonna be serious about campaign contributions and the influence that campaign contributions perceivably have," and again, I, you know, there's a lot of--I've served with a lot of you and a lot of Councillors over the years, and whether I agree with them or disagree with them, or whether they send me a Christmas card or I send them a Christmas card, I don't believe I have ever served with anybody who has sold a vote.

And, um, but we're talking perception here. Um, and so, you know, are we gonna say, so, uh, if--if money in politics is not a good thing, where we're saying it could lead to something perceivably not a good thing, then a \$1,000 contribution from someone who wants to, you know, build, you know, expand their business or build a--build a building, how is that different than a \$1,000 contribution from a resident who want--who has a downzoning petition in front of the city, or who often comes before the city, you know, to--to make a position.

So, you know, my concern, and I think the concern, I won't speak for my colleagues who signed onto it was, you know, we seem to be saying that this type of money is okay, this type of money isn't okay. But if we--if we're saying that money in politics overall is not okay, then we should have a broader, uh, that should apply to everybody.

And so that was the--the second. Um, councillors, I don't wanna get--I wanna, you know, we'll have time to debate these, but I'll let you explain what your, you know, what was the reason behind your proposal, and I'm just explaining what the reasoning--reasoning was behind ours. So, um, do you have something quick Councillor Carlone?

COUNCILLOR DENNIS J. CARLONE: Yes. I just wanna say the downzoning example is the same. They would not--they would be limited to \$200. It's the zoning.

COUNCILLOR MARC C. MCGOVERN: Okay. Well, I think

there--there might be some language changes we--we might have to make, because there's specifically says upzoning. And so that's a different than downzoning, right? So, um--

COUNCILLOR DENNIS J. CARLONE: That's fine.

COUNCILLOR MARC C. MCGOVERN: That might be some of the confusion that some--some folks who have written us with concern, because the way it's written, it would appear that it's only applying to a certain perspective and not another. So, but we do have this legal, um, again, I just got it too, so I haven't really read through it.

So, um, Solicitor Glowa, can you kind of walk us through this? And I don't know, do you need an--do you need the clerk to share? Do you need to--do you need to share your-- it might be good just to have it up on the screen so that we can all read through it together and the public can see it.

CITY SOLICITOR NANCY GLOWA: Through you, Mr. Chair--

COUNCILLOR MARC C. MCGOVERN: Hold on Solicitor--Madam Solicitor, Councillor Nolan, real quick.

COUNCILLOR PATRICIA M. NOLAN: Thank you, Chair McGovern. I just wonder if this was just literally email to all of us, I guess a few minutes ago. Has this already been put online so that people, if there are people, I don't even know if anybody's listening to the meeting, but that it is available to the public.

Because we often have this, when it's a last minute thing, nobody even knows about it. And I know this is very last minute, but is there a way to actually make sure that this is in the public domain, or I guess if there's not that many people watching, it suggests that there's-- they're not a lot being lost from this, but I would be concerned that we're discussing a pretty detailed legal memo without, and I know you're trying to get it on screen, but that's really hard to read.

COUNCILLOR MARC C. MCGOVERN: At this point, Councillor, we have one person, um, who's not on the panel or, uh, in the--in the room. So, um, but I think it should, I mean, if we can share it on screen, I'd like to have it all right in front of me, um, if we could. So,

CITY SOLICITOR NANCY GLOWA: Uh, are you ready, Mr. Chair?

COUNCILLOR MARC C. MCGOVERN: Yes. Sorry. Yes.

CITY SOLICITOR NANCY GLOWA: Thank you. Um, and I did want to apologize. Uh, we--we would have gotten to you early. We--we've had a very skeleton crew and we tried to get it to you as soon as we could, and we recognize that it's not optimal to be getting you something at the last

minute.

Um, I did email it to the council, uh, the members of the council as well as the committee chairs as well as the clerk. And I don't know whether the clerk has any staff available that could forward it to the people who put things online. But if that's possible that--then that would be, uh, great. Um, I will explain what I submitted to the, uh, committee now.

So, uh, there--as each of the co-chairs just mentioned, there were two different council orders asking for actions to be taken with respect to, um, in--in the first instance, um, that was submitted by Councillor Carlone and others with respect to limiting campaign donations, especially by individuals seeking financial reward from the city, typically, meaning if they have a contract or some other financial arrangement with the city.

And then, um, a different council order was submitted by Councillor McGovern and others, um, seeking to cap all campaign contributions, uh, to anyone by anyone at \$200, uh, per election--per year, per election. Um, so what I--what we have put together in my office is a brief, uh, cover letter just explaining that I've submitted.

So if I could go back a little bit further, the--so these are two calendar items that were, uh, I don't remember why they turned into calendar items, but the first one was calendar item number three of May 17th, 2021, which was, uh, referring back to an earlier calendar item number one of November 2nd, 2020, with a draft ordinance that was submitted by the councillors who submitted that order.

And the calendar item number 3rd of May 17th, 2021 was seeking, um, an update with respect to that. And I believe asking for a Home Rule petition to be prepared, I think that's what that asked for. Calendar item number four, uh, also of May 17th, 2021, um, specifically asked for a home repetition capping all campaign contributions at \$200 per person, per year, per election.

What we have done was to take the, uh, proposed ordinance that was submitted to calendar item number three of May 17th, and red line it. And that redlined document is submitted in the package, which is before the council presently. Um, and if there's a way to put it online, it can be easily seen in its redlined form by people.

We have also submitted a Home Rule petition that could be submitted with the draft ordinance, um, to the legislature, because as I believe we've discussed at one of our earlier committee meetings, we believe that this, uh, would definitely not, uh, be permissible legally without

Home Rule, um, relief. So we had advised that and we were asked to prepare the Home Rule petition, which we have done and is included in this packet.

And then what we've also done is prepared a fairly detailed legal analysis, um, with essentially, uh, responses to each of these two calendar items, um, as a traditional, uh, sort of legal memorandum, council order response, um, going through our analysis with respect to both of them.

So, I would say, um, the--the overarching issue here is that, um, there are First Amendment issues that are raised with respect to trying to limit people's ability to make campaign contributions. And because it involves the First Amendment, uh, the case law is fairly [inaudible 00:16:07] differences in different jurisdictions in the analysis.

So what we have done, um, so I'm looking at, so I guess the clerk is looking at page, uh, one, no two. Um, so page one, uh, just says that we, uh, what I basically just explained in my introduction. Then in the discussion section of our memorandum, um, we talk about the, uh, constitution and Home Rule powers and why we believe that a home repetition is necessary.

Then going on to talk about the actual, um, relief that's being sought with respect to the Home Rule petition and the ordinance. On page three, there is a section entitled First Amendment Requirements for Laws Imposing Limitations on Campaign Contributions.

And in that section, we start by noting again that there are, um, fundamental First Amendment interest that the courts have recognized that the courts are concerned about, um, limitations on people's ability to make campaign contributions would interfere with, and that interference is impermissible.

So the key question there is how do you figure out where the line is and whether you've crossed it or not? Um, what the court has identified as a--a test, um, talks about, uh, whether the, uh, ordinance at issue is, uh, closely drawn to, uh, um, addressing any danger signs that, um, the limitation either prevents candidates from amassing resources necessary for effective campaign advocacy, or magnifies the advantage--advantages of incumbency to the point where they put challengers to a significant disadvantage.

And that was recognized in a case called Randall, which was a--a Supreme Court case of the United States. And the court there noted that there were, um, four potential

danger signs. Um, one, if the limits are set per election cycle rather than divided between primary and general elections. Two, the limits applied to contributions from political parties.

Three, whether the limits are the lowest in the country, and four, whether the limits are below limitations previously upheld by the Supreme Court. The court then went on to say that if one of these dangerous signs exists, the reviewing court must then determine whether the campaign contribution limitation is closely drawn by considering the following five factors.

The first is whether the contribution limits will significantly restrict the amount of funding available for challengers to run competitive campaigns.

The second is whether political parties must abide by exactly the same low contribution limits that apply to other contributors. The third is whether volunteer services are considered contributions that would count toward limit.

The fourth is whether the contribution limits are adjusted for inflation. And the fifth is whether any special justification exists that may warrant a contribution limit solo or so restrictive.

So both, uh, the--so both--both of these proposed approaches proposed in calendar Item number three and calendar item number four, do implicate these concerns and require an analysis under this test.

Um, we have gone on, uh, on starting on page five to discuss, um, a more, um, specific application of these requirements to the first council order, meaning calendar item number three, which included the draft ordinance that was submitted. Um, and essentially we, uh, we then went on to go through the--the five, uh, factors that were listed that I just read, and basically indicated that we can't answer with certainty all of these questions.

We did note that whether volunteer services are considered contributions, um, is something that could be addressed by an amendment to the ordinance, which we did put in for consideration by the council. And whether the contribution limits are adjusted for inflation, which we also put in as a proposed amendment to the ordinance.

Um, the question of whether any special justification exists that may warrant a contribution limit that is so low or so restrictive as the alleged, um, limitation might be. Um, it's--it's not clear to us that such information exists that would support this.

We do know the recent circumstance in Fall River, where there was a lot of publicity in Massachusetts about

a, uh, mayor--an elected mayor and, uh, contacts within the business community and others and, uh, allegations of--of corruption. And it's--it's possible that a court might look at information that's sort of out there in the world generally as providing a sufficient sort of, uh, meeting the minimal required standard for showing that these are legitimate concerns generally in Massachusetts, let's say, um, as opposed to a more exacting analysis might suggest that the council should have information that, um, that indicates that that such corruption or influenced buying is a very real risk in Cambridge.

We aren't aware of the council having any such information, and as Council McGovern just said, he's not aware of any votes ever having been bought, so to speak in Cambridge. That was our impression also that there wasn't any such information.

Um, so this really, the First Amendment question, if this ordinance were adopted and challenged, the First Amendment issue would, uh, be in play. So there are a couple of points to note about that as far as what the, uh, our advice as to how to try to make it, um, withstand such a, uh, challenge if there were a challenge. Uh, the first is, um, sorry, uh, that, uh-- I lost my train of thought. Um, well, anyway, I'm--I'm sorry, I lost my train of thought.

COUNCILLOR MARC C. MCGOVERN: It'll come back to you, I'm sure.

CITY SOLICITOR NANCY GLOWA: Yeah. So we--we have prepared, uh, I'm sorry, the first of which is that by submitting the Home Rule petition, which as we have advised the council previously, we think is required because we do think that such an ordinance exceeds the council's Home Rule powers.

I think that if the ordinance were approved by a Home Rule petition passed by the legislature, there would be some insulation for the Cambridge City Council because it would be an act of the legislature that would be at issue. So I think that that, uh, may provide some, uh, protection, uh, perhaps, um, seem--seem more inhibiting to people to challenge it if it was something that was approved by the legislature and presumably therefore, by others in the state who look at proposed legislation before it's passed.

Um, the second thing, as I mentioned, is that in the draft ordinance, we have recommended putting in, um, provisions that would, uh, apply the CPI to the amounts in question and would, um, address whether volunteer services are considered contributions that would count, um, toward

the limit by, in--in this instance, we would say that it doesn't apply to volunteer services and expenses. Uh, the--the other factors, it's not completely clear whether they would be met or not.

But the--the final point in our analysis with respect to the second calendar item, or the so-called the,--the second council order, is that by making, um, a flat \$200 limit to every single person without any differentiation of circumstances or pointing to any factors that would suggest that there's a need for such a, uh, significant, um, across the board restriction, we think would make that approach more vulnerable to challenge.

And we therefore would recommend that the, uh, first approach seems more defensible to us from a legal point of view. Um, so that's sort of the nutshell overview of the legal analysis. And I do recognize that, uh, there may be questions either now or later, and of course, there may be another meeting if the council wanted to consider it further, because I recognize that this is a lot of material.

But if, uh, if the council committee wishes to move on from the legal analysis, we have submitted, um, a number of red line changes to the draft ordinance and as requested a petition for the committee's consideration. So I don't know whether you wanted to put that up and look at those two documents.

COUNCILLOR MARC C. MCGOVERN: Um, why don't we, I mean, obviously there's a lot here. Um, why don't we take this down and see if anyone has any questions. There's, uh, um, Mr. Clerk, I don't believe anyone is in public comment. Is that right?

CITY CLERK ANTHONY WILSON: There's no one in public comment.

COUNCILLOR MARC C. MCGOVERN: Um, what time are we at? Okay, so we're almost at closing public comment anyway. Um, why don't we maybe just see if there's any--anyone has any questions about what was just presented and legal questions, and then we can keep plugging away. Councillor Carlone. Oh, I'm sorry. Councillor, before you go, uh, Mr. Clerk, please let the record show the Councillor Toomey is indeed here.

CITY CLERK ANTHONY WILSON: Uh, noted.

COUNCILLOR MARC C. MCGOVERN: Thank you. Councillor Carlone.

COUNCILLOR DENNIS J. CARLONE: Uh, thank you, Mr. Chair. Um, Madam, uh, solicitor, you mentioned the CPI, it's just the general question. You mentioned the CPI, I

get that. Um, but as you recall, sometime in the last four years or so, the state increased the maximum from 500 to 1,000. It would seem to me, I'm sorry, it would seem to me that, um, the \$200 limit was arbitrary. I admit that. I wanted it to be more than what I was aware as the average donation.

Um, so if the maximum amount goes up to 1,200, that increase, 20%, should be applied to the 200. It's--it's sort of a relative thing. If the 1,000 doesn't go up, I don't care to be honest. But it seems to me that it should somehow be relative to the maximum. I mean, if the maximum became 5,000, it won't, then it should go up to a 1,000.

And I would just say consider that if--if fellow members think that makes sense, somehow a percentage on one number, but not on the other number doesn't seem quite right, it should be relative one to the other. That's one thought. The other no response was needed. I get it, it's just comments. The other thing is, I remember one time when we, on the council, maybe the chair remembers, when we talked about something more than public, uh, funding elections. It might have been three years ago. It might have been more, maybe less.

And I recall the solicitor said something to the effect that the council could, you might not have said restrict, I don't remember the wording, but limit or could have input on donations. You don't--I might be my friendly memory of this, and you never said that, but I think you did.

Um, what else did you--could you possibly have in mind and the kind of things we're proposing in both approaches tonight? I took that as a sign that we, as I recall, maybe nobody else does, that we could work on this area, but it almost sounds like whatever we work on, it's a first ame--possibly a First Amendment issue. Um, do you recall that or do you have a sense of what is possible without this being an issue? Seems to me almost anything would be a First Amendment issue.

CITY SOLICITOR NANCY GLOWA: Um, so, Mr. Co-Chair, I don't remember that exactly. I will say that each time we've looked at these new iterations of these questions, because we've had a number of these questions go back and forth, we submitted one response, uh, a couple years ago.

And now we've looked at this again with respect to the--the draft ordinance that, uh, you Councillor Carlone submitted, and the request to prepare a Home Rule petition, which we put together. And in reviewing the law, uh, this is--what I've just said to you, is where we have come out

in our analysis. I do not remember specifically--

COUNCILLOR DENNIS J. CARLONE: That's fine.

CITY SOLICITOR NANCY GLOWA: --if I said something different or--or why

COUNCILLOR DENNIS J. CARLONE: No--not different.

There was an implication that the council has some input on donations that we could change the law, change the ordinance, and--and that's--that's what I recall. But I'm not expecting you to remember every discussion. All right. Thank you, Mr. Chair.

COUNCILLOR MARC C. MCGOVERN: Thank you. Um, before I go to Councillor Zondervan, Councillor Simmons is with us, uh, as well. Please, uh, let the record show. Um, it is six o'clock. There's no one in public comment. So let's do a quick roll call to close public comment, and then we'll go to Councillor Zondervan.

City Clerk Anthony Wilson called the roll

CITY CLERK ANTHONY WILSON: On closing public comment.

Councillor Dennis J. Carlone - Yes

Vice Mayor Alanna M. Mallon - Absent

Councillor Patricia M. Nolan - Yes

Mayor Sumbul Siddiqui - Absent

Councillor E. Denis Simmons - Yes

Councillor Sobrinho-Wheeler Jivan - Yes

Councillor Timothy J. Toomey J - Yes

Councillor Quinton Y. Zondervan - No

Councillor Marc C. McGovern - Yes

Motion passes. Yes-6. Absent-2. No- 1

COUNCILLOR MARC C. MCGOVERN: I have Councillor Zondervan, and then Councillor. Sobrinho-Wheeler.

COUNCILLOR QUINTON Y. ZONDERVAN: Thank you, Mr. Chair, and through you. Thanks to the solicitor for the, uh, legal--legal analysis. I did, um, review it quickly, and I certainly, I think I understand, um, most of it, and--and I agree with most of it. Um, I did wanna respond briefly to Councillor Carlone's suggestion.

But it seems to me, based on what's in the memo, that putting in a CPI adjustment generally is protective against legal count. But I wonder if we could, in addition to that, also put in a clause that says if the limit overall limit is increased, then we would increase this limit, um, proportionally as well.

So--so not instead of the CPI, but in addition to it. Um, so that would be my suggestion on--on that. Um, other than that, I'm prepared to--to vote this, uh, along and--and do the--do the Home Rule.

COUNCILLOR MARC C. MCGOVERN: Councillor Sobrinho-

Wheeler.

COUNCILLOR SOBRINHO-WHEELER JIVAN: I, um, just wanted to follow up, uh, uh, Ms. Solicitor, are you suggesting that--that both of these be, um, done as Home Rule petitions?

CITY SOLICITOR NANCY GLOWA: Uh, so through you, Mr. Co-chairs, um, I am suggesting that the first one is more defensible than the second one. So, um, so to that extent, I think we would recommend going with the first one.

COUNCILLOR SOBRINHO-WHEELER JIVAN: Okay. Uh, thank you. Yeah. In that case, I, um, are you, uh, would just rather not, uh, do whatever we get had as a Home Rule petition. I--I just dunno that that there's examples of the state legislature passing, uh, Home Rule petitions like this. Um, so if we can--can enact, uh, one as our own, uh, as a city council, that would be my preference.

CITY SOLICITOR NANCY GLOWA: Uh, if I may, Mr. Chair, uh, this would be following, this would be pursuant to a Home Rule repetition. So the Home Rule petition is needed to do any of these ordinances. We don't have the authority to, uh, set campaign contributions under our Home Rule powers.

So our advice is that you would need, um, a Special Act in any event, but even if the legislature approved an ordinance such as either of these proposals, there still could be a First Amendment challenge brought by anybody, um, once the ordinance is enacted.

So we're looking at both going forward to the legislature and then looking at, uh, whether it would be what we could do to best protect it from legal challenge if it were approved by the legislature, and then enacted as a city ordinance.

COUNCILLOR SOBRINHO-WHEELER JIVAN: Gotcha. And, um, do you know of any examples of the--the state legislature, uh, passing a Home Rule petition about Campaign Finance from our municipality?

CITY SOLICITOR NANCY GLOWA: Not specifically, no.

COUNCILLOR SOBRINHO-WHEELER JIVAN: All right. Uh, in that case, I mean, uh, Somerville has enacted their, um, ordinance without a Home Rule petition. That's, you know, the--the avenue I would prefer to take. Um, I'll yield back.

COUNCILLOR MARC C. MCGOVERN: Thank you. Um, before I go to Councillor Nolan, um, and--and if you could, we--we did receive an email from David Sullivan who knows quite a bit about these issues, and he had mentioned that, um, Somerville's proposal is different than what we're talking

about.

And so Somerville's proposal was able to be done by an ordinance, but it is---we're asking-- we are actually asking for something--something different. And I can pull up his email at some point and read his specific question, but I do think I'd like some clarity on--on that, because I don't think it's not, based on what he says anyway, it's not apples to apples.

Um, and so, but I'll--I've got some other questions too, but I'm gonna go to Councillor Nolan, uh, then I'll go back to Councillor Carlone.

COUNCILLOR PATRICIA M. NOLAN: Thank you, Chairman McGovern, and through you to the city solicitor. I--

COUNCILLOR MARC C. MCGOVERN: It's--it's hard to hear you, Councillor.

COUNCILLOR PATRICIA M. NOLAN: Oh, Is that better?

COUNCILLOR MARC C. MCGOVERN: That's better.

COUNCILLOR PATRICIA M. NOLAN: Okay. Um, thanks. I did wanna follow up and understand what the memo is saying, which is, I'm hearing two things. One, the first way that we would approach this, you know, that we have two options, option A, option B, and option A is more legally defensible in the view of the city solicitor.

And the other one, which is just a blanket, um, prohibition on setting a limit for every single contribution is less defensible. And yet, as--as was just indicated, sound to me like they are both, even if we just just went with the first one, while it's more legally defensible, it is not clear that we can move forward with that.

So I was interested more in the details around that. And thank you Chairman McGovern for mentioning, um, David Sullivan's email, because I believe he also raised some legal questions about whether we would be able to move forward this way. And again, I want to move forward with something. And I believe Mr. Sullivan or Esquire Sullivan, in his memo also said he applauds and wants to move forward with some kind of change, or thinks that the council is sensible and he supports the objective and the intention of this change, but let's make sure we do it in a--in a legally defensible way.

So I'm curious as to whether that memo factored into or was available to the city solicitor, if, um, she could respond to whether we can reshape ours to make sure that it is more likely to resist any kind of legal challenge, if that makes sense as a question,

CITY SOLICITOR NANCY GLOWA: Uh, through you, Mr

Chair. Uh, I did not see that until today. So we have not had time to analyze Mr. Sullivan's, um, memorandum.

COUNCILLOR PATRICIA M. NOLAN: And to follow up. In your sense is that while we may be able to move forward, we do have to have a Home Rule petition, and the Home Rule petition, even if it's passed by the state legislature, is potentially open to legal challenge. Is that correct a fair summary of what the memo that you sent us just half an hour ago?

CITY SOLICITOR NANCY GLOWA: That, in my opinion, uh, through you, Mr. Chair, you need to submit a Home Rule petition in order to, uh, enact such an ordinance because the city lacks authority to do so under its own Home Rule powers. But that if the legislature approved the ordinance and the ordinance were enacted by the city council, that wouldn't protect it a 100% from whoever wanted to challenge it on First Amendment grounds. So it still is important to look at the First Amendment analysis and to try to make sure that we prepare it, uh, as best defended as we can do, uh, without a ton more work, often in some areas that are pretty murky.

And it's not clear how you would amass the information that this factor test, uh, under the court is referring to. Um, so we, we made a couple of recommendations of specific things we thought could be done to strengthen it, but there still would be some vulnerability, we think, less vulnerability with the first option than with the second.

COUNCILLOR PATRICIA M. NOLAN: I'd love to, in the future if we continue this, really dig into what, um, Esquire Sullivan's memo was, so that I understand that. But I yield, Chair McGovern. Thank you.

COUNCILLOR MARC C. MCGOVERN: Thank you. Uh, Councillor Carlone.

COUNCILLOR DENNIS J. CARLONE: Uh, thank you, Mr. Co-Chair. Um, Mr. Chair, um, just note to my council members that if Somerville's is legal, we'll do Somerville's. I just want some action to happen. I remember when we first did this, I was accused of copying Somerville's, and how dare you? Um, which I never understood. If something works, you follow it.

But, um, I have no problem amending this to be more like Somerville's if there are issues. However, it's--this is a process. And of course, any law could be challenged, Somerville's hasn't. Um, if that's the way we need to go, we'll go in that direction. I have to really study this, and I have to have some colleagues study this before I get back, um, and know what makes sense next.

But, uh, I want to change what we have, and if it needs to be in the Somerville direction. This is based on Somerville plus other cities that have done this. And, um, granted, New Jersey law might be very different. I'm not an expert, know nothing about state laws. Um, so I'm certainly willing to do that. I do wanna move this along because it keeps the efforts moving.

Again, this was submitted in November, and we're-- it's almost like we're beginning to seriously talk about it now, almost, uh, 10 months later, uh, nine months later. So, um, we will look at that. Thank you. Thank you, Mr. Chair.

COUNCILLOR MARC C. MCGOVERN: Councillor Zondervan.

COUNCILLOR QUINTON Y. ZONDERVAN: Thank you, Mr. Chair, through you, um, I did review David Sullivan's letter again, just now. And my understanding is that the-- the difference that causes us to require a Home Rule and-- and theirs does not, is that ours also tries to encumber future campaign contributions whereas the Somerville ordinance only limits the city entering into contracts with people who have made certain contributions in the past.

So that ordinance doesn't speak to limiting anyone's contributions, it speaks to limiting who the city goes into a contract with. Whereas our proposal does that. And then also, um, limit--tries to limit future campaign contributions by those individuals.

So if we wanted to align our ordinance with Somerville's, then we would at the least have to remove that provision so that it was no longer, um, encumbering future campaign donations, but only, um, limiting the city to entering the contracts with people who had made certain contributions in the--in the recent past.

COUNCILLOR MARC C. MCGOVERN: Right. I think that, and I was gonna read what Mr. Sulli---uh, what David had--had written, but I think that's right because that we can limit who the city does business with in some ways, but that's not a First Amendment issue. That eliminates the whole First Amendment issue.

Somerville's doesn't say someone who's seeking an upzone and can't contribute to a campaign, right? They don't say that. They say the city's not gonna enter into a contract with someone who has donated money. So that is a totally, I mean, it is--it's not-- so to say Somerville's hasn't been challenged, it hasn't been challenged because it's not doing what--what we're trying to do. Um, and so yeah, I think we would have to do it to avoid that challenge, or at least minimize that challenge, we would

have to do something closer to what they're doing than what we're proposing here.

And that's probably a different. I don't expect, Madam Solicitor, I don't think you're prepared to, I don't know if you've thoroughly looked at the Somerville proposal and prepared to do that. But, um, I think that's exact--I think Councillor Zondervan, I think that's exactly right. I mean, that's--we're asking to limit campaign contributions to candidates, and Somerville didn't do that, and that's the First Amendment glitch that we're--that we're in.

Um, I have a couple questions, um, Madam Solicitor, um, So actually one of 'em was around Somerville. So we--we sort of covered that. Um, how does this impact, and--and I don't know what the--there might be some wording we need to change. How does this impact, um, union contributions? Because there are certainly folks who are--are suggesting that unions have a financial interest. Is that--would this be something that would limit that, or? I mean, I guess it's sort of a broader question of kind of, and this again, was something that Mr. Sullivan brought up in his, um, in his email, was sort of just how do you determine who's benefiting financially and who's not benefiting financially? Right?

And, you know, obviously some things are more obvious than others, but one could argue anything, presumably, that, again, we're talking, and I think this goes to something you said earlier, Madam Solicitor, having to be able to prove that there is some nefarious thing going on. Everybody can have--I have perceptions, I could certainly put out some, you know, perceptions if I wanted to.

Um, that doesn't make 'em fact. And so--so I guess sort of to that question of how do we decide? So mine is specifically about unions, because I'm a--I support unions. I think unions are-- don't think, I think we all do. We all take all kinds of votes in support of unions. I think unions are under attack across the country, and I don't wanna limit union's ability to advocate.

Um, but you could make the argument that if somebody's gonna build a building, unions are gonna benefit financially from that. So how do you make sense of sort of, where do you draw that line and how do we, you know, determine who--who's benefiting and who's not? Uh, you're muted, Madam Solicitor.

CITY SOLICITOR NANCY GLOWA: Uh, we--I haven't looked specifically at the union issue, but generally speaking, this, uh, analysis relates to entities, whether they're individuals or corporations or other entities. So it would

be the same analysis for an individual.

COUNCILLOR MARC C. MCGOVERN: Okay. So that mean, do I--so that it could limit that then, right? If I mean, a union is an entity, right?

CITY SOLICITOR NANCY GLOWA: I believe so. Again, I have not looked at that question. Um, but that, uh, that's what I believe.

COUNCILLOR MARC C. MCGOVERN: Okay. Councillor Carlone.

COUNCILLOR DENNIS J. CARLONE: I just wanted to--I agree with you about the concern with unions. There is more than enough construction going on in Cambridge. Even though unions show up because the developer asks them to, they're not gaining extra income, they're not gaining profit from this. There is more than enough work. If we wanna say accepting unions, that's fine with me.

COUNCILLOR MARC C. MCGOVERN: Yeah. I just, and--and you, I mean, you know, you and I talked about this earlier and--and we're on the same--we're on the same page with it. But, you know, again, this all comes, I mean, my overall, and oh, I do have--I do remember my other question for you, Madam Solicitor, is again, and we've said it all, you know, Councillor, uh, Mr. Co-chair, you mentioned it in your--in your opening, you know that this isn't about individual councillors. It's not suggesting that anybody is doing anything unethical.

But when you start governing by perception, it opens a door to all different types of perceptions. Right? And, you know, I mean, we know that, and we--we saw it in the last election that people who got union contributions, there were people in the committee, uh, in the community that were saying, you know, "Those councillors are getting those contributions 'cause they're on the take." Whatever. So, you know, that stuff's gonna happen.

And I'm just trying to limit that. I just wanna be really, really clear, you know, because we--we all may agree, right? But we know how this is gonna get played. This is all about--this is all about campaigning. This is all gonna get--we know how this is gonna get played out.

Um, so my que--uh, the other question I had, um, um, Madam Solicitor, was, so simplify this for me, okay? I know you went through this explanation before, but, um, how is it that the first, uh, proposal that basically says it--it's putting a limit on who can contribute if you're in this kind of--if you fall under this umbrella, how is that more defensible--defendable to the First Amendment rights and something that says it applies to everybody? Like if it

applies to everybody, it applies to everybody. No one can say, "Oh, you're singling me out." So I don't--I don't--I guess I'm not fully understanding that.

I mean, I thought the second one, part of the reason we did it was because we were saying let's treat everyone equally and avoid that. You know, we're saying some--some contributions are good and some contributions are bad. So I--I don't understand why the first one is less of an issue. Can you just dumb it down for me a little bit here?

CITY SOLICITOR NANCY GLOWA: Um, what the court is saying is that, so if we're trying to limit business entities and advocates who are either applying for a specific item from the city, like either a contract or a permit or perhaps, uh, zoning relief and upzoning or something acquiring real estate or other financial assistance, um, and we're saying that they are limited for a certain period of time, then we're saying that that is a limitation that, um, that there could be perceived corruption that is beyond purely what the court refers to as mere conjecture.

So there could be a suggestion that people in that situation might be more--that councillor candidates might be more influenced by people seeking that kind of benefit.

COUNCILLOR MARC C. MCGOVERN: And--and do they make any distinction? I mean, again, like I--like I mentioned earlier, I mean, someone could say if, you know, curb, again, curb cuts. Curb cuts come before us, right? Having a private driveway is gonna enhance the value of your home.

So does that mean that anyone who files for a curb cut, a resident can't contribute? I mean, again, it's just--I just--this isn't so, it--it's murky to me as to how you decide who benefits and who doesn't. I mean, we, you know, we--there were a lot of people who believed that--that, you know, that if you downzone, you're enhancing your property values. If you're upzoning, you're enhancing your property values. Um, so if someone's, if 10 residents or 20 residents sign a petition before the city, they're not allowed to contribute to a candidate, which, as a resident, like--

CITY SOLICITOR NANCY GLOWA: Well, there--there is some, uh, protection, if you will, for the council members, um, as individuals when the council as a body acts in its official capacity as a body to, uh, enact ordinances or to grant curb cuts, or any of the other votes that the council takes that affect various people's, uh, rights.

So one could say that, I mean, we've had this conversation before where some people, uh, in the public

have objected to have made statements about, um, contract zoning petitions where a developer was seeking some significant benefits in connection with the zoning proposal.

And members of the public have stood up and said, you know, that developer gave contributions to this councillor and that councillor. Um, but it--so there--there could be that perception, but there, it's--it's not, um, well, I think I'm digging myself into a hole here.

COUNCILLOR MARC C. MCGOVERN: Well, but I mean, but this just brings, I mean, to me, this just brings up the complexity of it, right? And--and so again, I mean, yes, there's some protection from the council 'cause as we take an action for a council, but it's individual votes, right?

So, you know, somebody gives me a \$1,000 to my campaign and then six months later, you know, vote for a curb cut. I typically vote for every curb cut. I don't get into that. And so I vote for their curb cut, and then could somebody turn around and say, "Ah, you violated this." And--and, you know what I mean? It's just, we--it's easy to point to the--the--the obvious ones.

It's much harder to point to the--the more nuanced ones. And those are gonna get caught up in this too. And so I just wanna make sure we're--we're moving forward is, we're very, very clear. Um, because I think we're--I think we could be getting into a murky situation. I'm gonna stop there. Councillor Zondervan and then Councillor Carlone.

CITY SOLICITOR NANCY GLOWA: If I could just add Councillor before we move on to the next question. One of the things that the court said is that if the contribution limit applied to everyone, it could potentially create the risk that candidates would not be able to effectively campaign, in other words, raise enough funds.

Um, whereas if you limit it to people who are seeking a special, uh, benefit from the city, then there's a more direct quid pro quo that is perceived to be a wrong or an ill that--that might properly be addressed.

And again, we don't have an assurance of exactly where that First Amendment line is drawn, but it does appear that if it applies, if--if a limitation applies to everyone across the board and nobody in the entire city can give any money to any candidates, uh, then that means that candidates can't raise any money and fund elections. So they have to be self-financed or not be able to, uh, do things.

COUNCILLOR MARC C. MCGOVERN: But that's--but that's not what the second thing says. It doesn't say no money. It

caps it and maybe with--maybe 200, uh, Councillor Carlone said it was sort of an arbitrary number. You know, maybe it's--so we're not saying no one can contribute to campaigns. We're--we're saying we're limiting it to equally across the board. Councillor Zondervan.

COUNCILLOR QUINTON Y. ZONDERVAN: Thank you, Mr. Chair, and through you. Um, this discussion is why I think it's really important that we have publicly financed campaigns, um, so that we don't have this problem. But until that glorious day, um, I think it is pretty straightforward to figure out that when developers come before the council, they're looking to make money.

Otherwise they wouldn't be asking us for an upzoning. Um, these other cases that--that you raise are--are more murky and therefore shouldn't apply. It's--it's really about a straightforward *qui pro quo*. If there's a direct upzoning that's going to generate a profit, which is why they're there, or if it's another kind of contract with the city, um, that--that would benefit them in some way.

Um, and you know, I agree with the--the solicitor that as--as councillors, we--we are protected in terms of our votes because we may accept different contributions but vote the same way or the other way around. And so, you know, it's not, uh, a straightforward relationship. But--but I think the--the issue here is more about how our campaigns are run and--and again, the perception of influence being, um, you know, created through--through campaign donations.

So, you know, I think what's before us is--is good enough and--and seems to pass the--the legal test, at least if we are, um, doing it through Home Rules. So I see no reason not to do that. Um, and, you know, if there's questions about, you know, is this--is this particular, you know, if citizens are submitting a zoning petition, is it, um, benefiting them or not? If there's a question, then clearly it's not obviously benefiting anyone. So it shouldn't be, um, considered a, you know, a transaction that that is to their benefit.

COUNCILLOR MARC C. MCGOVERN: Councillor Carlone.

COUNCILLOR DENNIS J. CARLONE: Uh, I just wanted to add to the conversation that if it means we have to, uh, say that anybody getting a curb cut or a downzoning cannot give money, it's fine with me. Um, I think that you'll find more people doing downzoning proposals, so they won't be forced to give money. Uh, they'll use it the other way around.

But, um, you know, I think, of course, any law you're

gonna find, that's what you pay people for. How can you get around this law? And until you put the law in effect, you don't know for sure. Um, so, um, if that's what it takes, then I say they can't do it. So be it.

If you think they gain from that, I think a curb cut is pretty much public right to any site. We look at it from a safety point of view, DPW and traffic. Other than that, um, it's automatic, fundamentally. I only can remember one that wasn't. And as far as the downzoning, um, I think it decreases the value of the chase and property, if you're only looking at economics, not quality of life. And this primarily looks economics, but if we wanna include that, so be it. Thanks.

COUNCILLOR MARC C. MCGOVERN: Um, why don't--um, Madam Solicitor, you had other parts to present, so why don't we move on to those which hopefully you can share again. And, um--

CITY SOLICITOR NANCY GLOWA: Uh, through you, Mr. Chair. Not really. I mean, the ordinance with our proposed red lines, which we would recommend that the committee either approve or not to forward to the full council with the Home Rule petition, if it's the council's--the committee's wish to forward a Home Rule petition with a--with a proposed ordinance.

So the proposed ordinance right now, we have made some red line proposed changes to it. So that has been submitted for the committee's consideration. And, uh, it would be up to all of you to decide if that's--if these changes are changes that you, uh, want to adopt.

And if so, we would finalize the draft into a clean document that we would attach to the Home Rule petition that the committee could forward to the full city council with whatever recommendation there--there was.

COUNCILLOR MARC C. MCGOVERN: Um, what about some of the things that you've heard today? Like the, some of the clarifying, like, 'cause I don't think, again, I don't have it right in front of me, so I apologize.

But, um, you know that it talks about upzoning but not downzoning, it doesn't clarify the union piece. Are those things that you need time to--do we need to file, do we need to vote on--on amendments like that? Or are those things that you--how would--how do we proceed?

CITY SOLICITOR NANCY GLOWA: Well, so Mr. Chair, I guess looking--looking at, and I don't know if you wanted to put it on the screen for people who were watching, um, if the clerk has that, um, ability, uh, but the ordinance was drafted and submitted to us for our review. The only--

we only made a small number of changes.

The first of which was that we said that the definition of a contribution would not include services provided by campaign volunteers and expenses that volunteers incur in providing such services. So that was the first of the two changes that I discussed earlier.

With respect to the zoning question that you--that the council--the committee has discussed, um, the language that was in the draft ordinance that we didn't change, uh, defines a zoning change enhancing permittees value means an increase and allow density or height, a reduction in setbacks or parking or an expansion of allowed uses.

So I think that that pretty clearly defines what would be a benefit to the proponent of the zoning change or the--or the special permit. Not it-it doesn't address detriment to others, it just talks about the benefit to the person gaining the advantage.

COUNCILLOR MARC C. MCGOVERN: And could you stop right there for a second just before you--so again, if--if you believe or if I believe that downzoning increases, uh, is a benefit, because if we build less housing, if housing becomes, and again, we can debate this, I know we have different opinions on it.

I happen to believe that if you have a scarcity of something, values go up. So if we say in number 10, value means an increase and allow density or height or reduction in civic, so would we have to amend that to say increase or decrease? 'Cause I do think it's--I do think there's a financial bene--you limit housing being built in the city. I do think property values go up.

Again, we can disagree, but I don't--I'm not sure. I'm sure we could both line--everyone could line up their own statistics to prove their case. Um, but that's what I'm asking. Do we--this is--this says an increase. Do we--if we want to address downzoning as well, do we have to change that?

CITY SOLICITOR NANCY GLOWA: Well, through you, Councillor, I, um, I have never heard anyone else assert that if I seek to down zone my property, so I can't build anything more on it, that that's a benefit to me.

COUNCILLOR MARC C. MCGOVERN: Don't put--maybe not the individual property, but a downzoning for a neighborhood or a downzoning, you know, for an area and--and that I live in this neighborhood, I want to down zone Riverside. Um, you know, it will make my property worth more if there are fewer houses for people to live in, I'm benefiting from it.

CITY SOLICITOR NANCY GLOWA: Well, that, that, if--if

you're talking about a--so a citizen petition of 10 people or more who say all of Riverside is too developed, so we wanna change everything from being, um, you know, Res C to--to Res A or something. I think that, again, this is pretty hypothetical, but my--

COUNCILLOR MARC C. MCGOVERN: But, we see it all the time. It's not that hypothetical.

CITY SOLICITOR NANCY GLOWA: Well, I don't think that's perceived as being of benefit to property owners in that area. Uh, but you are right, people can disagree about that. But generally speaking, the way developers talk about it, at least in--in discussions, for the most part, it's that the more, you know, the FAR you get, the more square footage you can build, the more money you're gonna make.

And, and often those people are people who build things, pocket the money and walk away. So they're looking at land as a commodity, and the--the more you can squeeze out of it, the more money you're making. So I think that you're getting into a much more subtle and complicated sort of layer of value if you're talking about the sort of, uh, domino effect that might make an individual's property in one district over time, more valuable if you've limited development.

Uh, uh, that's--that's a little bit more attenuated in my opinion. Um, I'm not an expert and I'm not an economist, and so you can forget everything I just said. But, um, that's certainly the--the conversations that I have generally heard seem to be suggesting that the developers benefit when there's an upzoning. So that's what I understand to be the general consensus. If you're--right, you could say upzoning or downzoning, I think that that would change the meaning of that ordinance as it was presented, I mean, that section of the proposed ordinance.

COUNCILLOR MARC C. MCGOVERN: Councillor Zondervan.

COUNCILLOR QUINTON Y. ZONDERVAN: Thank you, um, through you, Mr. Chair. I also think we're--we're somewhat debating the wrong thing here because the--the question isn't whether or not a citizen's petition would or wouldn't, um, add value to the--to the property of the--of the petitioners, the--the language talks about the permittee.

So it's--it's the person seeking a permit to do something and a downzoning petition by residence is not a permit to do something. It's, it's a petition to change the law. So I don't see how we would possibly apply that here. We're--we're specifically, again, here talking about someone who's petitioning to change the permits of

specifically for their property, because doing so would enhance their profit. And--and I think that's very straightforward to determine. The--the other situation is much more complex and--and doesn't really enter here

COUNCILLOR MARC C. MCGOVERN: Further questions, comments? Looking for hands. Councillor Nolan.

COUNCILLOR PATRICIA M. NOLAN: I agree. I wanted to follow up on something what Councillor Zondervan said, which is, would this apply to citizen petitions too? Because if upzonings, as you said, uh, Chairman McGovern, applied to an entire neighborhood, then does that mean anyone in the entire neighborhood who might benefit would be subject to this?

I thought we were talking about an individual that as if I Patty Nolan applied for a either zoning variance or special permit to increase the value of my house as an individual. That's different than if my entire neighborhood or section of the city was gonna be affected by a zoning change.

So we're--we're, I wonder if we're losing sight of what we're trying to do, which is understand a situation where I, either as a homeowner or as a developer, have a very specific and targeted and individual way that I will benefit and for the perception of a conflict of interest or--or not just perception, but a direct conflict of interest, we're trying to make sure we do everything we can to avoid that. Which is different than a, for instance, a citywide zoning. Otherwise, when you pass something like the Affordable Housing Overlay, it's everyone in the city is affected. And we're not sure which way it would go, but they would all be affected. So I think we have to be pretty careful about how we're defining it.

CITY SOLICITOR NANCY GLOWA: Um, Mr. Chair, if I could just add. If you--if you looked at the, um, proposed ordinance, and this is the language that was there that we didn't change, it defines applicant as a person who has filed an application with the city or any city related agency in any of the following situations; seeking to enter into a contract, seeking approval for a special permit, zoning change, enhancing permittee value, or approval of a planned unit development, seeking to acquire real estate from, or disposing of real estate to the city, or any city related agency, or seeking financial assistance from the city.

So I think that that more clearly distinguishes between the downzoning example that you have, uh, referred to. I don't think that--that that would be within this

definition. So a zoning change enhancing permittee value an upzoning, um, petition submitted by a developer, which is, as we've discussed, commonly referred to as contract zoning, is--is definitely, um, permittee enhancing zoning change. Uh, it adds value to the property that the developer wants to develop. Same thing with an approval for a special permit or a planned unit development.

So those things, now, I mean, we--we don't, in Cambridge, the--under the Zoning Act, the city council could be the special permit granting authority and the council is not, as you all know. It's either--it's mostly the, uh, planning board, particularly for larger projects and planned, um, unit developments.

So that doesn't really relate necessarily to campaign contributions because the planning board members are not elected. But certainly a contract zoning, uh, petition would fit within this definition. And--and I don't think that that would be true if it were.

Contract zoning is usually something that is specifically to benefit the applicant as opposed to other people, at least the--the way it's discussed in the law and in most of the examples that have come before this council.

COUNCILLOR PATRICIA M. NOLAN: Yeah, my whole point is we don't even have to worry about citywide upzonings or downzonings. This is just very specific to individuals. The point that anyone who's confused about that, I think it's important to make that distinction. This isn't about citywide zoning chain. And--and I think eventually we should consider whether we could have some kind of public financing of campaigns, you know, have some kind of pledge be at low a certain limit. I realize this is not that meeting, that's not in this ordinance, but that's something I'm interested in pursuing for the future. But I have--I have no more questions. Um, Chair McGovern, happy to yield.

COUNCILLOR MARC C. MCGOVERN: Thank you, Councillor. Um, so, um, Madam Solicitor, so if this, um, if somebody has a, um, if somebody has a per--so a permit pending before the BZA or the Planning Board that's not coming before the council, they would not just--they would be included in this too. Right? So it's not just business before the council, it's any business in front of the city?

CITY SOLICITOR NANCY GLOWA: Yes.

COUNCILLOR MARC C. MCGOVERN: So even if we're not voting on it?

CITY SOLICITOR NANCY GLOWA: Correct. Um, I mean, it--it creates that appearance. I think in reality, if it doesn't have anything to do with the council, there may be

a way of distinguishing that, but I don't think that's relevant for the purpose of this discussion.

I would point out that, if I could, um, Mr. Chair, that there is one substantive question that we have in this--in our comments in the direct ordinance, and that is in the Penalty section. Um, the language that was there says, "The enforcing authority shall be the Ethics Commission or auditor." Uh, we don't have an ethics commission in Cambridge. I think if this was modeled on Somerville's, I think they do. Um, and--and I think there's a real question as to whether the auditor would be the appropriate person or whether it could be the, uh, election commission or some other city department. So, and it could be the auditor.

So I think that that's something that council should give consideration to. And I would recommend conferring with the city manager to see if he has thoughts about which department would be the appropriate department to enforce an ordinance. Because you need staff to be able to do the work, to do the enforcement. So, um, that's a question that has been raised that we didn't offer an opinion on, but I recommend some sort of further, uh, follow up on that point.

COUNCILLOR MARC C. MCGOVERN: Thank you. Um, so, and again, I'll use myself as an example 'cause I'm not, you know, if I'm gonna throw shade on anybody, I'll throw it on myself and not--not other Councillors. But--so my sister and her husband are gonna go before I guess the BZA to get a Dorma for their house to raise--raise the roof, so that, um, which will increase the value of their home. They would not be able to contribute because they're going--even though it's not gonna come before the council, I'll never vote on it. I won't comment on it or anything. They won't be able to donate to my, or only be able to donate \$200 to my campaign, even though I have no influence on that or no vote on it?

CITY SOLICITOR NANCY GLOWA: I believe so.

COUNCILLOR MARC C. MCGOVERN: That's a little tricky for me. I get it. I'm fine for if we wanna limit anybody that has business in front of the council. If this is about the perception that the council is gonna be bought off, if something's not coming before me or not coming before us to vote on, you know, I mean, I try to stay--I only sparingly even take part in BZA and Planning Board meetings because I try to draw that line, you know, um, between our role and their role, um, and, you know, only sparingly get involved with that stuff. But, you know, if it's not gonna come

before us, if it's not gonna come before the council, then I don't see where that conflict is. Councillor Zondervan. Uh, oh, hold on. Councillor Nolan, was that from before? Because you--you were up or before?

COUNCILLOR PATRICIA M. NOLAN: That's from before.

COUNCILLOR MARC C. MCGOVERN: Okay. Councillor Zondervan.

COUNCILLOR QUINTON Y. ZONDERVAN: Thank you. Um, through you Mr. Chair. I mean, I could see it either way in terms of, you know, even if it's not before the council, but before the Planning Board or BZA, but the council is the legislative authority in the city, and so there's still an indirect, um, potential for--for seeking influence with those bodies through the council.

Um, but I can also see the other way and--and say, you know, we don't necessarily care about that because if--if the, um, applicant meets all the conditions of the--of the permit that they're seeking, then, you know, why--why are we trying to impinge them? But I'm not clear that that's, again, really in question in this language.

I mean, I think it's--it is pretty clear that if it's seeking a permit or--or a change in the--in what's allowed under the zoning, so maybe we just add a little bit of clarification language that by that we don't mean a zoning variance or a special permit that's otherwise, uh, granted by the planning board.

COUNCILLOR MARC C. MCGOVERN: Yeah, I mean, I would like, you know, I would like to make a distinction between something that comes--that comes before the Councillors for a vote and something that doesn't. Um, you know, there's a lot of things that come before the city that come before different city departments, that come before different city commissions that we don't even--half the stuff we probably don't even know about, um, and never even, you know, have no comment on or never take part in. Um, you know, and, you know, that to me seems a little more, um, anything in front of the council, fine, you know. Um, Councillor Carlone.

COUNCILLOR DENNIS J. CARLONE: Uh, depending on the solicitor's opinion, I imagine just changing a few words, we can do that. I agree with you. No way should that affect you, uh, someone in your family before the BZA.

COUNCILLOR MARC C. MCGOVERN: Not that my sister can give me more than \$200,, by the way, but--

COUNCILLOR DENNIS J. CARLONE: I heard she's down to a 100. But, uh, but I think--

COUNCILLOR MARC C. MCGOVERN: She's upset with me about bike lanes, so I might not be getting anything.

COUNCILLOR DENNIS J. CARLONE: I'm sure solicitor, there's a way to, I think,, again, I don't know, you're the expert, Madam Solicitor. There's a way to make that more specific.

CITY SOLICITOR NANCY GLOWA: I have to say, not that I'm enjoying this prospect of saying it, but, um, that if the charter changes so that councillors approve permit granting appointees, then that could present a pretty different picture.

COUNCILLOR DENNIS J. CARLONE: Yeah,

COUNCILLOR MARC C. MCGOVERN: It's true.

COUNCILLOR DENNIS J. CARLONE: It's good point. Good point. Thank you.

COUNCILLOR MARC C. MCGOVERN: All right. So what do we wanna do gang? Anyone else who hasn't spoken, who wants to speak? Um, I guess Madam Solicitor, do you--are you, I think some folks are prepared to move this out of committee. Do you feel that you, that it's ready to do that? That any changes you can make between now and whenever it comes before? My guess is it's not gonna be August 3rd, so you've got, you know, into September.

CITY SOLICITOR NANCY GLOWA: Thank you, Mr. Chair. What I would, uh, suggest is that the committee ask, um, us to-- well, these are the changes we've already recommended. I don't know whether you just wanna forward it with these recommendations without a recommendation of the committee for the council's consideration.

What I would, uh, ask you to consider is--is asking to have a recommendation from the city manager as to the question of who has enforcement authority 'cause that is an operational, um, sort of executive function that I think would be helpful to get his input on.

COUNCILLOR DENNIS J. CARLONE: I, I'm sorry. Excuse me. Mr, Chair.

COUNCILLOR MARC C. MCGOVERN: Yeah, go ahead. Could you repeat that Madam Solicitor? My computer went dull at one moment.

COUNCILLOR MARC C. MCGOVERN: And repeat it exactly the way you want us to say it so I can just say, so moved.

CITY SOLICITOR NANCY GLOWA: Sure. So the last--the next to the last section of this proposed ordinance talks about penalties. And, um, so what it defines what a--what a violation would be. And we would--we recommend that the fine would be up to \$300 per day for each violation. And that each day is a separate violation, which is standard language in all of our ordinances.

Then the remaining question is, uh, the language that

was here said, "The enforcing authority shall be the Ethics Commission or auditor." I assume this was borrowed maybe from Somerville. We don't have an ethics commission.

So the question is, would both the council and the manager, uh, agree with it being the auditor who has a limited staff, uh, or the ethics commission, the city clerk, the city, you know, who--who--should be the enforcement personnel and who has the staff to, uh, carry out the enforcement responsibilities? 'Cause there often are, you know, you have to investigate, you have to make a determination. So usually we recommend that the council confers with the manager for--for the question of who's gonna be the enforcement personnel.

COUNCILLOR MARC C. MCGOVERN: Councillor Carlone.

COUNCILLOR DENNIS J. CARLONE: Uh, totally agree. Um, this was one of the things that we wanted to talk to you with. And we're talking about it now. We put that in because we had no idea what to change it to and that we knew would come up in this meeting. Totally agree. We take your recommendation on how to proceed, uh, before there's a vote in council. Totally agree.

COUNCILLOR MARC C. MCGOVERN: All right. So why don't we take care of that now? 'Cause you--you said, Madam Solicitor, you need a motion. So on a motion by Councillor Carlone to request an opinion from the city manager as who would be the enforcement authority to this Ordinance. Does that cover it?

CITY SOLICITOR NANCY GLOWA: Yeah.

COUNCILLOR MARC C. MCGOVERN: Okay. Roll call.

CITY CLERK ANTHONY WILSON: On that motion.

City Clerk Anthony Wilson called the roll

Councillor Dennis J. Carlone - Yes

Vice Mayor Alanna M. Mallon - Absent

Councillor Patricia M. Nolan - Yes

Mayor Sumbul Siddiqui - Yes

Councillor E. Denis Simmons - Yes

Councillor Sobrinho-Wheeler Jivan - Yes

Councillor Timothy J. Toomey J - Yes

Councillor Quinton Y. Zondervan - Yes

Councillor Marc C. McGovern - Yes

Motion passes. Yes-8. Absent-1

CITY SOLICITOR NANCY GLOWA: Mr. Chair. The--the other request I would have is that you let somebody make a motion to ask, uh, the city solicitor to finalize the changes that we've made in this red line draft and any other changes that we consider, uh, appropriate. And to submit it, um, to the counsel at the--in a meeting in September for

consideration, um, when this matter is referred back to the full council for a vote.

COUNCILLOR MARC C. MCGOVERN: Okay. Councillor Carlone.

COUNCILLOR DENNIS J. CARLONE: I would love to just amend that saying that, uh, I'll meet with the solicitor at her convenience just to go over the things, so to try to make it something that we support as the petitioner. Just normal discussion.

COUNCILLOR MARC C. MCGOVERN: That doesn't--that doesn't need to go in the motion. Right? You're just saying that, but you wanted it--

COUNCILLOR DENNIS J. CARLONE: I was putting it in there.

COUNCILLOR MARC C. MCGOVERN: Oh, okay. All right. So what--what's the language on there?

COUNCILLOR DENNIS J. CARLONE: That, I--that the petitioner will meet with the solicitor on her final draft prior to sending it to the council.

COUNCILLOR MARC C. MCGOVERN: Okay.

CITY SOLICITOR NANCY GLOWA: Um, Mr. Chair, if I could suggest that the Co-Chair Carlone meet with the city solicitor.

COUNCILLOR DENNIS J. CARLONE: I like that

COUNCILLOR MARC C. MCGOVERN: Okay. Um, so that--so, but the first part is that the city solicitor incorporate the changes, how did you say it, Madam Solicitor?

CITY SOLICITOR NANCY GLOWA: Uh, um, through Mr. Chair, I think I would suggest that, uh, the motion be that the, uh, Co-Chair Councillor Carlone meet with the city solicitor and finalize the changes proposed in the Red Line draft and any other appropriate changes for submission back to the full council at a meeting in September.

COUNCILLOR MARC C. MCGOVERN: Great. Roll call.

CITY CLERK ANTHONY WILSON: On that motion.

City Clerk Anthony Wilson called the roll

Councillor Dennis J. Carlone - Yes

Vice Mayor Alanna M. Mallon - Absent

Councillor Patricia M. Nolan - Yes

Mayor Sumbul Siddiqui - Yes

Councillor E. Denis Simmons - Yes

Councillor Sobrinho-Wheeler Jivan - Yes

Councillor Timothy J. Toomey J - Yes

Councillor Quinton Y. Zondervan - Yes

Councillor Marc C. McGovern - Yes

Motion passes. Yes-6. Absent-1

COUNCILLOR MARC C. MCGOVERN: Pleasure of the

committee. Councillor Zondervan.

COUNCILLOR QUINTON Y. ZONDERVAN: Thank you, Mr. Chair. Maybe I'm confused, but I don't think we referred it out of committee yet, though.

COUNCILLOR MARC C. MCGOVERN: We have not. That vote hasn't happened yet. We're just passing motions to the solicitor and the manager for further action. Councillor Carlone.

COUNCILLOR QUINTON Y. ZONDERVAN: Well, I would love--

COUNCILLOR DENNIS J. CARLONE: Thank you, Mr. Chair. I was gonna say the same thing. I would move that we move it forward

COUNCILLOR MARC C. MCGOVERN: As a---as the lead sponsor, Councillor Carlone, I'll give you the honors.

COUNCILLOR DENNIS J. CARLONE: Thank you.

COUNCILLOR MARC C. MCGOVERN: Uh, on a motion by Councillor Carlone, are you--what's your recommendation, favorable, neutral?

COUNCILLOR DENNIS J. CARLONE: Uh, favorable.

COUNCILLOR MARC C. MCGOVERN: On a motion by Councillor Carlone to move the first ordinance. I don't, again, I don't have the number right in front of me to the city council with a favorable recommendation--Oh, Councillor Toomey, discussion?

COUNCILLOR TIMOTHY J. TOOMEY, Jr: Uh, no. Uh, just, uh, thank you, uh, Mr. Co-chair. I'll be voting present on this 'cause I haven't seen the final version in front of me. So, um, I voted for the motions, but I will, uh, hold my final vote until I see what is finally before us. Thank you.

COUNCILLOR MARC C. MCGOVERN: Thank you. Councillor Nolan, discussion?

COUNCILLOR PATRICIA M. NOLAN: Yeah. Just to be clear, we are only voting on the first ordinance one, not the second one that had been proposed. Is that correct? We're moving without--

COUNCILLOR MARC C. MCGOVERN: Correct.

COUNCILLOR PATRICIA M. NOLAN: Okay. Thank you.

COUNCILLOR MARC C. MCGOVERN: Any further discussion?
Roll call.

CITY CLERK ANTHONY WILSON: On that motion just to--

COUNCILLOR DENNIS J. CARLONE: I think Madam Solicitor wish to add something.

COUNCILLOR MARC C. MCGOVERN: Oh, sorry.

CITY SOLICITOR NANCY GLOWA: Sorry. Thank you. Um, Mr. Co-chair. Mr. uh, Chair, um, Councillor McGovern. Um, I thought it should be, um, clear that the favorable

recommendation was to forward the proposed ordinance that was before the committee with the changes that will be included after Mr. Co-Chair Carlone meets with the city solicitor. And, um, to make it clear that as--as Councillor Toomey just said, you don't have the final version in front of you, so you're forwarding it with a favorable recommendation to make these changes, which would come back to the council

COUNCILLOR MARC C. MCGOVERN: And--and as has happened in other, you know, in other cases, um, all we're doing is moving this out of committee. There'll be changes that will come before the council. There will be further discussion at the council. So if folks are not comfortable with those changes, 'cause we don't really know what they're gonna totally be at this point, or if people have other amendments that they would like to add, there will be opportunity, uh, to do that. So all we're doing is kind of moving this down the--down the road.

CITY CLERK ANTHONY WILSON: Mr. Chair?

COUNCILLOR MARC C. MCGOVERN: Yes, uh, Mr. Clerk

CITY CLERK ANTHONY WILSON: Through you, um, that being the case, I would recommend to the--to the motion maker that you'd refer, 'cause all you've got before you is the current language that you refer that language out without a recommendation.

COUNCILLOR DENNIS J. CARLONE: That's fine.

COUNCILLOR MARC C. MCGOVERN: Okay.

COUNCILLOR DENNIS J. CARLONE: That's fine.

COUNCILLOR MARC C. MCGOVERN: Okay. So we're referring the current language out to the council with no recommendation, and then we'll make the amendments and you guys are gonna make amendments and bring that forward in September. Okay. Okay. Uh, on that, um, motion to move, uh, the first ordinance to the full city council with no recommendation. Roll call.

CITY CLERK ANTHONY WILSON: On referring the, um, policy order titled that the City Council adopt a municipal ordinance to reduce or limit campaign donations from donors seeking to enter into a contract. Approval for a special permit or Upzoning seeking to acquire real estate from the city, or seeking financial assistance from the city on referring that policy. Order back to the full City Council without a recommendation. Councillor Carlone.

City Clerk Anthony Wilson called the roll

Councillor Dennis J. Carlone - Yes

Vice Mayor Alanna M. Mallon - Absent

Councillor Patricia M. Nolan - Yes

Mayor Sumbul Siddiqui - Yes
Councillor E. Denis Simmons - Yes
Councillor Sobrinho-Wheeler Jivan - Yes
Councillor Timothy J. Toomey J - Present
Councillor Quinton Y. Zondervan - Yes
Councillor Marc C. McGovern - Yes

Motion passes. Yes-7. Absent-1. Present-1

COUNCILLOR MARC C. MCGOVERN: Um, Madam Solicitor, do you--you got your hands up again? Is that something new?

CITY SOLICITOR NANCY GLOWA: Yes. Thank you, Mr. Chair. And through you. Um, we had recommended that this should be done through submission of a Home Rule petition to the legislature. And we--we submitted a draft petition to the council together with this draft ordinance. So, uh, it is obviously for the committee to vote on, but my recommendation is that the council vote, the, uh, home, uh, sorry for the Home Rule petition to the full council as well.

COUNCILLOR MARC C. MCGOVERN: Okay. And--and it's, I would assume that that Home Rule petition may change, right? Depending on what--if the--if the ordinance changes, will that--you may have to amend, um, potentially?

CITY SOLICITOR NANCY GLOWA: I don't-- through you, Mr. Chair, I don't think so, because it's pretty simple. It just says that the ordinance as attached here too, is allowed and it can, um, change in any ways that are within the city's powers. Um, although it does say those persons and entities defined in the ordinance are who is subject. So yes, you're right. That--that could change if the text of--

COUNCILLOR MARC C. MCGOVERN: But that's fine. I mean, you'll just bring it up forward. All right. So on forwarding the home room petition to the Full City Council, roll call.

CITY CLERK ANTHONY WILSON: On that mo--on that motion.

City Clerk Anthony Wilson called the roll

Councillor Dennis J. Carlone - Yes
Vice Mayor Alanna M. Mallon - Absent
Councillor Patricia M. Nolan - Yes
Mayor Sumbul Siddiqui - Yes
Councillor E. Denis Simmons - Yes
Councillor Sobrinho-Wheeler Jivan - Yes
Councillor Timothy J. Toomey J - Present
Councillor Quinton Y. Zondervan - Yes
Councillor Marc C. McGovern - Yes

Motion passes. Yes-7. Absent-1. Present-1

COUNCILLOR MARC C. MCGOVERN: Okay. Now, regarding the second one, um, you know, I obviously, I don't think there's support for it. And--and the legal opinion is that it probably wouldn't stand anyway. I just will just say again for the, you know, for the record, I think if, and this goes to maybe the publicly financed elections or however we're gonna do that.

If we--if we really feel that money in politics is a problem, um, then that is---the \$1,000 contribution from a Harvard professor is the same as a \$1,000 contribution from someone else. If money buys influence, then all money buys influence.

And so I think we need to take a look at this if we're really serious about it. Um, you know, how do we make this more fair across the board? So, I guess, what do I--does this just, it doesn't, does this just expire? Does--What--Do we have to do anything with that second one to?

CITY CLERK ANTHONY WILSON: If it stays in committee, it will expire at the end of the term. If you send it to the full city council, then the council can vote it up or down.

COUNCILLOR MARC C. MCGOVERN: Uh, let's just let it go. I just--I'd rather not bring it to the council and then have more debate. We're gonna have enough debate over the first one. Um, you know, if it's--if it just dies, it dies. Okay. Um, anything else? Seen none. On a motion by Councillor Carlone to adjourn. Roll call.

CITY CLERK ANTHONY WILSON: On that motion.

City Clerk Anthony Wilson called the roll

Councillor Dennis J. Carlone - Yes

Vice Mayor Alanna M. Mallon - Absent

Councillor Patricia M. Nolan - Yes

Mayor Sumbul Siddiqui - Yes

Councillor E. Denis Simmons - Yes

Councillor Sobrinho-Wheeler Jivan - Yes

Councillor Timothy J. Toomey J - Yes

Councillor Quinton Y. Zondervan - Yes

Councillor Marc C. McGovern - Yes

Motion passes. Yes-8. Absent-1.

COUNCILLOR MARC C. MCGOVERN: All right. Good night everyone. Thank you. Uh, see you bright and early tomorrow. Well, 10 o'clock anyway.

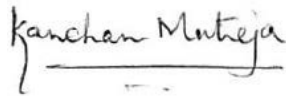
COUNCILLOR DENNIS J. CARLONE: Yeah, it's early. Good night.

The Cambridge City Council Ordinance Committee adjourned at approximately 7:00 p.m.

C E R T I F I C A T E

I, **Kanchan Mutreja**, a transcriber for Datagain, do hereby certify: That said proceedings were listened to and transcribed by me and were prepared using standard electronic transcription equipment under my direction and supervision; and I hereby certify that the foregoing transcript of the proceedings is a full, true, and accurate transcript to the best of my ability.

In witness whereof, I have hereunto subscribed my name this 12th day of January 2023.

A handwritten signature in cursive script that reads "Kanchan Mutreja". The signature is written in black ink and is positioned above a horizontal line.

Signature of Transcriber