



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

October 26, 2016

Honorable Board of Aldermen
City Hall
93 Highland Avenue
Somerville, MA 02143

Re: That the City Solicitor draft language to amend Ordinances 11-51 and 11-71 to require that all new building construction provide utilities that are underground

Board Order No. 201997

Dear Honorable Board Members:

You have asked this office to provide an amendment to the above-referenced ordinances concerning the following matters: (1) new building construction in the City of Somerville must provide utilities that are underground and that overhead lines will only be permitted when the construction is the result of a fire or natural disaster and the same type structure is replacing what was removed; and (2) that all utilities, including but not limited to, electric, telephone and cable television/internet shall have the location of these services approved by the Superintendent of Highways, Electric Lines and Lights, or his designee, and the final Grant of Location approved by the Board of Aldermen.

On the first question, MGL c. 166, s. 22C generally authorizes a municipality to forbid certain new overhead utility facilities except by way of replacement or upgrading of existing facilities, as part of comprehensive legislation concerning municipal regulation of overhead utility plant "upon, along or across" public ways. Mass. Electric Co. v. Northborough, 369 Mass. 472, 473 (1976).

Before adopting an ordinance under s. 22C, certain steps must be completed by the Board of Aldermen or a committee designated and appointed for the purpose by it: (1) complete preliminary consideration and study, including consultation with any utility it deems appropriate; (2) adopt a resolution calling for a public hearing to ascertain whether public safety, health, convenience of welfare would be advanced by a program prohibiting new installation or construction of poles and overhead wires and associated overhead structures in all or any part or parts of the city, and (3) after the hearing, make a report of its findings, conclusions and

recommendations which shall be filed with the records of the Board of Aldermen. MGL c. 166, s. 22B.

If a municipality adopts such an ordinance, MGL c. 166, s. 22L requires that the department of public utilities establish a differential between the rates charged customers located in the municipality which has adopted such an ordinance and those located in municipalities which have not adopted such an ordinance; provided that such differential shall not result in revenues materially exceeding any increased cost of providing service solely caused by the adopted ordinance. I am enclosing a copy of MGL c. 166, ss. 22A-22N.

On the second question, a draft amendment to Ordinance 11-71 is enclosed herewith.

Please contact me if you have any additional questions.

Very truly yours,



Jason D. Grossfield
Assistant City Solicitor

Enclosures

cc: Mayor Joseph A. Curtatone
John Long, City Clerk