

# City of Cambridge

MASSACHUSETTS

In City Council November 24, 2003

# Order # 2

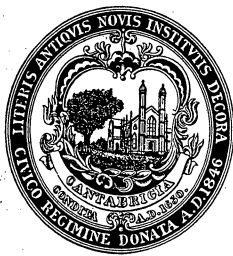
| YEA | NAY | ABSENT | PRESENT |                            |
|-----|-----|--------|---------|----------------------------|
| ✓   |     |        |         | Vice Mayor Henrietta Davis |
| ✓   |     |        |         | Ms. Marjorie C. Decker     |
| ✓   |     |        |         | Mr. Anthony D. Galluccio   |
| ✓   |     |        |         | Mr. David P. Maher         |
| ✓   |     |        |         | Mr. Brian Murphy           |
| ✓   |     |        |         | Mr. Kenneth E. Reeves      |
| ✓   |     |        |         | Ms. Denise Simmons         |
| ✓   |     |        |         | Mr. Timothy J. Toomey, Jr. |
| ✓   |     |        |         | Mayor Michael A. Sullivan  |

9 0 0 0  
 DS in recess if you swap w/  
 Reused failed 6-9

Donald A. Drisdell  
City Solicitor

Nancy E. Glowa  
Deputy City Solicitor

Arthur J. Goldberg  
First Assistant  
City Solicitor



2  
Assistant City Solicitors

Birge Albright  
Vali Buland  
Cheryl Anne Watson  
Nancy B. Schlacter  
Christine E. McGinn

## CITY OF CAMBRIDGE

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

November 24, 2003

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

**Re: *Issuance of Marriage Certificates to Same-sex Couples***

Dear Mr. Healy:

Mayor Michael A. Sullivan has requested a legal opinion relative to the legality of the City Clerk issuing marriage licenses to same-sex applicants.

As you know, the Supreme Judicial Court of Massachusetts on November 18, 2003 issued a decision in the case of *Goodridge & others v. Department of Public Health & another*, 2003 WL 22701313, (Mass. Nov. 18, 2003) (NO. SJC-08860). The Court in the *Goodridge* case declared that "...barring an individual from the protections, benefits, and obligations of civil marriage solely because that person would marry a person of the same sex violates the Massachusetts Constitution." *Goodridge*, 2003 WL 22701313 \*18. The Court went on to say that "[e]ntry of judgment shall be stayed for 180 days to permit the Legislature to take such action as it may deem appropriate in light of this opinion." *Id.* at \*18. The Mayor has asked whether or not the City Clerk has the authority to issue marriage licenses to same-sex applicants during the 180 day stay in the *Goodridge* case. I conclude that she does not.

The plaintiffs in the *Goodridge* case sought marriage certificates from a city or town clerk. In each case the clerk either refused a notice of intention to marry or denied a marriage certificate on the ground that Massachusetts does not recognize same-sex marriage. The Court noted that M.G.L. c. 207, §37 provides that "[t]he commissioner of public health shall furnish to the clerk or registrar of every town a printed list of all legal impediments to marriage, and the clerk shall forthwith post and thereafter maintain it in a conspicuous place in his office." *Id.* at FN4, \*46. In apparent understanding that it is the Department of Public Health, acting through the State Registrar of Vital Records and Statistics ("Registrar"), that interprets the propriety of an application for a marriage

certificate, the plaintiffs in *Goodridge* filed their lawsuit against the Department of Public Health rather than the individual municipal clerks.

The Court determined that the Department of Public Health was correct in concluding that M.G.L. c. 207 may not be construed to permit same-sex couples to marry. *Id.* at \*5. The Court proceeded to the larger question of whether the categorical marriage exclusion violates the Massachusetts Constitution. *Id.* at \*6. As noted above, the Court then declared that the exclusion violates the Massachusetts Constitution and stayed entry of judgment for 180 days.

In addressing a remedy, the Court in *Goodridge* noted that "...no one argues that striking down the marriage laws is an appropriate form of relief." *Id.* at \*18. Rather, the Court chose to "refine" the common-law meaning of marriage, and to declare that the exclusion of same-sex couples from access to civil marriage violates Massachusetts law. *Id.* at \*18.

The *Goodridge* case thus provides that under current statutory provisions same-sex applicants may not obtain a marriage certificate from the City Clerk. The 180 day stay imposed by the court provides time for the Legislature to review the large number of statutes that are related to marriage and marital benefits and to take such action as it may deem appropriate. Pending the stay, the case does not provide any authority for the City Clerk to issue marriage certificates to same-sex applicants. In the event that legislation is enacted consistent with the Court's decision prior to the expiration of the 180 day period, it is possible that the stay might be lifted.

The Department of Public Health, acting through the State Registrar of Vital Records and Statistics, has advised all city and town clerks by a memorandum dated November 19, 2003 that "...issuing marriage licenses to same sex couples within the next 180 days would violate the Supreme Judicial Court's ruling." While I am not certain if the Registrar sought or obtained legal advice from the Attorney General prior to issuing this directive, I have contacted the Attorney General's office and been advised that the Attorney General agrees with the position taken by the Registrar in his memorandum.

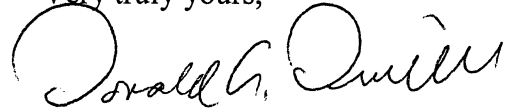
In somewhat similar circumstances in 1974, the Attorney General provided legal advice to the Registrar regarding the recording and change of birth and marriage records. *Secretary of the Commonwealth et al. v. City Clerk of Lowell*, 373 Mass. 178 (1977). The Registrar advised city and town clerks that they must allow changes to birth and marriage records in accordance with the legal interpretation of the Attorney General. *Lowell*, at 179.

The Court in *Lowell* noted that "[t]he Registrar, under the supervision of the Commissioner of Public Health (Commissioner), is to 'enforce all laws relative to the registry and return of births, marriages and deaths, and may prosecute in the name of the commonwealth any violations thereof.'" *Citing*, M.G.L. c. 17, §4, *Id.* at 182-183. The Court added that "...city and town clerks are to 'receive or obtain and record' prescribed facts relative to births, marriages and deaths, and are periodically to transmit to the Commissioner 'upon forms furnished by him' certified copies of the record. *Id.* at 182, citing M.G.L. c. 17, §§1, 17. The Court stated:

When the Registrar has obtained the advice of the Attorney General on a question of law, and the Registrar has informed the clerk of the result, it is no part of the duty of the clerk to substitute his legal judgment for that of the Attorney General.

Based both upon the express determinations in the *Goodridge* decision as noted above, and upon the directive from the Registrar, with which the Attorney General agrees, I conclude that the City Clerk cannot issue marriage certificates to same-sex applicants during the 180 day stay ordered by the Supreme Judicial Court in the *Goodridge* decision.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald A. Drisdell". The signature is fluid and cursive, with a large initial "D" and a stylized "A".

Donald A. Drisdell  
City Solicitor

**Consent Agenda #2**

Transmitting communication from  
Robert W. Healy, City Manager,  
relative to a legal opinion regarding  
the issuance of marriage certificates to  
same-sex couples.

**In City Council November 24, 2003**

**REFERRED TO POLICY  
ORDER #2.**



# City of Cambridge

O-2  
AMENDED ORDER  
**IN CITY COUNCIL**  
November 24, 2003

COUNCILLOR SIMMONS  
COUNCILLOR MURPHY  
COUNCILLOR DECKER  
COUNCILLOR REEVES  
VICE MAYOR DAVIS  
COUNCILLOR GALLUCCIO  
COUNCILLOR MAHER  
MAYOR SULLIVAN  
COUNCILLOR TOOMEY

WHEREAS: The Massachusetts Supreme Judicial Court issued a decision in *Goodridge vs. the Department of Public Health* on November 18, 2003 holding that the Massachusetts Constitution prohibits the denial of the protections, benefits and obligations of civil marriage to same sex couples; now therefore be it

ORDERED: That the City Clerk be and hereby is directed to take all necessary steps to remove any impediment to same sex marriage and to issue marriage licenses to same sex applicants as soon as it is legally possible.

In City Council November 24, 2003  
Adopted as amended by the affirmative vote of nine members.

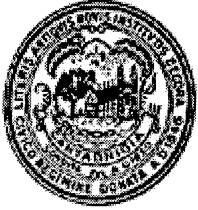
Attest:- D. Margaret Drury, City Clerk

A true copy;

A handwritten signature in cursive script, reading "D. Margaret Drury".

ATTEST:-

D. Margaret Drury, City Clerk



# City of Cambridge

O-2  
ORIGINAL ORDER  
**IN CITY COUNCIL**  
November 24, 2003

COUNCILLOR SIMMONS  
COUNCILLOR MURPHY  
COUNCILLOR DECKER  
COUNCILLOR REEVES

WHEREAS: The Massachusetts Supreme Judicial Court issued a decision in *Goodridge vs. the Department of Public Health* on November 18, 2003 holding that the Massachusetts Constitution prohibits the denial of the protections, benefits and obligations of civil marriage to same sex couples; now therefore be it

ORDERED: That the City Clerk be and hereby is directed to take all necessary steps to remove any impediment to same sex marriage and to issue marriage licenses to same sex applicants as soon as possible.

3785

**ORDER #2**

Directing the City Clerk to take all necessary steps to remove any impediment to same-sex marriage and to issue marriage licenses to same-sex applicants as soon as possible.

**Councillor Simmons, Councillor Murphy, Councillor Decker, Councillor Reeves and entire membership**

**In City Council November 24, 2003**

**ORDER ADOPTED AS  
AMENDED**