



CITY OF SOMERVILLE, MASSACHUSETTS CLERK OF COMMITTEES

February 20, 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	
Jefferson Thomas ("J.T.") Scott	Ward Two City Councilor	Present	
Jesse Clingan	Ward Four City Councilor	Absent	

The meeting was held in the Committee Room and was called to order at 6:03pm and adjourned at 7:49pm.

Councilor Clingan was unable to attend as he was out of town.

Others present: Khushbu Webber - Mayor's Office; Rich Raiche - IAM; Jess Fosbrook - IAM; Jill Lathan - Parks & Recreation; Ben Waldrup - Parks & Recreation; Eric Weisman - Public Works; David Shapiro - Law; Hannah Pappenheim - Law; Woojung Chang - Law; Christine Koh - SomerStat; Kimberly Wells - Assistant Clerk of Committees

Approval of the January 16, 2020 Minutes

RESULT:	ACCEPTED
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Approval of the January 28, 2020 Minutes

RESULT:	ACCEPTED
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Stormwater and Pervious Surfaces

198398: That this Board's Committee on Legislative Matters review the current pervious surfaces ordinances for their effectiveness and sufficiency.

Mr. Raiche shared that the new zoning ordinance does have language about ground cover, runoff, roof water, surface water, and other drainage, and it is the Engineering Department who enforces this. Essentially, any drainage into common sewers is illegal and the city can force the disconnection from the system. This allows control of stormwater runoff from both pervious and impervious surfaces. Any applicant for a building permit must go through the Engineering Department, which seeks to reduce the discharge to the maximum extent possible. Even with de-paving, the native soils can only accept a certain

amount of water, and will generate runoff. Detention and retention are important for reducing discharge. Stormwater and impervious surfaces are effectively regulated, and the addition of the goals for low-impact development will enable the city to better carry out its policies.

Councilor Niedergang asked about the requirement that paving contractors register and pay a bond, and whether that was being implemented and Ms. Fosbrook shared that with the addition of a Trench Inspector, the department has more resources to enforce this. Councilor Niedergang asked for a list of the paving contractors registered in the city. Councilor Scott asked how many illicit driveways have been addressed, and Ms. Fosbrook noted that anecdotally, it is approximately 7-8 since October. There is a discussion underway of fines that could be incurred. The strategy thus far has been to require a retroactive application for a driveway permit. The enforcement in the ordinance states that the paving contractor should not be entitled to receive another permit until the violation has been remedied. The fine for not having a permit is \$300 and for not having a registration is another \$300. The Chair asked that the Solicitor's Office review the bonding requirements and what non-monetary ramifications could be imposed. The Engineering Department will also consider what procedures might be able to be put in place to levy fines. There may also be outreach that could be implemented to make homeowners and paving contractors aware of the process.

Councilor Niedergang asked about how much effort and energy should be devoted to promoting de-paving. Mr. Raiche noted that simply de-paving is not sufficient, but improved on-site stormwater management is vital to keeping infrastructure costs down. If stormwater runoff makes it to the right-of-way, it requires more tanks and larger pipes. The department is exploring a sanitary stormwater fee component to equitably divide the costs among the properties that generate the problems and to incentivize people to do the right thing, through an abatement to stormwater fees. Stormwater retention and detention would be worth more "credit" than de-paving alone. Councilor Ewen-Campen clarified that on-site detention and retention could be anything from rain barrels and rain gardens, to a tank.

RESULT:

WORK COMPLETED

205701: That the Administration share enforcement mechanisms for Ordinance 11-33, Driveway Construction, as it relates to pervious surface area.

See 198398

RESULT:

KEPT IN COMMITTEE

205833: That the Directors of Capital Projects and Engineering work with the City Solicitor to craft a DEP-required Storm Water Ordinance as discussed at the April 16, 2015 meeting of the Legislative Matters Committee.

Ms. Fosbrook presented a memo with outlined changes suggested by the Department of Infrastructure and Asset Management, noting that the city has a combined sewer and stormwater system, and the changes incorporate the requirement for separate sewer and stormwater pipes. Finding and penalizing non-stormwater discharges, which primarily occur in the Mystic and Alewife Brook, is a priority and the ordinance should reflect this. Controls for construction practices for erosion and runoff, as well as a new section to address Illicit Discharge Detection and Elimination (IDDE) requirements are also recommended. The City has until June 30, 2020 to enact these ordinance changes, per the EPA.

Councilor Ewen-Campen asked how the IDDE works and what would be done. Ms. Fosbrook noted that illicit connections may exist, some of which are incredibly difficult to find, so the department

encourages using engineering consultants to target and find these. Mr. Raiche clarified that the bigger problem is the combined sewer, as the discharge in those pipes is more problematic. Further, the IDDE locating often includes entry onto private property, so the ordinance seeks to give the city the authority to go onto said properties to find the illicit connections and also to levy fines to remedy the problems. Councilor Ewen-Campen clarified that property owners are likely unaware of these situations, and may find themselves having to spend a significant amount of money to remediate these issues. Chair Davis clarified further that most of these connections date back approximately 60 years. Councilor Scott elaborated that it may be common that property owners purchased properties with plumbing issues and wondered if the ordinance could contain language to seek recompense from builders for these types of pre-existing issues. The Chair noted that this might be a claim between private parties, but certainly the city should do what it can to assist residents who may find themselves in this situation. Councilor Ewen-Campen suggested and Ms. Fosbrook will research whether there are state or other resources available to support homeowners who need to address these issues. Councilor Niedergang clarified that an acre is 43,560 square feet and there are just a few commercial lots of that size in the city.

Ms. Fosbrook noted that other communities have already taken these steps, so there are ordinances for reference, and the department is also checking in with the EPA periodically to move toward a draft ordinance. Mr. Raiche added that what is being undertaken in this ordinance also relates to pervious surfaces. Many of the changes to section 11-165 need to address the arcane geography.

RESULT:

KEPT IN COMMITTEE

Surveillance Technology Ordinance/Policy

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

The Chair noted that a policy that is transparent and detailed is important, though the mechanics of this are still to be determined. Councilor Ewen-Campen shared the draft policy with the ACLU and presented some updates based on their feedback as well as his own. One suggested change is using the language "with the importance of maintaining individual(s)' civil rights and civil liberties" rather than "right to privacy" in the last sentence of the first paragraph. Another is to clarify within Permissible Purposes and Authorized Uses that the technology cannot be used for all of these purposes. Each technology would have a singular purpose and it would be required to articulate the reason(s) for its use. Rather than stating that use of surveillance technology for any purpose not permitted by the ordinance is prohibited, it should be considered that the policy should be elaborated to explicitly state something to the effect of - use of surveillance technology for the purpose of monitoring people on the basis of either protected first amendment activity or association or any protected class including race or ethnicity is strictly prohibited. Within the Data Collection section, there should be a data minimization policy, as well as a purpose limitation policy. Lastly, the Data Access section should include maintaining a record of each time the technology is accessed and what the purpose of that access was. Councilor Ewen-Campen noted that this could pose a technical challenge for certain types of non-controversial data but is extremely important for some data types. There was agreement among the Committee that levels of access and tracking could vary based on the software.

Councilor Ewen-Campen asked about the Impact Report and Ms. Koh noted that it is being updated to include items such as authorized use, how staff will be trained, and how oversight will be managed. Ms. Webber noted that the administration does not object to any of the changes suggested by Councilor Ewen-Campen, though the feasibility and implementation of tracking will have to be studied further.

RESULT:

KEPT IN COMMITTEE

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

See 209592

RESULT:

KEPT IN COMMITTEE

Noise Ordinance

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. Webber shared that there were questions asked in a previous meeting about the inventory of equipment that the city uses and what impact an ordinance banning gas-powered leaf blowers would have on department operations. Mr. Weisman noted that a large number of DPW divisions use leaf blowers. The Highway Division uses three; Trees also uses three; and Grounds uses seven backpack blowers, which are larger, and five hand blowers. Parks & Recreation also uses three backpack leaf blowers. The potential equipment that could meet the 60 dBA requirement is not able to be purchased off-the-shelf. It would also likely have only half the force of a typical backpack leaf blower currently used, which could double the staff time needed to complete work, in addition to causing issues with battery life and requiring more batteries or a generator to be kept on-hand. The high output leaf blowers cost about \$500 and batteries are approximately \$70 each. There are also concerns with battery disposal options. He elaborated that the off-the-shelf blowers are approximately 89 dBA with 110 mph output, while the backpack blowers currently in use have an output of over 200mph. In addition to within the parks and fields, leaf blowers are used to clear sidewalks after events. Cambridge has experienced challenges with moving leaves, especially in autumn when they may be wet, and has an exemption for parks of a certain size.

Ms. Lathan noted that the time when park cleanup takes place is often in the evenings, and there are many weekend events that begin around 8am, with work beginning at 6am to prepare. This would put the work in violation of the proposed ordinance revisions. Ms. Webber noted that Mr. McEachern also communicated that Davis Square requires more high powered equipment to address debris that may be stuck in the bricks. Ms. Webber also added that the DPW has contracts for landscaping that do not specify a dBA requirement for leaf blowers. She noted that differentiating between hardscape and softscape spaces in the ordinance might be an approach to pursue. Mr. Weisman added that other cities and towns who have similar ordinances have dispensations for parks of a particular size or at a certain time of year.

Councilor Scott highlighted that the decibel levels may not be the primary issue, as there are some electric leaf blowers that operate at greater than 60 dBA and gas-powered leaf blowers that are decreasing in dBA, and other factors such as pollution need to be considered as well.

RESULT:

KEPT IN COMMITTEE

209640: That the Administration work with the Committee on Legislative Matters to consider revisions to the Noise Ordinance.

See 209061

RESULT:	KEPT IN COMMITTEE
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Handout:

- 2020-02-20 Council Memo SW Ordinance_final (with 205833)