

Councillor Sullivan questioned what gives newbox owners the right to attach their boxes to poles. Mr. Albright said that most of the sample ordinances prohibit attaching boxes to poles.

Vice Mayor Born asked whether boxes currently in place would be "grandfathered". Mr. Albright said that he believed that the City Council could pass an ordinance that regulates all boxes.

Vice Mayor Born moved that the Law Department be requested to prepare a draft ordinance based on the model legislation of the National Institute of Municipal Law Officers (NIMLO).

Councillor Sullivan expressed his concern with the safety issues exemplified by the boxes in front of the elderly housing at 2 Mt. Auburn Street.

Councillor Duehay and Councillor Davis expressed their desire for provisions regarding graffiti.

Councillor Sullivan pointed out that there is another side to this: there are people who appreciate the convenience of being able to get the newspaper.

Councillor Duehay said that the plan is to limit not prohibit.

Councillor Davis said that there will be the question of who can get a permit.

Councillor Duehay requested that all committee members read the NIMLO ordinance carefully and make comments to Mr. Albright in writing within ten days and that Law Department draft a proposed ordinance incorporating these concerns.

Councillor Sullivan requested that the City Council communicate to the City Manager a request for a survey of where the newsboxes are and what problems are associated with these placements. He also requested that the City Manager look carefully at the model legislation with the view of the amount of fee and departmental responsibility.

Councillor Davis noted that there are urban design and pedestrian issues that hopefully will be considered. She added that once the ordinance is drafted, many people should be consulted.

Councillor Duehay then moved to the issue of regulation of alcohol and cigarette advertising in signs.

Arthur Goldberg summarized recent case law in this area. Some recent Fourth Circuit cases have upheld a restriction on such advertising based on the City's interest in reducing smoking and alcohol consumption by minors.

Councillor Duehay introduced Mark Gottlieb, who chaired CUSP's smoking ordinance committee.

Councillor Davis introduced a representative from Cambridge Prevention.

Councillor Davis stated that Kitty Jerome of the Human Services Department also expressed an interest in being kept informed of the committee's proceedings.

Councillor Davis said that if the ability to restrict is limited to commercial and industrial districts, as it was in the Fourth Circuit cases, she questions how it will be helpful in Cambridge. She asked if it could be expanded to include areas around schools and parks.

Councillor Sullivan asked whether the content is an issue, i.e., the name of a beer producer versus a Joe Camel poster. Arthur Goldberg said that this was part of the fact pattern because some signs were argued to be public service "don't drink & drive", but the court did not react to the issue.

Councillor Davis said that alcohol distributors often affix illegal signs to buildings. Mr. Goldberg said that in such a case, the issue is enforcement.

Mark Gottlieb, Attorney with the Tobacco Control Institute, 36 Fairfield Street, distributed an article regarding state and local restriction on tobacco advertising. Regarding tobacco, Congress has pre-empted restrictions based on health. Thus restrictions must be based on other factors, for example, underaged smoking, as in the Baltimore case.

Councillor Davis asked about the difference between signs behind the glass or affixed on the building. Mr. Bersani, Managing Director of Inspectional Services, said that there is no legal distinction.

Mr. Barber said that there is a provision for temporary paper signs, but they are supposed to be limited to 1/3 of the window area.

Councillor Duehay said that there is a A-framed Joe Camel sign on the sidewalk in Central Square. He saw a person with visual disabilities almost fall over the sign.

Vice Mayor Born asked what constitutes a "commercial zone". It is not a term used in the zoning code. Could it be as narrow as a designated business zone? There are only two business zones in Cambridge.

Vice Mayor Born asked why alcohol advertising can be prohibited on television. Councillor Duehay said there is no formal regulation, there is an informal agreement.

Councillor Duehay asked Attorney Gottlieb whether a local government challenge to the federal pre-emption of health regulation of tobacco would be worthwhile. Mr. Gottlieb said that the U.S. Supreme Court did a careful analysis in 1992 of what is pre-empted by the federal legislation and is unlikely to revisit this issue in his opinion. He noted that there are many actions open to local government despite this particular pre-emption.

Councillor Davis said that the "1,000 foot" rule developed in relation to drug sales and

firearms could be useful. Councillor Sullivan noted the distinction that drugs and firearms are illegal.

Councillor Duehay requested Attorney Goldberg, on behalf of the committee, to look for model ordinances, and to consider whether the concept of "children's zones" could be useful.

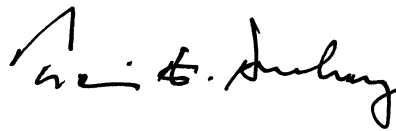
Councillor Davis noted the importance of vigorous enforcement of the present sign ordinances.

Councillor Duehay asked about the extent of illegal signs that advertise alcohol and cigarettes.

Councillor Sullivan suggested that summer Mayor's program kids do a survey. He also suggested that the present state of law argues against selective enforcement.

The meeting was adjourned at 6:25 p.m.

For the Committee,

A handwritten signature in dark ink, appearing to read "Francis H. Duehay". The signature is written in a cursive, flowing style with a large initial 'F'.

Councillor Francis H. Duehay, Chair

City of Cambridge

The Ordinance Committee held a public meeting on June 20, 1996, beginning at 5:10 p.m. in the Sullivan Chamber for the purpose of discussing with the City Solicitor's office the City's regulatory powers to limit signs advertising alcohol and cigarettes and to regulate newspaper boxes on the sidewalks.

Present at the hearing were Councillor Francis H. Duehay, Chair of the Committee, Vice Mayor Kathleen L. Born, Councillor Henrietta Davis, Councillor Michael A. Sullivan, and City Clerk D. Margaret Drury. Also present were Birge Albright, Legal Counsel and Arthur Goldberg, Legal Counsel.

Councillor Duehay convened the hearing and explained the purpose. He explained that this is a preliminary discussion, which may result in the committee requesting that the City Solicitor prepare ordinances to effect additional regulation in these areas.

Councillor Duehay turned the discussion to the first topic, the authority to regulate newsboxes on sidewalks.

Birge Albright reviewed the law in this area. In Lakewood vs. Plain Dealer, 1988, the U.S. Supreme Court held that the First Amendment was violated by an ordinance that gave the Mayor unfettered discretion to grant or deny permits for newsboxes on sidewalks. But the court did not answer the question of whether all newsboxes could be prohibited.

In the Cincinnati case, the Supreme Court struck down an ordinance which banned newsboxes distributing commercial circulars, but allowed "ordinary" newspapers. The number of newsboxes carrying these materials was 62 out of 1000.

Four Supreme Court justices have stated in these cases their opinion that all newsboxes could be banned.

Mr. Albright stated that he believes that it is clear that the City could pass an ordinance regulating newsboxes with regard to several factors, including distance from crosswalks, number that can be lined up in a row, size, color, cleanliness, etc.

Councillor Duehay asked whether Mr. Albright has reviewed ordinances which regulate newsboxes. He said that he would like to see examples of ordinances that go further than just regulation based on historic district type regulation. In Cambridge the problems are not in historic districts.

Vice Mayor Born agreed. She suggested establishing a "menu" of restrictions that have been upheld. She said she would be interested in seeing a combination of the Los Angeles and Des Moines ordinances.

Committee Report #3

5-378

A report from Councillor Duehay,
Chair, Ordinance Committee, for a
meeting held on June 20, 1996 for the
purpose of discussing with the City
Solicitor's Office, regulatory powers
to limit signs advertising alcohol and
cigarettes and to regulate newspaper
boxes on the sidewalks.

In City Council July 29, 1996

Report Accepted. Placed
on file.