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City Solicitor

Nancy E. Glowa
Deputy City Solicitor

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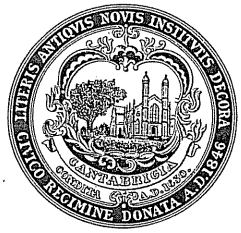

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CITY OF CAMBRIDGE

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

November 21, 2011

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Awaiting Report No. 11-89 Re: Report on the Need for a Bamboo Ordinance that either Bans the Planting of Bamboo Outright or Somehow Holds the Owner of the Bamboo Accountable

Dear Mr. Healy:

In response to the above Council Order, please be advised of the following:

Activity of one property owner or resident that may cause harm to or otherwise adversely affect the property of another, such as a neighbor's property, may give rise to a private remedy under the nuisance laws of the Commonwealth. In general, private nuisance laws provide that an individual may bring a private action for nuisance where a neighbor caused a substantial and unreasonable interference with the use and enjoyment of the property of the person whose property has been adversely affected by the nuisance. Vegetation encroachment in some instances has been considered to be a nuisance, depending upon how unreasonable invasion of the encroaching vegetation has become. In addition, there is the right of self-help, whereby one has the right to remove any roots or other vegetation that has encroached on one's property, and may erect barriers up to the property line to prevent such encroachment.

After a reasonable search on the question of whether other municipalities have dealt with complaints by citizens about neighboring bamboo plants adversely affecting their neighbors' property by enactment of an ordinance, we have been able to identify only one such ordinance, which was enacted in Haverford, Pennsylvania. It would thus appear that in most communities people may resort only to their own private remedies rather than having a municipal ordinance that addresses regulation of such activities.

If the City Council were to decide to enact an ordinance regulating the growth and maintenance of bamboo on private property, the Council could do so if the proposed ordinance were to have a demonstrable rational relationship between the restrictions on the

activity to be regulated and the harm that is being sought to be addressed. Our preliminary research into whether such an ordinance would be advisable has revealed that there are many varieties of bamboo, some of which have the potential to cause a nuisance on abutting properties, while others do not. Thus, regulation of plant species such as bamboo by ordinance could be complicated as well as difficult to enforce. Absent evidence that private remedies for residents concerned about the growth of their neighbors' bamboo would be inadequate, this may not be a desirable issue to address by legislation.

Very truly yours,

Donald A. Drisdell