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Testimony of the Boston Municipal Research Bureau  
**Before the**  
Boston City Council's Committee on Government Operations

April 24, 2017

**Regarding:** Docket #0566 – An Act Protecting Sunlight and Promoting Economic  
Development in the City of Boston

Mr. Chairman, I am Samuel R. Tyler, President of the Boston Municipal Research Bureau, and I am here to speak on Docket #0566 regarding the home rule petition to exempt the Winthrop Square Garage site (115 Federal Street) from the existing shadow laws (Ch. 362, Acts of 1990 and Ch.384, Acts of 1992). While as a policy, the Research Bureau does not take a position on individual development proposals, the policy at issue here for the Research Bureau is whether the exemption to the shadow laws for this specific project will allow the City to optimize the value of this surplus city asset and also contribute to a revitalization of the Downtown Boston business area.

The Research Bureau believes that the City has taken appropriate steps to maximize the value of this city-owned site and that 115 Winthrop Square would revitalize the Downtown Boston area and make it equally attractive with the Back Bay and Seaport District. For these reasons, we are supportive of the Winthrop Square project and passage of this home rule petition with the improvements suggested.

Nevertheless, our review of this home rule petition has raised other policy concerns for us and we think this petition can be improved. We believe the exemption to the shadow laws for this project could allow the City to optimize the value of this surplus city asset without doing so at the potential expense of future development projects that could contribute to the continued revitalization of the Downtown Boston business area and contribute to the City's fiscal health.

The existing *shadow special acts* for the Boston Common and Public Garden cede Boston's local control of land use and development decisions to the Commonwealth, a problematic situation that is expanded by this home rule petition. The draft petition extends the Commonwealth's jurisdictional control over land use decisions to projects in the Stuart Street District that may have a shadow impact on Copley Square which is not affected by the Winthrop Square project. Particularly given that extensive planning work has been conducted in recent years that will guide responsible development in that area, there is no reason for the City to subject potential development projects to additional constraints beyond the City's control. Also, there is no mechanism built into the draft home rule petition that would allow for future development projects that do not conform to the shadow laws but present compelling public benefits to make a case for relief. As such, the home rule petition, in its current form, could limit the development potential of the Downtown and Stuart Street areas going forward.

## 115 Winthrop Square

The Winthrop Square Garage site may be one of the last city-owned parcels in Downtown Boston suitable for large-scale development. The City has taken appropriate steps to maximize the value of this site with an agreement with Millennium Partners for approximately \$153 million, with a payment of \$102 million followed by up to \$51 million based on future condominium sales. Prior to enactment of this special act, the City has indicated that it would apply the proceeds of \$102 million for improvements to the Boston Common, since the project will have shadow impacts on the Boston Common, as well as improvements to Franklin Park and for completing the Emerald Necklace. Further, the proceeds would be applied to improve or redevelop public housing in South Boston and East Boston.

The site of the Winthrop Square Garage is located at 115 Federal Street between the Bank of America building at 100 Federal Street and Winthrop Square. The project being proposed is a 775-foot mixed-use tower building. This site is only two blocks from the southern edge of the Midtown Cultural District which has the benefit of the shadow bank that enables appropriate development to occur despite additional shadow impact.

The development proposal for the Winthrop Square Garage site would bring greater vitality and attractiveness to the Downtown Boston area, making it more competitive with the Back Bay and Seaport District as a locus of high-intensity mixed-use development. Redevelopment on this site offers potential to create new pedestrian connections that are critical to the evolution of the area. The proposed density at the site is critical to enable more effective use of the ground floor public space and better connectivity in the Winthrop Square neighborhood. In addition, 115 Winthrop Square is expected to generate approximately \$12 million in property taxes in its first year of operation which would increase in future years.

Shadow studies have indicated that any structure on the Winthrop Square site exceeding 365 feet could not be built without relief from the shadow law. At that height, the financial and economic benefits to the City would be significantly reduced and the City would not be maximizing the value of the site. We recognize that the Boston Common is an incomparable civic and cultural asset that merits careful stewardship. The Research Bureau believes that morning shadows on the Boston Common on certain days of the year resulting from the proposed project can be more than counter-balanced by improvements to the Boston Common beyond what the City normally has been able to provide. These improvements can in turn result in significant enhancements to the user experience of the Common

## Policy Concerns

As noted above, the Research Bureau has concerns about a few issues raised by the home rule petition now before the City Council. They are:

- **Existing Shadow Laws** - The existing shadow laws cede to the Commonwealth what should be local authority for decisions regarding land use and development in the City's core area. Both laws are inflexible, with no relief mechanism for projects that do not conform to the laws but nevertheless offer important benefits to the City.
- **Extending Shadow Protections** – This special act will extend these inflexible state-imposed shadow protections to Copley Square even though this area will not be impacted by shadows

from the proposed Winthrop Square tower and the Stuart Street District has already undergone an extensive land use planning study. While the language in this special act may not affect current development plans, it could affect future projects that may offer significant benefits to the City.

- **Eliminating Existing Shadow Bank** – By this home rule petition, the City is proposing to limit the development potential in the Midtown Cultural District by eliminating the remaining shadow bank, without a planning study to support this trade-off.
- **Housing Support** - Limiting the City on development potential in the core city area would also limit financial support for affordable housing generated through the City's Linkage and Inclusionary Development Programs.

## Recommendations

1. The Winthrop Square tower development may be one of the last opportunities in Downtown Boston to harvest the value of a city-owned site to address needed capital and one-time needs and also revitalize the Downtown Boston area. For those reasons, the sections of this special act related to the development of the Winthrop Square garage site should be approved.
2. The legislation should include a relief mechanism, administered by the BPDA, to allow individual development projects to make the case for departures from the existing shadow laws if they provide compensating public benefits.
3. The legislation should not extend protections to Copley Square, which already has appropriate zoning protections and sections seven and eight of the special act should be deleted.

## Use of Proceeds

While not germane to this hearing, the Research Bureau will expect the Walsh Administration to follow the prudent financial principle that the proceeds from the sale of a city-owned capital asset will be transferred to the City's Surplus Property Disposition Fund and be utilized only for capital or one-time purposes. The Memorandum of Agreement between the City of Boston and the Boston Redevelopment Authority (now the Boston Planning and Development Agency) dated July 20, 2016 stipulates that "all net proceeds" from the sale of the garage would be deposited in the Surplus Property Disposition Fund."