



**CITY OF SOMERVILLE, MASSACHUSETTS
CLERK OF COMMITTEES**

September 3, 2020
REPORT OF THE LEGISLATIVE MATTERS COMMITTEE

Attendee Name	Title	Status	Arrived
Lance L. Davis	Chair	Present	
Mark Niedergang	Vice Chair	Present	
Ben Ewen-Campen	Ward Three City Councilor	Present	
Matthew McLaughlin	Ward One City Councilor	Present	
Jesse Clingan	Ward Four City Councilor	Absent	

The meeting was held via GoToWebinar and was called to order by Chair Davis at 6:06pm and adjourned at 8:48pm.

Councilor Clingan was absent due to a neighborhood meeting.

Others present: Khushbu Webber - Mayor's Office; David Shapiro - Law; Shannon Phillips - Law; George Proakis - OSPCD; Tom Galligani - OSPCD; Sarah White - OSPCD; Nick Shonberger - OSPCD; Oliver Sellers-Garcia - OSE; Hannah Payne - OSE; Vithal Deshpande - OSE

Approval of the June 4, 2020 Minutes

RESULT:	ACCEPTED
----------------	-----------------

Approval of the June 18, 2020 Minutes

RESULT:	ACCEPTED
----------------	-----------------

204278: Requesting the replacement of Ordinance 7-28 with a new Demolition Review Ordinance. with relevant updates to Ordinance 1-11 for violations.

Councilor Ewen-Campen is recused from the discussion of this item. Chair Davis introduced Ms. White to share a summary of the updates and process thus far. Ms. White noted that one of the key goals was to clean up the language to clarify and help applicants, as well as give the Planning office a better tool to work with. She highlighted the key updates: the demolition review process is streamlined; the abutter notification area is expanded; the number of exempt areas are increased; the age of a structure to trigger demolition review is increased; the penalties for ordinance violation are increased; and the definition of demolition is clarified. Further, the ordinance allows the Historic Preservation Commission (HPC) to delegate some decision making to staff. City buildings are also exempt from the demolition review

process, though the City Council can request an advisory review by the HPC, and the first step of the process now includes a public hearing where comments can be shared.

One outstanding item is the length of delay. The current proposal is for a 9 month demolition delay, and Ms. White noted that the language change and streamlining is imperative, regardless of time frame. Also, there are questions around the intersection of the ordinance and affordable housing. Mr. Shapiro weighed in on whether the waiting period could be shorter for affordable housing projects, noting that the equal protection clause is at the center of the issue. The intent and purpose of the ordinance would need to be clearly linked to affordable housing for the period to differ.

Councilor McLaughlin asked about the average wait time for a project in demolition review and Ms. White shared that it is typically a two month wait, in addition to the time needed to submit the application. If a project is put on the delay, it varies depending on interest of the applicant and a memorandum of agreement to engage in some type of historic preservation. This can also be a several month process. Councilor McLaughlin also wondered how this is likely to affect development in the City. Mr. Proakis noted that the current ordinance doesn't fit with the way things could be done in the City. He does not have any issue with the length of the term, but the clarity around the administrative process and exemptions for redevelopment districts will make things much easier for developers and staff. Ms. White echoed that sentiment, adding that the most important thing is clarifying the language. Councilor Niedergang added that a 9 month delay can be incorporated by most developers as a part of doing business. It likely won't have any effect on large projects or affordable housing. He favors the maximum delay of 24 months to give the City more leverage over historic preservation, and could be amenable to 18 or 12 months. Chair Davis commented that the 9 months does not seem to be working, and the improvements won't matter much unless this timeline is extended. The waiting period can be significantly reduced if the applicant works with the staff and HPC on their historic preservation options. This is only to affect those who are unwilling to compromise.

Mr. Proakis added some thoughts on the affordable housing component, sharing a concern that there would be an operational challenge to determine that if the review process is waived or decreased for a building to be torn down for affordable housing to be built in its place, there is no guarantee that this will happen quickly, if at all. The opportunities for misuse could be high. Councilor Niedergang agreed that it is more important to pass the updates than to try to paste something in that may not belong and further delay the process. Councilor McLaughlin asked if there were legal concerns about a 24 month period and Mr. Shapiro explained that the longer the period is, the more likely it is to be challenged.

Chair Davis suggested waiting for a more comprehensive final document prior to voting on this item.

Councilor Niedergang moved to amend the proposed revision to have one timeframe, which is 18 months. The motion was approved on a roll call vote of 3 in favor (McLaughlin, Niedergang, Davis), 0 opposed, and 2 absent (Clingan, Ewen-Campen).

RESULT:

KEPT IN COMMITTEE

209020: Historic Preservation Planner responding to #204278 with a presentation regarding the draft Demolition Review Ordinance.

See: 204278.

RESULT:

KEPT IN COMMITTEE

209740: Requesting approval of an ordinance authorizing participation in the MA Commercial Property Assessed Clean Energy Program.

Mr. Galligani introduced Ms. Payne and Mr. Shonberger to speak about the Property Assessed Clean Energy (PACE) ordinance. This is intended to be an overview to the topic, which is a statewide program that municipalities can opt into to create financing opportunities for existing buildings to improve their energy efficiency. Ms. Payne noted that most of the emissions come from buildings, and accessing financing for large retrofit projects to improve efficiency can be difficult. Mr. Shonberger added details that this is a financing tool that is repaid via a betterment assessment on a property's tax bill. The energy cost savings must exceed the cost of the improvements. MassDevelopment is the lead administrator of this program (they approve the projects), with consultation from DOER. Commercial/industrial, office, not for profit, and multi-family (5 units or more) buildings would be eligible, while residential properties under 5 units, government buildings, and new construction would not. The state legislation requires municipalities to opt-in, keep a record of liens, collect the betterment assessments, and distribute those assessments to MassDevelopment.

Chair Davis clarified that the initial funds come from a third party financier, and there is a RFI out for that vendor (private lender). Councilor Ewen-Campen asked when the state guidelines were released and Ms. Payne clarified that it was at the end of July. Councilor Ewen-Campen also clarified that the benefits and the liability are tied to the property itself, rather than the owner. Councilor Niedergang asked whether religious institutions are eligible and Mr. Shonberger will follow up with MassDevelopment to clarify that. Councilor Niedergang also asked whether there was a projection based on inflation to determine the cost savings over time. Mr. Shonberger suggested that DOER could clarify that, as they are making those determinations. Chair Davis asked what the arguments against this might be and Ms. Payne shared that it would add some administrative work for the City, and the financing on the residential side can be complex.

Mr. Galligani noted that the staff will work to clarify the language and requirements with the Law Department in preparation for a vote at the next meeting.

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

209224: That the City Solicitor draft an ordinance to address the Black Swallow-wort problem.

Chair Davis shared that the most effective way to address this problem is through education, cooperation, and volunteer efforts, rather than a punitive ordinance. He added the background that black swallow-wort is a beautiful plant but not native to the environment and dangerous to the monarch butterfly population. For properties where the plant is growing wildly, another mechanism would be useful to enable removal. Mr. Shapiro shared the vision that the ordinance would set forth the prohibited activity, identify the enforcing authority, and set forth penalties. The first violation would be education, the second would come with a warning, and there would only be a penalty assessed after multiple violations. Chair Davis suggested clarification around the specific nature of this plant, rather than overgrowth in general. Councilor Ewen-Campen shared that since he learned of black swallow-wort, he has often seen it growing. He has concerns about imposing fines, as it may lead to tensions between tenants and landlords, but education and removal are important. Mr. Shapiro noted that a fine could be flexible, and would be a maximum of \$300. Chair Davis emphasized that the plants are currently producing pods, which is a great time to remove them before they bloom and distribute seeds, and the disposal should involve putting them in a plastic bag in the garbage in order to stop them from reproducing. The City's 311 Department can answer questions that residents may have.

RESULT:

KEPT IN COMMITTEE

209190: Proposing an amendment to Tree Preservation Ordinance 12-102 - Definitions, to add to the definition of Invasive Plant the following sentence: “However, Norway Maples and other trees larger than 24" diameter at breast height shall not be considered Invasive Plants.”

Dr. Boukili was unable to attend due to another City meeting, and the Chair deemed it important to wait for her input.

RESULT:

KEPT IN COMMITTEE

210235: Calling upon this Council to create a Police Commission and a Community Police Review Agency.

Chair Davis is awaiting feedback from the Personnel Department on proposed job descriptions, and there is no update at this point. He urged action in order to have something in place before the end of the calendar year.

RESULT:

KEPT IN COMMITTEE

209592: Requesting approval of the Surveillance Technology General Use Policy.

Ms. Webber shared the updated policy and draft reports with the Committee today, and suggested that the administration would like to get the Council's approval on the templates so the departments can begin completing the reports. The administration also proposes that by September 25, departments would submit impact reports to the Mayors office for review, by October 15, the Mayor's office would submit those to the Committee, and by October 22, they would be referred to the City Council. Thus, the 60 day deadline from the submission date would be December 21, and the administration's proposal is that the new effective date would be January 1, 2021. Chair Davis clarified that there are no issues with the timeline and the Committee was in support of the administration moving forward with the templates. The initial reason for moving the effective date was to avoid overlap for submission of the reports with the Council's recess. Ms. Webber noted that the additional requested extension of the effective date is to ensure that any use of the technology would not be in violation of the ordinance.

Councilor Ewen-Campen elaborated that the changes are mainly to the appendices and seem minimal, and involve adding a checklist enumerating the reasons for using the technology. Ms. Webber added that the additions were to help track how the technology aligns with the specific permissible purposes outlined in the ordinance, and clarifies how the technology will be used. The authorized uses and the rules and processes before that use happens are also specifically stated.

Chair Davis expressed concern that the authorized purposes are very broad and could be open to loopholes. Councilor Ewen-Campen shared the interpretation that the City Council's ability to reject the use is total, and this is designed as an explanation of the purpose for the City Council to consider in its determination of whether to approve, modify, or reject the requests. Chair Davis suggested that the information should be collected, even while the policy is refined. Ms. Webber noted that Mr. Shapiro is the representative for the Law Office on this matter.

RESULT:

KEPT IN COMMITTEE

209639: That the Administration work with the Committee on Legislative Matters to consider revisions to the Surveillance Technology Ordinance.

Chair Davis shared a concern that the ordinance should align with the policy, but wants to ensure that the policy continues to move forward independently.

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

209663: That the City Solicitor draft an ordinance requiring pollution mitigation for new housing built along high transit roads and highways.

Chair Davis shared the background that it was advised that this be addressed by the Board of Health, but that Board and Mr. Kress expressed willingness to collaborate, so the Committee would like information on what can be done. Mr. Sellers-Garcia thanked Mr. Deshpande for his work on this, and updated that the task was to research effective standards and regulatory parameters. The department is evaluating what the jurisdiction of the Board of Health would be to enforce the designated standards. It is notable that even within the small subset of new buildings, what can be done with a particular design standard is very different from what happens with the operation and life of the building.

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

210437: That the City Solicitor appear before this Council's Committee on Legislative Matters with draft language to repeal Ordinance 9-120, the so-called Anti-Gang Loitering Ordinance.

Councilor McLaughlin confirmed that the City Council discussion was robust, and Ms. Phillips shared the drafted ordinance to repeal the City's anti-gang law, Section 9-120. She added that there is also a Special Act related to this ordinance, which would need to be repealed through a separate Home Rule Petition process. Chair Davis asked for clarification on the differences and Ms. Phillips elaborated that the state act gives the City the ability to act in different ways, and goes further than the City ordinance does. Even if the ordinance is repealed, this Special Act would allow additional powers for the City to act on gang loitering.

Councilor McLaughlin moved that the City Solicitor's office prepare a Home Rule Petition to repeal the Special Act, Chapter 327, AN ACT RELATIVE TO PUBLIC SAFETY IN THE CITY OF SOMERVILLE. The motion was approved on a roll call vote of 4 in favor (McLaughlin, Ewen-Campen, Niedergang, Davis), 0 opposed, and 1 absent (Clingan).

RESULT:	WORK COMPLETED. [UNANIMOUS]
AYES:	Davis, Niedergang, Ewen-Campen, McLaughlin
ABSENT:	Clingan

210454: That the City Solicitor draft language to prohibit the use of prison labor of any kind for city projects, including the Middlesex Sheriff's Community Work Program.

Chair Davis asked Councilor Scott to speak to the intent of this proposal. Councilor Scott shared that this has been a practice of the administration for at least 4-5 years, and it is a problematic practice. It outsources potential union jobs to prisoners, and those prisoners are receiving less than \$2 per hour for their work. The City does not opt into this program, it is enabled by MGL. There are guidelines around public safety, but no other requirements. Councilor Scott suggested that he does not intend to try to

modify the law, but rather for the City to state that it will not utilize this practice. Chair Davis and Councilor Ewen-Campen expressed support for this as well. Ms. Webber noted that Assistant Solicitor McKenzie is the attorney assigned to this, and shared an update that Ms. McKenzie is researching language, including the intersection of nonprofits such as ROCA who work on jail diversion programs and establishing workforce skills, which do pay a living wage to the individuals participating in those programs, and whether the City could continue to utilize those programs. Councilor McLaughlin commented that the dividing line for him is the wage being paid, to ensure that it is meant to help people rather than exploit them. Councilor Scott emphasized that the prisoners are paid by the correctional facility, not the City. Work for projects in the City should pay the prevailing wage, not just minimum wage. Councilor McLaughlin agreed on this point.

RESULT:

KEPT IN COMMITTEE

Handouts:

- PACE Presentation (with 209740)
- 2020 07 TPO Memo (with 209190)
- TPO amendment memo VKB 09.03.20 (with 209190)
- Surveillance Use Policy Draft v1.2 (with 209592, 210235)
- 2020-repeal ordinance - gang activity as public nuisance (with 210437)
- Session Law - Acts of 2004 Chapter 327 (with 210437)