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**CITY OF CAMBRIDGE**

Office of the City Solicitor  
795 Massachusetts Avenue  
Cambridge, Massachusetts 02139

October 5, 2020

Louis A. DePasquale  
City Manager  
City Hall  
Cambridge, MA 02139

***Re: Response to Awaiting Report No. 19-137 and Calendar Item #4, of October 7, 2019, a report on determining if ISD can be given authority to issue citations for smoking in non-smoking buildings and report back to the City Council.***

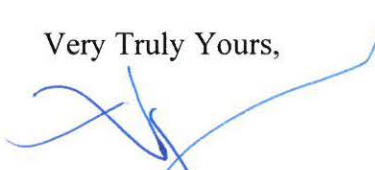
Dear Mr. DePasquale:

This is in response to Awaiting Report No. 19-137 and Calendar Item #4, of October 7, 2019, attached hereto, which requests a report on determining if the Inspectional Services Department “can be given authority to issue citations for smoking in non-smoking buildings and report back to the City Council.”

Currently there is no express authority for the City to issue citations to individuals or private property owners to enforce a private property owner’s own regulation related to smoking in private residential buildings. Massachusetts law does not affirmatively grant municipalities power to enforce a private property owner’s regulation related to smoking, and regulating the landlord-tenant relationship in private buildings in this way might be construed by a court as constituting the enactment of an illegal “civil law governing civil relationships” outside of an independent municipal power. See *Marshal House, Inc. v. Rent Review and Grievance Board of Brookline*, 357 Mass. 709, 717 (1970)(holding that a bylaw which required that rents be fair and reasonable invalidly regulated a civil relationship outside of an independent municipal power); see also *Bannerman v. City of Fall River*, 391 Mass. 328 (1984)(holding that an ordinance which required that a board approve a conversion of rental property to condominiums invalidly regulated a civil relationship outside the exercise of an independent municipal power). In addition, we were unable to find any municipality in Massachusetts which has enacted an ordinance which enforces a private landowner’s smoking prohibition with respect to a private building.

Tenants have a private right of action against a landlord to enforce a private lease and the rules and regulations related to such lease, whether such rules are related to smoking or otherwise. Conversely, landlords have private legal remedies against tenants. I do not believe it would be appropriate for the City to seek to bring an action or levy fines based upon a landlord's smoking rules and regulations on behalf of private individuals against other private individuals who have a contractual landlord-tenant relationship.

Very Truly Yours,



Nancy E. Glowa  
City Solicitor

Enc.