



CITY OF SOMERVILLE, MASSACHUSETTS CLERK OF COMMITTEES

April 30, 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	Present	

Others present: David Shapiro - Law, Hannah Pappenheim - Law, Rich Raiche - Capital Projects, Jessica Fosbrook - Engineering, Brian Postlewaite - Engineering, Rositha Durham - Clerk of Committees, Peter Forcellese - Legislative Clerk.

The meeting took place virtually via GoToWebinar and was called to order at 6:00 PM by Chairman Davis and adjourned at 7:51 PM on a Roll Call vote of 5 in favor (Councilors Niedergang, Ewen-Campen, Scott, Clingan and Davis) and none against.

Approval of the March 5, 2020 Minutes

The Minutes were accepted on a Roll Call vote of 5 in favor (Councilors Niedergang, Ewen-Campen, Scott, Clingan and Davis) and none against.

RESULT:	ACCEPTED
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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 informed the committee that the city was formally cited by the EPA in 2019, and has until June 30, 2020, to correct the following violations:

- the lack of erosion and sediment control and post-construction plans and authorities that are in compliance with the 2003 and 2016 General Permits, and
- a lack of an enacted Illicit Discharge Detection and Elimination ("IDDE") program that fully complies with the 2003 and 2016 General Permits (Part II.B.3. and Part 2.3.4. respectively).

Chair Davis referenced this meeting's handouts and said that they would provide an introduction to the draft ordinance's revisions. Ms. Fosbrook highlighted the changes, which included:

- the addition of relevant technical definitions,
- the addition of construction phase controls,
- the addition of post-construction Low Impact Development goals, and
- the addition of a new Ordinance section to address IDDE requirements.

Ms. Fossbrook pointed out some minor changes and grammatical corrections to the ordinance and Councilor Scott suggested changing the word “developer” to “applicant” in the first sentence of Section 11-146 F Performance Guarantee. Much of the language in Section 11-146 is based on ordinances from neighboring communities. Mr. Raiche explained that specific requirements from the DEP evolve over time, so Somerville’s ordinance will read that it complies with state and city regulations, thereby making it easier for the city to readily make change in the future, without city council approval. The City Council will receive a copy of the ordinance, yearly, which will include any incorporated changes. Mr. Raiche explained that the changes would be made to maintain compliance with Federal and state permits.

Chair Davis questioned the intent of Section 11-146 E Waivers as it is written and Mr. Shapiro explained that the goal is that all 4 of the listed requirements be met. Therefore, the word “and” at the end of Section 11-146 E Waivers (b) be removed and added to the end of Section 11-146 E Waivers (c). Mr. Shapiro explained that this proposed ordinance sets up some local criteria that must be followed, and the waiver would apply to those local guidelines in cases where they’re stricter than state or federal requirements. Ms. Fossbrook explained that the language is a ‘catch all’, but that she will review it with the Law Department to determine what makes more sense.

Chair Davis asked that the draft ordinance be given another look and that the waiver section be tightened to prevent abuse by future administrations. He asked that the ordinance be clear, objective and not overly broad and that it be ready for the committee’s next meeting on May 7, 2020. He also asked Ms. Fossbrook and Mr. Shapiro to review the city’s other performance bonds to make sure they’re similar.

Section 11-146 G Enforcement seeks to give the city the authority to go onto properties to find illicit connections and also to levy fines to remedy the problems. The fee structure has been set at a maximum of \$300, with each day constituting a new offense. Mr. Shapiro explained that, under the statute, the start of a violation is determined by when a violation comes to the attention or observation of the inspector. Chair Davis asked Mr. Shapiro to take a closer look at when the fines would be triggered.

Ms. Fosbrook reviewed the draft of the Site Construction Permit Guidelines and noted the 8 thresholds, any one of which, would trigger a permit being required. Chair Davis commented that he thinks that the proposal might be capturing things that weren’t meant to be captured, e.g., building a 30 s/f concrete pad in one’s yard. Ms. Fosbrook replied that the goal is to deal with stormwater runoff and Chair Davis pointed out that stormwater runoff was dealt with in zoning. Mr. Postlewaite explained that it was decided that these 8 thresholds be considered to determine if a larger zoning review is warranted, and he went on to say that the thresholds are small, to ensure that the projects proposed won’t have any detrimental effects.

Chair Davis expressed concern that the \$100 fee to build a shed over 30 s/f seems out of range. Councilor Niedergang believes that the \$100 fee is low and thinks that the ‘x’ value in the threshold of “Altering any existing slope greater than x” should be same as in the slope ordinance. He also asked that the threshold of “Altering the flow of water across property” be made clearer and Mr.

Postlewaite replied that the city has an ordinance stating that a property owner can't redirect runoff from his property to another property.

Ms. Fosbrook discussed the criteria for small, medium and large projects and pointed out that there is no scenario where a medium project can NOT have a direct stormwater connection. Ms. Fosbrook reviewed the proposed changes to the sewer ordinance, some of which are being made to replace outdated language and to fix errors and definitions. Additional changes will be proposed to keep up with state law referenced regulations as they evolve over time.

A proposed new section, Division 3. Illicit Discharges to Storm Drainage System, was added to the ordinance and reviewed with the committee. Members were told that the City reserves the right to promulgate additional requirements, although none are planned at this time. Mr. Raiche stated that much of the language of this section was copied from Waltham's ordinance. Councilor Niedergang questioned some of the exemptions, e.g., pumping out a basement and Ms. Fosbrook explained that some exemptions simply wouldn't fall under the IDEE requirements and Mr. Raiche added that this section is only about IDEE and illicit connections. Mr. Shapiro spoke about ticketing and fines and the options available to the city under this new Section J. Enforcement (4), (5), (6), and (7)). Chair Davis commented that he doesn't want the city to have too much leeway, so he asked Mr. Shapiro to add more parameters to Section J. Enforcement (4), to make it fairer. He also asked that language be included to allow the city entry to properties in an emergency.

Chair Davis asked members to submit any questions to Ms. Fosbrook, Mr. Shapiro and Ms. Webber in advance of the committee's next meeting on May 7th.

RESULT:

KEPT IN COMMITTEE

209663: That the City Solicitor draft an ordinance requiring pollution mitigation for new housing built along high transit roads and highways.

Chair Davis gave a brief background of how this request came about and Councilor Niedergang explained that a great deal of time was spent on this item in the Land Use Committee as a result of resident input about 1-2 years ago. He suggested that Ms. Pappenheim review the minutes from those earlier meetings and speak to Mr. Bartman and Mr. Proakis, as well. The committee is looking for guidance from the Law Department on how to address the matter. Councilor Ewen-Campen thinks that it makes more sense to address the matter by ordinance rather than zoning. Chair Davis asked what can legally be done to have adequate mitigation put into these projects while avoiding any state laws that may interfere with the city's attempts. Ms. Pappenheim will research the information and prepare something for the committee to review. Chair Davis asked that she include any appropriate buildings, e.g., schools and return before the committee at least by its May 21 meeting.

RESULT:

KEPT IN COMMITTEE

Handouts:

- 2020-04-29 Council Memo SW Ordinance - Update (with 205833)
- 20200429 Proposed Revisions to Engineering Ordinance (with 205833)
- 2020-04-29 Site Construction Permit Guidelines - DRAFT (with 205833)
- 20200429 Proposed Revisions to Sewer Ordinance (with 205833)