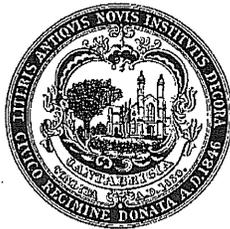


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## CITY OF CAMBRIDGE

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

May 5, 2014

Richard C. Rossi  
City Manager  
City Hall  
795 Massachusetts Avenue  
Cambridge, MA 02139

***Re: Amended Council Order No. O-13 of 3/17/14 Re: Request that City Manager Confer with City Staff to Determine the Relevant Zoning Requirements for the Edward J. Sullivan Courthouse with Respect to Use of the First Street Garage***

Dear Mr. Rossi:

In the above referenced Amended Council Order No. O-13, the City Council requested “that the City Manager . . . confer with City staff to determine the relevant zoning requirements” for the former Edward J. Sullivan Courthouse located at 40 Thorndike Street in East Cambridge (“Courthouse”) with respect to the potential use of the City-owned First Street Garage (“Garage”) to satisfy the off-street parking requirements for the redevelopment and use of the Courthouse. This letter responds to said request.

### **I. Courthouse Project**

#### **A. Background**

In 2011 and again in 2012, the Commonwealth of Massachusetts, acting through its Division of Capital Asset Management and Maintenance (“DCAMM”) issued a Request for Proposals (“RFP”) for the sale and redevelopment of the Courthouse. A private developer, LMP GP Holdings LLC (“Developer”), as the successful bidder, entered into a purchase and sale agreement with the Commonwealth for the purchase of the Courthouse.

In December 2013, the Developer submitted an application to the Planning Board seeking special permits to “[c]onvert the existing nonconforming Courthouse structure at 40 Thorndike Street to a mixed use office building containing ground floor retail uses, 24 dwelling units, and below grade parking.” The Developer in its application stated that there will be a zoning minimum of three hundred eighty-seven (387) and a maximum of seven hundred fifty (750) off-street parking spaces required for the redevelopment of the

Courthouse. The Developer also stated in its special permit application that it intends to use ninety-two (92) parking spaces on site, and that it will request permission from the Planning Board to use four hundred twenty (420) parking spaces in the City-owned Garage to fulfill the project's off-street parking requirements.

### **B. Zoning Requirements for the Courthouse Project**

Section 6.22.1 of the Ordinance authorizes a developer to fulfill the accessory off-street parking requirements for a building on a separate lot, but the separate lot must be "within three hundred (300) feet of the lot on which the use to be served is located and the use being served is nonresidential . . .," among other requirements. Further, pursuant to Section 6.23 of the Cambridge Zoning Ordinance, "binding commitments shall exist to guarantee, to the reasonable satisfaction of the Superintendent of Buildings or to the special permit granting authority, that the off-site parking will continue to be available for the period during which the use or uses that the parking serves may be expected to be in existence. Such commitments shall be evidenced by negotiated lease agreement, recorded covenant or comparable legal instrument." Assuming that the Garage is within 300 feet of the Subject Property, and will be used to serve the nonresidential uses associated with the Courthouse, the question becomes whether the City may commit to leasing parking spaces within the Garage to a private entity such as the Developer if it so chooses.

## **II. The City's First Street Garage**

### **A. Development of the Garage**

Between 1984 and 1986, the City obtained financing for and constructed the City-owned First Street Garage. The Garage houses one thousand one hundred (1,100) parking spaces. Development of the Garage was financed through an Urban Development Action Grant ("UDAG") Agreement from the United States Department of Housing and Urban Development ("HUD"), state and City funds, and the issuance of general obligation bonds by the City. The UDAG Agreement that the City entered into with HUD on August 29, 1984 (the "UDAG Agreement") contemplated development and/or redevelopment of the properties now known as the Davenport Building, One Canal Park, Ten Canal Park (the "Development Sites"), as well as the construction of the Garage. The UDAG Agreement required leases of parking spaces within the Garage to be provided to the developers of the respective newly developed or redeveloped buildings at the Development Sites. All of the City-issued municipal bonds have been paid, and the development contemplated in connection with the UDAG Agreement has been completed.

### **B. Restrictions on the Use of Parking Spaces in the Garage**

#### **1. Restrictions Related to the UDAG Agreement**

The UDAG Agreement required that one hundred thirty (130) spaces in the Garage "will be available to the general public at market rates" and required the provision of long term leases for parking spaces in the Garage to the owners of the Development Sites.

Although it is not clear that those provisions of the UDAG Agreement are still binding upon the City, both of the above requirements are still being met at this time.

## **2. Restrictions Based Upon State and City Funding**

Palmer and Dodge (now known as Edwards Wildman), which is the City's bond counsel ("Bond Counsel"), provided advice to the City in 1984 in connection with funding the construction of the Garage with respect to two issues as follows: (1) that in order for interest from the City bonds to be considered tax free under the Internal Revenue Code, less than twenty five (25) percent of the facility constructed through use of the bonds may be leased to private entities; and (2) that appropriation and expenditure of public moneys through use of City and state funds may be limited under the public purpose doctrine under the state Constitution, requiring that no more than from ten percent (10%) to twenty five percent (25%) percent of the facility funded by City or state funds be utilized for a private purpose.

Bond Counsel for the City has recently advised the City that because the bonds in question have been fully paid, it is Bond Counsel's opinion that there are no longer any limitations under federal tax law related to those bonds. Bond Counsel further stated its opinion that the redevelopment of the Courthouse is a "proper public purpose" for purposes of the expenditure of public moneys under the public purpose doctrine of the state Constitution. As such, based upon the opinion of Bond Counsel, the former state and local funding of the Garage does not impose any current restrictions upon the lease of parking spaces to a private entity.

### **C. Summary of Available Parking Spaces in the Garage**

Of the one thousand one hundred (1,100) existing parking spaces in the Garage, four hundred twenty-three (423) parking spaces are currently leased through binding leases which were originally required by and based upon the UDAG Agreement and subsequent amendments thereto. These existing leases are as follows: the owner of the Davenport Building has a long term lease for up to two hundred fifty (250) spaces with options to renew until November 2075; the owner of the property located at Ten Canal Park has a long term lease until the year 2073 for twenty-three (23) spaces, but such lease may be terminated upon three years' written notice; and the owner of the property located at One Canal Park also has a long term lease until the year 2073 for one hundred 100 spaces, which lease may likewise be terminated upon three years' written notice. In addition, the City currently leases fifty (50) spaces to the Commonwealth of Massachusetts.<sup>1</sup>

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<sup>1</sup> In 1980, the City agreed to provide fifty (50) parking spaces to the Middlesex County Commissioners ("County") in the Garage for the exclusive use of the County or its designees for as long as the Garage remains open for parking purposes. In 1997, the County was abolished pursuant to Chapter 48 of the Acts of 1997 (An Act Abolishing Certain Counties and for Payment by the Commonwealth of Certain Debts and Obligations of Middlesex County), which provided that "[a]ll valid leases and contracts of an abolished County which are in force immediately before the transfer date shall be obligations of the commonwealth and the commonwealth shall have authority to exercise all rights and enjoy all interests conferred upon the county by said leases and contracts . . . ." By letter dated September 10, 1997, the Commonwealth designated the Commonwealth's Administrative Office of the Trial Court as the successor to the agreement for the fifty (50)

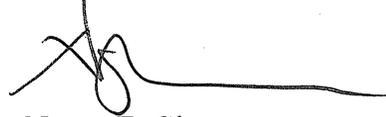
The following table tabulates the number of parking spaces in the Garage that the City is required to lease to private entities or to the general public:

Entity	Spaces that are committed
Davenport Building	250
One Canal Park	100
Ten Canal Park	23
Commonwealth of Massachusetts	50
General Public	130
Total	553

### III. Conclusion

Accordingly, in summary, the City is committed to leasing five hundred fifty-three (553) of the total number of one thousand one hundred (1,100) existing parking spaces in the Garage to private entities, the Commonwealth of Massachusetts or members of the general public, and therefore the City has five hundred forty-seven (547) remaining parking spaces that would be available to lease to a private party if the City so chooses.

Very truly yours,



Nancy E. Glowa  
City Solicitor

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parking spaces in the Garage, and thus those fifty (50) parking spaces continue to be leased to the Commonwealth.