CITY OF CAMBRIDGE

Office of the City Solicitor
795 Massachusetts Avenue
Cambridge, Massachusetts 02139
Tel. (617) 349-4121
Fax. (617) 349-4134

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Legal Counsel

Birge Albright
Gail S. Gabriel
Arthur J. Goldberg
Linda A. Stamper
Deborah R. Cautela
Nancy E. Glowa

May 8, 1997

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Vote required on transfer tax home rule petition;
Council Order #56 of May 5, 1997

Dear Mr. Healy:

By the above-referenced City Council Order (copy attached), the Council asked why the transfer tax home rule petition currently before the Legislature contains a provision requiring approval by a majority of those voting on it, while G.L.c.43, s.40, applicable to certain ballot questions, requires approval by a majority voting on the measure which must equal at least one third of the number of voters in a city.

G.L.c.43, s.40 applies only to initiative petitions. The transfer tax petition is not an initiative petition; it is a home rule petition for special legislation. The procedure for approval of home rule petitions is set forth in the Home Rule Amendment to the State Constitution, Amend.Art.89, §8. It is consistent with the Home Rule Amendment, and frequently provided in home rule petitions, that a home rule petition be submitted to a majority of voters for approval. The Governor's and Legislature's approval of the City's home rule transfer tax petition would authorize the placement of the petition on the ballot at the next regular city election. Attorney Robin Hall in the Secretary of State's Elections Division concurs with this opinion.

As a policy matter, G.L.c.43, s.40 requires that one third of the voters in a City approve an initiative petition at least partly because initiative votes are not taken at regular elections and fewer voters might turn out to vote on initiatives only. The transfer tax home rule petiton will be voted on at the next regular City election.

Very truly yours,

Russell B. Higley

Russell B. Higley

CCM-101

City of Cambridge

56.

Dowdale

IN CITY COUNCIL

May 5, 1997

COUNCILLOR TOOMEY
COUNCILLOR DAVIS
COUNCILLOR GALLUCCIO
MAYOR RUSSELL

WHEREAS: Chapter 43, Section 40 of the Massachusetts General Laws stipulates that a law proposed by a ballot question shall become effective if it shall be approved by registered voters of the City equal in number to one third of the whole number thereof and also by a majority of the voters voting on such measure, but not otherwise; and

WHEREAS: Section 12 of the Cambridge home rule petition on the transfer tax mandates that the act shall be deemed approved by the voters only if a majority of those voting on that question cast ballots in the affirmative, without regard to the number of registered voters; now therefore be it

ORDERED: That the City Manager be and hereby is requested to confer with the City Solicitor and report back to the City Council no later than May 19, 1997 with the reasons why there is a difference in the manner in which a ballot question shall be deemed accepted with reference to the transfer tax home rule petition and Massachusetts General Laws.

In City Council May 5, 1997
Adopted by the affirmative vote of eight members.
Attest:- D. Margaret Drury, City Clerk.

A true copy; D. Margaret Drury

ATTEST:-
D. Margaret Drury
City Clerk

3.

CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139
TEL. 349-4300
FAX. 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

May 19, 1997

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 24, regarding the vote required on transfer tax home rule petition, received from City Solicitor Russell Higley.

Very truly yours,

Robert W. Healy
City Manager

RWH/mec
attachment

Consent Agenda #3

5-295

Relative to Awaiting Report Item Number Twenty-Four, regarding the vote required on transfer tax home rule petition.

In City Council May 19, 1997

PLACED ON FILE