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June 12, 2023

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

Re: Council Order No. O-__ of 9/12/22 Re: That the City Solicitor be and hereby is requested to provide a legal opinion on the proposed zoning amendments of the Cambridge Transportation Decarbonization and Congestion Mitigation Bill, including whether the City council could limit the electric vehicle charging station sharing to holders of residential parking permits only.

Council Order No. O-1 of 5/8/23 Re: That the City Manager is directed to work with all relevant departments to recommend what new city regulations and council actions or changes to existing regulations or ordinances are needed to put in place in order to implement the Craig Kelly et al. Zoning Petition for residential car sharing and renting of EV charging stations and bring those recommendations to the full council by June 12, 2023.

Dear City Manager Huang:

The following is in response to the above referenced Council Orders related to proposed zoning amendments which would 1) establish a new land use category under Article 4 of the Cambridge Zoning Ordinance ("Zoning Ordinance") relative to electric vehicle charging (the "EV Amendment") and 2) allow for peer-to-peer car-sharing in the City between individuals (the "Peer-to-Peer Amendment").¹ The following legal analysis is provided to offer guidance and to assist the Council in navigating potential legal issues associated with the proposed amendments.

I. Legal Guidance Regarding the EV Amendment and Peer-to-Peer Amendment

A. Remove "Lawfully non-conforming" language.

The words "lawfully non-conforming" should be removed from Article 6.21(a) as proposed in the EV Amendment. This language permitting lawfully non-conforming uses invites ambiguity,

¹ Proposed language for the EV Amendment and Peer-to-Peer Amendment can be found in the Community Development Department's Response to Council Order No. O-1, dated June 12, 2023.

promotes confusion regarding permissible conditions, and increases the risk of legal challenge on vagueness grounds.

B. Implications of State Law Regarding Electricity Resale.

The EV Amendment does not implicate state regulations prohibiting the resale of electricity through unauthorized “submetering.”² So long as the electric meter for a property accurately reflects the proper owner’s or tenant’s total electricity usage, the utility company is charging the correct standard rates for the electricity usage, and all applicable provisions of the Massachusetts Sanitary Code are complied with, charging EV vehicles does not constitute a prohibited resale of electricity, even if the electric vehicle being charged is not the owner’s or tenant’s.

C. Implications on Residential Zoning.

Application of the EV Amendment on residential property parking spaces would mean that, for residential spaces, EV charging would be a shared principal use of a residential accessory use parking space. If a fee is charged, its payment would not be for the act of parking but for the ability to charge the electric vehicle, which cannot be done unless the vehicle is stationary. It is permissible to amend the Zoning Ordinance to allow EV charging as a shared principal use in residential zoning districts.

D. Implications of EPA Commercial Parking Freeze/Clean Air Act.

The EPA Commercial Parking Freeze, codified in Chapter 10.16 of the Cambridge Municipal Code, places a cap on the number of commercial parking spaces in the City. However, the EV Amendment can be applied in a manner that does not implicate the freeze. A commercial parking space is defined as “a parking space available for use by the general public at any time for a fee.” The charging of electric vehicles either for a fee or for free would not be a commercial use, however, as the primary focus of parking is not to park but to charge the electric vehicle. The parking is ancillary and only necessary due to the need to charge the electric vehicle. Likewise, the Peer-to-Peer Amendment can be applied in a manner that does not implicate the current EPA Commercial Parking Freeze. As with the EV Amendment, the payment is not for parking but for the use of a particular service, in this case use of a shared vehicle for trips. Thus, the EPA Commercial Parking Freeze would not be triggered.

Additionally, EV charging in the following parking spaces that fall under an exemption of the freeze would not have an effect on the cap: (i) parking spaces owned or operated by a commercial entity whose primary business is other than the operation of parking facilities, for the exclusive use of its lessees, employees, patrons, customers, clients, patients, guests or residents but which are not available for use by the general public; (ii) parking spaces restricted for the use

² Submetering occurs when an owner or landlord of a multi-unit property uses a single electric meter to service a property and directly bills the tenants for their electricity usage. Owners would purchase electricity at reduced rates from utilities companies and sell it at higher rates to tenants. Now, with certain narrow exemptions, such practices are now prohibited by the Massachusetts Department of Public Utilities (“DPU”) and meter installation is regulated under 105 CMR 410.200 of the Massachusetts Sanitary Code.

of the residents of a specific residential building or group of buildings; (iii) spaces located on public streets; or (iv) spaces located at a park-and-ride facility operated in conjunction with the Massachusetts Bay Transportation Authority. Cambridge Municipal Code Chapter 10.18.020.

E. Harmonizing with the Zoning Ordinance.

Amending the Zoning Ordinance to allow for EV charging or peer-to-peer ride sharing in all zoning districts would affect how accessory use parking spaces in the City would be designated, particularly in residential areas. Off street parking, whether on a lot, garage, or other facility, is typically considered an accessory use, subordinate and incidental to the principal use of the property. Allowing for peer-to-peer ride sharing or EV charging uses could implicate other ancillary uses. Care should be taken to ensure that allowing for peer-to-peer ride sharing in all zoning districts does not render subordinate other provisions of the Zoning Ordinance, such as the City's setback regulations. Storage of vehicles should also remain prohibited in setback areas, even if used for peer-to-peer ride sharing.

F. Implications of EV Amendment and Peer-to-Peer Amendment on Residential Parking.

Care should be made if adopting the Peer-to-Peer Amendment to ensure that, for residential street parking, only authorized residential vehicles can be parked in such spaces, as allowing non-resident vehicles to park in such spaces could implicate the City's resident permit parking program. In Commonwealth v. Petralia, 372 Mass. 452 (1977), the SJC upheld the City's residential parking program, finding that reducing traffic congestion and air pollution and encouraging the use of public transportation were legitimate public purposes, and that classifying cars by residence under the City's residential parking program had a rational basis by reasonably measuring use or nonuse of a motor vehicle. Id. at 456, 459. To avoid the risk of legal challenge on that basis, the Peer-to-Peer Amendments should be applied in a manner that is in harmony with the City's residential parking program.³

Please let me know if you have any questions.

Very truly yours,



Nancy E. Glowa
City Solicitor

³ Note that certain residential on-street parking spaces are also subject to Chapter 10.12, Section 10.12.010 of the Municipal Code which restricts parking to those vehicles with "residential parking stickers issued by the Cambridge Traffic Director pursuant to St. 1961, c. 455, § 3(a) . . . and pursuant to Cambridge Traffic Regulations, Article XVI, Section 16.3(c) and 16.4(b) are intended only for the personal use of the persons to whom they are issued."