



CITY OF SOMERVILLE, MASSACHUSETTS
CLERK OF COMMITTEES

June 24, 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	Absent	
Katjana Ballantyne	Ward Seven City Councilor	Present	
Ben Ewen-Campen	Ward Three City Councilor	Present	

Others present: George Proakis - OSPCD, Frank Wright - Law, Nick Antanavica - ISD, Dr. Vanessa Boukili - OSPCD, Luisa Oliveira - OSPCD, Christine Koh - SomerStat, Annie Connor - Legislative Liaison, Peter Forcellese - Legislative Clerk, Chris Dwan - resident, Kade Crockford ACLU.

The meeting took place in the Committee Room and was called to order at 6:30 PM by Chairman Niedergang and adjourned at 11:12 PM.

Councilor Ewen-Campen was appointed to this Committee for this meeting only as Councilor Clingan had another commitment.

Approval of the May 30, 2019 Minutes

RESULT:	ACCEPTED
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Tree Preservation Ordinance (see www.somervillema.gov/treeordinance for draft ordinance and other documents)

207498: Proposing a strengthened, comprehensive Tree Preservation Ordinance to protect trees on City and private property.

A motion by Councilor Davis to replace the May 15th draft working version of the proposed ordinance with the current revised proposal before the Committee, was approved. Ms. Connor distributed a different revised version of the ordinance, as proposed by the Administration. Due to a communication snafu, Councilor Davis was the only Committee member who had seen the proposal previously. As a result, the Chair stated that he believes that it would be challenging to deliberate on it tonight. Ms. Connor was prepared to discuss the proposed changes the Administration wants this evening and at the

request of Chairman Niedergang, she gave an overview of the proposal and reviewed the major changes, as follows:

- added Invasive Plant in the definitions section,
- changed the Significant Tree dimension to 8 inches DBH in definitions section,
- eliminated Very Significant Tree from definitions section,
- eliminated the City Arborist position since arborists are already on staff and because the wording conflicts with Sec 44 of the City Charter and because there is no titled position of City Arborist,
- eliminated Sec 12-105 d,
- eliminated Sec12-112 3 f (since it would be unenforceable)
- changed Sec 12-112 3 g (Ms. Connor noted that she believes there's a way to close the loophole for owner-occupied exemptions where the property is sold to a developer, but that Inspectional Services and the Planning Dept are still working it out)
- eliminated Sec 12-112 5 a and b
- changed Sec 12-113 (effective date).

Mr. Proakis explained that the Administration tried to maintain a recommendation role for the Urban Forestry Committee throughout the ordinance as that Committee was not established to have decision-making power.

Councilor Davis detailed his concerns regarding a number of issues in the Administration's proposed changes: invasive plants such as Norway Maples, some of which are huge and old and provide many benefits; raising the minimum to 8" for significant trees; the reduced role of the Urban Forestry Committee; concerns about change of ownership of properties and potential end-arounds the ordinance by developers in cooperation with property owners; and start date of enforcement. Mr. Antanavica asked that time be allowed for the City to get its processes in place before implementing the ordinance. Dr. Boukili commented that it would be best to keep the ordinance as simple as possible with respect to trees on private property until the City understands better what it's going to be dealing with, suggesting that the language could be amended at a later time if desired.

Councilor Ewen-Campen asked for information from the Administration regarding invasive plants, e.g., Norway Maple trees. Dr. Boukili explained the reasoning for the change. Mr. Proakis said that focusing on non-invasive trees of a certain size is a good starting point for the ordinance. Chairman Niedergang commented that he won't feel good about voting on this tonight, but given the alternative of waiting until the fall to pass something, he will support voting on the matter this evening. He suggested settling the major issues and then voting on the measure at the next Committee meeting. Councilor McLaughlin asked if would be permissible to institute a six-month moratorium on cutting down trees and Solicitor Wright replied that he would need to research the question. Dr. Boukili spoke about the moratorium in Cambridge and explained that 5 exceptions are built into that moratorium, so it is really not a moratorium at all. Mr. Proakis noted that a blanket moratorium could possibly affect development that is already in the pipeline. He also said that delaying the effective date of the ordinance by six months would allow the City to add the staff that will be needed for enforcement. Ms. Connor pointed out that the City does not have an official tree warden, although there is someone fulfilling those duties, nor does it have anyone who meets the qualifications for that position.

Councilor Davis stated that he thinks the Committee should try to work through the ordinance, considering the Administration's proposed changes, and try to get through the ordinance in order to vote on it tonight. He suggested a number of changes to what the Administration presented;

He would like to put the City Arborist position back in (changing the name of the position is ok with him)

12-105 & throughout put back 'and shrubs'

12-107 put 'residents' back in and require that the City flyer residences , where feasible, within 150 feet

12-112 3 f close the loophole (leave as is for now)

12-112 3 g delete

Councilor Davis' motion to adopt the version presented by the Administration, this evening, as the Committee's working version of the ordinance, was approved.

Councilor Davis made the following motions:

- Create a new Section 12-104 as follows: APPROVED

Sec 12-104. Senior Urban Forestry and Landscape Planner

The Senior Urban Forestry and Landscape Planner shall be an employee of the city, appointed by the Mayor.

1. The Senior Urban Forestry and Landscape Planner shall be a Certified Arborist by the Massachusetts Arborist's Association, The International Society of Arboriculture, or any successor of either organization.
 2. The duties and responsibilities of the Senior Urban Forestry and Landscape Planner shall include, but not be limited to, the following:
 - a. Working in conjunction with the Urban Forestry Committee to seek grants or other assistance concerning the preservation and maintenance of the City's tree canopy.
 - b. Working in coordination with the Urban Forestry Committee to expend the funds appropriated for planting and maintaining trees on city land under the jurisdiction of the Tree Warden.
 - c. Working in conjunction with the Urban Forestry Committee to develop and publish rules, regulations, tree inventory, manuals, and other data and documents necessary to carry out the purposes and intent of this ordinance.
 - d. Supervising the planting and care of City Trees to ensure that such planting and care meets these rules, regulations and standards.
 - e. Assisting and working closely with the Tree Warden to help the Tree Warden fulfill their responsibilities.
- 12-105 insert 'and shrubs' in 4 locations - APPROVED
 - 12-105 strike paragraph 4 - APPROVED
 - 12-107 revise to add that, when feasible flyers will be delivered to all residents within 150 feet

In addition to notice under G.L. c. 87 s. 3 for Removal of a Public Shade Tree, notice shall be given by the City by electronic notification when feasible, first-class mail to all property owners, and flyers to all residents located within 150 feet of the Public Shade Tree proposed to be removed at least 14 days before the public hearing. APPROVED

- 12-112 3 f. delete section f (Change of Ownership) and replace it with the following:
 - f. *Departure of owner-occupant:* If at any point during the eighteen (18) consecutive months following the issuance of a Tree Permit the owner no longer resides at that address; and if the requirements for replanting or payment were waived based on said owner-occupancy status as described in section (e) above; said waiver shall be revoked. In this case, the owner or, if the property has been sold, the new owner, shall be required to make full payment within thirty (30) days of the fees that were waived, unless such new owner is eligible for an owner occupant waiver under Section (e) above. APPROVED

Solicitor Wright sees the potential for a legal challenge. Ms. Connor will work with ISD to try to suggest different wording on the departure of owner-occupant issue by this week's City Council meeting.

- 12-113 change effective date to August 1, 2019 - APPROVED
- Chairman Niedergang motioned to strike the word 'site' in 12-112 2 c APPROVED
- Delete Sec 12-112 3 g APPROVED

Councilor Davis motioned that the ordinance be approved, as amended, and recommended to the full Council for passage, and the motion was approved unanimously by the Committee.

RESULT:	APPROVED AS AMENDED
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207646: Renee Scott submitting comments re: #207498, the Tree Protection Ordinance.

RESULT:	PLACED ON FILE
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207697: 16 residents submitting comments re: #207498, the Tree Protection Ordinance.

RESULT:	PLACED ON FILE
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207868: 5 residents submitting comments re: #207461 and #207498, Tree Protection Ordinances.

RESULT:	PLACED ON FILE
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208019: Anne Taylor submitting comments re: #207461 and #207498, Tree Protection Ordinance.

RESULT:	PLACED ON FILE
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208109: 15 residents submitting comments re: #207461 and #207498, Tree Protection Ordinances.

RESULT:	PLACED ON FILE
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208228: David Bresnick submitting comments re: #207461 and #207498, Tree Protection Ordinance.

RESULT:	PLACED ON FILE
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208451: Matthew Shuman submitting comments re: #207461 and #207498, Tree Protection Ordinances.

RESULT:	PLACED ON FILE
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Native Trees and Plantings

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.

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

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

Councilor Ballantyne informed the Committee that she, along with Dr. Boukili and a constituent, are suggesting some minor amendments to the current version of the proposed ordinance, e.g., the last 'whereas' would be deleted; a 4th & 5th points were added to Sec 3; footnotes were deleted; deleted 2nd sentence in Sec 5, added #4 in Sec 6; in Sec 7 - added terms. She asked that 3 members of the public be permitted to address the Committee. Tori Antonino spoke about the purpose of the ordinance, saying that the insect population is decreasing and that when the insects are gone, we will be too. Meredith Galocki spoke about having vibrant ecosystems. She said that there are many misconceptions about the viability of native plants. Lucas Rogers spoke about his experience over many years on his property in Somerville with native plants and their benefit to native insects.

Ms. Oliveira spoke about the 'white paper' the Administration put forth. If the only goal was to promote native species and pollinators, the advocates' proposed ordinance would be fine, but there are other factors that come into play, e.g., the maintenance involved in keeping trees healthy, diversity of species, the challenging physical environment for many trees, and many other barriers to native species. There is a better way to achieve the goal of a thriving urban forest, she said, and it requires a diversity of species. Street trees are planted in sidewalk wells where some natives might not do well.

Dr. Boukili said that the city plants natives when and where it can, but is restricted due to variables such as overhead wires, not impeding traffic/pedestrian flow, sidewalk plantings, exhaust from cars, etc. Of the number of native species, there are few that would be feasible for planting in Somerville.

Councilor Ewen-Campen is on board with the concept but he thinks the issues are nuanced and complicated. He would feel uncomfortable moving forward on this without more input from the Urban Forestry Committee. Councilor Ballantyne agreed that dealing with native trees is more difficult than dealing with plantings, which she feels should be 100% native. Chairman Niedergang would like to hear what the advocates want in the ordinance and the Administration's thoughts on the percentage of new tree plantings that should be native. Councilor Ballantyne said advocates want 100% of new plantings to be native and 75% of new trees planted in streetscapes to be native. Dr. Boukili said that the city prefers 20% for trees, not 75%. Ms. Oliveira said that for new plantings, the City does not want 100% and would like more time to consider it. Given the large disparity between what the advocates want and what the Administration thinks is best, Chairman Niedergang would like the Administration to return to the Committee with its best thinking or even a proposed re-write of the draft ordinance submitted by the advocates. Councilor Ewen-Campen said that there's much that can be done, including education. Chairman Niedergang would like to take action on this item by the end of this year. Councilor Ballantyne noted that it was the City Council that has lead the way on this measure, and wants to see requirements for native plantings and trees codified in law.

RESULT:

KEPT IN COMMITTEE

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

RESULT:

KEPT IN COMMITTEE

Facial Recognition Technology Ban

208142: Banning the usage of facial recognition technology in Somerville.

Councilor Ewen-Campen spoke on this matter and said that the administration has some concerns regarding enforcement and Mr. Wright told the committee that an ordinance requiring some form of discipline would have to be collectively bargained. Councilor Ewen-Campen asked that representatives from the ACLU be allowed to address the committee.

Councilor McLaughlin recused himself.

Mr. Wright thinks Section 3 (A) (B) (C) (D) are not enforceable since they fall under state statute. He explained that the city can't give someone permission to sue it, however, if state or federal law says someone can sue a city, then it's permissible. A municipality is not allowed to create a cause of action by ordinance. He also said that if there were an ordinance that was violated by the city, then there could possibly be some injunctive relief available. Chairman Niedergang asked if the enforcement section could be re-written by Law Department in thie for this week's City Council meeting.

Councilor Davis asked if there could still be a cause of action against the city if the enforcement section was deleted and Kate Cochran from the ACLU responded that she would have to research that. Councilor Davis stated that he doesn't have enough information to proceed. Chairman Niedergang asked the parties to return for the next committee meeting.

Councilor Ewen-Campen's motion to go into Executive Session was approved on a Roll Call vote of 4 in favor (Councilors Davis, Ballantyne, Ewen-Campen, Niedergang), none against, and 2 absent (McLaughlin, Clingan). The committee moved into Executive Session at 10:10 PM.

The committee returned from Executive Session at 10:28 PM and Chairman Niedergang announced that no votes were taken in Executive Session, other than the vote to adjourn and return to the regular meeting.

Councilor Ewen-Campen spoke on this matter and said that the Administration has some concerns regarding enforcement. Solicitor Wright told the Committee that an ordinance requiring some form of discipline for City employees would have to be collectively bargained with the relevant unions. Councilor Ewen-Campen asked that representatives from the ACLU be allowed to address the committee.

Councilor McLaughlin recused himself.

Mr. Wright thinks Section 3 (A) (B) (C) (D) are not enforceable since they fall under state statute. He explained that the City can't give someone permission to sue it, however, if state or federal law says someone can sue a city, then it's permissible. A municipality is not allowed to create a cause of action by ordinance. He also said that if there were an ordinance that was violated by the City, then there could possibly be some injunctive relief available. Chairman Niedergang asked if the enforcement section could be re-written by the Law Department in time for this week's City Council meeting.

Councilor Davis asked if there could still be a cause of action against the City if the enforcement section was deleted. Kade Cochran from the ACLU responded that she would have to research that. Councilor Davis stated that he doesn't have enough information to proceed. Chairman Niedergang asked if the parties could return for the next Committee meeting.

Councilor Ewen-Campen said he wanted to try to get this resolved tonight if possible, despite the late hour, and he made a motion to go into Executive Session, which was approved on a Roll Call vote of 4 in favor (Councilors Davis, Ballantyne, Ewen-Campen, Niedergang), none against, and 1 absent (McLaughlin). The Committee moved into Executive Session at 10:10 PM.

The Committee returned from Executive Session at 10:28 PM and Chairman Niedergang announced that no votes were taken in Executive Session, other than the vote to adjourn and return to the regular meeting.

Councilor Ewen-Campen's motion to replace Section 3 (E) with language provided by the Law Department was approved.

Councilor Ewen-Campen's motion to retain Sections 3 (A) and (B) and to delete Sections 3 (C) and (D) and to add the following new language: "Nothing in this ordinance shall be construed to limit any individual's rights under state or federal law.", was approved

Section 3A says what cannot be entered into evidence and Solicitor Wright said the City can't decide what evidence is permissible. Who decides when there is a violation and when something is deleted? Is there an investigation?

Ms. Crockford of the ACLU said the 2nd clause in the last sentence of 3 A should be stricken. Councilor Ewen-Campen agreed.

Councilor Davis' motion to strike the words "trial, hearing, or other proceeding in or before any court, grand jury." from Section 3 (A) was approved.

Councilor Davis' motion to delete the last sentence from Section 3 (A) was approved.

Solicitor Wright, referring to Section 3 (B), pointed out that the only entity is the City, not a department. Chairman Niedergang asked that the Law Department have opinions on sections of the ordinance that it has doubts about ready for this week's City Council meeting.

Councilor Davis' motion to strike the words "respective City department, and the" from Section 3 (B) was approved.

Councilor Ewen-Campen's motion to replace the title of the ordinance to read as follows: "Banning the usage of facial recognition surveillance technology by the City of Somerville" was approved.

Councilor Ewen-Campen's motion to insert the words "or verifying" immediately after the word 'identifying' in Section 1 (A), was approved.

Councilor Ewen-Campen's motion replace the word 'Somerville' with the word "ordinance" in Section 3 (A), was approved.

Councilor Ewen-Campen's motion to approve the ordinance, as amended, was approved unanimously for approval by the full Council.

RESULT:	APPROVED AS AMENDED
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207566: That the Administration prohibit the use of any facial recognition technology by the City.

RESULT:	WORK COMPLETED
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208314: Eric Grimaldi submitting comments re: #208142, a proposed ordinance to ban the use of facial recognition technology.

RESULT:	WORK COMPLETED
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Public Oversight of Surveillance Technology

207364: That would increase public oversight of surveillance technology, in order to balance public safety with the individual right to privacy.

RESULT:	KEPT IN COMMITTEE
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Housekeeping - Items to be Marked Completed

203098: Assistant City Solicitor submitting an Ordinance to create a Community Benefits Committee.

RESULT:	WORK COMPLETED
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203555: The Chamber of Commerce, Union Square Main Streets, and Somerville Local

First submitting comments re: the Union Sq proposed zoning, the US2 Covenant, and the Community Benefits Ordinance.

RESULT:	WORK COMPLETED
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203556: The Maurice and Jane Sugar Law Center for Economic and Social Justice submitting comments re: #203098, the Community Benefits Ordinance.

RESULT:	WORK COMPLETED
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208450: Our Revolution Somerville submitting comments re: #207923, the proposed Welcoming Community Ordinance.

RESULT:	WORK COMPLETED
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Handouts:

Tree Ordinance v9 clean as amended May 30, 2019 (with 207498)

Tree Ordinance v9 track changes as amended May 30, 2019 (with 207498)

Proposed Tree Ord. Amendments (with 207498)

Tree Preservation Ordinance June 24, 2019 (with 207498)

Native Plant Ordinance (with 203365)

Native Plant Ordinance (with 203365)

Native Species Ordinance 2019-0620 (with 203365)

Face Surveillance Full Ban Ordinance V4 - clean-1 (with 208142)

Face Surveillance Full Ban Ordinance V4 - redline (with 208142)