



City of Cambridge

43.

IN CITY COUNCIL

October 17, 1994

COUNCILLOR TOOMEY
COUNCILLOR BORN

ORDERED: That the attached amendment to the Municipal Code of Cambridge entitled "Regulating the Privatization of City Service" be referred to the City Manager and the City Solicitor; and be it further

ORDERED: That the Law Department prepare the appropriate form of the attached and upon completion, said draft be referred to the Ordinance Committee for its review.

In City Council October 17, 1994.

Adopted by the affirmative vote of nine members.

Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

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

D. Margaret Drury,
City Clerk

THE CITY OF CAMBRIDGE

An Act Regulating the Privatization of City Services

There is hereby added to the Municipal Code of Cambridge, Chapter __, which shall read as follows:

Chapter __ . The Privatization of City Services.

A. The City Council recognizes that the use of private contractors to provide public services formerly provided by City employees does not always promote the public interest. To ensure that the citizens of the City of Cambridge receive high quality public services at low cost, with due regard for the taxpayers of the City of Cambridge and the needs of public and private workers, the City Council finds it necessary to regulate such privatization contracts in accordance with this ordinance.

B. As used in this ordinance, the following words shall have the following meanings: -

"City" or "Agency" an executive office, department, division, board, commission or other office or officer in the executive branch of the government of the City of Cambridge.

"Privatization Contract", an agreement or combination of series of agreements by which a non-governmental person or entity agrees with the City to provide services, valued at \$5,000 or more which are substantially similar to and in lieu of services theretofore provided, in whole or in part, by regular employees of the City. Any subsequent agreement, including any agreement resulting from a rebidding of previously privatized service, or any agreement renewing or extending a privatization contract, shall not be considered a privatization contract. An agreement solely to provide legal, management, consulting, planning, engineering, or design services shall not be considered a privatization contract.

C. The City shall not make any privatization contract and no such privatization contract shall be valid unless the City complies with each of the following requirements:

(1) The City Manager shall prepare a specific written statement of the services proposed to be the subject of the privatization contract, including the specific quantity and standard of quality of the subject services. The City shall solicit competitive sealed bids for the privatization contracts based upon this statement. The day designated by the City upon which it will accept the sealed bids shall be the same day for any and all parties. The statement shall be of public records, shall be filed in the City Manager's office and with the City Council, and shall be transmitted to a subcommittee of the City Council, established and appointed by the Mayor for this purpose. The term of any privatization contract shall not exceed three years. No amendment to a privatization contract shall be valid if it has the purpose or effect of avoiding any requirement of this section.

(2) For each position in which the bidder will employ any person pursuant to the privatization contract and for which the duties are substantially similar to the duties performed by a regular City employee or employees, the statement requirement by paragraph (1) shall include a statement of the minimum wage rate to be paid for said position, which rate shall be the lesser of Step 1 of the grade or classification under which the comparable or regular City employee is paid, or the average private sector rate for said position as determined by the Executive Office for Administration and Finance of the Commonwealth of Massachusetts from data collected by the Department of Employment and Training and the Division of Purchased Services of the Commonwealth of Massachusetts. Every bid for a privatization contract and every privatization contract shall include provision specifically establishing the wage rates for each such position, which shall not be less than the said minimum rate as defined above. Every such bid and contract shall also include provisions for the contractor to pay not less than a percentage, comparable to the percentage paid by the City for City employees, of the cost of health insurance plans for every employee employed for not less than 20 hours per week pursuant to such contract. Such health insurance plan shall be substantially equivalent to the health insurance plans provided by the City of Cambridge for its employees covered by

collective bargaining agreements. Each contractor shall submit quarterly payroll records to the City and to the City Council subcommittee established by the Mayor for this purpose listing the name, address, social security number, hours worked and the hourly wage paid for each employee in the previous quarter. Any interested party, including any labor organization who represents employees in the City of Cambridge, may bring a civil action for equitable relief in the superior court to enforce this provision or to prevent or remedy the dismissal, demotion or other action prejudicing any employee as a result of a report of violation of this paragraph.

(3) Every privatization contract shall contain provisions requiring the contractor to offer available employee positions pursuant to the contract to qualified regular employees of the City whose employment is terminated because of the privatization contract and who satisfies the hiring criteria of the contractor. Every such contract shall also contain provisions requiring the contractor to comply with a policy of nondiscrimination and equal opportunity for all persons protected by chapter one hundred and fifty-one B of the General Laws of the Commonwealth of Massachusetts, and to take affirmative steps to provide such equal opportunity for all such persons.

(4) The City Manager shall prepare a comprehensive written estimate of the costs of regular City employees' providing the subject services in the most cost-efficient manner. The estimate shall include all direct and indirect costs of regular City employees' providing the subject services, including but not limited to, pension, insurance and other employee benefit costs. For the purpose of this estimate, any employee organization may, at any time before the final day for the City to receive sealed bids pursuant to paragraph (1) and after notice and opportunity,, propose amendments to any relevant collective bargaining agreement to which it is a party. Any such amendments shall take effect only if necessary to reduce the cost estimate pursuant to this paragraph below the contract cost pursuant to paragraph (6). Such estimate shall remain confidential until after the final day for the City to receive sealed bids for the privatization contract pursuant to paragraph (1) which time the estimate shall become a public record, shall be filed in the City Manager's office and shall be transmitted to the City auditor and sub-committee of the City Council for review.

(5) After consulting any relevant employee organization, the City shall provide adequate resources for the purpose of encouraging and assisting present City employees to organize and submit a bid to provide the subject services. In determining what resources are adequate for this purpose, the City shall refer to an existing collective bargaining agreement of a similar employee organization whose members perform the subject services, if available, which agreement provides similar resources in Cambridge or elsewhere in Massachusetts; provided, however, that if no such collective bargaining agreement exists, the City shall refer to any existing collective bargaining agreements providing such resources, and shall provide such resources at the minimum level of assistance provided in said agreements. The City shall consider any such employee bid on the same basis as all other bids. An employee bid may be made as a joint venture with other persons.

(6) After soliciting and receiving bids, the City shall publicly designate the bidder to which it proposes to award the contract. The City Manager shall prepare a comprehensive written analysis of the contract cost based upon the designated bid, specifically including the costs of transition from public to private operation, of additional retirement or other benefits, if any, and of monitoring and otherwise administering contract performance.

(7) The City Manager shall certify in writing to the City auditor and City Council that:

(i) he has complied with all provisions of this ordinance and of all other applicable laws;

(ii) the quality of the services to be provided by the designated bidder is likely to satisfy the quality requirements of the statement prepared pursuant to paragraph (1), and to equal or exceed the quality of services which could be provided by regular City employees pursuant to paragraph (4);

(iii) the contract cost pursuant to paragraph (6) will be less than the estimated cost pursuant to paragraph (4), taking into account all comparable types of costs;

(iv) the designated bidder and its supervisory employees, while in the employ of said designated bidder, have no adjudicated record of substantial or repeated willful noncompliance with any

relevant federal or state regulatory statute including, but not limited to, statutes concerning labor relations, occupational safety and health, nondiscrimination and affirmative action, environmental protection and conflicts of interest; and

(v) the proposed privatization contract is otherwise in the public interest.

A copy of the proposed privatization contract shall accompany the certificate transmitted to the City auditor and City Council.

D. (a) the City shall not make any privatization contract and no such contract shall be valid if, within thirty days after receiving the certificate required by section B.(7), the City auditor or City Council notifies the City Manager of their objection. Such objection shall be in writing and shall state specifically that the City Manager has failed to comply with one or more requirements of this ordinance, including that the City auditor finds incorrect, based on independent review of all the relevant facts, any of the findings required by paragraph (7) of said Section C.

(b) For the purpose of reviewing the City's compliance and certificate pursuant to said Section C, the City auditor or the City Council may require by summons the attendance and testimony under oath of witnesses and the production of books, papers and other records relating to such review. All provisions of law relative to summonses in civil cases, including the manner of service, the scope and relevance to such review, and the compensation of witnesses who are not City employees, shall apply to such summonses.



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Bom,

Consent Order #48. S-418

Councillor Toomey re: Regulating
the Privatization of City Service.

In City Council,

October 17, 1994

Order adopted