



CITY OF CAMBRIDGE

BOARD OF ELECTION COMMISSIONERS

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To: Richard C. Rossi, City Manager

From: Board of Election Commissioners

Date: April 30, 2014

Re: Response to Awaiting Report #14-07 re: What steps would be necessary to change the method by which surplus votes are transferred in municipal elections and whether the Fractional Transfer Method could replace the Cincinnati Method and whether this requires a Charter Change

In response to the above-referenced Council Order, the Board (in consultation with the Law Department) reports the following:

If the City Council votes to move forward with exploring the idea of replacing the Cincinnati Method of surplus ballot transfer with the Fractional Transfer Method, we strongly recommend that the City as a first order of business hire a consultant who specializes in proportional representation and municipal elections who could provide detailed insight and develop a comprehensive plan regarding the possible effects, costs, implementation, laws/regulations, proposed schedules and completion dates, pros/cons, skills and knowledge required, etc., with regard to such replacement before any proposal to move toward replacing the Cincinnati Method of surplus ballot transfer with the Fractional Transfer Method proceeds.

Legal Framework--

In 1940 the voters of the City of Cambridge elected by referendum to adopt the Plan E Charter (MGL Chapter 43, Sections 93-116.) As part of the charter the voters accepted a provision requiring that the City use the method of counting ballots found in Chapter 54A of the Massachusetts General Laws or "...any method of counting the voters' first choices and treating any such choices in excess of the quota, provided for under any system of proportional representation which on January first, nineteen hundred and thirty-eight was in effect for the purpose of municipal elections in any city of the United States, may be substituted for the method of counting such choices set forth in this chapter, if the registrars of voters determine that such substitution is advisable...."(MGL Chapter 54A, Section 16b; MGL Chapter 43, Section 115) In 1973 the Board of Election Commissioners adopted the rules for transfer of surplus votes

from a section of the Code of Cincinnati, Ohio which had been in use in Cincinnati on January 1, 1938 (the “Cincinnati Method.”)

In determining whether the Cincinnati Method may legally be replaced by the Fractional Transfer Method there are many factors to be considered. First, was the Fractional Transfer Method of proportional representation in effect for the purpose of municipal elections in any city of the United States on January 1, 1938? If the Fractional Transfer Method was in effect at that time, it would be the responsibility of the Board of Elections Commissioners to determine whether the change would be “advisable” and, if so, to adopt the rules for transfer of surplus under the Fractional Transfer Method replacing the Cincinnati Method.

If the Fractional Transfer Method sought to be substituted was not in effect on January 1, 1938 in any U.S. city, then the Election Commissioners do not have the authority to adopt it because MGL Chapter 54A, Section 16(b) and MGL Chapter 43, Section 115 (cited above) do not allow it.

In order to supersede the limitations established in G.L.c.43, s.115 and G.L.c.54A, s.16(b), both of those laws would have to be changed. Special legislation passed by the state legislature would be required to change the language of G.L.c.54A, s.16(b). The necessary change to G.L.c.43, s.115 would be a “charter change,” in that it would be altering a section of the Plan E charter (G.L.c.43, s.115) that applies to Cambridge. There are a number of different methods for making a charter change.

The following is a brief summary of procedures for making charter changes. This summary should not be considered a detailed systematic account of the subject.

A city can adopt or change a charter with or without action by the state Legislature. Any change must be consistent with state law.

1. Adoption or revision – may be used to adopt a new charter or to change an existing charter or special act unless specifically provided otherwise.¹

Adoption or revision procedures require election of a local charter commission (Please note steps are subject to time restrictions).

¹ There is a separate “amendment” procedure which may also be used to change a current charter involving approval by the Attorney General, action by the local legislative body, and approval by local voters. This amendment procedure cannot be used to change things such as the composition, mode of election, terms of office of the local legislative body, the mayor or the city manager. Due to its limitations, this would not be a viable approach to changing the method by which surplus votes are transferred because such a change would affect the “mode of election” of the local legislative body.

- It can take two years to implement. Steps are as follows:
 - Petitioning the local registered voters – file signed charter petition with the election commission for certification. Once certified the city council must order the question be submitted to the voters at the next regular municipal election. If the council fails to act the question will automatically appear on the ballot.
 - Election of a charter commission to propose a charter or revision – Nomination papers should also be filed for candidates for the position of member of the Charter Commission. The voters must elect nine candidates who will prepare the charter or revision if voted to do so. Both the charter question and commission candidates are included on the next regularly scheduled Municipal Election Ballot. Commissioners serve without pay.
 - If the question passes, the State Department of Community Affairs must be notified. The Charter Commission must then hold several public hearings and prepare reports within a specified time to be submitted to the state Department of Community Affairs and the Attorney General. The Attorney General will submit a written opinion to the Charter Commission outlining any conflicts between the charter/revision and constitutional and statutory law. If the Charter Commission’s final report recommends a new charter or revision it must be submitted to the voters at the next regularly scheduled municipal election.
 - Approval of the proposal by the voters – the charter would take effect on the day specified in the charter.
2. Special Act—no charter commission required
- Local legislative body votes to request the state Legislature to pass a special act.
 - State legislative action taken
 - Typically, although not clearly required unless so stipulated in the special act, acceptance of the charter change passed by the Legislature is subject to a vote of approval by City voters.

Practical Considerations--

Prior to determining if the Fractional Transfer Method of transferring surplus votes in municipal elections could replace the Cincinnati Method, it would be useful to investigate what overall effect such a replacement would have on the current or future voting system (voting machines, software, costs, consultants, procedures etc.). The Secretary of the Commonwealth “promulgates regulations governing the approval of the type of voting equipment... to achieve and maintain the maximum degree of accuracy, impartiality and efficiency on the procedures of voting and counting, tabulating and recording votes”(MGL Chapter 54 Section 37). Currently, two pieces of new voting equipment are undergoing the State certification process. If approved by the State, the machines will undergo field testing. If a change were to occur in the method of counting ballots, it may necessitate new software, possibly new voting machines, and a new State certification process, all of which would result in additional costs yet to be determined. In addition, as part of the consideration of the desirability of the Fractional Transfer Method, the impacts that such a method would have on manual recount procedures must be taken into account. It

is anticipated that it would be extremely difficult to do a manual recount based on the Fractional Transfer Method. If the City Council votes to pursue this, the City would need to hire a qualified expert consultant from the outset.

Recommendation--

In conclusion, it would be beneficial to hire a consultant who specializes in proportional representation and municipal elections who could provide detailed insight and develop a comprehensive plan regarding the possible effects, costs, implementation, laws/regulations, proposed schedules and completion dates, pros/cons, skills and knowledge required, etc., related to such replacement before any proposal to move toward replacing the Cincinnati Method of surplus ballot transfer with the Fractional Transfer Method proceeds.



City of Cambridge

0-13
Calendar item #2
AMENDED ORDER
IN CITY COUNCIL
May 19, 2014
June 2, 2014

COUNCILLOR MAZEN
COUNCILLOR CARLONE

WHEREAS: Since 1996, states and municipalities have begun implementing full public financing of elections, as part of a "Clean Election" movement, in an attempt to curb the undue influence of special interests in politics; and

WHEREAS: Public financing will encourage candidates who lack substantial resources, effectively lowering the barrier for entry, increasing the ideological and socio-economic diversity, and expanding the range of policy positions put before the electorate; and

WHEREAS: Public grants can make elections more competitive by reducing the fundraising advantages that, in particular, incumbents have over challengers-increasing candidate diversity and encouraging shorter terms; and

WHEREAS: Public funding can reduce the influence of private contributions on both candidates and officeholders by replacing individual, labor, and committee contributions with public funds not tied to any particular interest; and

WHEREAS: Public financing programs have been shown to reduce the overall cost of elections, preventing the further escalation of campaign spending; and

WHEREAS: Despite the up-front cost, public funding ultimately saves tax payers' money by reducing wasteful government spending that can result from the influence of campaign donors; and

WHEREAS: In 1998 Massachusetts voters approved by a margin of 2-1, The Clean Elections Law which provided public financing of statewide elections with 77% of Cambridge residents voting in favor of the initiative; and

- WHEREAS: In 2002, The Clean Elections Law was effectively repealed, through an amendment to the state's budget which eliminated funding for this popular initiative; and
- WHEREAS: Municipalities such as Santa Fe, NM, New York, NY, and Albuquerque, NM have all implemented successful public financing programs; and
- WHEREAS: Publically funded municipal elections can set a powerful precedent as one step towards nationwide campaign finance reform; now therefore be it
- ORDERED: That the City Manager be and hereby is requested to confer with the Law Department, the Election Commission, and the Massachusetts Office of Campaign and Political Finance to determine the feasibility of publically funded elections for Cambridge, taking into account models for implementation from other municipalities as well as the exploration of new publically funded models; and be it further
- ORDERED: That the City Manager be and hereby is requested to report back to the City Council on this matter; and be it further
- ORDERED: That this matter be referred to the Government Operations, Rules and Claims Committee.

In City Council June 2, 2014
Adopted as amended by an affirmative vote of eight members
Attest:- Donna P. Lopez, City Clerk

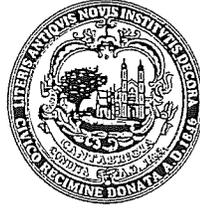
A true copy;

ATTEST:-
Donna P. Lopez, City Clerk

Roll Call Vote May 19, 2014

Roll Call Vote June 2, 2014

REFERRED TO GOVERNMENT OPERATIONS, RULES AND CLAIMS COMMITTEE
Attachment

City of Cambridge*Richard C. Rossi • City Manager*

Executive Department*Lisa C. Peterson • Deputy City Manager*

October 15, 2014

Councillor Timothy J. Toomey, Jr., Chair
Councillor Leland Cheung
Councillor Nadeen Mazen
Councillor Marc C. McGovern
Councillor E. Denise Simmons
Government Operations, Rules & Claims Committee

Dear Councillors Toomey, Cheung, Mazen, McGovern & Simmons:

This letter is in response to Calendar Item #2, dated June 2, 2014 (Amended City Council Policy Order #13 of May 19, 2014) which was referred to the Government Operations, Rules & Claims Committee. In that Amended Order, the City Council requested the City Manager "to confer with the Law Department, the Election Commission, and the Massachusetts Office of Campaign and Political Finance to determine the feasibility of publicly funded elections for Cambridge, taking into account models for implementation from other municipalities as well as the exploration of new publicly funded models."

The Election Commission Assistant Director spoke with Greg Birne, the General Counsel for the state Office of Campaign and Political Finance about the possibility of Cambridge instituting a form of public funding for local elections. Attorney Birne did not believe that doing so would be preempted by state campaign finance laws (e.g. G.L.c.55). Attorney Birne stated that municipalities are allowed to pass more restrictive campaign finance laws than exist under state law, as long as there is no direct conflict between the state and local laws. Attorney Birne was of the opinion that making public funds equally available to all qualifying local candidates would not be prohibited by law, and noted that at G.L.c.55C, there is at present a statutory structure for limited public funding for statewide office in the Commonwealth.

The Secretary of the Commonwealth's Elections Division, as well as the Attorney General's office, were also consulted by the City Solicitor's Office informally. A concern was raised by the Attorney General's office that because the Home Rule Amendment of the Massachusetts Constitution, Amendment Article 2, Section 7, prohibits municipalities from passing ordinances that "regulate elections," the City might need special legislation in order to implement a public funding scheme for candidates. The Elections Division Counsel stated that because she was not prepared to say that a public funding scheme would amount to regulating elections, she reserved judgment on the issue. She also stated that she does not believe any other municipality in the Commonwealth currently has publicly funded elections.

The City Solicitor advises that in creating a public funding program for candidates, there are a number of significant choices to be made about how the program will operate. For example, a funding source has to be identified for the funds that will be given to candidates; how candidates will qualify for public funds has to be determined; will a set amount be distributed to each candidate, or will the amount be distributed based on a matching fund system; appropriate staffing to administer the new program will have to be designated; and enforcement mechanisms will have to be put in place. In states and cities that have instituted such programs, typically candidates have to qualify in order to receive public funds by getting a certain number of small donations, and sometimes signatures as well, agreeing to campaign spending limits, and submitting detailed documentation to the program administrators proving that they have qualified. Effective monitoring and enforcement by public officials is necessary to ensure, for example, that candidates do not exceed the spending limits. If they do, some sort of penalty should be imposed.

A number of states and a handful of cities have enacted some form of public funding for elections. One example is New York City's Campaign Finance Act (originally enacted in 1988), which is 25 pages in length and is explained in detail in a 124 page Campaign Finance Handbook. It is implemented by a Campaign Finance Board. It is a voluntary program for candidates. If they don't participate, they do not receive matching funds from NYC, but are not subject to the law's spending limits. Qualifying donations have to be from NYC residents. Donations from corporations may not be accepted. The NYC program started with a one-to-one match on \$1,000 donations. In 2001, this changed to a four-to-one match on \$250 donations. In 2009, this changed to a six-to-one match on \$175 donations. The reason for the larger matching of smaller contributions was to encourage campaigns to seek smaller contributions in order to receive the matching funds.

In Albuquerque, New Mexico, City Council candidates must gather 500 signatures of registered voters in the district the candidate wishes to represent, and collect \$5.00 qualifying contributions from at least 1% of the registered voters in the district they seek to represent.

As reported by the Albuquerque Journal News, public funding was used for the first time in Sante Fe, New Mexico's most recent mayoral race. Each mayoral candidate received \$60,000 in taxpayer dollars. An issue that arose was that one publicly funded candidate was supported by outside PAC money that was spent independently of the candidate's campaign. The candidate had no control over the PAC's expenditure of funds, but benefitted from them. That candidate's opponents criticized the PAC spending as defeating the purpose of public financing, whose goal it is to level the playing field and keep big money out of local races.

First Amendment cases

There have been some recent significant federal decisions that have struck down certain provisions of public financing laws based on the laws infringing on the federal First Amendment right to "political speech." In Arizona Free Enterprise Club's Freedom Club PAC v. Bennett, 131 S.Ct. 2806 (2011), the United States Supreme Court held in a 5 to 4 decision that the Arizona state laws governing the disbursement of matching funds to publicly funded candidates for statewide office violated the First Amendment. The Arizona Citizens Clean Elections Act contained provisions whereby candidates who opt to participate are granted an initial outlay of public funds to conduct their campaigns. Such candidates received additional public matching funds if a privately financed candidate's expenditures, combined with the expenditures of independent groups supporting the privately funded candidate, exceeded the initial outlay to the publicly funded candidates. The additional matching funds were made

on a one-to-one basis, one dollar for every one dollar raised or spent by or for the privately funded candidate, and topped out at two times the initial grant of public funds. The Supreme Court ruled that the matching funds provisions imposed a substantial burden on the speech of privately financed candidates and independent expenditure groups because in spending their money they were faced with the choice of thereby triggering matching funds to an opponent, changing their message, or not speaking. The Court noted that: "This Court has repeatedly rejected the argument that the government has a compelling state interest in 'leveling the playing field' that can justify undue burdens on political speech. [citing Citizens United v. Federal Election Commission, 558 U.S. 310 (2010) which held that political spending is a form of protected speech under the First Amendment, and the government may not keep corporations or unions from spending money to support or denounce individual candidates in elections].

Earlier, in Randall v. Sorrell, 548 U.S. 230 (2006), the Supreme Court struck down as violative of the First Amendment certain provisions of the Vermont Campaign Finance Reform Act that set limits on the amounts that candidates for state office could spend on their campaigns, and that limited too much how much individuals, organizations and political parties could contribute to candidates for state office. The Court noted that it had upheld contribution limits in the past, but not all such limits will be constitutional.

In Cushing v. McKee, 853 F.Supp.2d 163 (D.Me. 2012), the United States District Court of Maine ruled, based on the Supreme Court's decision in Arizona Free Enterprise cited above, that the matching funds provisions in Maine's Clean Election Act violated the First Amendment, as they were similar to the matching funds provisions stricken by the Supreme Court in Arizona.

Constructing and implementing a local public financing system for campaigns in Cambridge would be a considerable undertaking which I would be pleased to discuss in greater detail with the Government Operations, Rules & Claims Committee.

Very truly yours,



Richard C. Rossi
City Manager

Cc: Mayor David P. Maher
Vice Mayor Dennis A. Benzan
Councillor Dennis J. Carlone
Councillor Craig A. Kelley
City Clerk Donna P. Lopez
City Solicitor Nancy Glowa
Asst. City Manager for Finance Louis DePasquale
Director of Financial Operations, Michele Kincaid
Executive Dir. of the Election Commission Tanya Ford