

## Committee on Legislative Matters and the Northampton City Council

### Members

*Councilor Alex Jarrett, Chair*

*Councilor Marissa Elkins, Vice Chair*

*Councilor Stanley W.. Moulton, III*

*Councilor Jim Nash*

## MEETING MINUTES

**Date: May 9, 2022**

**Time: 5:30 p.m.**

The Legislative Matters Committee meeting was held by remote participation. The public was able to join the virtual meeting by phone or by computer. The meeting was recorded for later broadcast and live public comment was available using zoom link or telephone call-in.

1. Meeting Called to Order and Roll Call: At 5:30 pm Councilor Jarrett called the meeting to order. Present at the meeting were: Councilor Jarrett, Councilor Elkins, Councilor Moulton and Councilor Nash. Also present was Councilor Rachel Maiore who was a co-sponsor of the ordinance. (Note: this meeting was duly posted as both a Legislative Matters and City Council meeting and as a result, other councilors could freely participate in the discussion.) Councilor Jarrett announced that the meeting was being audio and video recorded and that the recording would be available for later broadcast on YouTube or on the Northampton Open Media website.
2. Public Comment - None
3. Approval of Minutes of the April 11, 2022 meeting: Councilor Moulton moved to approve the minutes of April 11, 2022; Councilor Elkins seconded the motion. The motion was approved on a roll call vote of 4 Yes (Elkins, Moulton, Nash, Jarrett), 0 No.
4. 22.043 An Order for Special Legislation to Prohibit Landlords and Brokers from Requiring Brokers' Commissions to be Paid by a Tenant or Prospective Tenant
  - a. Councilor Jarrett reviewed the process notes concerning this item:
    - 3/17/2022 - City Council approved to refer item to Committee on Legislative Matters and Committee on Community Resources
    - 4/25/2022 - Committee on Community Resources held a public forum to review proposed legislation & amendments suggested by Councilor Jarrett; At the meeting the committee voted to approve the amendments as proposed and moved a positive recommendation back to City Council as amended.
  - b. Councilor Moulton moved a positive recommendation of the amended version back to City Council; Councilor Elkins seconded the motion. After discussion, the motion was approved on a roll call vote of 4 Yes (Moulton, Nash, Jarrett, Elkins) 0 No.
  - c. Discussion: The committee felt that they were familiar with the ordinance and waived reading. Councilor Moulton asked about the amendments to the ordinance that were introduced during the April 25th Community Resources meeting. Councilor Jarrett

explained that a concern was raised by a broker that the effect of the ordinance was that it would prohibit a broker from having any relationship with a tenant. The amendment clarifies that the tenants may be required to engage with a broker, but they cannot be required to pay for the broker. The revised section 2 of the Act would read as follows:

SECTION 2. No landowner, landlord, lessor, or sub-lessor shall demand or require that a tenant or prospective tenant retain, hire, or engage a rental agent or broker and pay such agent or broker a fee or commission as a condition to applying for or leasing a residential rental unit in the City of Northampton, and no such landowner, landlord, lessor, or sub-lessor shall demand or require that a tenant or prospective tenant make any payment in violation of SECTION 1 of this act.

Councilor Jarrett also explained that there were questions raised about whether a voluntary relationship between a broker and tenant would be prohibited. The question was posed to Attorney Seewald who gave the following opinion:

Nothing in the proposed special act modifies the voluntary relationship between the prospective tenant and a broker. The act would prohibit a lessor from compelling a prospective tenant to pay the lessor's broker or compelling the tenant to engage and pay a broker.

The example given during the Community resources meeting involved a prospective tenant moving from out of town and wanted to have an agency perform the work of a broker. In this case, the broker would be allowed to have the agency fees paid for by the broker.

Councilor Rachel Maiore noted that an article in the Daily Hampshire Gazette stated that landlords had to pay the broker's fee. The legislation does not specify who will pay, and Councilor Maiore wanted to clarify this point.

Ace Tayloe is a member of the Northampton Housing Partnership as well as a landlord in Northampton. In most parts of the country, brokers are paid by landlords. The major exception is between NYC and Boston. There is a case to be made that brokers might make less money because landlords may choose not to use the services of a broker. Brokers do provide services, like teaching landlords what is and is not legal to do, but if brokers are the only source of this education, effectively people's legal rights are locked behind a paywall. Landlords can write off broker fees as an expense and landlords can make the money back by marking broker or advertising fees as a loss. This is not an option for tenants. Landlords might raise rents, but then they would raise rents for any excuse. Because landlords can mitigate the broker fees, Ace Tayloe feels it is appropriate for landlords to assume the fee. Massachusetts law has already codified that the only fees that can be charged to tenants is first and last month's rent and security deposit. This law should be passed to say that it is bad to ask tenants to pay for broker fees.

Councilor Nash wondered how broker services worked outside of the northeast. Ace Tayloe noted that there are different services offered by different brokerage firms. Some advertise in the newspaper, or on-line. Generally speaking, a landlord can pay a fee to list a unit or pay a fee when a lease is signed or offered. Tenants can pay a fee to find a place to live, but this is not typically the case. Councilor Nash is concerned about the new economy that is being created around this. He notes that the number of things provided by a broker to a landlord was substantial, including performing background checks, showing apartments, determining financial eligibility, etc. Because of this, Councilor Nash noted that perhaps the tenant shouldn't be paying the fees associated with this service. However, the landlord might feel that the broker needs to work

exclusively for the landlord.

Concerning prospective tenants, Ace Tayloe reports that insurance provisions may dictate, for example, that a landlord cannot rent an apartment to undergraduate students, or that tenants may not have dogs. Using Rent NoHo, for example, the broker fee is paid when a tenant has been selected, and not when the lease is signed. Even if the tenant decides not to rent from that landlord, they are still obligated for the fee. Brokers are courting landlords such that they might waive the fee for them. They are doing a lot of work to get as many listings (stock) as possible. Ace Tayloe states that there is an important follow up to this and similar measures, that is, creating better accountability for landlords. It was brought up at the past meeting that landlords either don't know or care what the legal requirements are. There needs to be provisions for landlords to learn, and for tenants to report, and potentially similar systems for brokers.

Councilor Moulton was surprised by the testimony by brokers about how much education they do of landlords on pretty basic legalities on the condition of rental properties. He thinks that it is something that the Northampton community will need to follow up on. Perhaps some kind of a registry that landlords attest to the fact that they have a certain level of knowledge in order to be in business.

Councilor Elkins notes that perhaps among the most unpersuasive arguments is the suggestion that brokers have this role to play in educating landlords about what they should know anyway. Another thing that landlords could do is to contract with a lawyer to seek advice that their contracts are legal and they are following the law. There is a lot to putting a roof over people's heads, but there doesn't seem to be corresponding accountability. It is left up to the tenants to speak up for themselves.

Ace Tayloe states that property managers are different from brokers. While some of the responsibilities overlap, the property managers have more of an on-going relationship with tenants as they might provide on-site maintenance.

Councilor Jarrett notes the imperfect nature of what the legislation is trying to accomplish, but it is a step in the right direction. There is much more that needs to happen in other areas. There are many more positive outcomes in terms of access to living in Northampton as a result of this work. Access to fair housing for those with disabilities, or on Section 8 vouchers or other rent subsidies is a very important step in the right direction.

Councilor Nash asked about the permitting process for rental structures. He wondered if there is a sense of how many rental units there are in Northampton. Ace Tayloe notes that one of the frustrations of the Housing Partnership is that there is not a meaningful listing of all rental units in the city. While there is the deed listing of every building that is multi-family vs. single family, there is not any other evaluation/ permitting process required in order to rent out a unit. Councilor Jarrett states that there is a rental registry in Amherst, and might be something that Northampton could look at doing.

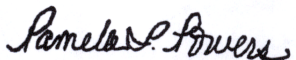
Clerk Powers states that every residential unit has an assessor code associated with it. Every year the Board of Registrars makes an inquiry of landlords about the tenants living in rental units. From the Landlord List, a street list is sent to each resident. This information is used to generate the annual street listing.

Councilor Jarret states that the order notes that the Act came out of a study by the Pioneer Valley Planning Commission. The study identified significant barriers to fair housing, which for the most part, means the ability to find housing, to find shelter in

Northampton. Councilor Moulton went to the National Alliance to End Homelessness 2021 report on the state of homelessness in the country. In 2019 6.3 million households experienced a severe housing cost burden (defined as spending more than 50% of their income on housing). Historically marginalized groups are more likely to be disadvantaged in the housing market. Councilor Moulton notes that this is a matter of equity and fairness. The legislation is not putting brokers out of business, but rather this is a modest step to address the equity imbalance. The city will also look to increase affordable housing, and these need to be made as accessible as possible to the most vulnerable population.

While the committee is endorsing the proposed amendments, Councilor Nash would like both versions to be moved forward to City Council. Council will need to officially accept the amendments into the legislation.

5. New Business: None
6. Adjourn: Councilor Elkins moved to adjourn the meeting at 6:13 pm, Councilor Nash seconded the motion. The motion was approved on a roll call vote of 4 Yes (Nash, Jarrett, Elkins, Moulton), 0 No.

Attest:   
\_\_\_\_\_  
Pamela L. Powers, City Clerk