



# City of Cambridge

AMENDED ORDER

5.

IN CITY COUNCIL  
February 5, 1979

COUNCILLOR PREUSSER

WHEREAS: Douglas Randall, Attorney at Law, retained by David Vickery, Assistant City Manager for Community Development for the City of Cambridge, with the approval of the City Solicitor and the City Manager, drafted the following order which includes advice to the City Council regarding what action should be taken by the City Council relative to the petition by Councillor Preusser, et al as it relates to the Harvard Square Overlay, and

WHEREAS: Councillor Preusser had on February 5, 1979 submitted this order for which said Attorney Douglas Randall was paid to prepare by the city with the approval of the City Manager, and

WHEREAS: The vote of the City Council taken on January 22, 1979, on the final adoption of the proposed zoning ordinance amendment, creating a Harvard Square Overlay District, was recorded as six in favor, two opposed and one "present", and

WHEREAS: The presiding officer declared that the proposed ordinance failed of passage, presumably due to the filing of objections by certain landowners and the provisions of General Laws Chapter 40A Section 5, and

WHEREAS: The legal effect of such vote is in doubt by reason that:-

1. The vote of "present" may satisfy the requirement of Section 5 which reads in part as follows:-

"No zoning ordinance or by-law shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members."

# City of Cambridge

2. The recorded vote was sufficient for enactment, for reason that the portion of said section permitting protests and thereby requiring a three-fourths vote is unconstitutional under the Fourteenth Amendment to the United States Constitution in that it denies certain inhabitants of the City of Cambridge their right to the equal protection of the laws by:-
- (a) permitting certain corporate property owners and individual property owners who own substantial areas of land to exercise a greater influence upon legislative enactment of the zoning regulation of their land and lands lying adjacent thereto than is accorded to the inhabitants of Cambridge at large;
  - (b) allowing the corporate owners and individual owners to protest the proposed legislation and thereby precipitate the alleged necessity of a three-fourths vote instead of the normal two-thirds vote, which corporations are substantially exempt from real estate taxation, the major source of support of municipal services supplied equally to all land owners;
  - (c) requiring the change in the quantum of vote necessary for such legislative enactment from two-thirds to three-fourths solely as the result of a protest of landowners and not the protest of inhabitants who alone are entitled to equal representation on the city council and to the equality of opportunity to effect legislation;
  - (d) predicating the power to change the legislative quantum for passage of zoning ordinances solely upon property ownership and not upon habitation within the community; and
  - (e) imposing upon this and other proposed zoning amendments (e.g. the Riverfront District Zone, submitted to the Cambridge City Council, Spring and Summer 1973) the unique and arbitrary requirement of a three-fourths vote instead of the traditional majority vote necessary for all other regulatory legislation under the police power of States and their subdivisions, and the traditional two-thirds vote only for long term borrowings, zoning enactments, Constitutional or Charter amendments, the overriding of vetoes and other matters of extreme gravity; and

WHEREAS: The importance of this zoning enactment is such that such doubts should be resolved in favor of its passage, now therefore be it

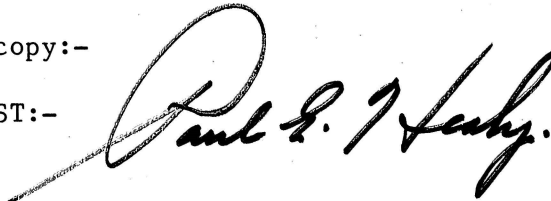
# City of Cambridge

- ORDERED: That the recorded vote on the final enactment of the proposed zoning amendment creating a Harvard Square Overlay District, as taken on January 22, 1979, be now recorded as "passed to be ordained", and be it further
- ORDERED: That the City Clerk is directed to correct his records accordingly and publish the ordinance as adopted in the usual course, and be it further
- ORDERED: That it is the policy of the City Council to defend against this possible infringement of the rights of the inhabitants of the City of Cambridge to the equal protection of the laws by such legal action as may be deemed necessary and appropriate, and be it further
- ORDERED: That the City Manager be and hereby is requested to petition the courts for a declaratory judgment affirming the validity of the enactment of said zoning amendment.

In City Council February 12, 1979.  
 Adopted as amended by a yea and nay vote:-  
 Yeas 5; Nays 4; Absent 0.  
 Attest:- Paul E. Healy, City Clerk.

A true copy:-

ATTEST:-

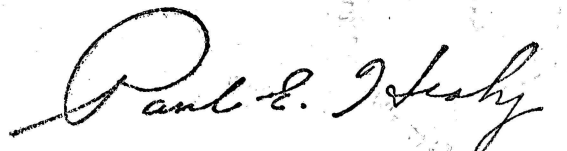


Councillor Sullivan has filed reconsideration on this matter.


DATE:

*February 29, 1979*

A TRUE COPY ATTEST:




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RECEIVED BY  
OFFICE OF CITY CLERK

MOTION FOR RECONSIDERATION SUBMITTED BY COUNCILLOR WALTER J. SULLIVAN

FEB 12 11 13 AM '79

CAMBRIDGE, MASS.

FEBRUARY 12, 1979

Date

Councillor Walter J. Sullivan has notified the City Clerk of his intention to move reconsideration of the vote of the City Council taken on February 12, 1979 adopting an order introduced by Councillor Preusser relative to recording the zoning amendment creating a Harvard Square Overlay District as "passed to be ordained".

Walter J. Sullivan  
Signature



# City of Cambridge

COUNCILLOR PREUSSER

*J. C. Vellozzi: Amendment inserted here*

IN CITY<sup>5</sup> COUNCIL

February 2, 1979

WHEREAS, the vote of the City Council taken on January 22, 1979, on the final adoption of the proposed zoning ordinance amendment, creating a Harvard Square Overlay District, was recorded as 6 in favor, 2 opposed and 1 "present"; and

WHEREAS, the presiding officer declared that the proposed ordinance failed of passage, presumably due to the filing of objections by certain landowners and the provisions of G.L. C 40 A Section 5; and

WHEREAS, the legal effect of such vote is in doubt by reason that:

1. The vote of "present" may satisfy the requirement of Section 5 which reads in part as follows:

"No zoning ordinance or by-law shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members."

AND

2. The recorded vote was sufficient for enactment, for reason that the portion of said section permitting protests and thereby requiring a three-fourths vote is unconstitutional under the 14th Amendment to the U.S Constitution in that it denies certain inhabitants of the City of Cambridge their right to the equal protection of the laws by:

- (a) permitting certain corporate property owners who own substantial areas of land to exercise a greater influence upon legislative enactment of the zoning regulation of their land and lands lying adjacent thereto than is accorded to the inhabitants of Cambridge at large;

- (b) allowing the corporate owners to protest the proposed legislation and thereby precipitate the alleged necessity of a three-fourths vote instead of the normal two-thirds vote, which corporations are substantially exempt from real estate taxation, the major source of support of municipal services supplied equally to all land owners;
- (c) requiring the change in the quantum of vote necessary for such legislative enactment from two-thirds to three-fourths solely as the result of a protest of landowners and not the protest of inhabitants who alone are entitled to equal representation on the city council and to the equality of opportunity to effect legislation;
- (d) predicating the power to change the legislative quantum for passage of zoning ordinances solely upon property ownership and not upon habitation within the community; and
- (e) imposing upon this and other proposed zoning amendments (e.g. the Riverfront District Zone, submitted to the Cambridge City Council, Spring and Summer 1973) the unique and arbitrary requirement of a three-fourths vote instead of the traditional majority vote necessary for all other regulatory legislation under the police power of States and their subdivisions, and the traditional two-thirds vote only for long term borrowings, zoning enactments, Constitutional or Charter amendments, the overriding of vetoes and other matters of extreme gravity; and

WHEREAS, the importance of this zoning enactment is such that such doubts should be resolved in favor of its passage;

NOW THEREFORE BE IT ORDERED ~~that the chairman order~~ that the recorded vote on the final enactment of the proposed zoning amendment creating a Harvard Square Overlay District, as taken on January 22, 1979, be now recorded as "passed to be ordained"; and

BE IT FURTHER ORDERED that the City Clerk is directed to correct his records accordingly and publish the ordinance as adopted in the usual course; and

BE IT FURTHER ORDERED that it is the policy of the City Council to defend against this possible infringement of the rights of the inhabitants of the City of Cambridge to the equal protection of the laws by such legal action as may be deemed necessary and appropriate; and

BE IT FURTHER ORDERED that the City Manager be and is hereby requested to petition the courts for a declaratory judgment affirming the validity of the enactment of said zoning amendment.

Order #5

*Calendar #5*

*0-11*

C. Preusser re: recording the zoning amendment creating a Harvard Square Overlay District as "passed to be ordained".

*2/5/1979*

*Charter Right*

*By*

*COUNCILLOR BRANC*

In City Council,

February 5, 1979

*2/12/79*

*Order as amended*

*Adopted 5-4-0*

*2/12/79 Recommendation*

*Filed by E. Falcioni*

*2/26/79 Recommendation*

*Proposed by E. Falcioni*

*Motion failed 4-5-0*