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CITY OF CAMBRIDGE

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January 27, 2025

Yi-An Huang
City Manager
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA 02139

Re: Response to Awaiting Report 24-54 re: review City of Cambridge's curb cut policies and report back if they can be improved to meet the City's transportation and sustainability goals with some proposed updates and draft ordinance language designating City staff as the final approval authority for curb cuts

Dear Mr. Huang:

Pursuant to the above Awaiting Report, City Council requested that staff review the City's curb cut policies and report back to City Council as to whether those policies can be improved through updates to help meet the City's transportation and sustainability goals. City Council further requested that staff prepare draft ordinance language designating City staff as the final approval authority for curb cuts. With the input of the Clerk's Office, Inspectional Services Department (ISD), Department of Public Works (DPW), Traffic, Parking and Transportation Department (TP+T), and Law Department (LAW), City staff report as follows:

City Council Authority to Regulate Curb Cuts

Regulating the creation and removal of curb cuts¹ is done to avoid the creation of nuisances, hazards, or unreasonable impediments to traffic. City Council regulates curb cuts through legislation establishing criteria and processes for the approval or denial of curb cut applications. While no specific state statute grants municipalities—and specifically, the legislative branch of a municipality—such authority, there exists implied authority to approve or deny curb cut applications. This implied authority flows from the local authority granted by G.L.

¹ Hereinafter reference to "curb cuts" shall collectively refer to creation and/or removal of curb cuts.

c. 82, § 21² and G.L. c. 83, § 25³ to respectively lay out and to alter public ways and sidewalks. Cf. First Class, LLC v. Russell, No. 06 MISC333504, 2008 WL 5115905, at *5 (Mass. Land Ct. Dec. 5, 2008) (noting that G.L. c. 81, § 21, which governs who and under what conditions *state* highways may be excavated, “expressly contemplates local action by providing that a permit for a driveway shall not be granted where ‘the board or department in a city or town having authority over public ways has notified the [state] department of [transportation] . . . of their objection to the driveway”).

City Council Authority to Delegate Curb Cut Regulation

The City Council can establish a curb cut approval/denial process through enacting legislation. The execution of City Council legislation “may be entrusted to and carried out in [its] particulars by, among other city officers, the city manager.” Sancta Maria Hosp. v. City of Cambridge, 369 Mass. 586, 592 (1976). Accordingly, the City Council may delegate its curb cut authority to ISD, a department under the supervision and administration of the City Manager. See Cambridge Plan E Charter, G.L. c. 43, §§ 104, 105; Shea v. Inspector of Buildings of Quincy, 323 Mass. 552, 558 (1949) (“The word ‘department’ in [G.L. c. 43, §§ 104, 105] plainly refers to an executive or administrative department of the city government....”).⁴ Therefore, the approval or denial of curb cut applications by ISD—an “executive or administrative department”—based on compliance with City Council mandated criteria and process is a proper delegation of authority by the City Council. Furthermore, delegating approval/denial authority to ISD, and other City departments as necessary, should help the City meet its transportation and sustainability goals while simultaneously promoting the efficiency of municipal government and making the process of creating and removing curb cuts standardized and subject to clearly stated publicly available regulations.

Current Curb Cut Process

Presently curb cut petitioners must navigate multiple steps to apply for a curb cut.⁵ These steps include:

- (1) completing and submitting an application to ISD,
- (2) ISD review for zoning compliance,

² “The selectmen or road commissioners of a town or city council of a city may lay out, relocate or alter town ways, for the use of the town or city, and private ways for the use of one or more of the inhabitants thereof; or they may order specific repairs to be made upon such ways; and a town, at a meeting, or the city council of a city, may discontinue a town way or a private way.”

³ “The aldermen of a city or the selectmen or road commissioners of a town may, if in their judgment the public convenience so requires, establish sidewalks in the public ways thereof and determine the grade of each such sidewalk and the materials with which it shall be constructed, and may order the reconstruction of existing sidewalks. No such sidewalk shall be dug up or obstructed without the consent of the board or officer having charge of the maintenance and repair of public ways in a city, or the selectmen or road commissioners in a town. Each city and town shall provide a slanted curbing on sidewalks in its public ways at pedestrian crosswalks when new or replacement curbing is required at such locations.”

⁴ Such delegation of authority applies equally to other City departments under the supervision and administration of the City Manager.

⁵ For an in-depth description of the process see: <https://www.cambridgema.gov/-/media/Files/publicworksdepartment/Brochures/curbcutbrochure.pdf>

- (3) TP+T review for traffic and safety impact evaluation,
- (4) Historical Commission review regarding potential impact on a protected property,
- (5) DPW review to identify the curb cut's minimum/maximum width requirements and or any conflicts with existing trees, catch basins, or utility structures/poles, and
- (6) City Council vote to approve or deny the requested curb cut.

As part of the initial application process, the petitioner must submit a plot plan illustrating the proposed curb cut and the layout of any accessory driveway and parking area. The petitioner must also submit forms, signed in favor or against the proposed curb cut, from any abutters to the front, side, rear, and across the street from the property where the curb cut is to be made. If the petitioner is unable to obtain these signatures, a statement is included with the application which describes the notice given to the specific abutters, attempts made to secure the required signatures, and reason(s) why it was not possible to obtain signatures. In addition, the current application process requires the Clerk's Office notify and solicit feedback from any applicable neighborhood association. At the end of this process City Council has sole discretion as to whether a curb cut is approved or denied.

Updating, Streamlining, and Standardizing the Curb Cut Process

To update, streamline, and standardize the curb cut process City staff propose the following steps:

- (1) curb cut petitioner completes and submits an application to ISD, including a plot plan (Application),
- (2) if "core criteria" are satisfied then the Application is conditionally granted and the petitioner is directed to provide notice as described below; otherwise, the Application is denied with no right of appeal to the City Council,
- (3) notice posted and sent by petitioner to "identified parties in interest" requesting they register their support or opposition to the proposed curb cut,
- (4) if 50% or more of responding identified parties in interest support the curb cut then it is granted,
- (5) if 50% or more of identified parties in interest respond and oppose the curb cut then it is denied,
- (6) in the event support and opposition for the curb cut is evenly split, then the ISD Commissioner will decide to approve or deny the curb cut, and
- (7) if the curb cut is denied, either because a majority of identified parties in interest oppose the curb cut or the ISD Commissioner denies the curb cut, then petitioner may appeal the denial to City Council.

Certain terms recited in the above points require definition. First, the "Application" submitted to ISD will mirror the application submitted as part of the current application process. Second, "core criteria" refers collectively to: (a) ISD's review for zoning compliance, (b) TP+T's review for traffic and safety impact evaluation, (c) Historical Commission's review regarding potential impact on a protected property, and (d) DPW's review to identify the curb cut's

minimum/maximum width requirements and or any conflicts with existing trees, catch basins, or utility structures/poles. Third, “identified parties in interest” shall mean the curb cut petitioner’s abutters, owners of land directly opposite the curb cut petitioner’s land on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the curb cut petitioner.⁶ Fourth, “notice” shall consist of a physical notice posted at the location of the proposed curb cut and letters sent to parties in interest. Fifth, an “appeal” to City Council shall require, upon request from a petitioner only, that City Council affirm or overturn the denial of a curb cut. To facilitate City Council’s review, City Council will receive from ISD the curb cut application, record of departmental reviews to determine satisfaction of the core criteria, and all responses from identified parties in interest. Whether a curb cut petitioner can re-petition for a curb cut after a City Council denial will need to be addressed in any eventual ordinance.

Next Steps

The proposed delegation of City Council authority and changes to the current curb cut approval process are a substantial shift from current procedure. Therefore, City staff recommend City Council referral of this matter to committee for consideration of policy questions arising from the contemplated changes. During this period of deliberation City staff are available to address City Council questions regarding the new proposed curb cut approval/denial process and to work with City Council to draft any ordinance to be added to the Cambridge Municipal Code.

Very truly yours,


Megan B. Bayer
City Solicitor

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⁶ This definition is based on the definition of “parties in interest” that appears in the Zoning Act. See G.L. c. 40A, § 11.