



CITY OF SOMERVILLE, MASSACHUSETTS

CLERK OF COMMITTEES

April 1, 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	Present	
Jesse Clingan	Ward Four City Councilor	Present	

Others present: Frank Wright - Law, Chief Charles Femino - SPD, Chief Charles Breen - SFD, Julie McKenzie - Law, 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 6:03 PM by Chair Davis and adjourned at 8:39 PM on a roll call vote of 5 in favor (Councilors Clingan, McLaughlin, Ewen-Campen, Niedergang and Davis), 0 against and 0 absent.

Tear Gas/Crowd Control

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 submitted his latest version (20200314-TearGas-Somerville-Language-v8) of the ordinance. Chair Davis then submitted his amendments ((20200314-TearGas-Somerville-Language-v8 (COMPARE to v7 with LD Notes 4-1-21)) to Councilor Ewen-Campen's version. The changes, as noted in Chair Davis' version, were reviewed by the committee. Councilor Ewen-Campen commented that the changes made by Chair Davis make the ordinance clearer and easier to understand. Chair Davis noted that he's comfortable dropping two of the issues he'd raised previously, based on input from the Solicitor's office; namely that the cause of action concept that was included in the facial recognition ordinance is in fact captured in this document and, regarding the language related to qualified immunity, he accepts the law department's position, as reflected in Councilor Ewen-Campen's draft, against adding more explicit language and he is comfortable that retaining the provision stating that the Ordinance shall be deemed to be clearly established law because it gives a court something upon which to base a decision but does not conflict with the court's ability to make that determination.

Councilor McLaughlin asked Chief Femino and Solicitor Wright to give their opinions of the proposed ordinance. Chief Femino commented that he thinks that the committee's efforts are sincere and he feels that the proposed language is acceptable to the degree, as it's written, however, he

thought that the intent of this legislation with respect to the use of chemical agents or kinetic projectiles was to address lawful demonstrations and/or protests and along the way, it changed to address the use of pepper spray. He is opposed to the language limiting an officer's discretion in the use of force. Chief Femino said that officers are trained by the MA Police Training Council (MPTC) in the use of different levels of force and it would be virtually impossible to describe every scenario when pepper spray use might be appropriate. He expressed concerns regarding having to train to an additional standard for the use of pepper spray. Solicitor Wright reiterated Chief Femino's concerns about having multiple standards.

Councilor Ewen-Campen noted that the use of pepper spray was initially separated from the conversation around protests specifically, because the idea was that pepper spray may need to be used in a situation where there are more than 10 people present and an individual officer needs to have that discretion, adding that he totally agrees with that. The proposed language clearly retains the officer's discretion in emergency cases and only sets out additional requirements where there is not an emergency. He noted that the ordinance's language was re-written each time there was an objection, to address that objection, and he is ready to move forward with the item. Chair Davis agreed and noted that the mayor, in his June 2020 press release declaring systemic racism to be a public health emergency, called for a number of changes in the way the city addresses policing, some of which may not be consistent with current police academy training so if the mayor felt it was appropriate to set higher standard then this ordinance would seem perfectly appropriate.

Councilor Niedergang said that he agrees with Councilor Ewen-Campen and is ready to approve the ordinance as written and amended, adding that the city's standard is higher than that taught at the police academy and he is comfortable with that. He would like a 30-60 day delay in implementation of the ordinance to provide time to train officers in the new restrictions. Councilor Clingan said this language is better than the last version and he will support it. Councilor McLaughlin said that it's difficult to subdue someone with non-lethal means and he thinks that the ordinance before the committee takes this into consideration by allowing the use of pepper spray in certain circumstances. He noted that use of force incidents are reportable to the state and he will support the item.

Chair Davis thinks it's fair to allow an implementation delay. Ms. Racaniello noted that Attorney Phillips had raised a concern about the "under the direction and control of" language and the use of force and qualified immunity. Solicitor Wright would like an opportunity to review the proposal and come back to the committee with any comments the administration might have. Councilors Ewen-Campen, Clingan and Niedergang stated their desires to move this item forward tonight.

Councilor Niedergang made a motion to approve the ordinance as amended with an effective date to be within 60 days of its passage.

Solicitor Wright would like to consult with Attorney Phillips, however she is unavailable until July 12th, and he again requested additional time to review the ordinance. Chair Davis stated that he is comfortable with what is before the committee and he's happy to hear comments, but he won't object to Councilor Niedergang's motion. If changes are proposed, he would sever item at from the committee report at the City Council meeting.

Chair Davis asked Councilor Niedergang to defer his motion so that he could make a motion to replace the current version of the ordinance with Councilor Ewen-Campen's latest version (20200314-TearGas-Somerville-Language-v8). The motion was approved on a roll call vote of 5 in favor (Councilors Clingan, McLaughlin, Ewen-Campen, Niedergang and Davis), 0 against and 0 absent.

Chair Davis made a motion to amend the version before the committee by deleting paragraph (c) 2 and renumbering all subsequent paragraphs accordingly and to revise a new paragraph (c) 2 so that the first sentence begins with “Subject to the provisions of paragraph 3 below...” The motion was approved on a roll call vote of 5 in favor (Councilors Clingan, McLaughlin, Ewen-Campen, Niedergang and Davis), 0 against and 0 absent.

Chair Davis noted that the item had been sent to the committee for discussion, therefore an actual submission of the ordinance would have to be submitted for approval.

Councilor Niedergang made a motion to approve the version before the committee, as amended, by replacing the words “immediately upon” with the words “60 days after” in the last sentence. The motion was approved on a roll call vote of 5 in favor (Councilors Clingan, McLaughlin, Ewen-Campen, Niedergang and Davis), 0 against and 0 absent.

Councilor Niedergang made a motion to recommend that the City Council approve an ordinance that is consistent with the draft that is before the committee, as amended. The motion was approved on a roll call vote of 5 in favor (Councilors Clingan, McLaughlin, Ewen-Campen, Niedergang and Davis), 0 against and 0 absent.

RESULT:

WORK COMPLETED

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

See 210736

RESULT:

WORK COMPLETED

SPD Staffing Levels Ordinance

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

Councilor McLaughlin was recused from this item.

Chair Davis sponsored Councilor Scott to speak on this item. Councilor Scott said the intent of his initial order was to return the ordinance to the state it was in prior to 1971, when the Board of Aldermen set the patrol officer numbers. He would like to have language added asserting that the City Council determines the number of patrol officers as well as superior officers. Chair Davis noted that the existing ordinance appears to achieve Councilor Scotts’ goal. Councilor Scott said that the set maximums have been disregarded by the mayor and he wants the City Council to be able to set the patrol officer numbers. He would be amenable with eliminating the numbers of superior officers and letting the City Council set those levels, as well. Chair Davis asked if this requires a Home Rule Petition and Ms. McKenzie stated that, since this is an ordinance, it could be changed by a majority vote of the City Council.

Councilor Niedergang reviewed the conversation from the last committee meeting when the words “shall” vs. “may” were discussed. He doesn't agree that the City Council should set staffing levels and said that it should be up to the Police Chief to set those levels, noting, that's why the city hired a police chief. He continued on by noting that the City Council should determine the Police Department’s budget, but not its staffing levels. Chair Davis thinks that the framework is present to allow the City Council to set staffing levels. Councilor Scott said that City Council establishes

staffing levels all the time, e.g., when additional employees are hired. He said that this ordinance was amended several times over the years and that the City Council should not shy away from this.

Chief Femino said that there have been changes in the staffing levels over time and if the City Council wants to change levels, such changes should not be based on any criteria that would endanger public safety. Chair Davis asked Councilor Scott to review the proposed ordinance and work with him (Chair Davis) off line to arrive at language that would then be brought before the committee.

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.

See #211232.

Councilor McLaughlin was recused from this item.

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.

Solicitor Wright spoke about how this legislation might affect individuals currently on the reserve lists. He informed the committee that he had a conversation with the counsel for the Human Resources Department (HRD) and reported that HRD staff had found no precedent for this, therefore, they are hesitant to provide an opinion. Solicitor Wright thinks that if the reserve lists are rescinded, those on them and those who were given conditional offers would be protected. The question is whether Civil Service would agree. The legal outcome remains to be seen. Chair Davis said it sounds like the city could take the action proposed and consider those people as being protected. Solicitor Wright said that there are some individuals who have received conditional offers but have not yet come before the Confirmation of Appointments and Personnel Matters Committee and some who have yet to be approved by the City Council. Chair Davis said the options are 1) to eliminate the lists and not protect those who might be affected, or 2) eliminate the lists and treat those on it as protected. Solicitor Wright said the more conservative method would be to let the lists expire and then eliminate them.

After hearing this discussion, Councilor McLaughlin stated that he has a conflict of interest, as his brother is a police officer, but any action on this item would not be a reason for him to recuse himself. Solicitor Wright agreed.

Councilor Ewen-Campen asked if a limit on the number of names could be set on the reserve lists and Solicitor Wright said that remains to be seen. He explained that in order to revoke the legislation, it needs to be reversed, i.e., it can't have been changed after being accepted. Councilor Ewen-Campen supports rescinding the legislation and protecting those who may be affected, but he would like to have smaller reserve lists. Chair Davis asked if the City Council could establish an ordinance to limit the number of people on the lists and also the time that they can remain on them. Solicitor Wright said that he would have to do some research before answering that question. Councilor Clingan would rather exhaust the current lists and then move to rescind them and Councilor Niedergang agreed, adding that he doesn't think it needs to be done immediately. Councilor McLaughlin said that he is fine with waiting and asked if the lists were revoked now,

could the mayor still make those appointments, or would those candidates have to appeal? Solicitor Wright stated that it would be better to exhaust the lists because people on the next list might be affected and it might cause a problem. Chief Breen said that there is nobody on the Fire Department's reserve list now, but 10 individuals have been given conditional offers and he would like to put them on the reserve list to fill the upcoming vacancies. Also, the certification list for those individuals has expired, so if they don't get hired, they don't get hired. Chief Breen pointed out that the certification for those individuals specified that they be appointed to the reserve list.

Councilor McLaughlin asked how long it would take to hire those 10 individuals and Chief Breen said there is an academy schedule in July, but he doesn't know if he can get all 10 of them into it. Councilor McLaughlin said that he doesn't want to hurt anyone who went through the process but adding 10 names to the list puts us back to where we were. He asked how other cities that don't have reserve lists handle hiring police and fire personnel. Chair Davis said that the next call should be for full time employment, not the reserve list. He thinks that it's a multi-step process to eliminate the lists. Ms. Racaniello stated that there are 7 individuals on the police reserve list who are waiting for confirmation by the C of APM Committee and 2 additional individuals who have been appointed but not confirmed. The Fire Department has 10 individuals who are completing the medicals process. Those 10 would then have to be put on the fire reserve list, confirmed and then appointed. If there are vacancies in the Fire Department, they would be put on right away. She told the committee that the administration is willing to work with the City Council to move these candidates through the process as quickly as possible. Chief Breen said he can't submit names to the academy until individuals are hired by the city, but he thinks it may take until August or September to get them all on the Fire Department. When asked about the city's prior practice of providing on the job training to new recruits, Chief Breen said that practice was stopped as it was unsafe. Councilor Niedergang asked how long it would take to hire all the current candidates and then rescind the list and Chief Breen said his guess would be by the end of the year, due to academy variables.

Chief Femino said staffing in the Police Department is critically low and he would like the additional 2 individuals confirmed, which would exhaust the list, so all 9 could get to the academy. He prefers to have a police reserve list since it cuts the hiring process time in half. Ms. Racaniello explained that candidates are hired off the police reserve list, sent to academy and then confirmed as police officers. Chair Davis requested that the administration present its plan for how hiring will work after the reserve lists are rescinded, since the mayor agreed to stop using those lists going forward. He then noted that the Council doesn't actually need to see a plan, just that the Administration should ensure that there is one. Councilor Niedergang suggested keeping these items in committee until September so that a positive date might be available when the reserve lists would be exhausted.

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

See 211260

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 211260

RESULT:

KEPT IN COMMITTEE

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

See 211260

RESULT:

KEPT IN COMMITTEE

Police/Fire Interview Panels

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.

Solicitor Wright said he has no information on this matter but would be happy to look into it. Chair Davis said the intent is to establish the City Council and the Department of Racial and Social Justice at an earlier point in the process and he would appreciate some guidance from the Law Department.

RESULT:

KEPT IN COMMITTEE

Referenced Material:

- 20200314-TearGas-Somerville-Language-v8 (with 210736, 211003)
- 20200314-TearGas-Somerville-Language-v8 (COMPARE to v7 with LD Notes 4-1-21) (with 210736, 211003)