



CITY OF CAMBRIDGE
INTEROFFICE CORRESPONDENCE

To Russell B. Higley, City Solicitor

Date May 25, 1984

From Paul E. Healy, City Clerk

Reference

Subject City Council Calendar Item No. 8 of 5/21/84

Enclosed you will find a copy of an order introduced by Councillor Sandra Graham at the City Council meeting of May 14th which she Charter righted at that meeting, and which order subsequently appeared on the City Council Calendar as Item No. 8 at the meeting of Monday, May 21st. Said order, with regard to development in the Cambridgeport Industrial District, was adopted by the Council as amended at its meeting of May 21st.

The order requests that the City Solicitor draft a general ordinance requiring that the Inspectional Services Department issue demolition permits and building permits in the Cambridgeport Industrial District only after the applicant meets certain conditions (as outlined in the content of the order), that your office submit an accompanying position paper on the legality of such an ordinance, and further requests that your office draft appropriate legislation to amend Chapter 40A of the General Laws in order to achieve the purpose of this order.

Your very kind attention in this matter will be greatly appreciated by the City Council.

PEH/mh

Enclosure: City Council Calendar Item No. 8 of 5/21/84



City of Cambridge

-15-

(Calendar Item No. 8)

COUNCILLOR GRAHAM

IN CITY COUNCIL

~~May 14, 1984~~

May 21, 1984

- WHEREAS: It is the policy of this City Council to promote balanced, community-oriented development in the Cambridgeport Industrial District under an overall plan for integrated development of the area; and
- WHEREAS: It is also the policy of this City Council to provide a diversity of jobs and affordable housing in the Cambridgeport Industrial District; and
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City of Cambridge

COUNCILLOR GRAHAM

Amended
(Calendar Item No. 8)

IN CITY COUNCIL

May 21, 1984

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; and be it further

ORDERED: That the City Solicitor submit to this City Council an accompanying position paper on the legality of the ordinance draft; and be it further

ORDERED: That the City Solicitor be and hereby is requested to draft legislation to amend Chapter 40A of the General Laws, the Zoning Law of the Commonwealth and the Zoning Ordinance of the City of Cambridge to achieve the purpose of this order.

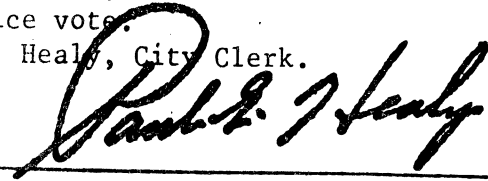
In City Council May 21, 1984.

Adopted by a voice vote.

Attest:- Paul E. Healy, City Clerk.

A true copy;

ATTEST:-


Paul E. Healy, City Clerk.



City of Cambridge

Amended
(Calendar Item No. 8)

COUNCILLOR GRAHAM

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In City Council May 21, 1984.

Adopted by a voice vote.

Attest:- Paul E. Healy, City Clerk.

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Paul E. Healy
Paul E. Healy, City Clerk.



City of Cambridge

-15-

(Calendar Item No. 8)

COUNCILLOR GRAHAM

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City of Cambridge

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In City Council May 21, 1984.

Adopted by a voice vote.

Attest:- Paul E. Healy, City Clerk.

A true copy;

ATTEST:-

Paul E. Healy, City Clerk.

Councilman Graham

Order adopted is amended (8)

May 14, 1984

DRAFT

In City Council

- WHEREAS: It is the policy of this City Council to promote balanced, community-oriented development in the Cambridgeport Industrial District under an overall plan for integrated development of the area; and
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adopted as amended
af. vote (of 9)

Ch. R. C. Graham

Colendon #1

City of Cambridge

MASSACHUSETTS

In City Council

May 21, 1984*Emergency Special Session*

	YEA	NAY	ABSENT	PRESENT
Mr. Daniel J. Clinton		✓		
Mr. Thomas W. Danehy		✓		
Mr. Francis H. Duehay	✓			
Ms. Saundra Graham	✓			
Mr. David E. Sullivan	✓			
Mr. Walter J. Sullivan		✓		
Mr. Alfred Vellucci	✓			
Ms. Alice K. Wolf	✓			
Mayor Russell	✓			

6 3 0

Order as amended

City of Cambridge

MASSACHUSETTS

In City Council

5/21 1984

	YEA	NAY	ABSENT	PRESENT
Mr. Daniel J. Clinton		✓		
Mr. Thomas W. Danehy		1	✓	
Mr. Francis H. Duehay	✓			
Ms. Saundra Graham	✓			
Mr. David E. Sullivan	✓			
Mr. Walter J. Sullivan		✓		
Mr. Alfred Vellucci	✓			
Ms. Alice K. Wolf	✓			
Mayor Russell	✓			

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QPS
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Councilman Graham

May 14, 1984

DRAFT

In City Council

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Ch. N. C. Graham



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

• (617) 498-9020

LAW DEPARTMENT

RUSSELL B. HIGLEY
CITY SOLICITOR

MICHAEL C. COSTELLO
ASSISTANT CITY SOLICITOR

EDWARD A. CUNNINGHAM
SEVERLIN B. SINGLETON
DAVID B. O'CONNOR
BIRGE ALBRIGHT
LEGAL COUNSEL

May 21, 1984

Mr. Robert W. Healy
City Manager
City Hall
Cambridge, Mass.

Re: Cambridgeport Industrial District

Dear Mr. Healy:

On May 14, 1984, the City Council requested that I draft a general ordinance as follows:

ORDERED: That the City Solicitor be and hereby is requested to draft a general ordinance which will cause the Department of Inspectional Services to issue demolition permits and building permits in the Cambridgeport Industrial District only after the applicant:

- (1) certifies that no residential, commercial or industrial tenants have been or will be evicted from the premises to be demolished more than sixty (60) days prior to the date when physical reuse of the site for new construction begins; and
- (2) plans for reuse of the site consistent with an overall redevelopment plan for the Cambridgeport Industrial District approved by the City Council have been filed with the Com-

munity Development Department and advertised as a public notice in local newspapers at least ninety (90) days prior to the effective date of the requested demolition permit.

In my opinion, the proposed ordinance would be beyond the power of the City Council, for the following reasons:

1. Insofar as the proposed ordinance attempts to regulate eviction of nonresidential tenants, it is not within the power of the City of Cambridge under the Home Rule Amendment because it constitutes the regulation of civil relationships not incidental to the exercise of an independent municipal power. See Marshall House, Inc. v. Rent Review & Grievance Board of Brookline, 357 Mass. 709 (1970). Eviction of residential tenants is already regulated by the City's Rent Control Ordinance, authorized by Chapter 36 of the Acts of 1976. The proposed ordinance does not indicate in what way the new ordinance would vary from existing eviction regulations.

2. Even if a redevelopment plan for the Cambridgeport Industrial District were approved by the City's legislative body, an ordinance limiting the issuance of building permits and demolition permits to projects for which plans consistent with the approved city plan had been submitted would not be authorized because the procedures called for by the proposed ordinance are not consistent with those mandated by Chapter 40A, the State Zoning Act.

3. Chapter 40A, the State Zoning Act, requires a city's legislative body to delegate approval of development plans to the Planning Board or Board of Zoning Appeals. The proposed ordinance would be invalid because it contradicts this requirement.

4. The proposed ordinance cannot be designated as a "general ordinance." It must be designated as an amendment to the Zoning Ordinance because regulation of development to require consistency with an approved plan constitutes zoning.

5. The proposed ordinance must be designated as an amendment to the zoning ordinance because it is to apply to only one district of the City and special regulation of a specified district is permissible only pursuant to Chapter 40A, the State Zoning Act.

May 21, 1984

6. The proposed ordinance would prohibit redevelopment of any sites with existing buildings until a redevelopment plan for the Cambridgeport Industrial District has been approved by the City Council. In spite of the work of the Community Development Department and the availability of the January 1983 Revitalization Plan, no such plan has been approved and future adoption of any such City plan is uncertain. If adopted prior to the approval of such a plan, the proposed ordinance would prohibit all redevelopment, and therefore constitute a "taking" of private property without just compensation in violation of the Fourteenth Amendment of the United States Constitution.

7. Insofar as the proposed ordinance would apply to demolition or building permits it should apply to all districts in the City of Cambridge. The reason is that special regulation of a specified district is permissible only pursuant to Chapter 40A.

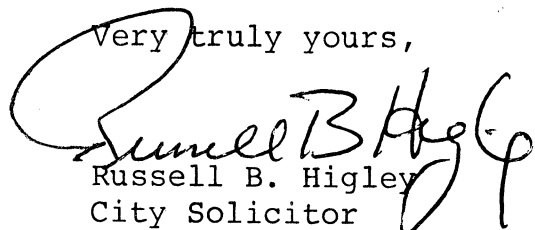
8. The proposed ordinance requires the approval by the City Council of a redevelopment plan. There is no authority for approval by a city's legislative body of redevelopment plans except in connection with urban redevelopment projects pursuant to Chapters 121A and 121B, which contemplate the taking of the land involved or the city providing financial assistance to the developer.

9. Insofar as the intent of the proposed ordinance is to assure that redevelopment meets the City's job opportunity and employment goals, the Cambridgeport Industrial District should be designated a "major economic revitalization area" pursuant to subsection 11.82 of the Cambridge Zoning Ordinance.

10. If the City Council believes it is appropriate to require review of development plans for the Cambridgeport Industrial District, it should designate the Cambridgeport Industrial District as an area of "special planning concern" under section 11.40 of the Cambridge Zoning Ordinance and require compliance with the development consultation procedures specified therein.

11. The proposed ordinance would conflict with G.L. c. 111, §127B and c. 143, §9, because those statutes place the demolition of buildings in Cambridge within the discretion of the Commissioner of Inspectional Services.

Very truly yours,


Russell B. Higley
City Solicitor



City of Cambridge

-15-

(Calendar Item No. 8)

COUNCILLOR GRAHAM

IN CITY COUNCIL

~~May 14, 1984~~

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C. Graham order re: City Solicitor to
draft a general ordinance causing the Inspec-
tional Services Dept. to issue demolition
permits & building permits in the Cambridge-
port Industrial District only after certain
conditions are met by the applicant.

Ordinance # 8 5/21/84

5/21/84

Order Adopted

As amended

By E. Velloso

E. Freeman

E. D. Sullivan

In City Council,

May 14, 1984

5/14/1984

Ordinance Right

Excused

By

*Councilman Freeman
letter sent to City Solicitor forwarding
a copy of this order. 5/25/84 mhr*