



CITY OF SOMERVILLE, MASSACHUSETTS
CLERK OF COMMITTEES

May 6, 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: Chief Charles Femino - SPD, Julie McKenzie - Law, Shannon Phillips - Law, Hannah Pappenheim - Law, Jill Lathan - DPW, Eric Weisman - DPW, Ben Waldrip - DPW, Nick Antanavica - ISD, 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 6:05 PM by Chair Davis and adjourned at 9:12 PM on a roll call vote of 5 in favor (Councilors Clingan, McLaughlin, Ewen-Campen, Niedergang and Davis), 0 against and 0 absent.

Councilor McLaughlin arrived a few minutes late due to his presence at a community meeting.

Approval of the April 15, 2021 Minutes

RESULT:	ACCEPTED
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210235: Calling upon this Council to create a Police Commission and a Community Police Review Agency.

Chair Davis gave a brief update on this subject, saying that he and Councilors Ewen-Campen and Scott met with the City Council's Policy Analyst, Community Outreach Coordinator and the Director of Racial and Social Justice to begin discussions on how to move this matter forward. Another meeting has been scheduled for next week and when a proposal is ready, it will be brought to the committee.

RESULT:	KEPT IN COMMITTEE
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211601: That the City Solicitor and the Chief of Police discuss with the Committee on Legislative Matters a formal policy or ordinance to decriminalize or deprioritize arrests for drug possession and prioritize treatment over incarceration.

Councilor McLaughlin said that he is interested in having something in writing, explaining to the fullest extent, what the city may do with regard to decriminalizing or deprioritizing arrests for drug possession and Councilor Clingan noted that the city is essentially already doing this, albeit not under a codified ordinance.

Ms. Pappenheim explained that the city may not decriminalize drug possession via an ordinance as that would usurp the executive authority granted to the mayor, and through the mayor to the Chief of Police, under the city's charter in sections 20 and 21. Additionally, the city, as a body politic, lacks the authority to establish ordinances that are contrary to state law. Chair Davis noted that a few ordinances with similar intent were passed this year by the City Council and Councilor Clingan asked how the cannabis ordinance is allowed, since it is contrary to federal law. Ms. Pappenheim explained that individuals are still at risk under federal law by using cannabis. Chair Davis stated that the item before the committee is different because it deals with controlled substances. City data indicates that arrests for drug possession have been very low over the past 5 years. Councilor McLaughlin commented that since state law trumps a city ordinance, even if the proposed ordinance were passed, the state law could be enforced by the state police. Ms. Pappenheim suggested that the best way to proceed would be by having the Police Department formalize a policy to be followed. Councilor McLaughlin said that he would be satisfied having regular updates on drug activity in the city and having that data included in SomerStat meetings.

Councilor Ewen-Campen asked what the difference was between an ordinance and a policy and Ms. Pappenheim explained that the legal difference is that an ordinance could be preempted by state law whereas the Police Department has the authority to set its own formal policies without dictates from the state. Chief Femino pointed out that the 7 arrests over the past 5 years were not completely random and that the informal policy being followed has been successful. He will formalize the policy for dealing with simple possession and will report back to the committee when it is completed.

Chair Davis asked Councilors McLaughlin and Clingan if they would on a resolution urging the Police Department to formalize such a policy and he asked Chief Femino to begin working on the formal policy, even before the resolution is approved.

RESULT:

KEPT IN COMMITTEE

211002: That the Chief of Police and the Administration discuss with the Legislative Matters Committee, potential revisions to the citation form for violations of City ordinances, to include demographic data.

Chair Davis stated that the current citation form used by the city does not have a place for demographic data, thus he submitted this item to consider whether having that information on the form may be of value.

Chief Femino explained that the use of citations was allowed to provide the ability to fine people without a criminal disposition. He told the committee that he was involved in modifying the city's citation form years ago and his understanding is that the form had to be drafted and then approved by courts, so in order to change it, it would have to be designed, approved by the lower court in Somerville then approved by the Chief Justice of the district court. He's not sure that it would have a beneficial community effect as it might cause additional complaints to be filed against officers.

Chair Davis commented that he would like to hear from any experts and from other interested parties and City Councilors regarding this matter. Councilor McLaughlin stated his agreement with Chief Femino's comments and thinks there has to be another way to obtain the data. Councilor Ewen-

Campen asked if race and demographic data is collected for arrests and Chief Femino said that it is on traffic citations and arrest and booking sheets. That information is submitted to the state annually to guard against racial profiling. Councilor Ewen-Campen asked what the issue was with extending this to citations. Chief Femino said he hopes that the data collected now and reported to the state would suffice since he feels that by extending this, it could open a pandora's box.

RESULT:

KEPT IN COMMITTEE

211605: That the City Solicitor work with this Council on an ordinance to deny, revoke or suspend permits to companies with a history of engaging in unsafe, hazardous or dangerous practices based on work safety histories or concerns.

Chair Davis stated that this is a very present issue that is worth pursuing. Ms. Phillips presented the City of Boston's Ordinance as a draft ordinance for Somerville, to be used as a starting point. She noted that the draft is very general and she has no issue with it from a legal perspective and believes that it's within the city's purview to enact it. She has contacted Boston's Law Department to see if any permits have been denied under their ordinance and she is waiting to hear back from them. She doesn't think the ordinance needs to have any more detail.

Mr. Antanavica spoke about setting expectations for enforcement and he said that affidavits are fine for 85% of the people. Staff would have to be trained in how to read and understand the information that would be provided. Through the development of the ordinance, ISD would like to provide education about safety issues to smaller contractors. He would like to have a plan in place to make the ordinance effective and he wants to move it forward with realistic expectations.

Councilor Clingan suggested that various groups, e.g., the Brazilian Center, could set up meetings with OSHA representatives to inform small businesses of its regulations. Councilor Niedergang expressed his desire to pass something along these lines soon. Chair Davis noted that the ordinance would have to be submitted to the City Council for a vote since it is not before the committee for a recommendation at this time. Ms. Racaniello stated that the administration has no concerns with the item. Ms. Phillips will submit the ordinance to the City Council through MinuteTraq.

Councilor Clingan made a motion *that the Committee on Legislative Matters requests that the City Council approve an ordinance authorizing the city to deny permits to any person or entity having a history of engaging in unsafe works practices.*

RESULT:

WORK COMPLETED

211679: Amending the Domestic Partnership Ordinance as attached and as further necessary to address issues in the existing version.

Ms. McKenzie asked to hear from Chair Davis on his proposed changes. Chair Davis explained the reasons for making the changes to Sec 2-502 (c) Domestic Partnership definition. The proposed change would expand benefits to domestic partners as if they were married. Other proposed changes covered withdrawal from and termination of the partnership, and recognition of domestic partnerships from other jurisdictions. For the purposes of the City of Somerville, the terms "spouse" and "marriage" would mean domestic partner.

Ms. McKenzie will take a closer look at the proposal and will look for any unintended consequences.

RESULT:

KEPT IN COMMITTEE

211680: That the City Solicitor prepare a Home Rule Petition to recognize any member of a domestic partnership as a "dependent" for Group Insurance Commission coverage, and as a "spouse" with respect to other applicable laws.

Chair Davis explained that the courts have ruled that domestic partners are not recognized by the Group Insurance Commission (GIC), thus this item is being presented to file a Home Rule Petition (HRP) that would, upon passage, allow the City of Somerville to treat domestic partners as dependents under the GIC. Ms. McKenzie explained the draft HRP and Ms. Racaniello stated that the administration has no particular concerns with the draft at this time. Councilor McLaughlin said that some unions would say that they were coerced into joining the GIC and he thinks that they should be included in any conversations concerning the GIC. Chair Davis asked that the HRP be submitted to the City Council in time for its next meeting.

Chair Davis made a motion *that the Committee on Legislative Matters requests that the City Council approve a Home Rule Petition recognizing any member of a domestic partnership as a "dependent" for Group Insurance Commission coverage, and as a "spouse" with respect to other applicable laws.*

RESULT:

WORK COMPLETED

211709: Submitting a revised Leaf Blower Ordinance regulating the use of leaf blowers.

Councilor Niedergang verified that this is the document he submitted to the City Council on April 22, 2021 and subsequently referred to the Legislative Matters Committee for action. He told the members he had no other changes to propose but that the administration had suggested three amendments, 2 of which he felt would water down the ordinance.

The committee heard from Mr. Weisman and Mr. Waldrip who spoke about the need for extended time to remove sand from certain playground equipment for both safety and warranty purposes. Chair Davis and Councilor Niedergang commented that they would prefer that the administration's amendment to 2) a) Limitation on Use, be more surgical to address rubberized surfaces.

Chair Davis made a motion to amend section 2) a) by inserting the following language in the second sentence, after the phrase Tufts University Recreational Field or: “ *any city-maintained playground, as necessary, to maintain the warranty or safety of a rubberized or similar surface,* ”.

The motion was passed on a roll call vote roll call vote of 5 in favor (Councilors Clingan, McLaughlin, Ewen-Campen, Niedergang and Davis), 0 against and 0 absent

A second amendment proposed by the administration was to raise the decibel level from 65 to 71, in section 2) e). Mr. Weisman told the members that the city's current equipment was compared to newer equipment and that moving to the higher decibel level would provide more blowing power and lower cost for the city. Councilor Niedergang stated that the City of Cambridge has made a 65-decibel level work since 2008 and if a different level was required in Somerville, it could cause problems for contractors working in both cities. Mr. Waldrip noted that Cambridge outsources about 85% of their leaf blowing work and Somerville wouldn't have that luxury with a 65-decibel level. Additionally, he noted that landscaping contractors in Cambridge are meeting the guidelines by using gas powered leaf blowers.

Mr. Weisman said the proposed amendment to section 6) specifies that non-compliant blowers would not be purchased by the city and that the city's current equipment would transition to compliant equipment within 5 years. He commented that the equipment was purchased with taxpayer money and it seems wasteful to discard perfectly good equipment. Councilor Niedergang said that if the city is allowed to do that, everyone should be allowed to do it, thus delaying full compliance for 5 years. He feels that this is unacceptable. Mr. Waldrip pointed out that everyone seems to be ignoring the fact that batteries for electric blowers have a significant carbon footprint. Councilor Ewen-Campen wondered if an agreement could be reached for a period of less than 5 years and Chair Davis stated that he was prepared to amend the ordinance tonight, adding that it is meant to regulate mostly contractors and city operations, not homeowners. He doesn't think this amendment is unreasonable and said that he would support a 3-year phase out period. Councilor Niedergang thinks that 3 years is too long, adding that he prefers 1 year, but could live with 2 years.

Councilor Davis made a motion to accept the administration's amendment to section 6). The motion was approved on a roll call vote of 3 in favor (Councilors McLaughlin, Ewen-Campen, Davis), 2 opposed (Councilors Clingan and Niedergang), and none absent.

Ms. Pappenheim suggested language, from a purely legal perspective, that would keep current contracts in effect since the city could be liable if the terms of the contract changed or if the contractor could terminate the contract. Mr. Weisman noted that there are a handful of contracts for landscaping, tree maintenance, turf and fertilizing that could be affected if this amendment is not accepted. Councilor Niedergang didn't have an objection but asked why there needs to be a date included and he suggested deleting that language. Chair Davis disagreed and favored allowing 1 year for contracts to be brought into compliance, if there is a change of condition provision in them. Councilor Niedergang stated that he would have no objection to that condition.

Councilor Niedergang made a motion to amend section 6) by replacing the word "DATE" with "one year after its passage." 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.

Ms. Racaniello noted that there would be a need for enforcement training for ISD staff and that some outreach should be made to the disabilities commission to make sure that nothing was overlooked. Mr. Antanavica said that equipment would be needed to take readings for enforcement. He also pointed out that if ISD received a complaint about noise, it would be entirely possible that, by the time ISD got to the site, the infraction had stopped, therefore the alleged incident could not be enforced. However, if a general contractor was continually out of compliance, a case could be made for enforcement.

Chair Davis made a motion to add a new section, 2) g) that reads:

"The limitations set forth in subsections 9.120-2(a) and (b) shall not apply to de minimus use of a leaf blower by an individual on the property at which they reside provided that such use is otherwise in compliance with Sections 9-112 to 9-119. For purposes of this subsection 9.120-2(g) "de minimus" shall mean not more than an aggregate of five (5) minutes per day."

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.

Ms. Pappenheim inquired about the noise ordinance reference and asked if there's a way to capture those time restrictions within this ordinance.

Councilor Niedergang motioned to approve this item, as amended.

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

Referenced Material:

- 2021-Workplace Safety History (with 211605)
- 2021-Domestic Partner (with 211680)
- Somerville Leaf Blower Ordinance Draft with Proposed Revisions 5.3 (with 211709)