



CITY OF SOMERVILLE, MASSACHUSETTS CLERK OF COMMITTEES

March 18, 2021

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	Absent	
Jesse Clingan	Ward Four City Councilor	Present	

Others present: Julie McKenzie - Law, Shannon Phillips - Law, David Shapiro - Law, Hannah Pappenheim - Law, Michael Jefferson - Local 76, Chief Charles Femino - SPD, Jill Lathan - DPW, Khushbu Webber - Mayor's Office, Lauren Racaniello - Legislative Liaison, Kim Wells - Assistant Clerk of Committees, Peter Forcellese - Legislative Clerk.

The meeting took place virtually via GoToWebinar and was called to order at 6:04 PM by Chair Davis and adjourned at 9:15 PM on a roll call vote of 4 in favor (Councilors Clingan, Ewen-Campen, Niedergang and Davis), 0 against and 1 absent (Councilor McLaughlin).

Councilor McLaughlin was unable to attend this meeting due to family obligations and would have been recused from a significant number of items on this agenda if he was present.

Approval of the February 18, 2021 Minutes

The minutes were approved on a roll call vote of 4 in favor (Councilors Clingan, Ewen-Campen, Niedergang and Davis), 0 against and 1 absent (Councilor McLaughlin).

RESULT:	ACCEPTED
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Leaf Blowers

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.

Chair Davis stated that when this item was previously discussed, the Solicitor's office advised that the Council is not able disallow the use of gas leaf blowers, so this committee has looked in to other options, including focusing on noise levels. The draft before the committee was prepared by Ms. Pappenheim at Councilor Niedergang's request and, at Chair Davis' suggestion, is based on the ordinance in Cambridge. Ms. Pappenheim explained four main functions of ordinance: 1) limitations on use; 2) exceptions for

certain municipal areas; 3) requirements for commercial leaf blower operators and large landowners; and 4) blanketed decibel restrictions. Chair Davis commented that he is more concerned with commercial users rather than homeowners. Councilor Niedergang would like the ordinance to be stronger and asked if the committee could accept this as an approach to the problem, as he would like to have it go into effect by September 1st of this year. He would like to change the 'no restriction' period from 6 months to 5 months. Councilor Ewen-Campen expressed his interest to work on this issue and asked if the ordinance is working in Cambridge, and if passage of this ordinance would actually make a difference in the number of leaf blowers used in Somerville. Councilor Niedergang thinks the ordinance is stronger than it looks, and he asked councilors and staff to reach out to people in Cambridge to get some feedback on their experiences with this. Chair Davis expressed his belief that any ordinance should, at the least, establish a period for phasing out city use of existing equipment and asked Commissioner Lathan to work on a proposal for that. Commissioner Lathan said she has discussed with her team how to phase out older equipment in favor of newer, quieter equipment.

RESULT:

KEPT IN COMMITTEE

Tear Gas/Crowd Controls

210736: That the City Solicitor draft an Ordinance banning the use of tear gas by the Police Department and other law enforcement agencies operating in Somerville.

Councilor Ewen-Campen reviewed his latest draft (V 7) of the ordinance and noted that there are 3 outstanding issues to be resolved:

- 1) In Section 1 (c) 4 a. i., he added the word “Captain” to ensure that a small number of people have the authority to authorize use. Chief Femino was asked how many officers would qualify as shift commanders and he stated that those positions are usually filled by lieutenants, however, if a lieutenant is out, the slot might be filled by a sergeant. In the case of pre-planned events, a captain or higher ranked officer would be on scene. Councilor Ewen-Campen doesn't think that authority should with highest ranking officer on the scene no matter the rank, but he could agree to it being a shift commander.
- 2) Pepper spray use is in the hands of individual officers. The ordinance before the committee has the following requirements:
“The use of Pepper Spray by the SPD or any Other Law Enforcement Officers shall not be permitted unless an Officer (a) personally witnesses on-going and illegal acts of violence, property destruction, or imminent threats of illegal violence or property destruction involving a weapon, (b) is unable to arrest or detain an individual using a lower level of force, and (c) provides a clear verbal warning of the imminent deployment of Pepper Spray prior to its use; or, if an emergency exists that requires the immediate use of Pepper Spray to prevent serious injury or death.”
- 3) Enforcement. Councilor Ewen-Campen explained that he'd removed two provisions from this section based on concerns raised by the Solicitor's office.

Councilor Ewen-Campen said he was trying to reach a compromise to move this ordinance forward, adding that he's comfortable with language he submitted. Chair Davis commented that he was unclear of the intent of some of the language, e.g., the word ‘weapon’ as stated in Section 1 (c) 5 as language clearly distinguishes between violence and property damage, neither of which has anything to do with bodily harm. Ms. Webber noted that she has not been involved in the discussion about this ordinance but said that although the administration has concerns, it is supportive of banning

these things. The administration is concerned about the pepper spray provisions and enforcement provisions since they could have a real impact on public safety. Also, there are components that may be addressed by the re-imagined police department and the civilian oversight initiative.

Ms. Phillips spoke about the Law Department's main concerns and said that many of the provisions discussed by Attorney Feuer, in the attached legal memorandum, are not applicable to Somerville.

Chief Femino supports a tear gas ban in crowd control atmospheres, and thinks more discussion is needed. He expressed some concern regarding the language addressing the use of pepper spray. He noted that officers receive training based on state standards and the Somerville Police Department (SPD) follows those standards and has a use of force policy that is used as a guide. All use of force incidents are reviewed locally and reported at the state level. Chair Davis noted that there have been several incidents where the existing training has failed. He agrees that the use of pepper spray to de-escalate a situation is relevant and that it does seem appropriate to address it separately from the other provisions in the ordinance. He also expressed his frustration that the views expressed by the Law Department appear to be more focused on successfully defending claims for violations of the ordinance than with ensuring that inappropriate measures are not used by police in Somerville. He said that he would reflect on Chief Femino's feedback, but he is ready to move this item forward.

Councilor Ewen-Campen said that he was happy that the Council and administration agree on most of the ordinance, with the exception of the pepper spray issue. He explained that he's trying to protect people from being pepper sprayed when it's unnecessary and said that he doesn't see any scenario when pepper spray is necessary that this ordinance doesn't cover. Chief Femino said that he is concerned that all of the requirements in Section 1 (c) 5 must be present in order to use pepper spray. He said that in some cases, pepper spray might be used to prevent a person from doing self-harm and Councilor Ewen-Campen noted that is allowable under his proposal. Chief Femino said that he reads it differently and said that maybe it can be made clearer after further discussion, in order to move it forward. Chair Davis noted that emergency use is permissible without meeting the other requirements of Section 1 (c) 5. He said that he thinks the proposal is consistent with what the chief is saying conceptually but that perhaps some re-organizing and tightening of the language could help make it more clear and to address the chief's concerns. Councilor Ewen-Campen stated that he appreciates the input of the SPD and Law Department and he would like to get this ordinance finished at the next meeting, adding that he wants clear guidelines to eliminate all ambiguity.

RESULT:	KEPT IN COMMITTEE
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211003: That this Council consider an ordinance banning chemical crowd control agents and kinetic impact projectiles.

See 210736

RESULT:	KEPT IN COMMITTEE
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Police/Fire Selection Committee/Interview Panels

211109: City Solicitor submitting an ordinance to amend the membership of the Police Chief Selection Committee, replacing the Director of Multicultural Affairs with the Director of Racial and Social Justice.

Ms. McKenzie pointed out that the Director of Multicultural Affairs position is vacant and making this proposed change is in line with the intent of the original makeup of the panel. Ms. Webber

informed the committee that an offer has been extended for the Racial and Social Justice position and the administration expects that position will be filled by the end of March.

Councilor Niedergang moved to approve this item.

The committee recessed at 7:55 PM and reconvened at 8:05 PM.

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

211262: That this Council pursue a Charter or Ordinance amendment to expand Police and Fire Interview Panels to include a City Councilor and a designee of the Director of Racial and Social Justice.

Ms. Webber commented that due to the way this order was worded, it might not have been clear that it should be assigned to an attorney in the Law Department but that they can look at the issue and report back to the committee.

RESULT:	KEPT IN COMMITTEE
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Specification of Police Officer Levels

211232: That Ordinance 10-1 regarding the organization of the Police department be amended by removing the specified levels of patrol and superior officers.

See 211417

RESULT:	KEPT IN COMMITTEE
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211417: City Solicitor responding to #211232 with an amendment to Ordinances 10-1 and 10-1.1, to eliminate specified levels of patrol and superior officers in the Police Department.

Councilor Niedergang wants to strike the words 'deputy chiefs of police' from the first sentence in Section 10-1 of the ordinance and asked if there is a reason why this can't be done. Ms. McKenzie suggested changing the word 'shall' to 'may' in the same sentence to give the Council flexibility in the ordinance. Chief Femino stated his opposition to the change and explained that the department has more responsibility now with 3 captains than when there were 7, during the time when Councilor Niedergang worked there. Councilor Niedergang was comfortable with Ms. McKenzie's suggestion and said that he wants the Police Chief to staff the department as he sees fit.

Councilor Niedergang made a motion **that the word 'shall' be changed to 'may' in the first sentence in Section 10-1 of the ordinance.**

Speaking on the motion, Chair Davis asked if this would mean that there is no defined structure for the Police Department and Ms. McKenzie replied that by using the word 'may', the department could include those ranks but doesn't have to. She sees it as giving the city flexibility at any given point in time. Chair Davis said that the impact of this would hypothetically allow the Police Department to be comprised of a chief and patrol officers. He said that the intent of the change was to reestablish the Council's authority regarding the size of the police department and he's not sure making staffing levels at the will of the chief is in keeping with the intent. Chair Davis stated that he isn't

comfortable with removing the maximum numbers of positions. Councilor Niedergang commented that the ordinance shouldn't be prescriptive at this time in view of what the department might look like in 10-15 years.

Councilor Niedergang's ***motion failed*** on a roll call vote of 2 in favor (Councilors Clingan, Niedergang), 2 against (Councilors Ewen-Campen, Davis) and 1 absent (Councilor McLaughlin).

Chair Davis suggested keeping this item in committee for discussion with Councilor Scott to confirm his intent since it appears that intent was to confirm that the size of the Police Department is under the Council's control, but the proposed changes appear to have the opposite effect. Councilor Niedergang noted that the Council does have authority over the department's size since it has to approve appointments.

RESULT:	KEPT IN COMMITTEE
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Reserve Lists

211260: That the City Solicitor prepare legislation revoking the enabling legislation for the Police Reserve List.

See 211319

RESULT:	KEPT IN COMMITTEE
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211261: That the City Solicitor prepare legislation revoking the enabling legislation for the Fire Reserve List.

See 211318

RESULT:	KEPT IN COMMITTEE
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211318: Requesting rescission of the adoption of MGL Chapter 48 Sections 59B, 59C and 59D relative to a Reserve Fire Force.

Mr. Shapiro is waiting for answers to some questions from the Human Resources Department (HRD). Chair Davis sponsored Mike Jefferson, President of Fire Fighters Local 76 to speak. Mr. Jefferson stated that he's not in disagreement with this request, however he reminded the committee that the last list was a disaster because there were twenty five candidates and that completely voided the 2016 eligible hire list. He said that if the process is done correctly, it can be a great asset for the city, and he suggested that a way be found to cap the list. In order to secure a spot at the fire academy, the city must submit a name and social security number. Mr. Jefferson proposed adding to the list based of retirement projections, but he doesn't know if it can be capped. He's stated his willingness to work with anyone to discuss keeping the list in place it.

Councilor Clingan asked how the process is different from police with regards to time and academy training. Mr. Jefferson said that the Stow academy is booked out until September and that the background and medical testing processes takes months to complete. Chief Femino said that the waiting time to enter the police academy depends on the academies' schedules and said that he is also willing to work with the Council to keep the list in place.

Chair Davis asked Mr. Shapiro to research whether the Council can set a maximum number of people on a reserve list and/or the amount of time they will remain on a list in time for the next Council meeting.

Councilor Niedergang asked if the 10 conditional offers to firefighters could be withdrawn and Ms. Webber believes that the candidates can withdraw their letters but beyond that, she's not sure.

Councilor Niedergang **moved to approve the item with the intent of hearing from HRD and allowing the full council to weigh in on the matter.**

RESULT:	APPROVED WITH CONDITIONS. [3 TO 1]
AYES:	Davis, Niedergang, Ewen-Campen
NAYS:	Clingan
ABSENT:	McLaughlin

211319: Requesting rescission of the adoption of MGL Chapter 147 Sections 11, 12 and 13 relative to a Reserve Police Force.

Mr. Shapiro is waiting for answers to some questions from the Human Resources Department (HRD). Chair Davis would like to approve this item in case the requested information is available and acceptable to the committee by the next City Council meeting. Chief Femino said that eliminating the list will extend the period of time it takes to hire officers by 4 to 6 months and he inquired if the time a person remains on the list could be limited.

Councilor Davis moved to approve the item. Ms. Webber stated that the administration has concerns about supporting this item without having clarity from HRD about how those currently going through the hiring process would be affected. The administration is fine with putting in the provision for future hires, but not the ones in the pipeline now. Ms. Webber noted that the police union also has concerns and would like to speak on the matter, adding that the administration also wants to hear from the unions on the topic. Chair Davis said that depending on the answers from HRD, a full council discussion may be warranted. Councilor Niedergang supported Chair Davis' course of action.

Ms. Webber noted that there are currently 7 individuals on the police reserve list and that the city is nearing the end of the Fire Department's hiring process, so both might be affected. Councilor Niedergang asked about the officers just approved and how many would be on list after March 25th. Chief Femino said that there could be 7 on the list and 3 pending to go on the list. Ms. Webber explained that the city had submitted 9 names from the reserve list and that there was also an additional name on the list. Seven individuals were approved from the list, leaving 3 names remaining on the list who would be available to potentially fill vacancies from retirements. Ms. Webber informed the committee that until the academy training is completed, approved candidates remain on the reserve list and said that she would have to check with HRD to get the exact process.

Chair Davis **moved to approve the item with the intent of hearing from HRD and allowing the full council to weigh in on the matter.**

RESULT:	APPROVED WITH CONDITIONS. [UNANIMOUS]
AYES:	Davis, Niedergang, Ewen-Campen, Clingan
ABSENT:	McLaughlin

Gender Neutral HRP

211369: Assistant City Solicitor responding to #211197 re: a Home Rule Petition to create a gender-neutral City Charter.

Chair Davis moved to approve this item.

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

To be closed

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

RESULT:	PLACED ON FILE
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Referenced Material:

- Somerville Leaf Blower Ordinance DRAFT 3.8.21 (with 209061)
- 20200314-TearGas-Somerville-Language-v7 (with 210736, 211003)
- Order-Charter gender neutral 3-15-2021 - clean (with 211369)
- Order-Charter gender neutral 3-15-2021 - redline (with 211369)
- Legal Memorandum re Somerville tear gas ordinance (with 210736, 211003)