



CITY OF SOMERVILLE, MASSACHUSETTS
CLERK OF COMMITTEES

December 5, 2019
REPORT OF THE LEGISLATIVE MATTERS COMMITTEE

Attendee Name	Title	Status	Arrived
Mark Niedergang	Chair	Present	
Lance L. Davis	Vice Chair	Present	
Matthew McLaughlin	Ward One City Councilor	Present	
Jesse Clingan	Ward Four City Councilor	Present	
Katjana Ballantyne	Ward Seven City Councilor	Present	

The meeting was held in the Somerville High School Auditorium and was called to order by Chair Niedergang at 6:04pm and adjourned at 8:07pm.

Others present: Ben Ewen-Campen - Ward 3 City Councilor; Annie Connor - Mayor's Office; Oliver Sellers-Garcia - OSE; Hannah Pappenheim - Law; David Shapiro - Law; Ellen Shachter - OHS; Hannah Carrillo - OSPCD; Kimberly Wells - Assistant Clerk of Committees

Approval of the November 7, 2019 Minutes

RESULT: ACCEPTED

207480: That the City Solicitor review the legal standing of each site identified in Sec. 12-131 of the proposed Public Space Conservation Ordinance to identify if there are any terms by which each site was acquired, or is held, that would prevent it from being dedicated to the public.

Councilor Ballantyne noted that work on this remains underway. Chair Niedergang pointed out that the revisions appear substantially different and Councilor Ballantyne clarified that there are discussions about what the change of use would do to landscaping that remain in question and there will be another new draft forthcoming.

RESULT: KEPT IN COMMITTEE

203365: That the City Solicitor draft an ordinance requiring native tree and plantings for all open space, to meet the goals of sustainability and biodiversity.

Councilor Ballantyne is working with the Administration and advocates in the community, but there is no additional information since the last Legislative Matters meeting. She hopes for a meeting with those parties in the next few weeks to move this forward.

RESULT:	KEPT IN COMMITTEE
----------------	--------------------------

205683: Tori Antonino submitting comments re: #203365, calling for a native planting ordinance.

See 203365

RESULT:	KEPT IN COMMITTEE
----------------	--------------------------

206495: That the City Solicitor consider the attached language in the drafting of a Native Tree and Plantings Ordinance, as ordered by #203365.

See 203365

RESULT:	KEPT IN COMMITTEE
----------------	--------------------------

207999: 3 residents submitting comments re: #206495, the proposed native plant ordinance.

See 203365

RESULT:	KEPT IN COMMITTEE
----------------	--------------------------

208567: Elizabeth Lundgren submitting comments re: #206495, the proposed native plant ordinance.

See 203365

RESULT:	KEPT IN COMMITTEE
----------------	--------------------------

209061: That the City Solicitor and the Director of Sustainability and the Environment draft with the Ward 5 Councilor an ordinance to ban or regulate the use of gas-powered leaf blowers.

Ms. Pappenheim looked at two options for banning gas leaf blowers - one is through a revision to the noise ordinance, which raises the question of whether gas leaf blowers are louder than electric leaf blowers. It does appear that a regulatory line could be drawn based on limiting the decibel level (dBA), which would capture most gas leaf blowers. One concern is that if the technology gets better such that these leaf blowers are made quieter, the regulation would lose its effect. The second option targets the environmental effects, and would be a longer process through the Board of Health that would also need to be approved by the state Department of Environmental Protection (DEP). Mr. Sellers-Garcia added that there are ordinances in other cities and towns that follow either or both of the approaches. A dBA of 60-65 seems to be the number targeted by many noise ordinances. It is complicated to enforce these, however, and they are primarily complaint-based. There is not much debate that gasoline powered leaf blowers do pollute.

Councilor McLaughlin asked what about the current noise ordinance would have to be adjusted. Ms. Pappenheim noted that there are current provisions that exist that could be enforced, and/or a section could be added to specifically address leaf blowers. The time restrictions would probably not be sufficient to decrease the effects of the pollution. Councilor Davis noted that most properties in the City are not large enough to require commercial equipment for leaf removal and he agreed that

enforcement will need to be addressed, but it remains worthwhile. Chair Niedergang noted that it would be worth moving forward with both options, as the noise option is easier to implement but more difficult to enforce, while the health option may be more difficult to pass but would have an important effect. Councilor McLaughlin noted that most of the complaints are regarding the noise, so that path seems like a good way forward. Councilor Clingan added that both paths are worth pursuing. Chair Niedergang expressed that he is not opposed to restricting electric leaf blowers as well, and Ms. Pappenheim noted that many of these are quite loud, so would be incorporated if the noise ordinance was updated. Councilor Ballantyne noted that the likely users of these would be developers, churches, not necessarily houses, but she is concerned for the health of the landscapers or others who are operating these.

Chair Niedergang asked Ms. Pappenheim to draft an amendment to the noise ordinance to restrict noise above 60 dBA. Councilor Davis added that the ordinance should specifically apply to use by City employees as well. Ms. Pappenheim will also look into the procedural elements to pursue an ordinance through the Board of Health.

RESULT:	KEPT IN COMMITTEE
----------------	--------------------------

208806: That the City Solicitor draft a Home Rule Petition to establish Broadway as a 25 mph roadway, and include any other municipal roadways within the city which currently exceed 25 mph.

Ms. Pappenheim shared that in October 2016 the City accepted a statute that allows it to reduce speed limits for thickly settled or business districts to 25 miles per hour. She has requested the details of this vote, to verify that Broadway is included. A Home Rule Petition may not be necessary to accomplish this. Councilor Davis recalled that there were several streets that had undergone analysis to determine the appropriate speed limit, and it was understood that those were not to be included. Chair Niedergang confirmed that the City's former Traffic Engineer noted in an email from 2017 that any street that had submitted a speed zone study and had posted speed limits and was therefore exempt per the state Department of Transportation (DOT). This included Broadway, Middlesex Ave and part of Washington St, which are set at 30 mph. Chair Niedergang asked that the process be explored with the DOT and perhaps another speed study can be conducted. Ms. Pappenheim will conduct further research and reach out to DOT. Councilor Ballantyne added that Representative Provost has been working on this for decades and should be included in the conversation. Councilor McLaughlin expressed the view that it may be worth just moving forward with this and Chair Niedergang agreed and added that he serves on the Traffic Commission and would advocate there for changes to the speed limit. Councilors Ballantyne and McLaughlin also noted that there are several instances where signs are posted but are not enforceable, such as no trucks or do not enter during certain hours. Ms. Connor added that there were no state guidelines on enforcement at the time that the act was passed. Ms. Pappenheim will research further.

RESULT:	KEPT IN COMMITTEE
----------------	--------------------------

208909: That the City Solicitor advise this Council on the process to request the lowering of speed limits on state roadways within the city.

The process is that the municipality contacts the DOT District office to request that the speed limit be lowered. Ms. Pappenheim has a call into the District office to clarify what information is needed. Ms. Connor noted that there is the possibility that a speed study could justify a higher speed limit, so the Mobility Division should be included in this and it should be explored by the City to understand the

potential implications before moving forward. Councilor Clingan added that perhaps enforcement of the current speed limit on Mystic Ave and Alewife Brook Parkway could help.

RESULT:

KEPT IN COMMITTEE

209041: Requesting approval of a Home Rule Petition that would authorize the City to provide tenants the right to purchase the residential property in which they reside when that property is being offered for sale.

Ms. Shachter and Mr. Shapiro shared that each provision in the original, much longer Home Rule Petition (HRP) proposed by the Administration was reviewed to ensure that it could be added back in if the Home Rule Petition is approved. In the 2018 HRP, there was a look-back provision that allowed tenants who had resided in that unit within the past six months to be covered, but this is not included in the 2019 proposed HRP, which parallels the enabling act that State Rep

Denise Provost has introduced in the State Legislature. The definition of tenant or the preamble would need to be changed if this look-back period is to be included. Councilor McLaughlin noted that this is an anti-displacement measure, and if the tenant is already displaced, including them would gain little and add a complicated burden. Councilor Ballantyne agreed that for this reason the change seems acceptable. Councilor Davis did note that this creates a loophole, but adding a look-back makes approval from the state much more difficult so he is inclined to accept the draft as presented. The provision for six month duration for tenancy has been removed; rather there must be any lease or other agreement in place, which could be proved through a record of payment and acceptance of rent by the landlord.

The preamble has been expanded and clarified to note that the City may add additional language, terms and provisions consistent with effectuating the purposes of the Act. Councilor Davis expressed worry that this language could put this at risk at the state level. Ms. Shachter clarified that it is stated that the ordinance shall contain substantially the same language set forth in the Act, which is consistent with other Home Rule Petitions that have been approved. Thus, several provisions have been stricken at this time, including relative to how fair market price is set and specifics about what constitutes a bona fide offer. The provision for hiring a third party appraiser to determine value has been removed. The right should be to match, not control what the prices are. Changing this would be inconsistent with the Act, and thus would not be able to be added at a later date. Councilor Davis clarified that this is covered by the revised definition of a bona fide offer.

Councilor Niedergang noted that the residential exemption has been removed from the HRP language around exempt properties. Ms. Shachter shared that the exemption can be used in an ordinance based on the HRP if it is approved to determine residency at the local level. Councilor Ballantyne also noted that the term “natural or adoptive child” seems offensive, and wondered if there was a legal reason for including that specific language. Ms. Shachter said that it was taken from the enabling legislation, but the reasoning is not clear to her. The provisions regarding various administrative processes have been removed from the HRP. These can be addressed locally and added back in to create procedural guidelines at a later date. The time frames for the right to purchase have been decreased slightly. These will not be able to be changed later.

The duty for both parties to negotiate in good faith has been clarified, in place of several specific administrative actions. Councilor Davis pointed out that the definition of Purchaser should be adjusted or removed, as if they have already entered into a Purchase and Sale Agreement, the obligation to negotiate in good faith is moot. It was also clarified that where the condo conversion law applies, that takes precedent over the right to purchase. A further provision was added to clarify that it is unlawful to evict without just cause and a tenant’s rights under the right to purchase legislation are not waivable.

Councilor Davis moved to adopt the most recent revision of December 3, 2019 as the working document. The motion was approved.

Councilor Davis moved to amend the last line of Section 3(a) to read "Both the Owner and such Tenant, Tenant Association or Tenant Association Designee shall be obligated to negotiate in good faith." The motion was approved.

Councilor Davis moved to amend Section 3(b) to remove "in good faith" after "Statement of Interest to negotiate" and add as a last line: "Both the Owner and the City or City Designee shall be obligated to negotiate in good faith." The motion was approved.

Councilor Davis moved to delete the definition of "Purchaser". The motion was approved.

Councilor Davis moved to amend Section 2(a) to delete "conditioned upon the waiver of rights under" and replace with "subject to the provision of, and delete "by all relevant parties" and "from a party". The motion was approved.

Chair Niedergang noted that the name of Ordinance 2019-06, "Condominium Conversion Ordinance," should be included in Section 2(a) so that people know what this refers to.

Chair Niedergang moved for adoption of the amended Home Rule Petition. The motion was approved unanimously.

RESULT:	APPROVED AS AMENDED
----------------	----------------------------

205118: Requesting approval of a Home Rule Petition to preserve affordable housing through a tenant's right to purchase.

See 209041

RESULT:	WORK COMPLETED
----------------	-----------------------

205343: That the Director of SPCD contact local mortgage lenders to determine how the proposed "Tenants Right to Purchase" policy might affect the ability of home-buyers to secure financing, and report back to this Board in writing.

See 209041

RESULT:	WORK COMPLETED
----------------	-----------------------

205344: That the Director of SPCD contact several Title Insurance brokers and ascertain their views on whether the proposed "Tenants Right to Purchase" policy would affect their ability to provide title insurance, and report back to this Board in writing.

See 209041

RESULT:	WORK COMPLETED
----------------	-----------------------

Handouts:

- Comments - K Carlson (with 208806)
- Draft 12-3-19 - Right to Purchase (with 209041)

- REVISED DRAFT HR Petition 12 6 19 (4) (with 209041)
- REVISED DRAFT HR Petition 12 6 19 (4)-1 (with 209041)
- Proposed Substitute RTF Petition (with 209041)
- Memo - OSPCD (with 205343, 205344)
- Leaf Blower Legislative Options (with 209061)