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**CITY OF CAMBRIDGE**

Office of the City Solicitor  
795 Massachusetts Avenue  
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September 12, 2022

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

***Re: Response to Awaiting Report No. AR-22-19 of 4/25/22, Re: Report on drafting language to enable the Cambridge Police Department and Department of Public Works to donate abandoned bicycles to charitable organizations as outlined under MGL 30B Section 15(g).***

Dear Mr. Huang:

This report has been prepared in response to the above-referenced Council Order. After review, we have confirmed that G.L. c. 30B, §15(g) does not permit either the Cambridge Police Department ("CPD") or Department of Public Works ("DPW") to donate abandoned bicycles to charitable organizations pursuant to that law, as that law only applies to surplus supplies that were originally purchased by a governmental body via public procurement. However, as set forth below, in our opinion the City does have the ability to donate abandoned bicycles pursuant to issuance of a policy by the City Manager, and we therefore recommend that such a policy be issued in order to provide for the proposed charitable dispensation of abandoned bicycles.

Generally, in order for a municipality to dispose of property which has been stolen, lost, abandoned, or taken from a person under arrest, state law requires that such property be secured by the police department and a public notice be issued giving the owner an opportunity to claim the item. G.L. c. 135, §7. If the property remains unclaimed in the possession of the police department for one month and the owner is either unknown or is known and does not respond within ten days of receipt by registered mail of written notice to take possession of the property, the police department may sell the property via public auction. G.L. c. 135, §8. The proceeds of the public auction are paid into the City treasury after deducting all reasonable charges and expenses incurred. G.L. c. 135, §10. If the owner claims and proves ownership of the property within two years of the auction of property, the owner is paid the unclaimed balance of the money or proceeds of the sale, after deducting all reasonable charges and expenses. G.L. c. 135, §11.

A potential problem with conducting such public auctions for abandoned bicycles, however, is that the costs in conducting the auction often outweighs whatever value could be obtained from the bicycles themselves. Fortunately, we believe that the language of G.L. c. 135, §8 can be construed such that the public auction process is **permissive** and not **mandatory**. As the statute states:

“If such property remains unclaimed in the possession of such police department or member thereof for one month and the owner thereof or his place of abode or business is unknown ... such department **may** sell the same, excepting money unclaimed, by public auction or any other licensed auction service ...”

Under the canons of statutory construction, when a statute distinguishes between the words “may” and “shall,” it is “generally clear that ‘shall’ imposes a mandatory duty.” Kingdomware Technologies, Inc. v. U.S., 579 U.S. 162, 172 (2016) citing United States ex. Rel. Siegel v. Thoman, 156 U.S. 353, 359-360 (1895). As prior sections of Chapter 135 employ the word “shall” to connote mandatory actions to be taken when reporting lost, stolen, and abandoned property, the use of “may” in Section 8 implies a permissive connotation, allowing for a municipality’s discretion towards the use of public auctions. It is our opinion, therefore, that statutory construction provides the City with the option of adopting alternative policies for the disposition of abandoned bicycles, considering their presumed *de minimis* value.

### **Recommended Policy for Abandoned Bicycles**

While most abandoned bicycles are either found by CPD and DPW or left at the City’s Recycling Center, staff from other City departments may also find bicycles in the course of their duties. It is therefore recommended that a policy for the charitable dispensation of abandoned bicycles be issued by the City Manager in order to ensure uniformity across all departments. Furthermore, DPW and other departments have reported that in addition to bicycles, City employees have also found and placed into storage abandoned e-scooters, wheelchairs, and other personal mobility devices. As such, it is also recommended that the policy be expanded to also include all such similar abandoned personal mobility devices of presumed *de minimis* value.

Under the recommended policy if issued by the City Manager, upon acquiring a lost or abandoned bicycle or other personal mobility device the City would be required to provide public notice as it does with other lost property pursuant to G.L. c. 135, §7. In addition to the usual terms, we recommend that the notice inform the public that, pursuant to the policy, the City would donate the bicycle or personal mobility device to a charitable organization if it remains unclaimed for 30 days. Depending on the number of abandoned bicycles or personal mobility devices currently stored by the City, the public notices should be scheduled to maximize efficiency and to allow for as many abandoned bicycles or personal mobility devices to be distributed expeditiously, which would also free up City storage space.

For all abandoned bicycles and other personal mobility devices that remain unclaimed after 30 days following the public notice, the City could, pursuant to the policy, arrange with charitable organizations to pick up and redistribute the bicycles. Under the policy, the City Manager or their designee(s) could also seek out input from the Bicycle Committee for recommendations of

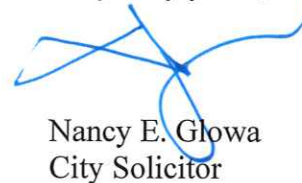


charities that the City would donate the bicycles or personal mobility devices to.<sup>1</sup> In the event that it is decided that multiple charities will receive bicycles, the City must distribute them in a manner that is equitable and fair to all receiving charities. Any participating recipient charity would be required to sign a liability waiver with the City, which would require them to agree to accept the donated bicycles in their “as is” condition.

### **Conclusion**

While G.L. c. 30B, §15(g) does not permit the City to donate abandoned bicycles to charitable organizations, for the reasons set forth above, we interpret G.L. c. 135, §8 to provide the City with the authority to donate such bicycles to deserving charities where their *de minimus* value would make their public auction impracticable, pursuant to a policy to be issued by the City Manager.

Very truly yours,



Nancy E. Glowa  
City Solicitor

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<sup>1</sup> When reviewing potential charitable organizations, care must be given to ensure that the donations do not violate the Anti-Aid Amendment to the Massachusetts Constitution, which prohibits the “grant, appropriation or use of public money ... for the purpose of founding, maintaining or aiding any church, religious denomination, or society.” Mass. Const. Amend. art. XVIII, § 2.