



## CITY OF SOMERVILLE, MASSACHUSETTS CLERK OF COMMITTEES

May 17, 2022

### REPORT OF THE LEGISLATIVE MATTERS COMMITTEE

Attendee Name	Title	Status	Arrived
Lance L. Davis	Chair	Present	
Ben Ewen-Campen	Vice Chair	Present	
Willie Burnley Jr.	City Councilor At Large	Present	
Jefferson Thomas ("J.T.") Scott	Ward Two City Councilor	Present	
Jesse Clingan	Ward Four City Councilor	Present	

This meeting was held via GoToWebinar and was called to order by Chair Davis at 6:06 pm and adjourned at 7:51 pm. Councilor Burnley moved to adjourn and the motion was approved by unanimous roll call vote.

Others present: Aneesh Sahni - Mayor's Office, Eric Weisman - DPW, David Shapiro - Solicitor's Office, Brendan Salisbury - Legislative & Policy Analyst, Stephanie Widzowski - Assistant Clerk of Committees.

#### **212819: That the Commissioner of Public Works, the Director of Procurement and Contracting Services, and the Director of Mobility report to the Legislative Matters Committee on enforcement of and annual reporting on the Ordinance to Safeguard Vulnerable Road Users.**

Taken together w/ items 213344, 212820, and 213819. Chair Davis said that it will be a challenge to enforce this ordinance and follow some of its specific requirements, and there are many reasons for that. He expressed his desire to end this meeting with a clear picture of what is happening with this ordinance and a plan going forward. He also stated there still may be some issues that arise with the ordinance, and there is an ongoing question of how to align with neighboring communities with similar ordinances to increase compliance.

Chair Davis explained that the ordinance requires all city and city contractor vehicles over a certain size to have a variety of safety equipment, including barriers between front and rear wheels called side guards. In drafting this with a constituent, Chair Davis included a number of measures recommended by the federal government, such as side indicator turn lights. He said the purpose of the ordinance is to give drivers a better view of pedestrians and cyclists around them, and the intent was for the fleet division to be the primary enforcer, though there was already an Administration effort underway to install equipment on city vehicles before this ordinance was submitted. The main challenge is how to make sure the vehicles hired by the city have these

safety measures in place. Currently, the ordinance calls for an inspection sticker permitting process housed within the fleet division, for which OSPCD would create policies. Chair Davis said he believes much of that has happened, and that the Council has received one of the required annual reports, but not all of them.

Dir. Weisman said that DPW no longer has a fleet superintendent, but does maintain a garage as part of the highway division. Chair Davis commented that it may be prudent to make the text of the ordinance more flexible to accommodate department restructuring. The ordinance also allows the Administration to temporarily waive the safety equipment requirements under certain circumstances, such as if a contractor is in the process of getting equipment. Chair Davis said he wanted to know how often that waiver is used.

Chair Davis reviewed the annual report and asked about a vendor listed there. Dir. Weisman said that vendor supplies ready-mix concrete, and their contract allows both for them to make deliveries and for the city to pick up directly. Their intention was to install side guards in June, but then steered away from doing that, and therefore the city edited their contract so their trucks could not drive in the city until inspected. DPW's highway trucks can still pick up the cement, though.

Chair Davis noted that there are no other requests for inspections, waivers or exemptions in the report and asked if that meant all of the city's contractors are compliant. Dir. Weisman explained the Procurement Office's role in the process, which is to inform vendors bidding on contracts about the ordinance, and if they meet the criteria to be subject to the ordinance, it is up to the vendor after that to request inspection. He verified that there have been no requests for inspection in the last 12 months. He added that in the case of the concrete vendor, issues became clear in the procurement process, so the office directed them to talk to the highway division.

Chair Davis shared the text of the Ordinance to Safeguard Vulnerable Road Users, asked for confirmation that the Administration's interpretation of the text is that trucks are supposed to be showing an inspection sticker before they are driven, and asked how contractor vehicles can be in the city if there have been no requests for inspections. Dir. Weisman replied that is the Administration's interpretation. For contractors, he said that there seems to be a gap between the vendor's self-acknowledgement of the ordinance and the point of inspection. He expressed doubt that Somerville has the capacity to find and check every contractor vehicle in the city for inspection.

Chair Davis talked about the original intent for the ordinance to be collaborative and allow for clear communication between the city and vendors. In practice, the ordinance has changed. He suggested revising the ordinance to reflect what Somerville can do and what is most sensible. He said that Cambridge is using Boston's inspection process for their compliance and suggested that Somerville could do something similar as a solution.

Councilor Scott asked if stickers have ever been issued and where a record of that could be found. Dir. Weisman said that he previously worked as part of SomerStat with the fleet division to develop an inspection sticker, but could not say if they were issued or where records would be kept. Chair Davis asked what the estimated degree of compliance is for this ordinance, to which Dir. Weisman answered that he suspects there is a range of compliance. He said the inspection process can be improved.

There was discussion on how to engage with staff from Cambridge and Boston on this issue. Dir. Weisman said he spoke to Cambridge about reciprocity with Boston for inspections, and that Cambridge seems to have hired inspectors from Boston, only recently creating positions in-house. Chair Davis asked for a description of differences between requirements in each city's ordinance - Somerville has the most stringent ordinance, and the city would like to encourage neighboring communities to add to their ordinances. Dir. Weisman said he believed the only difference is that Cambridge and Boston do not require mirror signals. There was discussion on the logistics of getting vendors through the approval process of three cities with different safety requirements. Chair Davis said if it was between having staff conduct in-person investigations or requiring all safety equipment, such as mirror signals, he would not be opposed to opting for the former. Dir. Weisman suggested convincing Boston and Cambridge to agree on a reciprocity that allows vendors to use vehicles already inspected by the other city.

Councilor Burnley said this issue reminds him of an issue with parking meters. He asked if DPW has had conversations with Boston on this issue and if there is groundwork on moving this forward on a regional level. Dir. Weisman said that they reached out to Boston and Cambridge in the fall to understand how the inspection process works from their perspective. He said there had not been substantive conversations on a regional approach at this time. Councilor Burnley stated that the biggest problems can only be solved with a regional approach, acknowledging the time that goes into such a collaboration and factors that may be out of Somerville's control. He asked if there is an estimate on a timeline for broader implementation. Dir. Weisman said he could not begin to speculate on that, but said he would be willing to collaborate with the Council on a regional approach.

Dir. Sahni said that the Procurement Office does not typically enforce the ordinance, but does put language around requirements into vendor contracts. He agreed that the process needs revision and said the Administration would be interested in working with the Council to see what should be implemented - including a regional approach, if needed. He requested that these conversations happen internally first.

Chair Davis stressed that the city, especially the Administration, should work to establish an inspection capacity large enough to comply with the existing ordinance, which was created in 2017. He said that Somerville should be doing its own inspections if Cambridge and Boston are, but expressed support for a reciprocity policy. He said he would like to keep this item in committee to hear from constituent experts and other city staff.

Dir. Sahni said that the Administration would like to have conversations with other departments about this, such as Engineering, to make sure the process is right. He said it was not clear from this meeting that the city is able to increase inspection capacity. Dir. Weisman said that Cambridge leveraged Boston's inspectional services before becoming independent, and that Somerville might have to do something similar. When Dir. Weisman discussed this with his staff, though, they had concerns about liability and safety. Chair Davis said that the Solicitor's Office could probably speak to the liability, but from his understanding city staff are well protected. For example, the inspection would certify that a piece of safety equipment meets written descriptions, but would make no claims about the driver's behavior. He said he would expect that additional staff needed for inspection would be small if a reciprocal approach was taken, but stressed that the previous Administration did commit to carrying out this ordinance five years ago, and he feels it is reasonable to ask the current Administration to do the same to the extent that it can.

Councilor Scott said that not doing what the ordinance called for felt like undermining the legislation to him. Chair Davis acknowledged Councilor Scott's concerns while stating that he is most concerned with compliance. He mentioned that an enforcement challenge in a reciprocal program is that Cambridge and Boston may not have stickers for their inspection process, and Somerville originally called for stickers so that SPD could easily see which vehicles are compliant. He called for having an offline conversation about stickers, and asked Dir. Sahni to include staff from Procurement and OSPCD for the next meeting.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**213344: That the Commissioner of Public Works, the Director of Procurement and Contracting Services and the Director of Mobility provide this Council with the 90-day Implementation Report relative to the Ordinance to Safeguard Vulnerable Road Users.**

<b>RESULT:</b>	<b>WORK COMPLETED</b>
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**212820: That the Director of Intergovernmental Affairs respond to Item #212250 regarding the Ordinance to Safeguard Vulnerable Road Users.**

<b>RESULT:</b>	<b>WORK COMPLETED</b>
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**213614: That the City Solicitor discuss this Council's ability to ban landlords from passing real estate agent fees onto tenants.**

Councilor Burnley explained that many residents are cost-burdened - paying sometimes 50% of their income just to be able to stay in Somerville. In those cases, even one fee or cost can be the difference between being able to afford to stay or not. He stated that agents are a provided service for landlords, not tenants, so renters should not directly pay for broker fees.

Councilor Ewen-Campen added that New York passed legislation in 2020 eliminating broker fees. Discussions in Somerville also led to certain text in the state Tenant Protection Act, and the version of the bill currently in the House would give municipalities the ability to eliminate broker fees. Somerville delegates are advocating for this on Beacon Hill as well.

Solicitor Shapiro said that this has come up several times over the years and that there are multiple general opinions. One route is a home rule amendment, which says that nothing shall be deemed to grant to any city or town the power to enact private or civil law governing civil relationships except an independent municipal power. Attorney General opinions and case law say that the tenant-landlord relationship is considered private or civil. Solicitor Shapiro said he felt this could be ruled by home rule petition.

Councilor Burnley commented that this aspect of state law seems to be steadfast, and the law in general favors protections for those with property as opposed to those without. He asked where the agreement begins - for example, are prospective tenants still bound by an agreement? What if the agreement is oral, not written? And does this apply if a broker is used but a lease is not signed? Solicitor Shapiro said that the opinion is directed at rights between private parties, but contractual arrangements can include terms that are established before a tenancy is signed.

Councilor Scott asked for a citation over time of that opinion. Solicitor Shapiro gave many examples and said he would provide Councilor Scott with the list.

Councilor Scott asked if there are terms that are illegal to put in a contract - for example, if it would be illegal to have a term that resulted in the tenant being indentured to the landlord - and if so, where are the legal boundaries. Solicitor Shapiro said he is thinking about it from whether the terms of a contract can be regulated by ordinance. There are certain terms a court would never enforce. Councilor Scott asked which governing laws are higher than a lease, and Solicitor Shapiro said it was a matter of state law. Chair Davis added that Somerville has ordinances that dictate what can or cannot be in a civil contract.

Councilor Burnley said that he and Solicitor Shapiro had discussed the “wobble room” of municipalities’ ability to intervene in private contracts in their collaboration on amendments to the Housing Stability Notification Act. He said that “wobble room” varies across states, but that municipalities can only make minor or “de minimis” changes to a private contract. Therefore, the Attorney General opinion may view the changes proposed here as major. Councilor Burnley said that he is able to argue that the changes are minor because the costs are still covered; just from a different source. He asked Solicitor Shapiro what is indicative of a private contract. Solicitor Shapiro responded with an AG opinion, which states that the conception of civil law is consistent with that offered by other legal authorities. Also, private law consists of substantive law that establishes legal rights and duties between and among private entities. He said that an independent municipal power would be able to intervene in a private relationship: for example, if it was relevant to the sanitary code.

Chair Davis said he will leave this item in committee to allow Solicitor Shapiro to review the literature further.

<b>RESULT:</b>	<b>KEPT IN COMMITTEE</b>
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**213819: Commissioner of Public Works responding to Item #212250 with an update on the inspection and enforcement of the Ordinance to Safeguard Vulnerable Road Users.**

<b>RESULT:</b>	<b>WORK COMPLETED</b>
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