



CITY OF SOMERVILLE, MASSACHUSETTS  
CLERK OF COMMITTEES

May 30, 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	

Others present: Frank Wright - Law, Tom Galligani - OSPCD, Daniela Carrillo - OSPCD, Chris Dwan - Resident, Ben Echevarria - Welcome Project, Alex Pirie - Resident, Peter Forcellese - Legislative Clerk.

The meeting took place in the Committee Room and was called to order at 6:17 PM by Chairman Niedergang and adjourned at 9:32 PM.

**Approval of the May 16, 2019 Minutes**

<b>RESULT:</b>	<b>ACCEPTED</b>
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**Tree Preservation Ordinance**

**(See [www.somervillema.gov/treeordinance](http://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.**

The Committee voted to accept the May 15th version of the ordinance as its working document. Chairman Niedergang stated that he doesn't think that the Committee has enough information, at this point, to pass legislation that is enforceable and legal, adding that he thinks the Committee should wait for feedback from the Administration.

Responding to questions from Councilor Ballantyne about the need for a tree warden and a city arborist, Mr. Dwan explained that the tree warden is obligated to fulfill state law, whereas the arborist has more of a naturalist role. It may, or may not, be the same person. Chairman Niedergang relayed that the Administration has not given its thoughts on the role for the tree warden in the ordinance yet. He told members that the Administration has clearly conveyed that they don't think

it's right to ask the Urban Forestry Committee (UFC) to take on the functions laid out in the proposed ordinance. Councilor Davis isn't too concerned about the UFC's role, since it's merely advisory. Councilor Ballantyne asked whether involving various committees would effectively slow down the functioning of government and Chairman Niedergang replied that all committees need not operate the same way. Councilor McLaughlin suggested passing the legislation without explicitly designating roles and responsibilities for various positions and committees and letting the Administration decide whose job it is to do what.

Councilor Ballantyne favors exempting owner-occupants and Mr. Dwan noted this is covered under Sec 12-112 3 e, f, and g

Chairman Niedergang asked about the 18 month look-back period during which, if the property were sold, the owner-occupant exemption would be revoked. This is described in Sec 12-112 3 f. Solicitor Wright said that the Law Department would like to examine this further since this might involve the imposition of a lien. The Chair explained that the intent was to prevent the avoidance of payment or replanting if an owner were to cut down trees for payment from the new owner/developer when selling their property. Solicitor Wright will contact the City of Newton to find out how this is working out in their ordinance.

The Committee reviewed the document and made the following comments/amendments:

- Sec 12-112 3 c Request for Waiver: the waiver granting authority is not specified
- Sec 12-112 3 d Hearing for Request for Waiver: the tree warden should hear requests for waivers with the UFC
- Councilor Davis's motion to amend the first 2 sentences of Sec 12-112 3 d to read as "The Tree Warden shall hear requests for such waivers within 60 days of the date the application was received. This hearing shall take place at a public meeting of the Urban Forestry Committee." was approved.
- Councilor Davis's motion to amend Sec 12-112 3 d by replacing the sentence "This recommendation shall be subject to the approval of the tree warden." With the sentence "The tree warden shall consider such recommendation in determining whether to grant a waiver," was approved.

Councilor Davis doesn't like the idea of a blanket owner-occupant exemption and he wants it made clear that, if this ordinance is passed, people may take down a healthy tree for no reason at all on their own property without any public process. Mr. Dwan commented that, flawed as this proposal may be, it is vastly better than what exists now.

- Chairman Niedergang's motion to amend the phrase "solely for reasons of economic development" to read "solely for reasons of financial gain or personal preference" in Sec 12-109 2 was approved. Solicitor Wright cautioned that there needs to be a rational basis for this, as well as an explanation.
- Chairman Niedergang's motion to amend Sec 12-101 by deleting the words "property of the Commonwealth or any independent authority thereof," from the first sentence. Was approved.

Solicitor Wright commented on the definition of Replacement Caliper in Sec 12-102, saying that under case law, a person can't be charged for more than what was taken. The definition, as written, has a potentially punitive nature because it requires replacement with two times the caliper of the tree

that was cut down. Councilor Davis countered that the true value of a tree and the care put into it deserves larger replacement and Councilor McLaughlin asked why there should even be a threshold.

Solicitor Wright pointed out that the City Charter addresses the terms of positions and that state law has established a 3-year term. He suggested letting the City Charter handle it.

- Councilor Davis' motion to amend the first sentence in Sec 12-104 by deleting the words “, for a term of three years” was approved.

Solicitor Wright recommended changes to Sec 12-112 8 a.

- Councilor Davis' motion to amend Sec 12-112 8 a by deleting the words “of \$300” and adding the words “as established in Section 1-11 of the Somerville Code of Ordinances” was approved.
- Councilor Davis's motion to amend Sec 1-11 of the Somerville Code of Ordinances to establish that a violation of the Tree Preservation Ordinance shall be \$300 per violation was approved.
- Chairman Niedergang's motion to add a new section, Sec 12-113 EFFECTIVE DATE, reading, “This ordinance shall take effect upon its passage.” Was approved.
- Chairman Niedergang's motion amend the text “Sec. 12-113 - 12-115. - Reserved.” to “Sec. 12-114 - 12-115. - Reserved.” was approved.
- Councilor Davis' motion to amend Sec 12-112 5 b by replacing the words “any tree not designated as Significant or Very Significant” with the words “trees measuring less than 3 inches DBH” was **NOT** approved on a voice vote with Councilors Davis and McLaughlin voting in favor and Councilors Niedergang and Ballantyne voting against.
- Councilor Davis' motion to amend Sec 12-112 5 b by replacing the words “any tree not designated as Significant or Very Significant” with the words “trees measuring less than 4 inches DBH” was approved.
- Councilor Davis' motion to amend Sec 12-112 3e by adding the sentence, “An owner occupant shall not be required to obtain a permit for the removal of trees less than 6 inches DBH.” was approved.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**207646: Renee Scott submitting comments re: #207498, the Tree Protection Ordinance.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**207697: 16 residents submitting comments re: #207498, the Tree Protection Ordinance.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**207868: 5 residents submitting comments re: #207461 and #207498, Tree Protection Ordinances.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**208019: Anne Taylor submitting comments re: #207461 and #207498, Tree Protection Ordinance.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**208109: 15 residents submitting comments re: #207461 and #207498, Tree Protection Ordinances.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**208228: David Bresnick submitting comments re: #207461 and #207498, Tree Protection Ordinance.**

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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### Welcoming Community Ordinance

**207923: Submitting for approval the Somerville Welcoming Community Ordinance, to establish Somerville as a Welcoming Community, to declare that all are welcome here, and to increase public confidence in city government with guidelines for our voluntary involvement in federal immigration enforcement.**

Councilor Davis gave some background information on the item. In 1987, the Board of Aldermen declared Somerville to be a sanctuary city, albeit without the power of law. Policies contained in the proposed ordinance have been followed for years and in 2014, the Mayor issued an executive order formalizing those policies and the Board of Aldermen passed the Trust Act, codifying those policies.

Councilor Davis believes that it is appropriate for this proposal to replace the existing Trust Act.

Ben Echevarria, Executive Director of the Welcome Project addressed the Committee and said that the Trust Act is outdated since parts of it have been determined to be unenforceable. Speaking on the proposal before the Committee, he explained that police officers have a choice when citing a person for a motor vehicle violation and may issue a summons, which would not trigger fingerprinting, thereby not alerting ICE to that person's appearance in court. Mr. Echevarria also explained that the term "sanctuary" has different meanings among the immigrant population.

Solicitor Wright said he has no concerns about repealing the Trust Act, so long as the process is done correctly. Chairman Niedergang asked that the Law Department prepare the paperwork for the City Council to take that action at its next meeting on June 13, 2019. The Solicitor commented that the Law Department was waiting for additional feedback from the Committee or City Council on this matter, however, he pointed out that the proposal seems to relate to directing the police department on how it shall respond to certain circumstances, e.g., arrest vs. summons. He would like to confirm that this is something that can be ordained, but he believes that actions taken are a discretionary function of the Police Department or its Chief, not the Mayor or City

Council. He will research this and hopefully have an opinion in time for the next City Council meeting.

Councilor Davis proposed amending the proposed ordinance by adding the following language between the PURPOSE and PREAMBLE sections:

**BACKGROUND**

*The City of Somerville first declared itself to be a Sanctuary City by Resolution of the Board of Aldermen in 1987. Policies regarding the city’s voluntary involvement in federal immigration enforcement were formally established by Executive Order in May of 2014 and in October of 2014 the Board of Alderman ordained the “Trust Act,” which codified certain aspects of those policies. In 2016 the Board of Aldermen, by Resolution, reaffirmed Somerville as a Sanctuary/Trust Act City. This Welcoming Community Ordinance further codifies existing policy and serves to reinforce the city’s ongoing commitment to the immigrant community and Sanctuary City status.*

Members discussed Alex Pirie’s comment about the importance of having the term “Sanctuary City” in the title of this proposed ordinance but felt that adding the Background section was sufficient.

The amendment was approved.

Chairman Niedergang proposed amending the proposed ordinance by replacing the words “place of birth” with the words “previous educational experience” in the last sentence of Section 2 (1).

Councilor Davis explained his reasons for not supporting this amendment. Mr. Echevarria spoke and agreed with Councilor Davis and relayed information he received from School Committee member Andre Green, who supports the proposed ordinance as written and will be introducing a resolution to the School Committee on it.

Chairman Niedergang withdrew the amendment.

Chairman Davis proposed amending the proposed ordinance by inserting the phrase “(if any)” after the words “place of birth” in the last sentence of Section 2 (1).

The amendment was approved.

<b>RESULT:</b>	<b>APPROVED AS AMENDED</b>
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**Food Trucks**

**206308: That the City Solicitor draft a food truck ordinance amendment to permit food trucks with minimal disruption to current businesses.**

<b>RESULT:</b>	<b>WORK COMPLETED</b>
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**208322: Requesting approval of an amendment to Ordinances 8-361 through 8-372 to revise the permitting process for Mobile Food Vendors.**

Mr. Galligani reviewed the information that was provided to the Committee at its May 16, 2019 meeting and reiterated that what is before the Committee is intended to streamline the permitting process for food trucks. A second Assembly Row location has been added to the mix of locations at

the request of Councilor McLaughlin. The Committee discussed the hours of operation for that venue. Ms. Carrillo noted that some locations are not specific enough and the pilot program will clarify exactly where and when food trucks may operate.

Councilor Davis requested that the 2:00 AM time for Davis Square be rolled back to the previous time and he also asked to be informed if more than 2-3 businesses apply for the Davis Square slot.

Councilor Ballantyne stated that, for Teele Square, the 11:00 AM to 3:00 PM hours are acceptable, but she doesn't want evening food truck hours there, since the area's brick and mortar businesses are hurting financially and are looking to extend their hours. Ms. Carrillo said that OSPCD staff has already planned to visit the businesses in Teele Square next week to gather their input on this subject. Mr. Galligani feels that the businesses in Medford would feel the impact of food trucks more than those in Somerville, but he agreed to eliminate shifts 2 and 3 in Teele Square.

Mr. Wright questioned language in the proposal that addressed changes being allowed with the approval of a ward Councilor, and he suggested that a ward Councilor should recommend changes, with approval to be granted by the City Council.

Councilor Davis prefers that locations be approved by the City Council with exceptions, as needed, e.g., for special events, and he would like the policy to be codified. He is still concerned that the City Council has not approved the proposed list. Ms. Carrillo informed the Committee that the locations and hours of operation are entirely under the control and approval of the City Council.

Councilor Davis' motion to **amend the ordinance so that the list of locations be approved by the City Council and that exceptions may be granted with approval of the ward Councilor and the Administration**, was approved.

Chairman Niedergang believes that this proposal is taking power away from the City Council and giving it to the Administration. Although he is fine with that shift, he is concerned that the Administration doesn't seem to have a complete understanding of what is in their own proposal.

Councilor McLaughlin made a motion to approve the ordinance, as amended. Councilor Davis stated that he was not comfortable voting on the item without having even seen the Administration's proposed version of the ordinance, and without a hard copy in front of him. He suggested referring the item to the City Council, without a recommendation, saying that he would make his comments then. That way the ordinance could be passed if the Council so wished in time to begin the pilot before summer. Councilor McLaughlin withdrew his motion.

Councilor Davis' motion **to refer this item to the City Council, without a recommendation**, was approved

<b>RESULT:</b>	<b>REFERRED FOR RECOMMENDATION</b>
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### **Clerks of Committees**

#### **208333: That the Municipal Ordinances be amended to provide for the appointment of the Clerks of Committee by this City Council.**

Councilor Ballantyne explained that this came up during the discussions of how to best manage the Clerk positions. The change effectively removes the Mayor from the appointment process. Solicitor Wright informed the members that Sections 44 and 21 of the City Charter give the appointment power to the Mayor, therefore, in order to make the proposed amendments, a charter change would be necessary. This would require a Home Rule Petition.

Councilor Ballantyne's motion that the City Solicitor prepare a Home Rule Petition to change the City Charter as it refers to Clerk of Committees positions, as referenced in Order #208333, was approved.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**Housekeeping -- Items to be Marked Completed**

**208158: That the Administration draft language regarding medical hardship.**

<b>RESULT:</b>	<b>WORK COMPLETED</b>
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**208123: Assistant City Solicitor responding to #207938 with a draft Ordinance to amend the terms of the members of the Planning Board.**

<b>RESULT:</b>	<b>WORK COMPLETED</b>
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**Handouts:**

- Email from Councilor Scott (with 207498)
- Somerville's Welcoming Ordinance 1 (with 207923)