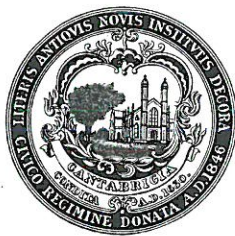


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CITY OF CAMBRIDGE

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

November 8, 2019

Louis A. DePasquale
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: ***Response to Council Order No. O-9 of 6/10/19 Re: That the City Manager is Requested to Instruct the City Solicitor to Draft for Discussion Several Ordinances to Reduce or Prohibit Campaign Donations from Donors Seeking to Enter into a Contract, Seeking Approval for a Special Permit or Up-zoning, Seeking to Acquire Real Estate from the City, or Seeking Financial Assistance from the City.***

Dear Mr. DePasquale:

We have prepared this legal opinion in response to Council Policy Order 2019 - #207 of June 10, 2019 which requests that the City Manager "instruct the City Solicitor to provide guidance on the legality of an ordinance to reduce or prohibit campaign donations from donors seeking to enter into a contract, seeking approval for a special permit or up-zoning, seeking to acquire real estate from the city, or seeking financial assistance from the city...." Although this office would need to review a specific ordinance in order to opine on its legality, it appears such an ordinance would likely be permissible under federal and state constitutional law but would require the City to seek special legislation from the Massachusetts Legislature in order to authorize the City to enact such an ordinance.

As examples, the above-referenced Policy Order identified law passed by the City of Los Angeles and State of New Jersey which ban or limit contributions from entities seeking to do business or that seek project approvals from the government. Although there have been no court decisions analyzing those laws, in 2011 the United States Court of Appeals for the Second Circuit favorably ruled on the City of New York's 2007 political campaign finance and lobby law that similarly limits campaign contributions by individuals and entities that were "doing business" with the city ("NYC Campaign Finance

Act”).¹ See Ognibene v. Parkes, 671 F.3d 174 (2nd Cir. 2012). Because the NYC Campaign Finance Act appears to be very similar in scope to that which was passed by the City of Los Angeles and the State of New Jersey, the Second Circuit’s holding is persuasive authority that an ordinance that restricts any campaign donations of those who are doing business with the City of Cambridge would pass constitutional muster.

I. First Amendment Analysis

The United States Supreme Court (“Supreme Court”) has held that campaign contribution limits and bans are permissible under the First Amendment so long as they are “closely drawn” to address a sufficiently important state interest. See Davis v. Fed. Election Comm’n, 554 U.S. 724, 737 (2008). A showing of special justification is required for such restrictions to be “closely drawn.” See Randall v. Sorrell, 548 U.S. 230, 261 (2006). The Supreme Court has consistently held that the prevention of actual and perceived corruption qualifies as a sufficiently important state interest. See, e.g., McConnell v. Fed. Election Comm’n, 540 U.S. 93, 143 (2003); Nixon v. Shrink Missouri Gov’t PAC, 528 U.S. 377, 390 (2000); Buckley v. Valeo, 424 U.S. 1, 27 (1976). However, the Second Circuit has held that an outright ban on all contributions may not be “closely drawn” to address a sufficiently important state interest where a mere restriction would have effectively addressed the appearance of corruption. See Green Party of Conn. v. Garfield, 616 F.3d 189, 206 (2d Cir.2010).²

Therefore, it appears that an ordinance which is similar in scope to the NYC Campaign Finance Act and is intended to prevent actual or perceived corruption would be permitted under the law.

II. Massachusetts Home Rule Powers Analysis

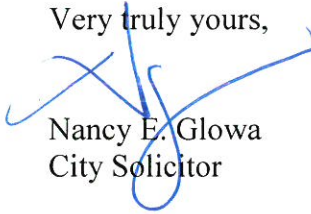
With respect to Massachusetts law, however, absent special legislation, it does not appear that the City has the power to regulate elections as proposed in the Policy Order because the provisions of the Home Rule Amendment, M.G.L. Const. Amend. Art. 2, § 7, specifically reserve to the state the regulation of elections. M.G.L. Const. Amnd. Art. 2, § 7 (“Nothing in this article shall be deemed to grant to any city or town the power to (1)

¹ The “doing business” limits apply to contributions from any natural person who is a chief executive officer, chief financial officer, and/or chief operating officer; serves in a senior managerial or equivalent capacity; or has an interest exceeding ten percent in an entity that has “business dealings” with the City or affiliate agency, unless that person is the candidate or a relative. N.Y.C. Admin. Code § 3–703(1–a). “Business dealings” include: (1) contracts greater than or equal to \$100,000 for the procurement of goods, services, or construction; (2) real property acquisitions or dispositions; (3) applications for approval of transactions involving office space, land use, or zoning changes; (4) certain concessions and franchises greater than or equal to \$100,000; (5) grants greater than or equal to \$100,000; (6) economic development agreements; (7) contracts for investment of pension funds; and (8) transactions with lobbyists.

² The Massachusetts Supreme Judicial Court (“SJC”) has held that Article 16 of the Massachusetts Declaration of Rights may provide greater rights than those afforded under the First Amendment. Mendoza v. Licensing Board of Fall River, 444 Mass. 188, 201(2005). The SJC has generally held that the rights available under the First Amendment and Article 16 are “comparable.” First National Bank v. Attorney General, 362 Mass. 570, 586 (1972). However, there do not appear to be any cases interpreting Article 16 that would prohibit the Council from enacting such an ordinance.

regulate elections other than those prescribed by sections three and four..."³. Therefore, if the City wishes to enact such an ordinance, the City should seek special legislation for the authority to do so.

Very truly yours,



Nancy E. Glowa
City Solicitor

³ These sections set forth procedures for adoption or revision of a charter by a city or town (§ 3) and amendment of a charter by a city or town (§ 4).