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CITY OF SOMERVILLE, MASSACHUSETTS  
LAW DEPARTMENT

CITY OF SOMERVILLE  
INTEROFFICE MEMORANDUM

To: Alderman Mary Jo Rossetti, Chair, Legislative Matters Committee  
Members of the Board of Aldermen

From: Francis X. Wright, Jr., City Solicitor *[Signature]*  
David Shapiro, Assistant City Solicitor *[Signature]*  
Eileen M. McGettigan, Assistant City Solicitor *[Signature]*

Re: Proposed Community Revisions to Draft Community Benefits Ordinance

Date: May 15, 2017

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The Board of Aldermen, acting by and through the Chair of the Legislative Matters Committee, has requested a legal review of the proposed revisions by members of the community to the draft Community Benefits Ordinance, which was renamed the Somerville Benefits Ordinance ("SBO"). This memorandum will address the most significant legal issues with the proposed SBO, as currently drafted.

As an initial matter, in our view, the proposed SBO effects an unlawful delegation of authority by the Special Permit Granting Authority ("SPGA"). It requires the withholding or revoking of a Coordinated Development Special Permit, in the absence of a legally enforceable Community Benefits Agreement negotiated between the permit applicant and a neighborhood council, a group of individuals outside the SPGA. See Weld v. Board of Appeals of Gloucester, 345 Mass. 376 (1963) (invalidating special permit with a condition indicating that the "water situation must be arranged to the satisfaction of all concerned" because it delegated the decision to other persons outside the board). See, e.g., SBO Sections I, X, XI, XII, and Section II, "High Impact Development Project".



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Furthermore, to the extent that the proposed SBO requires an applicant to enter into a Community Benefits Agreement containing undefined standards, the proposed ordinance would potentially allow the imposition of obligations which exceed existing regulatory authority and are not permitted by law. See, e.g. SBO Section II, "Community Benefits Agreement"; "Neighborhood Council", sub. (f); Section VII(6)(vi).

In addition, under existing law, the neighborhood council would likely be deemed a public body because its members are primarily performing an essentially governmental function under the proposed SBO in mandating that its funding requests be accepted by the Somerville Benefits Committee. It should be noted, however, that there are legal ramifications to this designation. For example, as a public body, the neighborhood council would be subject to the requirements of the Open Meeting Law (requiring, among other things, advance posted notice of meetings, the keeping of minutes, meeting in an ADA compliant venue, etc.) see M.G.L. c. 30A, sec. 18-25; the state conflicts of interest law, M.G.L. c. 268A; and the Public Records Law, M.G.L. c. 66, sec. 10, which would involve retaining emails and texts, and producing copies thereof in response to public records requests, including but not limited to those sent or received on personal devices.

Under the proposed SBO, the neighborhood council may itself be eligible to receive community benefits funds. SBO, Sec. II., "Applicant". However, as a public body for the reasons set forth above, the neighborhood council would be subject to the state conflicts of interest law. Therefore, its members will generally be precluded from receiving any community benefits funds for matters in which it take official action, unless the appointing authority "makes a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee." G.L. c. 268A, sec. 19. At a minimum, the appearance of impropriety is raised if the council's top three funding priorities contain requests for the council itself. G.L.c. 268A, sec. 23; SBO Sec. VII.1.(ii) and 6.(vii).

Finally, although ultimately a policy decision, the changes to the original draft have the legal effect of substantially limiting the types of programs and services that may receive



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Community Benefits monies as well as potential beneficiaries. See SBO Sec. II, "Community Benefits"; "Neighborhood Council" sub. (a). The revisions also eliminate the ability to fund citywide initiatives. See SBO Sec. II, "Funding Priorities"; "Neighborhood Advisory Committee".

Please feel free to contact me with any additional questions or concerns.