



BOSTON CITY COUNCIL

Committee on Government Operations
Ricardo Arroyo, Chair

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REPORT OF COMMITTEE CHAIR

March 30, 2022

Dear Councilors:

Docket #0312, message and ordinance amending the City of Boston Code, Ordinances, Chapter XVI, regarding targeted residential picketing, was sponsored by Mayor Michelle Wu and referred to the Committee on March 2, 2022. The Committee held a hearing on March 14, 2022 where public comment was taken and a working session on March 25, 2022.

Summary of Legislation As Filed:

The proposal would prohibit targeted residential picketing between the hours of 9:00pm and 9:00am. The term targeted residential picketing is defined as picketing, protesting, or demonstrating, with or without signs, that is specifically directed towards a particular residence or one or more occupants of the residence, and which takes place before or about the targeted residence. All other ordinances and statutes would apply including laws regarding excessive noise, disturbing the peace, and blocking streets and sidewalks. The provisions of this proposal would be enforced by the Boston Police Department ("BPD") and violators would be subject to fines of increasing amount based upon the number of offenses with \$100.00 for first offense, \$200.00 for the second offense, and \$300.00 for the third or subsequent offenses.

Information Gathered at the Hearing:

Chair Arroyo and provided opening remarks explaining that the docket is a proposed ordinance sponsored by Mayor Michelle Wu that would regulate residential picketing. Councilor Arroyo summarized a letter written by Corporation Counsel Adam Cederbaum. The letter stated that the proposed ordinance serves as a reasonable time, place, and manner restriction on speech that is narrowly tailored to achieve a significant government interest. The letter cited the Frisby v. Shultz decision where the United States Supreme Court upheld a similar town ordinance prohibiting picketing targeted at a particular residence. See Frisby v. Shultz, 487 U.S. 474 (1988). The Chair explained that according to the letter the proposal is content-neutral regarding the restrictions on time, place, and manner of speech and that it's narrowly tailored to serve a significant government interest of protecting the privacy of individuals in their homes. Further, the proposal also leaves ample alternative channels of communication.

The Committee discussed the legal standard of narrowly tailored to serve a significant governmental interest and discussed the balance of individuals' right to protest and individuals' right to privacy in their homes. Councilors discussed that there should be a balance with reasonable restrictions on demonstrations and privacy rights in residential homes. Councilors

discussed enforcement of the proposal as well as the enforcement of current ordinances concerning noise, disturbing the peace, and blocking sidewalks and streets. Councilors discussed adding a sunset clause to the proposal. Councilors also discussed the enforcement by BPD and concerns about disproportionate impact on certain groups and unequal enforcement.

Brianna Millor, Chief of Community Engagement, participated on behalf of the Administration. Chief Millor testified in support of the legislation and explained that she will listen to the concerns of the Councilors. Chief Millor stated that the proposal does not prevent protests. Chief Millor explained that the legislation preserves the right to protest without interfering with the quality of life of residents in the City's neighborhoods, particularly the elderly and children. Chief Millor stated that the legislation places reasonable limitations of time, place, and manner on targeted protests and establishes necessary parameters to protect the health and well-being of individuals in their homes.

The Committee heard public testimony. Public comments reflected both support of the ordinance and opposition to the ordinance. Comments supporting the ordinance expressed support because of quality of life issues. Comments against the ordinance opposed it on the basis that it violates their freedom of speech rights and their right to protest.

Information Gathered at the Working Session:

The following individuals participated on behalf of the Administration:

- Brianna Millor, Office of Community Engagement, Chief;
- Corporation Counsel Adam Cederbaum, Esq., Law Department;
- Rob Arcangeli, Esq., Law Department, Assistant Corporation Counsel;
- Superintendent Gerard Bailey, Boston Police Department, Bureau of Field Services.

The Chair summarized the issues discussed at the hearing. The Chair and the Councilors provided opening remarks. Councilors inquired about the impact of this proposal with current City ordinances particularly the noise ordinance, the need for this proposal, the enforcement of other ordinances such as the noise ordinance and disturbing the peace, and inquired about protection of the Mayor. The Committee discussed concerns with the ordinance and its necessity because of existing laws. The Chair asked how violations of noise ordinances are handled at BPD and why the BPD has not enforced noise ordinances for protests in front of someone's home. Councilors asked for data on the numbers of citations of current noise ordinances within the last ten weeks and within the last year. The Committee discussed the fines and the appeals process.

Chief Millor stated that the ordinance is necessary in order to protect the quality of life, health, and well-being of all residents in the City. Chief Millor emphasized that this ordinance regulates targeted picketing while preserving the right to protest. The City lawyers provided clarity on the legal analysis and discussed the significant government interest in protecting individuals' privacy rights within their homes. Superintendent Bailey discussed the role of the BPD, stated that BPD's role is to ensure that neighborhoods are safe to live, discussed the balance of freedom of expression and the noise of the protests, stated that the objective of BPD is to de-escalate, divert, negotiate with arrest as a last resort. Superintendent Bailey stated that no citations for violations

of the current noise ordinance have been issued for protected protests. Superintendent Bailey stated that BPD has contacted West Roxbury District Court in order to address noise violations.

Councilors offered language suggestions which included defining a kind of harm as a standard in order to provide context, for example regulating activity that rises above noise level and blocking public ways; removing the word “towards” and replacing it with “against or in opposition to”; and removing “a particular residence”. The Chair asked the City lawyers if the proposed language change would violate the content neutrality standard and asked for an interpretation of the meaning of the term “subsequent offense.” Corporation Counsel reiterated that targeted residential picketing is permissible for most of the day; however, there is a significant government interest in protecting privacy in homes for all times during the day. The Chair stated that the focus of the proposal is to provide protection of neighborhoods in general

Summary of Amendments:

- Removing the words “a particular residence” after the term “towards”. The second paragraph now reads as follows: For the purpose of this section, targeted residential picketing means picketing, protesting, or demonstrating, with or without signs, that is specifically directed towards one or more occupants of a particular residence, and which takes place before or about the particular targeted residence.”
- Amending the fine structure to \$50 - \$150 - \$300, adding language that fines are determined within a 12 month period, and adding language about non-criminal disposition procedures. The fourth paragraph now reads as follows: Any violation of this section shall be punishable by a fine of fifty (\$50.00) dollars for the first offense in any twelve (12) month period, one hundred and fifty (\$150.00) dollars for the second offense in any twelve (12) month period, and three hundred (\$300.00) dollars for any third and subsequent offense in any twelve (12) month period. All fines issued under this section shall be enforced pursuant to the non-criminal disposition procedures of G. L. c. 40, s. 21D, which procedures are incorporated herein by reference.
- In the third paragraph inserting the word “state” is inserted before the term “statutes”.
- Inserting the word "harassment" in the third paragraph after the phrase “disturbing the peace.”
- Inclusion of severability language at the end of Section 1 that provides as follows: If any provision of this section shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.
- Inserting the following new sentence after “Boston Police Department”: Any information obtained from enforcement of this ordinance shall not be included in any database maintained by the Boston Regional Intelligence Center.

Rationale and Recommended Action:

Passage of this docket in a new draft will ensure that the expectation of privacy that individuals have in their home is protected while maintaining freedom of speech and assembly rights. This docket regulates targeted residential picketing between certain hours and imposes reasonable limitations on the time, place, and manner of speech and is content neutral. The purpose of this ordinance is to protect the quality of residential life in our city, especially to protect residents' privacy, well-being and tranquility in the sanctity of their own homes and to protect individuals from becoming captive audiences in the privacy of their own home. Although these interests are important at all times, the ordinance seeks to protect individuals' privacy in their own homes

during the night and early morning when such intentional intrusion into privacy is particularly invasive and burdensome. The proposal in its amended draft provides clarity. Removing the word "a particular residence" after the term "towards" eliminates ambiguity. Including severability language is standard practice for the City and ensures that if challenged and such challenge prevails only those challenged provisions would be impacted. The proposal allows for demonstrations during certain hours. The proposal serves to address the significant government interest in protecting the right to privacy in homes and addresses the harm caused by targeting picketing is interfering with this protected right. The proposal is narrowly tailored to serve a significant government interest of protecting the privacy of individuals in their homes while leaving ample alternative channels of communication.

By the Chair of the Committee on Government Operations, to which the following was referred:

Docket #0312, message and ordinance amending the City of Boston Code, Ordinances, Chapter XVI, regarding targeted residential picketing,

submits a report recommending that this docket **ought to pass in a new draft.**

For the Chair:

Ricardo Arroyo, Chair
Committee on Government Operations



CITY OF BOSTON IN CITY COUNCIL

Be it ordained by the City Council of Boston, as follows:

SECTION 1. The City of Boston Code, Ordinances, is hereby amended in Chapter XVI by inserting the following new section after the existing Section 16-62:

16-63 An Ordinance Regarding Targeted Residential Picketing

It shall be unlawful for any person to engage in targeted residential picketing between the hours of 9:00 p.m and 9:00 a.m.

For the purpose of this section, targeted residential picketing means picketing, protesting, or demonstrating, with or without signs, that is specifically directed towards one or more occupants of a particular residence, and which takes place before or about the particular targeted residence. Those engaged in targeted residential picketing between the hours of 9:00 a.m. and 9:00 p.m. remain subject to all other ordinances and state statutes, including but not limited to laws concerning excessive noise, disturbing the peace, harassment, and blocking of streets and sidewalks.

Any violation of this section shall be punishable by a fine of fifty (\$50.00) dollars for the first offense in any twelve (12) month period, one hundred and fifty (\$150.00) dollars for the second offense in any twelve (12) month period, and three hundred (\$300.00) dollars for any third and subsequent offense in any twelve (12) month period. All fines issued under this section shall be enforced pursuant to the non-criminal disposition procedures of G.L. c.40, s.21D, which procedures are incorporated herein by reference.

This section shall be enforced by the Boston Police Department. Any information obtained from enforcement of this ordinance shall not be included in any database maintained by the Boston Regional Intelligence Center.

If any provision of this shall be held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

SECTION 2. This Section 16-63 shall take effect upon passage.

Filed in Council: March 30, 2022.