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CITY OF CAMBRIDGE

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

November 6, 2023

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

Re: Response to Awaiting Report 23-63 re: prepare a proposed Home Rule Petition relative to amendments to the Fair Housing Ordinance, as discussed at the Ordinance Committee meeting on September 12, 2023

Dear Mr. Huang:

At the Ordinance Committee meeting on September 12, 2023, the Committee discussed amendments to protect family inclusion and relationship diversity and requested that the City Manager direct the Law Department to prepare a proposed Home Rule Petition relative to amendments to the Fair Housing Ordinance (the "Ordinance"). Attached for the Council's consideration is a Home Rule Petition that seeks to amend Chapter 413 of the Acts of 1991 Authorizing the City Council of the City of Cambridge to Amend Chapter 14.04 of the Cambridge Municipal Code Entitled "Fair Housing."

At the September 12, 2023 Ordinance Committee, the question was raised as to why the amendments to the Ordinance required a Home Rule Petition. The Ordinance was originally enacted pursuant to the powers conferred by the Commonwealth on the City pursuant to Chapter 413 of the Acts of 1991. The Ordinance incorporates the substantive provisions and protections of Title VII of the Civil Rights Act and of 1968 and Massachusetts General Laws Chapter 151B. The Ordinance required legislative approval because it goes beyond the City's police powers. In particular, under the Ordinance the Human Rights Commission has authority to assess civil penalties not to exceed \$10,000 for the first violation and \$25,000 for a second offense. The Ordinance also regulates certain aspects of civil (landlord tenant) relationships for example requiring reasonable modifications of rental units for persons with disabilities. Regulation of

civil relationships is not within the powers of a municipality without legislative approval.¹ For these reasons, the Ordinance required legislative approval, and thereafter, any amendments require a Home Rule Petition to amend the original 1991 Act. The Ordinance was last amended in 2019 when the Legislature approved Chapter 118 of the Acts of 2019.

Additionally, the Human Rights Commission has considered the Council's proposed amendments to the Fair Housing Ordinance and the Human Rights Commission Ordinance² but it did not take a position on the Council's proposed amendments to the Domestic Partnerships Ordinance since the Commission does have jurisdiction over the Domestic Partnerships Ordinance. I recommend that the Council adopt further amendments to the Domestic Partnership Ordinance to be consistent with the proposed amendments to the Fair Housing Ordinance and the Human Rights Commission Ordinance. The redlined amendments were accepted by the Ordinance Committee on September 12, 2023, and I recommend the following further highlighted amendments for consistency:

Amend Chapter 2.119 – Domestic Partnerships as follows:

2.119.010 Recognition and scope.

A. The City Council recognizes the diverse composition of its residents citizenry and values its people. The City Council acknowledges that the people's lives have evolved from when laws governing family relationships were enacted. Perpetuation of the traditional definitions of "family" excludes a significant segment of the Cambridge population, deprives them of recognition and validation, and denies certain rights that should be afforded to persons who share their homes, their hearts and their lives. The City, recognizing its commitment to nondiscrimination and fair treatment of its residents citizens and employees, adopts this chapter acknowledging domestic partnerships.

B. The chapter allows persons in committed relationships who meet the criteria established by the City as constituting domestic partnerships to register at the office of the City Clerk and obtain a certificate attesting to their status. The chapter recognizes certain right of access for domestic partners. This chapter, in conformance with the Human Rights Ordinance, which bars discrimination on the basis of race, color, sex, age, religious creed, disability, national origin or ancestry, sexual orientation, relationship status, family structure ~~family and relationship structure~~.

¹ Massachusetts Constitution, Amendment Article 89, Section 7 states: "Nothing in this article shall be deemed to grant to any city or town the power to ... (5) to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power ..."

² Unlike the Fair Housing Ordinance, amendments to the Cambridge Human Rights Commission Ordinance ("HRO") do not require a Home Rule Petition. In *Bloom v. City of Worcester*, 363 Mass. 136 (1973), the Court upheld the City of Worcester's authority to enact a municipal ordinance establishing a human rights commission with powers to receive and investigate complaints, hold hearings, issue subpoenas, etc. The Court held that such an ordinance did not violate section 7(5) of the Home Rule Amendment of Article 89 of the Amendments to the Mass. Constitution and is consistent with G.L. Chapter 151B. The HRO provides remedies that are within the authority granted by the City's police powers. The HRO, at Section 2.76.170 of the Municipal Code, states: "[T]his chapter shall be deemed an exercise of the police power of the City...". Remedies for violations of the HRO are limited to filing a criminal complaint in District Court; levying a civil fine of up to \$300 for each violation (per day), enforceable by non-criminal disposition as set forth in G.L. c.40, §21D, filing a complaint in Superior Court for injunctive relief, filing a complaint in a court of appropriate disposition seeking damages, etc.

gender identity, marital status, ~~and~~ family status, military status, and source of income, also equalizes the treatment of City employees.

2.119.100 Retaliation.

No person shall discriminate or retaliate against a person who seeks the benefit of this chapter, registers or makes a declaration pursuant to its provisions, or assists another person in obtaining the benefits of this chapter to enter into a domestic partnership between two or more people. Any person who so discriminates or retaliates shall be penalized in accordance with the provisions of the Cambridge Human Rights Ordinance, Cambridge Code Chapter 2.76.

I will be available to answer questions about these amendments and the Home Rule Petition at the Council's meeting.

Very truly yours,



Megan B. Bayer
Acting City Solicitor

AN ACT RELATIVE TO AMENDING CHAPTER 413 OF THE ACTS OF 1991 AUTHORIZING THE CITY COUNCIL OF THE CITY OF CAMBRIDGE TO AMEND CHAPTER 14.04 OF THE CAMBRIDGE MUNICIPAL CODE ENTITLED "FAIR HOUSING".

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. The City Council of the City of Cambridge is hereby authorized to amend Chapter 14.04.010 through Chapter 14.04.090 of the Cambridge Municipal Code entitled "Fair Housing" as follows:

Sections

14.04.010	<i>Authority</i>
14.04.020	<i>Powers and duties of the Cambridge Human Rights Commission</i>
14.04.030	<i>Definitions</i>
14.04.040	<i>Unlawful practices</i>
14.04.050	<i>Complaint procedures</i>
14.04.060	<i>Remedies</i>
14.04.070	<i>Review of Commission's decision; Enforcement of Commission's order</i>
14.04.080	<i>Consistency</i>
14.04.090	<i>Severability</i>

Section 2. Title 14 - FAIR HOUSING

14.04.030 Definitions.

14.04.030 D In the third line add the words "relationship status, family structure," after the words "sexual orientation".

14.04.030 G In the third line add the words "relationship status, family structure," after the words "sexual orientation".

14.04.030 K Move the definition of "Gender identity" down to 14.04.030 L and replace 14.04.030 K with the following:
"Family structure" means a single person, or two persons, or a lawful consensual non-monogamous or lawful consensual multi-partner family structure which may include one or more parents, stepparents or legal guardians of a minor child or children and/or two or more consenting adults in a multi-partner and/or multi-parent family structure, including stepparents, multi-generational and/or other non-nuclear families.

14.04.030 L Move the definition of "Housing set aside for, or limited to, the elderly"

- down to 14.04.030 M and replace 14.04.030 L with the definition of “Gender identity” [currently located at 14.04.030 K].
- 14.04.030 M Move the definition of “Marital status” down to 14.04.030 N and replace 14.04.030 M with the definition of “Housing set aside for, or limited to, the elderly” [currently located at 14.04.030 L].
- 14.04.030 N Move the definition of “Military status” down to 14.04.030 O and replace 14.04.030 N with the definition of “Marital status” [currently located at 14.04.030 M].
- 14.04.030 O Move the definition of “Person” down to 14.04.030 P and replace 14.04.030 O with the definition of “Military status” [currently located at 14.04.030 N].
- 14.04.030 P Move the definition of “Real estate transaction” down to 14.04.030 Q and replace 14.04.030 P with the definition of “Person” [currently located at 14.04.030 O].
- 14.04.030 Q Move the definition of “Reasonable attorney’s fees and costs” down to 14.04.030 R and replace 14.04.030 Q with the definition of “Real estate transaction” [currently located at 14.04.030 P].
- 14.04.030 R Move the definition of “Religious creed” down to 14.04.030 T and replace 14.04.030 R with the definition of “Reasonable attorney’s fees and costs” [currently located at 14.04.030 Q].
- 14.04.030 S Move the definition of “Sexual orientation” down to new subsection 14.04.030 U and replace 14.04.030 S with the following:
 “Relationship status” means the actual or perceived involvement or lack thereof of an individual in a lawful, intimate personal relationship or relationships including but not limited to interpersonal relationships between two or more consenting adults that involve romantic physical or emotional intimacy.
- 14.04.030 T Move the definition of “Source of income” to new subsection 14.04.030 V and replace 14.04.030 T with the definition of “Religious creed” [currently located at 14.04.030 R].
- 14.04.030 U Add new subsection 14.04.030 U and insert the definition of “Sexual orientation” [currently located at 14.04.030 S].
- 14.04.030 V Add new subsection 14.04.030 V and insert the definition of “Source of income” [currently located at 14.04.030 T].

- 14.04.040 Unlawful practices.
- 14.04.040 A.1 In the fourth line add the words “relationship status, family structure,” after the words “sexual orientation”.
- 14.040.040 A.1b. In the sixth line add the words “relationship status, family structure,” after the words “sexual orientation”.
- 14.04.040 A.2 In the fifth line add the words “relationship status, family structure,” after the words “sexual orientation”.
- 14.04.040 A.3 In the fifth line add the words “relationship status, family structure,” after the words “sexual orientation”.
- 14.04.040 A.4 In the second line add the words “relationship status, family structure,” after the words “sexual orientation”.
- 14.04.040 A.5 In the fourth line add the words “relationship status, family structure,” after the words “sexual orientation”.
- 14.04.040 A.6 In the sixth line add the words “relationship status, family structure,” after the words “sexual orientation”.
- 14.04.040 A.8 In the fourth line add the words “relationship status, family structure,” after the words “sexual orientation”.
- 14.04.040 9 In the fourth line add the words “relationship status, family structure,” after the words “sexual orientation”.
- 14.04.040 C.3 In the sixth line add the words “relationship status, family structure,” after the words “sexual orientation”.
- 14.04.040 C.4 In the fourth line add the words “relationship status, family structure,” after the words “sexual orientation”.
- 14.04.040 C.5 In the third line add the words “relationship status, family structure,” after the words “sexual orientation”.

The City of Cambridge authorizes the General Court to make any and all such minor or incidental changes necessary in order to effectuate passage of this Special Legislation.



City of Cambridge

Agenda Item Number 5
IN CITY COUNCIL
November 6, 2023

ORDERED: That the City Council go on record directing the City Clerk to file the attached Home Rule petition entitled: AN ACT RELATIVE TO AMENDING CHAPTER 413 OF THE ACTS OF 1991 AUTHORIZING THE CITY COUNCIL OF THE CITY OF CAMBRIDGE TO AMEND CHAPTER 14.04 OF THE CAMBRIDGE MUNICIPAL CODE ENTITLED "FAIR HOUSING".

Attachment: HRC Home Rule Order (CMA 2023 #270 : AR Response RE: 23-63 HRC Home Rule Fair Housing)