



CITY OF SOMERVILLE, MASSACHUSETTS
CLERK OF COMMITTEES

November 7, 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	

The meeting was held in the Committee Room and was called to order by Chair Niedergang at 6:07pm and adjourned at 8:15pm.

Others present: Annie Connor - Mayor's Office; John Long - City Clerk; George Proakis - OSPCD; David Shapiro - Law; Lisa Oliveira - OSPCD; Malik Drayton - OSPCD; Shannon Phillips - Law; Oliver Sellers-Garcia - OSPCD; Chris Dwan - Urban Forestry Committee; Kimberly Wells - Assistant Clerk of Committees.

Approval of the October 3, 2019 Minutes

RESULT: ACCEPTED

Approval of the October 17, 2019 Minutes

RESULT: ACCEPTED

Deployment of 5G Small Wireless Facilities

208862: Assistant City Solicitor submitting an Ordinance to regulate Small Wireless Facilities in the Public Right of Way.

Mr. Shapiro highlighted a few key issues in the design standards that Committee members had expressed concern about. One of these was noise, which is addressed in section 3.A.e. The Administration's proposal to allow 55dBA is what an air conditioner would emit, he said. Another concern that Councilors had focused on was location, which is addressed in section 3.A.d. Mr. Shapiro said that the poles are approximately 12-15 feet away from residences currently, so he put in the Design Standards to establish 12 feet as a minimum. This is an increase from 10 feet in the previous draft. Councilors Davis and Niedergang expressed opposition to both of these. In terms of distance, they said that the higher of

the options seems reasonable and would be more respectful to residents. Councilor Ballantyne agreed that both the distance and the noise could still pose issues and should be restricted as much as possible. Chairman Niedergang wondered if there was an objective standard for noise. Mr. Long said that according to the City's current noise ordinance, 40dBA is the limit, for two hours, at the property line. Councilor Davis reiterated that it is in the public interest to be more restrictive and Councilor Niedergang agreed that it should be more aggressive. They both said that if the applicants argue that this is an effective prohibition, the City would deal with that, but we shouldn't curtail what is right for our residents out of fear of the applicants challenging it, as long as it is reasonable. Mr. Shapiro suggested changing 12 feet to 15 feet away from residences and 55dBA at a distance of 5 feet to 10dBA at the property line for the maximum noise allowed. This was acceptable to the Committee. Councilor Davis suggested that industry standards would be useful information here. Councilor Ballantyne clarified that one of the enforcement mechanisms is that the installation could be removed if it does not comply with the standards. She suggested that the application should also require declaration of the specifications. There was discussion about preserving tree planting locations. Councilor Ballantyne shared that, relative to section 3.A.f., Dr. Boukili has identified geographic areas for tree planting, but Councilor Davis expressed concern that without specific actual identified sites and future plans, this language may not be sufficient to withstand challenge by an applicant. Mr. Shapiro will connect with Dr. Boukili to determine what will work best and write that into the standards.

Councilor Niedergang asked about section 5.D. and why pole separation requirements for distance from a residence's window is not included in that section. Mr. Shapiro stated that the pole itself is different from the installation, and those installation requirements will still apply. Councilor Davis expressed concern about the height of installations. Section 3.A.h.1. was likely based on DPW needs rather than the pedestrian experience. Councilor Davis suggested increasing the number of feet and asked for information on what the highest option would be that would still enable the installation to work. He expressed this same concern for section 3.A.j., relative to antennas. Mr. Shapiro said he will consult and will change those sections as well.

Turning to the ordinance, Councilor Davis shared the opinion that these particular key standards should be included to be ordained, such that any changes would have to come before the City Council for approval. Chair Niedergang expressed concern that too many design standards in the ordinance could be a problem, as new technology and a fast-changing arena could require frequent changes to the ordinance. But including these important key concerns is a good balance. Councilor Ballantyne wondered if requiring updates if improved technology is available, specifically related to noise, is something that could be included.

Councilor Davis moved to amend the ordinance draft by inserting after (h), where the draft reads [COUNCIL TO FILL IN], to include the revised design standards agreed upon in the discussion from Section 3.A.d, e, f, h, and j.

The motion was approved.

Councilor Davis moved to adopt the draft of the ordinance submitted this week by the Administration, and discussed today, to replace the previous draft, subject to the prior amendment.

The motion was approved.

Councilor Davis moved to recommend the proposed ordinance as amended to the full Council for approval, and the motion was approved unanimously.

Committee members and Mr. Shapiro agreed that Mr. Shapiro would revise the standards and ordinance according to the discussion and if necessary, there would be discussion at the full Council meeting regarding any changes desired by Committee members.

RESULT:	APPROVED AS AMENDED
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208668: That the Legislative Matters Committee prepare an ordinance to regulate the placement of wireless facilities to the maximum extent permitted by state law.

RESULT:	WORK COMPLETED
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208883: 2 residents submitting comments re: the deployment of 5G small wireless facilities.

RESULT:	WORK COMPLETED
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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.

Councilor Ballantyne shared that discussions between advocates and the Administration and herself have been taking place to try to reach a mutually-agreeable compromise on this ordinance.

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

See #203365.

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.

See #203365.

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

See #203365.

RESULT:	KEPT IN COMMITTEE
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208567: Elizabeth Lundgren submitting comments re: #206495, the proposed native plant ordinance.

See #203365.

RESULT:	KEPT IN COMMITTEE
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Tree Protection Ordinance updates

208993: That the Administration provide an update on implementation of the Tree Preservation Ordinance, with any recommendations for amendments to make it as effective and enforceable as possible.

Ms. Oliveira shared that the tree preservation ordinance has been in effect for about 10 weeks and the staff is spending about 7 hours per week working on it. DPW spends an additional 10 hours per week, the equivalent of a ¼ FTE. The work includes addressing calls and emails. Five permits have been issued, three residential exemptions have been issued, and six permits are in progress. This work has delayed some of the City's tree planting that takes place in the fall.

Councilor Ballantyne expressed a concern about an exemption for affordable housing. (The exemption is for the public good, not specifically for affordable housing). Chair Niedergang suggested, that if the Committee so desired, an amendment could be proposed to limit the discretion for exemptions and waivers, although he supported this particular waiver and felt the Administration had been reasonable in granting it. Ms. Connor added that this particular situation was only a partial waiver; there was a waiver of permit fees, but they are planting seven trees in a small lot, and this is not a large developer trying to make a profit. The Committee was satisfied with this explanation.

RESULT:	WORK COMPLETED
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208994: Proposing amendments to the Tree Preservation Ordinance to allow the Tree Warden and Senior Urban Forestry and Landscape Planner to designate a co-worker to perform their duties and attend, count towards the quorum for, and participate and vote in, the meetings of the Urban Forestry Committee.

Chair Niedergang moved to make three amendments to the ordinance that had been suggested and drafted by Chris Dwan, a member of the Urban Forestry Committee: (1) to amend Section 12-103. Tree warden. to:

The Tree Warden shall be an employee of the City, appointed by the Mayor, subject to confirmation by the City Council, for a term of three years. The Tree Warden may delegate, subject to their control and direction, any of the powers and duties conferred upon them as Tree Warden to any other officer or employee of the City.

and (2) to amend Section 12-104. Senior urban forestry and landscape planner. to:

The Senior Urban Forestry and Landscape Planner shall be an employee of the city, appointed by the Mayor. The Senior Urban Forestry and Landscape Planner may delegate, subject to their control and direction, any of the powers and duties conferred upon them as Senior Urban Forestry and Landscape Planner to any other officer or employee of the City.

and(3) to amend Section 12-105. Urban forestry committee. to:

d. The Tree Warden and the Senior Urban Forestry and Landscape Planner may, at their discretion, delegate their ex officio status to another employee or officer of the City in the event that they are unable to attend a meeting of the Urban Forestry Committee.

Ms. Oliveira said that the Administration had no objection to these changes. The motion was approved unanimously.

On another issue, Chair Niedergang had circulated an email to the staff and the Committee proposing another amendment to the ordinance. (See attachment #4) He stated that several constituents have expressed great sadness about large trees being removed near their homes. These large trees turned out to be Norway Maples, which are considered invasive species, and thus exempt from the ordinance. He

suggested that all large trees greater than 24 inches DBH should be protected, as the ecological benefits are greater than the risks of the invasive species. Councilor Davis expressed skepticism, noting that trees such as Norway Maples have a number of harmful impacts, and stated a desire to hear from experts prior to voting on an amendment. Ms. Oliveira added that a large Norway Maple and other large trees can throw seeds further and other species can cause additional issues, so she would like to do more research before sharing a recommendation. As Dr. Boukili was out that day and had not had a chance to review the proposal, no action was taken. The Chair said he would submit a formal amendment on this at the next full Council meeting.

RESULT:

APPROVED

Other environmental issues

207480: That the City Solicitor review the legal standing of each site identified in Sec. 12-131 of the proposed Public Space Conservation Ordinance to identify if there are any terms by which each site was acquired, or is held, that would prevent it from being dedicated to the public.

Councilor Ballantyne recapped that the idea for the ordinance is to establish a baseline for open space, based on the state ordinance Article 97, so that any land removed from open space needs to be replaced. Any new open space added to the community would elevate the amount of green space to create a new, higher baseline. Mr. Proakis detailed that the process began with a list of public spaces, a number of which are protected through the state Article 97, which requires a supermajority vote of the state legislature to remove. However, there are many other important open spaces developed by the City that are not included in Article 97. It remains to be determined what would happen if an identified protected space was removed in the future, even if replaced in-kind with other open space in close proximity. There is a question of where the decision making should belong, if there are no state funds or connection to Article 97. The Administration would rather the decision be made by the City Council than that it have to go to the State Legislature. Attorney McGettigan is continuing to work on an ordinance that incorporates this City Council oversight and control.

RESULT:

KEPT IN COMMITTEE

203646: That the City Solicitor draft a Building Energy Use Disclosure Ordinance to reduce greenhouse gas emissions by requiring owners of larger buildings to disclose annual energy use.

Mr. Sellers-Garcia shared that energy disclosure ordinances (also called benchmarking ordinances) are in place in many large cities. They can serve to inform best practices. The ratio of emissions from large to small buildings is very different in largely commercial cities than in residential cities such as Somerville. These ordinances require a great deal of enforcement and data collection, and are only as effective as the engagement and data input. Somerville has included in Climate Forward, an action on creating a disclosure ordinance for residential buildings, which is where the bulk of emissions come from in Somerville. The Housing Division is working to determine how to build a registry and engage stakeholders.

Councilor Ballantyne inquired whether this type of disclosure could be included in the zoning requirements for new buildings.

RESULT:

WORK COMPLETED

208680: That the City Solicitor determine whether the City may draft an ordinance or implement a policy or procedure to address the Black Swallow-wort problem.

Mr. Shapiro shared that legally, there is an option to enact an ordinance to declare something a nuisance and then have a requirement that the nuisance be addressed, with an enforcement mechanism and fines for code violations. Councilor Davis noted that the primary focus should be information, but the enforcement mechanism of an ordinance would be valuable. He suggested drafting an ordinance that focuses on explaining the nuisance, but that has an option for fines if they are needed in the future. Councilor Ballantyne added that managing this as a municipality would be difficult, but property owners should be made aware.

Councilor Davis moved that the administration draft an ordinance to address the Black Swallow-wort problem.

The motion was approved.

RESULT:

WORK COMPLETED

Handouts:

- 2019-11-5draftordinance (with 208862)
- 2019-11-5draftstandards (with 208862)
- Somerville Standards 11-6-19 redlined (with 208862)
- Comments - M Niedergang (with 208993)
- City of Cambridge Building Energy Use Disclosure Ordinance (with 203646)
- COMPARISON OF MASSACHUSETTS BUILDING ENERGY USE DISCLOSURE ORDINANCES (with 203646)
- Comparison of U.S. Commercial Building Energy Policies and Ordinances (with 203646)