

*Re Agenda # 4**II***City of Cambridge**

MASSACHUSETTS

In City Council

August 8 198 *3*.*Motion to place the petition on the ballot at the next city election.*

	YEA	NAY	ABSENT	PRESENT
Mr. Daniel J. Clinton		✓		
Mr. Thomas W. Danehy		✓		
Mr. Francis H. Duehay	✓			
Ms. Sandra Graham	✓			
Mr. Leonard J. Russell		✓		
Mr. David E. Sullivan				✓
Mr. Walter J. Sullivan		✓		
Mr. Wylie		✓		
Mayor Vellucci	✓			
	<i>3</i>	<i>5</i>	<i>0</i>	<i>1</i>

Failed of adoption.

Agenda #4 - 8/8/83 -

City of Cambridge

MASSACHUSETTS

In City Council

August 8 1983

*Camellion Bonham motion to take the
Anti Displacement Petition from Committee
carried.*

	YEA	NAY	ABSENT	PRESENT
Mr. Daniel J. Clinton		✓		
Mr. Thomas W. Danehy	✓			
Mr. Francis H. Duehay	✓			
Ms. Saundra Graham	✓			
Mr. Leonard J. Russell		✓		
Mr. David E. Sullivan				✓
Mr. Walter J. Sullivan		✓		
Mr. Wylie	✓			
Mayor Vellucci	✓			
	5	3	0	1

Motion carried



City of Cambridge

Agenda Item No. 4

IN CITY COUNCIL

August 8, 1983

COUNCILLOR GRAHAM

ORDERED: That the petition entitled "Anti-Displacement Housing Program", which petition provides six proposals to stabilize city neighborhoods and protect racial, ethnic and economic diversity in the City of Cambridge and is submitted to this City Council under the provisions of Chapter 58, Section 18A, as a non-binding public opinion advisory question be placed on the ballot at the next regular municipal election to be held on Tuesday, November 8, 1983. Said petition reads as follows:

"Petition for a local, non-binding, public opinion advisory question

ANTI-DISPLACEMENT HOUSING PROGRAM

"Shall the City of Cambridge, in order to stabilize city neighborhoods and protect racial, ethnic, and economic diversity, adopt an anti-displacement housing program which includes, but is not limited to, these actions: (1) increase public funding of low-cost rehabilitation of affordable housing under rent control and stop bank discrimination against rent-controlled properties; (2) keep housing in use by requiring a removal permit for refusal to rent units left vacant for more than 90 days; (3) strengthen rent controls by "capping" rent increases; (4) require any new commercial and residential development to provide housing units for low- and moderate-income people; (5) rezone vacant land to promote new housing, especially for families; and (6) replace, one-for-one, units housing low- and moderate-income people when such units are lost to commercial development or university expansion?".

In City Council August 8, 1983.

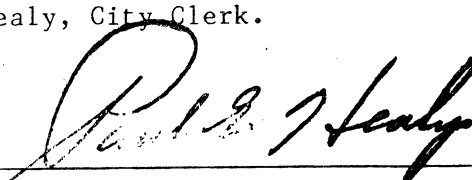
Failed of adoption by a yea and nay vote:-

Yeas 3; Nays 5; Absent 0; Present 1.

Attest:- Paul E. Healy, City Clerk.

A true copy;

ATTEST:-


Paul E. Healy, City Clerk.



City of Cambridge

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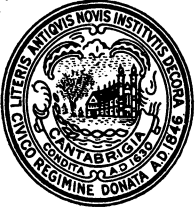
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CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9020

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

MICHAEL C. COSTELLO
ASSISTANT CITY SOLICITOR

EDWARD A. CUNNINGHAM
SEVERLIN B. SINGLETON
DAVID B. O'CONNOR
BIRGE ALBRIGHT
LEGAL COUNSEL

July 15, 1983

Mr. Robert W. Healy
City Manager
City Hall
Cambridge, Mass.

Re: Anti-Displacement Housing Program

Dear Mr. Healy:

I am informed by the City Clerk that the City Council, on June 20, 1983, requested a report from me on the above matter. My report follows.

FACTS

On June 20, 1983, the Cambridge Rent Control Coalition transmitted to the Council a petition (copy attached) for a local, nonbinding, public opinion advisory question for inclusion on the November 8, 1983 ballot, in accordance with G.L. c. 53, §18A. The petition is signed by 20 citizens, and bears the notation, "Certified 6/20/83."

LAW

General Laws, c. 53, §18A provides, in part, as follows:

*

*

*

A nonbinding public opinion advisory question may be placed on the ballot for a regular municipal election in any city... by vote of the city council...

A proposal to place a nonbinding public opinion advisory question on the ballot...may be presented to the (city council)...on a petition signed by at least ten registered voters of the city....

RECEIVED
JUL 18 11 00 AM '83
OFFICE OF THE
CITY MANAGER

If such (city council) shall not approve said petition at least ninety days before said election, then the question may be so placed on said ballot when a petition signed by at least ten per cent of the registered voters of the city..., but in no case less than twenty such voters, requesting such action is filed with the registrars...

If the signatures are certified, the city clerk "shall cause the question to be placed on the ballot at the next regular municipal election held more than thirty days after such certification."

QUESTION

Here, the proponents of the question have presented to the Council a petition signed by more than the necessary ten voters. The Council must now decide whether to "approve" said petition. If the Council fails to approve the petition by August 8, 1983 (90 days before the election), then the proponents must collect signatures from at least ten per cent of the registered voters of the city.

DISCUSSION

In deciding whether to approve the petition, we first note that the "question" actually consists of six separate questions. Second, we note that at least one of the questions calls for action by the City which the City may not legally take. I refer to question no. 3, which calls on the City to "strengthen rent controls by 'capping' rent increases." Such a cap would not be permissible, since the Rent Control Enabling Act requires that a landlord receive a "fair net operating income." See memo from Patricia A. Cantor to Russell B. Higley (7-1-83), p. 3, (copy attached).

In my opinion, the Council has the power to disapprove a question which calls on the City to take action which the City is not legally permitted to take. Although there have, apparently, not been any cases decided under G.L. c. 53, §18A, we may turn for guidance to the initiative petition cases decided under G.L. c. 43, §§37 and 38 and similar statutes.

Typical of these cases is Foley v. Lawrence, 336 Mass. 60 (1957), which held that an ordinance increasing

the salaries of certain city employees, adopted by the city council pursuant to an initiative petition under the city charter, without a supplemental appropriation for the increase, was invalid under G.L. c. 44, §33A. The Court stated, at p. 65, that initiative petitions do not

purport to enlarge the type and scope of the matters which lawfully may be the subject of legislative action by the city council. They, in general, merely substitute, in the manner... provided by (the city charter) the action of the voters for action of the city council in respect of measures within the council's authorized legislative jurisdiction and subject to applicable statutory limitations. See Dooling v. City Council of Fitchburg, 242 Mass. 599, 602 (1922)...

In Dooling, supra, Chief Justice Rugg stated that the initiative and referendum law was

necessarily limited to subjects vested by law in the city council. It cannot have been the purpose of the General Court to require or to permit the referendum or the initiative... touching subjects wholly outside the field of authorized action by the city council. Such a futile intention cannot be imputed to the General Court.

242 Mass. at 601.

In my opinion, the reasoning in Foley and Dooling applies equally here. The Council might be willing to approve a nonbinding, advisory question which has nothing to do with Cambridge government - for example, a question regarding foreign policy. But I believe that the Council has the right to disapprove a question which calls on the City to take action which it may not legally take. Paraphrasing Chief Justice Rugg in Dooling, it cannot have been the purpose of the General Court to require ballot questions, even though nonbinding, which call for action by the City on subjects wholly outside the field of authorized action by the City.

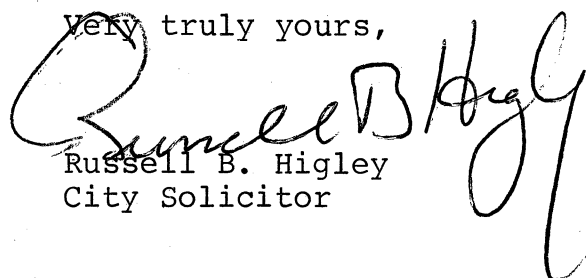
Mr. Robert W. Healy

-4-

July 15, 1983

In summary, my conclusion is that the Council would be within its rights in disapproving the petition in its present form.

Very truly yours,

A large, stylized handwritten signature in dark ink, appearing to read "Russell B. Higley". The signature is written over the typed name and title.

Russell B. Higley
City Solicitor

RBH/jl
Encs.



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
Tel. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

4.
August 8, 1983

To the Honorable, the City Council:

I transmit herewith communication from the City
Solicitor, with a report requested by the City Council
on the Anti-Displacement Housing Program.

Very truly yours,

Robert W. Healy
City Manager

RWH/b

Re: report from the City Solicitor on the Anti-Displacement Housing Program.

8/8/1983

Two Roll Call Votes
taken

1) Take from Committee
Council 5-3-0-1

2) Motions place the
petition on the ballot
Council 5-5-0-1

In City Council,

August 8, 1983

See City Sol. Opinion

8/8/1983

- Hearing Held By -

Deputy Council

- Condition -

8/8/1983

Order Forwarded

Copy to Mayor and City Solicitor