

BLATMAN, BOBROWSKI, HAVERTY & SILVERSTEIN, LLC
ATTORNEYS AT LAW

9 DAMONMILL SQUARE, SUITE 4A4
CONCORD, MA 01742
PHONE 978.371.2226
FAX 978.371.2296

JONATHAN M. SILVERSTEIN
JMS@bbhslaw.net

January 15, 2024

Mr. Robert Matthews
Vice President Sales & Business Development
Municipal Parking Services, Inc.

RE: Ability of City of Boston to Employ MPS Technology

Dear Mr. Matthews:

You have requested an opinion as to whether the City of Boston (City) may utilize the technology and services of Municipal Parking Services, Inc. (MPS) to monitor and enforce violations of parking prohibitions. It is my understanding that the primary question raised by the City is whether it has the right to issue citations based upon photographic evidence of parking violations. In my opinion, for the reasons set forth below, the City may accept a local option statute that would provide it with the authority to enforce against parking violations based upon photographic evidence. Alternatively, the City could submit a home rule petition, which would (upon approval by the Legislature) provide it with such authority.

1. Facts Relative to MPS's Technology and Services

Based upon the facts with which you have provided me, it is my understanding that MPS has developed a product called the Safety Stick, which is installed adjacent to designated no-parking areas. Municipal clients generally choose to concentrate deployment of the devices in or near high-traffic locations, where they have observed significant numbers of parking violations that have created substantial public safety risks.

The Safety Stick is equipped with automated license plate reader (ALPR) technology that is triggered by a vehicle stopping in the designated no parking zone for a specified period of time, typically 90 seconds. Once triggered, the Safety Stick captures an image of the vehicle's license plate at the time of arrival and departure, which is conveyed to MPS for verification by an MPS employee, who then forwards the photographic evidence to a designated officer(s) of the municipal client. The municipal officer(s) then also confirms the violation and the license plate of the vehicle before determining whether to issue a citation.

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Signage is installed at the location of the Safety Stick, clearly indicating that parking is prohibited and that camera enforcement is in effect.

2. Municipal Authority to Issue Citations Based Upon Photographic Evidence of Violations

In my opinion, municipalities may obtain the authority to employ ALPR technology such as the Safety Stick for parking enforcement by accepting the provisions of G.L. c.90, §20A. The second paragraph of that statute provides:

It shall be the duty of any police officer ... who takes cognizance of a violation of any provision of any rule, regulation, order, ordinance or by-law regulating the parking of motor vehicles established by any city or town, forthwith to give to the offender a notice to appear before the parking clerk of the city or town wherein the violation occurred at any time during regular office hours, not later than twenty-one days after the time of said violation. [Emphasis added]

The statute further states, in the third paragraph, that where it is not possible to affix notice of the violation to the vehicle at the time and place of the violation, a copy of the violation notice may be mailed to the registered owner of the vehicle.

In my opinion, the language of the statute does not require a police officer to be physically present to observe the parking violation. The phrase “who takes cognizance” does not suggest a requirement for in-person, physical observation. The word “cognizance” is not defined in §20A or in any related statutory provision. Where a term is not defined, it will generally be given its ordinary meaning. See G.L. c.4,6 (“Words and phrases shall be construed according to the common and approved usage of the language”); see also, e.g., Sullivan v. Town of Brookline, 435 Mass. 353, 360 (2001) (“fundamental tenet of statutory interpretation is that statutory language should be given effect consistent with its plain meaning.”); Framingham Clinic, Inc. v. Zoning Bd. of Appeals of Framingham, 382 Mass. 283, 290 (1981).

The word “cognizance” is generally defined to indicate taking notice or awareness of something; it does not require that such notice or awareness be a result of physical presence or in-person observation. E.g., Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/cognizance> (“knowledge, awareness”); Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/cognizance> (“to take notice of and consider something, especially when judging”); The Britannica Dictionary, <https://www.britannica.com/dictionary/cognizance> (“knowledge or awareness of something”); Oxford Reference Dictionary, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095622195;jsessionid=3003FD754248C5035C0954F3DE7D84F1> (“To take cognizance of something (to be cognizant of it) is to be aware of it or know it, and to take its presence or effect into account.”).

Indeed, the term “cognizance” is used in numerous provisions of the general laws in ways that clearly could not suggest learning a fact through first-hand, physical observation. For

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instance, G.L. c.12, §10, provides that the Attorney General “shall take cognizance of all violations of law or of orders of courts...and shall institute or cause to be instituted such criminal or civil proceedings before the appropriate state and federal courts, tribunals and commissions as he may deem to be for the public interest...” This language clearly could not reasonably be interpreted to limit the Attorney General’s authority to prosecuting only those crimes that he or she personally observes.

Accordingly, the Legislature’s use of the term “who takes cognizance” (rather than, for instance, “who personally observes” or “in whose presence”) in no way suggests that an officer enforcing a parking violation must be physically standing next to the vehicle that is illegally parked. “[T]he court cannot read into a statute an intent that is not there expressed in plain words or by necessary implication.” Tilton v. City of Haverhill, 311 Mass. 572, 578 (1942). Moreover, reading such a strict requirement into the statutory language would clearly not further the purpose of the statute, which is to empower police officers to enforce parking restrictions. See Chelmsford Trailer Park, Inc. v. Town of Chelmsford, 393 Mass. 186, 196 (1984) (“statute should not be read in a manner that defeats its intended utility.”). The fact that the statute allows for violation notices to be mailed when it is not possible to affix them to the vehicles further supports this interpretation.

Therefore, it is my opinion that municipalities that have accepted the provisions of G.L. c. 90, §20A, have the authority to enforce parking regulations based upon photographic evidence of violations acquired through use of MPS’s Safety Sticks.

3. Whether Boston may Accept the Provisions of G.L. c. 90, §20A

In light of the above analysis, the question of whether the City may utilize Safety Sticks to assist in parking enforcement may turn on whether it is able to accept the provisions of G.L. c.90, §20A. Presumably, the City is concerned about its ability to do so, because of language in G.L. c.90, §20A½ (an alternative local options statute to §20A, which provides different procedures for administering and processing parking violations) indicating that it applies “[i]n the cities of Boston and Cambridge and in any city or town which accepts the provisions of this statute.” Unlike §20A, §20A½ does not include a provision allowing for violation notices to be mailed when it is not practicable to affix them to offending vehicles.

In my opinion, a strong argument may be made that the above-quoted language is intended to establish the default process for Boston and Cambridge, but is not intended to foreclose the ability of either of those cities to accept the provisions of §20A, which states that it shall apply “in any city or town accepting the provisions of this section.” Therefore, §20A allows “any city” to accept its provisions. The Legislature could have, explicitly stated that Boston and Cambridge are precluded from accepting the provisions of §20A, but it did not do so. Indeed, there are many provisions of the General Laws that explicitly exclude Boston and/or

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other municipalities from their purview. See, e.g., G.L. c.140, § 147 (“The clerks of cities and towns, **except the city of Boston**, may retain for their own use \$.75 cents for each license issued”); G.L. c. 138, § 17 (“local licensing authorities of any city or town, **except the city of Boston**, which has voted to grant licenses for the sale of all alcoholic beverages...”); G.L. c.44, § 31 (“No department financed by municipal revenue, or in whole or in part by taxation, of any city or town, **except Boston**, shall incur a liability in excess of the appropriation”); G.L. c.53, § 10 (“In any city, **except Boston**, certificates of nomination and nomination papers for any city election shall be filed...”); G.L. c.32, § 81A (“**In cities, except Boston, which have accepted this section** and section eighty-one B by vote of the city council...”); G.L. c.41, § 25A (“This section apply in all cities and towns, **except Boston**...”); G.L. c.83, § 17 (“The aldermen of any city **except Boston** or a town in which main drains or common sewers are laid...”); G.L. c.41, § 81N (“The subdivision control law shall be in effect in every city, except Boston, ... unless such city or town by vote of its city council or town meeting at the time of establishment of such [planning] board shall vote not to accept the provisions of the subdivision control law”); G.L. c.43, § 44A (“...and in every city, except Boston, which, after said date adopts any such plan, except Plan E or F, in the manner provided in this chapter, the provisions of sections forty-four A to forty-four G, inclusive, shall apply.”); G.L. c.90, § 40A (“Any city, except Boston, and any town, may by ordinance or by-law adopt, and may administer and enforce, in the manner and upon the conditions hereinafter prescribed, approach regulations relative to approaches to publicly owned airports...”).

I would argue that the above-quoted language in Section 20A½ simply creates a default whereby Boston and Cambridge were not required to accept that section in order to proceed in accordance with its provisions. However, absent any exclusion of Boston in Section 20A from the ability of “any city or town” to accept its provisions it is my opinion that the City may lawfully do so, thereby permitting use of Safety Sticks in the City’s parking enforcement program.

4. Home Rule Petition

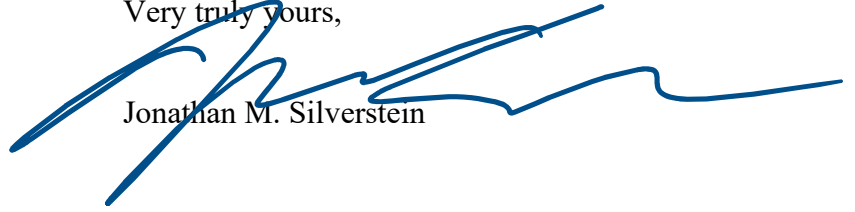
As an alternative to accepting the provisions of §20A, the City also has the option of submitting to the General Court a request for special legislation allowing it to mail traffic citations to the owners of illegally parked vehicles. Such requests, known as Home Rule Petitions, are common tools utilized by municipalities seeking special legislative authorization. Most of the differences between §20A and §20A½ seem to relate more to the structure of the City’s parking administration. If the City prefers not to adopt §20A½, whether out of concern regarding its authority to do so or a concern about complicating the administrative functioning of its parking enforcement program, a simple Home Rule Petition would allow it to seek legislative authorization to mail parking citations without otherwise removing the City from the statutory process prescribed in §20A½. I know that the City and its Law Department are very familiar with the process of preparing and submitting Home Rule Petitions, but I would be happy to prepare a draft Home Rule Petition if that would be helpful.

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Please do not hesitate to contact me should you have any questions.

Very truly yours,

Jonathan M. Silverstein

A handwritten signature in blue ink, appearing to read 'Jonathan M. Silverstein', is written over the typed name. The signature is stylized and fluid, with a long horizontal stroke extending to the right.