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## CITY OF CAMBRIDGE

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

October 21, 2024

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

***Re: Response to Awaiting Report No. 24-51 of 9/9/2024 Re: The City Manager is requested to provide a status update on automated parking enforcement.***

Dear Mr. Huang:

I write in response to the above-referenced Council Order, which requests a status update on automated parking enforcement. This order relates to a prior City Council inquiry about the City potentially adopting camera-equipped automated license plate reader (ALPR) bollards, such as MPS's Safety Stick<sup>1</sup>, for automated parking enforcement in certain designated no parking zones, such as bus stops or near fire hydrants. The City Council's order noted that there are unique legal considerations with adopting the technology due to current state law governing the City's enforcement of parking violations under G.L. c. 90, §20A½ ("Section 20A½"). The Council Order also references a January 15, 2024 legal opinion, provided to the City of Boston and shared with the City, regarding the potential legality of adopting ALPR technology.

As explained further below, in my opinion the language of Section 20A½ currently does not allow the City to use ALPR technology as a tool for parking enforcement. While the City could potentially adopt a different state law, G.L. c. 90, §20A ("Section 20A"), which contains language that could possibly allow for the adoption of this technology, doing so would require rescinding Section 20A½. It is unclear whether the City has the authority to rescind Section 20A½.

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<sup>1</sup> The Safety Stick is a solar powered ALPR which is installed adjacent to no-parking areas. The Safety Stick's ALPR is triggered by a vehicle stopping in the designated no parking area for a period of time. Once triggered, the device takes a photograph of the vehicle's license plate, which is then sent to the company for verification. If verified, the evidence is sent to parking enforcement officers for the municipality to determine whether to issue a citation.

Furthermore, rescinding the statute may have unintended consequences for the City's Traffic Regulations and special acts which reference or rely upon Section 20A½.

As such, I recommend that the City pursue special legislation expanding the City's options to issue citations under Section 20A½ should the City Council be interested in adopting ALPR technology, which has the benefit of enabling the adoption of new enforcement technologies in the future.

## DISCUSSION

### **A. State statutes governing parking enforcement citation procedures.**

For Massachusetts municipalities, the enforcement of local parking regulations typically falls under Section 20A and Section 20A½. Originally enacted in 1934 and applying to "any city or town accepting the provisions of this section," Section 20A states that, "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," may issue a notice to the violator to appear before the parking clerk, which is then affixed to the vehicle. Section 20A also contains language allowing for alternative service of the violation notice in the event the violation cannot be attached to the vehicle. In such instances, the enforcement officer, their commanding officer, or other authorized persons can mail the citation to the last known address of the motor vehicle's registrant, which is deemed as sufficient notice under the law. Id.

Section 20A½, enacted in 1981<sup>2</sup>, specifically applies "[i]n the cities of Boston and Cambridge and in any city or town which accepts the provisions of this section..." In contrast to Section 20A, Section 20A½ parking enforcement procedures differ in that they require enforcement officers to physically affix the citation to the violating motor vehicle. There is no language in Section 20A½ that authorizes the mailing of citations or other processes outside of attaching the citation on the motor vehicle.

### **B. Adopting Section 20A would require the City to rescind Section 20A½, which could have negative effects towards the City's Parking and Traffic Regulations.**

It is not recommended that the City adopt Section 20A in order to use ALPR technology for parking enforcement because doing so would require the City to also repeal Section 20A½. Section 20A's language requires adopting municipalities to exclusively follow the law. The language of Section 20A emphasizes this exclusivity when it states that it governs the duties of officers regarding parking violations "except in cities and towns subject to the provisions of section twenty A1/2." As such, the City would have to rescind Section 20A½ in order to avoid creating a conflict of laws issue.

It is also uncertain whether the City is authorized to adopt Section 20A and rescind Section 20A½. Not only was Section 20A½ codified at a later date than Section 20A, but a plain reading of the statutory language indicates that following Section 20A½ is mandatory for both Cambridge and Boston. The statute provides that "[i]n the cities of Boston and Cambridge and in any city or town which accepts the provisions of this section..." Were acceptance of this statute optional for

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<sup>2</sup> St. 1981, c. 351, § 115.

Cambridge and Boston, as it is for other adopting communities, the statute would have explicitly stated as such. That it has not suggests that the legislature intended Section 20A½ to be mandatory for both Boston and Cambridge and optional for all other municipalities in the Commonwealth.

Rescinding Section 20A½ would also affect the City’s parking enforcement, as the statute serves as the City’s sole basis to issue parking citations under its Traffic Regulations.<sup>3</sup> Adopting Section 20A and rescinding Section 20A½ would invalidate all City traffic regulations governing parking enforcement until they could be revised and reissued under Section 20A. Furthermore, rescinding Section 20A½ risks invalidating any special legislation the City previously adopted that refers to the statute. For instance, a home rule petition was recently passed authorizing the City to increase certain fines for illegal parking during street cleaning.<sup>4</sup> The home rule petition specifically recognizes the City’s authority to issue parking violations and set a schedule of fines as exclusively derived from Section 20A½. Rescinding Section 20A½ to adopt Section 20A could have a ripple effect on this and other similar laws, requiring the City to either refile updated special legislation or face potential legal challenges.

**C. Whether Section 20A allows for ALPR enforcement is not settled and would heavily depend on statutory interpretation in the event of a legal challenge.**

Additionally, we do not recommend adopting Section 20A because it is an unsettled question whether Section 20A citations issued through ALPR technology would be found valid if challenged. Section 20A states that a violation notice can be issued by “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...” (Emphasis added). While the statute does not define the term “cognizance,” statutory language is interpreted to give “effect consistent with its plain meaning and in light of the aim of the Legislature ‘unless doing so would achieve an ‘absurd’ or ‘illogical’ result.’” Commonwealth v. Scott, 464 Mass. 355 (2013) quoting Sullivan v. Brookline, 435 Mass. 353, 360, (2001). Given that the typical definition of “cognizance” is that of “knowledge,” “awareness,” or “notice” not requiring physical presence, a plausible interpretation of Section 20A is that awareness of a parking violation does not require the enforcement officer to be physically present in order to be aware of the violation.

However, when considering other relevant language in Section 20A, a contrary interpretation can be formed that requires enforcement officers to first physically observe the violation and attempt to affix notice on the vehicle before opting for the mailing option. When interpreting statutes, all terms must be taken into account. “[A] statute must be interpreted ‘as a whole;’ it is improper to confine interpretation to the single section to be construed.” Chin v. Merriot, 470 Mass. 527, 532 (2015). In the first paragraph of Section 20A, the statute states that “**Said notice** must be made in triplicate and one copy **shall be affixed securely to the motor vehicle** and shall contain, but shall not be limited to, the following information: ...” (Emphasis added). The use of the word “shall” in legal and regulatory context connotes a mandatory requirement. See Hashimi v. Kalil, 388 Mass. 607, 609 (1983). A plain reading of this language suggests that attaching a parking violation notice on a vehicle only occurs in instances where the enforcement officer physically observed the violation in their presence. As mailing a violation is only authorized when it is not possible to attach the notice on the vehicle at the time and place of

<sup>3</sup> City of Cambridge Traffic Regulations, April 2023 Edition, Appendix B – Related State Traffic Laws, Page 60.

<sup>4</sup> Chapter 131 of the Acts of 2024 – An Act Authorizing the City of Cambridge to Increase Certain Parking Fines.

the violation, and given the statute's use of the word "shall," a plausible argument can also be made that citations under Section 20A are not valid unless an officer physically observes the violation on patrol and attempts to attach the citation on the vehicle.

Given the risk of competing interpretations, a court could find in a legal challenge that parking citations issued through ALPR technology are invalid under Section 20A, as they were not first issued in person by an enforcement officer. If such a finding were to occur, any future citation issued through an ALPR could be challenged and dismissed on such a basis. While the City would have strong grounds to contest such a challenge, these potential risks should be noted when considering adoption of Section 20A.

**D. Special legislation is the safest approach to authorize adoption of the technology.**

Given the potential issues related to rescinding Section 20A½, special legislation authorizing the issuance of citations via mail and allowing for the use of ALPR or similar technology is recommended as the safer approach. Special legislation would allow the City to take advantage of the benefits the technology offers while maintaining continuity with the City's current laws, regulations, and schedule of fines. Special legislation offers an opportunity to "future proof" the law to account for other potential advancements in parking enforcement technology. Special legislation also affords the opportunity for the City to examine other aspects of Section 20A½ that could be updated to allow for more efficient parking enforcement in the City.

It should also be noted that Boston is exploring the potential of ALPR technology. The Boston Law Department is analyzing how that can be done, including potentially pursuing special legislation to update Section 20A½ to allow for the use of such technologies. Should the City Council be interested in pursuing this technology, the Law Department can prepare a Home Rule Petition and could discuss with the Boston Law Department a potential joint process with Boston.

Please let me know if you have any questions.

Very truly yours,



Megan B. Bayer  
City Solicitor