



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

September 14, 2017

Honorable Board of Aldermen
City Hall
93 Highland Avenue
Somerville, MA 02143

Re: That the City Solicitor Provide an Opinion on Board Item #203709 re: Using Area Standard Contractors

Board Order No. 203876

Dear Honorable Board Members:

You have asked this office to provide a legal opinion on Board Item #203709, a resolution that the "US2 Master Developers use Area Standard Contractors for the construction of development parcels in Union Square." It is my understanding from the Board Item that the resolution's reference to "area standard" means any contractor providing for payment of wages or benefits (i.e. health, retirement, and training) to their employees that are standard for the region. Generally speaking, a resolution is an expression of "opinion or mind or policy concerning some particular item of business coming within the legislative body's official cognizance." 5 Eugene McQuillan, *Municipal Corporations, Nature and Operation of Ordinances* §15.02 (3d ed.1996)¹. In my opinion, the expression of the opinion stated in the resolution may be lawful, however, if this or any other action seeks to directly or indirectly require the use of area standard contractors, it may be susceptible to legal challenge. A resolution may be subject to judicial scrutiny in the event of a legal challenge, including consideration of intent, or whether it is a basis for any other action. See, e.g. Owen v. Independence, 445 U.S. 622, 663, 100 S. Ct. 1398, 1421 (1980); Danchuk v. The Mayor and Council of the Borough of Mount Arlington, No. 2:15-CV-2028 (D. N.J., 2017).

Please contact me if you have any additional questions.

Very truly yours,

Jason D. Grossfield
Assistant City Solicitor

cc: Mayor Joseph A. Curtatone
John Long, City Clerk

¹ As noted therein, a resolution "ordinarily denotes something less solemn or formal than, or not rising to the dignity of, an ordinance. The term "ordinance" means something more than a mere verbal motion or resolution, adopted... It has been said that measures that prescribe binding rules of conduct are "ordinances," while measures that relate to administrative or housekeeping matters are categorized as "resolutions.""